

VGB In Perspective

By Scott Webb

Just over two years ago, the industry was startled to discover it would be regulated by the federal government

Few in the industry have forgotten those initial feelings of uncertainty and dread when the trade media first reported that the Federal government had passed something called the Virginia Graeme Baker Act, which would mandate change in the pool industry. The months that followed were filled with rumor and speculation, proceeded by more months of seminars, webinars and pamphlets as different voices in the industry (including this one) struggled to say with conviction exactly what this would mean.

In time, those feelings gave way to acceptance and for many in the industry, eager anticipation of opportunity, as profitable contracts were handed out by public pools forced to comply with the Act, and even some homeowners decided to pay for drain upgrades.

It's been over two years since VGB took effect on Dec. 19, 2008. In that time, the Act has moved from an initial stage of industry notification to interpretation (the spelling out by the CPSC of exactly what must be done and by whom), and finally compliance verification and the now incipient general safety education phase.

By the summer of 2008, most of the CPSC's interpretation of VGB as we know it was in place. But some issues remained. The CPSC had determined that public pool drains must be "unblockable," but the exact meaning of that word has been worked out in subsequent CPSC council decisions.

The last significant event in the interpretation phase had to do with the question of whether a large drain — sufficient to be unblockable but installed over a smaller sump — would still be considered unblockable under the statute.

The commission voted 3-2 that, yes, an unblockable cover that fits into a smaller sump would satisfy the statute, but not without a significant amount of lobbying by concerned parties, says Steven Getzhoff, senior litigation partner at the New York City law firm of Lester, Schwab, Katz & Dwyer, and who, for the last nine years, has served as outside national counsel for APSP.

"A number of manufacturers were making that exact type of product," he says, "which allows builders to address both issues — the drain cover and the need for an additional device as a remedy for a blockable drain — in one step."

"At the same time, pressure was brought to bear on the CPSC," Getzhoff adds. "Representatives of the Baker and Cohn families met with commissioner Adler, who they viewed as the swing vote, and said they did not agree with that interpretation."

The CPSC maintained its position, however, with Commissioner Adler issuing a statement noting that installing a compliant drain cover was the only measure that could prevent all five types of entrapment.

Still to be determined, however, are details concerning precisely what qualifies as a "public" pool.

To this point, the smallest public accommodation facilities to fall under the statute have been small inns or B&Bs with more than five rooms, notes Kathleen Reilly, public affairs specialist at the CPSC. Anything smaller than that need not comply.

“Recently,” she says, “an interpretation has come up where if you have a rental property — perhaps in Florida, and you rent it out in the winter, you would be considered a public pool or spa under the Virginia Graeme Baker Act,” says Reilly. The matter remains to be decided.

This may turn into a great deal of contractual work in the Southeast, where a significant number of winter rental properties have pools. If indeed these pools are forced to apply the same blockable drain correctives as a large public pools, they will rely on local pool service and renovation contractors. In that event, such contractors might want to contact rental property operators and notify them of the law and what their options are in terms of remedies. (They’ll be delighted.)

Drain Spotters

Even as these details are being worked out, the CPSC’s focus has turned to education and compliance, a process has gone fairly smoothly after some initial difficulties, Getzhoff says.

“In the beginning there was some natural resistance, but I think that’s come and gone. What I think we’ve learned in the first two years is that compliance is a lot more complicated than slapping on a new drain cover. And that’s where the education comes in, and that’s what the APSP and others have been trying to help people understand.”

Getzhoff notes that some things inspectors will likely focus on include matching the rated flow rate for drain covers with the pool’s filtration flow rate, checking the distance between multiple suction outlets, or whether the cover is properly seated and secured by original manufacturer fasteners.

“I think it’ll be something like, ‘Hey, I notice these are 80 gpm covers and your records indicate you use a 100 gpm flowrate. You need a 100 gpm cover,’” he says.

Basics of drain cover installation are crucial, Reilly adds. “That’s one of the things we’ve found, that if your cover is properly installed, you will prevent entrapment. A lot of the problem has been pools that had a drain cover, but it was improperly installed or simply broken and that caused the entrapment. These are pools that put their drain covers on and never thought about them again. That’s what we’re trying to stop.”

Part of the CPSC’s compliance effort includes the training of inspectors that will perform the pool checkups described above.

The CPSC is contracting with three industry organizations, APSP, NSPF and NESPA, to bring local inspectors up to speed on VGB’s requirements and how to spot non-compliance.

This inspector training role is a natural fit for an outfit like NESPA, notes Greg Bailey, the organization’s marketing and communications manager. NESPA has been running education programs for decades; the difference now is that this training is mainly for state and local inspectors.

“We’re putting together training courses for health code officials who will be in charge of inspecting existing public facilities and the building code officials who are in charge of inspecting all new public pools,” Bailey says. “And we’re putting together posters and checklists that will help people like lifeguards to remember to check to make sure that drain covers are in good working condition.”

NESPA is moving quickly to fine-tune the course and get started with offerings.

“We just put on a course — a beta test — to make sure that people understood it and whether they still had questions or whether we needed to make some modifications. And from what I understand it went

over pretty well. There are two different programs — one for the building inspectors and one for the health code inspectors,” he adds.

A Work In Progress

In assessing the overall progress VGB has achieved in two years, Getzhoff offers a generally positive appraisal.

“First of all, in public pools, we’re doing it right,” he says.

“And lot of states are beginning to move in the right direction. By adopting ANSI-7 they’re addressing all the hazards and they’re actually going above and beyond VGB both for public and residential. So we’re moving in the right direction.”

Getzhoff believes that, ultimately, the answer lies not in fixing drains but in getting rid of them altogether.

“We have a long way to go in educating states to allow that type of construction [drainless pools]. Almost every state has a code that requires drains in public pools for reasons that most would have a hard time tracing. But they’re there, and so they’re required,” Getzhoff adds.

“Nobody’s looking to outlaw drains, but we would like to see a recognition that pools can be properly circulated without them. If you can eliminate the hazard, you don’t have to worry about guarding against it.”

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