



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE VOTE TO DIRECT THE STAFF TO WITHDRAW THE PROPOSED
INTERPRETIVE RULE DEFINING "PUBLIC ACCOMMODATIONS FACILITY" IN
THE VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT
AND REDRAFT IT FOR COMMISSION CONSIDERATION

August 4, 2010

When I voted to adopt a proposed interpretation of "public accommodations facility" last March, it was based on our legal staff's analysis that since other federal statutes (including the Consumer Product Safety Improvement Act of 2008) had defined "public accommodations" in a specific, consistent way, it made sense to use the same definition of that term for the Virginia Graeme Baker Pool and Spa Safety Act (VGB). I still believe the staff recommendation is reasonable and defensible. The VGB Act does not define the term and there is no legislative history to guide the Commission as to the intent of Congress on the definition.

Since my earlier vote, however, I have examined the history behind the exclusion of small **owner-occupied** (and owner-occupancy is the key) places of lodging from various federal requirements. A review of the history of that definition in statutes such as the Americans with Disabilities Act (where one might have assumed that cost considerations were a reason to use a narrow definition of "public accommodations") indicates they merely used the definition in the Civil Rights Act of 1964. The exclusion of owner-occupied lodging establishments with five rooms or less for rent from the Civil Rights Act was a concession to the realities of those times, attempting to balance the rights of home owners who rent out part of their homes to transient guests to decide who those guests would be (or more accurately who they *wouldn't* be), with the right we all have to be treated fairly in having access to places of public accommodation.

Whatever you may think of the "a man's home is his castle" argument in *that* context, it has nothing to do with protecting families from potentially unsafe conditions in and around their temporary rental residences. From the standpoint of pool and spa safety, there is no logical distinction to be made between a six-room lodging facility and a five-room lodging facility or between a facility where the owner lives in the building and one where he does not. In my view, if a lodging facility is open to the public and provides a pool or a spa for the enjoyment of paying guests, then those pools and spas need to comply with the requirements of the Virginia Graeme Baker Pool and Spa Act. The VGB Act's definition of "public accommodations" should further **that** Act's goals and provide the same level of safety to all renters rather than use a definition based on a nearly fifty year-old political compromise that was unrelated to safety.