

BEFORE THE INDIANA STATE DEPARTMENT OF HEALTH

AN ADMINISTRATIVE RULES HEARING  
LSA DOCUMENT #09-6

HEARING OFFICER REPORT

This matter came before the duly appointed Hearing Officer, Kelly MacKinnon, on the 18<sup>th</sup> day of February, 2010, at 10:00 a.m., at the Indiana State Department of Health (ISDH), 2 North Meridian Street, Indianapolis, Indiana.

Notice of time and place of the hearing was given as provided by law by publishing on January 25, 2010, in the *Indianapolis Star* and by publishing in the *Indiana Register* dated January 27, 2010. Proof of publication of this notice has been received by the ISDH and the notice and proof are hereby incorporated into the record of this cause by reference and placed in the official files of the ISDH.

ORAL STATEMENT

The first oral statement came from Chris Menze, EHS, Johnson County Health Department. Her statement is in the transcript of the hearing which is attached and incorporated by reference as Exhibit 1. She requested a time limit on the super chlorination referenced in Section 30(e)(4) of the rule. In section 32(e), she asks that all future amendments to Virginia Graham Baker Pool and Spa Safety Act be incorporated into the rule. She also questioned the use of the word "quarterly" in Section 42.1(b)(15) for water testing in tourist homes because tests may have to be done almost immediately after the previous test. She requested the state considered in a future version of this rule to have a certified pool owner requirement because of the number of untrained people operating pools. She also commented about some formatting and typographical mistakes. Her final comment is that she wants a more sensitive test kit, one that could test up to 10 parts per million.

The second oral statement came from Adam Rickert, Marion County Health Department. His statement is in the transcript of the hearing which is attached and incorporated by reference as Exhibit 1. He commented that he wanted to make sure the tourist home definition did not include rental properties. Mr. Rickert also commented about the parricidal disinfection chemical in Section 30(b) because he wanted to make sure that all pools maintain a consistent balance of bromine versus chlorine. Also, in Section 30(s) he liked the requirement that pools have to be closed an hour after adding chemicals, but he also asked that they be required to test the water after adding the chemicals. He also asked that lifeguards be prohibited from being in the pool and be a lifeguard. Mr. Rickert asked that pool operators be required to have some sort of signage about contact information for the responsible party for the pool so that if a pool needs

corrective action taken, it can be taken immediately. His final comment was that there be some sort of training for pool operators because many operators do not know how to properly operate a pool.

The final oral statement came from Bob Smith, REHS, Johnson County Health Department. His statement is in the transcript of the hearing which is attached and incorporated by reference as Exhibit 1. Mr. Smith commented that he agreed with Mr. Rickert's comments about having pool operators properly trained. He also wanted some sort of clarification as to what a responsible adult would be when one is required. Finally, he asked that the rule either be adopted before or after the summer so the pools do not have to change enforcement part way through the pool season.

### **WRITTEN STATEMENT**

No written comments were submitted at the hearing or to the hearing officer before March 2, 2010.

Three people appeared to testify at the public hearing and no written comments were received during the hearing. The record was left open until March 1, 2010.

Dated at Indianapolis, Indiana this 7<sup>th</sup> day of May, 2010.



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Kelly MacKinnon  
Hearing Officer

## Transcript for Public Hearing for LSA Doc. # 09-6

This is a public hearing before the Indiana State Department of Health on the 18th day of February, 2010 at 10:00 a.m., at the Indiana State Department of Health, Conference Room 5001, 2 North Meridian Street, Indianapolis, Indiana, and is docketed before the Executive Board of the State Department of Health as LSA DOC #09-6, a rule to amend 410 IAC 6-2.1 to add and update definitions, to update and clarify agency requirements pertaining to the maintenance and operation of Public and Semi-Public Pools and Spas and to add tourist home requirements.

Notice of time and place of this hearing was given as provided by law by publishing on January 25, 2010 in the Indianapolis Star and on January 27, 2010 in the Indiana Register.

Proof of publication of this notice has been received by the Department, and the notice and proof are now incorporated in the record of this cause by reference and placed in the official files of the Department. My name is Kelly MacKinnon and I have been appointed hearing officer by the State Department of Health to serve in this cause.

The sign-in sheet should be completed by all individuals desiring to be shown as appearing of record, and shall be completed by those who desire to be heard during this hearing. If you have not already signed the sheet, please do so at this time. You will also find at the back of the room a copy of the proposed rule, the small business economic impact statement and the Indiana Economic Development Corporation's comments on the economic impact statement. You are welcome to take a copy of each. Additionally, the proposed rule and IEDC comments are posted on the Department's website, at [www.in.gov/isdh](http://www.in.gov/isdh) under "Rules".

Oral statements will be heard, and written statements may be handed to me, emailed to me at [kmackinnon@isdh.in.gov](mailto:kmackinnon@isdh.in.gov), or mailed to me at 2 N. Meridian Street, Section 3H-99, Indianapolis, Indiana 46204 by Monday, March 1, 2010. All written and verbal comments will be reported in my report on this hearing to the Executive Board of the Indiana State Department of Health.



Each person who speaks for the record is requested to clearly identify yourself by giving your name, spelling it, and identifying who you represent.

Is there anyone who cares to be heard?

Chris Menze, EHS – Johnson County Health Department

I had a couple of things here. In regards to section 30 E, under 4 Chemistry 30 E it states that the pool water shall be super chlorinated to break point or super oxidize with the non-chlorine oxidizer when the pool test reveals a combine chlorine concentration of probably 10 parts per million or greater. We would request that there be a time put on that as far as compliance as an inspector. I notice that some you may not do it that evening or they may choose not to it that week or even that month. That is a request.

On section 32 E – It just says all public and semi public pools and spas must comply with the Virginia Graham Baker Pool and spa safety act. I would just request that you would incorporate in there any amendments and changes to that rule as it stands now. Just because we do that with the state sometimes amendments and stuff so I am not sure that is important to do but I just recommend that.

There was possibly a small mix up on Section 42.1 15 and large letter C. This is under tourist home pools. 15D – In regards to coli form or testing or water but show the presence of coli form when the 100 millimeter present absences test is used another bacteriological sample should be collected from the same pool within a week of receiving notice about the original quarterly bacteriological sample test. My question is the word quarterly because often section 14 42.1B talks about they need to collect the water sample every month. So what I am saying that as soon as that water sample every month fails they would need to submit another one almost immediately afterwards. The same situation occurs in the spa – the tourist home spa section 42.2.

There is just a small typo in section 42.2 C – small c – the test kits are used to determine quality of the water in a spa at a tourist home shall shall have free agents placed according to the manufactures requirement and I think there is a coma (and) instead of meet the following.

Also, another little typo is in 44B 5. I guess that is small b. If chlorine stabilizer are not present in the pool, business whole bunch of crosses out – it talks about or completely during when the pool to a public sewer and then there is a period and a dash on top of one another. Type needs cleaned up.

One other thing that we would like to request is not this rule but the next that there be a certified pool operator requirement by the national swimming pool foundation CPO for anybody who is the operator or person in charge of public pool or even semi public pools. We find as inspectors that there is a lot of untrained people that are running the pools and they have no idea what they are doing and it takes quite a long time to get them up to speed and it is kind of a detriment to all the pools in the public.

There is kind of a mix up on page Section 44A – and I think it is so dense with so many A's and B's I think it kind of go mixed up a little. Section 44A says in the event that a solid stool or full stomach of vomit is identified in – they crossed out the 1 and he does not know if we meant to cross out the 1 there cause then you have a 2 and a 3 and a 4 and a 5 and then if you go onto the next page you got a 6 and then you got under B you got 1, 2, 3, 4, 5 and then it goes to 4, 5, 6 and a 7 on the left side. It just needs to have some continuity. I might have an older copy.

I guess my only other comment is that as an inspector the test kit requirement that they be able to on a pool or semi public pool that they only be able to test up to 5 parts per million as a high point makes it difficult because the law allows for them to go up to 7 parts per million most of them have no idea where they are and they don't do dilution factors. I would just request that there be a more specific or sensitive test kit that could test up to maybe 10 parts per million so they know when they are over.

That is it for me. Thank you.

Kelly - Anyone else like to speak?

My name is Adam Rickert - Marion County Health Department

My first question is: Is there a document available that summarizes all the comments that were received by the various stake holders and the Health Departments?

Kelly - There will be a document at the executive board meeting when we go to do final adoption rule. That is when that would be available.

Ok, that would be of interest to us to see if other health departments are observing the pattern here. If you have health department personnel that are seen as it is in the real world the code applies to real world situations so. I guess what the tourist home definition that might have been expanded upon since previous versions but looks like their define tourist home is as a single family dwelling that is rented or otherwise contracted for night lodging more than three time per year. From our perspective we are wanting to make sure that the eliminated rental properties so that would not be some home construed that rental property. As long as that definition seems like it takes care of that possibility.

Section 30B where it mentions the parricidal disinfectant chemical you have the table there that talks about the various testing types the minimum and maximum levels. We have looked at a few documents that talked about the relationship, or I should not say the relationship but the factors that are both when you compare chlorine to bromine and from what we found a lot of the test kits that the health departments use and the pool operators used are based off the bromine vs. chlorine. It is basically bromine is 2.25 times the level of chlorine so with that limitation in mind and some other articles where you had that you want to maintain your bromine level at least twice that of chlorine that for this table for all other pools which is as I take it is outdoor pools, indoor pools your normal indoor type pool. That relationship is maintained but for some of these other pools weigh pools wading pools that is not maintained. For spa pools it looks like it is maintained so that is good. For our perspective and from a practical point of view of actually testing the pool it would be better if that was consistent across the board for all those types of pools.

Also of course, the other reasoning with bromine since it is not as powerful as a disinfectant when you keep all the factors like ph in check, the centers for disease control mentions that the whole purpose of course is trying to eliminate bacteria and other path ages in the pool water. Nor to keep that consistent from all test pools unless there is some other external factors that would be involved while that should be consistent from our prospective it should be consistent.

Section 30S - where it talks about the pool shall be closed at least one hour for when adding the chemical to the pool water. That is a very good rule that you are allowing everything to mix properly. We were wishing for that to be a requirement that the pool operators actually test it as a common practice you add chemicals, you automatically test it no matter what. You wait an hour before you open it back up to the public you shall test it to verify that everything is in compliance. Maybe that is just to strengthen and emphasize their requirements from our experience we have seen a lot of situations where it may be closed for an hour, it may not be closed for an hour but there is no actual testing done by the operators that they automatically assume that everything is in compliance and meeting the requirements of the state code. Along with that too, the operators may not have a good concept of how much of the chemical that they are adding. They might receive that information from the previous operator is like well you add this amount to the pool without having any basis for that. We want to make sure it is the correct amount that is fine. But it should be checked. If that did not meet the requirements of the code then obviously it should be checked and then the correction should be made after that.

Section 35F – talks about one on one patient surveillance duty like shall not perform any other duties and shall not perform any other duties and should not be in the water except in the line of duty. As it is right now, that is a good rule that the lifeguards cannot be folding towels, they cannot be teaching a class, they cannot be doing other duty. For our experience however, we have problems at high school pools believe it or not where there is a temptation by the school staff they have factors that they are working under so they the reality is that they they use student lifeguards they may not have an adequate amount of student lifeguards present to fully teach a class and allow the teacher to teach a class not act as a life guard. Unfortunately, we have had quite a few incidents where we have walked in during the inspection and the teacher who is the lifeguard, there is no other lifeguard present is in the water and then they claim I am going to instantly get out of the pool and I am no longer the life guard. Everybody can do free spin, I am not going to teach the class anymore and that is perfectly – we cannot necessarily dispute that so in order to really clarify that and infuse to the High school, districts, and administrators there should be a further strengthening to that rule in our opinion where you are specifically mentioning teachers instructors that they may not be in the pool and being a lifeguard.

Section 36 G – This might be not in there right now where we would be a good possibility would be – some of the homeowners associations pools or for what ever the pool facility be whether a lifeguard not being there it might just be people using the pool, and there is a problem with the PH levels and disinfectant levels or the pool needs to be closed we were recommending that there should be some signage required of the pool operators that they possibly list the responsibility party for the pool operator for the pool operator or some entity that has the capability to make improvements to the pool or make corrections that is known to everybody especially the inspectors performing the inspections. Otherwise, there is a time delay in contacting the pool operator and in some instances the pool owner might want to appoint like a pool maintenance pool company to do that service for them which is perfectly fine and in the interest of the transparency and resolving compliance issues faster we were wanting to include that some type of requirement along those lines.

Looking at the state code – a few years ago they required that for each food establishment that they have someone who is trained in proper health – they were certified at least one person was trained. We felt that that should be no different for pool situation that the risk and the public health considerations are similar if not more – they present equally risky situations – as previously stated certified pool operator or something where there is some level of training required – there is a few organizations that have on line training that at the very least reinforce this basic principles – otherwise for our experience – a community semi public pool the person maintaining the pool might have six other duties to complete and the pool to be frank about it is way down on our list and even if they do have the knowledge to maintain the pool properly the owners of the pool facility may not make that a priority for them. If you are basically stating in the code that each pool facility shall have at least one certified pool operator or some level of training you are reinforcing the concept to the pool owners that that person – that is their responsibility – the state of Indiana recognizes that is an important rule for that pool owner to have someone operate the pool properly. Across the board they least understand the basics. I am basing this off of inspections that we complete out in the field and conversations over the phone where I talk to pool operators and I can tell very quickly that there is no level of understanding for what disinfectant means of ph or [unintelligible] and how this all plays together. If we have some level of

training required that would very helpful for protecting public health and just to make the actual operation of the pool more seamless. If you have a pool operator that does not know what they are doing then they are adding – for example, I have had pool operators they have drained the whole pool for fecal accident that did not require anything like that. They are wasting a lot of money. Treated water cost a lot of money – a lot of resources for that – if you have some level of training – if you have a fecal accident – you do have take these steps but you do not have to go overboard and it could be a very inexpensive correction to that type of situation.

One last point with the certified pool operator with the level of training – over the last few years, the state department of health or the state of Indiana has been ranked very low as for as funding from CDC and there is a lot of factors that are involved with that – one factor that I have heard is that we do not have a state [unintelligible] that has a public health for an agreed program. That is an important step to that I think in order to get to that point there still is a lot of other baby steps that we can make – so if we had a requirement like this I think that would be a good demonstration to the CDC that we are taking this seriously and we want our pools to be operated per their guidelines – and that possibly could help the state of Indiana receive additional CDC funding.

That is all I have. Thank you.

Kelly – is there anyone else?

Bob Smith, REHS – Johnson County Health Department

First of all echo on the importance of the person who is responsible for the pool facility be trained adequately on his or her responsibilities. Some type of local certification or national certification thereof. And that be both for public and the person who is in charge for semi public pool. Whether it be in a subdivision that is not requiring a lifeguard or somebody there at all times. The knowledge of taking care of the responsibility I believe just the potential liability and the safety of the individuals and the patrons is a must. Additionally, on occasion what he has inspected some of the semi public pools that are not required to have a lifeguard but they have the wanting of a responsible adult? I think that needs to be spelled out in Indiana. What is considered a responsible adult? Is it 18, is it 19, is it 20 years of age? I

found on the internet that is the only place I have looked for. Some of it is 18 and other places that can be other ages as well. So I think for the importance of the rule under the terms of the definitions should be spelled out for the responsible adult. During the I know summer seasons quickly approaching and I think for the effectiveness of this rule either try to get it effective before summer or after summer and I believe the way it is probably going to be the process I would probably ask for at least to become effective after summer season in September – October. Otherwise we are going to start enforcing a new pool rule right in mid stream. Right in the middle of the summer, so I would probably recommend or ask for the effectiveness of the rule to be after the summer pool season.

Kelly – is there anyone else?

Seeing and hearing everyone who cares to be heard at this time, I want to thank each of you for your presentation. My report of the hearing will be in writing to the Executive Board of the Indiana State Department of Health for their consideration before final adoption.

These proceedings, pursuant to notice, are hereby concluded. This cause is therefore adjourned until final order of the Executive Board.

Thank you all for coming.