

Petition for Declaratory Statement  
Before the Florida Building Commission

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>7/8/2015</b>
File #	

**Company:** Shamrock Pool Services, Inc.  
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**DS 2015-080**

**Petitioner's Attorney or Representative:** Jennifer Hatfield  
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**Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which a Declaratory Statement is sought:**

Florida Building Code, Building – 5<sup>th</sup> Edition (2014)  
Chapter 1, Sections 104.10, 105.1, 105.1.4, and 105.2.2  
Chapter 4, Sections 454.1 "Modifications" and 454.1.10.1

**Background:**

Shamrock Pool Services, Inc., provides commercial pool and spa maintenance, repair, and remodeling services. Services include resurfacing commercial swimming pools and spas. Shamrock Pool Service, Inc., is in the process of finalizing a project that will include resurfacing of a commercial swimming pool (otherwise known as a public pool and also referred to as such within this document). This resurfacing project will involve draining the pool and then preparing the old finish to receive the new finish. This preparation will include scoring the old finish; undercutting existing tiles, return lines and light fixtures; removing all hollow spots in the old finish and then acid washing the old finish to roughen the previous surface and to remove scale and bacteria to insure proper adhesion. Then a multi-coat scratch coat will be installed for superior bonding.

The pool will then have non-skid mud cap tiles on the entrance steps of the pool and "no diving and depth markers" tiles installed, both per Florida Department of Health (FDOH) standards. The pool will

then be refinished, which includes another acid wash to expose aggregate. The pool will then be refilled and the coping will be bleached. Any of the following items that require attention will then be replaced: gutter grates, return fittings, ladder bumpers, Virginia Graeme Baker approved main drain covers and light bulbs. The pool will then be returned to normal operation, including proper balancing of water.

It is also important to point out that the FDOH is currently alerted prior to commencement of this work; as well as once it is completed, and normal operation guidelines must be followed per FDOH guidelines.

Shamrock Pool Services, Inc., is seeking clarification on whether or not a permit is required when resurfacing a commercial pool or spa so to ensure that when performing such work they are doing so in compliance with the intent of the new Code that went into effect June 30, 2015. Petitioner seeks these clarifications as a “substantially affected person” under the procedures set for in Section 553.775, F.S.

Petitioner believes that per Section 105.1 and 105.2.2 of the Code, a permit is required when resurfacing a public swimming pool or spa. This is a repair of a structure and it can affect the general safety and in the case of a public pool or spa, the public health; therefore, it would appear it would not fall under a minor repair.

#### Section 105.1 (Permits) Required

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

#### Section 105.2.2 Minor Repairs.

Ordinary minor repairs may be made with approval of the building official without a permit, provided the repairs do not include the cutting away of any structural beam, partition or portion thereof, the removal or cutting of any structural beam or load bearing support, or the removal or change of any required means of egress, or the rearrangement of parts of a structure affecting the egress requirements: nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electrical wiring systems or mechanical equipment or other work affecting public health or general safety, and such repairs shall not violate any provisions of the technical codes.

In addition, the Florida Legislature passed legislation in the 2012 session (HB 1263) that was signed into law by the Governor that effectively split the regulation of public swimming pools between the FDOH

for operational issues and the Florida Building Code-Building for construction issues. Pursuant to that legislation the Florida Building Code-Building was updated to include all of the construction requirements previously included in the current FDOH Rule, 64E-9,F.A.C. Additionally, the current FDOH rule is undergoing a rule change that will remove all construction requirements, leaving only operational requirements.

Unfortunately, the public swimming pool rule language added to the Florida Building Code is not totally compatible with the language used in the Florida Building Code. Specifically, the word modification was used in the FDOH rule to identify those activities that required review and inspection, while activities that were identified as not a modification, did not require the same type of review and inspection. However, per 64E-9.005(2), F.A.C., resurfacing a public swimming pool is an activity that FDOH has always inspected, it just was not considered a modification. The concern is that one could construe that if a resurfacing project is not considered a modification, per what is now in Section 454.1.10.1, it does not require a permit, but that was not the intent nor we believe the case.

The definition of a “modification” found in Section 454.1 does not speak to whether an activity that may be identified as not a modification, would be exempt from permitting: therefore, the issue of permitting must revert back to FBC 105.1 which states that “An owner or authorized agent that intends to repair a structure shall obtain the required permit”. Resurfacing a public swimming pool is a significant activity that provides an opportunity to ensure several swimming pool features meet current safety standards, all of which will then improve public safety, and equipment replacement can significantly alter the performance of a system.

Section 104.10 Modifications. Reserved

Section 105.1.4 Public swimming pool.

The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to Section 514.031, *Florida Statutes*/ A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct their review of the building permit application upon filing and in accordance with Chapter 553, *Florida Statutes*. The local enforcing agency may confer with the Department of Health, if necessary but may not delay the building permitting application review while awaiting comment from the Department of Health.

Section 454.1 “Modification”

“Modification” means any act which changes or alters the original characteristics of the pool as approved. For example, changes in the recirculation systems, decking, treatment systems, disinfection system, and pool shape are modifications.

#### Section 454.1.10 .1 Modifications

Modifications include non-equivalent changes or additions to 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 section 454.1.3.1, and deck markings are upgraded in accordance with Section 454.1.2.3. Resurfacing the pool interior to original non-toxic, slip resistant and smooth specifications or equivalent replacement of equipment are not considered modifications.

Further, recognizing that the 2012 legislation required construction elements found in 64E-9, F.A.C., to be removed and placed in the Florida Building Code-Building, it is important to note that under 64E-9.005(2). F.A.C., the FDOH required that when resurfacing a pool several other items had to be addressed:

#### 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:

- (a) The lip of the gutter must be leveled to within 1/4 inch between the highest and lowest point and the downward slope from the lip to the drain must be maintained as originally designed or increased, but shall not exceed new construction standards.
- (b) Tile step markings must be installed meeting the requirements of subparagraph 64E-9.006(1)(d)3., F.A.C.
- (c) Where applicable the slope break marking must be installed meeting the requirements of subsubparagraph 64E-9.006(1)(c)2.b., F.A.C., and the safety line must be installed two feet before the marking.
- (d) Depth markers and NO DIVING markers must be installed in accordance with subparagraph 64E-9.006(1)(c)3., F.A.C.
- (e) The pool ladder must have a three to six inch clearance from the pool wall. New cross braced ladder(s) shall be installed in place of non-cross braced ladder(s) in conformance with 64E-9.006(1)(d)1. during a pool re-surfacing
- (f) Should resurfacing works affect the step riser heights, no riser shall exceed 12 inches and the intermediate risers shall be made uniform.
- (g) When fiberglass is used to resurface a pool any existing tile shall not be covered by the fiberglass finish.
- (h) The County Health Department shall be notified in writing of any proposed pool resurfacing or upgrades to decking at least 10 days prior to commencement. The notification shall include an itemized list of all proposed work that is to be performed,

the license number of the contractor selected and shall indicate that all work will meet the requirements of paragraphs 64E-9.005(2)(a) through (g), F.A.C.

- (i) Upon completion of the work the licensed contractor shall provide the County Health Department a letter bearing their license number which certifies that the work was completed in accordance with paragraphs 64E-9.005(2)(a) through (g), F.A.C.
- (j) Recessed treads that protrude from the pool wall shall be removed and replaced with a cross braced ladder or reconstructed to meet the requirements of Chapter 64E-9.006(1)(d)2.

Quite simply, the FDOH required certain things to be done when a public pool was resurfaced, which required oversight that due to the 2012 legislation would clearly require a permit for oversight to occur from the building department.

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Based on the above information and the fact resurfacing public pools is a significant part of the petitioners business; therefore, clarification is needed to ensure the intent of the code requirements are followed and done so consistently in the multiple jurisdictions he provides services (including the projects that are about to commence), we ask the following:

**Question:** Is a permit required to resurface a public swimming pool or spa?

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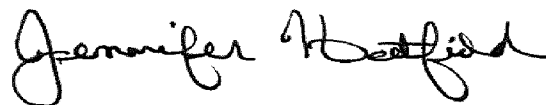
**Summary:**

Petitioner respectfully believes that the answer to this question should be as follows:

Recommended Answer: Yes, resurfacing a public swimming pool requires a permit, per FBC 105.1

Requiring a permit for a public swimming pool resurfacing is consistent with the process used previously by FDOH; therefore, safeguarding the public health and safety.

Respectfully submitted,



Jennifer Hatfield, on behalf of the petitioner

Date: 7/8/15