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Many pools still not in compliance with new federal safety regulations

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An entire outdoor pool season has come and gone since the deadline to comply with new federal safety standards for pool drains -- designed to cut the risk of swimmers becoming entrapped and killed by drain suction -- but many pools are still not in compliance, say state and local regulators.

National shortages of equipment and, in Wisconsin, engineers qualified to do a required retrofit evaluation have combined to make it difficult for pool operators to comply with the law. It has been so difficult that the state Department of Health Services this year is relicensing pools that are not in compliance if those owners can prove they are trying.

"We expect pools to try to come into compliance, that's what we're looking for this year," says departmental spokeswoman Stephanie Marquis. Contracting with an engineer to draft a plan, submitting the plan for review by the state Department of Commerce, or ordering the needed parts would all be evidence that a pool operator is attempting to come into compliance.

The cost of complying with the new law also has some pool operators complaining. In the simplest cases, complying requires only replacing a traditional drain cover with one designed to prevent a swimmer's body from completely blocking it or from becoming entangled in the grillwork. But in many cases, workers have to break up the bottom of a pool to re-engineer the plumbing beneath the drain. That means costs can run from a couple of thousand dollars, including state fees and engineering review, to \$25,000, says a local pool builder. And that's for each pool; many facilities have separate wading pools and spas that all need the same work.

The state health department has no record of a fatality involving entrapment by a pool drain, but two tragic deaths nationally are behind the new federal rules. The law -- the Virginia Graeme Baker Act -- is named for the 7-year-old granddaughter of former Secretary of State James A. Baker who drowned in a hot tub in 2002 when suction from a drain pinned her. The bill was passed in December 2007, just six months after a 6-year-old girl in a wading pool at a private club in suburban Minneapolis sat over an open drain hole and the intense suction disemboweled her. Abigail Taylor underwent surgeries, but eventually died on March 20, 2008.

The two girls were among 11 cases of pool/spa entrapment fatalities reported between 1999 and 2008, says the Consumer Products Safety Administration, the federal agency that administers compliance with the act.

The agency insists that pools that are not compliance with the new pool drain standards, which went into effect in December 2008, should be closed. In a July 8 letter, the agency asked state attorneys general to enforce it. In Wisconsin, officials say, that job lies with the departments of Health

Services and Commerce.

Of the estimated 4,000 public swimming pools, wading pools and spas in the state that fall under the law, state officials say they do not know how many already meet the standard. But as of Aug. 7, the state had reviewed plans of 1,229 pools and inspected the installed retrofit equipment for 225 of them.

Of 393 licensed public pools in Madison and Dane County, 49 are in compliance with the new federal law, and the owners of one pool are waiting for approval.

"We are writing on inspection reports that they need to come into compliance by July 1, 2010. After that time we will not allow pools not in compliance to reopen," says Beth Cleary, public health sanitarian for Public Health Madison and Dane County, which inspects pools in the county under the auspices of the state.

Pat O'Brien, chief executive officer of the YMCA of Dane County, says the \$60,000 cost of retrofitting pools at the East and West Madison and Sun Prairie Ys is putting a strain on the non-profit organization, which is struggling like many others to get by during the recession. "Even in a good year, that's a lot of money," he says.

What's more, the work will force the annual fall pool closing to extend from two to three weeks at the East and West Madison YMCAs, he says. The Madison Metropolitan School District found that all its high school pools were in compliance with the new standard, officials said, but a \$10,000 retrofit of the pool at Lapham Elementary School was required.

Madison's municipal Goodman Pool also will get an estimated \$10,000 retrofit, as soon as it can get on a contractor's schedule.

Trisha Pugal of the Wisconsin Innkeepers Association says the cost of complying with the new law could force some members to close their pools. "We're trying to find more reasonable and economical ways of satisfying the intent of the law," she says.

Only a few states, for example, require review of retrofit plans by a certified engineer like Wisconsin does, a step that pushes up the cost of making a pool compliant.

Peter Simon of Neuman Pools Inc. of Beaver Dam says the cost of the project goes up if plumbing work is required. The new standard sets a minimum distance between the bottom of the pool cover grate and the pump that pulls in the water. There is also a maximum rate of flow for water being pulled from the pool into the pump.

Simon, whose company provides the retrofits for many area pools, says Wisconsin operators could not possibly have complied with the law by the deadline. "Even if everybody wanted to get this done, there would not have been enough engineers, and the equipment they needed wasn't available. The feds did not think this through at all."

As for operating a pool not in compliance, Simon says "it's a risk assessment. I tell them to consult their insurance providers."

In the end, it may be up to the insurers.

"We think ultimately insurance companies will be the de facto enforcers on compliance," says Kristin Pires, director of communications for the Association of Pool and Spa Professionals, which helped draft the federal legislation. "They'll refuse to insure anyone who isn't."

[Return to story](#)

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