

Excerpts from SR Smith Presentation at TPPC, January 2011.

The goal of the ADA is a level playing field. Ultimately, the real goal is inclusion, which actually goes far beyond accessibility. Providing accessibility often focuses on compliance and checklists, and meeting the minimum obligations required to avoid lawsuits and fines. Inclusion goes beyond ramps and pool lifts, it defines an atmosphere where people with disabilities are viable parts of the mainstream. Accessibility describes an environment where society is doing FOR. Inclusion describes an environment where society is doing WITH. Everyone benefits from an inclusive society. People with disabilities are able to participate and contribute. The rest of us are able to reap the benefits of their participation.

On July 26, 2010, the revision of the ADA was signed into law. Coincidentally, this date was the twentieth anniversary of the signing of the original ADA law. The new regulations were published in the Federal Register on September 15, 2010 and will go into effect on March 15, 2011. Full compliance with these regulations will be required by March 15, 2012.

The ADA is broken down into a number of sections or “Titles.”

The two sections that are of relevance to our industry are Title II and Title III.

- Title II lays out barrier removal regulations for government owned facilities, including parks & recreation departments, state run schools or universities, military bases and the like.
- Title III addresses barrier removal for privately owned public accommodations. These include hotels, health clubs, private schools and community centers. With respect to swimming pools, the regulations are basically the same for both Title II and Title III facilities.

To understand who is actually regulated by the ADA, it may be easier to list the types of facilities not covered. These include Private residences, apartments, and condominiums.

In some cases, facilities that are not normally regulated by the ADA may, in fact, fall under its jurisdiction if they provide a public accommodation within their facilities.

Here are a few examples of these situations:

- If an apartment complex sells memberships to their pool to people living outside their complex, the pool would be considered a public accommodation and be subject to ADA regulations.
- If a condominium actively rented out their units, similar to a hotel, this would also be considered a public accommodation and subject to ADA regulations.
- If a home owner’s association rents out their pools for parties to people from outside their community, these would also be subject to ADA regulations.
- Private clubs are normally excluded from ADA regulations, however, the club must meet rigid criteria to qualify for such an exemption. The membership must be very restricted, and substantial fees must be charged. If the club had very loose membership requirements and charged a minor fee for membership, they would not be considered a private club and would need to comply with ADA regulations.

With the revisions adopted in 2010, the regulations provide relief to entities who made structural modifications consistent with the 1991 guidelines.

If an existing facility made such a modification and the new regulations require a different type of modification, the existing facility will not be compelled to bring their facility up to the 2010

standards until that facility undergoes a significant modification or renovation. This is called a safe harbor,

Elements that were not addressed in the 1991 standards and are now addressed in the 2010 requirements, are not covered by a Safe Harbor. Existing facilities that have such elements, must make modifications to assure compliance with the new regulations by March 15, 2012.

In the case of swimming pools, there were **no** requirements mentioned in the 1991 regulations. **Therefore, there is no safe harbor for swimming pools.**

All existing pools must meet 2010 standards by March 15, 2012.

The ADA recognizes that barrier removal may be more difficult for existing facilities than it would be for new construction. For a new project, changes can be made to the design prior to construction. This type of change would have little financial impact on the overall cost of a new project.

Existing facilities, however, may present significant challenges to barrier removal. Because of this, the ADA provides some relief to existing facilities where this is the case.

- If barrier removal would substantially alter the historical nature of an existing facility, that facility would not be required to make such a modification. A good example would be putting an elevator shaft up the side of this historical lighthouse.
- In all cases, barrier removal must be readily achievable. Readily achievable means easily accomplished or being able to carry out the modification without much difficulty or expense.

Determining whether or not barrier removal is readily achievable is subjective and is considered on a case-by-case basis. However, a list of examples of modifications considered to be readily achievable will shed some light on this issue with respect to swimming pools. This list, which was compiled as a reference to the 1991 regulations, includes installing ramps, creating curb cuts, providing accessible bathrooms and parking places, and rearranging toilet partitions. When calculating the cost of any or all of these examples and comparing that cost to the price of a swimming pool lift, it is reasonable to project that the cost of installing a pool lift on an existing pool would fall within the realm of being readily achievable.

For many facilities, installing a swimming pool lift will be considered to be a readily achievable method of barrier removal. There are instances, however, when the readily achievable provision may be used to delay implementation of barrier removal for swimming pools.

Here is an example:

- The 2010 regulations for wading pools state that a sloped entry must be provided into the deepest part of the pool. However, in order to install a safe sloped entry into an existing wading pool with a flat bottom, the entire pool would need to be razed and reconfigured with a sloped entry. This procedure would likely cost as much as installing a new pool, and would not be considered to be readily achievable. The existing wading pool would not have to comply to the new standard until such time as it undergoes significant renovation, if that ever happens.

The obligation to remove barriers is ongoing. A situation that is not readily achievable today may change in the future. If we consider the example of the wading pool, if the public accommodation at some time in the future changes the overall design of their facility, which incorporates moving

the wading pool, at that time, the wading pool should be modified to meet the sloping requirement.

Initiating barrier removal to provide access to a swimming pool should have a high priority if the facility has to address a number of different kinds of barrier removal modifications. As part of the release of the 1991 regulations, the Department provided guidance on priorities for barrier removal in existing facilities. The first priority was simply entering the facility. The second priority was to provide access to areas where goods and services are provided. In the case of a swimming facility, this means the pool.

The type of pool determines the type of access required. Swimming pools, spas, and wading pools are all affected by the ADA regulations.

Also affected are aquatic recreation facilities, such as: wave action pools, leisure or lazy rivers, or any type of pool where access to the water is limited to one area and everyone gets in and out of the pool at the same place.

Types of aquatic facilities not affected are beaches, lakes and rivers.

In addition, catch pools, or bodies of water where a water slide or flume ride drops users into the water, are not required to provide an accessible means of entry or exit.

Is every pool required to be accessible?

Scoping is a term used to describe a percentage of a certain element that needs to be accessible. For example, in the case of a parking lot, scoping dictates the minimum percentage of the parking spaces that would be required to be accessible.

With respect to swimming pools, the Access Board purposely did not include a provision for scoping. A facility with multiple pools would be required to provide accessibility for each of their pools.

On the other hand, for spas there is a scoping provision when spas are arranged in a cluster. In this case, 5%, or at least one, of the spas would need to be accessible.

For large pools, with over 300 linear feet of pool wall, at least two means of access are required. One of these means must be a primary means. The other can be any of the five. It is suggested that different types of access means be used to accommodate a wider variety of users, but there is no regulation to prevent a facility from having two pool lifts, for example.

For smaller pools, with under 300 linear feet of pool wall, at least one means of access must be provided and it must be a primary means. If additional access points are provided, they can be of any type.

The newly adopted regulations define five permitted means of access for swimming pools. They are:

- Sloped Entries
- Swimming Pool Lifts
- Transfer Walls
- Transfer Systems
- Accessible Stairs

Of these, only Swimming Pool Lifts and Sloped entries are considered primary means of access. A primary means of access is the only type of swimming pool access that can be used by itself. The other three types of access can only be used in conjunction with either a sloped entry or a swimming pool lift. This is why they are called secondary means of access.

The distinction between a primary means of access and one of the three secondary methods turns on the variety of users who can avail themselves of the type of access. Transfer walls and transfer systems require strong transferring skills, while stairs only work for ambulatory individuals. Sloped entries and pool lifts provide access for a wider range of users and therefore are considered primary means of access.

Just a quick word about ADA Compliant. This is a term that many manufacturers use to describe their products. When a pool lift is advertised as ADA Compliant, this does not mean that that lift will make every swimming pool accessible according to the regulations.

ADA Compliance is a partnership of the individual swimming pool and the chosen means of access. Not every means of access is always going to result in an accessible facility. For years, zero depth entries have been considered to be ADA compliant. However, unless the slope meets the stated requirements and the required handrails are in place, the pool will still need to address its barrier removal responsibilities.

The DOJ does not endorse or approve any product. The responsibility of making sure an installation meets the proper barrier removal provisions rests with the facility owner.

An important component of the new regulations is that any equipment used to provide accessibility must be maintained in proper working condition. This regulation insures that the pool will be accessible at all times. It also creates an opportunity for dealers with service departments to help their customers to keep their pool lifts in proper working condition, through programs such as annual maintenance contracts.

Enforcing the ADA is the responsibility of the Disability Rights Section of the Department of Justice.

Enforcement can be either direct or indirect.

- Direct enforcement occurs in a number of ways. Consumer complaints can be filed by an individual directly with the DOJ. Private lawsuits can also be filed against offending bodies. Many such lawsuits are filed by disability advocates who act as professional plaintiffs in order to compel public accommodations to provide accessible facilities. Typically, if a facility is found to not be in compliance with accessibility regulations, their penalty is to simply to perform whatever modifications are necessary to meet ADA regulations. Sometimes, however, in the case of a private lawsuit, losing defendants are usually required to pay the plaintiff's legal fees. And, in some situations, the court may assess a fine on the delinquent party.
- Indirect enforcement many times affects government owned facilities, such as parks & recreation departments, where the ADA is enforced by using compliance as a requirement for receiving federal grants.

Excerpt from ADA Regulations

1008 Play Areas

1008.1 General. *Play areas* shall comply with 1008.

1008.2 Accessible Routes. *Accessible* routes serving *play areas* shall comply with Chapter 4 and 1008.2 and shall be permitted to use the exceptions in 1008.2.1 through 1008.2.3. Where *accessible* routes serve *ground level play components*, the vertical clearance shall be 80 inches high (2030 mm) minimum.

1008.2.1 Ground Level and Elevated Play Components. *Accessible* routes serving *ground level play components* and *elevated play components* shall be permitted to use the exceptions in 1008.2.1.

EXCEPTIONS: 1. Transfer systems complying with 1008.3 shall be permitted to connect *elevated play components* except where 20 or more *elevated play components* are provided no more than 25 percent of the *elevated play components* shall be permitted to be connected by transfer systems.

2. Where transfer systems are provided, an *elevated play component* shall be permitted to connect to another *elevated play component* as part of an *accessible route*.

1008.2.2 Soft Contained Play Structures. *Accessible* routes serving *soft contained play structures* shall be permitted to use the exception in 1008.2.2.

EXCEPTION: Transfer systems complying with 1008.3 shall be permitted to be used as part of an *accessible route*.

1008.2.3 Water Play Components. *Accessible routes serving water play components shall be permitted to use the exceptions in 1008.2.3.*

EXCEPTIONS: 1. Where the surface of the *accessible route*, clear floor or ground spaces, or turning spaces serving *water play components* is submerged, compliance with 302, 403.3, 405.2, 405.3, and 1008.2.6 shall not be required.

2. Transfer systems complying with 1008.3 shall be permitted to connect *elevated play components* in water.

Advisory 1008.2.3 Water Play Components. Personal wheelchairs and mobility devices may not be appropriate for submerging in water when using play components in water. Some may have batteries, motors, and electrical systems that when submerged in water may cause damage to the personal mobility device or wheelchair or may contaminate the water. Providing an aquatic wheelchair made of non-corrosive materials and designed for access into the water will protect the water from contamination and avoid damage to personal wheelchairs.

1008.2.4 Clear Width. *Accessible* routes connecting *play components* shall provide a clear width complying with 1008.2.4.

1008.2.4.1 Ground Level. At ground level, the clear width of *accessible* routes shall be 60 inches (1525 mm) minimum.

EXCEPTIONS: 1. In *play areas* less than 1000 square feet (93 m²), the clear width of *accessible* routes shall be permitted to be 44 inches (1120 mm) minimum, if at least one turning *space* complying with 304.3 is provided where the restricted *accessible* route exceeds 30 feet (9145 mm) in length.

2. The clear width of *accessible* routes shall be permitted to be 36 inches (915 mm) minimum for a distance of 60 inches (1525 mm) maximum provided that multiple reduced width segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

1008.2.4.2 Elevated. The clear width of *accessible* routes connecting *elevated play components* shall be 36 inches (915 mm) minimum.

EXCEPTIONS: 1. The clear width of *accessible* routes connecting *elevated play components* shall be permitted to be reduced to 32 inches (815 mm) minimum for a distance of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220 mm) long minimum and 36 inches (915 mm) wide minimum.

2. The clear width of transfer systems connecting *elevated play components* shall be permitted to be 24 inches (610 mm) minimum.

1008.2.5 Ramps. Within *play areas*, *ramps* connecting *ground level play components* and *ramps* connecting *elevated play components* shall comply with 1008.2.5.

1008.2.5.1 Ground Level. *Ramp* runs connecting *ground level play components* shall have a *running slope* not steeper than 1:16.

1008.2.5.2 Elevated. The rise for any *ramp* run connecting *elevated play components* shall be 12 inches (305 mm) maximum.

1008.2.5.3 Handrails. Where required on *ramps* serving *play components*, the handrails shall comply with 505 except as modified by 1008.2.5.3.

EXCEPTIONS: 1. Handrails shall not be required on *ramps* located within *ground level use zones*.

2. Handrail extensions shall not be required.

1008.2.5.3.1 Handrail Gripping Surfaces. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 0.95 inch (24 mm) minimum and 1.55 inches (39 mm) maximum. Where the shape of the gripping surface is non-circular, the handrail shall provide an equivalent gripping surface.

1008.2.5.3.2 Handrail Height. The top of handrail gripping surfaces shall be 20 inches (510 mm) minimum and 28 inches (710 mm) maximum above the *ramp* surface.

1008.2.6 Ground Surfaces. Ground surfaces on *accessible* routes, clear floor or ground *spaces*, and turning *spaces* shall comply with 1008.2.6.

Advisory 1008.2.6 Ground Surfaces. Ground surfaces must be inspected and maintained regularly to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

1008.2.6.1 Accessibility. Ground surfaces shall comply with ASTM F 1951 (incorporated by reference, see “Referenced Standards” in Chapter 1). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951.

1008.2.6.2 Use Zones. Ground surfaces located within *use zones* shall comply with ASTM F 1292 (1999 edition or 2004 edition) (incorporated by reference, see “Referenced Standards” in Chapter 1). **TECHNICAL CHAPTER 10: RECREATION FACILITIES 213**

1008.3 Transfer Systems. Where transfer systems are provided to connect to *elevated play components*, transfer systems shall comply with 1008.3

Advisory 1008.3 Transfer Systems. Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component instead of an accessible route, careful consideration should be used in the selection of the play components used for this purpose.

1008.3.1 Transfer Platforms. Transfer platforms shall be provided where transfer is intended from wheelchairs or other mobility aids. Transfer platforms shall comply with 1008.3.1.

1008.3.1.1 Size. Transfer platforms shall have level surfaces 14 inches (355 mm) deep minimum and 24 inches (610 mm) wide minimum.

1008.3.1.2 Height. The height of transfer platforms shall be 11 inches (280 mm) minimum and 18 inches (455 mm) maximum measured to the top of the surface from the ground or floor surface.

1008.3.1.3 Transfer Space. A transfer *space* complying with 305.2 and 305.3 shall be provided adjacent to the transfer platform. The 48 inch (1220 mm) long minimum dimension of the transfer *space* shall be centered on and parallel to the 24 inch (610 mm) long minimum side of the transfer platform. The side of the transfer platform serving the transfer *space* shall be unobstructed.

1008.3.1.4 Transfer Supports. At least one means of support for transferring shall be provided.

1008.3.2 Transfer Steps. Transfer steps shall be provided where movement is intended from transfer platforms to levels with *elevated play components* required to be on *accessible* routes. Transfer steps shall comply with 1008.3.2.

1008.3.2.1 Size. Transfer steps shall have level surfaces 14 inches (355 mm) deep minimum and 24 inches (610 mm) wide minimum.

1008.3.2.2 Height. Each transfer step shall be 8 inches (205 mm) high maximum.

1008.3.2.3 Transfer Supports. At least one means of support for transferring shall be provided.
Advisory 1008.3.2.3 Transfer Supports. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

1008.4 Play Components. *Ground level play components* on accessible routes and *elevated play components* connected by *ramps* shall comply with 1008.4.

1008.4.1 Turning Space. At least one turning *space* complying with 304 shall be provided on the same level as *play components*. Where swings are provided, the turning *space* shall be located immediately adjacent to the swing.

1008.4.2 Clear Floor or Ground Space. Clear floor or ground *space* complying with 305.2 and 305.3 shall be provided at *play components*.

1008.4.3 Play Tables. Where play tables are provided, knee clearance 24 inches (610 mm) high minimum, 17 inches deep (430 mm) minimum, and 30 inches (760 mm) wide minimum shall be provided. The tops of rims, curbs, or other obstructions shall be 31 inches (785 mm) high maximum.

EXCEPTION: Play tables designed and constructed primarily for children 5 years and younger shall not be required to provide knee clearance where the clear floor or ground *space* required by 1008.4.2 is arranged for a parallel approach.

1008.4.4 Entry Points and Seats. Where *play components* require transfer to entry points or seats, the entry points or seats shall be 11 inches (280 mm) minimum and 24 inches (610 mm) maximum from the clear floor or ground *space*.

EXCEPTION: Entry points of slides shall not be required to comply with 1008.4.4.

1008.4.5 Transfer Supports. Where *play components* require transfer to entry points or seats, at least one means of support for transferring shall be provided.