

ORIGINAL: 2288



Centre Region Council of Governments

- **CENTRE REGION PARKS AND RECREATION BOARD**
- **CENTRE REGIONAL RECREATION AUTHORITY**

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Serving the Townships of College, Ferguson, Harris, Patton, and the Borough of State College.

7 Oct 02

Mr. Dennis Wilson
Environmental Health Administrator, Dept. Of Health
Bureau of Community Health Systems
Room 628 Health and Welfare Building
P.O. Box 90
Harrisburg, PA 17108-0090

RE: Proposed Act 75 Lifeguard Requirements

Dear Mr. Wilson:

The Centre Regional Recreation Authority operates two outdoor community swimming pools in the State College area. In response to the new proposed Act 75 Lifeguard Requirements, we would like to relay our support for the current proposal, as well as thank the Department of Health for reconsidering the proposals made earlier.

This new proposal provides a much more effective standard for providing lifeguard coverage at aquatic facilities, and outlines options that facility managers may use to reduce their coverage based upon bather load. The amendments also state more clearly the responsibilities of the facility for providing lifeguards, and will make our facility-specific rules and regulations more effective.

Thank you again for incorporating the input of Pennsylvania's aquatic professionals and operators into this new proposal.

Sincerely,

Ronald J. Woodhead
Director

Todd A. Roth
Aquatics Supervisor

c: Rbt. Griffith, PA. Recreation & Park Society

TOWNSHIP OF
DERRY



October 4, 2002

Dennis C. Wilson
Pennsylvania Department of Health
Environmental Health Administrator
Bureau of Community Health Systems
P.O. Box 90
Harrisburg, Pa 17108

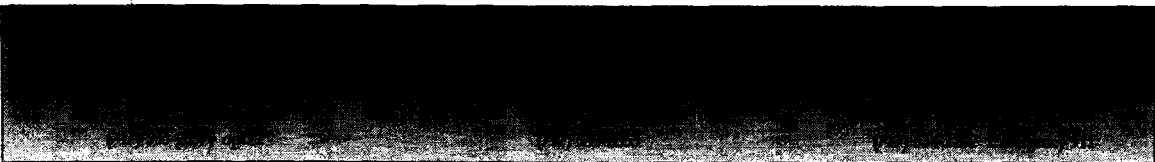
RECEIVED
OCT 11 11:15 AM '02
TOWNSHIP OF DERRY

Dear Mr. Wilson:

The Township of Derry appreciates receiving the faxed copy of the latest draft of the proposed regulations for lifeguards at recreational swimming facilities.

Upon review of the regulations, several positive revisions have been noted in relation to previous versions of the proposed legislation. Although that is the case, some areas of concern still exist in its current form. The items mentioned below are related to functional and regulatory scope issues and are not meant to diminish the departments' efforts to promote safety.

The item which causes the most concern, which I do not believe was included within the previous draft, is the requirement of a minimum of two lifeguards whenever bathers are utilizing the swimming establishment. This becomes a monumental problem for municipal pools that struggle to employ one lifeguard in order to accommodate the local constituencies' demand for 5:30 a.m. and other periods of lap swimming. Once again, basing lifeguard coverage on water surface area is a perfect example of "one size does not fit all". A solution to this problem would be to further specify the minimum two guard requirement to "when the swimming establishment is open to the general public for recreational swimming". This would allow municipal aquatic facilities to still provide exclusive lap swimming times, which would otherwise need to be eliminated under the current proposal, based on the lack of available certified lifeguard personnel.



The next concern relates more to the targeted entities of this legislation. Once again, I applaud the Department for its efforts in promoting aquatic safety within the Commonwealth. Although that is the case, I would argue that in most cases, due to liability exposure, municipal insurance policies and the constant scrutiny of the local tax paying public, municipal swimming establishments are far more safety oriented than the establishments which are exempt from this regulation. This is not to say that these establishments do not value safety, rather, the transient nature of those types of facilities increases the likelihood of injury, which further justifies these types of provisions more so than municipal establishments.

In conclusion, our position is that each municipal swimming establishment should submit current coverage plans to an agency designated by the State. Upon review, revisions specific to each unique facility could be discussed and implemented which would be far more effective than the current "standard" mandate.

We appreciate your time in this matter and would request that the Department take into serious account the items which we have outlined within this correspondence. If we can provide any further information in this regard, or assist in establishing a process in which each coverage plan can be effectively tailored to accommodate unique issues specific to each facility, please contact me at (717) 533-7138.

Sincerely,



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

cc: Senator Jeffrey Piccola
PA Independent Regulatory Review Commission
Township of Derry Board of Supervisor

Original: 2288

Palmerton Memorial Park Association

Third Street • Palmerton, PA 18071

2001 05 14 AM 9:10

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
14th 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

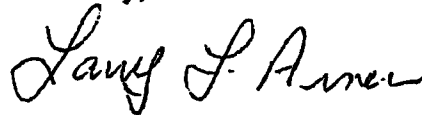
Page 2

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 black ink that reads "Larry J. Arner". The signature is written in a cursive style with a large initial "L".

Larry Arner
PMPA Pool Manager

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

Original: 2288

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EDWARD J. LENTZ
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JOSEPH A. BUBBA
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MEMORANDUM

VIA FEDERAL EXPRESS

**TO: DENNIS C. WILSON
ENVIRONMENTAL HEALTH ADMINISTRATOR
DEPARTMENT OF HEALTH
BUREAU OF COMMUNITY HEALTH SYSTEMS**

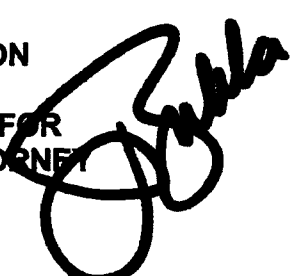
**CC: ROBERT E. NYCE
EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW COMMISSION**

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

DATE: OCTOBER 18, 2002

RE: PROPOSED REGULATIONS/LIFEGUARD COVERAGE

NOV 18 2002
10 21 2002
10 18 2002



On or about October 5, 2002, the Department of Health ("Department" or "DOH") published notice of proposed regulations relating to lifeguard coverage at recreational swimming establishments.¹ This is the third set of proposed regulations relating to this same issue.² Cedar Fair, L.P., the owner and operator of Dorney Park & Wildwater Kingdom ("Dorney Park") has now been involved in

¹ 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.

² As noted below, earlier sets of Regulations were proposed in February, 1999 and March, 2001.

Memorandum
October 18, 2002
Page 2

this regulatory process for approximately five (5) years. Dorney Park has repeatedly stated its position with respect to this process and lifeguard coverage in general.

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.

I. BACKGROUND

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.
- 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

Memorandum
October 18, 2002
Page 3

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 guidelines based on "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 the 1999 regulations stated:

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

Memorandum
October 18, 2002
Page 4

Associates, Inc.) have addressed the need for adequate lifeguard coverage by recognizing that each facility is 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.
- No regulations were finalized in 1999.
- On March 15, 2001, the Department proposed a second set of regulations.

Memorandum
October 18, 2002
Page 5

- The 2001 regulations utilized a standard based upon "facility size". Specifically, Section 18.42(c)(1) required one certified lifeguard for every 3,400 square feet of water surface area.
- Dorney Park and other industry members took the position that the proposed regulations (i) were inconsistent with the Bathing Place Law and the legislative history noted above; (ii) did not reflect the state of the art in the lifeguard industry; and (iii) were rejected in the original amendment to the Public Bathing Law in its revised form.
- No regulations were finalized in 2001.

II. CURRENT PROPOSED REGULATIONS

- As noted above, the legislature rejected lifeguard coverage guidelines based upon "facility size". That is exactly why past regulations based upon facility size or surface area have been rejected.
- However, at page 7 of the Preamble of the proposed regulations, the Department notes:

In these proposed regulations, the required number of certified lifeguards would be based on a determination of water surface area.
- The Preamble goes on to state that:

"computations based upon water surface area would provide a consistent method for determining the number of lifeguards needed ..." (emphasis added) p.8.
- In Section 18.42(a), the Department recognizes the American Red Cross and Ellis and Associates as "recognized lifeguard certifying authorities". The Department acknowledges that the American Red Cross and Ellis and Associates have rejected water surface as the standard for establishing lifeguards. It is then patently inconsistent for the Department to use water surface as the standard for establishing lifeguard coverage.

Memorandum
October 18, 2002
Page 7

• MISCELLANEOUS ITEMS:

- (1) Section 1842(b) indicates "*The Department will consider approval of a lifeguard certifying authority if the certifying authority's lifeguard training course satisfies the following requirements:*"

We want to be certain that once an entity has been designated as a "lifeguard certifying authority" such as Ellis and Associates, the Department will not need to consider approval of that entity. We would suggest changing the language of Section 18.42(b) as follows:

The Department will consider approval of an entity as a lifeguard certifying authority if the entity's lifeguard training course satisfies the following requirements:

- (2) Section 18.42(c)(1)(II) is potentially ambiguous. The phrase "sufficient to accomplish the task" in the second sentence does not add any objective criteria to the standard against which operators' compliance can be measured and we suggest it be deleted.

Dorney 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 regulations. The Park has pledged its cooperation, time and effort and will work with the Department to establish meaningful regulations. Thank you for your consideration.

cc: Senator Charles Dent
John Albino/Joseph Minninger
Kelly Ann Beers, Esquire

Original: 2288
East Cocalico Township

100 Hill Road, Denver, PA 17517
Phone (717) 336-1720
Fax (717) 336-1724

October 14, 2002

Dennis C. Wilson
Pennsylvania Department of Health
Environmental Health Administrator
Bureau of Community Health Systems
P.O. Box 90
Harrisburg, PA 17108

RECEIVED
OCT 15 2002
COMMUNITY HEALTH SYSTEMS

Dear Mr. Wilson:

East Cocalico Township recently received a draft of the proposed regulations for lifeguards at recreational swimming facilities. Although we understand the importance of establishing lifeguard regulations within the Commonwealth, some areas of the legislation are of a concern.

The first concern relates to the targeted entities of this legislation. In most cases, due to liability exposure and municipal insurance policies, municipalities are far more safety oriented than the establishments, which are exempt from this regulation. This is not to say that these establishments do not value safety, rather, the transient nature of those types of facilities increases the likelihood of injury, which further justifies these types of provisions for those facilities as well.

The next item, which causes concern, is the requirement of a minimum of two lifeguards whenever bathers are using the swimming establishment. While we agree on the importance of a guarded facility to necessitate, two lifeguards "whenever bathers are using the swimming establishment" may be disproportionate in relation to the activity and number of participants using the facility. A viable solution to this problem is for each municipal swimming establishment to submit a current coverage plan to an agency designated by the State. Upon review, revisions specific to each unique facility could be discussed and implemented. This proposal would be far more effective than the current "standard" mandate.

We appreciate the departments' efforts regarding this proposed legislation. If I can provide any further information, you may reach me at (717) 336-3192.

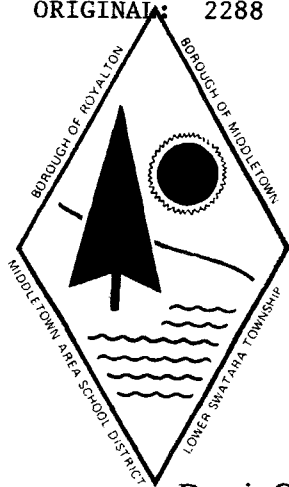
Sincerely,



Kimberly K. Baver
East Cocalico Recreation Board

OLMSTED REGIONAL RECREATION BOARD

55 WEST WATER STREET, MIDDLETOWN, PENNSYLVANIA 17057
TELEPHONE (717) 948-3318



October 10, 2002

Dennis C. Wilson
 Department of Health
 Bureau of Community Health Systems
 Room 628 Health and Welfare Building
 P.O. Box 90
 Harrisburg, Pa 17108-0090

To Whom It May Concern:

I am writing in response to the proposed rulemaking by the Department of Health 28 PA. CODE CH. 18: Recreational Swimming Establishment Lifeguard Requirements. As a certified lifeguard myself I am well aware of the need for a regulation of the number of lifeguards providing surveillance to a pool. I am however, concerned that the new proposed regulation will be set by surface area of water. As the manager of a municipality pool with a limited budget, this new proposed ruling will in tale more monies allocated for staffing, which is not readily available. I understand that safety is everyone's number one concern, but feasibility must also be considered. The proposed act states that pool operators may restrict areas of swimming during low bather load times. I fully agree that this is a way to provide safe lifeguarding and save money on low count days, however we must also think of our patrons. When paying an admissions fee our patrons are expecting to have full access of the swimming facility. To charge a fee based upon open areas of swimming, is not feasible operationally. I would suggest that the proposal look at regulating lifeguards based on the number of swimmers. If this act is going to apply to those establishments charging a fee, the establishment should be able to have an accurate figure of the number of swimmers at any given time, and the number of lifeguards needed. In closing, thank you for allowing a forum to express our opinions, and we look forward to the outcome.

Sincerely,

Amy M. Swartz
 Director of Recreation
 Olmsted Regional Recreation Board