

UNBLOCKABLE DRAIN LETTERS

(Received in the Secretariat September 2011)

DEBBIE WASSERMAN SCHULTZ
20TH DISTRICT, FLORIDA

CHIEF DEPUTY WHIP

COMMITTEES:

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

CHAIR, LEGISLATIVE BRANCH

VICE CHAIR, FINANCIAL SERVICES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE:

CRIME, TERRORISM AND
HOMELAND SECURITY

Congress of the United States
House of Representatives
Washington, DC 20515-0920

WASHINGTON OFFICE:
118 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0920
(202) 225-7931
(202) 226-2052 (Fax)

DISTRICT OFFICES:
10100 PINES BOULEVARD
PEMBROKE PINES, FL 33026
(954) 437-3936
(954) 437-4776 (Fax)

19200 WEST COUNTRY CLUB DRIVE
THIRD FLOOR
AVENTURA, FL 33180
(305) 936-5724
(305) 932-9664 (Fax)

June 10, 2010

The Honorable Robert Adler
Consumer Product Safety Commission
4300 East West Highway
Suite 817
Bethesda, Maryland 20814-4408

RE: Unblockable Drains Provision of the *Virginia Graeme Baker Pool & Spa Safety Act*

Dear Commissioner Adler,

We are writing to express our extreme dissatisfaction with the recent actions by the Consumer Product Safety Commission (CPSC) to interpret the Virginia Graeme Baker Pool and Spa Act (VGB). Congress passed VGB in response to a number of horrific incidents in which children and adults were entrapped by drains in pools and spas, resulting in serious injuries and deaths. The Act is intended to reduce, and even eliminate, these preventable tragedies.

When Congress passed VGB, the intention was to require layers of protection to prevent pool and spa entrapments and deaths, ensure that the CPSC was adequately responding to the deadly hazards that were present in too many public pools and spas, and send a strong signal that Congress intended the law to be carried out with public safety as the central and overriding priority.

We were sorely disappointed to learn that CPSC has chosen to interpret the law in the most egregious and narrow way possible, eliminating the requirement for pools and spas to be equipped with back-up systems. In addition, the Commission has exempted a number of facilities from the requirements of the law that we believe may result in unnecessary deaths and injuries. We understand that the interpretation that CPSC adopted is the same one that the pool and spa industry endorsed, and **is *not* the interpretation that public interest groups and victims' families had urged the Commission to adopt.**

Specifically, in the past several months, the CPSC has taken the following actions when implementing the VGB Act:

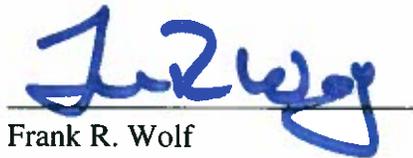
- Removed the “layers of protection” requirement in Section 1404(c)(1)(A)(ii) and voted to allow pools and spas with a single main drain to have no back-up system, as long as that drain is deemed to be “unblockable.” According to the Commission’s vote, a drain is “unblockable” if it is equipped with a drain cover that will prevent entrapment. This vote is an affront to the numerous real life examples brought before Congress and the Commission in which children died because drain covers were broken or missing;
- Removed the “layers of protection” requirement from the eligibility standards in the state swimming pool safety grant program, including the Model Uniform State Pool and Spa Safety Legislation;
- Exempted from the law any public accommodations with 5 or fewer units, even though the number of units in a building has no relationship to whether a pool or spa contains a deadly hazard;

The swimming season is upon us. We are writing to you to urge you in the strongest possible way to reverse these rulings. Public health demands the highest levels of protection to prevent drowning and Congress wholeheartedly agrees.

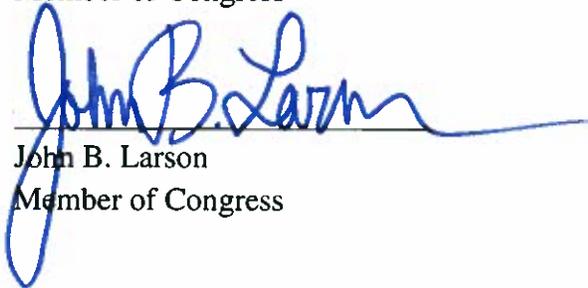
Sincerely,



Debbie Wasserman Schultz
Member of Congress



Frank R. Wolf
Member of Congress



John B. Larson
Member of Congress

MARK PRYOR

ARKANSAS

COMMITTEES:
ARMED SERVICES

COMMERCE, SCIENCE, AND
TRANSPORTATION

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RULES AND ADMINISTRATION

SELECT COMMITTEE ON ETHICS

255 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2353

500 PRESIDENT CLINTON AVENUE
SUITE 401
LITTLE ROCK, AR 72201
(501) 324-6336
TOLL FREE: (877) 259-9602
<http://pryor.senate.gov>

United States Senate

WASHINGTON, DC 20510

June 10, 2010

The Honorable Inez Tenenbaum, Chairman
The Honorable Thomas Moore, Commissioner
The Honorable Robert Adler, Commissioner
The Honorable Nancy Nord, Commissioner
The Honorable Ann Northup, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioners:

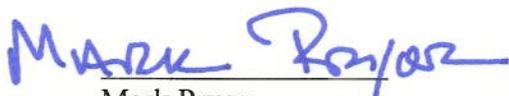
We write to express concern about the Consumer Product Safety Commission's ("the Commission's") interpretation of the Virginia Graeme Baker Pool and Spa Safety Act ("the Act") and, in particular, the Commission's recent decision regarding single main drain pools.

The language of the Act makes clear that pools with only one drain are to be treated differently than pools with multiple drains. Under the Act, a single drain public pool must incorporate both an anti-entrapment drain cover and another layer of protection, such as a suction release system. The reason for the extra layer of protection in single drain pools is simple: these pools pose more of a danger to children than pools with multiple drains because when blocked, the force of the suction in single drain pools is stronger.

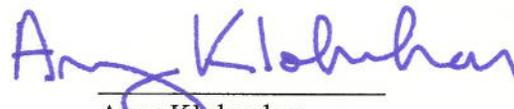
Notwithstanding the dangers inherent in single drain pools, the Commission recently voted to allow single drain pools to avoid the statutory requirement for extra layers of protection if the single drain was covered with an unblockable anti-entrapment drain cover. This decision runs counter to both the spirit and letter of the Act and fails to take into account the nature of entrapment-related accidents and deaths. In single drain pools, no drain cover – no matter how large or unblockable – can protect a child from entrapment if the drain cover is improperly installed or inadvertently removed. It is for this reason that Congress required extra layers of protection for public pools with only a single main drain and why we think the Commission's current decision runs counter to that goal.

We urge you to reconsider this decision. Thank you for your consideration.

Sincerely,



Mark Pryor
United States Senator



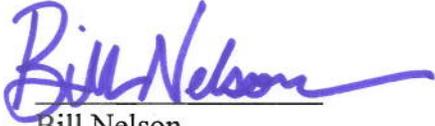
Amy Klobuchar
United States Senator



Richard Durbin
United States Senator



Chris Dodd
United States Senator



Bill Nelson
United States Senator

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 5, 2010

The Honorable Inez Tenenbaum, Chairman
The Honorable Thomas Moore, Commissioner
The Honorable Robert Adler, Commissioner
The Honorable Nancy Nord, Commissioner
The Honorable Ann Northup, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioners:

I am writing to urge the Commission to reexamine without delay the manner in which it has implemented the Virginia Graeme Baker Pool and Spa Safety Act (the VGB Act). The VGB Act was intended to protect the public from the danger of pool and spa drownings and entrapments. The Commission's actions to date have not met this goal and, if not reexamined, will leave the public exposed to the threat of serious injury or death.

The VGB Act has two requirements. First, it requires public pools and spas to install an anti-entrapment drain cover. Second, it requires public pools and spas with single main drains to take additional secondary measures to prevent drain entrapments unless they are equipped with an "unblockable drain."

On April 27, 2010, the Commission published a final interpretative rule regarding the term "unblockable drain" that effectively eliminates the requirement that a public pool or spa with a single main drain be equipped with a secondary anti-entrapment device. The Commission reached this result by interpreting an "unblockable drain" to mean any drain fitted with the anti-entrapment drain cover required by the VGB Act that is of an unblockable size. Reading the statute in this way creates an exception so broad that compliance with the Act's drain cover requirement through installation of an unblockable sized drain cover removes single main drain public pools and spas from the reach of the secondary anti-entrapment device requirements, making the secondary requirements superfluous. Contrary to the Commission's interpretation,

Congress specifically enumerated two requirements for public pools and spas with single main drains because it intended these facilities to be equipped with both a compliant drain cover and a secondary anti-entrapment device.

The apparent rationale for the Commission's interpretation is that a drain fitted with a compliant unblockable sized drain cover is safe. There is new evidence that calls this rationale into question.

I have learned that the American National Standards Institute (ANSI) is close to completing an investigation of the testing procedures employed by IAPMO R&T Laboratory to certify drain covers as compliant with ASME/ANSI A112.19.8, which is the standard required by the VGB Act. Among the drain covers tested as part of the ANSI investigation is one that is marketed as "unblockable." A confidential copy of a final report that will be submitted to an ANSI committee overseeing the investigation concludes that the drain covers "allowed for public use due to the original test results could result in serious injuries and or death." The report also concludes that the testing by IAPMO R&T was flawed in five major ways and that the flaws resulted from a lack of clear requirements in the standard itself regarding certain testing procedures. I have included a copy of that final report for your review.

This investigation by ANSI shows that installing drain covers certified as meeting the Act's standard can fail to ensure safety and that a drain cover on its own may not provide an adequate level of protection against drain entrapment.

I appreciate that the Commission has undertaken its own review of certain drain covers that have been marketed as compliant with the standard in the VGB Act so that it can ensure that any products presenting a safety risk are removed from the market as soon as possible. However, as the ANSI report makes clear, there remains a threat of serious injury or death.

I urge the Commission to take swift action on this issue in light of this new evidence, beginning with revisiting its interpretation of the term "unblockable drain." In addition, I ask the Commission to develop a plan with the relevant manufacturers to remove and replace noncompliant drain covers that have been installed in pools across the country. I also ask the Commission to work with all interested stakeholders to make sure that the procedures for testing the drain covers are clear so that no matter who does the testing the results will be accurate and consistent.

Finally, I would like to acknowledge the Commission's decision yesterday to revise its proposed interpretation of the term "public accommodation facility." The broader interpretation adopted yesterday more closely follows Congress' intent that children and adults get the same level of protection against drowning and entrapment hazards regardless of whether they are staying at a small inn or a large hotel with a swimming pool or spa. I believe the Commission's

U.S. Consumer Product Safety Commission
August 5, 2010
Page 3

decision to abandon the size-based proposed interpretation of this term is a step toward implementing the VGB Act in the manner that Congress intended, and I hope you will act quickly to take other steps in this direction.

Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman
Chairman

Attachment

From: Wolfson, Scott
Sent: Friday, September 16, 2011 10:59 AM
To: Stevenson, Todd; Little, Barbara
Subject: FW: unblockable language

Todd and Barbara,

The following public comment, which is intended for the Commissioners, was submitted to me this morning.

From: Harry Newhard [<mailto:newhard@firstadvisers.net>]
Sent: Friday, September 16, 2011 9:53 AM
To: Wolfson, Scott
Cc: whitfield@CPSC.ORG; 'Steve Dunn'; ron@drainsafe.com; garyduren@aol.com; newhard@firstadvisere.net
Subject: unblockable language

Unblockable Drain Rule.

Commissioners:

My name is Harry Newhard. I live in St. Louis , Mo. I was born Aug. 19 1930 and attended Hotchkiss School and Brown Univ. After college I was accepted into Naval Aviation, Joined Attack Squadron 36 and flew two tours off the USS Bennington in Korea in 1955. In 1985 I designed the first ant entrapment drain cover and have continued in that endeavor ever since. I presently manufacture the Star 100 [anti entrapment] and the Star 2000 [unblock able]. Both of these covers have been tested by IAPMO and the CPSC and are compliant. Your entire premise for the rule change is based on the fact that pool drain covers can brake and come off, which I agree with. Most are held in place with two screws in the sump and many are made of inferior materials. The Star 2000 is made with polypropylene, has four stainless screws holding it to the sump and four anchors on the perimeter, also made of polypropylene and rated at 2100 lbs each. It would an act of god to remove this cover. Further, the Star2000 has a secondary anti entrapment system built into it. Gravity drainage systems flow at 1,5 ft/s or less. The Star 2000 flows at .8 ft/s, almost half that amount, that is designed into the product, Lastly, The Star 2000 was tested on 1 ½ pipe. There are about 16,000,000 older pools with 1 ½ pipe in existence today. To replumb these pools would cost between \$2000 and \$10,000 each. Billions of dollars of cost to consumers which could be avoided by using the Star 2000 which could be purchased and installed for about \$500. The Star 2000 is SAFE, DURABLE and AFFORDABLE. I plea with you not to make it subject to these unnecessary rules and cost which will cost consumers billions of dollars.

With all due respect,
Harry Newhard

Harry W. Newhard
Worldwide Sports LLC
2 Pebble Creek Road
St. Louis, MO 63124
newhard@firstadvisers.net
www.worldwidesportslc.com
314-692-8001 Office
314-692-8004 Fax



Commercial Pool Systems, Inc.

252 Appalachian Drive Martinez, CA 94553

Voice/Fax: 925-938-7665

E-Mail: Sales@CommercialPoolSystems.com

Contractor's License # 794637

September 19, 2011

Troy Whitfield
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Subject: Virginia Graeme Baker Pool and Safety Act; Unblockable Drain Rule

Dear Troy Whitfield:

I am considered an expert in several areas pertaining to the aquatics industry. In addition to water quality, recreational illnesses and hydraulics is entrapment. I have been involved with entrapment/anti-entrapment hydraulics, education and training for over eleven (11) years. I have been educating the aquatics industry for approximately 10 years to the issues of hydraulics, entrapment and anti-entrapment.

I applaud the CPSC for requiring anti-entrapment suction covers be retested and issuing a recall. I have been espousing for over two (2) years that I anticipated a major recall would occur. The recall was very poorly written and has presented many problems with complying.

Now the CPSC has plans on repealing its definition of an unblockable suction cover fitting and sump. I again applaud the CPSC for acting prudently in reversing its current definition of an unblockable drain. I personally believe your first definition was based upon being uneducated at that time and it was irresponsible toward providing a safe environment in the aquatics industry.

However, your current viewpoint that every single suction outlet will require a secondary device because all covers may become dislodged/loose and/or broken is now going to the extreme.

I understand that the code/law needs to be simplified enough so that all parties are able to understand and comply with the law, and simplifying it allows for easier compliance verification. However, your new definition is not taking into consideration the number of fasteners or the quantity or quality of the construction material.

Examples:

Covers with only two (2) fasteners/screws definitely have the ability of one (1) of them becoming loose and missing allowing for the cover to spin on the remaining fastener/screw revealing the sump and suction pipe.

When the ASME A112.19.8 standard became in effect I reviewed it and found that it was well written and an excellent start. Like all documents/standards, it needed to be a work in progress. One of the items which I found to be deficient was the minimum number of fasteners/screws required.

Covers should have a minimum of four (4) screws.

It is extremely remotely possible that all four fasteners/screws would become loose or missing at the same time. With a minimum of only three(3) fasteners/screws will prevent a cover from rotating and exposing the sump and suction pipe. A cover cannot rotate with two fasteners/screws. The requirement to have a minimum of four fasteners/screws increases the safety factor.

There are several anti-entrapment suction covers manufactured which have a minimum of four (4) fasteners, some even have as many as eight (8).

Again, I definitely agree with the CPSC repealing its definition of unblockable drains. I firmly believe covers which are 24" x 24" and channel drains which measure approximately 3" x 31" are an entrapment hazard. However, I also believe that there are anti-entrapment covers manufactured which are unblockable, such as the Neptune Benson 30" x 30", Lawson Aquatics 18" x 36" or even an existing channel drain which measures 14.5" x 30 ' (feet).

This thirty (30) foot channel drain has only a single suction port underneath it. The existing flow rate is such that its velocity is a fraction of one (1) feet per second (fps). Grates, covers and sumps of this size are unblockable and extremely safe due to its size and very low flow and velocity.

Your new requirement that all single drain suction be equipped with one of five (5) secondary devices based upon the argument that all covers may crack or break is not taking into consideration the quantity of material used to construct the suction cover nor the type or properties of the materials used in construction. The most common materials that have been used to date are:

- ABS Plastic
- Schedule 40 PVC Plastic
- Schedule 80 PVC Plastic
- Schedule 40 CPVC Plastic
- Schedule 80 SPVC Plastic
- Polypropylene
- Fiberglass
- Stainless Steel

I am not a chemistry or plastics expert but covers made of ABS plastic should not be allowed to a life span of three (3) years as opposed to the life span of some of these inferior covers with a 5, 7, 8 or even 10 year life span as currently rated.

Polypropylene and all of the above mentioned PVC/CPVC plastics have excellent characteristics/compatibility with chemically treated water that we find in the aquatics environment. These products also have excellent ultra-violet (UV) and heat resistance. These products should not crack or break during their lifespan, provided the lifespan is reasonable. With a reasonable lifespan assigned these covers will exceed their lifespan providing a built in safety factor.

Fiberglass is far superior to all of the plastics and stainless steel is even better. Covers manufactured of these materials should be allowed to have longer life spans. Again, these products will not crack or break during their lifespan.

The following is a partial list of suction covers which are made of superior materials, of sufficient size to prevent entrapment, and have a minimum of four (4) fasteners.

Neptune Benson Aegis AEC3030, (30" x 30")

Lawson Aquatics MLD-FGD-1836 and larger, (18" x 36")

We will be happy to provide specification sheets or other materials regarding these or any other suction covers.

We also recommend the CPSC confer with plastics and other material experts to ascertain the property characteristics and qualities of each type of material currently being used for the manufacture of anti-entrapment suction covers. To avoid biased opinions we recommend that these experts not be employed with any aquatics industry manufacturer.

Please reconsider your new proposed requirement that all single drain suction ports require a secondary device.

Again, don't get me wrong, I am very much a proponent & believe very firmly in layers of protection and constantly promote their use. However, this new proposed requirement is going to cost a lot of safe facilities to expend unnecessary funds.

Sincerely,

Steve Dunn
Vice-President

CC: Scott Wolfson

From: Whitfield, Troy
Sent: Tuesday, September 20, 2011 10:49 AM
To: Little, Barbara; Stevenson, Todd
Subject: FW: Equal to or Better Than Classification

Importance: High

The Bonnie Snow communication regarding unblockable.

Troy

From: Bonnie & Teri Snow [<mailto:beesafesystems@gmail.com>]
Sent: Wednesday, September 14, 2011 4:39 PM
To: Whitfield, Troy
Subject: Equal to or Better Than Classification

Troy,

You know that we designed the BeeSafe System to be the best, safest solution for all of the entrapment hazards in swimming pools. We even attempt to eliminate the problem of covers coming off by using lock tite on the stainless steel screws to eliminate vibration loosening the screws of the lid. The CPSC panel only saw our product and while not unanimous their vote favored allowing our product as a stand alone solution. If the issue now is the possibility of the cover coming off then I have a better solution than adding a back-up. This would be to use the Mr. Sticky Industrial Adhesive (the adhesive that makes our product a permanent installation for the body of the product) on the lid as well in the final step of our installation. I can send specifications for the product to justify this making our product free from the hazard of broken or missing covers in that it is designed for repair of submarines, used as a permanent strong bond on pvc, and that it has a long lifetime. We can get the adhesive to every customer who has purchased our product and have them secure the lid permanently before the time required in your new interpretation of unblockable. What we want and what is appropriate is to classify our BeeSafe Systems as equal to or better than the alternative solutions. What would it take and to whom do I need to contact to have our product considered as equal to or better than dual drains? The separation across our product is equal or better than the separation of dual drains. Dual drains could be blocked by two children attempting to race to see who can cover each of the drains, but BeeSafe cannot be blocked even if several children sit on it together. The tubes have the unique feature of emptying when covered and suction is broken faster than the detection of a back-up device. With this feature, our products are equal to or better than the back-up systems as well.

We have had several sales to customers who were very dissatisfied with a breaker system. One that took theirs out and replaced with the BeeSafe System told me that the breaker had to be turned off daily for maintenance, false triggered many times during the night which resulted in no chemical mixing, and then in the fall when the drain was completely clogged with leaves, the system failed to turn off the flow. It seems prudent to consider that entrapment isn't the only issue that CPSC should consider. If dependence on a breaker can and often does false trigger and leave a pool without adequate chemical mixing then other water borne disease will increase. It might be worthwhile to do some monitoring in some of the health districts to collect data on the number of bad samples taken with specific information

on the type of VGB compliant product used. When I was working for the Utah County Health Department this was the reasoning for not wanting back up systems on the pools. Once they became popular we saw a dramatic increase in pool samples that had too high a bacterial count and detection of e-coli.

Our main reason for getting into this was to save lives. Our company is barely surviving but we had hopes of possibly breaking even or making a small profit with our second model that is now in testing. It is being molded by Custom Molded Products. They are also willing to help us with sales to the distributors. CMP is now concerned that there is no market for a product that costs more than a few dollars to produce. The customers who have been seeking an unblockable drain are those who have pools that cannot easily be remodeled with dual drains and that recognize the downfall of the secondary back-up systems. BeeSafe is more expensive, but a safer alternative and we lose our niche in the market if a back up is required.

Most of our sales have been to community pools, especially in Illinois, where they have no sump, or have aluminum lined pools, and also large pools that need the high flow rate that none of the smaller products have been able to reach. Many chose our system because they could not afford the expensive remodel that would be required for drain line as well as the additional modification of the drain for a dual system. The community pools are where most children learn to swim and with the problems of increased water borne diseases with the secondary devices we may lose many of these facilities. Some of the districts have based their decision on what unblockable product to use simply on the cost. Requiring them now to add a less than adequate back-up system will result in many of these facilities shutting down their pools. Please help us to get our information out to the right people and let us know the procedure for getting our product classified as "Equal to or Better Than" so we can continue to produce the best solution available in the pool industry. If necessary we would come with our products to demonstrate that our products should be classified this way as they are much more than just unblockable.

Bonnie

--

Bonnie Snow, Owner/CEO
BeeSafe Systems

795 W. Center St. #2
Provo, UT 84601

801-375-6881 Phone
801-691-5761 Fax
888-306-0121 Toll Free

beesafesystems@gmail.com
www.beesafesystems.com



September 20, 2011

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814-4408

Dear CPSC Secretary:

On behalf of the Abbey's Hope Charitable Foundation (hereinafter "Abbey's Hope"), we are writing to strongly urge the Consumer Product Safety Commission (hereinafter "CPSC") to revoke its previous interpretation of the term "unblockable drain" as used in the *Virginia Graeme Baker Pool & Spa Safety Act* (VGB Act). Abbey's Hope, at the time of the original interpretation, respectfully disagreed with the CPSC's contention that an otherwise dangerous swimming pool or spa with a single main drain can be made "unblockable" by the simple installation of a drain cover that meets certain larger dimensions and then not be required to use a secondary entrapment prevention device. We understand that the full Commission will soon be voting on whether to revoke its previous interpretation. In our view, this is a very important vote. As you know, our 6 year old daughter died as a result of an evisceration on a drain that had lost its cover. We believe that if that wading pool was equipped with a secondary safety system her injuries would have been much less severe which, in turn, may have saved her life.

I. "Unblockable Drain" Not "Unblockable Drain Cover" Triggers Additional Layer of Protection Exemption

According to the VGB Act, Section 1404(c)(1)(A), public pools and spas in the U.S. must be equipped with both an anti-entrapment drain cover and another layer of anti-entrapment protection unless the pool or spa has an "unblockable drain". Significantly, "unblockable drain" is defined in the Act as "a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard" (emphasis added). In other words, if a drain, as opposed to a drain cover, is of a certain size and possesses characteristics that make entrapment impossible, then the second layer of protection is not needed.

Abbey's Hope believes that the CPSC was misguided in its original interpretation of the Act by erroneously allowing a drain coupled with a drain cover of specific larger dimensions to be considered an "unblockable drain". A single dangerous drain outlet cannot be made fully safe by only using an anti-entrapment drain cover. The Act, in our view and by its plain language, does not allow for an exemption to the requirement for a second layer of protection (also referred to by the Commission staff as "secondary anti-entrapment systems") simply by using an "unblockable drain cover" of certain larger dimensions over an otherwise hazardous single drain outlet. Safety demands and the Act require that the all-important second layer of anti-entrapment protection also be used.



II. The Original CPSC Interpretation Allows for a Dangerous Scenario

Continuing to allow a so called “unblockable drain cover” to trigger an exemption of the additional layer of protection leads to a significant entrapment risk should that drain cover come off (as they often do and **did** in our case resulting in our daughter’s death). In fact, the staff mentioned this very possibility and the accompanying risk it poses in its earlier technical guidance when the Commission was deciding how to interpret the “unblockable drain” language of Section 1404(c)(1)(A) . As Abbey’s parents, we know all too well that the risk of a drain cover coming off can become reality and such a situation creates a serious threat to swimmers and bathers especially when there is no back-up secondary system. If the Commission interpretation is allowed to stand it would continue to thwart the intent of the law. In the end, the law should have been interpreted so as to require an additional layer of protection if the single main drain itself is not unblockable.

Abbey’s Hope is extremely appreciative of the CPSC’s work to enforce the VGB Act and educate the public about its requirements. Much of that work we have done in partnership. We hope, however, that the full Commission will reconsider its interpretation of unblockable drains. The VGB Act was carefully crafted so as to best protect swimmers, especially children, from suction entrapment. The Act should be implemented and the marketplace policed in a manner consistent with that goal. We hope that the CPSC would revise its technical guidance to ensure that an “unblockable drain cover” is no substitute for an “unblockable drain”.

Sincerely,

Scott F. Taylor
Founder & Chairman

Katey P. Taylor
Founder & President

About Abbey’s Hope Charitable Foundation

Abbey’s Hope Foundation was created as a tribute to 6-year-old Abigail Taylor of Edina, Minn., who was disemboweled in a wading pool on June 29th, 2007. After a triple organ transplant and numerous surgeries, Abbey passed away on March 20, 2008. Six year-old Abbey Taylor’s hope was that no child should ever suffer like she did as the result of an improperly maintained pool. In her name, the Foundation works tirelessly for a world with safer pools by providing education and advocating for comprehensive safety standards for all pools. For more information, please visit www.abbeyshope.org.



September 20, 2011

Mr. Troy Whitfield
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Mr. Whitfield:

RE: Revocation of the Interpretative Rule “Unblockable Drain”

The National Swimming Pool Foundation[®] (NSPF[®]), founded in 1965, is a 501(c)(3) non-profit organization dedicated to improving public health worldwide by attracting more people to safe aquatic environments and encouraging healthier living through aquatic education and research. NSPF is the leading research funder and educator for pool and spa professionals who service and operate public and private pools and spas and for public health officials who are responsible for pool safety. This research is disseminated via the World Aquatic Health Conference, which NSPF hosts, and the International Journal of Aquatic Research & Education, which NSPF publishes in partnership with Human Kinetics.

The Foundation works toward its educational mission with leading training programs like Certified Pool/Spa Operator[®] certification training, Certified Pool/Spa Inspector online training, and the Pool & Spa Safety Act online training developed under contract with the CPSC. The Foundation has certified over 300,000 pool operators, managers, and health officials since 1965. In 2010 alone, over 25,000 people were trained.

Please do not revoke CPSC’s interpretative rule on “unblockable drain” as suggested in 16CFR Part 1450. This position is justified based on three arguments:

1. Since the Pool & Spa Safety Act (P&SSA) was enacted, there have been no U.S. entrapment fatalities and no serious injuries to justify implementing a costly new requirement.
2. The unintended consequences of revoking this rule may increase the risk of drowning, thus conflicting with the intent of the law.
3. This change will create confusion in the market with no net benefit.

These justifications are further clarified below.

1. **Lack of Scientific Support to Implement**

There have been no U.S. entrapment fatalities or serious injuries since the Pool & Spa Safety Act was enacted to justify implementing a costly new requirement. As a result, there is no scientific evidence to justify adding another level of protection when compliant unblockable drain covers have been used.

2. **Unintended Consequences May Increase Drowning Risk**

The unintended consequences of this change may increase the risk of drowning, thus conflicting with the intent of the P&SSA. The nation has suffered the most severe economic recession since the Great Depression. Though justified, the Pool & Spa Safety Act and the Americans with Disabilities Act have placed an additional burden on aquatic facilities during a financially vulnerable time. In addition, the CPSC issued a recall prior to the 2011 swim season that resulted in new resource challenges for facilities to comply with the P&SSA.

Changing the P&SSA interpretation to require an additional level of protection for pools protected with compliant “unblockable drains” - when there are no failures that resulted in serious morbidity or mortality - places another financial burden on aquatic facilities. In contrast, this new requirement will provide a financial benefit to “safety equipment manufacturers” and “pool service/construction” companies. However, that benefit is at the expense of the aquatic facilities, making them more vulnerable to closure and thus shrinking the markets for manufacturers over time.

The National Drowning Prevention Alliance reported that for the period May 1, 2011, through August 26, 2011, a total of 1,592 drownings were noted by local media outlets. Public swimming pools play a key role in helping the general population learn to swim and for lifeguards to become trained and certified. Increasing arbitrary costs during difficult financial times has resulted in pool closures. Tragically, closures are more likely in economically-disadvantaged regions where drowning is a greater risk. Pool closures reduce the opportunity for many people to learn to swim, potentially increasing the risk of drowning. Thus arbitrary rule changes that impart cost should be avoided.

3. **Confusion with No Net Benefit**

The CPSC has funded several millions of dollars with contractors to create and disseminate educational materials to consumers, industry, and health officials. Changing the interpretation after all training contracts have ended will create confusion. Additional confusion may occur since there have been no serious injuries or deaths, suggesting that the proposed rule change would be ill-justified.

This rule change and resulting pool closures provides another drawback that is in direct conflict with the commitments of the President of the United States and both Houses of Congress. Our representatives are in debate on how to stimulate the economy to create jobs. It appears to be a direct conflict of the wishes of our elected officials to implement a rule change with no net benefit that may increase drowning risk AND may increase unemployment.

NSPF respectfully asks that the CPSC reject the revocation of this interpretive rule until scientific evidence justifies the change and can demonstrate the change will not increase drowning risk.

Respectfully,



Thomas M. Lachocki, Ph.D.
Chief Executive Officer
National Swimming Pool Foundation
4775 Granby Circle
Colorado Springs, Co 80919-3131
719-540-9119 (Phone)
719-540-2787 (FAX)
tom.lachocki@nspf.org

cc: U.S. Consumer Product Safety Commission
Cheryl Falvey, General Counsel
Ken Hinson, Executive Director
Inez Tenenbaum, Chairman
Robert Alder, Commissioner
Thomas Moore, Commissioner
Nancy Nord, Commissioner
Anne Northup, Commissioner

The Honorable Doug Lamborn, Colorado 5th Congressional District

From: [Sperling, Judith](#)
To: [Whitfield, Troy](#); [Falvey, Cheryl](#); [Hinson, Kenneth](#); eschwartz@cpsc.gov; ralder@cpsc.gov; [Taylor, Linda](#); [Moore, Autumn](#); fellin@cpsc.gov
Subject: Revoking Interpretation of unblockable drain pursuant to VGBA
Date: Tuesday, September 20, 2011 8:29:28 PM

I just heard that this will be up for consideration tomorrow. Changing this interpretation would in effect require all pools with unblockable drains and compliant covers to also get a secondary anti-entrapment system. This is a HUGE mistake. Secondary systems do not provide any additional safety and it is a colossal waste of money. Is the CPSC or its board getting some benefit from the industry that makes these devices? Somebody is going to be making a huge amount of money out of this while unnecessarily inconveniencing many swimming pool operators and their publics.

The launch of the original requirements under VGBA was a daunting challenge, which caused the closure of many facilities while they struggled to find and fund the appropriate covers to make their pools compliant. Still after nearly 4 years, there are many operators who haven't even heard of VGB. If you make this decision, we will all be back at square one and the same struggles to find the funds or shortage of equipment will happen again. As you should realize there are a lot of pools in the country and we still haven't gotten covers on every drain yet. Why don't we work on getting that done before we then require these unnecessary expenditures? Regulation needs to be reasonable not onerous and calculated towards achieving significant benefits. Have any lives been lost or injured by a blockable drain that had a compliant cover? I doubt it! Please be reasonable and vote to keep your original interpretation.

Judith Sperling
Asst. Director-UCLA Recreation
Past President, Southern California Public Pool Operators Association
California Park & Recreation Society Legislative Committee

From: Hinson, Kenneth
Sent: Wednesday, September 21, 2011 11:38 AM
To: Stevenson, Todd
Cc: Falvey, Cheryl
Subject: Fw: CPSC Unblockable Drain Definition

For distribution / the public record. Thanks.

From: Vellis, Gus [<mailto:Gus.Vellis@ssf.net>]
Sent: Wednesday, September 21, 2011 11:36 AM
To: Hinson, Kenneth
Subject: CPSC Unblockable Drain Definition

Ken Hinson, Executive Director
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Sir:

This comment is in response to the proposed revision of what constitutes an "unblockable drain" pursuant to the Virginia Graeme Baker Pool and Spa Safety Act.

I have over 30 years in the aquatics profession in operations (as a supervisor) and maintenance. As you are aware, research shows that facilities such as mine with two main drains at least 3 feet apart have never had an issue with suction entrapment. Yet we spent thousands of dollars to comply with the law by installing anti-entrapment drain covers. Under your agency's oversight, these drain covers turned out to be incorrectly tested and were recalled. It was later determined that I didn't have to have my drain covers replaced do to my pool's configuration.

The above action is an indication that the CPSC is aware of how poorly the original law was written and that our original compliance with the law did not make our pools safer. Adding an additional requirement requiring a secondary anti-entrapment system will also not make pools like mine any safer. This additional requirement appears to be designed to support a product and not driven by what actually would make a facility and the swimmers that use them safer.

Thanks you for your consideration.

Costas Vellis
Recreation and Community Services Supervisor
City of South San Francisco
PO Box 711
South San Francisco, CA 94083



**PARKS AND RECREATION DEPARTMENT
WACKFORD COMMUNITY & AQUATIC COMPLEX**

9014 Bruceville Road
Elk Grove, CA 95758

(916) 405-5600
Fax (916) 405-5659
www.yourcsd.com

September 21, 2011

Dear Consumer Product Safety Commission Commissioners:

After reading your proposal to interpret what constitutes an "unblockable drain cover" I am thoroughly upset and floored that you are proposing to incorporate additional equipment, costs, and staff time to include equipment that is pointless and a waste of money. After spending nearly \$12,000 to install approved Virginia Graeme Baker Act (VGB) drain covers in 2008 and then purchasing additional drain covers after the recall in 2011 the Cosumnes Community Services District (CSD) in Elk Grove, California has invested nearly \$25,000 in equipment, services, staff time, and down time. All in an effort to eliminate suction entrapment that is predominantly a problem in small pools and spas. The Cosumnes CSD Parks and Recreation Department has certified and trained lifeguards on duty during all hours of operation and therefore would prevent an entrapment from ever happening through vigilance and proactive intervention.

It is clear in reading the CPSC's message that someone is working with manufactures of pool equipment including drain covers, safety release vacuum systems, gravity drains, suction-limit vent systems, drain disablement systems, and all the other EXPENSIVE measures just so that someone can get rich! It is sad that the ones that will be screwed by such a decision are the local communities after their pools are shut down because of the expense to operate when it is just not necessary or makes any sense.

Many pools are still not in compliance with the VGB Act and do not have approved drain covers and operate small pools or spas in local motels, hotels, apartment complexes, homeowner association pools, and many more. Shouldn't this take priority before you decide to take away more money to already hurting industry? Based upon your own research in the *1999-2010 Reported Circulation/Suction Entrapments Associated with Pools, Spas, and Whirlpool Bathtubs, 2011 Report* there were 0, yes, ZERO deaths related to entrapment in 2009 and 2010, both years that pools and spas are compliant with the VGB Act. This statistic proves that what is already in place is enough.

I would hope that as a commissioner you think about what the aquatic industry is really about. We provide an avenue for children and families to recreate in a safe environment. This summer was not about suction entrapments but drowning. The Cosumnes CSD is proactive about the prevention of drowning and does so through training and education to our pool patrons and the responsibility of active supervision. At no time were these patrons at risk of a suction entrapment.

Please, be smart about this. Do not allow companies to dictate what equipment should be used in order to strengthen the "unblockable drain" cover. This idea is ridiculous and tells me and the thousands of pool operators in California who really is the CPSC working to protect, or should I say working to put more money into companies' pockets?!

Respectfully,

Molly John
Pool Manager
Cosumnes CSD Park & Recreation Department

Community Services District
Enriching Community Saving Lives



PARKS AND RECREATION DEPARTMENT
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September 21, 2011

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Please, be smart about this. Do not allow companies to dictate what equipment should be used in order to strengthen the "unblockable drain" cover. This idea is ridiculous and tells me and the thousands of pool operators in California who really is the CPSC working to protect, or should I say working to put more money into companies' pockets?!

Respectfully,

Beth Gegogine
Recreation Coordinator II
Cosumnes CSD Park & Recreation Department

Community Services District
Enriching Community Saving Lives

From: Whitfield, Troy
Sent: Wednesday, September 21, 2011 12:22 PM
To: Little, Barbara; Stevenson, Todd; Levine, Jason; Fong-Swamidoss, Jana; Gougisha, Michael; Howsare, Matt; Duncan, Janell; Kaye, Elliot; Martyak, Joseph; Cardon, Nathan; Mallory, Meredith; Avitabile, Gregg
Cc: Falvey, Cheryl; Hinson, Kenneth; Elder, Jacqueline; Howell, Robert; Ray, DeWane
Subject: FW: Unblockable drains

FYI - another comment...

Troy

From: James.Wheeler@sfgov.org [<mailto:James.Wheeler@sfgov.org>]
Sent: Wednesday, September 21, 2011 12:16 PM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; eschwartz@cpsc.gov; ralder@cpsc.gov; Taylor, Linda; Moore, Autumn; fellin@cpsc.gov
Subject: Unblockable drains

This one really shows who you are looking out for more than the original regulation. You made us install drains, many of which are now being recalled, but not in deep 2 drain pools (since they never needed them to start with). Replacing them all would cost all those manufactures that made millions from our broke public agencies have to give the money back essentially.

I am so sorry for the Baker's loss, but have you a clue about how many entrapments happen in the US each year? not many compared to all the drownings. I would like to "Pool Safely" unfortunately I spent all my money on drain covers, that have been recalled but now don't need to be replaced because we never needed them to start. I should have spent that money on teaching the underserved youth in my community how to swim.

This is just the latest in making vacuum suction device manufacturers rich like the drain manufacturers.

Jim Wheeler
Recreation Services Manager
San Francisco Recreation and Parks Department
501 Stanyan Street
San Francisco, CA 94117
Phone: 415-831-6833
Fax: 415-668-3330



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Elk Grove, CA 95758

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September 21, 2011

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It is clear in reading the CPSC's message that someone is working with manufactures of pool equipment including drain covers, safety release vacuum systems, gravity drains, suction-limit vent systems, drain disablement systems, and all the other EXPENSIVE measures just so that someone can get rich! It is sad that the ones that will be screwed by such a decision are the local communities after their pools are shut down because of the expense to operate when it is just not necessary or makes any sense.

Many pools are still not in compliant with the Virginia Graeme Baker Act and do not have approved drain covers and operate small pools or spas in local motels, hotels, apartment complexes, homeowner association pools, and many more. Shouldn't this take priority before you decide to add more money to already hurting industry that is just being told, "do this", "do that", and "do it now". Shame on you!

I would hope that as a commissioner you think about what the aquatic industry is really about. We provide an avenue for children and families to recreate in a safe environment. This summer was not about suction entrapments but drowning. The Cosumnes CSD is proactive about prevention of drowning and does so through training and education to our pool patrons and the responsibility of active supervision. At no time were these patrons at risk of a suction entrapment.

Please, be smart about this. Do not allow companies to dictate what equipment should be used in order to strengthen the "unblockable drain" cover. This idea is ridiculous and tells me and the thousands of pool operators in California who really is the CPSC working to protect, or should I say working to put more money into companies' pockets?!

Respectfully,

Tom Hellmann, Aquatic Supervisor
Cosumnes CSD Park & Recreation Department
California Park & Recreation Society Aquatic Section President



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September 21, 2011

Mr. Troy Whitfield
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Subject: Virginia Graeme Baker Pool and Safety Act/ Unblockable Drain Interpretation

Dear Mr. Whitfield:

I am a swimming pool contractor in the Sacramento area. I have made good money from the VGB Act the last few years- but it feels like blood money. Right is right and wrong is wrong. The VGB Safety Act has been a mess since its inception but *it has been effective* in the one area it was intended: **zero entrapment deaths since December 20, 2008.**

Why is a law with a perfect record and zero failure rate now being reinterpreted?

How can you make an already safe pool safer?

What's next, will all bathers be required to wear life jackets to ensure their safety? Really, why not? It would definitely decrease the risk of entrapment and would help prevent drowning.

If public pools with unblockable drains are required to have SVRS devices you will inadvertently kill more children than you save. These unwarranted and costly repairs will result in more pool closures (due to financial decisions), less options for children to swim and ultimately more deaths when they go to swim in a river, lake or quarry.

Mr. Whitfield, I stand to make more money for my family if you require backup devices on pools with unblockable drains. It may seem odd that I have taken the time to discourage you about something that will generate us additional revenue- but that's not what I'm about. Unblockable drains are proven safe. Please don't require people to spend money on something unnecessary.

I'm keeping my fingers crossed that the CPSC will do the right thing and leave the VGB law as written.

Sincerely,





Safe Kids USA,

June 9, 2010

The Honorable Robert Adler
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814-4408

RE: Unblockable Drains Provision of the *Virginia Graeme Baker Pool & Spa Safety Act*

Dear Commissioner Adler:

On behalf of Safe Kids USA, a member of Safe Kids Worldwide (hereinafter "Safe Kids"), we are writing in response to your request for comments about the unblockable drains provision of the *Virginia Graeme Baker Pool & Spa Safety Act* (VGB Act). **Safe Kids respectfully disagrees with your contention that a swimming pool or spa with a single main drain can be made "unblockable" by the simple installation of a drain cover that meets certain dimensions, and asks for you to reconsider your vote if given the opportunity.**

I. "Unblockable Drain" Not "Unblockable Drain Cover" Triggers Additional Layer of Protection Exemption

According to the VGB Act, Section 1404(c)(1)(A), public pools and spas in the U.S. must be equipped with both an anti-entrapment drain cover and another layer of anti-entrapment protection unless the pool or spa has an "unblockable drain". Significantly, "unblockable drain" is defined earlier in the Act as "a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard" (emphasis added). In other words, if a drain, as opposed to a drain cover, is of a certain size and possesses characteristics that make entrapment impossible, then the second layer of protection is not needed.

Safe Kids believes that the CPSC was misguided in their reading of the Act by erroneously allowing a drain coupled with a drain cover of specific larger dimensions to be considered an "unblockable drain". A dangerous drain outlet cannot be made fully safe by only using an anti-entrapment drain cover. The Act, in our view and by its plain language, does not allow for an exemption to the requirement for a second layer of protection simply by using an "unblockable drain cover" over an otherwise hazardous single drain outlet. Safety demands and the Act requires that the all-important second layer of anti-entrapment protection also be used.

1301 Pennsylvania Avenue, N.W. Suite 1000 Washington, DC 20004 tel 202-662-0600 fax 202-393-2072

www.safekids.org

II. Significant Entrapment Risk if Additional Layer of Protection is not Installed

Under the current CPSC requirements, the use of the so called “unblockable drain cover” will trigger an exemption of the additional layer of protection. As a result, there will be a significant entrapment risk should that drain cover come off, and we know that they often do. In fact, the CPSC staff mentions this very possibility and the accompanying dangerous risk it poses in its technical guidance. Such a situation would create a serious threat to swimmers and bathers, and would thwart the intent of the law. **The law should be interpreted so as to require an additional layer of protection if the main drain itself is not unblockable.**

Safe Kids is extremely appreciative of the CPSC’s work to enforce the VGB Act, and hopes that you will reconsider your interpretation of unblockable drains. The VGB Act, which bears Graeme’s name, was carefully crafted so as to best protect swimmers, especially children, from suction entrapment. The Act should be implemented and the marketplace policed in a manner consistent with that goal. Safe Kids has often testified to the need for multiple safeguards; in Nancy’s testimony to the Senate Commerce, Science and Transportation Subcommittee on Consumer Affairs, Product Safety and Insurance on May 3, 2006, she said, “each of these layers is meant to provide protection should the prior one fail for any reason. And this is the answer to the danger of entrapment”.

Safe Kids also encourages the CPSC to alert pool and spa safety stakeholders that the agency’s recent decision to allow an “unblockable drain” to be created by the use of a drain cover of a certain size is merely a minimum recommendation. We hope that the CPSC would continue to promote its longstanding message about the need for multiple layers of protection, especially for states considering passing a pool safety law in order to qualify for incentive grant funding.

If the opportunity presents itself, we urge you to change your vote in order to ensure that an “unblockable drain cover” is no substitute for an “unblockable drain”. As always, Safe Kids looks forward to working with you and the CPSC on this and other issues in the future.

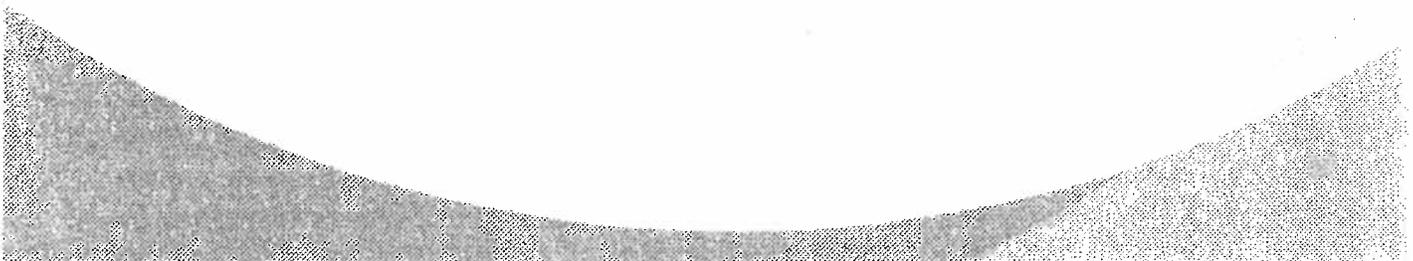
Sincerely,



Tanya Chin Ross
Interim Director of Public Policy



Nancy Baker
Parent Advocate



From: [Hinson, Kenneth](#)
To: [Stevenson, Todd](#)
Subject: Fw: VGB Act
Date: Thursday, September 22, 2011 2:58:57 PM

From: Margaret Resnick [mailto:mresnick@mundeleinparks.org]
Sent: Thursday, September 22, 2011 02:47 PM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; eschwartz@cpsc.gov <eschwartz@cpsc.gov>;
ralder@cpsc.gov <ralder@cpsc.gov>; Taylor, Linda; Moore, Autumn; fellin@cpsc.gov <fellin@cpsc.gov>
Subject: VGB Act

Ladies & Gentleman,

Over the last several years the Federal Government has implemented then modified the requirements of the Virginia Graeme Baker Act. These delays and changes have cost pool operators hundreds of thousands (if not millions) of dollars. At the Mundelein Park & Recreation District we have installed three sets of drain covers on our indoor pool in addition to the new drain covers and changes to the piping at our outdoor aquatic park. Because we are a special district supported by property taxes, this means our residents have paid for these changes.

It appears that this law was enacted before there was enough research completed on the best methods to prevent entrapments. Once enacted, more research identified better options and pool operators were once again mandated to make (and pay for) changes. There must have been additional research or complaints from vendors whose products were not compliant, because another change was mandated.

In the summer of 2010 we had over 72,000 visitors at our water park. Adding in the visitors to our indoor pool, we meet the aquatic recreation needs of nearly 100,000 visitors each year. If there is another unfunded mandate that requires us to modify our pools, we will not be able to afford to continue operating.

We feel the swimming public is safe with the measures currently in place. Please do not make any additional changes to this law.

Margaret Resnick
Director of Parks & Recreation
847-388-5460
www.mundeleinparks.org



From: [Hinson, Kenneth](mailto:Hinson_Kenneth)
To: [Stevenson, Todd](mailto:Stevenson_Todd)
Subject: Fw: CPSC: Do Not Revoke the Interpretative Rule "Unblockable Drain"
Date: Thursday, September 22, 2011 9:36:14 PM

From: Melon Dash [<mailto:melon@conquerfear.com>]
Sent: Thursday, September 22, 2011 08:55 PM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark
Cc: Vern Buchanan <ron.turner@mail.house.gov>; Senator Bill Nelson <bill@billnelson.senate.gov>
Subject: CPSC: Do Not Revoke the Interpretative Rule "Unblockable Drain"

Dear Mr. Whitfield and CPSC,

As a seasoned aquatics professional and industry contributor who is committed to the eradication of drowning worldwide, I ask you to follow the recommendations of the organization, National Swimming Pool Foundation, one that truly operates in the public's best interest. Their opinions are consistently well-considered and sound.

They have presented their reasons for keeping the P&SSA intact as agreed upon in the first place. They are correct in my view. Making the proposed change is unnecessary and could be dangerous, costing more lives on account of confusion in the pool marketplace, and closing of pools where people learn to swim.

It makes the most sense to leave the law intact.

Thank you.

Melon (Mary Ellen) Dash

The *End of Drowning* World Instructors' Conference, 2012
President, Miracle Swimming Institute, LLC
Executive Director, 21st Century Swimming Lessons, Inc.
941-921-6420
melon@conquerfear.com

www.conquerfear.com
The Learn To Swim Radio Show
Book: Conquer Your Fear of Water
DVD: The Miracle Swimmer
Sarasota, FL 34239



2111 Eisenhower Avenue
Alexandria VA 22314-4695

703.838.0083
703.549.0493 fax
www.TheAPSP.org



September 22, 2011

Troy Whitfield
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408.

Re: Revocation of Interpretive Rule on Unblockable Drains

Dear Mr. Whitfield:

The following is submitted on behalf of the Association of Pool and Spa Professionals (APSP) in response to the Federal Register Notice announcing a vote to potentially repeal the Commission's existing interpretation of an "unblockable drain," which was published in March, 2010. The memorandum from CPSC Staff of September 7, 2011 also indicates that this repeal and revised interpretation would be retroactive.

Since the initial interpretation was published, manufacturers, as well as distributors, builders, installers, service professionals and owners and operators of public pools made substantial investments and incurred substantial expense in the development and installation of products that were in full compliance with this "unblockable drain" interpretation. To our knowledge, there has not been a single entrapment incident or injury in any pool or spa that has complied in this manner. Nor are we aware of any instances in which a Pool & Spa Safety Act (P&SSA) compliant unblockable cover has broken or been missing during operation.

Concerns now exist that the Commission continues to make interpretative changes and this causes confusion amongst the industry, pool owners and operators. The Separate Statements of Commissioners Adler and Northup in support of the original interpretation also recognized the cardinal principal of entrapment avoidance: that a pool or spa should never be operated when a cover is broken or missing. APSP believes that adherence to this principal has and will continue to provide the most complete and effective means to prevent all forms of entrapment. We respectfully urge the Commissioners to keep this fundamental principle in mind as they consider the issue before them.

As the Commission has often stated, the most effective way to eliminate the risk of entrapment is the elimination of existing drains and construction of new pools and spas without submerged suction. Unfortunately, most states do not permit either approach in public facilities. We would welcome the assistance of the Commission in attempting to convince all states to embrace this option.

APSP continues to support the P&SSA and educate our members on the importance of pool and spa safety. We welcome the opportunity to continue working with the Commission on pool and spa matters.

Respectfully,



Carvin DiGiovanni

Senior Director, Technical and Standards

Cc. Inez Tenenbaum, Chairman
Robert Adler, Commissioner
Thomas Moore, Commissioner
Nancy Nord, Commissioner
Anne Northup, Commissioner
Cheryl Falvey, General Counsel
Ken Hinson, Executive Director

From: [Hinson, Kenneth](#)
To: [Stevenson, Todd](#)
Subject: Fw: Please do not revoke the current interpretation on unblockable drains
Date: Thursday, September 22, 2011 9:36:49 PM

From: Earl Jones [mailto:earl@texaspoolschool.com]
Sent: Thursday, September 22, 2011 09:35 PM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark
Subject: Please do not revoke the current interpretation on unblockable drains

To All concerned

I support the present stand on main drains for the same reasons as the NSPF but I also have my own reasons that I would like to express.

I sincerely hope you do not change your position I'm first a parent with two children who appreciates the current law, because two times in my life I have been involved with main drain suction, once I was a victim in 1978 when a dive went wrong and the breath was knocked out of me and I sank to the bottom but my coach could not get me off the drain cover until the pump was shut off. The second was at Bally's President First Lady in 1992 I was the manager and a patron became exhausted and in going down was sucked to the main drain, fortunately I knew what to do and turned off the system as another employee jumped in and we resuscitated her. These two events are a large part of why I became a NSPF CPO Instructor and opened the first Trade School in Houston, Texas for pool cleaners and Commercial Pool Operators. I'm currently working with 3 real estate companies with inspections and I show the video of Pool Safety "The Virginia Graeme Baker Pool and Spa Safety Act as part of the disclosure. New home buyers that have children seem to greatly appreciate. If you change your position it will be a great step backwards in pool safety.

PS I just recently started not being able to see the drain marks on my back left in 1978 fortunity I have the chance to pass the message on.

Earl E. Jones
NSPF Instructor
832-573-8279
earl@texaspoolschool.com
www.texaspoolschool.com

From: [Hinson, Kenneth](mailto:Hinson_Kenneth)
To: [Stevenson, Todd](mailto:Stevenson_Todd)
Subject: Fw: Swimming Pool & Spa entrapment hazards PERMANENTLY ELIMINATED through physics!
Date: Friday, September 23, 2011 12:34:21 AM

From: paolob@aquatictechnology.com [mailto:paolob@aquatictechnology.com]
Sent: Thursday, September 22, 2011 11:49 PM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark
Cc: alex.antoniou@nspf.org <alex.antoniou@nspf.org>; tom.lachocki@nspf.org <tom.lachocki@nspf.org>
Subject: Swimming Pool & Spa entrapment hazards PERMANENTLY ELIMINATED through physics!

Ladies & Gentlemen of the CPSC:

For too long, product safety has been about mechanical solutions, the installation of yet another mechanical safety device that can fail. Rarely, if ever, has the marketplace been provided an **absolutely infallible level of safety**... there exists such a method for making swimming pool suction points and drains inherently safe - WITHOUT INSTALLING A SINGLE PRODUCT OR DEVICE.

It is based upon physics... which like gravity, is something that is always on. Humans cannot defeat it. It cannot be turned off. It is not effected by power outages or adjustment screws.

The solution is to merely mandate lower line velocities for swimming pool & spa suction lines. The resulting level of suction can be reduced to the point wherein there is not sufficient vacuum to cause a suction entrapment incident. Period.

Why hasn't this been discussed before??? Because it is too simple!

Swimming pool builders would be required to install larger diameter pipes, be forced to perform and submit mechanical & hydraulic calculations. The leaders of the swimming pool industry have been advocating larger pipes and slower line velocities for decades. Trade associations who must cater to the lowest common denominator in their membership are not the leaders or pioneers of the industry. They are just the loudest mouthpiece with the fattest wallet (war chest).

This is not a implausible solution, as some life safety systems already require the submittal of hydraulic & mechanical calculations to planning & building departments prior to construction (e.g. fire sprinkler systems).

I encourage the CPSC to re-evaluate their standards and stance on swimming pool & spa suction entrapment. Mechanical devices are not the solution - mandating compliance with low line velocities is a simple, cost effective and energy savings remedy!

For further background information, you can review articles that I authored on this topic back in 2008:

<http://watershapes.blogspot.com/2008/09/graeme-baker-pool-spa-safety-act.html>
<http://watershapes.blogspot.com/2008/05/hydraulics.html>

Respectfully submitted,

Paolo Benedetti, S.W.D.

Principal
Aquatic Technology
www.aquatictechnology.com



Neptune-Benson™
Discover the World of Aquatopia.

September 22, 2011

Mr. Troy Whitfield
Lead Compliance Officer
Office of Compliance
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD. 20814-4408

RE: Unblockable Drain Rule

Dear Mr. Whitfield,

We are writing this letter to state the position of Neptune-Benson, LLC regarding the revocation of Federal Register notice of April, 27th on the unblockable drain cover interpretation.

When the VGB Act went into law, suction outlet fittings were required to meet the requirements of ASME A112.19.8a-2007. Considering the hundreds of thousands of existing pools that would require retrofit, Neptune-Benson chose to design, certify and market an extremely durable and versatile cover in one model, the 30"x30" fiberglass AEGIS Shield.

Many public pools are decades old and are equipped with a vertically integrated pipe and a grate over it to serve as the main drain. Seeing the potential of the AEGIS to provide a safe and cost effective means to help a facility comply with the VGB Act, we had NSF certify it for use in "no sump applications" up to a 12" diameter pipe.

The AEGIS was qualified using a vacuum of 30" of mercury, which equates to 13,500 lbs. After accelerated UV testing per code, samples are required to retain at least 70% of the tensile strength and Izod impact toughness tests compared to the virgin material. The AEGIS retained 100% of tensile strength and 91.8% of Izod impact toughness well beyond the requirements. In addition, we use (4) 1/4" dia. T316 fasteners, each rated for over 2000 lbs of pull strength. The fasteners are fully recessed mandating special tools for removal.

Neptune-Benson's Anti-Entrapment Shield (AEGIS) has been tested and approved by the National Sanitation Foundation (NSF) per the requirements of ASME A112.19.8a-2007. It should also be noted that there has not been a single filed report of fastener separation or Aegis breakage for any reason.

The CPSC is voting to revise the interpretation where pools with a single drain, regardless of size can not be made unblockable by installing an unblockable cover over it. The recommendation is to add an additional layer of protection in the event that an unblockable cover is missing or broken.

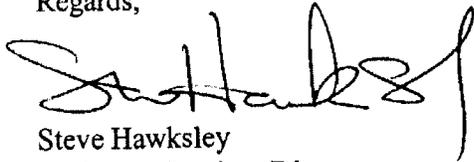
We certainly understand the level of precaution surrounding this issue, but the extent to which we must be affected by all the "what ifs" can be unnecessarily overbearing. Serious consideration should be given to design, material of construction, installation practice and final NSF qualification of the drain cover. In addition, based on the term of performance that can serve as a frame of reference, we urge the parties involved to be cognizant of the results.

No matter what angle that anyone or any agency is evaluating the VGB Act and related products and services, we are all seeking the common goal of a favorable safety result. Neptune-Benson is pleased to have engineered, manufactured and delivered the Aegis Shield to the aquatics industry which has successfully achieved this goal 100% of the time.

We welcome any questions or comments you may have for us. If this would help the cause, we can further expand on the benefits of the AEGIS shield. We have comments and opinions from the perspective of other industry professionals.

Thank you for your attention and cooperation regarding this matter.

Regards,

A handwritten signature in black ink, appearing to read "Steve Hawksley". The signature is stylized and cursive.

Steve Hawksley

Technical Services Director

Shawksley@neptunebenson.com

From: Steve Hawksley
To: Whitfield, Troy
Cc: "Barry Gertz"
Subject: RE: FEDERAL REGISTER-UNBLOCKABLE MAIN DRAIN COVERS
Date: Thursday, September 22, 2011 3:54:02 PM
Attachments: CPSC Unblockable Ltr.pdf

Troy, please see attached for our position letter. Let us know if you have any comments our questions.

Regards,

Steven Hawksley - Technical Service Director

(401) 821-2200 x221 | (800) 832-8002 | (401) 480-9986
www.neptunebenson.com | www.defenderfilter.com



From: Whitfield, Troy [mailto:TWhitfield@cpsc.gov]
Sent: Monday, September 19, 2011 5:27 PM
To: Steve Hawksley
Subject: RE: FEDERAL REGISTER-UNBLOCKABLE MAIN DRAIN COVERS

Steve,

As long as the multiple drains are serving the 'multiple pumps' are appropriately rated for the system flow. If it were possible to run both pumps at the same time, that total flow should be considered when assessing cover ratings and each cover in a dual drain system should be rated at 100% flow.

Troy

From: Steve Hawksley [mailto:shawksley@neptunebenson.com]
Sent: Monday, September 19, 2011 1:00 PM
To: Whitfield, Troy
Subject: RE: FEDERAL REGISTER-UNBLOCKABLE MAIN DRAIN COVERS

Troy thanks. One more clarification. Many pools have a redundant pump system where one is running and the other is a backup. In this instance if we have two main drains and two pumps is this exempt?

Steven Hawksley - Technical Service Director

(401) 821-2200 x221 | (800) 832-8002 | (401) 480-9986
www.neptunebenson.com | www.defenderfilter.com



From: Whitfield, Troy [mailto:TWhitfield@cpsc.gov]
Sent: Monday, September 19, 2011 11:30 AM
To: Steve Hawksley
Subject: RE: FEDERAL REGISTER-UNBLOCKABLE MAIN DRAIN COVERS

Steve,

Pools with multiple main drains (outlets per pump) are not affected. Multiple outlets per pump means two or more outlets serving one pump (or more in some instances where all pumps are sourced from the same 'multiple outlets' in the pool). Multiple outlets in a pool where each outlet serves a

single pump (single outlets) would be affected, and a secondary system would be required if the cover/sump are of a blockable size.

Troy Whitfield
Mechanical Team Lead
Regulatory Enforcement
U.S. Consumer Product Safety Commission
(301) 504-7548 (tel)
(301) 504-0359 (fax)

From: Steve Hawksley [mailto:shawksley@neptunebenson.com]
Sent: Thursday, September 15, 2011 1:19 PM
To: Whitfield, Troy
Subject: FEDERAL REGISTER-UNBLOCKABLE MAIN DRAIN COVERS

Troy does the revocation of Federal Register notice on April 27th, 2010 affect pools with multiple main drains?

Steven Hawksley - Technical Service Director

(401) 821-2200 x221 | (800) 832-8002 | (401) 480-9986
www.neptunebenson.com | www.defenderfilter.com

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From: Hugh Atkins [Hugh.Atkins@tn.gov]
Sent: Monday, September 19, 2011 3:07 PM
To: Commissioner Nord
Cc: Health, TN
Subject: Re: Fwd: US Commissioner Request for Information Re Pool Regulations

Commissioner Nord,

Your inquiry regarding the Virginia Graeme Baker Pool and Spa Safety Act was forwarded to me for a response.

In Tennessee, we are in the process of revising our public swimming pool rules to, among other things, incorporate provisions of the VGB Act. However, any revision will cover only public pools and will not be retroactive to existing establishments. We notified all pool operators of the requirements of the Act back when it first went into effect. We also check for compliance with the Act when plans for new construction are presented. All public pools in Tennessee fall under the state statute and regulations. I have not heard of any local jurisdictions passing any building codes requiring dual main drains or unblockable drains in private pools.

Tennessee has required dual main drains on public pools since 2000. Again, the requirement was not retroactive, but most public pools in this state have dual main drains.

I do not have information about the number of operators who have installed unblockable covers; therefore, we have no numbers on how many pools with unblockable covers also have secondary backup systems.

I hope this information is helpful.

Hugh Atkins, REHS/RS
Director, Division of General Environmental Health
5th Floor - Cordell Hull Bldg.
425 5th Avenue North
Nashville, TN 37243
(615) 741-7206
Hugh.Atkins@tn.gov

Our Mission -

To promote, protect and improve the health of persons living in, working in, or visiting the State of Tennessee!

From: DeWitt, Justin [Justin.Dewitt@Illinois.gov]
Sent: Wednesday, September 21, 2011 6:29 PM
To: Commissioner Nord
Cc: Culp, David; Mccann, Ken; Mitchell, Joe
Subject: Request for information Re Pool Regulations 9 21 2011

Commissioner Nord,

As I am listed with the CPSC as the primary contact for the State of Illinois, it is unclear why your email was not addressed directly to me such that I could provide a timely response. Given the lateness of this communication, I would appreciate an opportunity to discuss this contemplated shift in interpretation with you at your earliest convenience. Please advise.

Sincerely,

Justin DeWitt, P.E., LEED AP
Chief of General Engineering
Division of Environmental Health
justin.dewitt@illinois.gov
Illinois Department of Public Health
525 West Jefferson Street
Springfield, Illinois 62761
(217)782-5830, Fax (217)785-5897
Visit our website at:
<http://www.idph.state.il.us/envhealth/ehhome.htm>

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From: Ken Pastorick [Ken.Pastorick@LA.GOV]
Sent: Monday, September 19, 2011 3:26 PM
To: Commissioner Nord
Cc: Lisa Faust
Subject: RE: US Commissioner Request for Information Re Pool Regulations

Dear Commissioner Nord,

In regards to your request regarding the enforcement of the Virginia Graeme Baker Pool and Spa Safety Act, the Louisiana Department of Health and Hospitals follows the Consumer Product Safety Commission's 2010 interpretation of the Virginia Graeme Baker Pool and Spa Safety Act. DHH engineers review plans for new public pools and plans for modifications of existing public pools to ensure these pools are VGB compliant. DHH does not have statistics on the use of unblockable drain covers or secondary backup systems in the state of Louisiana.

If we can assist you further, please let us know.

Sincerely,

Ken Pastorick
Public Information Officer
Louisiana Department of Health and Hospitals
Bureau of Media and Communications
628 N. 4th Street
Baton Rouge, LA 70802
Office- 225-342-1881
Cell- 225-588-4651
Cell- 225-335-0235
Fax- 225-342-3738
Ken.Pastorick@la.gov

From: Lisa Faust
Sent: Thursday, September 15, 2011 4:37 PM
To: Ken Pastorick
Subject: FW: US Commissioner Request for Information Re Pool Regulations

Can you track this down?

Lisa

Lisa Faust
Director
Bureau of Media and Communications
Louisiana Department of Health and Hospitals
225.342-7913 office
225.252.3379 mobile
lisa.faust@la.gov

*Pursuant to the Louisiana Health Emergency Powers Act and the Louisiana Public Records Act, this document may contain protected health information which is confidential and is **not** subject to redisclosure by you to any other person or entity as a public record.*

From: Jolie Adams
Sent: Thursday, September 15, 2011 2:59 PM
To: Lisa Faust
Subject: FW: US Commissioner Request for Information Re Pool Regulations

Hi Lisa,

FYI- CPSC is asking for info on Louisiana regulations regarding pool drain covers. I know OPH inspects public pools, so they may be able to help if you decide this is worth your resources.

Regards,

Jolie

From: Jillson, Steve [Steve.Jillson@nebraska.gov]
Sent: Friday, September 16, 2011 12:28 PM
To: Commissioner Nord
Subject: RE: US Commissioner Request for Information Re Pool Regulations

Dear Commissioner Nord (Nancy):

I appreciate your call yesterday inquiring what the state of Nebraska has done in regards to the VGB Act. Please see my responses in red below. If I can be of further assistance please do not hesitate to call or email me.

Steve

To help me determine my approach to this issue I am seeking the following information

- (1) Has your state issued rules or otherwise relied on our 2010 interpretation? Are you aware of any local communities that may have passed ordinances or otherwise may have relied on this interpretation?

Yes, the state of Nebraska has relied on the CPSC interpretation. A CPSC interpretation change would require a modification to the state regulations. No, I am not aware of any local communities that have passed any ordinances. The local communities (cities, and villages) rely on the state regulations for interpretation for public pools. All modifications in regards to the VGB Act were reviewed by the state.

- (2) Do you have information about how many pool operators installed unblockable drain covers? What proportion does this number represent out of the total number of pools that have a single main drain that is blockable without an unblockable drain cover?

Yes, our best estimate without going to each individual file is about 200 to 400+ out of 1291 pools that have installed unblockable covers.

“What proportion does this number represent out of the total number of pools that have a single main drain that is blockable without an unblockable drain cover?” I am going to have to answer this two ways as I can interpret this two ways.

1. There are probably 150 to 300 pools that have installed unblockable covers on pools that previously had blockable covers.
2. If you are asking what number out of the 200 to 400+ that have an unblockable single main drain that is blockable with the drain cover removed I cannot answer the question. It may be the same number (200 to 400+). Please see my **comment number 1** below for a detailed explanation.

- (3) Do pools that have unblockable drain covers also have secondary backup systems? If so, how many, and what portion of the total number of pools with single main drains do they represent?

Yes, when we started to review VGB projects single drains with original blockable covers (less than 18" by 23") that installed unblockable covers were required to install a secondary device per the CPSC's guidance at that time. Pools that had original unblockable covers (greater than 18" by 23") were not required to install secondary devices. The number is between 25 to 100 out of around 300 single drain pools that installed secondary devices on pools with unblockable covers prior to the CPSC 2010 interpretation. After the 2010 interpretation we did not require the secondary device anymore on any blockable single drain pools that installed unblockable covers. Therefore, we probably have somewhere between 50 to 200 pools out of 1291 pools that would be affected by the change in interpretation.

Comment Number 1.

I have some concerns with the sentence below, specifically this portion "so long as the drain without the cover is blockable".

"The Commission is considering revoking this interpretation, and directing our staff to deem as noncompliant any pool with single main drain that has an unblockable drain cover but no second anti-entrapment device or system (so long as the drain without the cover is blockable)."

What is the criteria for determining what constitutes a blockable drain with the cover missing? I do not see how this will be determined and is very confusing to us. Detailed criteria would need to be provided. It is my opinion that the percentage of covers that are blockable with the cover removed is quite high. With the cover removed a blockable drain is determined by the access to the suction piping. Removal of a cover is an automatic shutdown item for a pool. Nebraska regulations require that covers are not removable without the use of tools.

Thank you.

Steve

From: June Swallow [June.Swallow@health.ri.gov]
Sent: Wednesday, September 21, 2011 3:26 PM
To: Commissioner Nord
Cc: Grant, William; Novais, Ana
Subject: Re: Fwd: US Commissioner Request for Information Re Pool Regulations

>>> William Grant 9/21/2011 3:18 PM >>>

In my opinion I believe the Commission made the correct interpretation when it found that a single main drain with a properly installed unblockable drain cover constituted an unblockable drain. To reverse this ruling would impose a substantial hardship on pool operators. Listed below is the information you requested.

(1) Has your state issued rules or otherwise relied on our 2010 interpretation? Are you aware of any local communities that may have passed ordinances or otherwise may have relied on this interpretation? **ANSWER:** The Rhode Island Department of Health relied on the 2010 interpretation for single main drain outlets. There has not been any other ruling, ordinances or interpretation by any other State or Municipal agency.

(2) Do you have information about how many pool operators installed unblockable drain covers? What proportion does this number represent out of the total number of pools that have a single main drain that is blockable without an unblockable drain cover? **ANSWER:** Approximately 95 - 100 percent of the 400 public pools installed unblockable drain cover. In some rare cases the operators covered the main drain completely. Approximately 10 - 15 percent have single main drain with unblockable covers.

(3) Do pools that have unblockable drain covers also have secondary backup systems? If so, how many, and what portion of the total number of pools with single main drains do they represent? **ANSWER:** Approximately 15 percent of the public pools (50 pools) installed a secondary backup system. Approximately 90 percent of the 50 pools have single main drains.

Bill Grant, Senior Sanitarian
R. I. Department of Health
Drinking Water Quality, Room 209
3 Capitol Hill
Providence, RI 02908
(401) 222-7776
Fax (401) 222- 6953

>>> June Swallow 9/16/11 9:25 AM >>>

Bill, in addition to replying to this, please make a list of the pools that are affected by this so we can follow-up if they revoke the interpretation.

>>> Ana Novais 9/15/2011 5:32 PM >>>

FYI and action? Ana

From: [Whitfield, Troy](#)
To: [Little, Barbara](#); [Stevenson, Todd](#)
Subject: FW: Reversal of Unblockable Drain Decision
Date: Friday, September 23, 2011 8:42:52 AM

Comment just received...

Troy

From: Admin [mailto:admin@aquaticsinc.com]
Sent: Friday, September 23, 2011 8:34 AM
To: Whitfield, Troy
Subject: Reversal of Unblockable Drain Decision

I fully support the opinions and positions held by the NSPF.

Chris Jordan
Owner
Aquatics, Inc.
1635 Wellington Ave
Wilmington, NC 28401
(910) 392-2619
www.aquatisinc.com

From: [Whitfield, Troy](#)
To: [Little, Barbara](#); [Stevenson, Todd](#)
Subject: FW: Reversal of Unblockable Drain Decision
Date: Friday, September 23, 2011 11:08:51 AM

Letter from Minnesota environmental health specialist.

Troy

-----Original Message-----

From: Dave Distad [mailto:dave_d@co.renville.mn.us]
Sent: Friday, September 23, 2011 9:44 AM
To: Whitfield, Troy
Subject: Reversal of Unblockable Drain Decision

Dear Mr. Whitfield: I have been informed that the consumer product safety commission intends to vote on September 28th, 2011 to possibly revoke the interpretation of the unblockable drain cover. I urge you at this point to at minimum delay this vote. Please first analyze statistics from before and after enactment of the Pool & Spa Safety Act to verify numbers of injuries and death. Use this as a guide along with input from the entire industry to base your decision. As an environmental health specialist in a rural area, I believe that possibly adding more protective measures may be a financial aspect that some of my small town pools may not be able to bear. Each and every town/city in my jurisdiction has the safety of their swimmers as a priority, but as I see it, pools are not generally a profitable venture and adding a possible large unnecessary expense may be more than some of my municipalities can handle. Again I urge you to delay your vote until more information is gathered and studied. Please do not base reversal on 156 letters as there are thousands more individuals from the pool and spa industry who may feel differently.

Respectfully,

Dave Distad
Environmental Health Specialist
Redwood/Renville CHS
ph(320)523-2570
fax(320)523-3749

Stevenson, Todd

From: Taylor, Linda
Sent: Friday, September 23, 2011 12:05 PM
To: Stevenson, Todd; Little, Barbara
Subject: FW: Meeting with Commissioner
Attachments: NSPF Recommendation to CPSC - Revocation of Unblockable Drains - 09-20-11.pdf

From: Tracynda Davis [<mailto:tracynda.davis@nspf.org>]
Sent: Thursday, September 22, 2011 7:19 PM
To: Taylor, Linda
Subject: Meeting with Commissioner

Dr. Thomas Lachocki, CEO of the National Swimming Pool Foundation, would like to meet with the Commissioner regarding the revocation of the unblockable definition on Tuesday September 27th. Does the Commissioner have any time available on Tuesday? Or early Wednesday morning? He would like to meet before the hearing on Wednesday morning.

Thank you for your assistance,

Tracynda

Tracynda Davis, M.P.H.
Director, Environmental Health Programs
National Swimming Pool Foundation
719-540-9119
www.nspf.org

Encouraging healthier living through aquatic education and research

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Pool Safety Council



September 20, 2011

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814-4408

Dear Mr. Todd A. Stevenson, Secretary:

Pool Safety Council and its supporters are writing you today to strongly urge the Consumer Product Safety Commission to revoke its previous interpretation of the term “unblockable drain” as used in the Virginia Graeme Baker Pool & Spa Safety Act (VGB Act). A swimming pool or spa with a single main drain cannot be made “unblockable” by the simple installation of a drain cover that meets certain larger dimensions and then not be required to use a secondary entrapment prevention device. **The true spirit of the VGB Act was to create additional layers of protection to make our pools and spas safer for everyone.**

Pool Safety Council believes that the CPSC’s original interpretation of the Act has allowed a drain coupled with a drain cover of specific larger dimensions to be considered an “unblockable drain”. A single drain cannot be made safe by only using an anti-entrapment drain cover. **Remember, it is not a matter of “if” a drain cover or grate comes off, but when a cover comes off.** The Act does not allow for an exemption to the requirement for a second layer of protection (also referred to by the Commission staff as “secondary anti-entrapment systems”) simply by using an “unblockable drain cover” of certain larger dimensions over an otherwise dangerous single drain outlet. The Act requires that a second layer of protection also be used.

Continuing to allow a so called “unblockable drain cover” would negate the need for an additional layer of protection. This will lead to a significant entrapment risk **when** that drain cover comes off. In fact, the staff mentioned this very possibility and the accompanying risk it poses in its earlier technical guidance when the Commission was deciding how to interpret the “unblockable drain” language of Section 1404(c)(1)(A) . The risk of a drain cover coming off can create a serious threat to swimmers and bathers that is why a secondary system is necessary. If the Commission interpretation is allowed to stand it would circumvent the intent of the law. In the end, the law should have been interpreted so as to require an additional layer of protection if the single main drain itself is not unblockable.

Pool Safety Council



I understand that the Commission will soon be voting on whether to revoke its previous interpretation. I hope that you reconsider your previous interpretation, and fully enforce the layers of protection that the Act requires.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul E. Pennington".

Paul E. Pennington
Chairman



September 23, 2011

Mr. Troy Whitfield
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Revocation of the Interpretative Rule "Unblockable Drain"

Dear Mr. Whitfield:

Westport Pools has been in business since 1967 and is an aquatic construction and service company serving an 8 state area in the Midwest. We have built commercial aquatic facilities ranging from hotel pools to municipal aquatic centers to high level Olympic and NCAA competition facilities. Our sister company Midwest Pool Management operates 60+ commercial facilities employing over 1,500 lifeguards in the St. Louis and Kansas City area.

We urge the CPSC to NOT revoke the interpretative rule on "unblockable drains as suggested in 16CFR Part 1450.

There is absolutely no scientific or empirical data available that justifies the revocation of this rule. According to the National Swimming Pool Foundation: since the implementation of the Virginia Graeme Baker Act there have been no entrapment fatalities or serious injuries. **NOT ONE!**

According to the information sent out by the CPSC on September 7, 2011 consideration of this revocation is based on the receipt of 156 letters! 156 letters are swaying the CPSC to consider a very costly and unneeded regulatory requirement solely based on an assumption that drain covers can be broken or come off. Who are the letters from? Would 157 letters opposed to revocation be enough to stop this action?

It is our experience building, operating and servicing swimming pools for the past 47 years that the installation of safety vacuum release systems provides a false sense of security. We have also seen dozens of them disabled by the pool owner's maintenance personnel because of the unreliability of the systems.

In May immediately prior to the summer swimming season the CPSC irresponsibly recalled VGBA compliant grates which placed an impossible burden on swimming pool owners. Since the replacement grates were not even available, the pool owners were faced with the choice of not opening or open in violation of the rules.

Now the CPSC is considering yet another regulation that will most assuredly force the closure of many swimming pools across the country due to the financial burden that imposed thus denying the opportunity for millions of people to learn how to swim. This will especially affect economically disadvantage areas. Some of the facilities we built and operate will be faced with over \$10,000 - \$15,000 in additional expense.



How many of the hundreds of lifeguards that we have operating inner city pools in Kansas City will be unemployed next year because the city will not have the funds to make the modifications required to comply with this revocation? How many children will be denied wholesome leisure time activities and the opportunity to learn to swim because the local pool is shut down due to 156 letters received by the Consumer Safety Product Commission?

Words do not exist that express how strongly we feel about the potential damage that will result should revocation of this rule be enacted.

We appreciate your careful consideration of our concerns and should you need additional information, please do not hesitate to contact us.

Sincerely,

James H. Bastian
Chairman

CC: U.S. Consumer Product Safety Commission
Cheryl Falvey, General Counsel
Ken Hinson, Executive Director
Inez Tenenbaum, Chairman
Robert Alder Commissioner
Thomas Moore, Commissioner
Nancy Nord, Commissioner
Anne Northup, Commissioner

Stevenson, Todd

From: Little, Barbara
Sent: Friday, September 23, 2011 2:56 PM
To: Stevenson, Todd
Subject: FW: CPSC request - Cm Northup

From: Mallory, Meredith
Sent: Friday, September 23, 2011 2:55 PM
To: Little, Barbara
Cc: Fellin, Mark
Subject: FW: CPSC request - Cm Northup

Barbara,
Cm Northup put out a request to drain manufacturers for the following info, if they're willing and able to get it to us. This is our first response back, and we'll continue to forward any more we get, for circulation to the whole Commission. (And you'll see our original email below.)
Thanks

m

From: Leif Zars [<mailto:leif@garypools.com>]
Sent: Friday, September 23, 2011 2:17 PM
To: Mallory, Meredith
Subject: RE: CPSC request - Cm Northup

Meredith Brown Mallory
Senior Policy Advisor
Office of Commissioner Anne M. Northup
Consumer Product Safety Commission

Provided is the information requested from Gary Equipment Co.

- 1) Gary Equipment Co. has not manufactured any drain covers since March 22, 2010
- 2) 79 Units Sold Since March 22, 2010
- 3) 79 Units Installed Since March 22, 2010

The "8/24 Retro" drain covers were manufactured before the date of March 22, 2010 and most of our sales occurred before the March 22, 2010 date. We have been reluctant to promote this product due to apparent conflict of interests.

--

Tassie Zars

for
Leif Zars

(210) 341-5153

From: Mallory, Meredith [mailto:MMallory@cpsc.gov]

Sent: Thursday, September 22, 2011 5:56 PM

To: jepson.sutton@aamfg.com; olaf@aquastarpoolproducts.com; beesafesystems@gmail.com; bdrury@c-m-p.com; cathryn@eurekamanufacturing.com; rob@lawsonaquatics.com; shawksley@neptunebenson.com; don.baker@paddockindustries.com; buzz@1paramount.com; leif@garypools.com; GOrtiz@haywardnet.com; Raym@Waterwayplastics.com; Steve.Barnes@Pentair.com; newhard@firstadvisers.net; johnszymanski99@hotmail.com; jimd@aquaticgroup.com

Cc: Avitabile, Gregg; Fellin, Mark

Subject: CPSC request - Cm Northup

Importance: High

Please see the attached letter from Commissioner Anne Northup regarding information related to the upcoming “unblockable drain” vote. Thank you – and please contact our office if you have any questions regarding this letter: 301-504-7780.

September 22, 2011

To: Manufacturers of unblockable drain covers

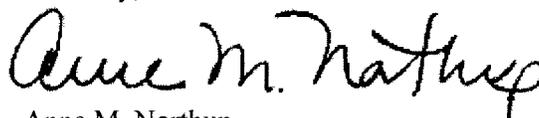
From: Commissioner Anne Northup, Consumer Product Safety Commission

In light of the Commission’s upcoming vote to revoke our previous interpretation of “unblockable drain” under the Virginia Graeme Baker Pool and Spa Safety Act (VGB), I would like to request the following information. I apologize for the late notice and short turn-around. If you have this information and would be willing and able to share it before next Wednesday’s vote, it would be greatly appreciated.

- 1) How many unblockable drain covers designed to satisfy the definition of “unblockable drain” set forth at 16 C.F.R. 1450.2(b) has your company manufactured since the Commission voted on March 22, 2010, to issue a final interpretive rule defining the term “unblockable drain” to include the drain cover?
- 2) How many unblockable drain covers designed to satisfy the definition of “unblockable drain” set forth at 16 C.F.R. 1450.2(b) has your company sold since the Commission voted on March 22, 2010, to issue a final interpretive rule defining the term “unblockable drain” to include the drain cover?
- 3) How many “unblockable drain covers” designed to satisfy the definition of “unblockable drain” set forth at 16 C.F.R. 1450.2(b) that have been manufactured by your company have been installed in *single drain* public swimming pools or spas since the Commission voted on March 22, 2010, to issue a final interpretive rule defining the term “unblockable drain” to include the drain cover?

Thank you in advance for your time and attention.

Sincerely,



Anne M. Northup
Commissioner

Meredith Brown Mallory
Senior Policy Advisor
Office of Commissioner Anne M. Northup
Consumer Product Safety Commission
(301) 504-7549

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!

Stevenson, Todd

From: Hinson, Kenneth
Sent: Friday, September 23, 2011 7:37 PM
To: Stevenson, Todd
Subject: FW: CPSC - Revocation of Unblockable Drains
Attachments: Summary of Public Pool Closings.docx

Kenneth R. Hinson
301-504-7854

From: Tom Lachocki [<mailto:tom.lachocki@nspf.org>]
Sent: Friday, September 23, 2011 7:33 PM
To: Whitfield, Troy; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Falvey, Cheryl
Subject: CPSC - Revocation of Unblockable Drains

On September 20, 2011, we forwarded the NSPF position and request that the CPSC not revoke the current interpretation of unblockable drains. Within our position, we stated that an unintended consequence of revoking the interpretation may increase the risk of drowning based on more pool closures that provide a venue for healthy learn-to-swim programs. We also indicated there may be an unintended consequence of increasing unemployment with no net safety benefit.

To substantiate our claim that pools are under financial distress and closures and unemployment may result, attached is a summary of some of the announced closures between June 1, 2011 and September 21, 2011. If you would like to receive more information about these closures, we have text from local press announcements. I will bring this information with me to Bethesda next week. My appreciation to USA Swimming who has been maintaining "clippings" associated with the troubling instances of pool closures for the last three year and provided them to me.

Tom

Thomas M. Lachocki, Ph.D.
Chief Executive Officer
National Swimming Pool Foundation
tom.lachocki@nspf.org
www.nspf.org
719.540.9119, Extension 104
719.540.2787 (FAX)

A Summary of Pool Closures and Risk of Pool Closures
From June 1, 2011 to September 21, 2011*

Date	Location	Closure/Risk	Reason
9/21/11	Libertyville, IL	Close two pools	School District closes two pools because federally mandated repairs won't be complete by Oct. 1
9/9/11	Wausau, WI	Risk of closing 3 pools	Expected to lose about \$70,000 for the 2011 swim season
8/29/11	Belleville, IL	Risk of closing pool	Consistently lost the city \$10,000 for the past years, needs \$13,000 in repairs
8/16/11	Concordia University-Chicago	Closes one pool	Closes pool for "a better use"
8/13/11	Stuart, FL	Anticipate losses	Martin County water park expected to \$90,000 in first year it's open
8/12/11	Marathon County, WI	Anticipate closing	North Central Health Care's Mount View Care Center and aquatic services at the bottom of the list of programs to fund facing a \$500,000 budget deficit.
8/11/11	Detroit, MI	Risk of closing Water Park	Wayne County Commission would save \$1 million of the \$160 million deficit by closing the park
8/11/11	Palm Beach, FL	Risk of closing two pools	Palm Beach County Commission might close Santaluces Aquatics Complex to save the county over \$73,000 and closing the Aqua Crest Pool would save over \$446, 000
8/8/11	Pearland, TX	Risk of closing pool	Pearland City Council has \$860,000 in budget cuts, closing the pool saves over \$136, 000
8/7/11	Hazleton, PA	Two pools closed	Board of education closed the pools as part of the 2011-2012 budget process
8/6/11	Stevens Point, WI	Risk of several closing	Decreasing budget and aging pools may require closing municipal pools
8/1/11	Kingman, AZ	Risk of closing	City Council could close downtown pool to save \$58,000 in the budget
7/31/11	Tampa, FL	Pool closed	Pasco County commissioners closed Zephyrhills' Hercules Aquatic Center because of budget constraints
7/30/11	Fort Worth	City pools closed	For the second year in a row city pools have been closed due to budget constraints
7/29/11	Eugene, OR	Therapeutic Pool Closed	\$125,000 a year shortfall in revenue closes pool

Date	Location	Closure/Risk	Reason
7/23/11	Hazleton, PA	Planned closures of 2 pools	The board of education approved closure of Hazleton Area elementary/middle schools pools in the 2011-2012 budget
7/14/11	Goodlettsville, TN	Closes only public swimming pool	Casualty of a tightened city budget
6/15/11	Johnston, CA	Closes only municipal pool	The Smithfield Town Council closes pool to save \$30,000
6/14/11	Montgomery, MD	Cuts hours to indoor pool	Montgomery Aquatic Center slashes swimming hours in a budget-cutting move
6/13/11	Midland, TX	Closing two pools	Midland Public Schools propose closing 2 pools to save \$103,000
6/13/11	Minneapolis, MN	Pool closed since 2008	Pool not functioning and lacked the money for renovations
6/11/11	Pasco, FL	Risk of closing multiple pools	Pasco County proposed closing pools at the Land O'Lakes Recreation Center and Veterans Memorial Park to help balance next year's budget
6/8/11	New York, NY	Risk of closing multiple pools	Mayor Bloomberg has proposed cuts in funding for NYC swimming pools to close the city's budget gap
6/7/11	Houston, TX	More than a dozen pools at risk or closed	More than a dozen pools and community centers are closed or scheduled to close in 2011 because of budget problems with the City of Houston
6/6/11	West Pittston, PA	Pool closed	Costly annual repairs, 4 th public pool in Luzerne County to do so
6/6/11	Dearborn, MI	3 pools closed; 3 more next year	Mayor proposed closing 6 of 8 public swimming pools to ease a \$20 million deficit
6/3/11	Ft. Wayne, IN	Pool closed 3 rd year in a row	Saves the city \$50,000 annually
6/3/11	Prattville, AL	Pool closed to public	Pool only open to swimming lessons and water aerobics classes due to budget cuts, can't afford the number of lifeguards
6/1/11	South Carolina	Closed multiple pools	17 cities across SC have closed with pools because of lack of money to keep up with the upgrades and operations

*Special thanks to USA Swimming for providing media clips. www.usaswimming.org

Stevenson, Todd

From: Wolfson, Scott
Sent: Friday, September 23, 2011 6:11 PM
To: Little, Barbara; Stevenson, Todd
Subject: FW: VGB Unblockable Drain comment
Attachments: Change to VGB on Unblockable Drains.pdf

I have no idea why Ms. Washington signed the Commission's vote sheet.

From: Tracynda Davis [<mailto:tracynda.davis@nspf.org>]
Sent: Friday, September 23, 2011 6:08 PM
To: Wolfson, Scott
Subject: FW: VGB Unblockable Drain comment

Hi Scott,
We received this from a Health Official in Washington (see below). Could you please forward this to the Commissioners and/or post on the CPSC website? I see you have other letters posted on this subject.
Thank you!
Tracynda

From: Washington, Vicki [<mailto:WashingtonV@co.cowlitz.wa.us>]
Sent: Friday, September 23, 2011 11:51 AM
To: Susan Wichmann
Subject: RE: VGB Unblockable Drain

Can you do this for me?

Vicki Washington
Environmental Health Technician
Cowlitz County Health Department
1952 9th Avenue
Longview, WA 98632
Tel: 360.414.5591
Fax: 360.425.7531
TDD: 360.577.3061
washingtonv@co.cowlitz.wa.us

Public Health - Always Working for a Safer and Healthier Cowlitz County

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From: Susan Wichmann [<mailto:susan.wichmann@nspf.org>]
Sent: Friday, September 23, 2011 10:49 AM
To: Washington, Vicki
Subject: RE: VGB Unblockable Drain
Importance: Low

Did you send this to CPSC (Troy Whitfield) or did you want us to?

Susan Wichmann
Environmental Health Program Assistant
National Swimming Pool Foundation
4775 Granby Circle
Colorado Springs, CO 80919
Tel: 719.540.9119
Fax: 719-540-2787
www.nspf.org

From: Washington, Vicki [<mailto:WashingtonV@co.cowlitz.wa.us>]
Sent: Friday, September 23, 2011 11:20 AM
To: Susan Wichmann
Subject: RE: VGB Unblockable Drain

Please see attached.

Vicki Washington
Environmental Health Technician
Cowlitz County Health Department
1952 9th Avenue
Longview, WA 98632
Tel: 360.414.5591
Fax: 360.425.7531
TDD: 360.577.3061
washingtonv@co.cowlitz.wa.us

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

This document has been electronically
approved and signed.

Date: September 7, 2011

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Kenneth R. Hinson, Executive Director

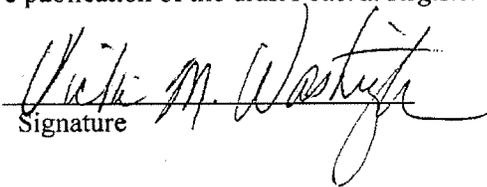
FROM : Cheryl A. Falvey, General Counsel
Philip L. Chao, Assistant General Counsel, RAD
Barbara E. Little, Regulatory Affairs Attorney

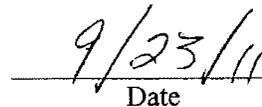
SUBJECT : Virginia Graeme Baker Pool and Spa Safety Act; Unblockable Drain Rule

Section 1403(7) of the Virginia Graeme Baker Pool and Spa Safety Act defines an “unblockable drain” as a “drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.” On April 27, 2010, the Commission issued a final interpretive rule in the *Federal Register* providing that certain drain covers that meet specific requirements could create unblockable drains. Staff is forwarding to you a *Federal Register* notice that would revoke the Commission’s position announced in the April 27, 2010 *Federal Register* notice.

Please indicate your vote on the following options:

- I. Approve publication of the draft *Federal Register* notice, without changes.


Signature


Date

Stevenson, Todd

From: Lee, Dorothy
Sent: Friday, September 23, 2011 7:10 PM
To: Stevenson, Todd; Howsare, Matt; Duncan, Janell
Subject: FW: VGB

From: Robin Taylor [rtaylor345@comcast.net]
Sent: Friday, September 23, 2011 5:39 PM
To: Lee, Dorothy
Subject: VGB

Please do not confuse things and add extra cost to the swim clubs it is hard enough to stay in business now w/o more regulations and cost. We are here to teach swimming and make everyone safer in and around the water. Let us do our jobs.

Thank you
Robin Taylor

Stevenson, Todd

From: Hinson, Kenneth
Sent: Sunday, September 25, 2011 12:26 PM
To: Stevenson, Todd
Subject: Fw: Vote on Unblockable Drains
Attachments: Professional_BIO[2011].doc

From: Terry LeBeau [mailto:terry_lebeau@msn.com]

Sent: Sunday, September 25, 2011 10:57 AM

To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark

Subject: Vote on Unblockable Drains

Dear Committee Members:

I am totally opposed to your intent to change your current position that unblockable drains do not require an additional level of protection. Your present position is a proper one that should not be changed.

The manufacturers of various Automatic Vacuum Safety Release systems are pushing this change primarily for marketing reasons, as is far too common in our swimming pool industry. I and my staff of technical support specialists have a good deal of hands-on experience with these various pieces of equipment. They are unreliable, inaccurate and operationally problematic, for commercial systems.

Moreover, the disaster that prompted VGB - 2007 was a disembowelment. All of these devices/systems carry some form of cautionary verbiage that states "will not prevent disembowelment".

As I've read various opinions of concerns for the presence of vacuum on the suction side of a circulation pump, as well as comments on velocities through any cover/grate, whether it is a direct-connected cover/grate or flows by gravity to a surge tank, seems to indicate an inadequate understanding of fluid flow, velocities through piping causing friction loss on the suction side of the pump, or that pipe velocities are only related to hair entanglement . . . not suction-entrapment.

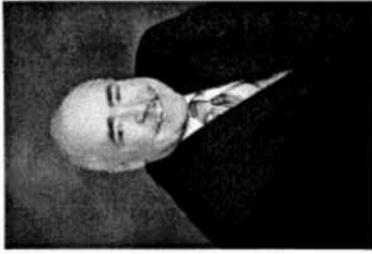
My opinion has been from **day one** that the VGB - 2007 Act should have outlawed single drain pools. That would have eliminated virtually all unsafe pools. It would have greatly lessened the marketing-driven posturing by manufacturers in this industry whose primary objective is sales.

I've included an attachment of my professional bio to enable you to assess the viability of my personal opinions.

Respectfully,

Terrence R. LeBeau, CPD
GM - Commercial Systems Division
Halogen Supply Company, Inc.
4653 W. Lawrence Ave.
Chicago, IL 60630

Phone: 773-286-6300
Fax: 773-286-1024
halogensupply@aol.com



Professional Bio

Terrence R. LeBeau, CPD

Mr. LeBeau has spent over 25 years in the Swimming Pool industry. His experience is multi-faceted. System design, plumbing layouts, chemical solutions, problem trouble-shooting, and innovative energy saving concepts, are some principal areas of expertise.

Mr. LeBeau is called upon to provide instructional seminars for Public Health Departments in Illinois, as well as several neighboring states. He is a member of the American Society of Plumbing Engineers (ASPE) and holds their Certified in Plumbing Design (CPD) accreditation. In 2007 he revised and expanded ASPE's Plumbing Engineering Design Handbook, Chapter 6 of Volume 3 *Public Swimming Pools*. In 2010 he again updated that chapter. He has had several articles published on swimming pool design and the Virginia Graeme Baker Pool & Spa Safety Act

He has provided technical presentations for several ASPE mid-west chapters, as well as at their national technical symposiums. Illinois Association of School Business Officials (IASBO) and Wisconsin Association of School Business Officials (WASBO) have also made use of Mr. LeBeau's services for training their maintenance staff. He is accredited by the National Swimming Pool Foundation as a Certified Pool Operator Certification Instructor. He also presented a technical paper at NSPF's World Aquatic Health Conference in 2009 on *High Quality Filtration – Cryptosporidium Removal*. In May, 2011 Mr. LeBeau served on the International Code Council's (ICC) Code Review Committee to finalize their new International Swimming Pool & Spa Code (ISPSC – 2012) which will be issued in January of 2012.

Mr. LeBeau is currently the General Manager of the Commercial Systems Division of Halogen Supply Company, Inc. - Chicago, Illinois.

Code Compliance Incorporated

Telephone
352/478-9098

September 24, 2011

Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: VGBA UNBLOCKABLE DEFINITION

To Whom It May Concern:

I have been involved in the science of hydraulics for over twenty-five years and considered as an expert in the area of aquatic entrapment prevention. , I serve on the ASME A112 Committee as the Project Team Leader for the Safety Vacuum Release System (A112.19.17) and served as the Deputy Project Team Leader for the Suction Fitting (A112.19.8) Project Teams. In addition, I authored the anti-entrapment language based on CPSC Guidelines found in the 2003 and 2006 Editions of the International Code Council's, International Building and Residential Codes.

I am currently and have been very concerned regarding the knee-jerk reactions that the CPSC has taken in the area of entrapment prevention in recent years. My concern now primarily relates to the definition of unblockable drains. I believe that any such definition is misleading and a very slippery slope because it implies that body or limb entrapment cannot occur *under any anticipated usage* under the current and proposed definitions.

The latest attempt to revise this dangerous and misleading terminology is not in the interest of public safety, because it fails to incorporate necessary safety parameters that relate to the proper application of the SVRS technology and fails to delineate the limitations of such use.

Everyone involved recognizes that there are many hundreds if not thousands of potential death-traps existing in aquatic bodies of water that can be made safe by the incorporation of state-of-the-art suction fittings and/or by using state-of-the-art SVRS technologies. However, neither of these items can nor should be applied to poor hydraulic designs and considered unilaterally adaptable or most importantly safe for public use.

13728 Mattix Avenue – Hudson, Florida 34667

Code Compliance Incorporated

CPSC's focus is much too narrow in this instance. It is well known that a single drain recirculation system can be designed and installed that is intrinsically safe by utilizing proper hydraulic design. Such systems cannot ever produce enough vacuum force to entrap a body or limb. It appears to me that the CPSC is ignorant of such *vacuum limiting* designs and is mandating technologies that cannot be safely applied to every single drain unilaterally.

It is my recommendation that the CPSC move away from using such ambiguous terminologies in its interpretive role. I would like to see the unblockable terminology eliminated altogether. What is needed more is good the application of good engineering practices which can only come by and through education that teaches to recognize bad hydraulic design and does not promote a reliance on any one particular component or device. There are certainly numerous situations where a single drain/SVRS combination can be considered to provide the desired level of safety and reliability. However, It is not prudent to promote such a broad definition such as is currently under consideration.

In recent years, the industry has made every attempt to thwart the SVRS concept by promulgating rules that simply rely on more than one outlet without providing the necessary limitations of such usage. The necessary sizing, developed length between multiple outlets, and other important safety guidelines are sorely absent from such so-called dual/multiple drain standards. In some cases designs built to these rules are unsafe because vacuum forces may still be present that could entrap a limb or body.

CPSC should work on issuing new guidelines that incorporate all available science and technologies in a way that provides reasonable and affordable solutions to the industry and the public. The new construction arena is one subject and existing aquatics is an additional subject that must to be properly addressed in any such guidelines. If the CPSC is really serious about providing solutions then it should gather the experts, stakeholders and other interested parties in neutral setting with a round table and open forum to achieve consensus on what these guidelines should include. Special interests have unfortunately been the principal driving force with generally vague and ambiguous results. The center of the universe must be public safety not products.

If you have any questions or require any further information please do not hesitate to contact me.

Sincerely Yours,
CODE COMPLIANCE, INC.

Gary S. Duren

Stevenson, Todd

From: Taylor, Linda
Sent: Monday, September 26, 2011 9:41 AM
To: Gougisha, Michael; Stevenson, Todd
Subject: FW: Letter
Attachments: Unblockable Drains -- Code Compliance letter.doc

From: Walt Sanders [<mailto:wsanders@vmgthehill.com>]
Sent: Sunday, September 25, 2011 10:28 AM
To: Fellin, Mark; Falvey, Cheryl; Little, Barbara; Lee, Dorothy; Moore, Autumn; Adler, Robert; Taylor, Linda; Northup, Anne; Tenenbaum, Inez; Nord, Nancy; Moore, Thomas
Cc: Wolfson, Scott; Whitfield, Troy; Chao, Phillip; 'Harry Newhard'; gbachula@internet2.edu
Subject: Letter

Gary Duren from Code Compliance has requested that I convey the attached letter to your attention for consideration on the unblockable drain issue and Monday's meeting.

Walt A. Sanders
Vice President Law & Government Affairs
Van Fleet Associates, Inc.
1800 Diagonal Road, Suite 600
Alexandria, VA 22314
(703) 647-7504 (Main Phone)
(703) 647-7522 (Direct Phone)
(703) 728-2431 (cell)
(703) 647-7531 (fax)

Memorandum

September 26, 2011

**TO: Chairman Inez M. Tenenbaum
Commissioner Thomas H. Moore
Commissioner Robert S. Adler
Commissioner Nancy A. Nord
Commissioner Anne M. Northup**

FM: Walt A. Sanders, Esq., Van Fleet Associates, Inc.

RE: Revocation of Commission's Interpretation of "Unblockable Drain"

This memorandum represents the position of Worldwide Sports, LLC regarding the possible decision by the Commission to revoke the interpretative rules associated with the definition of "unblockable drain" issued on April 27, 2010. The definition of unblockable drain is codified in 16 CFR § 1450.2(b) as follows:

A suction outlet defined as all components, including the sump and/or body, cover/grate, and hardware such that its perforated (open) area cannot be shadowed by the area of the 18" x 23" Body Blocking Element of ASME/ANSI A112.19.8-2007 and that the rated flow through the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. All suction outlet covers, manufactured or field-fabricated, shall be certified as meeting the applicable requirements of the ASME/ANSI A112.19.8 standard.

Worldwide Sports and many other companies in the pool and spa industry have relied upon this interpretation because it is based on an appropriate interpretation of the Virginia Graeme Baker Pool and Spa Safety Act (VGBA). Under this interpretation, when a drain cover meeting certain specifications was attached to a drain, the covered drain constituted an "unblockable drain" and did not require a secondary anti-entrapment backup system as specified in the Act.

The Statement made by Commissioner Adler on March 2 when the Commission approved the interpretative rules reinforced this definition:

An unblockable drain, as defined in the Act is a “drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.” I think it indisputable that a drain cover of sufficient size that fully complies with the voluntary standard would render any drain unblockable – and is clearly the best approach of any of the anti-entrapment devices or systems in the VGBA. . . I would certainly read the statute as requiring the secondary anti-entrapment systems if it contained language with such a mandate, but it does not. What section 1404(c)1(A) (ii) calls for, as I read it, is such systems if a pool or spa does not contain an unblockable drain.

In fact, the only protection that seems to address virtually all hazards is the drain cover which, if fully compliant with the voluntary standard (and of sufficient dimension), is the most cost-effective approach to safety.

In his statement, Commissioner Adler stated his confidence in the protections accorded by the voluntary standard and his skepticism that secondary systems would provide the necessary protection against entrapment.

I have, however, seen no evidence that the standard will fail to provide the necessary protection. Second, [and]...current secondary anti-entrapment systems ...fail to protect against some of the most serious hazards to children, such as organ evisceration or hair entrapment.

Commissioner Adler supports the argument that well made drain covers offer the most effective protection against entrapment or other hazards.

Accordingly, I return to my conclusion that the most important safety step one could take to meet the spirit of VGBA is to install a well-made drain cover.

Most important, the legislative history of the Virginia Graeme Baker Pool and Spa Safety Act (VGBA) does not include any consideration that the Commission would include the “useful life” of a drain cover as a condition precedent in determining whether a cover would satisfy the statutory test of whether it is “unblockable.” What is contemplated by the Act is whether the drain cover meets Federal standards.

The Commission is now proposing to take an unprecedented action to reverse its determinations made after careful analysis of internal data and information submitted by experts based on anecdotal information contained in some 156 letters, the majority of which are duplicate language.

Existing Technology is Safe and Will Continue to be Safe

Reversing the interpretative guidelines would create a false sense of security on secondary systems that do not protect against hair entrapment and evisceration. New methods of securing drains using additional anchors to insure drains will remain secure and new materials providing for a much longer useful life. Improved design has produced safer flow rates and these products are available to consumers at affordable prices. The Star2000, manufactured by Worldwide Sports, LLC is only one example of a secure, durable and safe technology, fully compliant with existing standards. Requiring a backup system to such technology would not improve safety and would unnecessarily increase costs to consumers.

The Pointe At Ballwin Commons
#1 Ballwin Commons Circle
Ballwin, MO 63021-8845



(636) 227-8950
Fax: (636) 207-2330
www.ballwin.mo.us

Department of Parks & Recreation

September 26, 2011

Mr. Tory Whitfield, Lead Compliance Officer
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Mr. Whitfield,

I serve the City of Ballwin's 32,000 residents as the Director of Parks and Recreation and I as well as our 250 plus professionally trained aquatic staff is responsible for their safety when attending one of the two municipal aquatic facilities in our city. In 2009-10 the City of Ballwin, Missouri spent \$25,000 of taxpayers' money to bring the facilities into compliance with the VGB act on pools that were less than 10 year old.

I learned this morning of the commission's recent discussions with regard to revoking the interpretation of an unblockable drain at 16 CFR 1450.2(b) and requiring a secondary anti-entrapment system be installed due to the fact that the unblockable drains the CPSC just three years ago specified and mandated are not reliable. I am also aware that the CPSC has received some 156 letters raising concerns with regard to the current anti-entrapment requirements.

I am writing you this letter today to ask you **to not revoke the interpretation of unblockable drain at 16 CFR 1450.2(bh)** for the following reasons:

1. There is no proof that there is anything wrong with the drain covers that were specified by the CPSC three years ago to prevent entrapments. There have been no incidents that I am aware of any drowning or near drownings as a result of new drain covers that were installed all over this country at the expense of the taxpayers over the past two-three years.
2. The City of Ballwin's new drain covers were installed and secured with screws and inspected by the St. Louis County Health Department for compliance and will not be easily removed. These grates and screws are inspected at least once a year when pools are drained.
3. The City of Ballwin estimates that to retrofit our pools with this secondary anti-entrapment system the expense could be upwards of \$30,000 and as city staff we will be responsible for explaining to our residents why we are spending money on anti-entrapment systems **again**. In this economy, when cities are making tough choices about services this potential mandate based on 156 letters to the CPSC is almost unimaginable.
4. A deadline of May 2012 is absolutely unrealistic based on what pool operators experienced with the last round of VGB mandates.

We take safety very seriously in the City of Ballwin, Missouri, however I have not seen any proof that the requirements you are suggesting will improve or protect the quality of life in our community. I encourage you to take time to do the research before making another error in your decision with regard to pool entrapment standards.

Sincerely,

Linda A. Bruer, CPRP
Director of Parks and Recreation
City of Ballwin, Missouri

From: [Moore, Autumn](#)
To: [Nord, Nancy](#); [Martyak, Joseph](#); [Cardon, Nathan](#)
Cc: [Stevenson, Todd](#)
Subject: FW: CPSC Interpretative Rule on Unblockable Drain (16CFR Part 1450)
Date: Monday, September 26, 2011 1:34:23 PM
Attachments: [DOC092611.pdf](#)

VGB letter

From: Bruer, Linda [mailto:lbruer@ballwin.mo.us]
Sent: Monday, September 26, 2011 1:32 PM
To: 'eschwartz@spsc.gov'; 'ltaylor@spsc.gov'; Moore, Autumn; 'felin@cpsc.gov'
Subject: CPSC Interpretative Rule on Unblockable Drain (16CFR Part 1450)

I am the Director of Parks and Recreation for the City of Ballwin, Missouri and I learned this morning of the CPSC consideration to revoke the interpretation of unblockable drain at 16 CFR 1450.2 (b). I took time this morning to write the attached letter expressing my concern with regard to this discussion and possible new mandate by the CPSC that could cost millions of dollars of taxpayers' money AGAIN and the possible unnecessary closure of public swimming pools across the country. I encourage the commission to consider this topic carefully. Thank you for your time.

Linda Bruer, CPRP
Director of Parks and Recreation
#1 Ballwin Commons Circle
Ballwin, Missouri 63021
636-227-2743
lbruer@ballwin.mo.us

From: [Little, Barbara](#)
To: [Stevenson, Todd](#)
Subject: FW: VGB webinars
Date: Monday, September 26, 2011 2:40:16 PM

-----Original Message-----

From: Whitfield, Troy
Sent: Monday, September 26, 2011 2:38 PM
To: Little, Barbara
Subject: FW: VGB webinars

Barbara - this appears to include a comment on unblockable along with education/inspection question.

Troy

-----Original Message-----

From: CAMPBELL, SUSAN [mailto:Susan_Campbell@occhd.org]
Sent: Monday, September 26, 2011 1:46 PM
To: Reilly, Kathleen; Whitfield, Troy
Cc: CAMPBELL, SUSAN; LI, CHRIS
Subject: RE: VGB webinars

Oh Good. That will help me with the training.
I still have last year's Pool Safety training on the VGB, is there a new one?

I am vastly opposed to adopting standards that we have to buy (ASPS).

ALSO - the definition of unblockable MD SHOULD NOT be changed. This is just a money grab by SVRS makers. They have created unnecessary hysteria to accomplish their own self-serving goals. If you want letters I suspect I can get you hundreds, including some from members of Congress. I have not found or heard of any entrapments on these drains in the last two years. Have there been some?

Are some of these installed incorrectly - yes. But that can be addressed with the current wording. Is there room for improvement in the definition? Probably.

The impact of the new wording on many of my facilities that installed unblockable drain covers (including the SS Eureka at \$1000+) will be that they refuse to spend more money and don't do anything. The impact on a large pool may be a considerable cost if they have a single unblockable. I am not even sure that there are cutoff devices for the larger pools (no, they aren't all dual drain systems.)

We need to review and consider some of the configurations. If they have 2 unblockable drain covers on a single sump is that a single drain?

The sad fact is that devices are NOT maintained and are difficult for us to test. (We could use a training video on proper installation and testing of each of them if we MUST have them.)

Suzie Campbell

-----Original Message-----

From: Reilly, Kathleen [<mailto:KReilly@cpsc.gov>]
Sent: Monday, September 26, 2011 8:26 AM
To: CAMPBELL, SUSAN
Subject: RE: VGB webinars

HI.
Not yet but they will be. I still have hard copies.

Kathleen

From: CAMPBELL, SUSAN [Susan_Campbell@occhd.org]
Sent: Monday, September 19, 2011 5:18 PM
To: Reilly, Kathleen; Elizabeth Curwen
Subject: VGB webinars

Are any of Ray's webinars available on your website?
SJC

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LOG OF PHONE CALL

CPSC 60001 CLEARED for PUBLIC
✓ NO MEMBERS PRIVILEGES
PRODUCTS IDENTIFIED
10/20/11

WITH POINT TO POINT

DATE: October 14, 2010
LOCATION: CPSC, 4330 East West Highway, Bethesda MD 20814

ATTENDEES: Representatives from International Association of Amusement Parks and Attractions (IAAPA) and Ian Rayder, Staff to Representative Debbie Wasserman Schultz

CPSC ATTENDEES: Commissioner Robert Adler; Jason Levine, Legal Counsel to Commissioner Adler; Jana Fong-Swamidoss, Legal Counsel to Commissioner Adler; Troy Whitfield, CRE; and Barbara Little, OGC.

MEETING HIGHLIGHTS: At his request, representatives from the IAAPA spoke with Commissioner Adler and CPSC staff regarding technical matters with respect to the definition of “unblockable drains” and issues surrounding the implementation of the Virginia Graeme Baker Pool and Spa Safety Act. Commissioner Adler thanked the IAAPA representatives for their willingness to share their technical expertise and encouraged them to follow up with any additional information they believe the Commissioner may find useful.

LOG AUTHOR: Jana Fong-Swamidoss

LOG CREATION DATE: October 19, 2010

CPSA 60(M)11 CLEARED FOR PUBLIC
8/5/2010 JH
X NO MFRS/PRVTLBLRS OR
PRODUCTS IDENTIFIED

LOG OF MEETING

— EXCEPTED BY: PETITION
RULEMAKING ADMIN. PRCDG

— WITH PORTIONS REMOVED: _____

DATE: July 9, 2010

LOCATION: CPSC, 4330 East West Highway, Bethesda, MD 20814

SUBJECT: Association of Pool and Spa Professionals (APSP)
meeting with Commissioner Adler and staff.

ATTENDEES: Carvin DiGiovanni, APSP
Leif Zars, The Gary Company
Steve Barnes, Pentair Water Pool and Spa, Inc.
Steve Getzoff, Lester, Schwab, Katz & Dwyer, LLP

OBSERVERS: Pamela Gilbert, Cuneo, Gilbert & LaDuca, LLP
Ian Rayder, Office of Representative Wasserman
Schultz

CPSC ATTENDEES: Robert Adler, Commissioner
Jana Fong-Swamidoss, Counsel to Commissioner Adler
Colin Justice, Legal Intern to Commissioner Adler
Troy Whitfield, CRE
Scott Wolfson, OPA

MEETING HIGHLIGHTS: Commissioner Adler requested to meet with APSP representatives to discuss various provisions of the Virginia Graeme Baker Pool and Spa Safety Act (VGBA). Subsequent to the March and April votes to implement VGBA, Commissioner Adler received letters from Members of Congress and had a meeting with Representative Debbie Wasserman Schultz regarding his votes on the term “unblockable drain,” the model state legislation provision, and the Commission’s interpretation of the term “public accommodations.” With regard to the interpretation of the term “unblockable drain,” and whether an “unblockable drain cover” can constitute an “unblockable drain,” Commissioner Adler made a commitment to Rep. Wasserman Schultz to reconsider his vote on the interpretation of this term. Commissioner Adler has also met with representatives of the Pool Safety Council to discuss these issues.

Commissioner Adler raised the following issues with APSP representatives: their involvement or lack of

involvement in the use of the term “unblockable drain” in the VGBA at the time it was being drafted by Congress; whether an “unblockable drain” includes the drain cover and fittings or means something else; whether they had any information or if they had conducted a survey about drain covers coming off; whether a “dead man’s switch” is a viable technology to automatically turn off the pool pump when a drain cover is removed or comes off; whether they had information regarding how pool operators are complying with the requirements of VGBA; whether pool operators are shutting down their pools if they discover drain covers are missing or broken; the use of secondary systems in the field; how the Commission’s interpretation of the term “unblockable drain” is affecting states like Florida that have state laws requiring secondary systems such as gravity drains; and the effectiveness of warning labels.

APSP said that Congress probably did not consider the possibility of “unblockable drain covers” when drafting VGBA, but that APSP did talk with Congress about existing “unblockable drains” (drains with large dimensions or long channel configuration). They also asserted that it is reasonable for the Commission to interpret “unblockable drain cover” as constituting an “unblockable drain” because Congress chose to reference the ASME/ANSI A112.19.8 standard, which defines a suction outlet as “a fitting, fitting assembly, cover/grate, and related components.”

APSP was unsure how many pool operators are using “unblockable drain covers” to comply with the VGBA. They also are not aware of data showing whether drain covers come off frequently or stay affixed. The APSP representatives stated they are fairly confident that in Florida, California, and Las Vegas, Nevada pool operators are shutting pools down if they discover drain covers are missing. Further, the APSP representatives stated they are not confident that pool operators are shutting pools down if they discover drain covers are missing in the rest of the U.S.

APSP also said that “unblockable drain covers” are the best method for retrofitting residential pools with a single 8-inch drain. They expressed concern that if the

Commission were to say that “unblockable drain covers” do not fulfill the requirements of VGBA for public pools, then residential pools would be less likely to use them.

APSP representatives provided Commissioner Adler with information regarding their efforts to improve the ASME/ANSI A112.19.8 drain cover standard. In particular, they have formed a subcommittee to work on eliminating the need to take covers off during winterization of the pool. They are also working on improving the fasteners on covers, suction limiting, and warning labels. The APSP representatives could not provide a target date for the publication of a new standard.

The APSP representatives provided Commissioner Adler and his staff with an overview of five types of entrapment hazards and whether different types of secondary systems prevent those five entrapment hazards. The APSP representatives claim that sixty-seven percent of entrapment hazards are not addressed by secondary systems.

Commissioner Adler encouraged APSP to share any data they may have or acquire in the future regarding compliance with the drain cover standard in the marketplace.

LOG AUTHOR: Jana Fong-Swamidoss

LOG SUBMISSION DATE: August 4, 2010

Sent Via US Mail and Email

September 23, 2011

Mr. Troy W. Whitefield Jr.
Mechanical Team Leader
Office of Compliance and Field Operations
U. S. Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Revocation of the Interpretative Rule "Unblockable Drain"

Dear Troy:

We respectfully request that the Consumer Products Safety Commission not revoke the interpretative rule on "unblockable drain" as suggested in 16CFR Part 1450. Our position is consistent with points made in both Steve Dunn's and Thomas M. Lachocki's letters of September 19th and 20th, 2011, respectively.

We have and continue to take the most conservative route in arriving at our series of unblockable drain sizes. Each have been totally certified by NSF or certified, configuration wise, under Section #1404 of the Virginia Graeme Baker (VGB) Pool & Spa Safety Act (Mandatory Appendix II Fitting Type Requirements of ASME A112.19.8-2007).

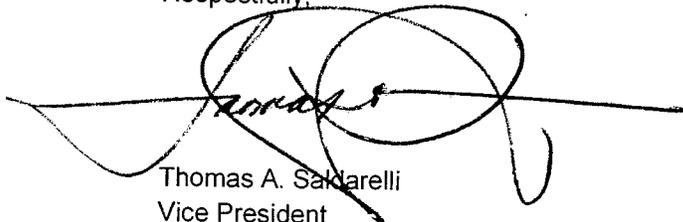
In addition, we strongly recommend that for future retrofitting and new construction, the following be considered:

1. That unblockable drains are fully compliant with Section #1404 of the Virginia Graeme Baker (VGB) Pool & Spa Safety Act (Mandatory Appendix II Fitting Type Requirements of ASME A112.19.8-2007). However, compliance and certification should not require a vacuum test. Unblockable drain covers do not experience these forces under actual field conditions. The Q formula as well as body entrapment tests determine the flow through the open area and performance of the grate.
2. The standards committee can consist of members that manufacture the products. However, as it could be considered a conflict of interest reducing the credibility of the document, they should not participate in the voting process.

By using such certification processes, as recommended above, it ensures that all the safety factors for blockable drain covers are applicable to the unblockable category as well. We also point out that under the current unblockable interpretive rule, one is relying on the Registered Design Professional to certify their configuration, safety and compliance. We know, in many cases, the designer of the facility does not want that responsibility. We also know that some RDA's do not sight data for their certification process.

Thank you for your consideration in these important issues to reduce undue burden and to maintain the safety of unblockable main drain covers.

Respectfully,



Thomas A. Sakdarelli
Vice President



Robert B. Lawson
Chief Executive Officer

cc: U. S. Consumer Products Safety Commission
Cheryl Falvey, General Counsel
Ken Hinson, Executive Director
Inez Tenenbaum, Chairman
Robert Alder, Commissioner
Thomas Moore, Commissioner
Nancy Nord, Commissioner
Anne Northup, Commissioner

Thomas M. Lochocki, Ph.D
Chief Executive Officer
National Swimming Pool Foundation

Steven Dunn
Vice President
Commercial Pool Systems, Inc.

The Honorable Connie Mack, Florida's 14th Congressional District

FRANK R. WOLF
10TH DISTRICT, VIRGINIA



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(800) 946-9653 (IN STATE)

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WINCHESTER, VA 22601
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Congress of the United States
House of Representatives

September 27, 2011

The Honorable Inez Tenenbaum
Chairman
Consumer Product Safety Commission
4330 E West Hwy, Room 704
Bethesda MD 20814

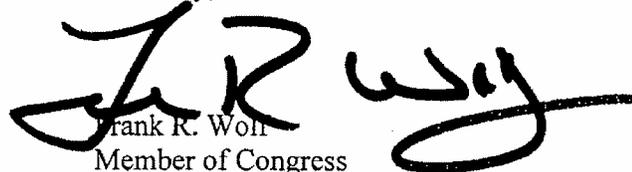
Dear Commissioner Tenenbaum:

I understand that the Consumer Product Safety Commission will reconsider its interpretation of the anti-entrapment and drowning provisions of the Virginia Graeme Baker Pool and Spa Safety Act and I write to support your action.

As a cosponsor and supporter of this act, I believe the law is vital to protecting adults and children from entrapments and drowning in recreational pools and spas. I commend you and the Commission for reexamining your original interpretation of this law and urge you to take the necessary steps to protect public safety.

Best wishes.

Sincerely,



Frank R. Wolf
Member of Congress

FRW:cw

Nancy Baker
66 Hyler Street
Thomaston, Me. 04861

September 27, 2011

Dear Commissioners:

I am writing to reiterate my thoughts expressed in earlier letters regarding the vote that was taken last year which exempted certain single drain pools and spas, those with “unblockable” drains, from the necessity of installing a secondary or back up system in order to prevent entrapment. I am grateful to Chairman Tennebaum for her consistent position of opposing the interpretive ruling of the commission and I anxiously await news of the vote being taken tomorrow reconsidering the earlier interpretation.

My hope is that the vote reflects the intent of the law which was named for my daughter Graeme but was passed in recognition of all the children who have lost their lives in this tragic, gruesome and preventable way. None of these deaths, whether in private or public pools, ought to have happened. When the Virginia Graeme Baker Pool and Spa Safety Act was passed, it put into place a gold standard of safety regarding the dangerous conditions in drain systems which jeopardize the safety of swimmers, particularly children. In so doing, it also has educated the public and given guidance to pool builders and service companies as to the proper steps to take in order to circumvent the possibility of a person becoming entrapped. I know that these safety standards, required in public pools and spas, has also had an impact in private pool settings as responsible service companies have encouraged customers to make safety a priority.

When the earlier vote was taken on the interpretation of “unblockable” drains, it failed to take into consideration that these drain covers are vulnerable to damage and dislodgement. There have been many deaths which have occurred under those conditions and only a secondary system would have released a victim from the forceful suction at the drain. That is why the law included a provision requiring a back-up system regarding single drain pools, with an understanding that a drain cover would only prevent an accident were it in place and functioning properly.

I regret that my letter comes late, in the eleventh hour, but it is because my youngest daughter, Graeme’s twin, still suffers emotional scars today from the death of her sister and I have had to give my attention to her care and well being which is currently in question. I know, as too many other families do, of the terrible consequences and trauma of losing a loved one in this way. I trust that the commission will do everything in it’s power to insist that the intention of this law is carried out, to prevent entrapment under any and all circumstances.

Sincerely,

Nancy Baker

Congress of the United States
Washington, DC 20515

September 27, 2011

The Honorable Inez Tenenbaum, Chairman
The Honorable Thomas Moore, Commissioner
The Honorable Robert Adler, Commissioner
The Honorable Nancy Nord, Commissioner
The Honorable Anne Northup, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioners:

We are writing to express our strong support for the Commission's decision to re-consider its interpretation of the Virginia Graeme Baker Pool and Spa Safety Act. The Commission's re-examination of the anti-entrapment and drowning prevention measures that should be taken by public pools with single main drains under the Act is long overdue and we urge no further delay.

As sponsors and supporters of the original legislation, we can tell you that the language of the Act makes clear that pools with only one drain are to be treated differently than pools with multiple drains. Under the Act, most single drain public pools were expected to incorporate both an anti-entrapment drain cover and another layer of protection. The reason for the extra layer of protection in single-drain pools is simple: these pools pose a much more significant danger to individuals than multiple drains because when blocked, the suction force from a single drain is much stronger than when the suction force is distributed across multiple drains.

Notwithstanding the dangers inherent in single drain pools, the Commission voted to allow all single drain pools to avoid the statutory requirement for extra layers of protection simply by installing drain covers marketed as "unblockable." As pointed out in letters from members of Congress to the Commission throughout the summer of 2010, this decision ran counter to both the spirit and letter of the Act and failed to take into account the nature of entrapment-related injuries and deaths.¹ In single drain pools, no drain cover can protect a child from entrapment if the drain cover is improperly installed or inadvertently removed. It is for this reason that Congress required extra layers of protection for public pools with only a single main drain.

The importance of requiring an extra layer of protection is underscored by the Commission's recent voluntary recalls. These recalls included some drain covers marketed as

¹ Letter from Sens. Mark Pryor, Amy Klobuchar, Richard Durbin, Chris Dodd, and Bill Nelson to the Commission (June 10, 2010); Letter from Reps. Debbie Wasserman Schultz, Frank Wolf, and John Larson to the Commission (June 10, 2010); Letter from Rep. Henry A. Waxman to the Commission (Aug. 5, 2010).

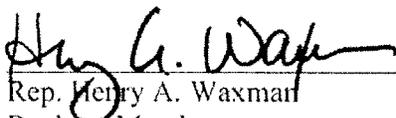
“unblockable” due to concerns that the covers do not in fact protect against entrapment hazards.² An additional layer of protection will ensure that children are protected when so-called “unblockable” drain covers fail to work.

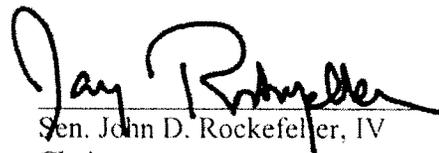
The Commission has already established an ample record on this issue. All interested parties were offered an opportunity to be heard through comments beginning in July 2009 and at a public hearing in November 2009.³ Moreover, we understand that over the last year, members of industry and safety advocates have made their views known to the Commission regarding reconsideration.

We thank you for your careful consideration of this issue. We believe it is now time to act in the interest of protecting swimmers of all ages from entrapments and drowning. Congress passed the Act in response to a number of horrific incidents in which children and adults were entrapped by drains in pools and spas, resulting in serious injuries and deaths. A decision to require additional protection for single-drain pools will ensure that the purposes of the law are fulfilled.

We look forward to and applaud your vote this Wednesday to bring interpretation of the Act in line with the spirit and intent of its sponsors and supporters.

Sincerely,


Rep. Henry A. Waxman
Ranking Member
House Energy & Commerce
Committee

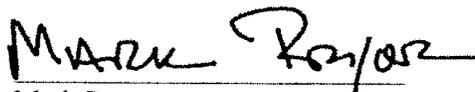

Sen. John D. Rockefeller, IV
Chairman
Senate Commerce, Science &
Transportation Committee

² Consumer Product Safety Commission, *Recalled Pool and Spa Products*, www.poolsafely.gov/news-resources/recalls; See also Patricia Callahan, *The Danger That Lurks Underwater, Drain Covers for Pools and Spas That Are Meant to Protect Might Not Be Safe*, Chicago Tribune (Feb. 7, 2011) (“Equipment meant to prevent powerful drains from causing people to drown in pools and hot tubs is being used across the country even though the products underwent flawed safety evaluations, then failed subsequent, more stringent tests, a Tribune investigation has found. A confidential report describing one laboratory’s tests concluded that the equipment “could result in serious injuries and or death.””).

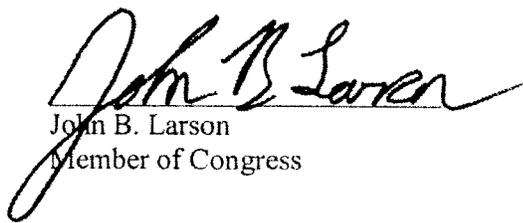
³ Consumer Product Safety Commission, *Virginia Graeme Baker Pool and Spa Safety Act; Interpretation of Unblockable Drain, Final Interpretive Rule* (Apr. 6, 2010) (available at www.poolsafely.gov/wp-content/uploads/unblockdrain.pdf).



C.K. Butterfield
Ranking Member
House Subcommittee on Commerce,
Manufacturing, and Trade
House Energy & Commerce
Committee



Mark Pryor
Chairman
Senate Subcommittee on Consumer Protection,
Product Safety, and Insurance
Senate Commerce, Science &
Transportation Committee



John B. Larson
Member of Congress



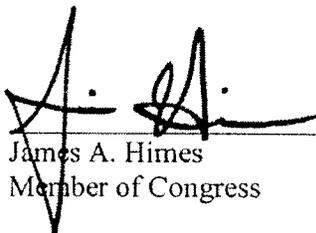
Richard J. Durbin
United States Senator



Debbie Wasserman Schultz
Member of Congress



Bill Nelson
United States Senator



James A. Himes
Member of Congress



Richard Blumenthal
United States Senator



September 20, 2011

Mr. Troy Whitfield
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Mr. Whitfield:

RE: Revocation of the Interpretative Rule "Unblockable Drain"

The National Swimming Pool Foundation[®] (NSPF[®]), founded in 1965, is a 501(c)(3) non-profit organization dedicated to improving public health worldwide by attracting more people to safe aquatic environments and encouraging healthier living through aquatic education and research. NSPF is the leading research funder and educator for pool and spa professionals who service and operate public and private pools and spas and for public health officials who are responsible for pool safety. This research is disseminated via the World Aquatic Health Conference, which NSPF hosts, and the International Journal of Aquatic Research & Education, which NSPF publishes in partnership with Human Kinetics.

The Foundation works toward its educational mission with leading training programs like Certified Pool/Spa Operator[®] certification training, Certified Pool/Spa Inspector online training, and the Pool & Spa Safety Act online training developed under contract with the CPSC. The Foundation has certified over 300,000 pool operators, managers, and health officials since 1965. In 2010 alone, over 25,000 people were trained.

Please do not revoke CPSC's interpretative rule on "unblockable drain" as suggested in 16CFR Part 1450. This position is justified based on three arguments:

1. Since the Pool & Spa Safety Act (P&SSA) was enacted, there have been no U.S. entrapment fatalities and no serious injuries to justify implementing a costly new requirement.
2. The unintended consequences of revoking this rule may increase the risk of drowning, thus conflicting with the intent of the law.
3. This change will create confusion in the market with no net benefit.

These justifications are further clarified below.

1. **Lack of Scientific Support to Implement**

There have been no U.S. entrapment fatalities or serious injuries since the Pool & Spa Safety Act was enacted to justify implementing a costly new requirement. As a result, there is no scientific evidence to justify adding another level of protection when compliant unblockable drain covers have been used.

2. **Unintended Consequences May Increase Drowning Risk**

The unintended consequences of this change may increase the risk of drowning, thus conflicting with the intent of the P&SSA. The nation has suffered the most severe economic recession since the Great Depression. Though justified, the Pool & Spa Safety Act and the Americans with Disabilities Act have placed an additional burden on aquatic facilities during a financially vulnerable time. In addition, the CPSC issued a recall prior to the 2011 swim season that resulted in new resource challenges for facilities to comply with the P&SSA.

Changing the P&SSA interpretation to require an additional level of protection for pools protected with compliant “unblockable drains” - when there are no failures that resulted in serious morbidity or mortality - places another financial burden on aquatic facilities. In contrast, this new requirement will provide a financial benefit to “safety equipment manufacturers” and “pool service/construction” companies. However, that benefit is at the expense of the aquatic facilities, making them more vulnerable to closure and thus shrinking the markets for manufacturers over time.

The National Drowning Prevention Alliance reported that for the period May 1, 2011, through August 26, 2011, a total of 1,592 drownings were noted by local media outlets. Public swimming pools play a key role in helping the general population learn to swim and for lifeguards to become trained and certified. Increasing arbitrary costs during difficult financial times has resulted in pool closures. Tragically, closures are more likely in economically-disadvantaged regions where drowning is a greater risk. Pool closures reduce the opportunity for many people to learn to swim, potentially increasing the risk of drowning. Thus arbitrary rule changes that impart cost should be avoided.

3. **Confusion with No Net Benefit**

The CPSC has funded several millions of dollars with contractors to create and disseminate educational materials to consumers, industry, and health officials. Changing the interpretation after all training contracts have ended will create confusion. Additional confusion may occur since there have been no serious injuries or deaths, suggesting that the proposed rule change would be ill-justified.

This rule change and resulting pool closures provides another drawback that is in direct conflict with the commitments of the President of the United States and both Houses of Congress. Our representatives are in debate on how to stimulate the economy to create jobs. It appears to be a direct conflict of the wishes of our elected officials to implement a rule change with no net benefit that may increase drowning risk AND may increase unemployment.

NSPF respectfully asks that the CPSC reject the revocation of this interpretive rule until scientific evidence justifies the change and can demonstrate the change will not increase drowning risk.

Respectfully,



Thomas M. Lachocki, Ph.D.
Chief Executive Officer
National Swimming Pool Foundation
4775 Granby Circle
Colorado Springs, Co 80919-3131
719-540-9119 (Phone)
719-540-2787 (FAX)
tom.lachocki@nspf.org

cc: U.S. Consumer Product Safety Commission
Cheryl Falvey, General Counsel
Ken Hinson, Executive Director
Inez Tenenbaum, Chairman
Robert Alder, Commissioner
Thomas Moore, Commissioner
Nancy Nord, Commissioner
Anne Northup, Commissioner

The Honorable Doug Lamborn, Colorado 5th Congressional District

From: [Taylor, Linda](#)
To: [Gougisha, Michael](#); [Stevenson, Todd](#); [Little, Barbara](#)
Subject: FW: CPSC - Revocation of Unblockable Drains
Date: Wednesday, September 28, 2011 7:39:15 AM
Attachments: [CPSC 2011 Report on Suction Entrapment Incidents.pdf](#)
[CDC Child Injury Data.pdf](#)
[CDC Water Injuries Factsheet.pdf](#)
[Pool & Spa News Article.pdf](#)
[Proposed Change - Virginia Graeme Baker Pool and Spa Safety Act: Unblockable Drain Rule - 09-07-11.pdf](#)

From: Dane Johnson [mailto:dane@rowleyinternational.com]
Sent: Tuesday, September 27, 2011 8:57 PM
To: Whitfield, Troy
Cc: Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark; tom.lachocki@nspf.org; jnorwood@nalobby.net; jnorwood@calspec.org; William N. Rowley
Subject: CPSC - Revocation of Unblockable Drains

Troy,

As you know, for over 37 years I have been engaged in basic research on suction entrapment and have tested and written extensively on the subject since my first suction entrapment testing in June of 1974. I pioneered the development of suction entrapment testing methodology and personally acted as a test subject hundreds of times in the last 30 years. I have authored or co-authored over 20 articles, papers, and research studies on suction entrapment.

I am a Life Member and Fellow in the American Society of Mechanical Engineers (LM/FASME). I am also a Certified Safety Professional (CSP) and have been continuously certified by the Board of Certified Safety Professionals (BCSP) since 1990. The CSP certification is the preeminent safety certification for safety professionals in the United States of America and requires education, professional safety experience, and demonstrated knowledge of professional safety practice. CSP applicants undergo an eight-hour safety exam and must be recertified every five years.

From 1987 until 1997, I was part of the U.S. Consumer Product Safety Commission's (CPSC) and National Spa & Pool Institute's (NSPI) National Swimming Pool Safety Committee (NSPSC). I was also on the NSPSC's Steering Committee and Research Sub-Committee. As part of my duties, each year I personally reviewed approximately four hundred CPSC aquatic accident investigations, including suction entrapment accidents.

I do not have a financial interest in the matter. As a professional engineer licensed to practice in twenty-eight states and the District of Columbia, and as a designer of swimming pools, the safety of the public in swimming pools is my only professional interest.

Since the Virginia Graeme Baker Pool & Spa Safety Act went into effect, there has not been a recorded suction entrapment incident in a compliant public swimming pool. Even though the Virginia Graeme Baker Pool & Spa Safety Act and its required ASME/ANSI A112.19.8-2007- Suction

Fitting for use in Swimming Pools, Wading Pools, Spas and Hot Tubs (and now ANSI/APSP-16 2011) are not perfect, there have been no suction entrapment accidents since the law went into effect.

The Consumer Product Safety Commission (CPSC) established the position that an unblockable drain cover does not require an additional level of protection. This position enabled many public swimming pools to become compliant quickly with existing equipment or only slight modifications.

If the CPSC revokes its position on unblockable drain covers, it is possible that many public swimming pools will be pulled out of service for an undeterminable length of time. This occurred previously when the Virginia Graeme Baker Pool & Spa Safety Act became effective.

Per the Center for Disease Control and Prevention

(<http://www.cdc.gov/homeandrecreationalafety/water-safety/waterinjuries-factsheet.html> and http://www.cdc.gov/safekid/Child_Injury_Data.html; also attached),

- 1) Fatal drowning is the sixth leading cause of unintentional injury death for people of all ages.
- 2) Drowning is the leading cause injury death for those 1 to 4 years of age.
- 3) Fatal drowning remains the second-leading cause of unintentional injury-related death for children ages 1 to 14 years.
- 4) There were 3,443 fatal unintentional drowning incidents in 2007 in the United States.
- 5) For every child who dies from drowning, four more received emergency department care for nonfatal submersion injuries. This observation means that in 2007, there were over 17,000 fatal and nonfatal drowning incidents in the United States.
- 6) Participation in formal swimming lessons can reduce the risk of drowning by 88% among children aged 1 to 4 years.

By comparison, the CPSC is aware of only 97 reports of circulation system entrapments (suction entrapment incidents occur on the circulation system inlets, hence circulation system entrapments are suction entrapments) over the period from 1999 to 2010

(<http://www.cpsc.gov/library/foia/foia11/os/entrap11.pdf>; also attached). 97 incidents over a period of 12 years has an average of approximately 8 suction entrapment incidents per year.

The number of drowning incidents is greater by three orders of magnitude than the number of suction entrapment incidents. Worldwide, approximately 175,000 children die from drowning every year. There are thousands of drowning deaths each year in the United States, whereas there is an average of approximately 8 suction entrapments per the CPSC. Aquatic Safety Research Group founder Tom Griffiths states that teaching children to swim “would have saved many more lives than changing the drain grates. The bottom line is, you now have a huge law to prevent double-digit deaths. And the sad thing is, we accept thousands of drownings each year” (<http://www.poolspanews.com/2009/102/102safety.html>; also attached).

It is obvious that nonswimmers are at much greater risk in aquatic environments than swimmers. Per the Center for Disease Control and Prevention (above), formal swimming lessons reduce the risk of drowning. Public swimming pools are where bulk of the public receives formal swimming

lessons. If public swimming pools close for any length of time, many nonswimmers will miss an opportunity to learn to swim.

It is not possible to determine how many, if any, drownings have occurred or will occur because of the individuals that missed the opportunity to have formal swimming lessons when their public swimming pools were closed until compliant at the onset of the Virginia Graeme Baker Pool & Spa Safety Act.

When a suction inlet is considered to be in need of an anti-entrapment device, a suction vacuum release system (SVRS) system tends to be the first option as it is the least expensive to obtain and install. If it is determined by the CPSC that a backup safety device is required for an unblockable drain, the SVRS system is the most cost-effective as it does not require a major renovation to the swimming pool to install.

However, SVRS systems do not prevent suction entrapment incidents, they react to them. Furthermore, they react to body entrapments, but cannot be designed to respond to hair entanglements or limb entrapments or eviscerations. Per the above CPSC report, only 35% of the 97 suction entrapment incidents were body entrapments; body entrapments are the only type of entrapment that may cause an SVRS device to engage. 65% of the 97 suction entrapment incidents could not have been mitigated by an SVRS.

If the CPSC changes their established position on unblockable main drain covers, it is possible that many public swimming pools will close until they can become compliant and many people who could have received formal swimming lessons in that time will continue to be at a much greater risk of drowning.

It is time for the CPSC to stop being reactive and become proactive. In engineering practice, if you have a hazard, you have three choices: 1) eliminate the hazard, 2) design around the hazard, and/or 3) warn against the hazard. Eliminating the hazard is always the preferred professional approach.

I recommend that the CPSC not approve publication of the (attached) draft Federal Register notice.

As historically proven, its approval would likely result in a number of public swimming pools closing to avoid fines for noncompliance, which would reduce the number of people able to obtain formal swimming lessons to minimize their chances of drowning. In the United States Air Force, the aircraft maintainers on the flight line hold to a time-honored saying: "If it ain't broke, don't fix it." I suggest that this would be a wise course for the CPSC to follow.

For a lasting solution, I recommend that the CPSC eliminate the suction entrapment hazard by working towards eliminating main drains in swimming pools; main drains are not necessary in a properly designed swimming pool.

Troy, I hope this helps and wish you luck on a very difficult and politically charged issue.

Bill

William N. Rowley, Ph.D., P.E.,
President

Rowley International Inc

Tel: 310.377.6724 ext 21

Fax: 310.377.8890

2325 Palos Verdes Drive West, Suite 312

Palos Verdes Estates, CA 90274-2755

<http://www.rowleyinternational.com>



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http://www.cdc.gov/safechild/Child_Injury_Data.html

CDC Childhood Injury Report

Unintentional injuries—such as those caused by burns, drowning, falls, poisoning and road traffic—are the leading cause of morbidity and mortality among children in the United States. Each year, among those 0 to 19 years of age, more than 12,000 people die from unintentional injuries and more than 9.2 million are treated in emergency departments for nonfatal injuries.

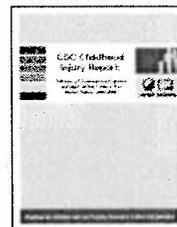
The CDC Childhood Injury Report: Patterns of Unintentional Injuries among 0–19 Year Olds in the United States, 2000 – 2006 uses data from the National Vital Statistics Systems and the National Electronic Injury Surveillance System–All Injury Program to provide an overview of unintentional injuries related to drowning, falls, fires or burns, poisoning, suffocation, and transportation–related injuries among others, during the period 2000 to 2006. Results are presented by age group and sex, as well as the geographic distribution of injury death rates by state.

Key findings from the report include the following:

Injury Deaths

- On average, 12,175 children 0 to 19 years of age died each year in the United States from an unintentional injury.
- Males had higher injury death rates than females.
 - The death rate for males was almost two times the rate for females, and males had a higher injury death rate compared to females in all childhood age groups.
- Injuries due to transportation were the leading cause of death for children.
 - The highest death rates were among occupants of motor vehicles in traffic.
 - There were also a substantial number of pedestrian and pedal cyclist deaths among children.
- Combining all unintentional injury deaths among those between 0 and 19 years, motor vehicle traffic–related deaths were the leading cause.
- The leading causes of injury death differed by age group.
 - For children less than 1 year of age, two–thirds of injury deaths were due to suffocation.
 - Drowning was the leading cause injury death for those 1 to 4 years of age.
 - For children 5 to 19 years of age, the most injury deaths were due to being an occupant in a motor vehicle traffic crash.
- Risk for injury death varied by race.
 - Injury death rates were highest for American Indian and Alaska Natives and were lowest for Asian or Pacific Islanders.
 - Overall death rates for whites and African–Americans were approximately the same.
- Injury death rates varied by state depending upon the cause of death.
 - Overall, states with the lowest injury death rates were in the northeast. Fire and burn death rates were highest in some of the southern states.
 - Death rates from transportation–related injuries were highest in some southern states and some states of the upper plains, while lowest rates occurred in states in the northeast region.
- For injury causes with an overall low burden, death rates greatly varied by age.
 - The poisoning death rate for those older than 15 years of age was at least five times the rates of the younger age groups, and the suffocation death rate for infants was over 16 times the rates for all older age groups.

Childhood Injury Report



The complete report can be viewed [online](#) or [downloaded](#) [PDF 2MB].

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Nonfatal Injuries

- An estimated 9.2 million children annually had an initial emergency department visit for an unintentional injury.
- Males generally had higher nonfatal injury rates than females.
 - For children 1 to 19 years of age, nonfatal injury rates were higher among males than females, while the rates were approximately the same for those under 1 year.
- Injuries due to falls were the leading cause of nonfatal injury.

- Each year, approximately 2.8 million children had an initial emergency department visit for injuries from a fall.
 - For children less than 1 year of age, falls accounted for over 50% of nonfatal injuries.
- The majority of nonfatal injuries are from five causes.
 - Falls was the leading cause of nonfatal injury for all age groups less than 15.
 - For children ages 0 to 9, the next two leading causes were being stuck by or against an object and animal bites or insect stings.
 - For children 10 to 14 years of age, the next leading causes were being struck by or against an object and overexertion.
 - For children 15 to 19 years of age, the three leading causes of nonfatal injuries were being struck by or against an object, falls, and motor vehicle occupant injuries.
- Nonfatal injury rates varied by age group.
 - Nonfatal suffocation rates were highest for those less than 1 year of age.
 - Rates for fires or burns, and drowning were highest for children 4 years and younger.
 - Children 1 to 4 years of age had the highest rates of nonfatal falls and poisoning.
 - Injury rates related to motor vehicles was highest in children 15 to 19 years of age.

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Injuries in your state

Select a state below for state-specific data on child injury deaths.

Alabama

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Unintentional Drowning: Fact Sheet

Overview

Every day, about ten people die from unintentional drowning. Of these, two are children aged 14 or younger. Drowning is the sixth leading cause of unintentional injury death for people of all ages, and the second leading cause of death for children ages 1 to 14 years.¹

How big is the problem?

- In 2007, there were 3,443 fatal unintentional drownings (non-boating related) in the United States, averaging ten deaths per day. An additional 496 people died from drowning in boating-related incidents.^{1,2}
- More than one in five people who die from drowning are children 14 and younger.¹ For every child who dies from drowning, another four received emergency department care for nonfatal submersion injuries.¹
- More than 55% of drowning victims treated in emergency departments require hospitalization or transfer for higher levels of care (compared to a hospitalization rate of 3-5% for all unintentional injuries).¹ These injuries can be severe.
- Nonfatal drownings can cause brain damage that may result in long-term disabilities including memory problems, learning disabilities, and permanent loss of basic functioning (e.g., permanent vegetative state).

Who is most at risk?

- **Males:** Nearly 80% of people who die from drowning are male.¹
- **Children:** Children ages 1 to 4 have the highest drowning rates. In 2007, among children 1 to 4 years old who died from an unintentional injury, almost 30% died from drowning.¹ Fatal drowning remains the second-leading cause of unintentional injury-related death for children ages 1 to 14 years.³
- **Minorities:**
 - Between 2000 and 2007, the fatal unintentional drowning rate for African Americans across all ages was 1.3 times that of whites. For American Indians and Alaskan Natives, this rate was 1.7 times that of whites.¹
 - Rates of fatal drowning are notably higher among these populations in certain age groups. The fatal drowning rate of African American children ages 5 to 14 is 3.1 times that of white children in the same age range. For American Indian and Alaskan Native children, the fatal drowning rate is 2.3 times higher than for white children.¹
 - Factors such as the physical environment (e.g., access to swimming pools) and a combination of social and cultural issues (e.g., wanting to learn how to swim, and choosing recreational water-related activities) may contribute to the racial differences in drowning rates. Current rates are based on population, and not on participation. If rates could be determined by actual participation in water-related activities, disparity in minorities drowning rates compared to whites would be much greater.⁴

What factors influence drowning risk?

- **Lack of Supervision and Barriers.** Supervision by a lifeguard or designated water-watcher is important to protect young children when they are in the water, whether a pool or bathtub. But when children are not supposed to be in the water, supervision alone isn't enough to keep them safe.
 - Barriers such as pool fencing should be used to help prevent young child access to the pool area without caregivers' awareness.⁵ There is an 83% childhood drowning with a four-sided isolation pool fence, compared to line fencing.⁶
 - Among children ages 1 to 4 years, most drownings occur in residential swimming pools. Most young children who drowned in pools were last seen in the home, had been out of sight less than five minutes, and were in the care of one or both parents at the time.⁷
- **Natural Water Settings (such as lakes, rivers, or the ocean).** The percent of drownings in natural water settings increases with age. When a location was known, 65% of drownings among those 15 years and older occurred in natural water settings.⁸
- **Lack of Life Jacket Use in Recreational Boating.** In 2009, the U.S. Coast Guard received reports for 4,730 boating incidents; 3,358 boaters were reported injured, and 736 died. Among those who drowned, 9 out of 10 were not wearing life jackets.⁹ Most boating fatalities that occurred during 2008 (72%) were caused by drowning with 90% of victims not wearing life jackets; the remainder were due to trauma, hypothermia, carbon monoxide poisoning, or other causes.²



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- **Alcohol Use.** Alcohol use is involved in up to half of adolescent and adult deaths associated with water recreation and about one in five reported boating fatalities.^{9, 10} Alcohol influences balance, coordination, and judgment, and its effects are heightened by sun exposure and heat.¹¹
- **Seizure Disorders.** For persons with seizure disorders, drowning is the most common cause of unintentional injury death, with the bathtub as the site of highest drowning risk.¹²

What has research found?

- Participation in formal swimming lessons can reduce the risk of drowning by 88% among children aged 1 to 4 years.¹³
- Seconds count. CPR performed by bystanders has been shown to improve outcomes in drowning victims. The more quickly intervention occurs, the better chance of improved outcomes.¹⁴
- A CDC study about self-reported swimming ability¹⁵ found that:
 - Younger adults reported greater swimming ability than older adults.
 - Self-reported ability increased with level of education.
 - Among racial groups, African Americans reported the most limited swimming ability.
 - Men of all ages, races, and educational levels consistently reported greater swimming ability than women.

Details about additional studies and their findings are highlighted in [Water-Related Injuries: CDC Activities](#).

How can drowning be prevented?

To help prevent water-related injuries: 1, 5, 7, 9, 10, 12

- **Supervision when in or around the Water.** Designate a responsible adult to watch young children while in the bath and all children swimming or playing in or around water. Supervisors of preschool children should provide "touch supervision", be close enough to reach the child at all times. Adults should not be involved in any other distracting activity (such as reading, playing cards, talking on the phone, or mowing the lawn) while supervising children.
- **Buddy System.** Always swim with a buddy. Select swimming sites that have lifeguards whenever possible.
- **Seizure Disorder Safety.** If you or a family member has a seizure disorder, provide one-on-one supervision around water, including swimming pools. Consider taking showers rather than using a bath tub for bathing.
- **Learn to Swim.** Formal swimming lessons can protect young children from drowning. However, even when children have had formal swimming lessons, constant, careful supervision when children are in the water, and barriers, such as pool fencing, to prevent unsupervised access are necessary.
- **Learn Cardiopulmonary Resuscitation (CPR).** In the time it might take for paramedics to arrive, your CPR skills could make a difference in someone's life.
- **Do Not Use Air-Filled or Foam Toys.** Do not use air-filled or foam toys, such as "water wings", "noodles", or inner-tubes, in place of life jackets (personal flotation devices). These toys are not designed to keep swimmers safe.
- **Avoid Alcohol.** Avoid drinking alcohol before or during swimming, boating, or water skiing. Do not drink alcohol while supervising children.

If you have a swimming pool at home:

- **Four-Sided Fencing.** Install a four-sided pool fence that completely separates the house and play area of the yard from the pool area. The fence should be at least 4 feet high. Use self-closing and self-latching gates that open outward with latches that are out of reach of children. Also, consider additional barriers such as automatic door locks or alarms to prevent access or notify you if someone enters the pool area.
- **Clear the Pool and Deck of Toys.** Remove floats, balls and other toys from the pool and surrounding area immediately after use so children are not tempted to enter the pool area unsupervised.

If you are in or around natural bodies of water:

- Know the local weather conditions and forecast before swimming or boating. Strong winds and thunderstorms with lightning strikes are dangerous.
- Use U.S. Coast Guard approved life jackets when boating, regardless of distance to be traveled, size of boat, or swimming ability of boaters.
- Know the meaning of and obey warnings represented by colored beach flags , which may vary from one beach to another.
- Watch for dangerous waves and signs of rip currents  (e.g., water that is discolored and choppy, foamy, or filled with debris and moving in a channel away from shore). If you are caught in a rip current, swim parallel to shore; once free of the current, swim toward shore.

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From: [Taylor, Linda](#)
To: [Gougisha, Michael](#); [Stevenson, Todd](#); [Little, Barbara](#)
Subject: FW: Unblockable Drain Issue
Date: Tuesday, September 27, 2011 4:15:14 PM
Attachments: [NSPF Recommendation to CPSC11.pdf](#)
[Proposed Change_VGBF11.pdf](#)

From: Nikki Thole [mailto:nthole@desperesmo.org]
Sent: Tuesday, September 27, 2011 4:10 PM
To: Whitfield, Troy
Cc: Falvey, Cheryl; Hinson, Kenneth; Hinson, Kenneth; eschwartz@cpsc.gov; ralder@cpsc.gov; Taylor, Linda; Moore, Autumn; fellin@cpsc.gov
Subject: Unblockable Drain Issue

Dear Mr. Whitfield:

The City of Des Peres Parks and Recreation department urges the CPSC to NOT revoke the interpretative rule on "unblockable drains" as suggested in 16CFR Part 1450.

From what I understand, there is no data available that justifies the revocation of this rule. According to the National Swimming Pool Foundation: since the implementation of the Virginia Graeme Baker Act there have been no entrapment fatalities or serious injuries.

In May, immediately prior to the summer swimming season, the CPSC recalled VGBA compliant grates which placed an impossible burden on swimming pool owners. Since the replacement grates were not even available, the pool owners were faced with the choice of not opening or open in violation of the rules.

The CPSC is now considering another regulation that will most likely force the closure of many swimming pools across the country due to the financial burden imposed thus denying the opportunity for people to participate in aquatic activities.

Our recreation department provides many aquatic opportunities throughout the year for children and adults. In addition, this decision could impact the 130 lifeguards we employ throughout the year.

We appreciate your careful consideration of our concerns and should you need additional information, please do not hesitate to contact us.

Sincerely,

NIKKI THOLE BUECHLER

Interim Director of Parks and Recreation, City of Des Peres
1050 Des Peres Road, Des Peres, MO 63131
314-835-6160 Office | 314-835-6151 Fax
www.TheLodgeDesPeres.com | [Facebook](#) | [Twitter](#)
nthole@desperesmo.org

From: [Hinson, Kenneth](#)
To: [Stevenson, Todd](#)
Subject: FW: Revocation of the Interpretive rule "unblockable drain"
Date: Tuesday, September 27, 2011 5:03:17 PM

Kenneth R. Hinson
301-504-7854

From: vlester.lestermgmt@gmail.com [mailto:vlester.lestermgmt@gmail.com] **On Behalf Of** Vickie Lester
Sent: Tuesday, September 27, 2011 5:02 PM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; fellin@cpsc.gov
Subject: Revocation of the interpretive rule "unblockable drain"

The Independent Pool and Spa Service Association represents nearly 4,000 pool and spa service and repair technicians throughout the country.

We support the recommendation you have received from the National Swimming Pool Foundation, requesting that you do not revoke CPSC's interpretive rule on "unblockable drain" as suggested in 16CFR Part 1450. This position is justified based on three arguments:

1. Since the Pool & Spa Safety Act (P&SSA) was enacted, there have been no U.S. entrapment fatalities and no serious injuries to justify implementing a costly new requirement.
2. The unintended consequences of revoking this rule may increase the risk of drowning, thus conflicting with the intent of the law.
3. This change will create confusion in the market with no net benefit.

IPSSA respectfully asks that the CPSC reject the revocation of this interpretive rule until scientific evidence justifies the change and can demonstrate the change will not increase drowning risk.

Vickie Lester, MBA, CAE
Executive Director
Independent Pool and Spa Service Association
10842 Noel Street #107
Los Alamitos CA 90720
[888-360-9505](tel:888-360-9505)
Fax [888-368-0432](tel:888-368-0432)
www.ipssa.com

;



September 27, 2011

Anne M. Northrup
Commissioner
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Pending vote on “unblockable drain.”

AquaStar appreciates the letter inquiry by Commissioner Northrup of September 23, 2011. We support the March 22, 2010 vote and final interpretive rule defining the term “unblockable drain” by the Commission. This vote was based on sound safety and legal principles, as outlined in the respective Separate Statements of Commissioner Northrup and Commissioner Adler. AquaStar also joins and supports the September 22, 2011 Statement submitted by the Association of Pool and Spa Professionals.

With regard to the specific inquiry by the Commissioner, AquaStar presently manufactures several model drain covers that are certified as unblockable, based on 16 C.F.R. 1450.2(b) and the ASME and current ANSI/APSP Standards. AquaStar does not believe that any of these models would be affected by the proposed reinterpretation.

AquaStar also respectfully submits that it is not aware of a single incident where an AquaStar drain cover classified as “unblockable” as defined in 16 C.F.R. 1450.2(b) has come loose or broken during operation and is not aware of a single entrapment incident or injury where any AquaStar drain cover has been installed.

We thank the Commissioner for her time and consideration.

Sincerely,

Olaf Mjelde
President

1666 GARNET AVE STE 224, SAN DIEGO, CA 92109
(877) 768-2717 –PHONE / (877) 276-POOL (7665) –FAX
INFO@AQUASTARPOOLPRODUCTS.COM –EMAIL
WWW.AQUASTARPOOLPRODUCTS.COM –WEBSITE

Stevenson, Todd

From: Hinson, Kenneth
Sent: Wednesday, September 28, 2011 11:20 AM
To: Stevenson, Todd
Subject: Fw: Do not reverse the "unblockable drains not needing additional protection" position

From: Jim.Cyrus@gwinnettcountry.com [<mailto:Jim.Cyrus@gwinnettcountry.com>]
Sent: Wednesday, September 28, 2011 11:19 AM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark
Cc: Tina.Fleming@gwinnettcountry.com <Tina.Fleming@gwinnettcountry.com>
Subject: Do not reverse the "unblockable drains not needing additional protection" position

To the members of the CPSC Committee

If I interpret the statements below correctly, you are considering to reverse a position regarding unblockable drains.

Our industry took a huge hit with the VGB Act financially in complying with requirements that in many cases were not necessary. We agree with the intent to have our pool drains safe, but to add to protection levels to "unblockable drains" is a waste of money that we do not have. Especially, in this economic time, mandates without funding sources is will drive us out of business.

Please do not reverse the current position that CPSC has on unblockable drains

Jim Cyrus
Aquatic/Adult Athletic Section Manager
Gwinnett County Parks and Recreation
(O) 770-564-4686 (F) 770-564-4657

"Those Who Cannot Appreciate Success Will Never Attain It"

CPSC will vote on Wednesday, September 28 to Reverse Current Position on Unblockable Drains!

CPSC will vote on Wednesday, September 28 to Reverse Current Position on Unblockable Drains!

FROM THE NATIONAL SWIMMING POOL FOUNDATION...

On September 7, 2011, the Consumer Product Safety Commission (CPSC) published its intent to change the CPSC position that an unblockable drain cover does not require an additional level of protection. The CPSC will vote and possibly revoke this interpretation on Wednesday, September 28!

NSPF has issued its position that the CPSC not revoke the current interpretation based on the following:

1. Since the Pool & Spa Safety Act was enacted, there have been no U.S. entrapment fatalities and no serious

injuries to justify implementing a costly new requirement.

2. The unintended consequences of revoking this rule may increase the risk of drowning, thus conflicting with the intent of the law

3. This change will create confusion in the market with no net benefit

It is important that experts weigh in to help guide the CPSC on how best to minimize both entrapment AND drowning. If you support the NSPF position, please comment to the CPSC today. Alternatively, if you have other guidance, please forward it to the CPSC as well.

All stakeholders who care about aquatics and public health agree that we must continue to work hard to have zero entrapments AND to work harder to reduce the thousands who drown each year.

Please send your comments to the CPSC before the vote on Wednesday, September 28! Their contact information is below. It is also recommended that your Congressional Representative and/or Senators be copied on any correspondence sent to the CPSC.

Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814

Troy Whitfield, Lead Compliance Officer - twhitfield@cpsc.gov

Cheryl Falvey, General Counsel - cfalvey@cpsc.gov

Kenneth Hinson, Executive Director - khinson@cpsc.gov

Inez Tenenbaum, Chairman - dslee@cpsc.gov

Robert Alder, Commissioner - radler@cpsc.gov

Thomas Moore, Commissioner - ltaylor@cpsc.gov

Nancy Nord, Commissioner - amoore@cpsc.gov

Hon. Anne Northup, Commissioner - mfellin@cpsc.gov

Tina Fleming | Division Director | Gwinnett County Parks & Recreation | 770.822.8875 | 75 Langley Drive •
Lawrenceville, GA 30046 tina.fleming@gwinnettcountry.com | www.gwinnettparks.com

 Please consider the environment before printing this email.

From: [Taylor, Linda](mailto:Taylor.Linda)
To: [Gougisha, Michael](mailto:Gougisha.Michael); [Stevenson, Todd](mailto:Stevenson.Todd); [Little, Barbara](mailto:Little.Barbara)
Subject: FW: Do not reverse the "unblockable drains not needing additional protection" position
Date: Wednesday, September 28, 2011 11:15:06 AM

From: McCallister, Robert (Bob) [mailto:RobertBob.McCallister@cobbcounty.org]
Sent: Wednesday, September 28, 2011 8:54 AM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark
Cc: Jim.Cyrus@gwinnettcounty.com; Canon, L. Eddie; Ramsey, Terrence
Subject: Do not reverse the "unblockable drains not needing additional protection" position

CPSC Committee

If I interpret the statements below correctly, you are considering to reverse a position regarding unblockable drains.

Our industry took a huge hit with the VGB Act financially in complying with requirements that in many cases were not necessary. We agree with the intent to have our pool drains safe, but to add to protection levels to "unblockable drains" is a waste of money that we do not have. Especially, in this economic time, mandates without funding sources is will drive us out of business.

Please do not reverse the current position that CPSC has on unblockable drains.

Thank you.

Bob McCallister
Aquatics Manager
Cobb County Parks, Recreation and Cultural Affairs Dept.
Marietta, Georgia

From: Jim.Cyrus@gwinnettcounty.com [mailto:Jim.Cyrus@gwinnettcounty.com]
Sent: Tuesday, September 27, 2011 5:05 PM
To: McCallister, Robert (Bob)
Subject: Did you see this?

Did you see this?

Jim Cyrus
Aquatic/Adult Athletic Section Manager
Gwinnett County Parks and Recreation
(O) 770-564-4686 (F) 770-564-4657

"Those Who Cannot Appreciate Success Will Never Attain It"

From: Fleming, Tina
Sent: Tuesday, September 27, 2011 2:32 PM

To: Cyrus, Jim
Subject: What does this mean?

CPSC will vote on Wednesday, September 28 to Reverse Current Position on Unblockable Drains!

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Please send your comments to the CPSC before the vote on Wednesday, September 28! Their contact information is below. It is also recommended that your Congressional Representative and/or Senators be copied on any correspondence sent to the CPSC.

Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814

Troy Whitfield, Lead Compliance Officer - twhitfield@cpsc.gov

Cheryl Falvey, General Counsel - cfalvey@cpsc.gov

Kenneth Hinson, Executive Director - khinson@cpsc.gov

Inez Tenenbaum, Chairman - dslee@cpsc.gov

Robert Alder, Commissioner - radler@cpsc.gov

Thomas Moore, Commissioner - ltaylor@cpsc.gov

Nancy Nord, Commissioner - amoore@cpsc.gov

Hon. Anne Northup, Commissioner - mfellin@cpsc.gov

Tina Fleming | Division Director | Gwinnett County Parks & Recreation | 770.822.8875 | 75
Langley Drive • Lawrenceville, GA 30046 tina.fleming@gwinnettcountry.com
| www.gwinnettparks.com

 Please consider the environment before printing this email. ~

From: [Taylor, Linda](#)
To: [Gougisha, Michael](#); [Stevenson, Todd](#); [Little, Barbara](#)
Subject: FW: CPSC vote concerning the installation of secondary entapment protection devices on pools/spas
Date: Wednesday, September 28, 2011 11:14:26 AM

From: Rex Cowan [mailto:lofrpc@att.net]
Sent: Wednesday, September 28, 2011 9:01 AM
To: Whitfield, Troy; Falvey, Cheryl; Hinson, Kenneth; Lee, Dorothy; Adler, Robert; Taylor, Linda; Moore, Autumn; Fellin, Mark
Subject: CPSC vote concerning the installation of secondary entapment protection devices on pools/spas

Dear Sir/Madam:

It has been brought to my attention that a representation is being made by certain segments of the pool/spa industry that "[s]ince the Virginia Graeme Baker Act was enacted, there have been no drain entrapment fatalities nor serious injuries in the United States". This statement is, quite simply, incorrect. For a Chronology of pool/spa entrapment and evisceration incidents, having occurred both before and after enactment of the VGBPSA, please click on the following link: <http://www.playitsafetech.com/blog/category/evisceration-entrapment-incidents> .

Respectfully,

Rex P. Cowan, Mgr.
Play It Safe technologies, LLC
P.O. Box 651
Winter haven, FL 33882-0651

1-(888)-300-7032



September 26, 2011

The Honorable Inez Tenenbaum
Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Tenenbaum,

We are writing to thank you for bringing the issue of pool drain entrapment back to the forefront for the Commission's consideration, and for your persistence in seeking an outcome in the discussion of un-blockable drain covers that sides with safety.

The Virginia Graeme Baker (VGB) Act was intended by Congress to prevent entrapment by using all safeguards available to the industry. In the Commission's errant decision last year – to which you were justified in your dissenting view – a majority of Commissioners concluded that an un-blockable drain cover on a blockable sump satisfies the definition of an "un-blockable drain" in the VGB Act. In doing so, the Commission turned a blind eye to one of the specific risks that the Act was intended to eliminate and breached its custodial responsibility to protect the public from unreasonable risks of serious injury or death. More disturbing, however, has been the consistent and coordinated effort by the pool and spa industry since passage of the VGB Act to dismantle and roll back the law at both the state and federal levels. This undo pressure led to the error in judgment by the Commission a year ago, and contributed to a two-year delay in the Commission recalling a noncompliant drain cover more recently. It is our hope that when the Commission revisits this issue that it will place the lives of those who use pools and spas across the country ahead of any financial interest.

As parents of a child that has fallen victim to entrapment, we cannot stand by and allow others to experience the loss that we have suffered. While we do not question that the members who supported this decision are concerned by the terrible and preventable nature of entrapment, we believe the ultimate decision removed what should be one of the "layers of protection" that Congress envisioned and the Act requires. And while the pool and spa industry may seek to persuade to the assumption that drains in pools and spas are continuously and accurately installed and maintained, we personally, and tragically, know this not to be the case. After all, our son Zachary lost his life because the drain cover failed. Had there been a secondary layer of protection our precious child would be alive today.

While a Commission reversal of its errant decision certainly would signal a renewed commitment to safety, equally important will be the effectiveness of the Commission in educating the market place regarding what compliance entails and its enforcement of the law. Our Foundation, The ZAC Foundation, is growing rapidly with a grassroots network and educational programs expanding into states across the country. The ZAC Foundation stands ready to assist the Commission in amplifying the message regarding proper VGB compliance, as well as any other message to promote pool and spa safety.

We look forward to the Commission taking action to correct its misinterpretation of the un-blockable drain issue, and we invite you to join us as we work to ensure that no family ever has to endure the loss of a child from a water safety accident.

Sincerely,



Karen Cohn
Co-Founder
The ZAC Foundation



Brian Cohn
Co-Founder
The ZAC Foundation



September 20, 2011

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814-4408

Dear CPSC Secretary:

On behalf of the Abbey's Hope Charitable Foundation (hereinafter "Abbey's Hope"), we are writing to strongly urge the Consumer Product Safety Commission (hereinafter "CPSC") to revoke its previous interpretation of the term "unblockable drain" as used in the *Virginia Graeme Baker Pool & Spa Safety Act (VGB Act)*. Abbey's Hope, at the time of the original interpretation, respectfully disagreed with the CPSC's contention that an otherwise dangerous swimming pool or spa with a single main drain can be made "unblockable" by the simple installation of a drain cover that meets certain larger dimensions and then not be required to use a secondary entrapment prevention device. We understand that the full Commission will soon be voting on whether to revoke its previous interpretation. In our view, this is a very important vote. As you know, our 6 year old daughter died as a result of an evisceration on a drain that had lost its cover. We believe that if that wading pool was equipped with a secondary safety system her injuries would have been much less severe which, in turn, may have saved her life.

I. "Unblockable Drain" Not "Unblockable Drain Cover" Triggers Additional Layer of Protection Exemption

According to the VGB Act, Section 1404(c)(1)(A), public pools and spas in the U.S. must be equipped with both an anti-entrapment drain cover and another layer of anti-entrapment protection unless the pool or spa has an "unblockable drain". Significantly, "unblockable drain" is defined in the Act as "a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard" (emphasis added). In other words, if a drain, as opposed to a drain cover, is of a certain size and possesses characteristics that make entrapment impossible, then the second layer of protection is not needed.

Abbey's Hope believes that the CPSC was misguided in its original interpretation of the Act by erroneously allowing a drain coupled with a drain cover of specific larger dimensions to be considered an "unblockable drain". A single dangerous drain outlet cannot be made fully safe by only using an anti-entrapment drain cover. The Act, in our view and by its plain language, does not allow for an exemption to the requirement for a second layer of protection (also referred to by the Commission staff as "secondary anti-entrapment systems") simply by using an "unblockable drain cover" of certain larger dimensions over an otherwise hazardous single drain outlet. Safety demands and the Act require that the all-important second layer of anti-entrapment protection also be used.



II. The Original CPSC Interpretation Allows for a Dangerous Scenario

Continuing to allow a so called "unblockable drain cover" to trigger an exemption of the additional layer of protection leads to a significant entrapment risk should that drain cover come off (as they often do and did in our case resulting in our daughter's death). In fact, the staff mentioned this very possibility and the accompanying risk it poses in its earlier technical guidance when the Commission was deciding how to interpret the "unblockable drain" language of Section 1404(c)(1)(A). As Abbey's parents, we know all too well that the risk of a drain cover coming off can become reality and such a situation creates a serious threat to swimmers and bathers especially when there is no back-up secondary system. If the Commission interpretation is allowed to stand it would continue to thwart the intent of the law. In the end, the law should have been interpreted so as to require an additional layer of protection if the single main drain itself is not unblockable.

Abbey's Hope is extremely appreciative of the CPSC's work to enforce the VGB Act and educate the public about its requirements. Much of that work we have done in partnership. We hope, however, that the full Commission will reconsider its interpretation of unblockable drains. The VGB Act was carefully crafted so as to best protect swimmers, especially children, from suction entrapment. The Act should be implemented and the marketplace policed in a manner consistent with that goal. We hope that the CPSC would revise its technical guidance to ensure that an "unblockable drain cover" is no substitute for an "unblockable drain".

Sincerely,

Scott F. Taylor
Founder & Chairman

Katey P. Taylor
Founder & President

About Abbey's Hope Charitable Foundation

Abbey's Hope Foundation was created as a tribute to 6-year-old Abigail Taylor of Edina, Minn., who was disemboweled in a wading pool on June 29th, 2007. After a triple organ transplant and numerous surgeries, Abbey passed away on March 20, 2008. Six year-old Abbey Taylor's hope was that no child should ever suffer like she did as the result of an improperly maintained pool. In her name, the Foundation works tirelessly for a world with safer pools by providing education and advocating for comprehensive safety standards for all pools. For more information, please visit www.abbeyshope.org.

From: [Moore, Autumn](#)
To: [Nord, Nancy](#); [Martvak, Joseph](#); [Cardon, Nathan](#)
Cc: [Stevenson, Todd](#)
Subject: FW: Equal to or better than other options for compliance
Date: Wednesday, September 28, 2011 4:21:30 PM

VGB Letter

From: Bonnie & Teri Snow [mailto:beesafesystems@gmail.com]
Sent: Wednesday, September 28, 2011 1:35 PM
To: Falvey, Cheryl; Fellin, Mark; Lee, Dorothy; Hinson, Kenneth; Moore, Autumn; Adler, Robert; Taylor, Linda; Whitfield, Troy
Subject: Equal to or better than other options for compliance

Consumer Product Safety Commission

We were disappointed with your vote today. Commissioner Moore seemed to think there are many besides the SVRS systems that can now be used but this is not the case. The other options of secondary back-up are extremely costly, impossible to add on in most retrofits or are only designed for new installations. Most pools that opted for an unblockable cover over their existing drain system cannot go deeper or into their drain lines for vent or gravity systems or they may have an inadequate sump that cannot be changed without going deeper with the entire plumbing line. So they now can add an inadequate SVRS device (made by Paul Pennington) for a lot of money. Thousands of people will tell you that as consumers they have disabled the systems because the back-ups are causing too many problems and don't work when the drain actually is plugged. We know a better way to address the problems of damaged or missing drain covers and would ask that you allow us to bring the solution to CPSC.

BeeSafe Systems is asking for a meeting with the Consumer Product Safety Commission to prove that our product as a stand alone installation is equal to or better than either of the other options that can be used to bring a pool into compliance with the Virginia Graeme Baker Pool and Spa Safety Act. We need this meeting at your earliest possible date. The action of the Commission this morning caused us to lose our manufacturing and marketing partner for our second product. We have invested over \$100,000 in development of this product and would be starting to Manufacture within the month of October as we are close to completing the testing for compliance. We will be facing bankruptcy if we cannot get our product to you for approval within the next 2 months. Customers who have our products will not be able to get replacement parts if we are no longer in business. We need to be able to make sales before the next pool season. This means we need to show our products (especially our new, smaller but still unblockable model) at the November 2-4 International Pool and Spa Trade Show in Las Vegas and to get the product into distributors this fall and winter. It needs to be on the shelves of retailers before spring to be in the pools for the 2012 season. Please let us know your procedure and the soonest possible date for getting us scheduled.

Sincerely,
Bonnie Snow

--

Bonnie Snow, Owner/CEO
BeeSafe Systems

795 W. Center St. #2
Provo, UT 84601

801-375-6881 Phone
801-691-5761 Fax
888-306-0121 Toll Free

beesafesystems@gmail.com
www.beesafesystems.com

From: [Howse, Matt](#)
To: [Stevenson, Todd](#)
Subject: FW: Message from Email Form
Date: Wednesday, September 28, 2011 6:06:11 PM

This came in this afternoon on drains.

From: emailform@cpsc.gov [mailto:emailform@cpsc.gov]
Sent: Wednesday, September 28, 2011 1:03 PM
To: Chairman
Subject: Message from Email Form

09/28/2011 13:02:49

Name = Bill Robertson
Organization/Affiliation = Bill Robertson Pool Design
Daytime Phone = 2483484960
E-mail address = billrob@comcast.net

Message = I understand your office is looking into the elimination of un-blockable drains. I would suggest you do not remove unblockable drains. I would add a vortex plate over the suction 2 to 4 times the diameter of the suction pipe creating a compliant sump and replacing the grate with known open area. Thanks Bill

Stevenson, Todd

From: Stevenson, Todd
Sent: Thursday, September 29, 2011 8:25 AM
To: Stevenson, Todd
Subject: VGB

-----Original Message-----

From: Robin Taylor [<mailto:rtaylor345@comcast.net>]
Sent: Friday, September 23, 2011 5:39 PM
To: Hinson, Kenneth
Subject: VGB

Please do not confuse things and add extra cost to the swim clubs it is hard enough to stay in business now w/o more regulations and cost. We are here to teach swimming and make everyone safer in and around the water. Let us do our jobs.

Thank you

Robin Taylor

Stevenson, Todd

From: Center, Information
Sent: Wednesday, September 28, 2011 3:17 PM
To: OS - Office of the Secretary
Cc: Wolfson, Scott; Filip, Alexander; Fleming, Nychelle
Subject: FW: Message from Email Form

Todd,

Please review as comment.

Thanks

Maureen

From: emailform@cpsc.gov [<mailto:emailform@cpsc.gov>]
Sent: Wednesday, September 28, 2011 11:52 AM
To: Center, Information
Subject: Message from Email Form

09/28/2011 11:51:45

Name = Douglas Muller
Organization/Affiliation = None
Daytime Phone = 201 280 5353
E-mail address = dougamuller@optonline.net

Message = To commissioner Bob Adler,
Very disturbed to hear of your decision to reverse your vote on the swimming pool drain issue. This country does not need added mandatory retrofitting that brings no incremental benefit to consumers. Congratulations on adding to the burden consumers already feel.

Stevenson, Todd

From: Hinson, Kenneth
Sent: Thursday, September 29, 2011 5:36 PM
To: Stevenson, Todd
Subject: FW: drains

For correspondence tracking / handling. Thanks.

Kenneth R. Hinson
301-504-7854

From: Bill Robertson [<mailto:billrob@comcast.net>]
Sent: Thursday, September 29, 2011 5:19 PM
To: Hinson, Kenneth
Subject: drains

States don't care what your position is. Why bother to create provisions for Certifying drains by professionals when some could care less as long as they can force their interpretation of compliance on all of us. Some have not adopted the A112 for the sumps and look for compliant covers only, using common sense over unblockable. Some ignore VGBA all together for they have had drain standards in place for decades. Congratulations to those States with these common sense approach. Congratulations for Florida for creating a law no longer requiring pool drains.

States like Illinois found they can ride your coat tails, ignore your September change to adopting ANSI/APSP-16, force existing facilities to follow the A112 since it is part of their existing code, subject compliance to their interpretation, mandate compliance by October 1, 2011, take months to review and rationalize their position citing "safety" as the excuse. Yet now you accept the influence of manufacturers to force even further restrictions.

Please let us all know when the target will stop moving. The Rules, The Law, well that speaks for itself. Sorry for being frustrated.

Thank for taking the time to read this for I know you have your hands full. Bill

*BILL ROBERTSON POOL DESIGN/BUILD INC
913 WHITEGATE DRIVE
NORTHVILLE, MICHIGAN 48167
248348 4960 FX 248348 4968
billrob@comcast.net*

Stevenson, Todd

From: Hinson, Kenneth
Sent: Friday, September 30, 2011 12:18 PM
To: Stevenson, Todd
Subject: Fw: Bad VGB ruling

From: Shannon Synan [<mailto:ssynan@verizon.net>]
Sent: Friday, September 30, 2011 12:16 PM
To: Fellin, Mark; Moore, Autumn; Taylor, Linda; Adler, Robert; Lee, Dorothy; Hinson, Kenneth; Falvey, Cheryl; Whitfield, Troy
Subject: Bad VGB ruling

I am very disappointed by the ruling last Wednesday. It makes absolutely no sense. There have been no deaths or injuries in the last three years.

Robert Adler, Inez Tenenbaum, Thomas Moore – in my heart I will hold you responsible for every drowning death in communities where the pool has been closed down directly or indirectly by this ruling.

Anne Northup and Nancy Nord thanks for proving that not all Republicans are idiots.

I am sorry this is not how I usually conduct my comments but I am shocked and angry.

Shannon Synan
8 Howe St.
Belchertown MA, 01007

Stevenson, Todd

From: Whitfield, Troy
Sent: Friday, September 30, 2011 2:43 PM
To: Little, Barbara; Stevenson, Todd
Subject: FW: Message from Email Form

I suppose this could be considered a comment...

Troy

From: Bill Robertson [<mailto:billrob@comcast.net>]
Sent: Friday, September 30, 2011 2:04 PM
To: Whitfield, Troy
Cc: Toro, Mary; Cohen, Neal
Subject: RE: Message from Email Form

Thank you Mr. Whitfield,

I understand why you accepted ANSI/APSP 16 to replace A112, however A112 is included under "related standards". Under A112 everything is treated as direct suction with some states requiring greater open area which is acceptable in many instances. However this takes a facility constructed in 2000 and earlier and forces already cash strapped Public Facilities to spend \$150,000 vs \$5,000. The \$5,000 meets the intent and they can be certified but does not meet current standards of construction in some States. This whole thing has snowballed in some States.

States are applying their own interpretation to the 18" X 23" standard and for a pool with a 12" X 15' feet trench drain it no longer complies, even when the Engineer is willing to sign off on it, the State wants it certified via a test. Which is what we will do. The sump size does not need to match the covers especially if both sides are equal to or greater than the width of the cover. There is no way to block a raised cover, especially if the cover is above the sides.

I am also aware of your completion date and some have their own like Illinois which is more than 6 weeks behind in initial review, 6 additional weeks in final review and will as of tomorrow close a guesstimated 400 facilities around the State. Some initially waited many months to be approved only to have to go thru this all over again. In two instances we offered to cap the main drain until the State could get caught up but State Law says main drains are required. No place in the standard is elimination of the main drain an option.

Thank you for your time. Respectfully submitted. Bill Robertson

*BILL ROBERTSON POOL DESIGN/BUILD INC
913 WHITEGATE DRIVE
NORTHVILLE, MICHIGAN 48167
248348 4960 FX 248348 4968
billrob@comcast.net*

From: Whitfield, Troy [<mailto:TWhitfield@cpsc.gov>]
Sent: Friday, September 30, 2011 12:50 PM
To: billrob@comcast.net
Cc: Toro, Mary; Cohen, Neal
Subject: RE: Message from Email Form

Bill,

The VBGA (Pub. Law 110-140) Section 1403 simply defines the 'term' ASME/ANSI within the Act. Section 1404 (b) requires that all drain covers manufactured, distributed, or entered into commerce meet the performance requirements of the ASME/ANSI standard..or any successor standard...regulating such drain covers. The Commission voted at the end of July to incorporate ANSI/APSP-16 as the successor standard to the ASME standard, effective Sept. 6, 2011.

Troy Whitfield
Mechanical Team Lead
Regulatory Enforcement
U.S. Consumer Product Safety Commission
(301) 504-7548 (tel)
(301) 504-0359 (fax)

From: emailform@cpsc.gov [<mailto:emailform@cpsc.gov>]
Sent: Thursday, September 29, 2011 2:54 PM
To: Section 15
Subject: Message from Email Form

09/29/2011 14:53:37

Name = Bill Robertson
Organization/Affiliation = Bill Robertson Pool Design
Daytime Phone = 2483484960
E-mail address = billrob@comcast.net

Message = I am aware of the recent change adopted yesterday in unblockable drains. We seem to have a multitude of interpretations be various States giving them free reign to dictate and then the change in unblockable for whatever reason. Public Law 110-140 Section 1403 specifically States, "ASME/ANSI". Just to be clear the beginning of the month you amended the Law to now follow ANSI/APSP-16 2011. There are also sections in 1401 which defer to A112. Is 1401 now being amended and revoted on by the Legislature to include ANSI/APSP 16 into Public Law? It is my understanding that the Law must include the standard. Thanks Bill

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!

Stevenson, Todd

From: Center, Information
Sent: Friday, September 30, 2011 3:28 PM
To: OS - Office of the Secretary
Cc: Wolfson, Scott; Filip, Alexander; Fleming, Nychelle
Subject: FW: Message from Email Form

Todd,

For your review.

Thanks

Maureen

From: emailform@cpsc.gov [<mailto:emailform@cpsc.gov>]
Sent: Thursday, September 29, 2011 9:51 PM
To: Center, Information
Subject: Message from Email Form

09/29/2011 21:50:19

Name = Carol Cameron
Organization/Affiliation =
Daytime Phone = 813 253-3671
E-mail address = carollcameron@gmail.com

Message = Would you please reconsider your vote regarding new guidelines for drain covers for public pools? I am 72 year old lap swimmer in my city public pool that is over 30 years old. Due to budget cuts, we have been fighting to keep the pool open. I live in Florida and since the pool is heated, swim all year. Your new regulation will certainly mean the pool will close and there is no money to build a new one. I have to swim since I have health issues that prevent me from other exercise. Please realize the "law of unintended consequences" applies here. In an attempt to MAYBE make the pools safer, thousands of swimmers will no longer be able to swim. Is there any chance that you will reconsider your vote? I am heartsick about the new guidelines! Please, please reconsider.

Stevenson, Todd

From: Howsare, Matt
Sent: Monday, October 03, 2011 8:28 AM
To: Stevenson, Todd
Subject: Fw: Message from Email Form

From: emailform@cpsc.gov [mailto:emailform@cpsc.gov]
Sent: Friday, September 30, 2011 04:07 PM
To: Chairman
Subject: Message from Email Form

09/30/2011 16:07:22

Name = John Riley
Organization/Affiliation = City of Frisco
Daytime Phone = 972-670-3873
E-mail address = jriley@friscotexas.gov

Message = Dear Chairman Tenenbaum:

I want to congratulate you and the commission for your reversal in defining "unblockable". I read your letter from the original commission approval as to why you could not support the decision and it was if I had read my own letter. I'm sure you and the others disapproving the definition are under pressure, especially Mr. Adler who changed his mind, but please reassure them both there are others that feel you got it right this time. Below I have attached an email that I sent to the CPSC during the original review process. It never made the website and I never received a reply to the other emails I sent asking if it was received and or forwarded to the right department. In any case, if you read my correspondence below, you will see that there were several items we would require prior to considering approval of a single main drain suction system. Approval would include a scenario of what we might consider as a version of an "unblockable" sump in conjunction with other required conditions.

Please let the other commissioners know how much we appreciate your hard work and the integrity you have shown in making this decision.

Best Regards,

John Riley

Building Inspector
Multi-Family Coordinator
City of Frisco
Development Services
Building Inspections Division
6101 Frisco Square Blvd, 3rd Floor
Frisco TX, 75034
972-292-5378
Fax 972-292-5388
jriley@friscotexas.gov
www.friscotexas.gov

ATTACHED PREVIOUS CORRESPONDENCE BELOW

Dear Sirs:

I have not received a response to the last two emails forwarded to the CPSC (please read below). It might be that they are not being forwarded to the right department. I used a link provided in the Staff Draft Technical Guidance on Unblockable Drains, July 2009 (due by August 5, 2009) which defaults to os@cpsc.gov This morning, I was using a different link and it defaulted to cpsc-os@cpsc.gov. In any case, could someone please reply to the email below as it is extremely frustrating

to take the time and effort to reply to your requests for comments using your websites referenced links and not be included in the referenced comment data.

Thank you,
John Riley

Health Inspector
City of Frisco
Development Services
Health & Food Safety
6101 Frisco Square Blvd, 3rd Floor
Frisco TX, 75034
972-292-5378
Fax 972-292-5388
jriley@friscotexas.gov
www.friscotexas.gov

From: John Riley
Sent: Thursday, September 10, 2009 10:55 AM
To: 'os@cpsc.gov'
Subject: FW: Unblockable Drain Guidance

Dear Sirs:

I would like to know why my comments sent to you on July 30th (see original email below) are not contained in CPSC website link.

"Public Comments Received (Comments 1 through 69, August 11, 2009) on Technical Guidance on Unblockable Drains (July 2009 CPSC Staff Draft"

Thank you,
John Riley

Health Inspector
City of Frisco
Development Services
Health & Food Safety
6101 Frisco Square Blvd, 3rd Floor
Frisco TX, 75034
972-292-5378
Fax 972-292-5388
jriley@friscotexas.gov
www.friscotexas.gov

From: John Riley
Sent: Thursday, July 30, 2009 4:30 PM
To: 'os@cpsc.gov'
Cc: Health
Subject: Unblockable Drain Guidance

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 105

Dear Sirs:

This reply is in response to your request for public comments regarding guidance on unblockable drains. Although the definition of an unblockable includes the requirements of an approved cover/grate, sump, and fasteners, there is no

requirement for a secondary form of safety such as an SVRS, or the operation of the suction system not to exceed the approved flow rate of the cover/grate. The focus of the definition seems to heavily lean towards the size of the cover/grate both rectangular (minimum 18x23) or diagonal (minimum 29") as means to render it unblockable by the human body with the condition that if the cover/grate is missing, it is then no longer unblockable.

Our training over the last 5 years (State, National, Products, and Professional Organizations) has documented and shown that most drowning deaths from suction entrapment are due to a single suction outlet system with no additional protection such as an SVRS and the main drain cover was broken or missing. We do not see how a single main drain regardless of its size is safe when the cover is broken or missing. Meaning, a 29" diagonal or 18"x23" cover/grate is no safer than a 10" round when it has a missing cover. We have not heard or seen proof of any drowning by suction entrapment where there have been dual drain suction systems with approved covers, sumps, 3 ft separation and an approved SVRS.

We might feel more comfortable regarding an approved single unblockable suction system is if it met the following conditions:

1. Was approved by the Texas Department of State Health Services
2. Was installed with an approved cover, sump and fasteners
3. Was installed with pump size not to exceed the approved flow rate of the cover/grate
4. The cover and sump were large enough to allow it to be plumbed with dual pipe fittings installed at bottom or sides of sump, hydraulically balanced piping from the sump to the single suction line, with minimum of 3 ft separation between the pipe outlets attached to the sump.

With the above scenario, we feel there is a better chance to avoid suction entrapment, if the cover/grate were to become broken or missing, because there would be two areas of suction within the sump separated 3 ft apart.

Thank you for your consideration.

Best Regards,
John Riley

Health Inspector
City of Frisco
Development Services
Health & Food Safety
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Frisco TX, 75034
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Fax 972-292-5388
jriley@friscotexas.gov
www.friscotexas.gov

From: [Howsare, Matt](#)
To: [Stevenson, Todd](#)
Subject: Fw: Virginia Graeme Baker Pool and Spa Safety Act
Date: Friday, November 04, 2011 10:42:35 AM
Attachments: [Letter to Commissioners\[1\].doc](#)

From: Kathleen Moore [mailto:madmaven2@gmail.com]
Sent: Thursday, November 03, 2011 05:58 PM
To: Chairman
Subject: Virginia Graeme Baker Pool and Spa Safety Act

Chairman Tenenbaum,

My name is Kathleen Moore and I am employed by State of Texas, Department of State Health Services (DSHS) as a Registered Sanitarian. I am responsible for the Public Pool and Spa Program and the Public Interactive Water Feature Program. In addition I am the subject matter expert (SME) for all things aquatic, including open recreational waters, private and public pools and spas, recreational waterborne illness, etc. I am currently serving on the committee that is engaged in rewriting the ANSI standard for suction outlets. I was asked to contact you concerning VGBA and CPSC's recent unblockable main drain interpretation. I was unable to receive permission to respond on behalf of DSHS, so I am contacting you as a private citizen with insight into VGBA, suction outlets, and the impact to the industry of VGBA and interpretations of VGBA by CPSC. Please see the attached.

I appreciate your taking to the time to read the attachment.

Kathleen O. Moore, R.S., CPO

In 1999, the State of Texas adopted new administrative rules for public swimming pools and spas. Included in these rules were specifications for suction outlets intended to protect against 4 of the 5 forms of entrapment; evisceration, body entrapment, limb entrapment and hair entanglement. These rules were based in part on CPSC Publication No. 363 009801, *Guidelines for Entrapment Hazards*. The CPSC Guidelines stressed using layers of protection in pools and spas.

As information concerning entrapment risks grew and entrapment became identified as a cause of death or injury new rules were adopted in Texas which included changes to the rules for suction outlets. These new rules, adopted in 2004, included the use of suction vacuum release devices (SVRD) and automatic vent systems (AVS) when applicable. The changes were designed to include options for the pool owner/operator, not only for new construction but also for existing public pools and spas. Higher risk pools and spas were subject to more stringent regulations. Higher risk pools and spas were identified as those having a single suction outlet or those that were shallow (4 ft. deep or less). Although, and for many reasons, these changes were difficult to implement, over a reasonable period of time, pool owner/operators came to understand the importance of protecting against the risk of entrapment and changes were made both in new construction and in existing public pools and spas.

Initially SVRD installation and operation was problematic as many SVRDs revealed problems in the circulatory system. Frustrated, pool owner/operators disabled many SVRDs. SVRD manufacturers took steps to redesign, reprogram, and replace what was necessary and, more importantly, began an extensive and free SVRD education seminar for owner/operators. As pool owner/operators gained confidence in SVRDs and as more and different types of SVRDs became available the use of SVRDs as one of several available entrapment protection options became viable and accepted. Also, intentional disabling of the SVRDs stopped.

When the Virginia Graeme Baker Pool and Spa Safety Act (VGBA) was passed and went into effect those public pools and spas in Texas that were in compliance with current State of Texas Administrative Code were only minimally impacted. The greatest concern was the lack of available VGBA compliant suction outlet covers. However, over a fairly brief period of time, that was resolved.

Ideally, a pool or spa should include a circulatory system that has been designed and constructed to include built-in entrapment protection without having to include additional mechanical or electronic equipment. However, that option is not and was not possible for public pools and spas constructed before entrapment was identified as a danger and mitigated by regulation, or in cases where there were structural limitations placed upon construction of a new pool or spa. However, when properly selected and sized for a particular pool or spa suction system, and when properly installed and maintained, a SVRD is an important, useful and effective entrapment protection device.

It has been my experience that problems with most SVRDs is not due to failure of the SVRD but is related to either improper installation, selection of an inappropriate SVRD for that system, poor maintenance of the circulatory system or facility, or circulatory system problems related to plumbing and/or pump sizing.

Please understand that some of the aquatic industry's reaction to CPSC's recent interpretation of unblockable main drains is not necessarily a rejection of the basis for that interpretation. It is more a reflection of the overall impact of the numbers of recent regulation and the suction outlet recall upon the industry. In addition the timing of some of "interpretations" from CPSC was unfortunate coming after most facilities had completed their over-winter maintenance, rehabilitation, and repair to aquatic facilities and just prior to opening for the 2011 swimming season. This forced the hand of many regulatory officials to intervene and delay the opening of public pool facilities until corrections were made. Regulatory officials felt the dissatisfaction from the aquatics industry very strongly. I have spent the better part of the last 3 years educating myself, pool owner/operators, local regulatory officials, and the public about VGBA. In addition, I have been working closely with the industry to mitigate the impact of the recall of suction outlet covers and the recent interpretation of "unblockable" to suction outlets.

I do understand that not all the Commissioners agreed with the latest decision, however, I want to assure you that it is a more correct interpretation of "unblockable" and will provide more protection to the pool user from the risks of death or catastrophic injury related to entrapment, hair entanglement or evisceration.

If you would like to contact me at any time concerning VGBA or any matter concerning swimming pools, spas, or open recreational waters , I can be reached at my

office by email, Katie.moore@dshs.state.tx.us, or by telephone at 512-834-6788, ext. 2306.

Respectfully,
Kathleen O. Moore, R.S., CPO