



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

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

ITEM:

Virginia Graeme Baker Pool and Spa Safety Act; Final Interpretive Rule on Unblockable Drains
(Briefing package dated March 30, 2010)

DECISION:

The Commission voted (3-2) to approve the publication of the draft final interpretive rule in the *Federal Register* without any changes. Commissioners Nord, Adler and Northup voted to approve the draft rule. Chairman Tenenbaum and Commissioner Moore voted to not approve the publication of the draft rule.

Commissioner Adler issued the attached statement with his vote.

For the Commission:

A handwritten signature in black ink that reads "Todd A. Stevenson".

Todd A. Stevenson
Secretary

* Ballot vote due April 6, 2010
(Ballot votes completed on April 2, 2010)



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

April 2, 2010

**Statement of Commissioner Robert S. Adler on the
Final Interpretive Rule addressing the term “unblockable drain” as used in the
Virginia Graeme Baker Pool and Spa Safety Act**

On December 19, 2007, Congress passed the Virginia Graeme Baker Pool and Spa Safety Act,¹ (“VGBA” or “the Act”). Today I voted to publish a Final Interpretive Rule interpreting the term “unblockable drain” as used in the Act. Along with my vote, I am requesting that any interested party who would like to provide feedback to me on the Commission’s interpretation of the term please direct those comments to: commentsforCommissionerAdler@cpsc.gov. Please do so by the end of the traditional summer pool season, Labor Day (September 6, 2010).

The decision to publish this rule at this time as a “Final” Interpretive Rule (as opposed to a “Proposed” Interpretive Rule) was an unusual one, and it was based exclusively on the particular (and unusual) circumstances surrounding this matter. Because this rule was never published as a Proposed Rule, there has been no formal request by the Commission for comments on the final interpretation published in the Federal Register. In the normal course of business, even though we are not required to do so, the Commission always requests comments on its interpretive rules, and I expect that practice to continue. The practice is one that I believe allows the Commission to receive the vital feedback from all interested parties that informs our decision making process. It is for this reason that I am personally soliciting comments that I will share with my fellow Commissioners and the relevant members of the CPSC staff.

By way of background, in July 2009, the CPSC staff issued draft technical guidance concerning the definition of an “unblockable drain” under the Act, and invited comment on this guidance. In October 2009, the Commission issued a notice in the Federal Register announcing a public hearing at which interested parties could present their views on the proposed staff definition of “unblockable drain.” Prior to the hearing, comments were received regarding the staff definition and those comments were posted on the agency’s website at:
<http://www.cpsc.gov/LIBRARY/FOIA/FOIA10/pubcom/unblockdrain.pdf>.

¹ P.L. 110-140, Title XIV, 15 U.S.C. § 8001, et. seq.

In November 2009, the public hearing was held with presentations both by CPSC staff and nine presenters. A video webcast of this hearing can be found at:
<http://www.cpsc.gov/vnr/asfroot/unblockdrain.aspx>.

After the hearing, CPSC staff revised its interpretation of the term and presented it for consideration to the Commission. In March, upon careful consideration, I voted with two of my colleagues to approve the staff's interpretation and instructed the staff to prepare a rule consistent with their interpretation.² I realize that this vote effectively bypassed the usual comment period the Commission provides – an approach that I will be reluctant to adopt in the future.

Upon further consideration, I think it is important that those that wish to comment have a forum to do so and should know that their voice will be heard. It is for this reason that I am requesting comments through the end of the summer pool season at:
commentsforCommissionerAdler@cpsc.gov. I promise to read carefully any and all comments.

² At that time I issued a separate statement discussing my vote. The statement is available at:
<http://www.cpsc.gov/pr/adler03032010.pdf>.