



For Immediate Release

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Controversial New Pool & Spa Safety Act Will Create Public Pool Closures Nationwide

Legislation could force 300,000 public pools to shut down December 19.

Most of the 300,000 public pools and spas in the U.S. are required to close on December 19, 2008 according to the Consumer Product Safety Commission (CPSC) if they do not comply with the Virginia Graeme Baker Pool & Spa Safety Act (the Act). The Act was named honoring Miss Baker, granddaughter of James Baker III, former U.S. Secretary of State, who died in 2002 when entrapped on a drain in a private in-ground spa. "Even though we fully support the goal of the Act, forcing public pools and spas to close has unexpected and undesirable consequence," states Thomas M. Lachocki, Ph.D., and CEO of the National Swimming Pool Foundation® (NSPF®). Suction entrapment claims about one to two victims per year based on historic data from the CPSC. In contrast, drowning claimed the lives of 761 children aged 14 and under in 2004 and those numbers may increase since fewer children will attend swim lessons when pools are closed.

The new federal law requires all public pools and spas, including those at community parks, YMCAs, apartments, condominiums, and other homeowner associations, waterparks, hotels, schools, and universities to be equipped with drain covers that are certified to comply with the new ASME/ANSI 2007 standard, as well as other safety measures to prevent entrapment and evisceration. CPSC, the enforcing agency of the Act, may impose enormous financial penalties and seek imprisonment for violators.

"Swimming pool operators support preventing entrapment," says Dr. Lachocki. NSPF has funded suction entrapment and drowning prevention research for decades and trains over 20,000 pool and spa operators each year. "Despite good faith efforts, organizations nationwide will not comply with this law by the deadline for reasons that are outside of their control," asserts Lachocki, who outlines the current issues to include:

- The Pool & Spa Safety Act budgets \$5 million per year for an educational program requiring CPSC to establish and carry out education to the public pool service companies, pool facility owners, operators, and others. No such programs exist. As a result, facilities are either unaware or confused about the requirements of the Act.
- Some compliant covers are only now becoming available.

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- Large and unique shaped (unblockable) compliant drain covers will not be available by the deadline.
- The Act requires existing large, “unblockable” drains to be replaced with no evidence the change will reduce the risk of entrapment. In addition to the drain cover, the area below the cover (the sump) must sometimes be excavated and replaced in order to be compliant. Confusion over this exists and can increase compliance costs which can reach \$200,000 per pool. See discussion below.
- There are conflicts between engineering requirements in the Act and local laws already in place to prevent entrapment.
- State laws require local health departments to review and approve changes to pools before work begins. The Pool & Spa Safety Act is an unfunded mandate for health departments who do not have the capacity to review changes on all public pools in their jurisdiction prior to the deadline. Thus, operators must choose to either break a state law by making changes before the deadline, or to break a federal law by seeking state approval and missing the federal deadline.
- There are a limited number of qualified engineers, contractors, and design professionals available to design and implement changes.
- Design professionals are not willing to certify aquatic facilities as compliant due to ambiguity in the law and substantial fines and risk of imprisonment.

Controversy and confusion revolves around replacing existing unblockable drains. The Pool & Spa Safety Act defines unblockable drains as “drains of any size and shape that a human body can not sufficiently block to create a suction entrapment hazard.” There is no evidence that an entrapment has ever occurred on an unblockable drain. Yet the Act and CPSC further require unblockable drains (drains larger than 18” x 23”) to satisfy a standard that will require tens of thousands of unblockable drains to be replaced. A facility would have to close the pool, drain it, perform an engineering review, seek and gain local health department approval - in some cases seek competitive bids - dig trenches beneath the pool, replace the sump beneath the drain covers, repair the structural steel and pool shell, re-plaster the pool, and re-fill and re-start the pool. This process could take a year and cost hundreds of thousands of dollars, and disrupt or permanently close the pool. One Massachusetts middle-school reports an estimate of \$110,000. That pool, they say, will remain closed due to lack of money. Many professionals do not understand if a drain is “unblockable” and not a risk of entrapment, why it has to be replaced at all.

Since many unblockable drains are “field fabricated” by the pool builder and are unique in size and shape, there is not a “manufacturer” who will build and have them tested to the 2007 standard required by the Pool & Spa Safety Act and the CPSC. As a result, new compliant “unblockable drains” are not available in the market. “The controversy around replacing ‘unblockable drains’ is an example where a slight oversight can jeopardize the intent of the Act,” concludes Lachocki.

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Swim lessons are one of the key tools to prevent drowning. Unfortunately, closing thousands of public pools means fewer children will learn to swim and fewer lifeguards will be trained. Closing pools also disrupts those who are refining their swimming skills. “Within the interscholastic swimming program across the United States, there were over 264,000 participants in 2007-2008,” says Becky Oakes, National Federation of State High School Associations Assistant Director. “The possible suspension of use of any pools could certainly impact students in their school programs.” “We need to keep people swimming,” states Adolph Kiefer, the 1936 Olympic gold medalist in backstroke and an aquatics safety advocate.

Dozens of leading organizations have communicated with the CPSC to request a 12 to 18 month delay in implementation. These include the National Recreation and Park Association (NRPA), the YMCA of the USA, National Swimming Pool Foundation, and many others.

A delay in implementation of the Pool & Spa Safety Act would allow activities that benefit people (swim lessons, aquatic therapy and rehabilitation, lifeguard training, physical exercise, family-together activities) to continue while the local pool and spa facility works to also reduce the risk of suction entrapment. NRPA, whose 21,000 members manage municipal aquatic facilities, also sees the challenge with complying and has provided case studies to the CPSC outlining the impact. “There are a host of external factors that are creating roadblocks for compliance, including product availability, local water ordinances, availability of installation engineers, and the financial burden, estimated at \$1,000 to \$15,000 per pool, on many local governments at a time when their budgets are already stretched. Many communities manage many more than just one public pool, and some agencies operate scores of pools. Additionally, many older pools have field fabricated drains that are uniquely shaped and would require specially designed covers or grates,” says Barbara Tulipane, CEO of NRPA. She adds that, “As a result, many facilities will be forced to shut down. Our member agencies tell us that the potential disruptions will be nationwide.”

“An implementation delay makes sense to resolve technical issues and to solve the entrapment problem - without creating a drowning problem, reducing public services, and hurting our fragile economy,” Lachocki reinforces. “This is not a money issue. Everyone agrees we need to prevent entrapment. How we get it done will dictate if lives are saved or lost. Furthermore, if we do it right, we can also help prevent painful job losses of thousands of people and preserve valuable, safe programs for citizens. It may be a harder path, but it is the right path,” he concludes.

For more information, or to schedule an interview, contact Laurie Batter, BatterUp! Productions at batterup@batterupproductions.com or 760-438-9304.