



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

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June 9, 2022

POSITION STATEMENT: Public Pool Fencing Regulation

PURSUANT TO: Interpretation of gate fencing rule 15A NCAC 18A .2528, .2537(b)(5) and SL 2011-39

SOURCE: Alice Isley, Pools, Tattoos, and State Institution Program

QUESTION: How should fencing regulations be interpreted.

DISCUSSION AND RATIONALE:

15A NCAC 18A .2537 was last amended in 2004. Most of .2537 remains as written in 1993, during which time it was customary to mark non-compliant fences as construction items and not take permit action provided the fence met .2537(b)(5).

.2528 was amended May 1, 2010, to be consistent with the building code. .2537 was not reviewed at that time to see if it conflicted with the new fence rule. Shortly after the rule was adopted, we were advised that fencing was listed in GS 130A-282(a)(5) as a “safety” item therefore we could not treat fencing as construction but rather must treat it as a safety item and make each pool meet the current fence rule to qualify for a permit.

Session Law 2011-39 was then enacted and allowed existing permitted pools to continue to operate provided the gate and doors met the requirements of .2528(a)(7) and (8), even if their fencing did not meet (a)(1)-(a)(6)

Since the General Statute trumps the rules and SL 2011-39 specifically mentions 15A NCAC 18A .2527(a)(1)-(a)(6) the portion of .2537(b)(5) relating to gates and doors is in conflict and therefore should not be enforced.

.2528 and .2537(b)(5) are inconsistent and have different requirements for doors, specifically the use of an audible alarm system.

RESPONSE: Because fencing is a safety item, we should only enforce what is in .2528.

This guidance replaces all prior guidance whether verbal or written.

NOTE: Position statements are policy documents to clarify how to interpret or enforce a law or rule. They are not enforceable on their own but are intended to promote uniform interpretation and enforcement of the underlying law or rule.

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