

## **New Federal Pool and Spa Safety Requirements** **By Carolyn B. Goldschmidt, Esq. & Michael Shupe**

For most of us in Southern Arizona, a swimming pool can be a refreshing refuge from the summer heat. We all know about the dangers that pools and spas present to small children, but typically the pool drain probably does not come to mind. In fact, that inconspicuous drain can present a significant risk of entrapment by suction, fatal to both children and adults alike.

**History of Legislation.** In June 2002, Virginia Graeme Baker, granddaughter of former U.S. Secretary of State James Baker, died in a tragic drowning accident after the suction from a spa drain trapped her under water. With the support of the Baker family, new legislation, named in honor of Virginia, was introduced in Congress and aimed at eliminating the risk of entrapment in pools and spas around the country. The Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. § 8001, *et seq.*, (the “Act”), signed by President Bush on December 19, 2007, preempts all state laws, and requires various layers of protections including, specifically, new standards for pool and spa drains and covers.<sup>1</sup>

**Summary of Legislation.** As of December 19, 2008, the Act requires every public pool and spa in the U.S., including those open exclusively to residents and guests of a residential real estate development, to be equipped with a compliant anti-entrapment drain cover.<sup>2</sup> In addition, all such pools and spas with only a single drain, other than an “unblockable” drain<sup>3</sup>, must also be equipped with at least one of the following compliant anti-entrapment devices or systems: Safety vacuum release system, suction-limiting vent system, gravity drainage system, automatic pump shut-off system, drain disablement device or system, and/or any other device or system that is equally effective or better than any those named above.<sup>4</sup>

Although the second regulation above applies only to pools and spas equipped with one blockable drain, the additional anti-entrapment devices are still recommended in pools with multiple drains. In pools with multiple drains, which are commonly connected to a single pump, the blockage of one drain by toys, towels or other debris could increase the potential risk of suction entrapment at the other drain or drains. In the alternative, pools with multiple drains having individual pumps simply possess a number of drains with suction forces capable of trapping a swimmer.

**Enforcement.** All together, the Act requires that if a pool or spa is not equipped with a compliant cover, and additional anti-entrapment device or system, if necessary, it must be retrofitted with such equipment or it will not be permitted to be open for use. Currently, violations of the Act are only enforceable by the Consumer Product Safety Commission (the

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<sup>1</sup> All pools and spas configured to comply with ANSI/APSP-7 (*American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins*) will comply with each of the new standards.

<sup>2</sup> Drain covers must comply with the ASME/ANSI A112.19.8 performance standard.

<sup>3</sup> An “unblockable” drain is one of such size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

<sup>4</sup> Such devices and systems must conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387 if there is such a standard for the device or system, or any applicable consumer product safety standard.

“CPSC”)<sup>5</sup>, as the Act does not specify any other responsible federal or state agencies, and, furthermore, has not been incorporated either into the Arizona Revised Statutes, nor the Pima County Code. Therefore, no fines will be administered by state or local authorities until local regulations are issued. Nevertheless, the Pima County Health Department encourages all those responsible for public pools and spas to comply with the Act as soon as possible to provide an additional level of safety for all swimmers.

**Incentive for States to Adopt Legislation.** The Act includes a Voluntary Grant Program aimed at encouraging States to adopt measures addressing the dangers of pool and spa drains and general pool safety. The grants will provide funding to hire and train local enforcement personnel, and to educate pool companies, owners, operators, and members of the public about the Act’s standards and drowning prevention. In order to be eligible, States must enact statutes (1) incorporating the Act’s anti-entrapment requirements regarding drain covers and devices, and (2) requiring the enclosure of all outdoor residential pools and spas to effectively prevent small children from gaining unsupervised and unfettered access. With this additional incentive, the Arizona legislature may move soon to incorporate the Act’s requirements into the State statutes.

Finally, the Act also requires the CPSC to establish and carry out a public education program on methods to prevent drowning and entrapment in pools, with funding appropriated through 2012.

**Information Resource.** For additional or more specific questions about engineering changes to pools and spas, the CPSC has a website: <http://www.cpsc.gov/about/contact.html>. The CPSC Small Business Ombudsman can also answer questions about drain covers and compliance with the Act, and can be reached at 1 (800) 531-9070.

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<sup>5</sup> Violations of the Act are considered violations of the Consumer Product Safety Act, as well, and are, therefore, subject to fines of up to \$100,000 for each separate violation, with a maximum cumulative penalty of \$15,000,000.