ADVISORY OPINION

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MAR 23 1978
U.S. CONSUMER PRODUCT SAFETY COMMISSION

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

March 27, 1978

6(b) CLEARED:
✓ No Mfrs Identified
Excepted
Mfrs Notified
Comments Processed

Mr. Philip P. Nowers
Program Manager
Waste Equipment Manufacturers' Institute
National Solid Wastes Management Association
1120 Connecticut Avenue
Washington, D.C. 20036

Dear Mr. Nowers:

Your letter of February 13, 1978 to Mr. Robert Poth of Compliance and Enforcement, on a matter dealing with possible preemption under section 26(a) of the Consumer Product Safety Act (CPSA) of a state law regulating refuse bins, was transmitted on March 8, 1978 to this office for response.

Your letter, which enclosed a copy of a proposed Michigan bill to regulate refuse bins, asks whether section 6 of the proposed bill would be preempted by section 26(a) of the CPSA, because of the existence of the Commission's ban of unstable refuse bins (16 CFR 1301).

Section 26(a) provides:

> 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. (Emphasis added.)

As you will note, section 26(a) does not mention consumer product safety rules that declare products to be banned hazardous products. Rather it deals specifically only with consumer product safety standards. Therefore, in our view section 26(a) would not apply in this instance since the federal rule is a ban rather than a consumer product safety standard as specified in section 26(a).

Section 26(a), when it does apply, provides that a state shall have no authority to establish regulatory requirements concerning the same risk of injury unless the requirements are identical to federal requirements. Nevertheless, at your request, we reviewed section 6 of the proposed Michigan bill with which you take issue. We note that the provisions of that section deal not with technical performance requirements, but with enforcement matters. Thus, the subsections of section 6 deal with means for the state to ascertain that refuse bins continue to conform to the technical requirements set forth in other parts of the proposed bill, rather than actually setting forth performance requirements. Therefore, it does not appear that section 6 of the proposed Michigan bill conflicts with the banning criteria of the Commission's rule.

While the views expressed in this letter are based on the most current interpretation of the law by this office, they could be subsequently changed or superseded by the Commission. Please call upon us if you require further assistance.

Sincerely,

/s/

Theodore J. Garrish
General Counsel

National Solid Wastes Management Association

1120 CONNECTICUT AVENUE, N.W. • SUITE 930 • WASHINGTON, D.C. 20036
TELEPHONE (202) 659-4613

EUGENE J. WINGERTER
EXECUTIVE DIRECTOR

February 13, 1978

RECEIVED
MAR 3 1978
Consumer Product Safety Commission
Office of the General Counsel

Mr. Robert G. Poth
Assistant Director CERM
Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Poth:

As you are aware, the National Solid Wastes Management Association (NSWMA), representing the private solid waste collection and disposal industry, has supported the Consumer Product Safety Commission's (CPSC) efforts to regulate unstable refuse containers. In addition, we have taken the lead in publishing the Commission's Ban on Unstable Refuse Bins (16 CFR 1301) through our newsletter and other media. A copy of our latest newsletter with a front-page story on the ban is attached.

The NSWMA is very concerned, however, about a new bill currently before the Michigan state legislature (House Bill No. 5829) to regulate the same containers covered by the CPSC action.

A copy of the bill is enclosed and, as you will note, it differs in a number of ways from the Ban on Unstable Refuse Bins issued by your agency on June 13, 1977. While there are numerous inconsistencies with respect to the CPSC regulation, of particular concern to our association is Section 6 of the proposed bill. That section would impose very onerous inspection, labeling, and fee structures on bin owners that go far beyond the federal regulation.

Section 26(a) of the Consumer Product Safety Act prohibits states from establishing or continuing in effect any requirement on a federally-regulated product or hazard unless those requirements are "identical to the requirements of the Federal Standard." The proposed Michigan bill clearly would be a case of a more stringent standard of performance being required, and thus prohibited by the federal statute.

In order to clarify this issue would you please inform me as to the official opinion of the CPSC with respect to the Michigan bill.

Thank you for your attention to this matter.

Very truly yours,

Philip P. Nowers
Program Manager
Waste Equipment Manufacturers' Institute

PN/yjs

• INSTITUTE OF WASTE TECHNOLOGY
  • CHEMICAL WASTE COMMITTEE
  • NATIONAL SANITARY LANDFILL COMMITTEE
  • RESOURCE RECOVERY COMMITTEE
• WASTE EQUIPMENT MANUFACTURERS INSTITUTE

008239

Specific clearly that municipality the owner should be allowed to be present when tested & contractor be allowed to conduct his own test.

JAN 16 1978

HOUSE BILL No. 5829

HOUSE BILL No. 5829

December 15, 1977, Introduced by Reps. Mary C. Brown, Hollister, Forbes, Kelsey, Spaniola, Hasper, Symons, Porter, Scott, Angel, Bennane and McNamee and referred to the Committee on Public Health.

A bill to regulate the construction, manufacture, sale, or distribution of refuse bins to protect the health, safety, and welfare of the people of this state; to define certain terms; to provide test conditions and procedures; and to provide remedies and penalties for violations of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "refuse bin
2 act".
3 Sec. 2. As used in this act:
4 (a) "Department" means the state department of public health.

HOUSE BILL No. 5829

1 (b) "Health officer" means an administrative officer of a city, county,
2 or district department of health.
3 (c) "Manufactured" means produced, assembled, imported, or otherwise
4 constructed.
5 (d) "Manufacturer" means a person who manufactures or imports refuse
6 bins.
7 (e) "Person" means an individual, partnership, corporation, association,
8 or other legal entity.
9 (f) "Refuse bin" means a metal receptacle or a receptacle of other rigid
10 construction having an internal volume not less than 1 cubic yard
11 which temporarily receives and holds refuse for ultimate disposal
12 either by unloading into the body or loading hopper of a refuse collection
13 vehicle or by other means.
14 (g) "Retailer" means a person to whom refuse bins are delivered or
15 sold for purposes of sale or distribution by the person to a consumer.
16 (h) "Unstable" means that during the application of either test force
17 described in section 6(1), the refuse bin begins to rotate forward, sideways,
18 or backwards on or about its ground supports. B 01.5(b) - TIPPED ONLY FROM WARDS.
19 Sec. 3. (1) This act applies to those refuse bins that are being dis-
20 tributed in commerce after the effective date of this act, which do not meet
21 the criteria of this act and which are produced or distributed for sale to,
22 or for the personal use of consumers, in or around a
23 household or residence, a school, in recreation, or otherwise.

(2) A common carrier, contract carrier, or freight forwarder shall not be considered to be a manufacturer, distributor, or retailer solely by reason of receiving or transporting refuse bins in the ordinary course of its business as a carrier or forwarder.

(3) A person shall not manufacture for sale, offer for sale, or distribute refuse bins which are unstable.

Sec. 4. When being tested by a health officer or duly authorized representative a refuse bin shall:

(a) Be empty and have its lids or covers in a position which would most adversely affect the stability of the bin.

(b) Be on a hard, flat surface, and shall not be tilted from level in a way so as to increase its stability.

(c) If equipped with casters or wheels, have the casters or wheels positioned in a position which would most adversely affect the stability of the bin and shall be checked to prevent movement.

(d) Be tested for stability without dependence upon nonpermanent attachments or restraints including chains or guys.

(e) Be in that position which most adversely affects its stability.

Sec. 5. (1) The refuse bin shall be tested by applying forces as follows, 1 after the other:

(a) A horizontal force of 70 pounds shall be applied at a point and in a direction most likely to cause tipping.

1 (b) A vertical downward force of 191 pounds shall be applied to a point
2 most likely to cause tipping.

3 (2) The forces in subsection (1) shall be applied separately and the
3a bin shall not be
4 unstable under the application of either horizontal or vertical force as
5 provided in subsection (1).

6 Sec. 6. (1) The health officer or the duly authorized representative
7 shall inspect all in-service refuse bins to ascertain that the bins are in
8 compliance with this act, every 3 years.

9 (2) The health officer or the duly authorized representative shall
10 inspect all newly manufactured refuse bins at manufacturing or distribution
11 points to ascertain that the bins are in compliance with this act.

12 (3) Approved refuse bins used for the storage of solid waste in this state
13 shall display a printed statement of approval on a pressure sensitive backed
14 label which is serially numbered, in a conspicuous place. The label shall be
15 affixed by the health officer or the duly authorized representative and shall
16 read substantially as follows: "This refuse bin meets the minimum safety
17 standards of the department of public health and is approved for use in the
18 state of Michigan." The label first applied shall contain the expiration
19 date of July 31, 1981, and thereafter an expiration date of July 31 every third
20 year.

21 (4) The refuse bin shall have printed in block letters and figures not
22 less than 4 inches high on 1 vertical side:

23 (a) The name and business telephone number of the licensed collector.

24 (b) The capacity of the container in cubic yards.

25 (c) A safety notice reading, "NOTICE--container must be placed on hard
26 level surface".

27 (5) A $10.00 fee shall be charged and collected for each refuse bin that

1 is inspected.

2 Sec. 7. The department shall:

3 (a) Establish an information program to inform parents and children of
4 the danger posed by unstable refuse bins. This program shall consist of a
5 broad dissemination of written information to the public, as well as announcer
6 copy for radio and television stations on a statewide basis.

7 (b) Notify all local health departments of their responsibilities under
8 this act.

9 (c) Produce and distribute to local health departments the label of
10 approval as provided in section 6(3).

11 Sec. 8. A person shall not:

12 (a) Manufacture for sale, offer for sale, or distribute, or import
13 into this state a refuse bin which is not in conformity with this act.

14 (b) Fail or refuse to permit access to, or copying of records; fail or
15 refuse to make reports or provide information; or fail or refuse to permit
16 entry or inspection, as required in this act.

17 Sec. 9. (1) A person who violates this act shall be subject to a civil
18 penalty of not more than $2,000.00 for each violation. The maximum civil
19 penalty shall not exceed $500,000.00 for any related series of violations.
20 Each violation of this act shall constitute a separate violation with respect
21 to each failure or refusal to allow or perform an act required by this
22 If the violation is continuing, each day of the violation shall constitute a
23 separate offense.

24 (2) A health officer may request that the attorney general or county
25 prosecuting attorney bring an action in the name of the state, or a city,
26 village, or township may bring an action in its own name against a person who
27 violates this act.

1 (3) An action may be brought in the circuit court for the county in
2 which the violation occurs, or in Ingham county.
3 Sec. 10. (1) A person who knowingly and wilfully violates this act,
4 and 30 days after having received notice of noncompliance from the health
5 officer fails to comply, shall be guilty of a misdemeanor and shall be fined
6 not more than $50,000.00 or be imprisoned not more than 1 year, or both.
7 (2) An individual director, officer, or agent of a corporation who
8 knowingly and wilfully authorizes, orders, or performs any of the acts or
9 practices constituting a violation of this act, and who has knowledge of notice
10 of noncompliance received by the corporation from the health officer, shall be
11 subject to penalties under this section without regard to any penalties to which
12 that corporation may be subject under this act.
13 (3) A health officer may request that the attorney general or county
14 prosecuting attorney bring an action in the name of the state, or a city,
15 village, or township may bring an action in the name of the state against a
16 person who violates this act.
17 (4) An action may be brought in the circuit court for the county in
18 which the violation occurs, or in Ingham county.
19 Sec. 11. (1) A person who sustains injuries by reason of a violation of
20 this act may bring an action against a person who violates this act, and upon
21 determination that a violation has occurred, shall recover actual damages
22 and reasonable attorney's fees, in the discretion of the court.
23 (2) The remedies provided in this act shall be in addition to and not
24 in lieu of any other remedies provided by law.
25 Sec. 12. (1) An interested person may bring a civil action to enforce
26 this act, and to obtain injunctive relief. Not less than 30 days before the
27 commencement of an action, the interested person shall give notice by registered

1 mail to the health officer, to the attorney general or the county prosecuting
2 attorney, and to the person against whom the action is directed. The notice
3 shall state the nature of the alleged violation of this act, the relief to
4 be requested, and the court in which the action will be brought. A separate
5 action shall not be brought under this section if at the time the action is
6 to be brought the same alleged violation is the subject of a pending civil
7 or criminal action brought by this state or a city, village, township, or
8 county under this act. In an action under this act, an interested person may
9 elect, by a demand for relief in the person's complaint, to recover reasonable
10 attorney's fees, in which case the court shall award a reasonable attorney's
11 fee to the prevailing party.
12 (2) An action may be brought in the circuit court for the county in which
13 the violation occurs, or in Ingham county.
14 Sec. 13. This act shall not take effect until June 13, 1978.
15 Sec. 14. This act shall expire December 31, 1988.

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