

FSPA NEWS

What type of pool contractor can perform modifications on commercial pools and spas?

by Jennifer Hatfield

On November 13, 2009, the Construction Industry Licensing Board (CILB) agenda included a petition for declaratory statement submitted by Rodney Fischer of the Pinellas County Construction Licensing Board. Mr. Fischer asked the CILB to clarify whether or not a licensed swimming pool/spa servicing contractor can do certain work related to the Department of Health rule changes in the Florida Public Swimming Pool Code (64E-9, F.A.C.) and the Virginia Graeme Baker Pool & Spa Safety Act (VGB Act).

Specifically, the concern stemmed from the new requirement to convert all remaining direct suction commercial/public swimming pools and spas to a gravity fed system. This new requirement is being phased-in. For all pools, including wading pools, except spa type pools, with a main drain grate water depth of 4 feet or less, construction should have been completed on or before May 24, 2010 (one year from the effective date of the revised 64E-9 rule). All spa type pools built before 1977 should have been retrofitted by July 1, 2010. The remaining phase-in dates are:

- for all spa type pools built between 1977 and 1986, retrofit by July 1, 2011,
- for all spa type pools built between 1986 and 1995, retrofit by July 1, 2012, and
- for all other pools, retrofit by July 1, 2013.

Mr. Fischer's petition maintained that this type of work is not dealing with "like, similar, same as or equivalent" materials, but instead requires the removal of concrete decks and a modification of the pool structure by installing a completely different piping arrangement and installation of a gravity system. Therefore, this is not service work, repair, replacement or renovation; rather, it is new construction that falls under the scope of work of a commercial pool/spa contractor.

The second question presented in the petition was: "Can a Swimming Pool/Spa Servicing Contractor change a filtration system from a direct suction type to a gravity fed collection tank type system?" The CILB answered this question as follows: "**A Swimming Pool/Spa Servicing Contractor cannot change a filtration system from a direct suction type to a gravity fed collection tank type system.**"

The CILB official response can be found on the BOAF website...In addition to ensuring that any modification to a commercial pool is done by a commercial pool/spa contractor, it is always important for building departments to check which type of pool contractors license is held before giving out permits to do any work on any type of pool or spa.

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This information was presented to the CILB by Mr. Fischer and additional testimony was made by representatives of the United Pool & Spa Association and the Florida Swimming Pool Association (FSPA). FSPA voiced its concern that if a decision was to be made by the CILB, it must be careful to clarify the position without unjustly limiting a service contractor from doing certain work. For example, FSPA wanted it to be clear that a service contractor can penetrate the shell for purposes of repairing or replacing like for like parts such as part of a main drain, a return line, or skimmer. Work such as re-plastering a pool shell should also still be deemed under the scope of work of a service contractor. Mr. Fischer and members of UPSA agreed with the FSPA clarification, noting it was not their intent to limit a service contractor from this type of work, their intent rested upon the issue of a new system modification.

The first question presented in the petition was: “Can a Swimming Pool/Spa Servicing Contractor do work that includes penetration or modification of a swimming pool concrete structure?” The CILB answered this question as follows: **“A Swimming Pool/Spa Servicing Contractor cannot make any modification of a swimming pool concrete structure.”** They removed the word “penetration” for the reasoning presented by FSPA and information presented by Board member Roy Lenois. In order to better understand what is meant by the word “modification” in the CILB answer FSPA suggests contractors look to the public pool rule, which states:

Section 64E-9.005(2) Modifications – Modifications include non-equivalent changes or additions to the recirculation system, treatment equipment, physical structure, or appurtenances. Replacement of the pool or spa shell is considered to be construction of a new facility and shall be processed as such. The installation of new decking is not considered a modification if it is installed in conformance with paragraph 64E-9.006(2)(a), F.A.C., and deck markings are upgraded per subparagraph 64E-9.006(1)(c)3., F.A.C. Resurfacing the pool interior to original non-toxic slip-resistant and smooth specifications or equivalent replacement of equipment are not considered modifications. However, the following items shall be addressed during resurfacing projects...

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