



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

Record of Commission Actions
December 16, 1981

At the December 16, 1981, meeting of the U.S. Consumer Product Safety Commission, the Commission considered two matters: (1) in open session, CP 82-1, and (2) in closed session, Enforcement Matter OS #1069. The Commission was also briefed by staff on issues related to the safety of toy chests. Chairman Nancy Harvey Steorts convened the meeting. Commissioners David Pittle, Edith Barksdale Sloan, Stuart M. Statler and Sam Zagoria were present.

Decision Matters.

1. Unvented Gas-Fired Space Heaters, Petition CP 82-1

The Commission considered a petition from the Gas Appliance Manufacturers Association requesting revocation of the consumer product safety standard that requires unvented gas-fired space heaters manufactured after December 31, 1981, to be equipped with an oxygen depletion sensing device (ODS). Following substantial discussion, the Commission voted 4-1 to deny the petition, Chairman Steorts and Commissioners Pittle, Sloan and Statler voted to deny, with Commissioner Zagoria voting to grant the petition. Chairman Steorts and Commissioner Pittle filed a statement or opinion concerning their views on this matter.

2. Enforcement Matter OS #1069

Following discussion, the Commission voted 3-2 to accept the corrective action plan and close the file in this matter. Chairman Steorts and Commissioners Pittle and Statler voted to accept the plan and close the file. Commissioners Sloan and Zagoria dissented. Commissioner Zagoria filed an opinion on this matter.

For the Commission:

A handwritten signature in cursive script that reads "Sadye E. Dunn". The signature is written in black ink and is positioned above a horizontal line.

Sadye E. Dunn
Secretary

Attachments

12/16/81

STATEMENT OF
NANCY HARVEY STEORTS
IN THE MATTER OF
UNVENTED GAS SPACE HEATERS

I am voting to deny the petition.

My commitment to voluntary cooperation between industry and the federal government remains unchanged. However, I have always said that when necessary, I will vote for mandatory regulation. I believe that the 11th hour industry efforts in this matter do not demonstrate the kind of voluntary effort that makes mandatory regulation unnecessary. I am not convinced that the consumer will be adequately protected by withdrawing this regulation just as it is due to become effective or by extending its effective date. Therefore, I vote to deny.

Industry can show its willingness to cooperate by voluntarily incorporating additional safety features. Perhaps after a year of regulation, we will be willing to deregulate based both on compliance with the mandatory and on voluntary efforts.

12/16/81

CONSUMER PRODUCT SAFETY COMMISSION
OF THE
UNITED STATES OF AMERICA

Petition for Revocation of)
Mandatory Standard for)
Unvented Gas-Fired Space)
Heaters)

OPINION OF
COMMISSIONER R. DAVID PITTLE

On October 6, 1981, the Gas Appliance Manufacturers Association (GAMA) petitioned the Consumer Product Safety Commission (Commission) requesting revocation of the Commission's standard requiring unvented gas-fired space heaters to be equipped with oxygen depletion sensing devices (ODS). The purpose of this standard is to reduce the unreasonable risk of injury from carbon monoxide poisoning associated with unvented gas-fired space heaters. The standard, which was due to go into effect on December 31, 1981, requires that each heater manufactured after that date be equipped with an ODS capable of shutting off the gas supply to the heater when the oxygen level is depleted to not less than 18 percent of the ambient atmosphere.

The petitioner asks that the Commission abandon its mandatory standard and rely on the American Gas Association's (AGA) certification program for gas-fired space heaters instead. The petitioner states that in order to be certified by AGA as conforming with the American National Standards Institute (ANSI) Standard Z21.11.2, unvented gas-fired space heaters produced after December 31, 1981

must be equipped with an ODS. GAMA believes that compliance with the ANSI standard will result in heaters at least as safe as those which comply with the Commission's standard, and that relying on the voluntary standard will be less expensive, less confusing, and less burdensome.

On December 16, 1981, the Commission voted 4-to-1 to deny GAMA's petition. I concur in the decision not to withdraw the mandatory standard at this time. However, I believe it would be in the public interest to change the effective date of the Commission standard to December 31, 1982. During the next year I would be willing to evaluate new data submitted in support of a reconsideration of the petition.

Unvented gas-fired space heaters without an oxygen depletion sensor system or some other safety feature to protect against carbon monoxide poisoning clearly present an unreasonable risk of injury to consumers. The manufacture of heaters with a properly functioning ODS safety device will eliminate or reduce greatly this risk of injury.

The staff has carefully compared the technical aspects of the Commission's mandatory standard against those in the voluntary standard developed by ANSI and certified by AGA. It found that either standard's ODS requirement would adequately protect the consumer. Both approaches would require heaters manufactured after December 31, 1981 to be equipped with an ODS.

It is important to note that on September 30, 1980, when the Commission voted to finalize this standard, AGA had been unable to guarantee an effective date for their voluntary program. This was

a critical factor—one that weighed heavily in my vote to finalize the mandatory standard. Now that AGA has guaranteed an acceptable effective date, I believe an important defect in the overall voluntary program has been corrected.

In order for me to vote to revoke the Commission standard, I need to be confident of three things:

1. The ANSI voluntary standard is adequate to address the risk.
2. The certifying body, AGA, can achieve substantial compliance with the voluntary standard after the effective date of the AGA program.
3. Industry is presently capable of meeting the ANSI requirements on a production basis.

There seems to be little disagreement within the staff concerning the first two points. Staff analysis indicates the ANSI standard is adequate; indeed, it is even more stringent than the mandatory standard. Further, AGA seems to have the credibility, experience, national influence and effectiveness to justify my confidence in the successful application of this ANSI standard. I have little doubt that few, if any, of these heaters would be manufactured for sale out of compliance with AGA's certification requirements.

My concern is with the third point—the ability of industry to meet the standard given the present stage of production technology. The industry has not yet completed its first full-scale production of complying heaters. Based upon the historically uneven pace of the development of the ODS itself, there seem to be

substantial uncertainties surrounding the successful production of complying heaters for the 1982 heating season. Despite AGA's effective date of December 31, 1981 and their continuing good intentions and designs, I would not withdraw the Commission's standard until the successful manufacture of ODS-equipped heaters has been demonstrated. The presence of the Commission's standard serves to counterbalance pressure that could develop on AGA from manufacturers to extend AGA's effective date. Thus, I concur with the majority decision to deny the request for withdrawal at this time.

However, I depart from my colleagues on what action the Commission should take now. I believe that AGA's certification requirements, with a firm December 31, 1981 effective date, would result in every bit as many complying heaters as a Commission standard. I do not, therefore, believe we need our mandatory standard to go into effect at this time. Instead, shifting our effective date to December 31, 1982 would preserve the integrity and impact of our standard and simultaneously provide an opportunity for the industry to implement fully its voluntary program. Should complying heaters be successfully produced on a mass basis over the next year, I would have little hesitance in withdrawing the Commission's standard. From the remarks of my colleagues during the Commission meeting, it seems clear that at least a majority would agree to withdraw the Commission standard when such evidence is before them. Thus, I am reluctant to impose a mandatory standard in 1982 only to withdraw it one year later.

Many local jurisdictions will be confused when their regulations

are preempted by our mandatory standard. Those wishing to retain their regulations, and those whom they regulate, will face an interim period where the status of local laws will be uncertain while petitions for exemption from preemption are considered by the Commission. In addition, all those localities seeking an exemption from preemption will incur considerable costs petitioning the Commission. Their burden of proof is substantial. Until a petition is granted a local government will be required to adopt the Commission approach. If the Commission then withdraws its standard, possibly freeing local jurisdictions to once again regulate heaters as they see fit, a doubly confusing and costly condition will result. All of this disruption can be avoided simply by extending the effective date of our standard by twelve months.

CONCLUSION

The Commission's experience with unvented gas-fired space heaters has been one fraught with delays, unmet expectations, and the frustration of trying to harness an emerging technology in an expeditious manner. It is regrettable that non-ODS-equipped heaters appeared on the market during the interim period after the Commission's proposed ban was withdrawn in favor of a product standard. It is clear to me today as it was then that the proposed ban should not have been withdrawn until mass-produced complying heaters were in sight.

However, that was then and this is now. Today the industry has agreed to manufacture only complying heaters after December 31, 1981. Therefore, I would give the voluntary approach a chance to

work. Extending the effective date of our standard by twelve months would provide no less safety to the consumer and, at the same time, would help avoid the confusion of a preemption "whipsaw."


R. David Pittle
R. David Pittle, Commissioner

January 29, 1982

12/16/81



CONSUMER PRODUCT SAFETY COMMISSION

OF THE

UNITED STATES OF AMERICA

In the Matter of)

OS #1069)

OPINION OF

COMMISSIONER SAM ZAGORIA

In a period when regulatory bodies are being cautioned to cut down on mandatory regulations and boost up government-industry cooperation, voluntary recalls become a particularly desirable way to deal with unsafe consumer products. Such recalls are cheaper, faster and less restrictive for both manufacturer and agency than industry-wide standards are.

But recalls that are essentially limited to press releases are inadequate to protect the health and safety of consumers in many cases. This case history of an actual dangerous toy, which I may not name, except as "Product X," illustrates why both government and business must find ways to do better.

Almost two years ago, the U. S. Consumer Product Safety Commission was informed that a potentially fatal hazard existed in a popular and substantial child's plaything that was widely distributed throughout the Nation. The manufacturer had learned of and informed the Commission that an infant died when its head became wedged between the steps of a wooden ladder that was part of the toy. Another infant suffered irreversible brain injury when deprived of oxygen in an almost identical accident. A third infant, fortunately, had been pulled loose without injury.

The situation has been a bad one for all concerned. The company described the toy as one of its biggest sellers -- almost 400,000 units had been produced from the early 1960's to the late 1970's -- and now the CPSC staff had reason to believe all were "defective." The company instigated a design change increasing the spacing between the slats of the ladder. As to the units already produced, the company notified its sales chain to halt further sales and to offer previous purchasers a free replacement ladder kit. Point of sale posters were provided for retailers describing the "exchange program."

Since one of the incidents had occurred at a day care center, our staff suggested a warning letter to day care centers, and they were mailed by the company. These resulted in almost 2800 responses, the firm reported. Since some of the purchases were from catalogues, a letter and replacement kit were sent to those customers who had placed orders by mail.

But with the target for correction set at the 400,000 units produced, there was still a need to alert hundreds of thousands more consumers. A second press release was issued by the company and CPSC jointly, and a national morning television show reported the "recall."

In late 1981, the company said it felt "the public in general had been adequately notified by our corrective action," and asked that "the file in this matter be closed."

At this point, the Commission economics staff informed us that its best estimate was that slightly more than 300,000 units were likely still to be in use, since the play equipment had a 10-year life because of the "durability of materials and construction." It was a product that had retailed for about \$30 to \$50 and was "likely to be handed down in families with more than one child or loaned to other families when the product is outgrown."

The company had corrected about 49,000 units, as of December 1981, or about 15 percent of the units likely to be in use. Almost 85 percent, therefore, still may exist in their original, potentially hazardous form.

The matter was considered by the Commission last month in a closed session, as allowed in matters involving enforcement and compliance, and by a vote of 3-2, the staff was directed to close the file on the matter. The two "nay" votes were by Commissioner Edith Barksdale Sloan and myself.

In arguing against dropping the matter, I urged that the manufacturer consider "reverse marketing" -- using the same media to distribute the danger message that it had used so successfully to sell the product. It would mean retracing advertising paths, a difficult and expensive route, but in my view justified where death and serious injury are involved. Another procedure which might be tried involves offering a reward for information leading the manufacturer to the location of a still-defective unit.

By coincidence, we were informed recently of a 78 percent recall success involving paid advertising and a 23 to 42 percent record in another recall incorporating monetary incentives.

I very much regret that I may not even mention the name of the product. Ironically, even though the Commission is committed to alert consumers about possible hazards, and two press releases have already been issued on this one, we are obliged to operate under legislative restrictions which do not permit identifying a manufacturer in these circumstances unless a cumbersome statutory procedure is followed.

In all fairness, I should note that the company involved has been cooperative in the past, and I know of no current recalls in which it is involved. But in this case, involving a substantial and expensive toy (the kind that is hardly likely to be tossed away), one which has been known to inflict fatal or severe injury, I believe both the company and a majority of the Commission are wrong about whether there is need for more notice.

I would not want any infant playing on one of those
261,296 ladders yet to be corrected.

Sam Zagoria

Sam Zagoria
Commissioner

January 15, 1982