



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

MINUTES OF COMMISSION MEETING
June 19, 1980

Room 456 Westwood Towers
5401 Westbard Avenue
Bethesda, Maryland

CLOSED TO THE PUBLIC

The June 19, 1980, meeting of the U.S. Consumer Product Safety Commission was convened in closed session by Chairman Susan King, with Commissioners David Pittle, Edith Sloan, Stuart Statler and Sam Zagoria present.

The staff briefed the Commission on regulatory and enforcement issues related to baby cribs.

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Agenda Matters. The Commission then considered the following decision matters in open session.

1. Refuse Bins Petition, CP 80-1

The Commission voted to grant that portion of the subject petition which requested that certain straight-sided refuse bins be exempted from the consumer product safety rule declaring certain unstable refuse bins as banned hazardous products (16 CFR 1301). The Commission had previously denied that portion of the petition which requested that enforcement of the banning rule be suspended pending Commission decision on the petitioners request for exemption from the rule (see Minutes of the Commission Meeting for November 14, 1979). A draft proposed partial revocation of the regulation will be prepared for Commission consideration to implement the decision. The vote was 4-1 with Commissioner Sloan voting to deny the petition for exemption and to direct the staff to implement a priority enforcement system for the ban of unstable refuse bins. (Sloan's Dissenting Opinion attached).

2. Emerging Hazards Recommendation Amusement Rides, EP 79-1

The Commission voted unanimously to approve the development of a federal-state cooperative program on amusement ride safety. The program will include the following:

- a. An information exchange program,
- b. Continued involvement in voluntary standards activities through monitoring,

Minutes of Commission Meeting - June 19, 1980 (Cont'd)

Agenda Matters (Cont'd)

Emerging Hazards Recommendation Amusement Rides, EP 79-1 (Cont'd)

- c. Continuation of Section 15 activities, and
- d. Preparation of a Hazard Analysis on amusement ride injuries.

(Commissioner Sloan voted to approve in addition to the above: 1. Developing Commission staff technical expertise; and 2. Developing model state legislation.)

At the request of the Executive Director and in view of the above decision to monitor the voluntary effort, the Commission indicated to the Executive Director that they agreed that it would not be appropriate to approve funding public participation in the voluntary effort at this time as requested by the American Society for Testing and Materials (ASTM).

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The Commission then reconvened in closed session to be briefed by staff on various enforcement activities related to amusement rides and a child's toy.

There being no further business on the agenda, Chairman King adjourned the meeting.

For the Commission:

Date June 27, 1980

Sadye E. Dunn
Sadye E. Dunn
Secretary

Attachment (Commissioner Sloan's Dissenting Opinion on Refuse Bins)

REFERENCES: Minutes of June 19, 1980, Commission Meeting

Agenda Matters:

1. Refuse Bins Petition, CP 80-1

Briefing Package dated June 17, 1980, Vote Sheet dated March 12, 1980

2. Emerging Hazards Recommendation Amusement Rides, EP 79-1

Briefing Package dated June 11, 1980



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DISSENTING OPINION OF
COMMISSIONER EDITH BARKSDALE SLOAN
RE: "STANDARD-SIZE" STRAIGHT-SIDED REFUSE BINS

On October 7, 1976, the CPSC banned unstable refuse bins of metal construction and internal capacity of one (1) cubic yard or more, after determining that no feasible safety standard would protect the public from the unreasonable risk of injury from such bins.

On June 19, 1980, the Commission voted, 4-1, to exempt "standard-size" straight-sided refuse bins from the existing ban. I cast the sole vote against the exemption and my reasons for doing so follow. A petitioner seeking exemption for a banned product must persuade the Commission that the subject product no longer presents an unreasonable risk of injury by providing facts and data justifying such characterization of the particular product. Here, the petitioner simply has not provided facts sufficient to justify an exemption.

The Commission has been advised that "standard-size" bins come in a range of capacities determined by variances in the depth, length, height and width of the subject bins. Additionally, the weights given for the various bins have variances exceeding 200 lbs., yet no evidence has been presented that any of the bins have actually been weighed. This variance causes me to question the accuracy or the propriety of the ranges presented for the other measurements (height, depth, length, and width).

Compliance with the ban on unstable refuse bins is made difficult by an exemption of a "standard-size" refuse bin given the initial problem of quantifying this "standard-size." This problem would be present in many on-the-street visual examinations given the virtual impossibility of visually distinguishing between some of the straight-sided and some of the slanted-sided bins. How can we effectively enforce our ban on unstable refuse bins when the banned product cannot be distinguished from many of the exempted products, except in the compliance testing room?

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As I understand it, the testing procedure utilized here did not include laboratory testing on a subject bin. I am concerned that data presented does not address the impact that wheels have on the tipping of refuse bins. I am further concerned that the data ignores the impact of such bins being located on uneven surfaces, or soft surfaces, and there is no doubt that such bins would be so located.

We have relied upon data which indicates the exempted bins have failed our compliance tipping test at relatively low weight forces. These forces indicated that the equivalent weight of two eight-year old children, for example, could tip the subject bins. Yet we do not have the empirical data necessary to describe how children play on straight-sided refuse bins because we have not tested nor studied the play patterns of children on straight-sided bins. We have, instead, borrowed data collected on slant-sided bins (already banned products) and we have excluded from that data, via staff assumptions, play patterns presumed incompatible with straight-sided bins. This analytical approach is required by the paucity of information as to straight-sided refuse bins. Indeed, we have no documentation of injuries on straight-sided refuse bins and we have no reliable estimates of the number of such bins in this country.

It is clear to me, however, that in the circumstance of tipping, the unreasonable risk of harm presented by these "standard-size" straight-sided bins is no less than that presented by the slant-sided bins. Injuries from these heavyweight bins could be severe, if not fatal.

It has been suggested that if these bins present an unreasonable risk of injury, such hazard would have manifested itself by now. In response to this suggestion, Judge Gee of the 5th Circuit may be appropriately quoted from the recent case of Southland Mower vs. CPSC, Paragraph 13, U.S. Court of Appeals, 5th Circuit (June 19, 1980), as follows:

"When part of a safety standard is directed at making sure that required safety measures provide their intended level of protection...it is primitive to wait until a number of people have lost their lives or sacrificed their limbs before we attempt to prevent those accidents."

An additional argument advanced in behalf of the petition is that most of the businesses involved are small businesses and, therefore, in need of our "cooperation." This urging is irrelevant given the potential severity of injury to children at play on such bins unless these bins are retrofitted for safety. We must not lose sight of the fact that manufacturers can retrofit these bins and for the most part eliminate the hazard. The majority, by a decision to exempt these bins from our ban, has allowed a hazard to continue. I cannot, in good conscience, concur in this decision and, therefore, I dissent.

Signed: Edin Barthelme Sloan Date: June 27, 1980