Commissioner Gertler:

This letter is respectfully submitted by the Northeast Pool and Spa Association (NESPA) and the Pool and Hot Tub Alliance (PHTA) on behalf of our over 500 New York based member companies. As a nation, we are all struggling to combat the rapid transmission of the coronavirus (COVID-19). All levels of government are working to mitigate the spread of the disease and in some areas drastic steps have been taken including shutting down businesses that are deemed as non-essential. NESPA and PHTA fully support those efforts. We also want to make sure these efforts do not produce additional health and safety problems for residents. Therefore we are reaching out to you today to address 1) the complete service/maintenance of the approximately 280,000 residential and commercial pools and spas in NY, and 2) the completion of open pool construction to avoid injuries to owners and land collapse.

1. **Complete Maintenance of existing pools.**

We are aware of the email sent by the Office of Economic Development on March 26, 2020 to Thomas Minogue which states in part:

> Pool opening has NOT been determined to be an essential business. Based on the information you have provided, pool maintenance is a business function that is an essential business and/or supports an essential business.

We agree with and appreciate the designation of pool maintenance as essential. If water is not properly maintained, a swimming pool or spa can become a health risk for the homeowner as well as the public at large. Consistent management of water chemistry and sanitation is essential. During the current public health crisis with COVID-19, it is important to continue to be vigilant with water sanitation to minimize the risk of additional public health concerns. Untreated, unfiltered, and uncirculated bodies of water allow for the growth and development of a variety of pathogens, as well as mosquito and other insect activity. Residential and outdoor recreational pools should still be maintained at least to a minimum standard. West Nile and other diseases that have been a problem over the years could reappear at a time when we are already in the middle of public health crisis and the healthcare system is taxed. If water is not properly maintained, a swimming pool or spa can become a health risk for the homeowner as well as the public at large.

We respectfully submit that in providing this March 26 response, however, the ESD may have overlooked the role that pool openings play in this regard. Opening a pool in the spring is also not a matter of simply removing the cover. Covers can hold water or become damaged in winter months. Water conditions and structural integrity issues resulting from winter conditions followed by warming weather cannot be assessed until the pool is opened and running. The concerns over water health listed above can still occur under a covered pool as the spring progresses but could never be identified if the cover remained in place.

Pool openings are part of the seasonal maintenance process, and are typically performed by one or two employees, who are able to arrive in separate vehicles, maintain adequate distancing from each other and avoid contact with the owner and family. Therefore, we ask that you confirm that pool openings are also
essential to public health. If not, then we respectfully request that you expressly permit pool openings by a single employee, consistent with your guidance on construction activities.

2. Completion of existing construction.

The revised directive of March 27 permits one to “continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site.” While we agree with the determination that non-essential and new construction should pause during this crisis, we submit it is essential to complete construction on existing projects to a point where the excavation, rebar, concrete and durable fencing are at a point where the site is secure. Because the nature of pool construction is excavation, any uncompleted project is a potential hazard for fall injury, cave in or collapse, or a source potential for untreated water collection if the pool project is not advanced to a point where it is filled and the circulation system is functioning properly. As recognized by New York State Code (Code 6-1.16) without durable barriers (as opposed to temporary fencing used during the project) there is an unreasonable risk of drowning. Failure to install rebar, or a composite pool shell or liner also creates a risk that the excavation will collapse, thereby creating greater risk to life and health. Project completion typically requires two people, who are able to maintain appropriate distancing.

Thank you for the consideration and clarification. We wish to add that opening and completion of backyard pools will further compliance with the Executive Order, offering pool owners a means of exercise without frequenting public spaces. Provided they are used solely by the homeowner and not as a place for social gathering, backyard swimming pools provide both great physical exercise and serve to stave off mental health challenges that could be associated with isolation and loneliness.

The Center for Disease Control (CDC) continues to report that there is no evidence that COVID-19 can be spread to humans using pools and hot tubs. Proper operation, maintenance, and disinfection (e.g., with chlorine and bromine) of pools and hot tubs should remove or inactivate the virus that causes COVID-19. If people are going to use their pools, it is essential that they are maintained properly.

We support the diligent enforcement of the Governor’s order as revised. To protect the life and safety of our customers, we respectfully request that you provide the above requested clarifications. The pool and spa industry stands with the rest of the business community in wanting to delay the spread of COVID-19, and we will play our part to navigate this crisis. We strongly feel that some of the services we provide, as explained above, are essential to the health of the community and we urge you to consider the same so our professionals can continue to provide these valuable services even while we battle the Coronavirus.

Thank you,

Sabeena Hickman  
President & CEO  
Pool and Hot Tub Alliance

Dominick Mondi  
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CC: Karen Chaikin, Executive Director, Long Island Pool and Spa Association  
Kathy Doran, Chapter Administrator, METRO Pool and Spa Association