

WELCOME

VIRGINIA GRAEME BAKER
POOL & SPA SAFETY ACT

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Thank you.

Speakers



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VIRGINIA GRAEME BAKER POOL & SPA SAFETY ACT



Making Public Pools & Spas Safer



**This information was prepared by the CPSC staff; it has not been approved by and does not necessarily represent the views of the Commission.*

Drain Entrapment

CPSC staff began investigating reported incidents of pool/spa suction entrapment in the 1970s.

Types of entrapment

- Hair
- Body
- Limb
- Evisceration/disembowelment
- Mechanical: Jewelry, bathing suits

Reported Pool/Spa-Related Circulation/Suction Entrapments

From 1999-2007 for all age categories 74 reports of circulation
entrapments

<u>Pool/Spa Location</u>	<u>Deaths</u>	<u>Injuries</u>	<u>No Injury</u>
Public	2	20	
Residential	7	33	2
Unknown	0	10	
Male	4	28	
Female	5	35	

Individuals in the 5-9 year-old category had the highest
frequency of entrapment reports

National Legislation for Entrapment Prevention

The Virginia Graeme Baker Pool & Spa Safety Act (VGBSSA) was named after the daughter of James and Nancy Baker and the granddaughter of former Secretary of State James Baker III. Graeme Baker died in a tragic incident in June 2002 after the suction from a spa drain entrapped her under the water. This Act was first introduced by Rep. Debbie Wasserman-Schultz (FL) and was supported by the Baker family and Safe Kids Worldwide.

Goals of the Baker Act

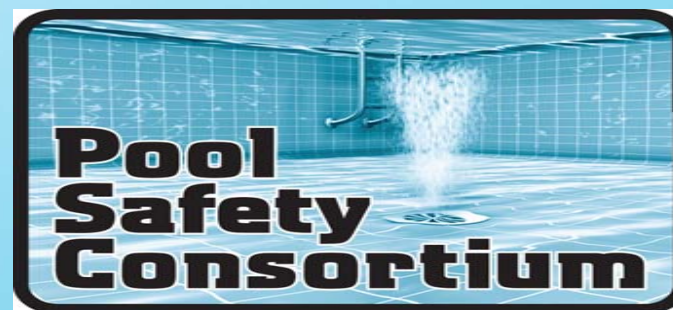
- To enhance the safety of public and private pools and spas.
- To encourage the use of layers of protection.
- To reduce child drowning
(283 each year involving children younger than 5).
- To reduce the number of suction entrapment incidents, injuries and deaths.
- To educate the public on the importance of constant supervision of children in and around water.

Partners in the Pursuit of Safe Pools and Spas



State and Local
Governments

Pool Safety Foundations
and Associations



Fire Departments and
First Responders



The Law Is Now In Effect

Know What You
Are Required To Do

And Complete The Job
Quickly

Federal Requirements

Effective Date: Dec. 19, 2008

Sec. 1404: Top Priority for Public Pool And Spa Owners/Operators

- All pool/spa drain covers manufactured, distributed or entered into commerce on or after December 19, 2008 must meet ASME/ANSI A112.19.8 – 2007.
- All public pools/spas must be equipped with new ASME/ANSI A112.19.8-2007 compliant drain covers.
- Pools/spas operating off of a single main drain (other than an unblockable drain) must also add one or more of the following options:
 - a Safety Vacuum Release System (SVRS), or
 - a suction-limiting vent system, or
 - a gravity drainage system, or
 - an automatic pump shut-off system, or
 - a disabled drain, or
 - any other system determined by the Commission to be equally effective as or better than the others listed above.

Enforcement Discretion

- Any public pool or spa not open on December 19, 2008 does not need to be in compliance until the day the owner/operator opens the pool or spa.

CPSC's Enforcement Priorities

Protect young children from the pools and spas that pose the greatest risk of entrapment:

- Wading pools,
- Kiddie pools,
- In ground spas

Especially those with single main drain systems and flat drain grates

Are pools closing down?

- Most have not, but many have
- Tends to be based on the decision-making of:
 - State Dept. of Health
 - Local Dept. of Health
 - Insurance Company
 - Pool or spa operator

State of the Marketplace

Supply (of labor and parts) has not kept up with demand

- Round covers & 9x9s have been available since the summer
- 12x12s became available in the late summer; 18x18s late in the fall
- Some round, square and rectangular unblockable covers are available
- More unblockables are coming soon
- www.cpsc.gov/phth/draincman.html

What about field fabricated grates?

- ASME/ANSI A112.19.8-2007 allows for a certified pool engineer to independently assess and test the grate to see if it meets the standard (hair test, UV ray, durability, flow rate)
- PE will need to put his/her name on the line on a “certificate of conformity”



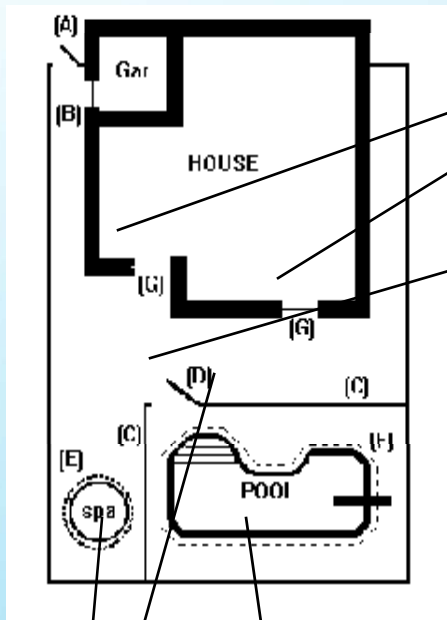
Our Collective Challenge

- Many state and local officials, affected organizations, and consumers are not aware of the law or December deadline.
- Need to continue to educate the public.
- More simplified communication materials have been developed for national and local dissemination.

CPSC Studies Pool Drowning

- In 2008 the Commission released a report related to pool and spa submersion incidents involving children under 5.
 - Drowning deaths in this age group increased from a yearly average of 267 (2002-2004) to 283 (2003-2005).
 - Emergency room-treated submersion injuries remained about the same from an annual average of 2,800 (2004-2006) to 2,700 (2005-2007).

Layers of Protection!



Door alarms

Self closing/latching gate

Drain and pool covers

Isolation fencing



CPSC Pool Barrier Recommendations

Primary barriers as described in CPSC's
“Safety Barrier Guidelines For Home Pools” :

- A fence completely surrounding the pool/spa with a self-closing, self-latching gate that opens out from the water.
- A power safety cover.
- Door alarms.

SUPERVISION

Active supervision at all times prevents incidents and injuries...

- ...but, a recent study showed that normal caregivers experience brief lapses in supervision on a daily basis. Uninterrupted supervision is a challenging expectation.
- Effective supervision is direct visual contact and is only sustainable for brief periods.
- Momentary distractions such as phone calls, using the restroom or someone at the door can provide enough time for a child to access the pool and quietly slip under water.



Grants & Education

Grant Program

- Should Congress appropriate funds, staff has posted draft technical guidance for the states.

Information & Education Program

- Should Congress appropriate funds, staff will work with interested stakeholders at the state and local level.

Questions/Concerns CPSC staff

- New FAQs are coming soon
- Office of Compliance & Field Operations

info@cpsc.gov



**U.S. Consumer Product
Safety Commission**

Legal Issues Presented under the Virginia Graeme Baker Pool and Spa Safety Act



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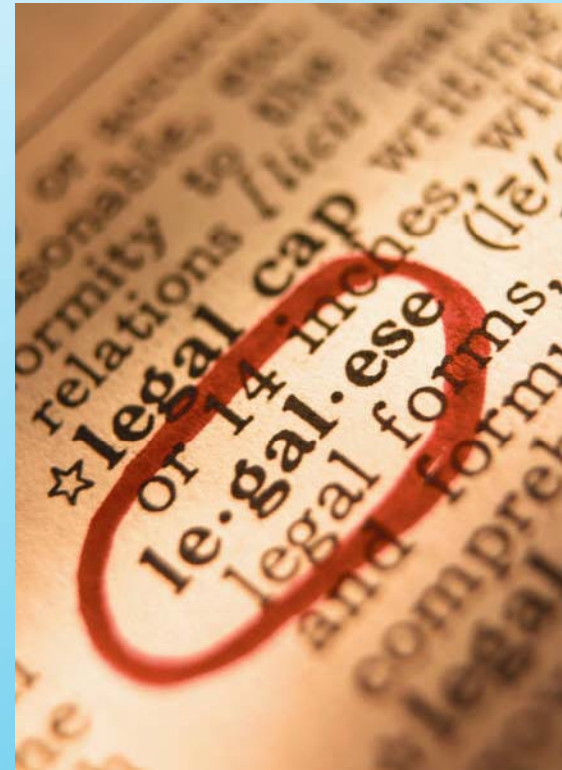
Consultant / Expert Witness



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- By your participation in this webinar, you agree that no attorney-client relationship will be formed.
- If you need specific legal advice, please consult a competent attorney in your jurisdiction.



VGB Act is a Federal law

- Enforcement authority given to the Consumer Product Safety Commission
- CPSC ***must*** enforce the law as published in the Federal Register
- CPSC cannot assume the liability of directing pools to remain open in clear violation of federal law.
- CPSC is not authorized to change the deadline that Congress established. Thus CPSC cannot issue any “extensions”.

All Public Pool & Spa drains require compliant covers

- The law is clear. Sec. 1404(c)(1)(A)(i) requires that ALL suction outlets in “public pools and spas” have compliant covers. **NO EXCEPTIONS.**
 - If you have a large “**unblockable**” drain, it nevertheless **MUST** have a compliant cover.
 - “Unblockable” (18” x 23” or larger) means that you do not need the secondary entrapment prevention system
 - You still need to have a compliant cover!

Compliant Covers

- Under the ASME A112.19.8-2007 Standard, covers (including field fabricated outlets) are only considered compliant when they have passed testing for:
 - Hair Entrapment
 - Body Entrapment
 - Finger and Limb Entrapment
- Large “unblockable drains” address only the risk of body entrapment and not hair, finger or limb entrapment.
- Thus, even unblockable drains must have compliant covers to protect against these other forms of entrapment.

Non-compliance

- Any pool that remains in operation following the **December 19, 2008** deadline despite having failed to meet the requirements of the VGB Act will be operating in violation of federal law and could be subject to both civil and criminal penalties.
 - CPSC has allowed seasonal pools additional time to come into compliance.

Possible Criminal Penalties

(a) Violation of section 19 of this Act [15 USCS § 2068] is punishable by—

- (1) imprisonment for not more than 5 years for a ***knowing and willful violation*** of that section;
- (2) a fine determined under section 3571 of title 18, United States Code; or
- (3) both.

Civil Fines

- Federal law allows for a civil fine in the amount of **\$5000 *per day*** per occurrence with a maximum civil penalty of ***well over \$1 million*** for a series of related violations
 - *The clock has already started ticking for year-round facilities.*

Federal Enforcement

- Non-compliant facilities may be able to minimize civil penalties if they can demonstrate a good-faith effort to come into compliance which has been hindered by market conditions.
 - Proof of a purchase order for compliant covers is one example of attempting to mitigate damages by demonstrating a good-faith effort at compliance.

“Good Faith Effort”

- This is **not** an excuse which exempts you from the Act!
- It is merely an argument operators can use to minimize the penalties which could be imposed for a knowing and willful violation.
- Good faith efforts will not get you too far in court.

The Courts

- The courts do not necessarily care about any good faith efforts to comply at a future date.
 - Violation of a safety law resulting in injury (the type contemplated by the law) is considered *negligence per se*.
 - If an entrapment occurs, you would be found negligent provided *causation* can be established.
 - Causation would easily be established as compliant covers are placed into the marketplace.

Local Enforcement

- Local health agents have no authority to enforce a federal law *under the Act*
 - States may update their laws with parallel legislation or may adopt the requirements into their health codes
- In most U.S. jurisdictions, local health agencies are authorized to enforce the local/state health code.
- Check your local code for a general “safety” provision – a catch-all provision which allows for pool closure for safety reasons
- The Consumer Product Safety Improvement Act authorizes your state Attorney General to commence a civil action seeking injunctive relief to enforce the VGB P&SSA.

Example of “catch-all” phrase

- “All swimming, wading and special purpose pools and all bathhouses, grounds and appurtenances shall be maintained in good repair and in a **safe** and sanitary manner.”
- If the local health agent feels that a drain is not safe (as evidenced by lack of compliance) then this provision may form the basis of an order to close.

Liability for Health Agency

- A local/state health department does not want to be named in a suit for issuing a permit to operate despite knowledge of non-compliance.
- They will likely find any way possible to deny the permit or close the facility to help keep their office outside of the scope of litigation

Your health agent has two options:

- Upon inspection, you may be
 - Denied a permit to operate subject to proof of compliance
 - Issued an order to close for violation of the state/local health code

Should your pools be shut down?

- The law gives us no guidance, it merely requires that covers be in place.
- Operators who are not in compliance have a choice: stay open or close.
 - If you stay open, you risk civil and criminal penalties and a substantial verdict should an entrapment occur.
 - If you stay open, you may not be covered by your insurance company

Risk Management 101

- If your local health agent has not inspected you, and you are willing to run the risks of operating your pool despite known non-compliance, a strong risk management approach is recommended

Consider the CPSC Enforcement Priorities

- CPSC hopes to focus its limited resources on the pools/spas most likely to entrap
 - Wading pools
 - Spas
 - Pools with single “main drains”
- As these present the greatest entrapment risk, consider closing these immediately

Deep Pools With Single Drain

- Present a lesser risk of entrapment, but can still entrap. If you're going to stay open:
- *Know that you are knowingly violating federal safety laws*
- *Know that you face both criminal & civil penalties if you get caught.*
- *Check with your insurance agency and/or your legal counsel/risk management officer*
- *Develop a risk management plan*

Sample Plan for a Deep Pool, with a single noncompliant drain cover

- Verify existing covers are firmly attached, requiring tools to remove
 - Make certain the system is powered down when inspecting the cover
- Install one of the secondary protection devices
- Educate users about the danger of playing on or near the main drain (signage)
- Require staff to keep swimmers away from the drain
- Order a compliant cover
- Schedule a diver for rapid installation when the cover becomes available



Q & A

Please submit your questions in the Q&A panel

Thank you for attending

AthleticBusiness

AQUA
The Business Magazine for Spa & Pool Professionals

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