

SEARCHED
INDEXED
SERIALIZED
FILED
MAY 1994
FBI - BETHESDA
COMMUNITY RELATIONS

LOG OF MEETING

SUBJECT: Meeting Between CPSC Chairman Brown and Representatives of the 5-Gallon Bucket Industry

DATE OF MEETING: April 26, 1994

PLACE: CPSC, Room 714,
East-West Towers
Bethesda, MD

LOG ENTRY SOURCE: John Preston, ESME *JP*

DATE OF ENTRY: May 2, 1994

COMMISSION ATTENDEES:

Ann Brown, Chairman
Alan Schoem, Ass't to Chair.
Eric Rubel, Gen. Counsel
Robert Verhalen, AED, EP
John Preston, ESME
Harleigh Ewell, OGC
George Sweet, EPHF
Sue Cassidy, EPHA

Patricia Adkins, Ass't to Chair.
Patsy Semple, Com. Gall's Office
Ron Medford, EXHR
David Schmeltzer, AED, CE
Renae Rauchschalbe, CECA
George Sushinsky, ESEL
Mary Donaldson, ECSS

NON-COMMISSION ATTENDEES:

William Roper, Ropak Corp.
Mara Letica, Letica Corp.
Warren Sickle, ISSA
Marilyn Langill, Consultant
John Ortman, NMAMPAC
Robert Bourg, Bennett Ind.
Eric Rieke, Rieke Corp.
Ken Sokoloff, Prospect Ind.
Jake Colley, Gypsum Ind.
John Whalen, BNA
Rick Schaffer, PSL

Elaine Lang, Rep. Chas. Wilson
Robert Hultquist, PSC, Inst.
John Clementi, Plastics, Inc.
Archibald Munn, NAMPAAC
Chris Lanath, Ecolab
William Wright, Paragon
Steve Landstra, Monsey Products
Fred Masfield, Kainak Corp.
Jeffrey Kursweil, Jenner & Block
Mary Spock, PSL
Mary M. McNamara, Law Off. M³

SUMMARY OF MEETING:

Chairman Brown opened the meeting by thanking the representatives of the 5-gallon bucket industry for coming to this meeting. The Chairman said that she wanted to start a cooperative effort on the health and safety of children in the United States and that she was very serious about children's hazards especially the drowning hazard presented by buckets.

The Chairman noted that 200 children have drowned in buckets since 1989. Since the Coalition for Container Safety was formed, 150 children have drowned and since the formation of the ASTM 5-gallon bucket subcommittee, 90 children have drowned. Since March 1994, four children have drowned. More than one child in 200,000 will drown in a bucket each year.

The Chairman said that there has been "no prejudging" on what action should be taken. The Commission will decide what option, if any, should be adopted. She will consider the entire record in addressing this issue including what is said at this meeting, and "will be of an open mind." However, the Chairman said she was very concerned about the industry's progress in developing requirements to address the drowning hazard presented by 5-gallon buckets and informed the attenders that the Commission would decide, on May 19th, what action should be taken to address this hazard. The options presented in a staff briefing package are: Do nothing, require a warning label, develop performance requirements, or ban certain buckets. Protecting children is a civil rights issue, giving a voice to the voiceless. Victims are not just statistics, they are people.

The Chairman commended the gypsum industry for voluntarily labeling their 5-gallon buckets, followed closely by Proctor and Gamble. However, staff has informed her that labels only do so much and the drowning hazard should be designed out of the product. The Chairman said that the Commission cannot rely on the hope that a voluntary standard will be completed. In order to defer to a voluntary standard such a standard has to be completed and adequate.

Mr. Roper, a manufacturer of plastic 5-gallon buckets, said that his company's products have to meet a number of existing performance standards in addition to meeting the needs of customers. The requirements in the draft ASTM performance standard are not the solution. If there were performance requirements that would be compatible with the needs of customers, bucket manufacturers would follow them. He said that he has had four engineers attempt to develop a performance requirement and they were unsuccessful.

Mr. Roper noted that there are about one billion buckets already in consumer's hands and no ASTM labeling or performance standard would affect these buckets for up to 20 years. He also said that he believed that an information and education campaign was very important and it should focus on low income consumers since these appear to be most at risk.

The Chairman responded by stating that education is concomitant with other action. Since industry is creative, it should be able to figure out a remedy.

Mr. Clementi, another bucket manufacturer, stated that he is on a hospital board and serves 300 hours a year at the hospital. He said he is intimately involved in primary care and the photographs of a bucket drowning victim disturb him. If a product redesign were feasible, he would undertake it. However, the bucket industry is between a rock and a hard place in that performance requirements to address the drowning hazard

contradict other existing standards covering shipping containers. He said he would not want to see hazardous materials shipped in unstable buckets; buckets with knockout plugs would not survive the DoT 4 foot drop test; restrictors in buckets present a hazard of head entrapment. He believed that the bucket industry has been proactive in attempting to solve the drowning problem and supported a mandatory labeling rule. Industry has concluded that the proposed performance requirements would eliminate the bucket industry. If there was a feasible solution it would have been followed by now.

In response to a question from the Chairman, Mr. Clementi said he estimated that probably 20-25 percent of buckets currently being shipped bear a warning label. Mr. Roper said he believed this figure to be 30-35 percent. The chairman asked why the percentage of labeled buckets was not higher. Mr. Clementi responded that customers do not want labels and there was a cost involved in lithographing buckets to meet the California law and the label proposed in the Senate Bill. Mara Letica said that complying with labeling requirements "is a shifting ball game" and the industry was "being blackmailed - everyone is all over the map." The Chairman responded by noting that CPSC now has a new Chairman and "this is now a new playing field."

Bob Hultquist, a representative of the Plastic Shipping Container Institute, displayed a plastic 5-gallon bucket containing a "hazardous materials" warning label and other directions, instructions and warnings and noted that there is very little room on a bucket for a warning label addressing the drowning hazard. In response, the Chairman said that industry should consider a solution other than labels.

Mr. Roper said that the cause and effect needed to be identified. The cause of the bucket drownings is unattended children, so there is a need to reach the parents through education. He said he did not accept the statement that labeling is not effective, and drew attention to the latest staff estimate of 40 bucket drowning deaths per year that previously had been 50 per year. He suggested that the reduced estimate may be the result of labeling. He also noted that if containers were changed tomorrow, there are still about one billion buckets in consumers hands that present the drowning hazard.

Ms. Letica displayed other products that she stated have resulted in drownings. These were a 10 and 12 quart bucket and two 6 gallon plastic trash cans. It was noted that there are numerous child drownings in toilets. Chairman Brown responded that nobody was suggesting that we return to the outhouse.

An industry representative stated there used to be numerous cases of children asphyxiating in refrigerators until the public was made aware of this hazard through an information campaign.

Alan Schoem reminded the speaker that the Refrigerator Safety Act is enforced by CPSC and requires that refrigerators be openable from inside. Magnetic latches are used to ensure compliance.

A spokesman for the metal bucket industry drew attention to a metal 5-gallon bucket that had an unprotected steel bottom to ensure that it will quickly rust and be undesirable for consumer use because it would leak or leave a rust stain on floors.

There was discussion on making buckets either larger or smaller than the current popular 5-gallon capacity. Larger buckets were believed to be impractical because they would be too heavy to carry and smaller buckets (less than 4 gallons) may increase the cost to the point that a bag-in-box container may be preferred by many shippers. Industry also believed that smaller buckets would present a solid waste problem. Tall narrow buckets may reduce the drowning hazard but industry stated these would be unstable when stacked.

An industry representative questioned why CPSC was so concerned about bucket drownings when there are more infant drownings in bathtubs and toilets. Ron Medford responded that most consumers are aware of the hazard of drowning in bathtubs and toilets but do not perceive the drowning hazard of buckets.

Mr. Kursweil, a spokesman for the metal bucket industry, drew attention to the fact that CPSC staff is aware of eight drownings in buckets with capacities less than 4 gallons, yet these did not appear to be regarded as a problem. Whereas staff is aware of only one drowning in a metal 5-gallon bucket, but metal buckets appear to be included in the ANPR.

CPSC General Counsel, Eric Rubel, outlined the regulatory process that will be followed if the Commission votes to publish the ANPR. He noted that approval of a voluntary standard that adequately addressed the drowning hazard of 5-gallon buckets, together with substantial conformance by industry, would require the Commission to terminate its rulemaking proceeding.

It was noted that, since other government agencies have regulations addressing 5-gallon buckets CPSC should coordinate its efforts with these other agencies.

The Chairman closed the meeting by stating that she is sympathetic to the problems expressed by industry but is very concerned about the overriding problem of children dying at unacceptable rates in 5-gallon buckets.

DISTRIBUTION

OS(2) EXHR
ES File