

NEW YORK
state department of
HEALTHNirav R. Shah, M.D., M.P.H.
CommissionerSue Kelly
Executive Deputy Commissioner

July 26, 2011

Christopher Boyd
Assistant Commissioner
Office of Environmental Science and Engineering
22 Cortland Street
28th Floor, CN-56
New York, New York 10007

Dear Mr. Boyd:

We reviewed the proposed amendments to Sections 165.03 and 165.15 of Article 165 of the New York City Health Code for consistency with the Public Health Law (PHL) and State Sanitary Code (SSC) and offer the following comments:

1. The two options listed for acceptable courses are consistent with those listed in Section 6-1.2 of Subpart 6-1 of the State Sanitary Code (SSC). For your information, the Department is proposing to eliminate option #1 (New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B) during a future revision to Subpart 6-1 because courses addressing pool specific operation and maintenance issues are more relevant. The requirements for "qualified swimming pool water treatment operator" in Section 6-3.2 of Subpart 6-3 of the SSC already reflect this concept. We support eliminating the New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B from your options of acceptable courses.
2. Although "certified pool operator" used in these amended sections is existing code language and not part of the proposed changes, the term is a registered trademark of the National Swimming Pool Foundation. As such, we recommend the term be modified.

Although we have provided legal and programmatic review, please note that New York City is responsible for updating its local sanitary code to ensure that the entire code remains consistent with the current PHL and SSC. If the Department determines that a previously approved provision of a local code is now inconsistent with those statewide authorities, the county must revise its local code. In addition, you may wish to consult with the New York State Department of Environmental Conservation (DEC) concerning any proposed revisions relating to the Environmental Conservation Law (ECL) or otherwise falling under DEC's jurisdiction.

Be advised that the Department's review of these changes to the local sanitary code does not constitute an approval of any fees set forth therein. Note that fees related to filing a realty subdivision plan, permitting a children's camp, and licensing and inspecting a tanning facility are established by Public Health Law §§ 1119, 1393, and 3551 and 3554, respectively. Any inconsistency with these laws may subject the city to legal challenge.

Further, be advised that inclusion of a public health program in the local sanitary code does not ensure that the program is eligible for State aid under Article 6 of the Public Health law. Additionally, for purposes of State Aid, it is the county's responsibility to include documentation of all fees related to public health work in its fee and revenue plan.

Sincerely,



Victor E. Pisani, Acting Director
Division of Environmental Health Protection

cc: C. Jones Rafferty
M. Cambridge/D. Sackett/T. Shay
B. Devine, MARO

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