

What Happened

On December 17, 2007, the federal government passed the Virginia Graeme Baker Act ("VGB") to protect swimmers from drain suction injuries. It required pool drains to be in compliance by December 18, 2008. On November 20, 2008, PSC had new, VGB compliant drain covers installed. On January 1, 2010, California adopted AB1020, setting out state standards to the same end. The state standards required compliance by July 1, 2010, but grandfathered in those pools that had complied with VGB, provided they submitted certification of that compliance by September 30, 2010. On July 12, 2010, a field inspector from the Alameda County Department of Environmental Health ("DEH") shut the pool down, noting in his Official Inspection Report that "Pool is VGB compliant", but requiring PSC to "obtain VGB certification from this agency for pool to reopen." (We understand that some 40 public pools in Alameda County were shut down.) Neither the inspector's report, nor subsequent conversations between PSC and DEH, explained how failure to obtain certification could possibly be a valid basis for closing the pool when both the statute and DEH's own web site said that the paper work for certification is not even due until September 30, 2010.

When PSC pointed out that the certification was not due yet, DEH then latched on to the independent California code requirement that the drain flow rate be at least 436 gpm (gallons per minute). The flow rate on the Inspection Report was listed as 400, but the code requires a flow meter only to be within 10% of the actual flow, so the observed rate was not itself evidence of non-compliance. In fact, the recorded flow rate on the DEH's PSC inspection last summer is 300 gpm and it didn't shut the pool down over that then. (There are all kinds of reasons why the recorded rate might vary at any particular time.) DEH said it was not concerned about the recorded flow rate but the rate listed on the pump's specifications as its capacity. Unfortunately, both the model and serial numbers on PSC's pump have worn off over time and it took a while for PSC to track down the original paper work that accompanied the pump's installation in 1996. It turned out that paper work showed a pump capacity of 450 gpm and that DEH had approved and signed off on the pump at that time. Nevertheless, DEH took the position, from generic guidelines it had, that the pool drain covers should be 18", rather than 12" to obtain the desired flow rate

PSC got a contractor to draft plans to install new 18" drain covers, got those plans approved by DEH and drained the pool so that work could be done. When that work commenced, however, the contractor discovered that the pipe connecting the two pool drains went from one drain to the next and then to the pump and that those pipes were not 1.5 times the diameter of the pipe below the drain. DEH insisted that the piping be replaced with one pipe connecting the two drains and another pipe in the middle of that pipe, forming a T, connecting that pipe to the pump, so each drain was the same distance from the pump. New plans had to be drawn up and approved, a bigger hole dug, and the new piping installed. The hole then had to be cemented, the pool bottom re-plastered and everything inspected and approved by DEH. While that was happening, the DEH pool inspector took a couple of days off. Finally, his approval was

obtained and the pool was refilled, chemically balanced and heated (a process that takes two to three days).

An article in the Piedmont Post states that DEH sent out five notices of the impending law changes and implies that PSC failed to heed those notices. In fact, PSC is aware of only three such notices. The first, dated December 2008, simply stated that every pool with multiple main drains must have installed VGB compliant drain covers. PSC had done that the month before it got that notice. The second notice, dated December 1, 2009, talked only about a surcharge imposed by AB 1020. It said nothing about drain compliance. The third notice was dated July 1, 2010, the deadline for compliance. It did say that pools that hadn't submitted a scope of work for review and approval, obtained a final inspection of that work, and completed the VGB compliance certification would be shut down (even though the statute only required certification and only that by September 30, 2010), but PSC did not receive that notice until July 20, a week **after** the pool was closed. Indeed, the only notice that the field inspector gave PSC when he closed the pool on July 12 was the one dated December 2008, which PSC had complied with in November 2008.

None of this had anything to do with a serious safety concern. The VGB is primarily concerned with pools that have one main drain and the PSC main pool was reconfigured in 1996 to have two drains, sufficiently far apart that nothing could block both drains at once. In fact, when the pool is cleaned, the sweeper picks leaves off the drain covers so its suction isn't even strong enough to hold a leaf against the sweeper. Since the Inspection Report noted that the pool was VGB compliant, PSC asked to be given provisional approval to reopen so that any additional work DEH wanted done could be done when the summer season was over. DEH refused. The PSC Board decided that the fastest way to get the pool reopened was to do whatever the DEH required, rather than to appeal and fight about whether DEH had a valid basis to shut the pool down in the first place.

Analysis prepared by PSC board members Jon Sakol and Bill Drum in consultation with manager Joe Perez and board president Tim Rood.