

Summary of Comments
Regulatory Services Branch, Environmental Health Section
Section 19a-36-B61 of the Regulations of Connecticut State Agencies

SUBJECT: Proposed Public Swimming Area Regulations

- COMMENTERS: (1) **Randy Collins**, Senior Legislative Associate, Connecticut Conference of Municipalities (CCM)
 (2) **David Knauf**, President, Connecticut Association of Directors of Health (CADH)
 (3) **Elizabeth Gara**, Executive Director, Connecticut Council of Small Towns (COST)

| NUMBER OF COMMENTERS | COMMENT | RESPONSE |
|----------------------|--|---|
| 1 | <p><u>Section 1(b) (1) would require every public swimming area be provided with on-site toilet facilities unless the local director of health determines that adequate facilities are already provided elsewhere.</u> Mandating that municipalities install on-site toilet facilities, washing facilities and dressing rooms at every public swimming area is simply not feasible given the current budget limitations faced by Connecticut's towns and cities.</p> | <p>The proposed regulations require that adequate on-site toilet facilities, with handwashing or hand sanitation stations, be provided. The proposed regulations do not require dressing rooms to be constructed. The requirement for on-site toilet-facilities is intended to protect public health and to provide individuals who use the swimming area with an appropriate means of relieving themselves of bodily wastes. The provision of a chemical privy (a.k.a. a port-a-potty) would be sufficient to satisfy the requirement for on-site toilet facilities. The cost of an individual port-a-potty is estimated to be approximately \$150/month, which is offset by the public health benefit of having toilet facilities available to swimming area patrons.</p> |
| 1 | <p><u>Section 1(b) (10) prohibits domestic animals in the areas adjacent to public swimming areas. CCM is concerned as to the definition of "immediate vicinity" and regarding municipal authority to</u></p> | <p>The term "adjacent lands" refers to the land that abuts the waters of the public swimming area; i.e., the shoreline of the public swimming area, and not the land of the neighboring properties. The proposed regulations</p> |

| | | |
|---|---|--|
| | <u>enforce this prohibition on adjacent lands that may be private though abutting a public swimming area.</u> | have been revised to make this distinction clearer. |
| 1 | Section 1(b) (11) mandates the inspection of all public swimming areas. The <u>inspection of public swimming areas has never been a mandatory function for local public health departments</u> , and this would create an additional unfunded mandate. | The proposed language in Section 19a-36-B61 (b) (11) has been revised to read “The Director of Health may...”, thus making the inspections non-mandatory. |
| 1 | CCM does not understand why <i>state owned or operated</i> swimming areas are exempted from the provisions of these proposed regulations. | The Department of Energy and Environmental Protection (DEEP) already regulates state owned swimming areas through the Regulations of the State of Connecticut Section 23-4-1. There is no need for the Department of Public Health (DPH) to additionally regulate public swimming areas currently owned or operated by the DEEP. |
| 1 | The changes currently proposed by DPH limit the discretion of municipalities to allocate limited resources. CCM urges DPH to consider the fiscal impact of any new regulations and that no new mandates, financial or administrative are imposed on local governments. | The mission of the DPH is to assure conditions in which people can be healthy and to prevent disease, injury and disability. The proposed regulations are consistent with that mission and take into consideration the potential impact on local governments. |
| 2 | <i>Note: CADH cites Sec. 19-13-B36 in all their comments</i> | <i>The proposed regulations are codified in Section 19a-36-B61. Section 19-13-B36 is being repealed.</i> |
| 2 | The proposed regulations specifically empower the local health director to enforce the regulations. 1.) <i>Language Proposed by DPH</i> The Director of Health Shall: (A) Inspect all public swimming areas to determine compliance with the provisions of this section. (B) Issue an order which may result in a closure of the public swimming area, in part or in whole, to the owner of the public swimming | The proposed language in Section 19a-36-B61 (b) (11) has been be revised to read “The Director of Health may...”, thus making the inspections non-mandatory. |

| | | |
|---|--|---|
| | <p style="text-align: center;">area....</p> <p>2.) <i>Language Modifications Proposed by CADH</i> The Director of Health shall <u>may</u>: (A) Inspect all public swimming areas to determine compliance with the provision of this Section. (B) Issue an order which may result in a closure of the public swimming area, in part or in whole, to the owner of the public swimming area... Sec. 19-13-B36 (b) (11).</p> <p>3.) <i>Rationale</i> Inspection of public swimming areas has never been a mandatory function for local public health. Requiring inspection going forward is a new and unfunded mandate, potentially exposing municipalities to significant liability if they do not have adequate resources to fully enforce these regulations. Providing that local health directors <i>may</i> inspect public swimming areas and enforce these regulations provides them with the flexibility necessary to ensure that overall public health promotion and Public Health Code enforcement is optimized and conducted to best suit the needs of specific public health districts and departments. For example, a health district or department should be given the flexibility to enforce in other ways, short of issuing legal orders for violations.</p> | |
| 2 | Conspicuously absent from the proposed regulations are protocols for monitoring water quality | The issue of protocols for monitoring water quality in public swimming area is presently addressed in a joint |

| | | |
|---|---|---|
| | <p>in public swimming areas. Local health directors are interested in engaging in further conversation with the Department of Public Health about drafting language for inclusion in the final regulation with respect to bacteriological water quality in accordance with approved policies and protocols.</p> | <p>DPH/DEEP Guidance Document that has been in place since May 1989, last revised April 2003. The DPH believes that this guidance is protective of public health and provides regulatory authorities with reasonable discretion in addressing issues related to monitoring and water quality.</p> |
| 2 | <p>Under current law, the language seems to imply that only certain public swimming areas must have “adequate numbers” of fly-tight privies or water-flushed toilets. The proposed regulations provide that, in general, every public swimming area must have on-site toilet facilities.</p> <p>1.) <i>Language Proposed by DPH</i> Every public swimming area shall be provided with on-site toilet facilities unless the director of health determines that adequate facilities are already provided elsewhere. Separate toilets shall be required... Sec. 19-13-B36 (b) (1).</p> <p>2.) <i>Language Modifications Proposed by CADH</i> Every public swimming area shall be provided with on-site toilet facilities unless the director of health determines that adequate facilities are already provided elsewhere. Where bathhouses are provided, Separate separate toilets shall be required... Sec. 19-13-B36 (b) (1).</p> <p>3.) <i>Rationale</i> Local public health always supports good public health practice and would readily recommend to town officials that public swimming areas be</p> | <p>The proposed regulations require that adequate on-site toilet facilities, with handwashing or hand sanitation stations, be provided. The requirement for on-site toilet facilities is intended to protect public health and to provide individuals who use the swimming area with an appropriate means of relieving themselves of bodily wastes. The provision of a chemical privy (a.k.a. a port-a-potty) would be sufficient to satisfy the requirement for on-site toilet facilities. The cost of an individual port-a-potty is estimated to be approximately \$150/month, which is offset by the public health benefit of having toilet facilities available to swimming area patrons.</p> |

| | | |
|---|---|--|
| | <p>provided with on-site toilet facilities. However, in this challenging fiscal climate, <i>requiring</i> municipalities to appropriate funds and install toilet facilities at every public swimming area may not be feasible. Beyond the extreme fiscal impact of this new, unfunded mandate, installation of on-site toilet facilities is logistically impractical in many locations, especially at large, shoreline public swimming areas. Introducing these structures could serve as new targets for vandalism in every jurisdiction and also could pose potential significant sources of pollution in the event of large storms.</p> | |
| 2 | <p>Under current law, the swimming areas to be regulated are:</p> <p>a.) “Artificial bathing places” (i.e., an artificially constructed impounding basin) used for bathing and swimming by a “considerable number of persons other than the immediate family of the owner or proprietor,” and</p> <p>b.) “Public bathing establishments,” which are bathing establishments “on or near any stream, natural or artificial pond, or tidal water where bath houses for the use of the public are maintained either free or for hire” and also include “the grounds, bath houses, toilets and other appurtenances.”</p> <p>1.) <i>Language Proposed by DPH</i> “Public swimming area” means a designated location, together with any buildings, toilet facilities, the water and the land used in connection</p> | <p>The proposed regulations have been revised to exclude from the definition of “public swimming area” those swimming areas accessible only as part of a lake association, beach association, or condominium.</p> <p>As previously noted, the DEEP already regulates state owned swimming areas through the Regulations of the State of Connecticut Section 23-4-1. There is no need for the DPH to additionally regulate public swimming areas currently owned or operated by the DEEP.</p> |

therewith, at any natural or artificial pond, lake, stream, tidal water or other body of fresh or salt water that is advertised as a place for swimming and is accessible to the public. Public swimming area does not include: (a) swimming areas in connection with or appurtenant to single family dwellings and used solely by persons residing in such dwellings and such person's guests; (b) any state owned or operated swimming areas; and (c) public swimming pools that are regulated under Section 19-13-B33b of the Regulations of Connecticut State Agencies. Sec. 19-13-B36 (a) (1).

2.) *Language Modifications Proposed by CADH*
"Public swimming area" means a designated location, together with any buildings, toilet facilities, the water and the land used in connection therewith, at any natural or artificial pond, lake, stream, tidal water or other body of fresh or salt water that is advertised as a place for swimming and is accessible to the public. Public swimming area does not include: (a) swimming areas in connection with or appurtenant to single family dwellings and used solely by persons residing in such dwellings and such person's guests, including but not limited to those swimming areas accessible only as part of a lake association, beach association, or condominium; ~~(b) any state owned or operated swimming areas;~~ and ~~(c)~~ public swimming pools that are regulated under Section 19-13-B33b of the Regulations of Connecticut State Agencies.

| | | |
|---|--|--|
| | <p>3.) <i>Rationale</i> On its face, the language “swimming areas in connection with or appurtenant to single family dwellings and used solely by persons residing in such dwellings and such person’s guests” seems to include those swimming areas accessible only as part of private associations, such as lake associations, beach associations and condominiums. The additional language to part (a) above confirms the perceived intent of this provision, which is to exclude private swimming areas from the regulation.</p> <p>With respect to the existing part (b), CADH cannot identify a sound public health rationale for exempting state owned or operated swimming areas but would support regulation that directs the responsibility for enforcing this regulation to the State. Among the stated purposes of these proposed regulations is “to protect public health and safety for persons using public swimming areas.” To fully meet this purpose, all public swimming areas, included those owned and operated by the state, should be included in the definition of “public swimming area.”</p> | |
| 2 | <p>The proposed regulations provide that, in public swimming areas where there is a diving board, the diving area must meet certain requirements.</p> <p>1.) <i>Language Proposed by DPH</i> Diving shall be permitted only off a diving board. No diving boards greater than sixteen feet in length shall be permitted. The owner of the property</p> | <p>The provision to permit diving only off a diving board is intended to protect public health by providing a clearly defined location where diving is safe. This language is used to ensure that the standards pertaining to safe diving are consistent within the DPH regulations.</p> |

| | | |
|---|---|---|
| | <p>shall ensure that the diving area is in compliance with the required water depths at all times. Sec. 19-13-B36 (b) (5).</p> <p>2.) <i>Language Modifications Proposed by CADH</i> Diving shall be permitted only off a diving board. No diving boards greater than sixteen feet in length shall be permitted. The owner of the property shall ensure that the diving area is in compliance with the required water depths at all times. Sec. 19-13-B36 (b) (5).</p> <p>3.) <i>Rationale</i> CADH recommends deleting the provision that restricts diving to diving boards because of the lack of compelling data, demonstrating significant safety concerns in Connecticut associated with diving from other surfaces other than a diving board, such as a permanent float or diving block. As written, the provision is unduly restrictive and presents enforcement difficulties.</p> | |
| 2 | <p>1.) <i>Language Proposed by DPH</i> “All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pools are free of contamination...” Section 17a-145-86, listed under Section 6 of the proposed regulations.</p> <p>2.) <i>Possible Language Modification Proposed by CADH</i> “All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pools are free of contamination...”</p> | <p>The Department of Children and Families is responsible for enforcement of the provisions of Section 17a-145-86 of the Regulations of Connecticut State Agencies. The proposed change in Section 17a-145-86 is intended to reflect the new regulatory citations resulting from the approval of these regulations.</p> <p>DPH interprets the term “on-ground” pools to mean pools located on the grounds of the property, and that the term is not intended to describe of the type of pool.</p> |

| | | |
|---|--|---|
| | <p>Section 17a-145-86.</p> <p>3.) <i>Rationale</i> CADH is not sure if this language is written as intended or whether it is a typographical error. Typically, children are at risk of falling down into pools that are “in-ground”; the risk of significantly mitigated when those pools are elevated or “on-ground” or “above-ground.”</p> | |
| 2 | <p>1.) <i>Language Proposed by DPH</i> “The area open for authorized swimming shall be clearly designated.” Sec. 19-13-B36 (b)(3). “Swimming in public swimming areas shall be restricted to designated areas and during assigned hours of operation.” Sec. 19-13-B36 (b) (4).</p> <p>2.) <i>Language Proposed by CADH</i> “The area open for authorized swimming shall be clearly designated, <u>unless the director of health otherwise determines.</u>” Sec. 19-13-B36 (b) (3). “Swimming in public swimming areas shall be restricted to designated areas and during assigned hours of operation, <u>unless the director of health otherwise determines.</u>” Sec. 19-13-B36 (b) (4).</p> <p>3.) <i>Rationale</i> The requirements above, as written in the proposed regulations, do not adequately account for the many different types of public swimming areas that exist in Connecticut. The Long</p> | <p>The mission of the DPH is to assure conditions in which people can be healthy and to prevent disease, injury and disability. Consistent with that mission, the DPH believes that all areas that are open for authorized swimming must be clearly designated to inform swimmers where it is safe to swim.</p> <p>The proposed language in Section 19a-36-B61(b)(4) was reviewed and taken into consideration, however there are no standards within the regulation that would allow the health director to make such determination.</p> |

| | | |
|---|--|---|
| | <p>Island coastline is very different from the many lakes and ponds that dot our state. The less proscriptive language that CADH proposes would allow for a more flexible approach to designating public swimming areas. Retaining the existing language could have sweeping unanticipated consequences in some jurisdictions, depending on the precise nature of the swimming areas contained therein.</p> | |
| 3 | <p>The proposed regulations impose costly new requirements on municipalities that make natural or artificial bodies of water accessible to the public as places for swimming. These requirements include on-site toilet facilities that must include at least one hand washing sink or hand sanitation station. Requiring on-site toilet facilities at swimming areas provided at lakes, shorelines, ponds and other natural swimming areas would impose a considerable financial burden on municipalities. Although local directors of health may recommend the installation of toilet facilities at certain swimming areas, it is impractical to require toilet facilities at each and every swimming area. Such facilities can be cost prohibitive, forcing towns to close swimming areas to the public, undermining summer recreational activities in these areas.</p> | <p>The proposed regulations require that adequate on-site toilet facilities, with handwashing or hand sanitation stations, be provided. The requirement for on-site toilet-facilities is intended to protect public health and to provide individuals who use the swimming area with an appropriate means of relieving themselves of bodily wastes. The provision of a chemical privy (a.k.a. a port-a-potty) would be sufficient to satisfy the requirement for on-site toilet facilities. The cost of an individual port-a-potty is estimated to be approximately \$150/month, which is offset by the public health benefit of having toilet facilities available to swimming area patrons.</p> |
| 3 | <p>The proposed regulations require local health directors to inspect all public swimming area to determine compliance with the regulations. This imposes a costly, unfunded mandate on local health directors and the municipalities they serve. Requiring local health directors to inspect the areas to determine compliance with the regulations, which</p> | <p>The proposed language in Section 19a-36-B61 (b) (11) has been revised to read “The Director of Health may...”, thus making the inspections non-mandatory.</p> |

| | | |
|---|---|--|
| | include requirements relative to signage, diving boards, a notification system regarding lifeguard services and prohibitions on boats, washing, glass containers and domestic animals, would require frequent, ongoing inspection of such areas, which may divert resources away from other critical public health functions. | |
| 3 | The proposed regulations may be interpreted to regulate swimming areas that are accessible as part of a lake or beach association. It is recommended that the proposed regulations be revised to specifically exempt swimming areas accessible as part of a lake or beach association. | The proposed regulations will be revised to exclude from the definition of “public swimming area” those swimming areas accessible only as part of a lake association, beach association, or condominium. |