

## **11/13/09 - CILB responds to a Petition for Declaratory Statement regarding pool contractors**

By Jennifer Hatfield, Director of Government and Public Affairs

On November 13, 2009 the Construction Industry Licensing Board (CILB) met in Orlando for their last general session of the year. On the agenda was 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 recent 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 will be a phased-in requirement with some types of pools/spas having to reach compliance as early as May 24, 2010 and as late as July 1, 2013. (See timetable chart for specifics).

### Timetable for 64E-9 gravity drainage system installation

All pools, including wading pools, with a main drain located in four feet of water or less:

by May 24, 2010 (one year after the effective date of the revisions to 64E-9)

All spa type pools built before 1977:

by July 1, 2010

All spa type pools built between 1977-1986:

by July 1, 2011

All spa type pools built between 1986-1995:

by July 1, 2012

All other pools (main drain in water greater than four feet):

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.

This information was presented to the CILB by Mr. Fischer and additional testimony was made by representatives of the United Pool & Spa Association (UPSA). FSPA responded to the petition both by an official letter and in testimony to the CILB. The Association 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...

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 will put out an official response to this petition in the months to come and FSPA will provide this response as soon as it becomes available. In addition, FSPA has already begun talking with the Building Officials Association of Florida, who were in attendance at the CILB meeting, and other parties to make sure everyone clearly understands what was determined by the CILB.