

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION SECRETARY

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In the Matter of)
CENTRAL SPRINKLER CORP.,)
and)
CENTRAL SPRINKLER CO.,)
Respondents)

CPSC DOCKET NO. 98-2

**COMPLAINT COUNSEL'S OPPOSITION
TO RESPONDENTS' MOTION TO DISMISS**

COMES NOW the staff of the Consumer Product Safety Commission and respectfully submits its opposition to Respondents Central Sprinkler Corporation and Central Sprinkler Company's Motion to Dismiss the staff's Complaint in the above-captioned matter.

I. INTRODUCTION

On March 3, 1998, the staff of the Consumer Product Safety Commission filed an Administrative Complaint against Respondents Central Sprinkler Corp. and Central Sprinkler Co. of Lansdale, Pa., the manufacturers of "Omega" automatic fire sprinklers. The Complaint seeks a nationwide recall of the approximately 10 million Omega fire sprinklers manufactured by Respondents since 1982.

The staff filed its Complaint after extensive investigation revealed that Omega sprinklers have a high failure rate, and may not properly activate to release water in the event of a fire. The significant chance of failure of the Omega is a defect that creates a substantial risk of injury to the public pursuant to 15 U.S.C. § 2064. Complaint Counsel has

evidence, which it intends to produce at trial, of thousands of failures of Omega sprinklers. Complaint Counsel is aware of at least six fires in which Omega fire sprinklers have reportedly failed to operate; one of which caused over \$3 million in property damage. In their brief, Respondents have indicated that there may be at least two additional fires in which Omega sprinklers reportedly failed to open (although claiming that in one of these, the sprinklers failed to open because of inadequate water supply). Respondents' Memorandum at 5, n. 2.

On March 26, 1998, Respondents filed a Motion to Dismiss and supporting Memorandum, claiming that CPSC lacks jurisdiction over Omega fire sprinklers, and that the staff's Complaint and List and Summary of Documentary Evidence are deficient. As explained more fully below, Respondents' arguments are without merit. CPSC clearly has jurisdiction over the Omega, and its Complaint and List and Summary of Documentary Evidence meet all applicable requirements.

II. SUMMARY OF THE ARGUMENT

Central's Omega sprinklers are consumer products within the jurisdiction of the Consumer Product Safety Commission. Therefore, there is no basis upon which to dismiss the Complaint for lack of jurisdiction.

The Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*, imposes three basic requirements in order for an item to be a "consumer product" within the Commission's jurisdiction. *See* 15 U.S.C. § 2052 (1997). First, the item must be an "article" (or a component part of such "article") -- a final manufactured product, rather than anything at an intermediate stage of production. *See id.*; *Consumer Prod. Safety Comm'n v. The*

Anaconda Co., 593 F.2d 1314, 1319 (D.C. Cir. 1979). Second, the article must be customarily produced or distributed for sale to, or for the personal “use, consumption, or enjoyment of a consumer.” *Id.* Lastly, the use, consumption or enjoyment of the article must be “in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.” *Id.*

As the following discussion demonstrates, Omega sprinklers are “articles” that are “used or enjoyed by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.” Omega sprinklers are a final manufactured product. They are installed in a “wide range of residential, commercial and industrial structures.” Respondents’ Memorandum at 3. Consumers use or enjoy Omegas in their homes, schools, hospitals, recreational facilities and many other places, and are exposed to the risk they create. Omega sprinklers are without question “consumer products” subject to the Commission’s jurisdiction.

Furthermore, contrary to Respondents’ claim, the staff’s Complaint and List and Summary of Documentary Evidence fulfill all applicable pleading requirements.

As the moving party seeking an Order of Dismissal, Respondents bear the heavy burden of proving that the Agency lacks jurisdiction over Omega sprinklers, and that the staff’s Complaint and List and Summary of Documentary Evidence are insufficient. *See Department of Labor v. Greenwich Collieries*, 114 S.Ct. 2251, 2259 (1994) (holding that under section 7(d) of the APA, 5 U.S.C. 556(d), the proponent of an order bears both the burden of production and the burden of persuasion). Respondents’ unsupported and

untenable arguments fall far short of meeting this burden, and their Motion to Dismiss should therefore be denied.

III. FIRE SPRINKLERS ARE "CONSUMER PRODUCTS" WITHIN THE CPSC'S JURISDICTION

To fall within the Commission's jurisdiction, an article must be a "consumer product." *United States v. One Hazardous Product Consisting of a Refuse Bin*, 487 F. Supp. 581, 584 (D.N.J. 1980). Section 3 of the Consumer Product Safety Act, 15 U.S.C. §§ 2051 et seq. ("the Act"), clearly and unambiguously defines "consumer product" as:

any article, or component part thereof, produced or distributed

- i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise, or
- ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include--
 - (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer.

15 U.S.C. § 2052 (1997) (emphasis added).¹

The Act's definition of "consumer product" is to be "liberally construed in accordance with the stated purposes of this legislation, i.e., the protection of consumers from injury due to unsafe products." *One Hazardous Product*, 487 F. Supp. at 584; *see also* Annotation, *What is "Consumer Product" for Purposes of Consumer Product Safety Act (15 USCS §§ 2051 et seq.)*, 43 A.L.R. Fed. 827. As explained by one court,

¹ The statute further excepts tobacco products, motor vehicles, pesticides, aircraft, boats, food, drugs, devices and cosmetics, and articles which, if sold, would be subject to taxation under the Internal Revenue Code section 4181. *See* 15 U.S.C. § 2052(a)(1)(B) - (I) (1997).

The most unequivocal expression of congressional intent to be gleaned from the legislative history of the Act is that the definition of "consumer product" be construed broadly to advance the Act's articulated purpose of protecting consumers from hazardous products . . . An additional factor in favor of an expansive interpretation of the Act generally is the Act's character as remedial legislation directed at a widespread, specifically identified threat to the public safety.

Consumer Prod. Safety Comm'n v. Chance Mfg. Co., 441 F. Supp. 228, 231 (D.D.C. 1977); see also *Butcher v. Robertshaw Controls Co.*, 550 F. Supp. 692 (1981) ("[t]he Act is intended for the protection of the public against unreasonable risks of injury associated with "consumer products," a term which is to be liberally construed in accordance with the statutes's patently remedial purpose").

Since the Commission was established, courts and the Agency have upheld an expansive definition of "consumer product," finding that, among many other things, the Act applies to architectural glazing materials (*ASG Indus. v. Consumer Product Safety Comm'n*, 593 F.2d 1323, 1328 (D.C. Cir.), cert. denied, 444 U.S. 864 (1979)); fire extinguishers (CPSC Advisory Op. No. 154 (1974)); aluminum wiring (*Kaiser Alum. & Chem. Corp. v. Consumer Prod. Safety Comm'n*, 574 F.2d 178 (3d Cir.), cert. denied, 439 U.S. 881 (1978)); elevators (CPSC Advisory Op. No. 182 (1973)); portable gas heaters (CPSC Advisory Op. No. 286 (1982)); and fire alarm equipment (CPSC Advisory Op. No. 181 (1975)).

A. Omega Sprinklers Are "Articles"

To qualify as a "consumer product" under the Act, a product must be produced or distributed as a distinct article of commerce, or as a component part of such distinct article, rather than any physical entity that might exist only at an intermediate stage of production.

Consumer Product Safety Comm'n v. The Anaconda Co., 593 F.2d 1314, 1319 (D.C. Cir. 1979) (emphasis added); *ASG Indus. v. Consumer Prod. Safety Comm'n*, 593 F.2d 1323, 1327 (D.C. Cir.), *cert. denied*, 444 U.S. 964 (1979). Respondents do not dispute that the Omega sprinklers in the instant case are distinct "articles" of commerce -- they are the final manufactured product, and not any intermediate stage of production.

However, Respondents do confuse which articles are the subject of this jurisdictional inquiry. Respondents attempt to back into a jurisdictional argument by claiming that sprinkler systems are not consumer products, and then urging the Commission to conclude that the sprinklers within those systems are not consumer products.^{2,3} Sprinklers systems,

² See, e.g., Respondents' Memorandum at 1 (sprinkler systems are an integral part of a building, and therefore disqualified as consumer products; sprinkler systems are not customarily marketed, sold or distributed to consumers); Respondents' Memorandum at 3 (discussing the makeup and construction of, and permit requirements associated with, sprinkler systems), Respondents' Memorandum at 4, 6, 15-16, 18 (discussing state and local regulation of sprinkler systems); Respondents' Memorandum at 11 (claiming that active consumer interaction with the product is required for the product to be a "consumer product," and arguing that the sprinkler system remains passive until automatically activated by fire); Respondents' Memorandum at 14-15 (arguing that a fire suppression system is a building component and, therefore, not a consumer product); Respondents' Memorandum at 21 (arguing that sprinklers in commercial and industrial settings are not consumer products because OSHA standards address automatic sprinkler systems).

³ Respondents argue that the National Commission on Product Safety did not include "sprinkler systems" in its list of consumer products in 1973, nearly 10 years before Omega fire sprinklers were ever manufactured. Because the staff does not claim that sprinkler systems are defective, the absence of those systems from the National Commission's list is irrelevant. Moreover, the list contained in the National Commission's Final Report on Product Safety explicitly states, in bold and capital letters, that the home alarm, escape, and protection devices **INCLUDE BUT ARE NOT LIMITED TO** the few items listed therein. National Commission on Product Safety Final Report to the President and Congress, Table 11, p. 90 (June, 1970) (attached hereto as Exhibit B). What is included in the list is very instructive -- fire extinguishers, fire alarms, smoke alarms and burglar alarms, all of which, like fire sprinklers, are designed to operate in the event of an emergency. See *id.* Respondents ignore this inclusive language and the clear intent of the National Commission

however, are not at issue in this case. Complaint Counsel does not allege that sprinkler systems are consumer products, nor that they create a substantial product hazard. Instead, Complaint Counsel alleges that Omega sprinklers themselves are defective, and that the defect in those sprinklers creates a substantial product hazard.

As indicated by Respondents, sprinkler systems include piping, valves, hydraulic devices, and the sprinklers themselves, installed in a pressurized water delivery system. See Respondents' Memorandum at 3. Sprinklers are distinct from the sprinkler systems that contain them. This distinction is crucial to the jurisdictional inquiry.

In *Kaiser Alum. and Chem. Corp. v. Consumer Prod. Safety Comm'n*, 574 F.2d 178 (3d Cir.), *cert. denied*, 439 U.S. 881 (1978), the United States Court of Appeals for the Third Circuit held that aluminum branch wiring is a consumer product within CPSC jurisdiction. Less than a year later, in *Consumer Prod. Safety Comm'n v. The Anaconda Co.*, 593 F.2d at 1319, the United States Court of Appeals for the District of Columbia Circuit held that aluminum branch wiring systems will not fall under the Commission's jurisdiction unless the Commission can show that the systems are distinct articles in commerce. Stressing that it was only considering aluminum branch circuit wiring systems, and recognizing the difference, for purposes of CPSC jurisdiction, between a system and its components, the *Anaconda* Court refused to give collateral estoppel effect to *Kaiser*:

A ruling for which collateral estoppel effect is sought must have been essential to the judgment in a prior proceeding . . . The jurisdictional question in this case is whether aluminum branch circuit wiring systems are "consumer products." This was not the issue before the Delaware district court. A fair reading of Judge Stapleton's decision makes clear that the only issue actually

to include more than the listed products.

litigated in Delaware related to aluminum wiring, a distinct product from the one involved in this case . . . For the same reason, the Third Circuit's ruling on appeal, *Kaiser Aluminum & Chemical Corp. v. CPSC*, 574 F.2d 178 (3d Cir.), Cert. denied, 439 U.S. 881, 99 S. Ct. 218, 58 L. Ed. 2d 193 (1978), is not entitled to effect on the basis of collateral estoppel in this case.

Anaconda, 593 F.2d at 1322 (emphasis added).⁴

By its own reasoning, the holding of *Anaconda* is inapplicable to the instant case, and *Kaiser* is controlling. Like the aluminum wiring in *Kaiser*, sprinklers are articles customarily produced or distributed for the personal use, consumption or enjoyment of consumers, and are, therefore, consumer products. See *Kaiser*, 574 F.2d at 181.

B. Omega Sprinklers are Customarily Produced or Distributed for the Personal Use, Consumption or Enjoyment of Consumers

To qualify as a "consumer product" under the Act, an article must be produced or distributed "for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise, or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise." 15 U.S.C. § 2052 (1997) (emphasis added). Articles which are not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer, are explicitly excluded from coverage under the Act. *Id.*

Because Omegas are customarily produced or distributed for use by, consumption by, or

⁴ In *Anaconda*, the Court pointed out that the defect at issue was in the wiring systems, and not in the components of that system (the wires themselves). *Id.* In fact, the fire hazard was due to faulty connections in the system, and was a problem of "improper design or installation of the wiring system as a whole." *Id.* In the instant case, the defect in Central's Omega sprinklers is in the sprinklers themselves, not in the sprinkler system. It is not a question of faulty connections between components of a sprinkler system (between pipes, valves and pipes, sprinklers and pipes, etc.), or of improper design or installation of the sprinkler systems in which the defective sprinklers are installed.

enjoyment of consumers, and because consumers are exposed to the hazards associated therewith, Omegas are consumer products.

1. An Article Need Not be Sold or Marketed Directly to Consumers to be a "Consumer Product"

Respondents claim that the Act absolutely requires that to be a "consumer product," a product must be produced or distributed for sale to consumers. See Respondents' Memorandum at 7 (emphasis added). By its clear and unambiguous language, however, the Act requires that the article be produced or distributed either for sale to or for use, consumption, or enjoyment of a consumer. 15 U.S.C. § 2052(a)(1) (1997). In *Consumer Prod. Safety Comm'n v. Chance Mfg. Co.*, 441 F. Supp. 228, 232 (D.D.C. 1977) (emphasis added), the Court held that:

[i]n light of the House Committee's additional statement that "[it] is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use," it seems beyond dispute that Congress intended the Act's application to a given product to depend, less on how the product changes hands than on the degree to which it affects or endangers the safety of individuals in their capacity as consumers. This guiding principle forms the first of the two prerequisites to CPSC jurisdiction: That the product in question be either directly sold to the consumer or "produced or distributed . . . for the personal use, consumption or enjoyment of a consumer . . .

Likewise, in *Anaconda*, 593 F.2d at 1320 (citing H.R. 92-1153, 92d Cong., 2d Sess. (1972) (emphasis added), the Court emphasized that "[i]t is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use." That Omega sprinklers are not available in retail stores, that the general public cannot directly purchase sprinklers, and that sprinklers are sold only to professional contractors through Central's distribution outlets, are all irrelevant for purposes of jurisdiction. See

Respondents' Memorandum at 8-9. Because Omegas are customarily produced or distributed for use, consumption or enjoyment of a consumer, they are consumer products.

Respondents ignore the plain language and judicial interpretation of clause (ii) of the definition of consumer product, which extends coverage to articles produced or distributed "for the personal use, consumption or enjoyment of a consumer." See 15 U.S.C. § 2052(a)(ii) (1997). Respondents claim that clause (ii) was merely intended to encompass free samples and promotional items. See Respondents' Memorandum at 7. In *Anaconda*, 593 F.2d at 1320 (emphasis added), however, the Court emphasized that clause (ii) is not a limitation on jurisdiction, but instead an effort to ensure its comprehensiveness:

A consumer product must be produced or distributed either "(i) for sale to a consumer . . .," or "(ii) for the personal use, consumption or enjoyment of a consumer . . . Together, clauses (i) and (ii) were designed to ensure that the definition of consumer product would encompass the various modes of distribution through which consumers acquire products and are exposed to the risks of injury associated with those products.

Respondents also argue that because they do not market sprinklers directly to consumers, Omegas are not consumer products. See Respondents' Memorandum at 9 (citing *ASG Indus., Inc. v. Consumer Prod. Safety Comm'n*, 593 F.2d 1323, 1328 (D.C. Cir.), *cert. denied*, 444 U.S. 864 (1979)). Once again, Respondents attempt to insert a requirement into the CPSA that is simply not there -- neither the statute, nor the case Respondents cite, *ASG*, require marketing to consumers. In fact, the Court in *ASG* pointed out that:

Jurisdiction does not require a showing that a majority of product-sales are to consumers, but there must be a significant marketing of the product as a distinct article of commerce for sale to consumers or for the use of consumers before the product may be considered as "customarily" produced or distributed in that manner.

ASG, 593 F.2d at 1328 (emphasis added) (citing *Anaconda*, 593 F.2d at 1314-1322, and holding that architectural glazing materials are consumer products,). Likewise, in *Anaconda*, 593 F.2d at 1320 (emphasis added), the Court noted that "products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for use of consumers."

In *Kaiser*, 574 F.2d at 181, the Court held that aluminum branch circuit wiring is a consumer product regardless of the fact that it is sold primarily to electrical wholesalers who sell it directly to electrical contractors. The *Kaiser* Court rejected an argument identical to Respondents', explaining that:

The method of distribution chosen by a manufacturer for its product cannot, however, determine whether the product falls within the definition . . . Since both (copper and aluminum branch wiring) are articles used or enjoyed by consumers in or around households, both are, according to the plain language of the Act, consumer products.

Id. at 181.

The true test of the jurisdictional inquiry is not to whom Omegas are marketed or sold, but whether consumers are exposed to the hazards associated with them. *United States v. One Hazardous Product Consisting of a Refuse Bin*, 487 F. Supp. 581, 584-85 (D.N.J. 1980) (citing *Kaiser* and *Anaconda*, and holding that refuse bins at a drive-in restaurant, supermarket, and apartment complex are consumer products because their distribution results in a significant number of consumers being exposed to the hazard associated with them); *Chance*, 441 F. Supp. at 231 (D.D.C. 1977) (holding that "[t]o insure that the Commission remained fully capable of acting against evolving and unforeseen risks associated with consumer products, Congress provided that the Commission's jurisdiction as to a particular

product would depend directly on the extent to which consumers were exposed to the risks associated with the product”).

According to Respondents, Omega sprinklers are marketed and sold to professional contractors. Respondents' Memorandum at 9. Those contractors, in turn, sell and install Omegas into "a wide range of residential, commercial and industrial structures." *See* Respondents' Memorandum at 3 (citing 'affidavits' of Carmine Schiavone and Frank Hill).⁵ These structures include homes, apartments, nursing homes, hospitals, schools and recreational facilities. Affidavit of Francis J. Teevan, attached hereto as Exhibit A. The ten million Omegas produced by Respondents expose the public to one of the most significant hazards imaginable -- uncontained fire. *Id.* Because Omegas are widely used or enjoyed by consumers, and because consumers are exposed to the hazards associated with them, Omegas are consumer products.

2. The Statute Does not Require that Consumers "Actively Interact" With or "Manipulate" a Product

Respondents argue that consumers do not "use" Omega sprinklers because they do not "actively interact" with or "manipulate" them. *See* Respondents' Memorandum at 10, 11. Respondents cite no authority to support this alleged "active interaction" or "manipulation" requirement. Once again, Respondents attempt to inject a requirement into the statute that is simply not there.

⁵ Neither of Respondents' supporting affidavits are properly sworn. For this reason, and because they contain inaccurate information (*see Affidavit of Francis J. Teevan*, attached hereto as Exhibit A), they should be excluded.

As Respondents admit, smoke detectors, fire alarms and burglar alarms are consumer products. Respondents' Memorandum at 6. Yet, like Omega sprinklers, these consumer products are designed and intended only to activate in the event of an emergency; they are "passive systems" that consumers do not "actively interact" with or "manipulate." CPSC has jurisdiction over "consumer products," regardless of any "active interaction" or "manipulation" of the product by consumers. *See Kaiser*, 574 F.2d at 181 (aluminum wiring is a consumer product); *Chance*, 441 F. Supp. at 233 ("[t]he legislative history of the Act nowhere suggests that Congress intended to import a "control" requirement into the definition of the term "consumer product"). For Omegas to be consumer products, it is sufficient that consumers "use" or "enjoy" the Omega sprinklers by relying on them to function in a fire, and that consumers are exposed to the risk caused by their failure to function. The statute does not require consumers to actively manipulate them.

C. Omega Sprinklers are Used, Consumed or Enjoyed by Consumers "In or Around a Permanent or Temporary Household or Residence, a School, in Recreation, or Otherwise"

To qualify as a consumer product, an article must be produced or distributed for sale to or use, consumption or enjoyment of consumers "in or around a permanent or temporary household or residence, a school, in recreation, or otherwise . . ." 15 U.S.C. § 2052 (1997). Courts have interpreted the statutory enumeration of locations and activities in which a consumer product may be used as "an assurance of comprehensiveness rather than a limitation on jurisdiction." *ASG*, 593 F.2d at 1328; *One Hazardous Product*, 487 F. Supp. at 584. As noted above, Respondents admit that Omegas are installed in "a wide range of residential, commercial and industrial structures." *See Respondents' Memorandum* at 3. By

virtue of the fact that they are found in and around permanent and temporary households, residences, schools, recreational facilities and other locations, Omegas are clearly consumer products.

1. Omegas Do Not Lose their Status as "Consumer Products" Because They are "Installed" in a Building

Respondents argue that Omega sprinklers are not used in or around a household, residence or school, in recreation or otherwise, because they are "incorporat[ed] into the fundamental structure of a building as part of a complex system." Respondents' Memorandum at 12. Respondents claim that because "housing" is not within the Commission's jurisdiction, anything "incorporated" therein is also outside the Commission's reach. *See id.*

In *Kaiser*, 574 F.2d at 180, the United States Court of Appeals for the Third Circuit rejected the very argument Respondents make here, albeit in the context of an argument by the manufacturer that the products were not "articles.". Like Respondents herein, the manufacturer in *Kaiser* maintained that to qualify as a "consumer product," a product cannot be permanently affixed to or in the home. The Court criticized Kaiser's attempt to artificially inject a new requirement into the statute:

It does not follow . . . that the Act incorporates all the arcane knowledge about when personal property becomes a fixture and thus part of a building. If Kaiser's interpretation were correct, then many consumer products in common use -- such as furnaces, water heaters, dishwashers, and lighting fixtures -- would be excluded from coverage. We see nothing in the plain language of the Act suggesting that the word "article," a noun denoting any material thing, excludes components incorporated in a residence if they otherwise fit within the definition.

Id. The Kaiser Court ultimately concluded that because aluminum branch circuit wiring is an article used or enjoyed by consumers in or around households, it is, according to the plain language of the Act, a consumer product. *Id. at 181.*

Like aluminum wiring, furnaces and lighting fixtures, automatic fire sprinklers such as the Omega are consumer products, regardless of whether they are installed in a residence.

2. CPSC has Jurisdiction Over Omegas Even if Some of the Sprinklers Are Installed in Industrial and Commercial Buildings

Respondents claim that "even if certain Omegas are consumer products, they do not remain subject to the act when installed in commercial and industrial settings." Respondents' Memorandum at 19. Respondents claim that although "some" Omega models are designated for incorporation into residential structures, "most" are designed for commercial and industrial use. *Id.* Respondents' only support for this proposition is the unsworn statements of Carmine Schiavone and Frank Hill, which contain inaccurate information. Respondents point to the Flow Control and Model "M" Omegas as two models that are in distinctly "non-consumer locations." Respondents' Memorandum at 9, n. 3.

As indicated in the Affidavit of Francis J. Teevan, the Flow Control and Model "M" Omegas that Respondents claim are not in 'consumer locations' are actually installed in hospitals, schools, homeless shelters, nursing homes, and libraries. Affidavit of Francis J. Teevan, attached hereto as Exhibit A. While hospitals, schools, shelters and libraries may all be considered "commercial" facilities, they are 'permanent or temporary household(s) or residence(s), schools, recreational facilities and other' places where consumers may be exposed to the hazards of Omega sprinklers. *See One Hazardous Product*, 487 F. Supp. 581 (finding that refuse bins were located in facilities whose use by consumers was actively

facilitated and encouraged, that access to the bins was unrestricted, and that refuse bins were typically located in the parking areas of apartment complexes, retail businesses, restaurants, and supermarkets, and holding that the refuse bins are "consumer products" within the meaning of the statute); *Kaiser*, 574 F.2d at 181; *Chance*, 441 F. Supp. at 231-32. That certain Omega models "contemplate" certain construction or installations is irrelevant. Because consumers use or enjoy Omegas in or around households, residences, schools, recreational facilities and other locations, and because consumers are exposed to the risk of injury associated with Omegas, Omegas are consumer products.

IV. CPSC HAS JURISDICTION OVER OMEGAS REGARDLESS OF OSHA

Respondents argue that the Commission lacks jurisdiction over Omegas because the risk of injury associated with them falls under OSHA pursuant to Section 31(a) of the Act. *See* Respondents' Memorandum at 20. Section 31(a), codified at 15 U.S.C. § 2080, provides that:

The Commission shall have no authority under this Act to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970.

15 U.S.C. § 2080(a) (1997).

The Commission has jurisdiction over Omegas despite the provision contained in Section 31(a). In *ASG*, 593 F.2d at 1328-1330, petitioners argued that the Commission is deprived of authority over architectural glazing materials used in most non-residential buildings pursuant to Section 31(a). After carefully considering the legislative history of the statute, the *ASG* Court rejected this argument, holding that the Section:

[w]as not intended to preclude the exercise of jurisdiction by CPSC whenever a product-hazard either potentially could be or was in part being regulated under OSHA. Congress required CPSC to make a judgment . . . [E]ven if the product is being regulated under OSHA, the Commission has the authority if there has not been sufficient reduction or elimination of the risk of injury We need not consider whether the Commission's authority may be negated if there exists potential but unexercised authority under OSHA to sufficiently reduce a risk of injury within the Secretary's jurisdiction.

Id. at 1328-29 (holding that Section 31(a) does not preclude Commission's jurisdiction over architectural glazing materials).

The relevant test, as the statute and *ASG* suggest, is whether OSHA has sufficiently reduced or eliminated the risk of injury associated with a particular product. *Id.* at 1329. In the instant case, the risks associated with Omegas have not and cannot be sufficiently reduced or eliminated by OSHA. First and foremost, OSHA only extends to safety issues in the workplace. Omegas, as discussed above, are widely installed in residences and other facilities, not just workplaces. *See Chance*, 441 F. Supp. at 233 (emphasis added) (suggesting that the Court's holding that the Commission has jurisdiction over an amusement park ride would have been different if the risks associated with the ride threatened only employees).

Second, even though OSHA may have the power to regulate safety issues in the workplace, it does not remedy the risk that Omega sprinklers pose to employees and the American public. In a sweeping and unsubstantiated generalization that, once again, confuses sprinklers with sprinkler systems, Respondents maintain that since OSHA standards "thoroughly address . . . sprinkler systems . . . , sprinkler heads in the workplace are not within the Act's purview." Respondents' Memorandum at 21 (emphasis added). Although Respondents cite numerous OSHA fire protection and prevention requirements, these OSHA

regulations say little about sprinklers themselves -- the distinct article of commerce at issue in this adjudication -- and less about their integrity and safety, the central issues in this case. See 16 C.F.R. §§ 1910.155-1910.165 and Pt. 1910, Subpt. L., App. A. The only potentially relevant provision that Respondents cite is 16 C.F.R. § 1910.159(8), which provides that:

- (i) The employer shall assure that only approved sprinklers are used on systems.⁶
- (ii) The employer may not use older style sprinklers to replace standard sprinklers without a complete engineering review of the altered part of the of the system.
- (iii) The employer shall assure that sprinklers are protected from mechanical damage.

16 C.F.R. § 1910.159(8) (1997) (emphasis added).⁷ Even if all employers protect their Omegas from mechanical damage, refrain from using older style replacement sprinklers without an engineering review, and use only listed Omegas,⁸ the Omegas in United States workplaces will remain defective, and will continue to create a substantial risk of injury to the public. Because OSHA fails to sufficiently reduce or eliminate the risk of injury, Section 31(a) does not limit CPSC jurisdiction over Omegas.

⁶ Even OSHA distinguishes between sprinklers and sprinkler systems by allowing only approved sprinklers to be used in sprinkler systems.

⁷ The regulations define "approved" as "accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory." 16 C.F.R. § 1910.155(c)(3)(i).

⁸ Because Omegas remain listed by Underwriters Laboratories (UL), employers using the Omega in their facilities remain in technical compliance with OSHA regulations for fire sprinklers in the workplace.

V. CPSC HAS JURISDICTION OF OMEGAS REGARDLESS OF STATE AND LOCAL BUILDING AND FIRE CODES

Claiming that "fire sprinkler systems are already the subject of extensive state and local control," Respondents argue that CPSC lacks jurisdiction over Omegas because Congress did not intend for CPSC regulation to "supplant state and local regulations regarding building construction." *See* Respondents' Memorandum at 8. Respondents argue that if the Agency is given jurisdiction over defective automatic fire sprinklers, it will inexorably open the door to agency rule-making on the installation and design of fire sprinkler systems.⁹ *See* Respondents' Memorandum at 17.

Respondents' argument is flawed. First, no matter how Respondents twist and contort, this case is about Omega sprinklers, not sprinkler systems. The question of whether and to what extent state and local governments regulate sprinkler systems is simply not relevant herein.

Like the OSHA standards discussed above, the building codes Respondents reference require only that sprinklers be "approved." *See* BOCA Code, Respondents' Memorandum, Exhibit C.¹⁰ Respondents provide no evidence that the safety or efficacy of the sprinklers

⁹That Agencies do not regulate sprinkler systems is simply inaccurate. Concurrent with local Authorities Having Jurisdiction, the federal government exercises considerable authority over sprinkler system installation, design, and maintenance requirements. OSHA, the Joint Commission on Accreditation of Hospitals, and the Health Care Financing Administration, all prescribe standards regarding sprinkler systems. *See*, e.g., 16 C.F.R. § 1910.106(h)(6)(d) (OSHA requirement that processing plants have automatic sprinkler systems); 42 U.S.C. § 1395bb (JCAHO authority generally).

¹⁰ Similar requirements apply to a wide range of consumer products, including furnaces, electrical products, and smoke and carbon monoxide detectors. *See id.*

themselves, which are the subject of this litigation, are regulated by state or local authorities, or that state and local authorities have the power to demand a recall or corrective action relating to defective fire sprinklers.

Second, even if state and local governments were to exercise authority over the safety and efficacy of Omegas, the Commission's authority would control. The House Budget Committee Report that Respondents cite for the proposition that CPSC is barred from "establishing standards that conflict[] with or displace[] state and local regulations," does not stand for this proposition. See H. R. 158, 97th Cong., 1st Sess., 390 (1981). In fact, contrary to Respondents' suggestion, the House Report actually states the opposite ("subsection (a) amends section 26 of the CPSA to provide that voluntary standards, which the agency has stated in the Federal Register that it will rely upon to address risks of injury, **preempt all inconsistent state and local laws**"), and reiterates one of Congress' primary goals in establishing the Agency -- "to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations. *Id.* at 423, 390; see also 15 U.S.C. § 2051(b)(3) (1997). The Consumer Product Safety Act itself provides that:

Whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

15 U.S.C. § 2075(a) (1997).¹¹

Respondents' claims are also contrary to established case law. In *Butcher v. Robertshaw Controls Co.*, 550 F. Supp. 692, 700 (D. Md. 1981) (citations omitted), the Court rejected similar "floodgates" and "federalism" arguments. The Court pointed out that:

The Congress made express finding that "control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers . . ." and that "regulation of consumer products . . . is necessary to carry out [the protection of the public against said unreasonable risks of injury]." In view of these findings and the declarations of purpose that follow them, defendants' "floodgates" argument is entirely unconvincing.

Likewise, in *Kaiser*, 574 F.2d at 181, the Court rejected the manufacturer's argument that matters of specification, composition, and design of branch circuit wiring were intended by Congress to be left entirely to local building codes. The Court doubted that it "should even consider the argument in view of the explicit preemption in section 26(a) of the Act, 15 U.S.C. § 2075(a)," and ultimately held that "although local building codes continue to play a role in regulating the installation and use of consumer products, such as electric, gas, or plumbing appliances, design and performance standards for components are now a matter of national concern." *Id.* (citing Bureau of Nat'l Affairs, *The Consumer Product Safety Act: Text, Analysis, Legislative History* 81 (1973)). Thus, even if local and state governments were to regulate the safety and efficacy of sprinklers, and even if such authority were to somehow conflict with Commission action, the Commission's authority would control.

¹¹ Although the CPSC has issued no safety standard for sprinklers, it clearly has the jurisdiction to do so.

Based on the foregoing, it is clear that the Commission has jurisdiction under the Act over Omega sprinklers. Omegas are articles customarily produced or distributed for use or consumption by, or enjoyment of, consumers in or around households, residences, schools, recreational facilities or otherwise. Neither OSHA standards, nor any state or local regulations, negate the Commission's jurisdiction over Omega sprinklers.

VI. THE COMPLAINT AND LIST AND SUMMARY OF DOCUMENTARY EVIDENCE COMPLY WITH ALL APPLICABLE REQUIREMENTS

Respondents further request dismissal of the staff's Complaint by claiming that it fails to inform them with reasonable definiteness of the factual basis of the defect and hazard posed by their sprinklers. Respondents also allege that the List and Summary of Documentary Evidence that supports the staff's allegations is insufficient. As explained below, both the Complaint and the List and Summary of Documentary Evidence meet all applicable requirements.

A. The Complaint Contains a Clear and Concise Statement of the Charges, Sufficient to Inform Respondents with Reasonable Definiteness of the Factual Bases of the Allegations of Hazard

Under the Commission's Rules of Practice for Adjudicative Proceedings, an administrative complaint issued under Section 15 of the CPSA must contain "a clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factual basis or bases of the allegations of violation or hazard." 16 C.F.R. § 1025.11(b)(3) (1997). Respondents claim that the Administrative Complaint in this matter does not comply with this rule because it fails to contain "factual specificity." Respondents' Memorandum at 22. Based on this allegation, Respondents seek dismissal of the Complaint or, in the alternative, amendment of the Complaint to somehow inform

Central with more 'reasonable definiteness" of the factual basis for the staff's Complaint.

See id.

An administrative complaint must provide the adverse party with sufficient notice of the charges. Koch, *Administrative Law and Practice*, § 5.33 (2d ed. 1997). The complaint is not required to set forth evidentiary facts, but must simply advise parties of the legal and factual issues involved. *Id.* (citing Att'y Gen. Manual on Admin. Proc. Act, U.S. Dep't of Justice, 47 (1947)).

Because the Commission's Rules of Practice are patterned on the Federal Rules of Civil Procedure, a review of Federal Rule of Civil Procedure 8 on the requirements of pleading is instructive. *See* Supplementary Info., Consumer Prod. Safety Comm'n Rules of Practice for Adjudicative Proceedings, 45 Fed. Reg. 29,206, 29,207 (May 1, 1980); *Consolidated Gas Supply Corp. v. Fed. Energy Reg. Comm'n*, 611 F.2d 951, 959, n.7 (4th Cir. 1979) (administrative pleadings are no stricter than the requirements for court pleadings). Federal Rule of Civil Procedure 8 requires only that a complaint provide "a short and plain statement of the claim" sufficient to give the defendant fair notice of what the plaintiff's claim is, and the grounds upon which it rests. Fed. R. Civ. P. 8. As the United States Supreme Court explained in *Conley v. Gibson*, 355 U.S. 41, 47-48 (1951):

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules requires is a "short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. . . . Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues.

See also Mitchell v. E-Z Way Towers, Inc. 269 F.2d 126,129-130 (5th Cir. 1959) (possible vagueness of complaint no grounds for granting dismissal).

In the instant case, Complaint Counsel has more than met its pleading burden under 16 C.F.R. § 1025.11(b)(3). The Complaint provides Respondents with "a clear and concise statement of the charges" by stating that "Omegas are defective pursuant to 15 U.S.C. § 2064(a)(2) and 16 C.F.R. § 1115.4", Compl. ¶ 10, that "Omegas do not and will not function in a significant percentage of instances," *id.*, by referencing data compilations depicting 40% failure rates in testing of Respondents' Omega brand fire sprinklers (List and Sum. of Doc. Ev. ¶ 1), and by referencing documents evidencing failure of Respondents' Omega fire sprinklers in actual fire situations (List and Sum. of Doc. Ev. ¶ 2). These enumerated allegations of malfunction are more than a sufficient factual predicate for the charges of defect and substantial product hazard stated in the Complaint. To the extent Respondents seek to argue that the Complaint is deficient because a specific failure mechanism is not enumerated, such pleading is not required either by the Act or under analogous tort principles. *See* 16 C.F.R. § 1115.4(e) (exhaust fan, which is intended to activate to remove carbon monoxide fans but consistently does not, is defective although cause of malfunction not positively identified); *see also* Restatement (Third) of Torts: Products Liability § 3 (1998) (discussing well-settled "malfunction" theory of defect). The Complaint need not be rewritten, and should not be dismissed, for an alleged lack of definiteness.

B. The List and Summary of Documentary Evidence Complies with the Commission's Rules of Practice for Adjudicatory Proceedings

Respondents also ask the Court to dismiss the Complaint because it "identifies" none of the documents that support the Complaint. Respondents' Memorandum, at 22.

The Commission's Rules of Practice for Adjudicative Proceedings at 16 C.F.R. § 1025.11(b)(3) requires that a "list and summary of documentary evidence supporting the charges" be attached to the Complaint. The rule does not call for the "comprehensive" summary Respondents desire, nor does it require Complaint Counsel to specifically "identify" documents, as Respondents demand. *See* Respondents' Memorandum at 25. It simply requires "a list and summary of documentary evidence." This is precisely what Complaint Counsel has provided. *See* List and Summary of Documentary Evidence.

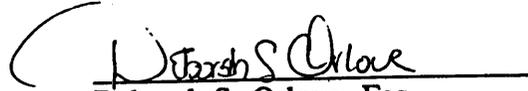
Respondents' attempt to add to the regulations is unfounded, and their tactics can only be seen as an effort to delay this case. Respondents admit that they are aware of fires in which Omegas have reportedly failed to activate. Respondents have also tested thousands of Omega sprinklers, and found a significant number of failures. Respondents can, and already have, requested in discovery all of the documentary evidence supporting the staff's claims. Respondents' claims are unpersuasive, and do not remotely support a dismissal.

VII. CONCLUSION

Based on the foregoing, the Commission has jurisdiction under the Act over Omega fire sprinklers, and the Complaint and List and Summary of Documentary Evidence meet all applicable requirements. Complaint Counsel respectfully requests that Respondents' Motion to Dimiss be denied.

Dated: April 6, 1998

Respectfully submitted,



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Complaint Counsel

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3. In my capacity as Captain II (Assistant Fire Marshal), Fire Prevention Division, Fire and Rescue Department, Fairfax County, Virginia, I have also personally seen installed Central Omega Model "M" sprinklers in a nursing home and in the INOVA/Fairfax Hospital. The Model "M" sprinklers were not used with exposed piping in either of these locations.

4. In my capacity as Captain II (Assistant Fire Marshal), Fire Prevention Division, Fire and Rescue Department, Fairfax County, Virginia, I have also personally seen installed Central Omega sprinklers in numerous residential occupancies and in facilities open to and used by the public.

5. Properly operating fire sprinklers are an integral part of a building's fire protection package. In a fire situation, the failure of a sprinkler to operate properly will allow the spread of fire. The occurrence of a fire is one of the most devastating phenomena known to mankind. Each year lives and property are lost due to fire. In Fairfax County, Virginia in 1997 there were 7 lives lost, 32 burn cases and \$14,042,972 worth of property damage due to fire.

Date: April 3, 1998

Signed: Francis J. Teevan
Captain II Francis J. Teevan
Assistant Fire Marshal

COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax

Sworn to before me this 3rd
day of April, 1998.

Richard M. Turner
Notary Public

EXHIBIT B

Table 11

NATIONAL COMMISSION ON PRODUCT SAFETY REVISED PRODUCT LIST¹

I. GENERAL HOUSEHOLD APPLIANCES INCLUDING BUT NOT LIMITED TO

Clothes washers without wringers or other dryers
 Washing machines with wringers
 Washing machines with spin dryers without thermal dryers
 Washing machines with electric dryers
 Washing machines with gas dryers
 Electric dryers without washing machines attached
 Ironers
 Electric blankets and electric sheets
 Electric heating pads
 Electric fans
 Sewing machines
 Floor buffers and waxers
 Electric rug cleaners
 Vacuum cleaners
 Electric sweepers
 Automatic door openers and closers
 Gas water heaters
 Electric water heaters
 Oil water heaters
 Incinerators without gas or electric heat supply
 Electric incinerators
 Gas incinerators
 Water fountains, with or without cooling or heating units
 Water softeners and conditioners
 Washing machines not otherwise specified
 Clothes dryers, not otherwise specified
 Water heaters, not otherwise specified
 Incinerators, not otherwise specified

II. KITCHEN APPLIANCES INCLUDING BUT NOT LIMITED TO

Electric ranges with ovens, except self-cleaning ovens
 Electric ranges without ovens
 Gas ranges with ovens, except self-cleaning ovens
 Gas ranges without ovens
 Electric ovens separate from ranges
 Gas ovens separate from ranges
 Electric refrigerators
 Gas refrigerators
 Electric freezers
 Gas freezers
 Automatic corn poppers
 Can openers, powered
 Dishwashers
 Electric blenders
 Electric broilers
 Electric coffeemakers and teapots
 Cutlery, powered
 Electric deep fryers
 Electric defroster devices
 Electric food warmers and hot trays
 Electric fry pans and skillets
 Electric griddles
 Electric hot plates and grills
 Electric ice-cream makers
 Electric ice crushers
 Electric ice makers, separate from refrigerators
 Electric juicers
 Electric kettles
 Electric meat grinders
 Electric mixers
 Electric scissors
 Electric slicers
 Toasters
 Electric waffle irons
 Faucet water heaters
 Garbage disposers
 Irons with dry heat
 Steam irons
 Knife sharpeners
 Rotisseries
 Electric immersion heaters
 Ranges, not otherwise specified
 Ovens, not otherwise specified
 Refrigerators, not otherwise specified
 Freezers, not otherwise specified
 Irons, not otherwise specified
 Electric ovens, self-cleaning
 Gas ovens, self-cleaning
 Range and oven accessories (including racks, broiler pans, etc.)

III. SPACE HEATING, COOLING, AND VENTILATING APPLIANCES INCLUDING BUT NOT LIMITED TO

Electric air conditioners
 Gas air conditioners
 Fans, water cooled
 Humidifiers
 Vaporizers
 Dehumidifiers

Ionizers
 Broilers
 Coal furnaces, including floor furnaces
 Gas furnaces, including floor furnaces
 Oil furnaces, including floor furnaces
 Panel and cable electric radiant heat units
 Electric space heaters
 Gas space heaters and gas heating stoves, attached.
 Note: For portable heaters see category XII, sports and recreation equipment
 Kerosene space heaters and kerosene heating stoves, attached.
 Fireplaces and wood or coal stoves, factory built
 Chimneys, factory built
 Electric furnaces, including floor furnaces
 Other heating systems, including heat pumps
 Radiators and hot water or steam pipes
 Air conditioners, not otherwise specified
 Furnaces, not otherwise specified
 Space heaters, not otherwise specified
 Heating stoves, not otherwise specified
 Water heaters, not otherwise specified
 Floor furnaces, not otherwise specified

IV. HOUSEWARES INCLUDING BUT NOT LIMITED TO

Can openers, unpowered
 Chafing dish with open flame heaters
 Table stoves - open flame
 Non-electric coffee grinders
 Coffee makers and teapots, unpowered
 Cooking utensils and ovenware including glass
 Cutlery, unpowered
 Ironing boards and covers
 Manual ice crusher
 Manual juicers
 Manual heat grinders
 Pressure cookers and canners
 Waste containers
 Cutting and chopping devices including scissors
 Candles and candleholders, including butane candles
 Corkscrews and other opening devices
 Flatware, except cutlery
 Tableware, including insulated design

V. HOME COMMUNICATIONS AND ENTERTAINMENT APPLIANCES AND EQUIPMENT INCLUDING BUT NOT LIMITED TO

Television sets
 Radios, and record players, including Hi-Fi and Stereo equipment
 Sound and video recording and reproducing equipment (tape recorders and players)
 Musical instruments including electric musical instruments
 Motion picture and still cameras
 Other photographic equipment and accessories
 Movie projectors
 Slide projectors
 Intercommunication devices
 Telephone and telephone accessories
 Typewriters, electric and manual
 TV and radio antennas
 Art supplies and equipment
 Clay, pottery and ceramic supplies and equipment
 Printing presses

VI. HOME FURNISHING AND FIXTURES INCLUDING BUT NOT LIMITED TO

Beds, springs, mattresses, covers and pads
 Chairs
 Tables
 Other furniture including multiple use and lawn furniture
 Electrical outlets, built-in wiring devices, and distribution systems for use in or around the household
 Electric power plants
 Gas pipes, fittings and distribution systems
 Plumbing fixtures and pipes, including sinks and toilets
 Structural glass and glass doors, including bathtub and shower enclosures
 Bathtub and shower enclosures of materials other than glass
 Bathtub and shower structures other than doors and panels, including the tub, walls, handgrips, etc.
 Runners and throw rugs
 Carpeting including outdoor carpeting but excluding runners
 Sheets and pillow cases
 Pillows
 Blankets, except electric and baby blankets
 Drapes, curtains including plastic curtains and shower curtains
 Step ladders
 Straight ladders
 Stepstools
 Appliance cords, extension cords and replacement wire
 Gas meters

¹In the case of certain product categories (primarily IX and XVII), some products may be subject to limited Federal regulations under existing laws. In each case, such products are listed here because all potential hazards are not subject to regulation or because some remedial means (such as labeling) are covered, while others (such as performance standards) are not.

Table 11 (continued)

Meters for LP gas
 Electric meters
 Gas lamps
 Electric table lamps and floor lamps
 Light bulbs
 Electric light fixtures, attached
 Electric clocks
 Medicine cabinets
 Gun cabinets, ammunition cabinets and racks
 Other cabinets, shelves and storage areas
 Sump pumps
 Furniture, not otherwise specified
 Fabrics not otherwise specified
 Ladders or stepstools, not otherwise specified
 Meters, not otherwise specified
 Window shades and venetian blinds
 Flashlights and electric lanterns
 Mirrors and mirror glass
 Glass - unknown origin

**VII. HOME ALARM, ESCAPE, AND PROTECTION DEVICES
 INCLUDING BUT NOT LIMITED TO**

Fire extinguishers
 Fire and smoke alarms
 Fire escape devices, including chain ladders
 Burglar alarms
 Ground fault circuit interrupters
 Lighting arrestors, rods and grounding devices
 Locks and padlocks

**VIII. HOME WORKSHOP APPARATUS, TOOLS, AND ATTACHMENTS
 INCLUDING BUT NOT LIMITED TO**

Power saws
 Power drills
 Power sanders
 Power routers
 Power lathes
 Power grinders
 Power jointers
 Power shapers
 Other portable and stationary power tools
 Workshop manual tools and accessories
 Torches
 Welding equipment
 Soldering guns and irons
 Hoists, lifts, jacks and chains
 Test equipment
 Battery chargers
 Batteries
 Extension work lights and continuous use flood lights
 Separate electric motors
 Internal combustion engines, for use in or around the household
 Automotive tools and accessories
 Paint sprayers
 Air compressors, separate

**IX. HOME AND FAMILY MAINTENANCE PRODUCTS, INCLUDING
 BUT NOT LIMITED TO**

Cleaning agents and compounds
 Bleaches and dyes
 Solvent based cleaning and sanitizing compounds
 Waxes
 Polishes
 Fumigants
 Paints, paint removers, brushes and rollers
 Thinners
 Adhesives and adhesive products including glues and tapes
 Gasoline
 Kerosene
 Anti freeze
 Lubricants
 Alcohol
 Caustics
 Charcoal
 Caulking compounds
 Other chemicals, including photographic chemicals
 Wallpaper cleaners and removers, including steamers
 Other cleaning equipment

X. FARM EQUIPMENT INCLUDING BUT NOT LIMITED TO

Electric fences
 Home pasteurizers
 Cream Separators

**XI. PACKAGING AND CONTAINERS FOR HOUSEHOLD PRODUCTS
 INCLUDING BUT NOT LIMITED TO**

Pressurized containers
 Vacuum containers
 Self-contained openers
 Resealable closures
 Child resistant closures
 Glass bottles and containers

Containers made of materials other than glass, except vacuum or pressure containers
 Plastic wrapping products, including plastic trash and garden bags
 Paper and cardboard products, and other paper objects, including magazines, newspapers, books, etc.

**XII. SPORTS AND RECREATIONAL EQUIPMENT
 INCLUDING BUT NOT LIMITED TO**

Playground equipment, swings, slides and associated hardware.
 Bicycles and bicycle equipment
 Boats, motors and accessories for recreational use
 Baseball equipment
 Basketball and volleyball equipment.
 Bowling equipment
 Boxing and wrestling equipment
 Croquet equipment
 Exercise equipment
 Fishing equipment
 Football equipment
 Golf equipment except golf carts
 Golf carts
 Hockey equipment, including ice skates
 Lacrosse equipment
 Skiing equipment, including skis, poles, boots and bindings
 Sleds and toboggans
 Snowmobiles
 Tennis equipment, including badminton and table tennis
 Swimming and underwater sports equipment, including scuba accessories and spear guns
 Headgear for cycling
 Beach equipment
 Stationary and portable grills, kerosene, charcoal and gas
 Portable gasoline and kerosene stoves
 Portable gasoline, alcohol, and gas heating equipment
 Note: For attached heating devices see category III.
 Gasoline, kerosene and propane lanterns and lamps
 Battery powered cooking devices
 Picnic equipment including coolers
 Camping equipment including tents, cots, and sleeping bags
 Camping trailers, other than mobile homes
 Swimming and wading pools and associated equipment
 Charcoal igniters, electrical or chemical
 Rebound tumbling devices
 Play houses and tree houses
 Archery equipment and darts
 Unlicensed motor scooters and go-karts
 Gas, air and spring operated guns
 Other special sports and camping clothing
 Horseback riding equipment
 Aquariums, including pumps, heaters and accessories

XIII. TOYS INCLUDING BUT NOT LIMITED TO

Wheeled toys - carrying the child, powered and unpowered including wagons, tricycles, stand-up scooters, pedal cars, sit-in airplanes, sit-in trucks
 Non-mechanical dolls and toy animals
 Mechanical dolls and toy animals including keywind and battery operated
 Other windup and battery operated toys
 Wheeled toys not carrying the child, powered and unpowered including toy cars, electric trains, and non-flying airplanes
 Gasoline powered toys, including model airplanes
 Electric games
 Skates and skateboards
 Kites and kite string
 Pogo sticks and stilts
 Toy guns and other toy weapons without projectiles
 Toy guns and other toy weapons with projectiles
 Fireworks, explosives and caps
 Rocketry sets
 Chemistry sets
 Other science kits and toys
 Flying devices, not gasoline or rocket powered
 Other models and their construction materials. For glues see category IX.
 Metal and plastic molding sets
 Games, other than electric
 Toy home equipment, including ovens, stoves, sinks, irons, sewing machines, washing machines, etc.
 Children play tents, play tunnels and other enclosures
 Toy balls and balloons
 Inflated toys other than balloons
 Blocks, pull toys, and similar items

**XIV. YARD AND GARDEN EQUIPMENT INCLUDING
 BUT NOT LIMITED TO**

Power mowers of all types
 Hand mowers
 Hand garden tools
 Power trimmers and edgers
 Garden tractors
 Snow throwers and snow plows
 Garden sprayers
 Power tillers and cultivators
 Other power garden tools
 Outdoor lighting equipment
 Chain saws

Table 11 (continued)

Pumps including electric submersible fountain pumps
Greenhouse equipment
Garden hose, nozzles, and sprinklers
Winter manual yardtools
Insect traps and insecticide vaporizers, electrically operated
Yard decorative equipment including fish ponds, bird baths, planters, bird houses, etc.

XV. CHILD NURSERY EQUIPMENT AND SUPPLIES INCLUDING BUT NOT LIMITED TO

Highchairs
Changing tables
Infant seats
Cribs, including springs and mattresses
Carriages
Gates
Baby blankets, sheets, pads, pillows, etc. and other baby bedding equipment
Walkers
Bottles, nipples and related items
Bottle warmers
Sterilizers
Diapers and diaper pins, including disposable diapers
Playpens
Baby baths
Baby scales
Other nursery furniture and equipment, including baby rattles

XVI. PERSONAL USE ITEMS INCLUDING BUT NOT LIMITED TO

Razors and shavers
Hair dryers
Hair curlers
Cigarette, cigar and pipe lighters, and lighter fluid
Wigs
Eyeglasses, not including contact lenses
Eye protection devices, including light shields, sunglasses
Powered tooth brushes and picks
Sun lamps
Massage devices
Manicure devices
Saunas including facial saunas
Electric shoe polishers
Clothing
Footwear except for sports footwear
Other beauty aids, and jewelry
Ear protection devices, including noise plugs
Respiratory protection devices
Personal protection devices, including tear gas pens and tear gas guns
Hearing aids
Umbrellas
Wrist watches, wrist compasses, pendant watches, pocket watches, etc.
Luggage
Contact lenses

XVII. HOME STRUCTURES, CONSTRUCTION MATERIALS, INCLUDING BUT NOT LIMITED TO

Stairs, ramps and handrails, indoors and outdoors
Fireplaces, individually built
Insulation materials
Siding materials, including aluminum siding
Doors, trap doors, hatches and other ingress-egress devices
Note: Glass doors and automatic door openers are listed elsewhere.
Roofs and roofing materials
Floors and flooring materials, including patios
Awnings and shutters
Patio and porch covers
Outside structures, including retaining walls, fences and separate enclosures
Elevators and other lifts
Windows and window glass
Scaffolding
Landings, porches, balconies, open side floors and floor openings
Cisterns, cesspools, and septic tanks
Nails, carpettacks and construction materials
Hardware including doorknobs, hinges, cabinet pulls, door springs, etc.

XVIII. OTHER PRODUCTS INCLUDING BUT NOT LIMITED TO

Christmas and other seasonal decorations, including trees
Switchblade and gravity knives
Mobile homes and related equipment including campers
Matches
Ash trays
Crutches and canes
Wheelchairs
Special beds
Other special equipment for the injured or aged
Home first-aid and health equipment including hot water bottles, thermometers, etc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, Complaint Counsel's Opposition to Respondents' Motion to Dismiss was deposited in the United States Mail, via certified delivery, postage pre-paid, addressed to the following:

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Attorneys for Central Sprinkler Corporation and
Central Sprinkler Company



Dated: 4/6/98