

Original: 2002

# **Palmerton Memorial Park Association**

Third Street • Palmerton, PA 18071

2001 MAY 18 AM 9:15

May 14, 2001

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Bureau of Community Health Systems  
Room 628, Health & Welfare Building  
Commonwealth & Forster Streets  
Harrisburg, PA 17120

Public Health and Welfare Committee  
The Honorable Harold F. Mowery, Jr., Chairman  
Senate Box 203031  
Harrisburg, PA 17120-3031

Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

Health and Human Services Committee  
The Honorable Dennis M. O'Brien, Chairman  
100 Main Capitol Building  
Harrisburg, PA 17120-2020

Dear Sir or Madam:

The following comments are in reply to the notice of March 21, 2001, sent to Palmerton Memorial Park Association concerning final regulations that were submitted to the Independent Regulatory Review Commission (IRRC) on March 15, 2001 for approval.

As background information, the Palmerton Memorial Park Association pool was built in 1947 and is a monolithic structure with dimensions of 90 ft. wide by 225 ft. in length. This facility is owned by the Palmerton Borough but leased to the Association for a minimal fee. The financial stability of the operation depends on donations and membership fees, receiving no financial support from any governing organization.

Keeping this in mind, we must strenuously object to this proposed regulation, which would require unnecessary additional lifeguard hours, which translates directly into increased operating costs. It is difficult enough to operate in a break-even mode without new regulations, which have the potential to threaten the existence of PMPA's facility. We presently have certified lifeguards with classes conducted each year by our Pool Manager who is a certified lifeguard instructor among other certifications. Therefore, we are not objecting to lifeguard training but only to the section referring to the required number of lifeguards.

In all of the 53 years of PMPA's existence, we have never been aware of staffing a pool based on the number of square feet of water surface area! We staff our pool according to the operating time of day that relates to the number of people in the pool. Our normal operating day is 12 noon to 8 p.m., 7 days per week.

When the pool opens, four lifeguards are on duty and normally the Pool Manager, or another qualified person acting in this capacity is present, the 2-6 p.m. shift – six lifeguards, 6-7 p.m. – four lifeguards, and 7-8 p.m. – two lifeguards.

The total hours under the present schedule is 1,862 hours per week but under the proposed regulation, would increase to 2,793 hours per week. Based on an average swimming season of 105 days or 15 weeks, this would increase our operating costs approximately \$14,000

May 14, 2001

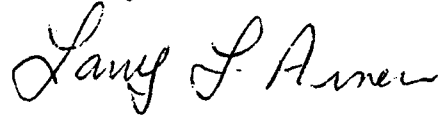
Page 2

per season! We cannot afford this increase nor can we expect the membership, many of whom are senior citizens, to be burdened with increased swimming fees for summertime enjoyment.

We believe the Palmerton Pool is operated in a safe and efficient manner with our present staffing and do not agree with the proposed regulation. This unnecessary additional financial liability will be devastating to the continued operation of a fine, well-operated and safe facility.

Please consider these comments when you are arriving at final regulations for pools and consider their fixed incomes and other escalating costs!

Sincerely,

A handwritten signature in cursive script that reads "Larry S. Arner".

Larry Arner  
PMPA Pool Manager

cc: Representative K. R. McCall  
Senator J. J. Rhoads  
Congressman P. E. Kanjorski  
Palmerton Borough

IRRC

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**From:** WPA User [sunsetpress@wpa.net]  
**Sent:** Wednesday, April 04, 2001 7:20 PM  
**To:** Robert Nyce  
**Subject:** Proposed swimming pool certification regulations

I am Robert Woodall, representing Laurel Mountain Park, Inc., a home-owners association of which I am a director, and the Borough of Laurel Mountain as a Councilman. We find that the regulations currently under consideration would be very difficult for us as follows:

Our shallow (1 to 5 feet deep) swimming pool has a surface area of about 7200 square feet. Under the porposed regulations we would be required to have three lifeguards. This we can neither afford or need. Our attendance can run from 2 to about 40 bathers depending on weather (I'ts and outside seasonal pool--so we could find 3 guards for 2 bathers--a bit much I think.

The regulations also require no less than 50 square feet per bather and this is not a problem for us. Considering the 3400 square feet per lifeguard divided by 50, the math says that 68 swimmers per lifeguard is OK. We could live with such a requirement quite nicely.

If the regulations are adopted as written we will be required to revert to a private pool that is unregulated, and thus our service to the community and its surroundings will be considerably limited. What we suggest is an allowance for more surface area to be available so long as the head count does not exceed the 68/lifeguard. This would be an easy change in the way the regulations are currently written without disenfranchising anyone or increasing safety concerns beyond reasonable levels.

Your help in bringing this to the attention at the current hearing will be appreciated. We simply had insufficient notice to arrange for a personal visit to Harrisburg, and must trust that the involved authorities will see the wisdom of granting our request.

Respectfully,

Bob Woodall, 15655-0216, 724-238-5867, sunsetpress@wpa.net



**American Red Cross**

Pennsylvania State Service Council  
724 S. George St.  
York, PA 17403

2001 APR -4 PM 3:15

Original: 2002

REVIEW COMMISSION

April 4, 2001

Mr. Robert Nyce  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg PA 17101

Re: Department of Health Final Form Regulation No. 10-155  
Certified Lifeguard Coverage for Recreational Swimming Establishments

Dear Mr. Nyce:

With regard to the above Regulations which are being considered by the Commission on Thursday April 5<sup>th</sup>, the American Red Cross would urge your approval.

Since a 1990 PA Supreme Court Decision, there has not been in place a requirement for lifeguard coverage at public bathing places in the Commonwealth. As the largest provider of lifeguard training programs, the American Red Cross believes these Regulations would greatly enhance public safety at certain recreational swimming establishments.

The Department of Health has worked with all interested parties in an attempt to create a meaningful program to protect Pennsylvania residents. We applaud its efforts.

We urge your approval.

Sincerely,

Jeffrey M. Varnes,  
Vice-Chair

CC: The Honorable Harold F. Mowery  
The Honorable Dennis M. O'Brien

RGL:elw

Original: 2002

## EMBARGOED MATERIAL

RECEIVED

2001 APR -4 AM 8:44

Laurel Mountain Park, Inc.  
PO Box 39  
Laughlintown, PA 15655

REVIEW COMMISSION  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, Pennsylvania 17120-3031

Dear Commission Chairperson,

Please consider these comments as you review the proposed regulations for lifeguard coverage at recreational swimming establishments.

Laurel Mountain Park, Inc. is a small, non-profit (not qualified for 501C status) community organization that owns and operates a neighborhood swimming pool. Based on the definition of a "recreational swimming establishment" as indicated in the March 21, 2001 correspondence from the Department of Health, our community pool may be subject to regulations regarding the number of guards per square foot of surface area, should they be approved. This would impose a financial crisis on our organization since two guards would be required and our budget barely covers the salary for a single guard.

Our annual budget of approximately \$5000, is not only for upkeep and staffing of the pool, but also for maintenance of an adjacent shelter house and the surrounding grounds. This budget is sustained through membership dues, as well as, occasional rental of the shelter house and pool. Based on the limited size of our community, which is roughly 100 homes, we have been forced to look outside the community for members in order to defray the maintenance costs. The pool itself is not a modern facility but rather a 50+ year old, slope-sided, in-ground, structure with a maximum depth of 5'5". Its principal use is by families with younger children. Since we are a somewhat old-fashioned community, we offer no video games or concessions and we require that children under 12 be accompanied by an adult. Currently our membership fee is \$35 per year and a family pool pass may be purchased for \$110. As an alternative to the pool pass members may pay a fee of \$1.00 per swim, and their guests \$3.00. As a part of the community ambiance we use the pool area and grounds for family activities like covered dish dinners, teen dances with free evening swims, kid game days, parties, etc..

Each year we put whatever we can into maintenance of the infrastructure. Our goal this year is to put a new roof on the shelter house. Last year we worked on improving its structural integrity and upgraded the kitchen. Other projects in recent years have involved upgrading the pool with new pumps and resurfacing/sealing the concrete.

In our reading of the regulations, if we charge a fee then we will be required to have two life guards which is simply not financially feasible. If we elect not to charge a per swim fee we will be forced to raise our membership rate substantially which will decrease the membership to the point where we will no longer be able to operate. In our role as an old fashioned community organization we would like to be able to keep our pool available to

our members, but should these regulations pass, without an exemption, we would be forced into non-existence.

Please consider these comments as you deliberate and advise us if you know of a way in which we could be compliant and remain in existence.

Sincerely,

Susan G. Crouse  
President, Laurel Mountain Park, Inc.

Original: 2002



## EMBARGOED MATERIAL

April 3, 2001

Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, Pa 17120


Re: Title 28. Health and Safety  
Part II. Local Health  
Chapter 18. Public Swimming and  
Bathing Facilities

Dear IRRC Chairman:

As stated in the correspondence dated March 21, 2001 from the Department of Health, we submit our comments as they relate to the Title and Chapter referenced above which is under consideration by the Independent Regulatory Review Committee on April 5, 2001.

Over the past couple of months, many aquatic facilities throughout the Commonwealth have been holding their collective breathe as the deliberation process for newly proposed regulations for lifeguard coverage has unfolded. As a result, today, the Derry Township Department of Parks and Recreation submits it's comments to the Commission to be part of the minutes of the hearing to be held on April 5, 2001.

As this process has unfolded, many questions have surfaced in reference to the thought process and goal of this proposed legislation. We believe that all involved in the field of aquatics holds safety as the number one priority in all areas of operation. From that stand point, we are pleased that safety issues remain a high priority for the Department of Health in it's function within state government. In terms of the recently proposed regulations currently under consideration, several concerns have surfaced which are cause for great concern as it relates to functionality, staffing and adherence to these regulations in there current form.

A large rectangular area at the bottom of the page is completely blacked out, indicating redacted content.

We were first made aware of this proposal by a representative of the Department of Public Health, who provided a presentation regarding proposed legislation which would change the manner in which lifeguard coverage is calculated. Currently, facilities develop and adhere to a coverage plan, which is unique to it's facility, and which is predicated upon lifeguard certifying authorities and the associated recommendations of those authorities. The benefit to this approach is that it provides each facility the flexibility to establish a plan which promotes the highest level of safety, yet, still has built in flexibility to address down times or low bather load time frames while not compromising the safety of unoccupied water surface during those times..

Based on the information provided at the November 15 meeting, and the second draft of the proposed regulations received recently, it would require one lifeguard per three thousand four hundred square feet of water surface for any given pool facility. In the case of the Hershey Recreation Center, our lower pool represents approximately eighteen thousand two hundred square feet of water surface. Our upper pool is approximately two thousand eight hundred square feet of surface water. If this legislation is enacted, we would be required to have eight lifeguards in guard chairs whenever the facility is open to the public, in our case, from 5:30 a.m. to 8:30 p.m. during the week in the summer months. This does not take into account the weekends which represent another fourteen hours of staffing time. In addition, with a large majority of lifeguards being under eighteen years of age, current law limits the number of consecutive hours these employees can work, which with the proposed guard ratio, would triple the size of our seasonal staff. In most cases, aquatic facilities struggle to find sufficient certified lifeguards to meet current coverage plans. Provided below are the issues that these proposed regulations would create with your typical municipal pool.

- 1) Staffing a pool facility for an average of 89 hours per week at a consistent eight guard ratio is not feasible.
- 2) Many times, under our current coverage plan and during peak bather load times, staffing levels are actually higher than the proposed requirement. With that being said, the key is that it provides flexibility to reduce coverage during low bather load time frames thus making other guards available to work other peak hours.
- 3) Under the proposed regulation, our maximum bather load prior to having to add an additional lifeguard per fifty people is four hundred and twenty bathers. On a low attendance day, our facility has well over five hundred bathers by 1:00 p.m. On high attendance days, under this requirement, it is possible that we would need up to twenty three guards on deck at one time.
- 4) It states that the operator may reduce the water surface by roping areas off limiting access from the public as long as adequate supervision is maintained to prevent patrons from entering these areas. Depending on the design of the facility, these areas would need to be monitored by a certified lifeguard if in fact they are being required to be monitored, thus mandating additional certified staff.



We believe those in the field of public recreation agree with the intent of this measure in terms of increasing safety standards at public swimming facilities. Although that is the case, we believe that the manner in which staffing is being calculated does not fit all facilities and certainly does not take into account the functional issues of operating a public swimming facility. It is our opinion and recommendation that the Department of Health establish a committee made up of individuals who operate public bathing facilities to discuss a uniform standard. The other alternative is to have applicable facilities submit a coverage plan for approval by the department. This would be a site specific approach which is the best solution to address such a complex issue in the context of such a diverse and unique field such as public swimming facilities.

In conclusion, it is our opinion that this proposed legislation does not take into account the actual operational functions of aquatic facilities and presents many more obstacles for operators of these facilities. It is the IRRC's responsibility to determine if these stringent and non functional regulations out way the ability of municipal pools to continue to provide swimming facilities to the residents of there communities. Although the intent of increased safety is the goal, we believe the regulatory web which is created hinders the ability to provide this most important quality of life service .

We would like to thank you for your attention in this matter and appreciate the opportunity to provide our perspective on this issue. We would be glad to provide any additional information which you may need. I can be reached at 533-7138 if I can be of any further assistance.

Sincerely,

Matthew J. Mandia  
Director  
Township of Derry  
Department of Parks and Recreation

Township of Derry  
235 Hockersville Road  
Hershey, Pa 17033

.....  
**facsimile transmission**

To: Independent Regulatory Review  
Commission

Fax: 783-2664

From: Matt Mandia

Date: 04/03/01

Re: Public Swimming and Bathing  
Facilities Regulations

Pages: 4 including cover sheet

CC:

☐ Urgent

☒ For Review

☐ Please Comment

Please Reply

☐ Please Recycle

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Comments regarding proposed regulations in relation to lifeguard coverage for bathing facilities. Requested to be included in IRRRC hearing scheduled for April 5, 2001.

RECEIVED  
2001 APR -3 PM 2:21  
TWP OF DERRY  
PARKS & RECREATION  
COMMISSION

Original: 2002

**Pennsylvania Department of Conservation and Natural Resources**

843 Park Road  
Elverson, PA 19520-9523  
April 3, 2001

**French Creek State Park**

610-582-9680  
Fax: 610-582-9692

The Honorable James Gerlach  
Senate of Pennsylvania  
1230 Pottstown Pike, Suite #4  
Glenmoore, PA 19343

## EMBARGOED MATERIAL

Dear Senator Gerlach:

This letter is in reference to the proposed Department of Health regulations requiring lifeguard coverage at recreational swimming establishments in the Commonwealth that charge a fee.


It is my belief that the proposed regulations, as written, would adversely impact both Marsh Creek and French Creek State Parks. The proposal would require more lifeguards at each pool, thereby substantially increasing the concessionaire's costs, which, to a large extent, would then have to be passed on to the public. Of course, this is assuming that there is an adequate number of lifeguards available to hire.

I have operated or overseen the operation of Commonwealth swimming pools for 22 years. In the majority of years, it has often been difficult to hire an "adequate" number of lifeguards. Being required to hire even more lifeguards, may not be feasible.

One suggested alternative would be to adopt the standard used by New York State Parks. I have been told that their requirement is 1 lifeguard per 4800 sq. ft. of pool surface. Since Marsh Creek is 11,300 sq. ft., and French Creek is 24,000 sq. ft., the number of lifeguards utilizing the New York requirements would be more in keeping with what is currently being used.

Thank you.

Sincerely,

  
Randall L. Frey  
Park Manager  
French Creek Complex

Cc: IRRC

RLF/kb

RECEIVED  
2001 APR -3 PM 2:16  
FRENCH CREEK COMPLEX

**Stewardship****Partnership****Service**

Commonwealth of Pennsylvania  
Department of Conservation and Natural Resources  
French Creek State Park Complex  
843 Park Road  
Elverson, PA 19520-9523

610-582-9680  
Fax 610-582-9692

Date: 4-3-01

To: IRRC

From: FRENCH CREEK COMPLEX

# Pages Including Cover Sheet: 2

Notes:

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PROCESSED  
2001 APR -3 PM 2:16  
REVIEW COMPLETED  
10

Original: 2002

**EN. JARGOED MATERIAL**

**Telephone: 570-629-1661 • Ski Report: 1-800-233-8100 • Fax 570-620-0942 • <http://skicamelback.com>  
P.O. Box 168 • Tannersville, PA 18372 • Ext 45 1-80**

Date: April 3, 2001

Subject: Proposed Public Bathing Law Changes

We agree that maintaining the highest level of safety for bathers should be the #1 priority of any aquatic facility. Camelback Ski Corporation agrees with the goals of the Commonwealth of Pennsylvania and the Department of Health in this regard.

It must be noted, however, that the proposed regulations attempt to apply a universal standard to an exceedingly wide variety of aquatic facilities across the state. A community swimming pool is a vastly different facility from most any waterpark attraction. A waterslide complex, a wave pool, a children's water play area, and every other unique waterpark attraction requires its own distinct approach to guard coverage and staffing, different from one another and from the approach a community pool would require.

While most community pools have a fairly standard size and shape, waterpark attractions come in endless varieties, with unique shapes, ride paths, dynamics and layouts for each. Camelback's waterpark contains a multi-level play structure in one shallow-depth pool, onto which bathers can climb and then operate various water devices. We have several waterslide complexes, an action-river inner tube ride, a wave pool, a conventional swimming pool, and a bumper boats ride with motorized vehicles. Each of these attractions has its own unique characteristics, and thus each requires its own approach to lifeguarding.

With the variety that exists in the waterpark industry, a square-footage based approach to guard staffing is not the best solution. This is why we employ the proven standard of care known as the "10/20 Rule," which was pioneered by Jeff Ellis and Associates. Ellis, as you are likely aware, is the leading waterpark guard-certifying agency in the United States, with many additional clients internationally. They also have a strong presence at conventional community-type pools, where the 10/20 Rule is applied as well. Ellis has recognized that square footage alone is not the determining factor in establishing a proper standard of care; bather load, attraction design, and other factors also hold an important role, with guard staff levels adjusted up or down accordingly.

An absolute square-footage standard, while simple to administer, does not address the extensive variety among Pennsylvania's aquatic facilities. A square-footage standard's coverage requirements may be appropriate for one type of attraction, inadequate for a second, and overkill for a third. No substantial allowance is made for differences between facility designs. No allowance is made for periods of extremely low bather loads other than to rope off sections of a pool—which in the case of a waterpark, often means closing entire attractions.

Camelback Ski Corporation feels that the best approach is to look to those organizations that have worldwide experience in certifying aquatic facilities' guard plans. Jeff Ellis and Associates, along with similar organizations, have gathered extensive experience and data from their work with global clients. It would be unfortunate if we were to close our eyes to this knowledge base and instead adopt a standard which would not best serve the bathing public.

Sam Newman  
President, Camelback Ski Corporation



Ski Area  
Fax Cover Sheet

To: INDEPENDENT REGULATORY REVIEW COMMISSION

Company: \_\_\_\_\_

From: DAVE JOHNSON - 570-629-1661 ext. 1182

Fax: 717-783-2664

Pages (including cover sheet): 2

Date: 4-3-2001 Time: \_\_\_\_\_

Should this fax arrive incomplete, please call 570-629-1661

Comments:

OUR COMMENTS ON THE PROPOSED  
CHANGES TO THE PUBLIC BATHING LAW  
ARE ATTACHED.

Original: 2002

REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WANAMAKER BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

APR - 3 2001

Operations Division  
Technical Support Branch

**SUBJECT: Amendment to PA Public Bathing Law, Provision of Lifeguards**

Commonwealth of Pennsylvania  
Department of Health  
Bureau of Community Health Systems  
Room 628, Health and Welfare Bldg.  
Commonwealth and Foster Streets  
Harrisburg, Pennsylvania

**Attention: Mr. Gary L. Gurian, Deputy Secretary for Public Health Programs**

Dear Mr. Gurian:

Reference is made to your letter dated 21 March 2001, subject as above, a copy of which was received by our Blue Marsh Lake Project Office. The letter requested that any comments on the proposed regulatory changes regarding provision of lifeguards be sent to the Commonwealth.

Within the Commonwealth of Pennsylvania, the Philadelphia District operates the federally owned Blue Marsh Dam and recreation areas at Blue Marsh Lake, located in Berks County, near Reading, Pennsylvania. Our facilities include a developed, fee area swim beach at the "Dry Brooks Day Use Area" of our project.

In accordance with federal regulations governing the Corps of Engineers operation of recreation areas at our Water Resource Projects, lifeguards are not provided at swim beach areas, including those where user fees are charged. Because the "No Lifeguards" provision is a "national" policy, individual Corps Divisions, Districts or projects have no discretionary authority to alter this policy. The regulation reads as follows:

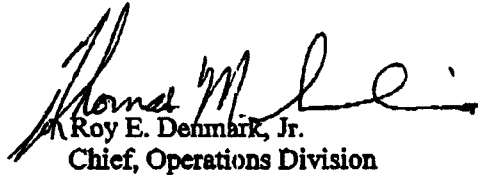
"Lifeguard services are not provided at public use areas administered by the Corps. Planning and safety regulations, however, do require proper signing and notification to the public regarding water safety, lack of lifeguards and safety equipment. Lifeguard services may be provided by other agencies at outgranted swimming areas". (Source: U.S. Army Corps of Engineers, Engineering Regulation ER 1130-2-550, paragraph 2-2n, 29 November 1996).

-2-

Therefore, for projects such as Blue Marsh Lake, which have Corps-operated recreation areas, the Philadelphia District must operate in accordance with the lifeguard policy stated above. Also, note that within the Commonwealth, similar Corps projects are operated by the Baltimore and Pittsburgh Districts.

If your office should require any additional information regarding this matter, please contact Mr. James F. Drumm of our Technical Support Branch at (215) 656-6884.

Encl



Roy E. Denmark, Jr.  
Chief, Operations Division



## Commonwealth of Pennsylvania



DEPARTMENT OF HEALTH

DEPUTY SECRETARY FOR  
PUBLIC HEALTH PROGRAMS

March 21, 2001

Dear Bathing Facility Owner/Operator:

In 1998, the General Assembly amended the Public Bathing Law of 1931, mandating that the Department of Health adopt regulations requiring lifeguard coverage at recreational swimming establishments in the Commonwealth that charge a fee. A key component of the regulations requires a specified number of lifeguards be at pool or waterside at all times, which may or may not result in a fiscal impact on pool owners. Enclosure 1 defines fee based recreational swimming establishments that are impacted by this proposed regulation and those that are not.

These regulations prescribe requirements that person(s) owning or operating recreational swimming establishments must meet to comply with the law. On March 15, 2001, the Department submitted final regulations to the Independent Regulatory Review Commission (IRRC) for approval.

IRRC will review the regulations and hold a public hearing on April 5, 2001. Additionally, the standing legislative committees will be reviewing the regulations for approval and may hold public hearings as well.

You may send comments on the regulations, not later than April 3, 2001, to:

1. Bureau of Community Health Systems, Room 628, Health and Welfare Building,  
Commonwealth and Forster Streets, Harrisburg, Pennsylvania 17120.
2. Independent Regulatory Review Commission, 14<sup>th</sup> Floor, 333 Market Street, Harrisburg,  
Pennsylvania 17101.
3. Standing Legislative Committees:
  - a. Public Health and Welfare Committee, The Honorable Harold F. Mowery, Jr., Chairman,  
Senate Box 203031, Harrisburg, Pennsylvania 17120-3031.
  - b. Health and Human Services Committee, The Honorable Dennis M. O'Brien, Chairman, 100  
Main Capitol Building, Harrisburg, PA 17120-2020.

If you would like a copy of the regulation or you have any questions please contact Dennis Wilson in the Bureau of Community Health Systems at 717-787-4366. Thank you for your interest in public health and safety.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary L. Gurian".

Gary L. Gurian

Enclosure

**Enclosure 1**

**Public bathing places impacted by these regulations are those that fall under the definition of a recreational swimming establishment as follows:**

***Recreational swimming establishment*** – A facility that is designed, constructed, or designated for use by individuals for the primary purpose of swimming, if a fee is charged for admission. The term includes swimming pools, water rides, wave pools and swimming beaches and other outdoor swimming facilities. The term excludes those facilities owned by condominiums, other property owner associations, rental arrangements which include three or more families or social units, hotels or motels, campgrounds, private clubs and private organizations which do not provide access to the general public, swimming facilities used exclusively for hydrotherapy, and residential swimming facilities used solely by the owner of a residence, the owner's family and personal guests.

Recreational swimming establishments include state, county, municipal, and school owned pools as well as waterparks, that charge any fee, whether on an annual, seasonal, monthly or daily basis, for use of the facility by the general public.

Bathing facilities that will not be subject to this regulation include pools owned by hotels/motels, apartments, condominiums, campgrounds (KOA), private clubs, YM/YWCAs, health clubs, and all facilities that do not charge a fee of any kind.

Technical Support Branch, CENAP-OP-TN  
Wanamaker Building, 100 Penn Square East  
Philadelphia, PA 19107-3390  
ATTN: Jim Drumm  
Phone: (215) 656-6884, Fax: (215) 656-6742

**U.S. Army Corps of  
Engineers**

# Fax

**To:** Commonwealth of PA

**From:** Jim Drumm

Independent Regulatory Review

Commission

**Fax:** 717-783-2664

**Date:** April 2, 2001

**Phone:**

**Pages:**

**Re:** PA Bathing Law Revisions/Lifeguards CC:

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

**•Comments:** Reference my telephone conversation yesterday afternoon, April 2, 2001 with Dennis Wilson, PA Department of Health, Bureau of Community Health Systems. Attached is a comment letter in response to the general information letter received from Mr. Wilson's office, dated March 21, 2001, concerning provision of lifeguards at recreational swimming facilities.

RECEIVED  
2001 APR -3 AM 9:24  
REVIEW COMMISSION

Original: 2002 Fax received prior to embargoed period

**IRRC**

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**From:** LBryanBIRD@aol.com  
**Sent:** Tuesday, April 03, 2001 10:16 AM  
**To:** IRRC@irrc.state.pa.us  
**Subject:** Public Swimming and Bathing Regulation 10-155

Please accept the attached comments from the Pennsylvania Recreation and Park Society on Department of Health Regulation 10-155, IRRC 2002.

Yhank You,

Lee Bryan, Aquatics Branch President  
PRPS

RECEIVED  
2001 APR -3 AM 10:24  
REVIEW COMMISSION  
40

4/3/2001

April 3, 2001

2001 APR -3 AM 10:24

**COMMENTS OF THE PENNSYLVANIA RECREATION AND PARK SOCIETY  
TO  
THE INDEPENDENT REGULATORY REVIEW COMMISSION  
ON  
PENNSYLVANIA DEPARTMENT OF HEALTH REGULATION NO. 10-155  
(Dated March 15, 2001)  
IRRC #2002**

**PUBLIC SWIMMING AND BATHING PLACES**

Upon review of the proposed final form regulation from the Department of Health we would like to submit the following objections and comments for your consideration.

We strongly urge you to reject these regulations and direct the Department of Health to reschedule stakeholder meetings. While we support reasonable regulations in this area, these regulations fail on several technical points as outlined below. These regulations also did not allow for adequate public review and are far different than what was published in the Pennsylvania Bulletin in February 1999. The regulated community needs more time to consider these important regulations as they will significantly increase costs.

**1. Section 18.42 (B) Requirements For A Lifeguard Certifying Authority**

Subsection (8) states that a lifeguard instructor must be a certified lifeguard. This is contrary to the American Red Cross who require an individual to be a certified lifeguard as a prerequisite to becoming an instructor, but does not require the instructor to maintain this certification. The rationale is that a guard may not have any other responsibility other than the supervision of the bather. Instructors must have lifeguards on duty during a lifeguard course, therefore do not need to be certified lifeguards themselves to instruct.

Approval of regulation 10-155 could result in the loss of numerous instructors in schools, universities and recreation departments across the Commonwealth who no longer are active lifeguards.

**2. Section 18.42 (C) Required Number of Lifeguards**

Subsection (1)(II) allows the operator to reduce the water surface area by closing portions of the swimming area with safety ropes provided that adequate supervision is maintained. The accepted definition of a safety rope is the rope, with buoys, attached across the pool one to two feet towards the shallow end to define the floor breakpoint (where the floor begins to slope towards the deep end).

Approval of regulation 10-155 as written would restrict pools from being able to use lane lines, chain off entrance points, or utilize other materials to close portions of the swimming area.

Additionally, the ambiguous term of "adequate supervision" needs to be defined. What a pool operator may consider adequate supervision can become a litigious factor in the case of an aquatic accident.

### **3. Section 18.42 (C) Required Number of Lifeguards**

Subsection (2) notes that there must be an additional lifeguard on duty when there is less than 50 square feet of water surface area for each bather. It then requires that the operator shall divide the total water surface area by the total number of bathers in the recreational swimming establishment.

Nowhere in regulation 10-155 does the Department of Health define what constitutes a bather. Without such a definition an operator would be unsure if the number of bathers were those individuals in the water, or all patrons (swimmers and non-swimmers) within the establishment.

The Allegheny Health Department defines a bather as an individual engaged in activities in the water and Ohio Department of Health notes that bather means an individual swimming, diving or bathing in a public swimming pool. This definition appears to be the industry standard and we agreed with bathers as being those individuals in the water.

### **4. Section 18.42 (C) Required Number of Lifeguards**

Subsection (3) permits a lifeguard in a fixed lifeguard station to supervise a wading pool if there is an unobstructed view. There is no mention of response time, bather load, or distance.

This is in direct conflict to section (C), subsection (1) which requires that there be one certified lifeguard per 3,400 square feet of water surface area on duty at waterside whenever the establishment is open.

Regulations should allow for reduced lifeguards for lifeguard training, swimming lessons, swim team meets, swim team practice and adult lap swimming.

### **5. The Department states that there will be no fiscal impact from the approval of regulation 10-155.**

At the stakeholders meeting held February 12, 2001, attendees estimated that their budgets would increase somewhere between twenty-five and thirty-three percent, if the additional lifeguards necessary to meet the new regulation were available to be employed. This substantial cost increase is an unfounded mandate placed upon operators of recreational swimming establishments.

6. In their comments of April 15, 1999 the Independent Regulatory Review Commission noted that the Department of Health should specify a reasonable time period after final publication for facilities to meet the new requirements.

This does not appear to be included in Annex A.

7. The Independent Regulatory Review Commission also suggested that the Department of Health should consider issuing an advance notice of final rulemaking to give establishments subject to the rulemaking an opportunity to review and comment on the new standards.

As the Department of Health did not submit the final form regulation until March 15, 2001, and notification of submission was not made until sometime after March 21, 2001, establishments were prevented from making such comment.

While we applaud the Department of Health on their attempt to amend and update the Bathing Code, the Pennsylvania Recreation and Park Society feels that this final form regulation has sufficient ambiguous and non-defined language to cause it to be rejected by the Independent Regulatory Review Commission.

We look forward to working with the Department of Health in developing a regulation that will ensure the safety of the public and is reasonable and clear for all concerned.

Submitted by:  
Lee E. Bryan, Aquatics Branch President  
Pennsylvania Recreation and Park Society, Inc.  
1315 W. College Avenue, Suite 200  
State College, PA 16801-2776



**Pennsylvania Department of Conservation and Natural Resources**

Rachel Carson State Office Building, P.O. Box 8767, Harrisburg, PA 17105-8767  
Office of the Secretary

April 3, 2001

Original: 2002

717-772-9084  
FAX 717-705-2832

**EMBARGOED MATERIAL**

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown II  
Harrisburg, PA 17101

Dear Mr. Nyce: *Bob,*

The purpose of this letter is to express our serious reservations with the proposed final regulations submitted on March 15, 2001, by the Department of Health prescribing requirements for the operation of recreational swimming establishments in Pennsylvania. While we are generally supportive of the need for this regulation, we feel the proposed lifeguard standard imposes significant increased economic hardship without any resultant measurable increase in the health and safety of visitors using our State Park pools.

The Department is responsible for the operation of pools at ten State Parks which will be affected by this regulation. The current level of staffing and operation for these pools has provided an exemplary model with not a single drowning in the past 20 years. The regulations proposed by the Department of Health will require our State Park pools to increase lifeguard staffing over 40 percent, which is not only unnecessary, but also substantially worsens the already difficult problem of hiring and retaining qualified lifeguards.

I want to make it very clear that we support having a regulation that results in the appropriate number of lifeguards and assures swimmer safety. Our concern is that the proposed standard of one lifeguard for every 3,400 square feet of water surface is based on a single study conducted by the New York State Department of Health without any comparative analysis of the standards employed elsewhere throughout the country. In fact, the regulatory analysis submitted by Health fails to note that the State Parks in New York utilize a different standard of one lifeguard for every 4,800 square feet of water surface.

We expect that the proposed lifeguard standards will also have enormous economic consequences on other fee-based recreational swimming establishments which, in all likelihood, are not even aware of the proposal now being considered by the Independent Regulatory Review Commission (IRRC). In large measure, this is due to the fact that neither the proposed standard nor any other standard has been subject to public scrutiny during the official public review period.

**Stewardship**

**Partnership**

**Service**



Mr. Robert E. Nyce

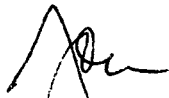
-2-

April 3, 2001

For these reasons, we urge the IRRC to disapprove this rulemaking so that all stakeholders have a fair opportunity to participate in the development of a more cost effective approach which is protective of public health and safety. We stand ready to work with the Department of Health to develop a new regulation which achieves this goal.

Thank you for the opportunity to comment on these regulations. Our detailed response on the entire regulatory package is enclosed. If you have questions regarding our comments, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John C. Oliver', written over a large, stylized 'A' shape.

John C. Oliver

Secretary

Department of Conservation and  
Natural Resources

Enclosure

Department of Conservation and Natural Resources Comments  
Title 28, Health and Safety, Proposed Final Recreational Swimming Establishment  
Requirements

- The following provides comments concerning the proposed Department of Health *Title 28 Health and Safety* regulations pertaining to lifeguard requirements for recreational swimming establishments. The Department of Conservation and Natural Resources opposes these regulations, as they are excessive for meeting cost effective lifeguarding standards. We support lifeguard requirements for recreational swimming establishments similar to what the State of New York requires for their state parks. Attached is a copy of the New York's requirements. Without more reasonable requirements, we would have to increase costs over \$150,000 just to implement the proposed standard. We currently operate very safely using an alternative approach with a demonstrated safety record of no drownings at fee-operated pools over the past 20 years. Having safe and affordable swimming opportunities is our objective. This proposal also affects municipal pools and others. We believe they will have similar concerns.
- Definition of bathers used in Section 18.42 (2) should not include all bathers in the recreational swimming establishment but should clearly state that the bathers should only be those persons in the water. Experienced lifeguards are capable of monitoring bather load and pool capacities.
- All references of 3,400 square feet should be changed to 4,800 square feet.
- Lifeguards are difficult to hire to meet current operational requirements. Much recruitment is needed to staff the pools. Lifeguards are frequently unable to work the entire summer. Required lifeguard training is not readily available in all communities. The proposed regulations imposes stringent requirements that will over-burden and cost public establishments undue hardships, both financially and in providing qualified employees for public safety.
- The Department of Conservation and Natural Resources (DCNR) administers 10 fee-operated swimming pools at state parks in Pennsylvania:
  - Caledonia State Park, Franklin County – state operated,
  - Codorus State Park, York County – state operated,
  - Cook Forest State Park, Forest County, – state operated,
  - Frances Slocum State Park, Luzerne County – state operated,
  - French Creek State Park, Berks County, under concession lease agreements
  - Lackawanna State Park, Lackawanna County – state operated,
  - Little Buffalo State Park, Perry County – state operated,
  - Marsh Creek State Park, Chester County, under concession lease agreements
  - Neshaminy State Park, Bucks County, under concession lease agreements
  - Nockamixon State Park, Bucks County, under concession lease agreements

Department of Conservation and Natural Resources Comments  
Title 28, Health and Safety, Proposed Final Recreational Swimming Establishment  
Requirements

88 lifeguards are utilized to staff these pools during the summer season. The proposed regulations will require an increase of 36 lifeguards without any reasonably expected improvements to swimmer safety.

- On page 2, paragraph 11, the Department of Health presented in its *Regulatory Analysis Form* statistics maintained by the federal Center for Disease Control (CDC) that stated from 1990 through 1998, 1030 drowning deaths occurred in Pennsylvania.

Although it was stated that 1030 drowning deaths occurred in Pennsylvania from 1990 to 1998, nowhere does the Department of Health indicate where these drownings occurred or even if many are swimming related. DCNR provided information to the Department of Health concerning the operation of state park pools which indicated that there have been no drownings in fee-operated pools that we administer. We are unsure as to why the Department of Health is using the statistics on all drownings within the state of Pennsylvania in order to regulate the pools that charge admission.

The Department of Health should provide specific figures indicating how many of these drownings occurred in the recreational swimming establishments that these regulations would affect. For an example of how the data can be misleading, CDC's web page states that between 60-90% of drownings among children aged 0-4 years occur in residential pools; more than half of these occur at the child's own home. These tragic deaths are included in the statistics that the Department of Health is using to require lifeguards at recreational swimming establishments. Yet none of these deaths occurred at public guarded swimming facilities that would be affected by these regulations. Drownings occur at homes, in boating and fishing accidents, during floods and in many other situations. It is unfair to use this statistic as a justification for these burdensome public lifeguarding requirements.

- Department of Health's response to Section 14 of the *Regulatory Analysis Form*, states that no entities are perceived to be adversely affected by these regulations. Department of Health makes the statement without providing any information as to who might be affected by these regulations. The department has also been in contact with state park managers at fee-operated pools and determined that there will be a significant increase in the cost of operations. This additional cost of operation would eventually be passed on to our users. The additional costs of providing the number of lifeguards required by Department of Health may make user fees cost prohibitive. Attendance may drop at pools with increased fees. This same kind of major impact may well similarly affect the pools administered by other agencies. DCNR is finding that hiring the current number of lifeguards is very challenging. The number of lifeguards required to comply with the Health regulation may not be readily available.

Department of Conservation and Natural Resources Comments  
Title 28, Health and Safety, Proposed Final Recreational Swimming Establishment  
Requirements

- Section 16 of the *Regulatory Analysis Form* described the communications with an input from the public in the development and drafting of the regulation. These communications were infrequent. An initial stakeholders meeting was held in 1998. Proposed rulemaking was published in the Pennsylvania Bulletin in February 1999. To DCNR's knowledge, nothing was known to be happening outside of the Department of Health until November 2000 when staff from the Department of Health spoke at an optional breakout session during the Pennsylvania Recreation and Park Society's fall meeting. Staff indicated to this group that one lifeguard would be required for every 2,000 square feet of pool surface. No written materials were shared. DCNR worked with the Department of Health to convince them that this would not be practical. The Department of Health then held a stakeholders meeting on February 12, 2001. Attendees at this meeting did not get a chance to look at proposed final language before or during the meeting. This small group of stakeholders did not ever see the regulation package with the requirements in writing until it was recently transmitted to IIRC. A wider distribution of the proposal is warranted.

The Department of Health lists organizations, including DCNR, as participating in a small stakeholder's meeting held on February 12, 2001. They also state that information and suggestions provided by the stakeholders were taken into consideration when drafting these regulations. DCNR's and other stakeholder's concerns may have been considered, but were not included in Title 28 Health and Safety regulations in its current form. The transcripts of the February meeting will show that stakeholders suggested greater square footage for lifeguards than one lifeguard to 3,400 square feet and provisions with greater flexibility regarding required lifeguards for swim lessons, lap swimming and swim team meets and practice. None of these suggestions were incorporated. There were also suggestions from stakeholders that water parks featuring wave pools, elaborate water slides, etc. be treated differently than lifeguards required for the typical rectangular municipal pool.

Stakeholders were not provided with adequate time to review the final regulations being presented. Much more time and a much broader review are needed to adequately find a workable solution. The Department of Health should start over and clearly share its proposal with the regulated community so that stakeholders can respond on this very important matter. As important as this issue is, more outreach is needed to ascertain and address the additional issues that will certainly be raised by the regulated community. New York State responded to public concerns by relaxing some of their lifeguard requirement regulations after finding that the full impact of their actions had not been initially considered.

- Section 18 of the *Regulatory Analysis Form* estimate that a negligible cost or savings to local governments is anticipated. Based on conversations with municipal recreation departments, all managers estimate greatly increased costs to

Department of Conservation and Natural Resources Comments  
Title 28, Health and Safety, Proposed Final Recreational Swimming Establishment  
Requirements

comply with these regulations. Not enough work was done to properly identify the economic consequences of these regulations.

- Section 20 of the *Regulatory Analysis Form* lists only the “State Government - DCNR” figures as cost savings. This is not actually a cost savings, as the Department did not realize any cost savings over the period of the subsequent five-year period. However, DCNR did provide the increased costs (conservatively estimated at approximately \$150,000 for 10 state parks with swimming pools that charge admission) that would be the result of these regulations. When you consider the number of municipal pools affected and the seasonal nature of DCNR outdoor pools (as contrasted to some indoor municipal pools), the actual cost for additional lifeguards will be much higher. Increased costs for total compliance with these regulations would easily reach millions of dollars statewide. DCNR pool operations will also result in major sections of the pools being closed during slow periods.
- Section 20 A of the *Regulatory Analysis Form* is inaccurate. It incorrectly lists conservative estimates of increased costs for DCNR as DCNR’s savings. It does not show any costs for the regulated community and local governments. DCNR predicts these costs could amount to millions of dollars.
- Section 20 B of the *Regulatory Analysis Form* provides the expenditure history over the past three years for programs affected by these regulations. This section apparently reflects the fiscal budget for the Bureau of State Parks. We can see no rationale for its listing.
- Section 24 of the *Regulatory Analysis Form* asks if there are any provisions in the proposed Health regulations that are more stringent than federal standards.

The Department of Health stated that none of these proposed regulations are more stringent than federal standards and that the regulations are consistent with industry protocols. These regulations are in fact more stringent than federal standards. At present, the U. S. Army Corps of Engineers swimming facilities have been using a “Swim At Your Own Risk” program, which has been very successful for over 20 years. The Department of Health clearly did not recognize or consider any of these programs for regulating the swimming community. We know of no federal regulations requiring lifeguards; therefore, these proposed Health requirements go well beyond existing federal requirements.

- Section 25 of the *Regulatory Analysis Form* asks how these regulations compare with those of other states. The Department of Health states that the lifeguard certification procedures are similar to those in place in other states and that these regulations will not put Pennsylvania at a competitive disadvantage. However, DCNR would assert that the Department of Health has not adequately addressed the question in this section. The question should address comparative regulations

Department of Conservation and Natural Resources Comments  
Title 28, Health and Safety, Proposed Final Recreational Swimming Establishment  
Requirements

in place that presently exist in other states, not lifeguard certification procedures. The Department of Health has referenced a portion of New York State's lifeguard regulations which requires that at least one lifeguard shall be on duty at waterside for every 3,400 square feet of water surface area or fraction thereof during all periods the recreational swimming establishment is open for use. This information was taken from an unpublished New York State report.

DCNR obtained the important additional qualifying information from New York State that the "fraction thereof" portion of their formula would only apply to pools with square footage below 10,200 square feet of surface. This reasonable accommodation allows for more guards for small pools and some economy of scale for larger operations. DCNR also found that New York allows for variations of lifeguard levels for learn-to-swim programs, competitive swimming (practices and competition) and recreational "lap" swimming. The Department of Health makes no similar adjustments. This flexibility would be helpful for many pools affected by these regulations. Without such flexibility, you would greatly increase costs or have many operations shut down or non-compliant.

The New York State Park system currently uses the 1-to-4,800 square foot rule in providing lifeguard coverage. DCNR submitted comments to the Department of Health well before these proposed regulations were submitted to IRRC recommending that Pennsylvania follow the proposing to follow New York State Parks system of requiring one lifeguard per 4,800 square feet or a fraction thereof. This was rejected without any justification in favor of utilizing the more stringent standard.

**In conclusion** -- DCNR would strongly request that IRRC reject the present regulatory proposal by the Department of Health; that the matter be returned to the Department of Health with direction to consider a more flexible and cost-effective standard; and that the Department of Health be instructed to conduct extensive public communication and hearings with all members of the regulated community, leaving a substantial period for comment and revision

# WATER SAFETY MANUAL

STATE OF New York  
George E. Pataki, Governor

*Office of Parks, Recreation, and Preservation*

Bernadette Castro, Commissioner  
Darwin DeLappa, Director of Water Safety

## 2000 Edition

Redesigned by: Kristie Muller

An Equal Opportunity/ Affirmative Action Agency

## **I. LIFEGUARD COVERAGE**

Lifeguards must be assigned in adequate number to cover the swimming areas open to the public. New lifeguards should be paired up with experienced lifeguards until they are familiar with expectations of being a professional lifeguard.

- A. The hours of daily operation, size, type of facility, and patron density are key factors in determining the number of guards required. Operational hours will vary from facility to facility and are scheduled by the Regional office, subject to the approval of the Commissioner.
- B. Some regions rotate lifeguards between two or more bathing facilities, thereby, requiring fewer full time personnel. Lifeguards, therefore, must be knowledgeable in swimming pool and bathing beach supervision.
- C. For the purpose of meeting supervision standards, the usable space for bathing within the facility's total available space, can be decreased or increased by using marker buoys and/or lifelines. The use of lifelines defines the swimming area being supervised and provides temporary emergency support for distressed swimmers.
- D. After developing the coverage plan, it is important to test it for feasibility. Do not hesitate in making any modifications necessary to assure proper coverage. All lifeguards and supervisory staff, including park management, must understand the coverage plan.

**Coverage requirements can be determined by area/zone sizes, in either square feet or linear measurements.**

**Pools:** Every swimming pool, regardless of size, must **NOT** open with less than TWO (2) lifeguards.

A minimum of **ONE (1)** lifeguard shall be provided for every 4,800 square feet of pool surface area **open** for swimming.

When 50 % of pool capacity is reached, a **ROVING** lifeguard **MUST BE PROVIDED**.

Pool capacity must be posted in the pool office. (To calculate capacities consult National Spa and Pool Institute standards or refer to the NYS Dept. of Health, Sanitary Code, Subpart 6.1 )

**DIVING AREAS** must be guarded to appropriate levels, **separate** from the 4800 square foot calculations. A minimum of **ONE (1)** lifeguard for every **TWO (2)** diving boards in use is required.

**WADING AREAS** 2 feet deep or less must be supervised by a lifeguard or in extenuating circumstances, by a responsible staff person of 18 years of age or older who has been oriented to the job and knowledgeable about the Emergency Action Plan.

**BEACH:** 1 guard/chair for every 50 yards of OPENED beach; with a maximum distance of 50 yards over the water to the outside boundary line. **ZONE COVERAGE** shall NOT exceed 22,500 square feet. No beach shall open with less than two lifeguards on site.

**DIVING BOARDS** - When diving boards are used at a beach facility, lifeguards shall be stationed at diving boards as a separate zone; a minimum of ONE lifeguard for every two boards in use is required.

**RAFTS** - When a raft is used at a beach facility, a lifeguard must be stationed on the raft to monitor the activity of the patrons using it and limit the number of persons aboard to approved capacity. Special cautions should be taken to prevent excessive bouncing. Bathers are prohibited from swimming under the raft. Diving from the raft is restricted to approved water depths and must be controlled.

## **II. SUPERVISION STAFFING FORMULA**

Determine the size (square foot of pools and yards at beaches) of the area/zones to be covered, determine the hours of operation to figure your lifeguard needs and apply the following current formula for assigning supervising lifeguards to NYS Parks aquatics facilities:

### **2 to 8 Guards - (Including Supervisor)**

The facility shall have **one** assistant chief position.

### **9 to 17 Guards - (Including Supervisors)**



The facility shall have **one (1)** chief and **one (1)** assistant chief position.

**18 Plus Guards - (Including Supervisors)**

The facility shall have **one (1)** chief and **two (2)** assistant chief positions.

Original: 2002.

Towamencin Township  
Parks & Recreation Department  
FAX

To: FAX#

From: Barbara Koch-Santoro

Date: April 2, 2001

Re: ANNEX A, Title 28 Health & Safety, PART II, Chapter 18. Public Swimming and Bathing Facilities

# of pages: this one only

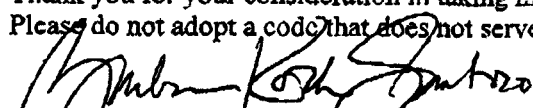
To those it concerns:

Regarding the proposed changes to the Pennsylvania Bathing Code regulating lifeguards and coverage at our municipal pool complex:

It is our professional opinion that the changes outlined by the Department of Health in the report submitted in March to the IRRC are premature. Definition of several terms would make substantial difference in the interpretation of the regulations. "Bather", "participant", "user", and other terms are not adequately defined when used in reference to the scope of coverage. Also, the formula for adding guards in a more crowded condition is questionable with regard to the use of the word "establishment".

If these regulations are adopted as is, the financial burden on our municipal budget in adding a significant number of extra lifeguards will be immense. We believe that the system we currently operate under is safe, with a blemish-free safety record. The Health Department might consider conducting a more in depth study of different types of pools and establishments and writing specific guidelines that apply to each in categories. Setting wide standards cannot serve the general Commonwealth in its' own best interests, as the pools that may be most affected are municipal.

Thank you for your consideration in taking more time to review the proposed changes. Please do not adopt a code that does not serve in the best way possible.

  
Barbara Koch-Santoro, CTRS, CPSI, WSI  
Director of Parks & Recreation  
Towamencin Township

Towamencin Township Parks & Recreation Department  
1675 Sumneytown Pike, PO Box 303, Kulpsville, PA 19443-303  
215-368-7602 FAX: 215-368-7650



*A Community of Tradition and Vision*

P.O. Box 303 • 1675 Sunnyside Pike  
Kulpville, PA 19443-0303  
(215) 368-7602 FAX (215) 368-7650

RECEIVED  
2001 APR -3 AM 9:13  
REVIEW COMMISSION

**FAX NO.:** 717) 783-2664

**TO:** Honorable Dennis M. O'Brien

**FROM:** Barbara Koch-Santoro

**RE:** Recreational Swimming Establishments

**DATE:** April 3, 2001

**TOTAL NUMBER OF PAGES (Including Cover) :** 2

**COMMENTS:**

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RECEIVED  
2001 APR -3 AM 9:13  
TOWAMENCIN TOWNSHIP  
REVIEW COMMITTEE

**FAX NO.:** 717) 783-2664

**TO:** Honorable Harold F. Mowery, Jr.

**FROM:** Barbara Koch-Santoro

**RE:** Recreational Swimming Establishments

**DATE:** April 3, 2001

**TOTAL NUMBER OF PAGES (including Cover):** 2

**COMMENTS:**

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Towamencin Township  
Parks & Recreation Department  
FAX

To: FAX#

From: Barbara Koch-Santoro

Date: April 2, 2001

Re: ANNEX A, Title 28 Health & Safety, PART II, Chapter 18. Public Swimming and Bathing Facilities

# of pages: this one only

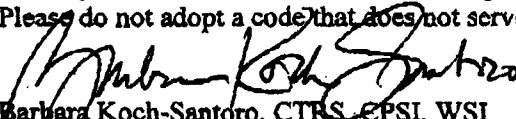
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Thank you for your consideration in taking more time to review the proposed changes. Please do not adopt a code that does not serve in the best way possible.

  
Barbara Koch-Santoro, CTRS, CPSI, WSI  
Director of Parks & Recreation  
Towamencin Township

Towamencin Township Parks & Recreation Department  
1675 Sumneytown Pike, PO Box 303, Kulpsville, PA 19443-303  
215-368-7602 FAX: 215-368-7650



## ***Recreation Department***

Herbert R. Dolaway, C.L.P. Supt. of Recreation  
Julie L. Redding, Asst. Supt. of Recreation

April 2, 2001

Original: 2002

Patrick Fleagle  
State Representative  
116 West Main Street  
Waynesboro, PA 17268

Dear Representative Fleagle:

It has come to my attention that the State of Pennsylvania is upgrading its bathing code regulations, specifically, regulations regarding lifeguards. I agree this matter needs to be addressed, but I question the standards that are being considered. I also question the concept of establishing measurable standards for safety purposes if the standards are not established for all pools.

The requirement of one guard per 3,400 square feet is too strict particularly when this standard is in effect regardless of the number of bathers in the water. The necessity of an additional guard when the concentration of bathers exceeds one bather per fifty square feet is reasonable if considering bathers in the water.

Chambersburg has operated a 15,500 square foot pool, 550,000 gallons, for over thirty years. We have serviced over one million bathers and never encountered a drowning. We have maintained a profit of operation every year while giving special rates for underprivileged youth. With these proposed standards our cost of operation could increase as much as fifteen (15%) percent.

In my opinion, the establishment of the standards referred to earlier will not make pools more safe but will require the pool operators to hire untrained lifeguards, increase fees, and shorten hours of operation.

Our main goal as a community pool is to serve the public with a quality safe experience at a reasonable, responsible price. These proposed new standards would greatly complicate operations and could result in poor services.

Sincerely,

BOROUGH OF CHAMBERSBURG

Herbert R. Dolaway  
Superintendent of Recreation

HRD:dem

235 South Third Street, Chambersburg, Pennsylvania 17201  
Telephone (717) 261-3275 • Fax (717) 264-0224  
E-mail Address is chbgrec@pa.net

RECEIVED  
2001 APR -2 PM 1:10  
REVIEW COMMISSION



# Borough of Chambersburg

Celebrating 50 years of consumer owned gas service  
and over 100 years of consumer owned electric service

## FACSIMILE TRANSMISSION COVER SHEET

TO: Rep Patrick Fleagle

RECEIVING FAX NUMBER: 703-2664

FROM: Borough of Chambersburg Herb Dolaway RECREATION Dept

TRANSMITTING FAX NUMBER: 717-264-0224

SENDER'S DIRECT DIAL PHONE NUMBER: 717 261-3295

SUBJECT: Bathing code - Pool - Lifeguard Regulations

RECEIVED	2001 APR -2 PM 4:10
REVIEW OF ALLOCATION	

DATE: 4-2-01 APPROXIMATE TIME OUT: 4:05

NUMBER OF PAGES (Including this page): 2

Original: 2002

**C-B Enterprises, Inc.**163 Mail Route Road  
Sinking Spring, PA 19608

Telephone / Fax (610) 670-5051

April 2, 2001

Dear State Health Committee,

Our company has operated the swimming pool concession at French Creek State Park in Elverson, PA since 1983. We also have the concession at Marsh Creek State Park swimming pool in Downingtown, PA since 1990. We are extremely concerned about new regulations currently proposed. We have several concerns:

1. Financially we cannot operate under the new proposal (1 guard for every 3400sq. feet). We feel this proposal is "overkill" and would require us to have 7 - 8 guards on duty at all times and 5 lifeguards off-duty. If this was approved, we would need to double the price of admission to cover costs and payroll would also double.
2. We feel the committees should consider number of bathers and pool facilities, rather than just square footage.
3. We also believe we cannot be compared to a water park. Our pool depths are between 6 inches and 6 feet deep with approximately 2/3 of our pools being less than 3 feet deep. (No diving boards or slides)
4. Finding qualified lifeguards has become more difficult every year. Doubling our guard staff would be impossible.
5. We take pride in our operations and safety is our utmost concern. But this proposal is flawed and needs more consideration.
6. We feel New York State Parks have more realistic and feasible requirements. (One guard for every 4800 sq. feet with the understanding of adding more guards at busier times.)

It seems these new regulations are being sought without proper research and understanding. Please vote against these new proposals. I would be more than happy to talk more in-depth on any of these aforementioned subjects. (610) 670-5051.

Thank you for your time and careful consideration in this matter.

Sincerely,

William G. Biffel, President

Cc: State Representative Mary Ann Daley  
Senator Gerlach

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2001 APR 3 - 8 10 10 02

RECEIVED



**C-B ENTERPRISES, INC.**

163 Mail Route Road  
Sinking Spring, PA 19608

(610) 670-5051  
(610) 582-1194 (seasonal)

**FAX COVER LETTER**

TO: State Health Committee

FROM: Bill Biffel (President)

PAGES (including cover letter): 2

DATE: 4-2-01

**COMMENTS:**

Dear Committee:

Please contact me with any  
questions or comments about  
my concerns!

Thank you,

Bill Biffel

610-670-5051

RECEIVED  
2001 APR -3 AM 10:15  
HEALTH COMMITTEE

**BOROUGH OF WEST READING**

500 Chestnut Street West Reading PA 19611  
(610) 374-8273 Fax: (610) 374-8419 [www.westreadingborough.com](http://www.westreadingborough.com)

Original: 2002

April 1, 2001

**EMBARGOED MATERIAL**

Bureau of Community Health Systems  
Room 628; Health & Welfare Building  
Commonwealth & Forster Streets  
Harrisburg, PA 17120

To Whom It May Concern:

This letter is in response to your letter of March 21, 2001 addressing the Public Bathing Law of 1931. The regulations being submitted to the Independent Regulatory Review Commission are difficult for us to agree with and I know these views are shared by many people who manage and operate public swimming pools. Please find those views listed below:

- 1) Some hotels charge a fee to use their pools if the individual interested in swimming is not an overnight guest. For example, the Sheraton Hotel swimming pool in Reading is open to the public for a fee. Yet, this for-profit pool would be exempt from the new regulations, while our non-profit municipal swimming pool is not exempt.
- 2) The number of lifeguards required under the new regulation would greatly increase our costs of operation. Currently, we can operate with one lifeguard on our main pool for small groups where our lifeguard to bather ratio is at least one to twenty-five. This is ideal when there are swimming lessons, water polo matches, or simply lap swimmers. The proposed regulations would require us to have three or four lifeguards on at all times when the pool is being used regardless of the amount of people swimming. Our costs of operation could triple with the new regulations forcing us to take drastic measures to remain open. Our pool membership and the surrounding community is not affluent and we would undoubtedly lose revenue and members if we had to drastically increase our fees.
- 3) The definition of a "safety rope" to close off the areas of water not being used needs more clarification. What exactly is a "safety rope."
- 4) The definition of "bather" also needs clarification. Bather should be the actual person in the water swimming. We have many situations where family and friends are charged an admittance fee to watch a water polo tournament, participate in moonlight swims/dances, swimming meets, and the swimmer who is accompanied by the non-swimmer. It is not realistic to view these individuals as bathers. We may have 100 spectators for a polo match who will not be

continued on next page...

swimming, but are charged an admittance fee and now they will be called "bathers?" Again, this will negatively affect our pool's operation and costs.

We are urging the Independent Regulatory Review Commission to re-evaluate the proposed changes to the Public Bathing Law and realize the negative impact the new regulations will have on municipal non-profit swimming pools and the community. We propose and are satisfied with the current law based on the ratio of lifeguards to the number of swimmers in the water. Lifeguards are not easy to locate, employ, and retain.

If I can be of assistance in this matter, please don't hesitate to contact me. I can be reached at the phone number listed on the front of this letter or via the borough's email address to my attention at <wrb@wrb.nxlkhome.com>. Please keep me informed to any changes and updates. Thank you.

Sincerely,



Heidi L. Carles  
Recreation Coordinator

Original: 2B02



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

March 30, 2001

Mr. Robert E. Nyce, Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Mr. Nyce:

We have recently been made aware of proposed regulations by the Department of Health. The Recreational Swimming Establishment Lifeguard Requirements as proposed by the Department will have a direct effect on our membership. If a concerned operator who received a letter from the Department on March 21, 2001 had not notified us, this regulation would have been considered without our review.

Since time is running out to comment (April 3<sup>rd</sup> black-out requirement) we would like to raise a few issues that will affect any municipality that either owns or operates a swimming establishment that meets the requirements of the proposal. First, the proposal does not address the potential cost to municipalities to implement the proposal. On page 8, item 20, of the submittal it lists no cost or savings for local government. We do not know how they can state on page 4, item 17, "some recreational swimming establishments will incur costs..." and not list a cost to local government in item 20?

We also question why the regulations state that the department recognizes certain organizations and "other organizations that intend to qualify as a certifying authority shall submit materials on an annual basis..." Will these listed organizations also have to qualify annually and be listed in the *PA Bulletin* or is it the assumption that since they are in the regulations that they will be treated differently?

We are also questioning the rationale of Section (C)(2) which requires additional certified lifeguards when the "bather load is such that there is less than 50 square feet of water surface area for each bather." Nowhere in their submittal does the Department address the issue of "bather load" as it relates to water surface area. In item 24 of the submittal the Department references a standard that they will be following in the proposed regulations. This standard does not reflect what is being proposed by Section (C)(2). Based on the proposal, an operator's potential liability could be increased instead of being decreased. The operator would constantly have to monitor the number of bathers in the "establishment" even though that number may not be the same number of bathers as in the water; or have an excessive number of lifeguards present at all times.

3001 Gettysburg Road  
Camp Hill, PA 17011-7296  
Telephone: (717) 763-0930  
Fax: (717) 763-9732  
Internet: [www.psats.org](http://www.psats.org)

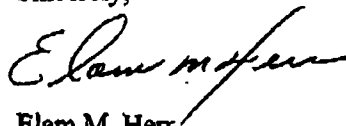
## PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

Mr. Robert E. Nyce, Director  
March 30, 2001  
Page 2

There appears to be many issues in these proposed regulations that will affect the municipalities within this state. We feel that there has not been adequate consideration given to these issues and as such the regulations should not be approved by the Commission but returned to the Department for further consideration.

We appreciate your cooperation and understanding on this issue. If we can be of further assistance or if you would like to discuss the issue further, please contact us.

Sincerely,



Elam M. Herr  
Assistant Executive Director,  
Legislative Affairs and Policy Development

EMH:ls

cc: Sen. Harold F. Mowery, Jr.  
Sen. Vincent Hughes  
Rep. Dennis M. O'Brien  
Rep. Frank L. Oliver  
Ms. Deborah Griffiths

RECEIVED  
2001 MAR 30 PM 4:45  
LEGISLATIVE COMMISSION

**Pennsylvania State Association of Township Supervisors**

3001 Gettysburg Road, Camp Hill, PA 17011-7296

Phone (717) 763-0930

Fax (717) 763-9732

**FAX COVER SHEET**Date: 3-30-01No. of Pages 2 & CoverTo: Robert NyceOrganization/Company: IRPCFax No.: 717-2664From: Elam HerrMessage: Hard copy to follow on MondayRECEIVED  
2001 MAR 30 PM 4:45  
TOWNSHIP SUPERVISORS  
REVIEW COMMITTEE



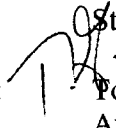
The Pennsylvania State University  
McCoy Natatorium  
University Park, PA 16802-3804

(814) 865-1432  
Fax: (814) 865-3728

RECEIVED  
2001 APR -2 AM 9:31  
REVIEW COMMISSION

DATE: March 30, 2001

TO: Bureau of Community Health Systems  
Independent Regulatory Review Commission  
Standing Legislative Committees

FROM:  Tom Griffiths, Ed.D. Director of Aquatics and Safety Officer for Athletics  
Author of *The Swimming Pool*, *The Complete Swimming Pool Reference*  
and *Better Beaches*

RE: New Lifeguard Requirement

I am writing to you in response the proposed lifeguard requirement of one lifeguard per 3,400 square feet of surface area. This is the same requirement New York State uses for some of it's pools. State Park Pools in New York State require one lifeguard per 4,800 square feet. I strongly urge you to use the one lifeguard per 4,800 square feet for the following reasons:

1. Traditional six lane 25 meter pools are approximately 4,000 square feet. I manage on of these pools which is all shallow water with a maximum depth of five feet. We only use one lifeguard but your 3,400 square foot would require two lifeguards which would double our costs without increasing safety.
2. Newer pools are eight lanes rather than six lanes and while they only need one lifeguard, your requirement would necessitate two lifeguards where one would suffice.
3. The trend in this country and the Commonwealth is to construct larger pools with only shallow water and beach like entries. These pools better serve Senior Citizens and toddlers. While the water surface in these pools is greater, the depth is not, making for safer pools. Again, your overly conservative lifeguard requirement would require too many lifeguards for these facilities.

In summary, the best square footage for the Commonwealth is approximately 4,800 square feet to guard swimming facilities with safety and affordability. If you have any questions, please do not hesitate to call me at 814-863-4000.

Original: 2002

**FITZPATRICK LENTZ & BUBBA, P.C.**

JAMES G. KELLAR  
EDWARD J. LENTZ  
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BRIAN E. O'NEILL  
ALBERTINA D. LOMBARDI  
SHANNON K. RUST  
EDWARD J. ANDRES

OF COUNSEL  
LEE R. SMITH

**MEMORANDUM**

**TO: BUREAU OF COMMUNITY HEALTH SYSTEMS  
INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC HEALTH AND WELFARE COMMITTEE, THE  
HONORABLE HAROLD F. MOWERY, JR., CHAIRMAN  
HEALTH AND HUMAN SERVICES COMMITTEE,  
THE HONORABLE DENNIS M O'BRIEN, CHAIRMAN**

**FROM: FITZPATRICK LENTZ & BUBBA, P.C., ATTORNEYS FOR  
CEDAR FAIR, L.P., OWNER AND OPERATOR OF DORNEY  
PARK & WILDWATER KINGDOM**

**DATE: MARCH 30, 2001**

**RE: PROPOSED REGULATIONS/LIFEGUARD COVERAGE**

RECEIVED  
2001 APR -3 AM 8:50  
REVIEW COMMISSION



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On March 15, 2001, the Department of Health proposed regulations relating to lifeguard coverage at recreational swimming establishments.<sup>1</sup> This is the second set of

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<sup>1</sup> We want to confirm that although the definition of "recreational swimming establishment" includes "water rides", the balance of the definition of "recreational swimming establishment" makes it clear that the primary purpose of the "facility" must be "swimming" so that many generic water rides in which an individual is not engaged in swimming as a primary activity (for e.g. a log flume ride which merely utilizes water as a medium) will not be governed by these regulations.



**FITZPATRICK LENTZ & BUBBA, P.C.**

Memorandum  
March 30, 2001  
Page 2

proposed Regulations relating to this same issue.<sup>2</sup> Cedar Fair, L.P., the owner and operator of Dorney Park & Wildwater Kingdom ("Dorney Park") has been involved in this process for several years. Dorney Park has repeatedly stated its position with respect to this process and lifeguard coverage in general. At this juncture, it is sufficient to note that Dorney Park can accept and can operate under the proposed regulations, however, for purposes of consistency and out of an abundance of caution, it submits its ongoing formal objections to the proposed regulations in this position paper.

Dorney Park's main objections to the proposed regulations are that:

- (1) the proposed regulations are inconsistent with the Bathing Place Law and the legislative history of that Law; and
- (2) the regulations are inconsistent with the state of the art of the lifeguard industry.

(As a tangential item, Dorney Park also wishes to note that there does not seem to be any safety based reason to exclude facilities and pools such as those operated by the YMCA/YWCA from any of these regulations.)

In order to completely understand Dorney Park's position, a chronology of the legislative process would be helpful.

- The Public Bathing Law (first adopted in 1931) was a rather antiquated piece of legislation that governed all types of public bathing places. An amendment to the Public Bathing Law was proposed in 1997 (House Bill No. 1597). Among other things, that amendment required the Department of Health to promulgate regulations to establish appropriate lifeguard coverage based upon "facility utilization, facility size and other environmental factors". Through the public comment process, many members of the industry (including Dorney Park) submitted their objections to House Bill No. 1597. The industry submitted rather compelling information that establishing lifeguard coverage based upon "facility size" and "facility utilization" was an antiquated basis for establishing lifeguard coverage. That methodology was no longer utilized in the industry and was not an appropriate basis for assuring aquatic safety.

---

<sup>2</sup> As noted below, an earlier set of Regulations was promulgated in February, 1999.

**FITZPATRICK LENTZ & BUBBA, P.C.**

Memorandum  
March 30, 2001  
Page 3

- After receiving public comment, H.B. No. 1597 was amended and the Public Bathing Law was changed to include the following language:

*The Department shall promulgate regulations to determine the number of lifeguards required at a recreational swimming establishment using objective criteria that takes into consideration industry standards. The Department shall consult with approved certifying authorities and recreational swimming establishments to develop regulations relating to lifeguards. (emphasis added.)*

- In effect, the Public Bathing Law that was ultimately adopted by the legislature rejected lifeguard coverage guidelines based upon "facility size" and chose instead to utilize "industry standards".
- On February 13, 1999, the DOH submitted proposed regulations in accordance with the amendment to the Public Bathing Law. The Department's preamble to those regulations states:

**Subsection (b) Facilities Requiring Lifeguards.**

*This subsection would provide the Department's criteria for determining that an adequate number of certified lifeguards are on duty at a recreational swimming establishment to protect the safety of the public when that establishment is in operation. Traditionally, the number of lifeguards required at public bathing places pursuant to national standards has been based upon the surface area of the facility, user load (number of swimmers in the pool), or a combination of both. This approach to determining an adequate number of lifeguards at a given facility does not take into consideration the proliferation of uniquely designed pools and types of facilities (for example, wave pools).*

*A number of nationally-recognized lifeguard certifying authorities (for example, The American Red Cross, YMCA, Ellis and Associates, Inc.) have addressed the need for adequate lifeguard coverage by recognizing that each facility is*

**FITZPATRICK LENTZ & BUBBA, P.C.**

Memorandum  
March 30, 2001  
Page 4

*different and that any attempt to protect user safety must account for individual facility size, design and utilization. Furthermore, while it is important to have an adequate number of lifeguards, swimmers' safety is further protected when those lifeguards have been trained and situated so they can visually monitor, detect, react, and reach a victim within an acceptable amount of time. This subsection would incorporate current certifying authority standards for ensuring adequate lifeguard coverage.*

- The actual regulations included lifeguard coverage requirements that were, in fact, based upon the practice of scanning and reacting to a swimmer within accepted time standards. Dorney Park supported the proposed regulations and believed the proposed regulations were in direct compliance with the legislative change to the Public Bathing Law.
- On April 15, 1999, the Independent Regulatory Review Commission ("IRRC") issued Comments on the proposed regulations. IRRC's Comments indicated that any regulation relating to the number of lifeguards "should specify the required number of lifeguards for a particular pool contingent on the size of the facility, participants on-site, support staff and scheduled activities." Dorney Park took exception to IRRC's Comments on two grounds. First, the Park believed that IRRC's suggestion was contrary to the legislative changes which were now in place. In fact, IRRC's Comments would have supported H.B. No. 1597 in its original (unchanged) form. Second, as noted throughout this process, from a substantive perspective, Dorney Park believed that IRRC's Comments were suggesting a step "backward" in aquatic safety.
- The current proposed regulations are also inconsistent with the Bathing Place Law and the legislative history noted above.
- Specifically, Section 18.42(c)(1) requires one certified lifeguard for every 3,400 square feet of water surface area.
- The proposed regulations revert back to a standard which would refer to "facility size" – an item that was rejected in the original amendment to the Public Bathing Law in its revised form.

**FITZPATRICK LENTZ & BUBBA, P.C.**

Memorandum  
March 30, 2001  
Page 5

- The proposed regulations also do not reflect the state of the art in the lifeguard industry. This is apparent from the Preamble to the 1999 regulations.

Nevertheless, as noted above, the Park can accept and can implement the proposed regulations. However, the Park does not believe the regulations properly reflect the directive of the Public Bathing Law or the industry standard. Accordingly, Dorney Park wishes to note its formal objection to the proposed regulation. Thank you.

cc: The Honorable Charles Dent  
John Albino/Joseph Minninger

Original: 2002

PENNSTATE




The Pennsylvania State University  
McCoy Natatorium  
University Park, PA 16802-3804

(814) 865-1432  
Fax: (814) 865-4728

RECEIVED  
MAY 1 1991  
LEGISLATIVE COUNCIL

DATE: March 30, 2001

TO: Bureau of Community Health Systems  
Independent Regulatory Review Commission  
Standing Legislative Committees

FROM:  Tom Griffiths, Ed.D. Director of Aquatics and Safety Officer for Athletics  
Author of *The Swimming Pool*, *The Complete Swimming Pool Reference*  
and *Better Beaches*

RE: New Lifeguard Requirement

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In summary, the best square footage for the Commonwealth is approximately 4,800 square feet to guard swimming facilities with safety and affordability. If you have any questions, please do not hesitate to call me at 814-863-4000.

**FITZPATRICK LENTZ & BUBBA, P.C.**

Original: 2002

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SHANNON K. RUST  
EDWARD J. ANDRES

OF COUNSEL  
LEE R. SMITH

**MEMORANDUM**


**TO: BUREAU OF COMMUNITY HEALTH SYSTEMS**  
**INDEPENDENT REGULATORY REVIEW COMMISSION**  
**PUBLIC HEALTH AND WELFARE COMMITTEE, THE**  
**HONORABLE HAROLD F. MOWERY, JR., CHAIRMAN**  
**HEALTH AND HUMAN SERVICES COMMITTEE,**  
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**CEDAR FAIR, L.P., OWNER AND OPERATOR OF DORNEY**  
**PARK & WILDWATER KINGDOM**

**DATE: MARCH 30, 2001**

**RE: PROPOSED REGULATIONS/LIFEGUARD COVERAGE**

RECEIVED  
2001 APR-4 AM 10:40  
INDEPENDENT REGULATORY REVIEW COMMISSION



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**FITZPATRICK LENTZ & BUBBA, P.C.**

Memorandum  
March 30, 2001  
Page 2

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Memorandum  
March 30, 2001  
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Memorandum  
March 30, 2001  
Page 4

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**FITZPATRICK LENTZ & BUBBA, P.C.**

Memorandum  
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cc: The Honorable Charles Dent  
John Albino/Joseph Minninger