

Special Update on Virginia Graeme Baker Act The Latest Info from 1/13/09 Webinar

Tuesday afternoon, January 13, 2009 the Consumer Safety Products Commission's (CPSC), Scott Wolfson and "Aquatic Consulting" Attorney Shawn P. De Rosa, Esq. conducted a [webinar](#) with the latest Virginia Graeme Baker Act information. We felt it was important to forward some of that information to you, our loyal customers.....

Asked whether the CPSC can change the deadline or grant exceptions, it was made clear that the CPSC is not authorized to change the deadline that Congress established. Thus the CPSC cannot issue any extensions to become complaint with the VGBA. Also noted was that the CPSC must enforce the law as published in the Federal Register.

Clarification of whether an unblockable field-fabricated cover needs to be changed - They mentioned that "large, unblockable drains address only the risk of body entrapment and not hair, finger or limb entrapment." It was stated that "ASME/ANSI 112.19-9-2007 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)." They added that the "PE will need to put his/her name on the line on a "certificate of conformity.""

Per the question of fines, they stated that "Federal law allows for a civil find in the amount of \$5,000 per day per occurrence with a maximum civil penalty of well over \$1 million for a series of related violation." They added that "the clock has already started ticking for year-round facilities (as of December 20, 2008). They also stated that it is not the CPSC's intent to inspect and fine organizations that are not yet compliant, unless there is a complaint or an accident.

On how to minimize penalties? They stated that "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 hampered by market conditions." They added that "proof of a purchase order for compliant covers is one example of attempting to mitigate damages by demonstrating a good-faith effort at compliance."

On whether to keep pools open or close them? They stated that "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." They noted that "if you stay open, you risk civil and criminal penalties and a substantial verdict should an entrapment occur."

Staying open - have a plan! They recommended that you should "develop a risk management plan:. So if your facility is open, a sample plan would consist of:

- Schedule a firm to assist you with a facility assessment that will most likely involve diving the pool(s).

- Verify existing covers are firmly attached, requiring tools to remove.
- 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 compliant covers.
- Install compliant covers as rapidly as you can; as they become available for your individual case.

Until your facility has reached total compliance, you should probably not only test and secure the main drain cover (and screws), but also you should mark the action down on your water quality logs to document this important safety action. Remember: it could take multiple changes to come into full compliance.

If you haven't ordered a compliant cover, do so as soon as you can. KSI has already received hundreds of orders for VGBA complaint covers and we will gladly make the order contingent on any future engineering or assessment charges.

KSI, or one of our associates, can assist you with an assessment of your facility and proper course of action to become compliant with the VGBA.

Please contact your KSI representative with any questions or comments.