



DIVISION OF PUBLIC HEALTH

1 WEST WILSON STREET
P O BOX 2659
MADISON WI 53701-2659

Jim Doyle
Governor

Karen E. Timberlake
Secretary

State of Wisconsin

Department of Health Services

608-266-1251
FAX: 608-267-2832
TTY: 888-701-1253
dhfs.wisconsin.gov

Date: December 2, 2009

To: Facility Operators, Agent Health Departments, Regional Directors, State Inspectors, and CO Staff

From: James Kaplanek, R.S. Chief
Food Safety and Recreational Licensing

Shane Sanderson, R.E.H.S., M.S., J.D.
Recreational Waters Program Manager
Food Safety and Recreational Licensing

Re: Virginia Graeme Baker Act Enforcement

BACKGROUND:

On December 19, 2007, President George W. Bush signed into law the Virginia Graeme Baker Pool and Spa Safety Act, which was named after the daughter of Nancy Baker and the granddaughter of former Secretary of State James Baker. 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.

The Act specifies that by **December 19, 2008**, all public pool drain covers available for purchase in the United States must meet specific performance requirements. Additionally, all public pools must meet requirements for the installation of compliant drain covers for suction outlets. In certain instances, public pools must have additional devices or systems designed to prevent suction entrapment.

In Wisconsin, any alterations or modifications to the recirculation system of an existing public pool that falls under the definition found in s. Comm 90.03, Wis. Adm. Code, must have plans submitted by a licensed engineer or architect and receive plan approval prior to commencing the modification or alteration. A minimum of one onsite inspection of the pool is also required to ensure compliance is met. To start the process, contact an engineer or architect for an assessment of the facility.

INTERPRETATION:

The Department of Health Services (DHS) recognizes that this is a federal requirement delegated to the Consumer Product Safety Commission (CPSC), which is a federal agency. The CPSC has already performed a number of inspections in the state of Wisconsin and followed the site visits with a closure letter for the non-compliant facilities. In addition, chapter DHS 172, Wis. Adm. Code, requires facility operators to show documentation that they are in compliance with federal and state laws.

In November 2008 and February 2009, DHS distributed memos informing pool operators that they must meet federal requirements. When the law was first passed there was a concern that suppliers would not be able to meet the demand for compliant drain covers. There was also a concern that knowledgeable professionals were not available to move operators through the compliance process. Therefore, DHS indicated that it would work with operators to bring them into compliance with VGBA. At this time, obtaining most sizes of VGBA compliant covers and contracting with knowledgeable professionals are no longer an impediment for achieving compliance.

On or after **July 1, 2010**, documentation of *progress* or *compliance* must be provided upon inspection. The only three forms of acceptable documentation are:

1. The pool completion statement issued by a Department of Commerce inspector resulting from an approved plan review and inspection.
2. A letter of conformity from a licensed engineer or architect stating that the pool is currently in compliance with the act without any changes.
3. A signed contract with an engineer or architect agreeing to provide an evaluation and engineered plans for submittal to the Department of Commerce.

Any permitted pool that cannot provide one of the three forms of documentation listed above within 30 days of the routine inspection will have their permit voided and if they continue to operate will be subject to fines and forfeitures under s. 254.47(3), Stats., and fees under s. DHS 172.06(1)(e).

On or after **July 1, 2011**, documentation of *compliance* must be provided upon inspection. The only two forms of acceptable documentation are:

1. The pool completion statement issued by a Department of Commerce inspector resulting from an approved plan review and inspection.
2. A letter of conformity from a licensed engineer or architect stating that the pool is currently in compliance with the act without any changes.

Any permitted pool that cannot provide either of the two forms of documentation listed above will have the pool permit voided and if they continue to operate will be subject to fines and forfeitures under s. 254.47(3), Stats., and fees under s. DHS 172.06(1)(e).

Remember, before operators make any physical changes to their existing pool to comply with the new law, they must obtain plan approval from the Department of Commerce. To view information and get contact names about the plan review and inspection process, go to the Department of Commerce website at:

<http://commerce.wi.gov/SB/SB-SwimmingPoolsProgram.html>

With the CPSC now performing inspections in the state it is important to start the process and bring your facility into compliance as soon as possible.