



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

**STATEMENT OF COMMISSIONER ELLIOT F. KAYE AND ACTING CHAIRMAN
ROBERT S. ADLER ON PETITION 19-A FOR CLASSIFICATION OF “VACUUM DIFFUSION
TECHNOLOGY” AS AN ANTI-ENTRAPMENT SYSTEM UNDER THE VIRGINIA GRAEME BAKER
POOL AND SPA SAFETY ACT**

July 6, 2020

On June 1, 2020, the Commission voted 3-1 to deny a petition resubmitted by PSD Industries, LLC (PSD) requesting that the Commission classify vacuum diffusion technology (VDT), the technology used in PSD’s ProteKtor product, as an “other system” under the Virginia Graeme Baker Pool and Spa Safety Act (VGBA). The VGBA requires that public pool drains be equipped with one or more of five enumerated devices intended to prevent entrapment hazards associated with pool drains and pool drain covers.¹ Alternatively, public pools may be equipped with “any other system determined by the Commission to be equally effective as, or better than, the [five systems in the VGBA] at preventing or eliminating the risk of injury or death associated with pool drainage systems.”²

The five entrapment hazards that the VGBA seeks to address are body entrapment, limb entrapment, hair entrapment, mechanical entrapment and evisceration. Notably, all five of the enumerated systems in the VGBA prevent body entrapment.³ We voted to deny the petition because the CPSC staff has concluded that VDT does not protect against body entrapment and therefore is not as equally effective as the enumerated systems at reducing entrapments in drains.⁴ Since it went into effect in 2008, the VGBA has been remarkably successful in reducing body entrapments.⁵ Based on incident reports made to CPSC, limb and body entrapment incident rates have

¹ 15 U.S.C. § 8003(c)(1)(A)(ii).

² *Id.*

³ Staff Briefing Package at 15.

⁴ *Id.* at 14-15.

⁵ *Id.* at 3, 10-11.

dropped by half, and limb and body entrapment death rates have dropped by eighty percent.⁶

The plain language of the VGBA requires that the Commission determine that a new technology is, in fact, equally or more effective than the five enumerated systems in the VGBA at preventing or eliminating the risks associated with pool drainage systems. Since the five enumerated systems all protect against body entrapment, it seems to follow that any “other system” would need to, at a minimum, protect against body entrapment.

If we are incorrect about the intent of the VGBA on this point, we are open to a different interpretation that would not require an “other system” to fully protect against body entrapment as long as it adequately or more robustly protects against other entrapment hazards. Based on the record before us, however, there is no information of which we are aware that the drafters of the bill intended that any “other system” could exclude protections against body entrapment. We have seen nothing in the legislative history that directly addresses this issue.⁷ Before changing our interpretation, it would be important to see a clear expression of intent in the legislative history on this point from the members of Congress who wrote the VGBA.

Clearing the hurdle of the interpretation of the VGBA is the first but not the only hurdle. In the event it were cleared, there is also the matter of staff’s concerns that VDT may not protect against hair and mechanical entrapments and evisceration. It would also be important to see strong evidence addressing these concerns in the record.

We appreciate and encourage the innovative work being done to make our pools safer. As noted by CPSC staff, VDT may provide some level of protection against entrapment hazards other than body entrapment. Nothing in the VGBA or the Commission’s denial of this petition prevents VDT from being used by pool owners as another layer of protection in addition to the five enumerated devices.⁸

⁶ *Id.*

⁷ *But see* Examining Pool Safety Issues, Hearing Before the S. Subcomm. on Consumer Affairs of the Sen. Comm. on Commerce 109th Cong., S. Hrg. 109-597 (2006) (several witnesses citing body entrapment as an area of special concern); S. Rep. No. 110-182 at 4-5 (2007) (focusing on body entrapment as a primary injury scenario).

⁸ Staff Briefing Package at 15.