



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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CHAIRMAN INEZ M. TENENBAUM

September 28, 2011

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE COMMISSION
DECISION TO REVOKE THE VIRGINIA GRAEME BAKER POOL & SPA
SAFETY ACT INTERPRETIVE RULE ON UNBLOCKABLE DRAINS**

Today, the U.S. Consumer Product Safety Commission voted to revoke the Commission's rule on the interpretation of "unblockable drain," as set forth in the Virginia Graeme Baker Pool and Spa Safety Act ("VGB Act" or "the Act"). In taking this action, the Commission has now implemented the law as I believe Congress and the advocates who have lost their young children intended.

The VGB Act was passed into law by Congress in 2007. The VGB Act is intended to create layers of protection and barriers to prevent the drowning, drain entrapment, and evisceration of victims like Virginia Graeme Baker, Abigail Taylor, and Zachary Cohn, three children who died in tragic, yet entirely preventable ways.

The VGB Act requires each public pool and spa in the United States to be equipped with an anti-entrapment drain cover. In addition, each public pool and spa in the United States with a single main drain, *other than an unblockable drain*, must be equipped with one or more of the following secondary devices or backup systems: an automatic shut-off system, a gravity drainage system, a Safety Vacuum Release System, or a suction-limiting vent system. Section 1403(7) of the Act defines an unblockable drain as "a drain of any size or shape that a human body cannot sufficiently block to create a suction entrapment hazard." The presence of an unblockable drain removes the requirement for a secondary backup system.

On April 6, 2010, a majority of my colleagues voted to interpret the VGB Act's definition of "unblockable drain" to include the installation of an "unblockable drain cover" over a small, blockable, drain suction outlet; thus eliminating the requirement of a secondary backup system. As a result, when an unblockable drain cover is missing or broken, public pools and spas likely would be without a secondary backup system to prevent entrapment hazards.

This interpretive rule was published as a final rule in the *Federal Register* on April 27, 2010. I was in the minority at the time of this vote because I believed that this interpretation failed to follow clear congressional intent in the passage of the VGB Act. In my view, this approach did not follow the intent of the Act, which was to establish the layers of protection that have been long advocated by families of victims and the pool safety community as necessary to prevent deaths and injuries from pool and spa drownings and entrapments.

Based upon further reflection, discussion and analysis, and after having received many letters from the public, families of victims, and members of Congress, my colleague, Commissioner Robert Adler, concluded that he misinterpreted the legal requirements of the VGB Act. His change in position, he advised us, was not based upon a new set of facts, but rather, strictly on a change in his view of the meaning and intent of the law. Accordingly, the Commission held a public meeting and voted today to revoke this interpretive rule.

Indeed, revocation of the interpretation of an “unblockable drain” has been a contentious issue. I would like to set the record straight on a few issues. Some of my colleagues have sought to delay action on revoking the interpretive rule and requested that we seek comment from affected industry before any such revocation is issued. I concur with my colleague, Commissioner Adler, who observed at today’s meeting that such action would be seeking the “wrong answers from the wrong people.” Because this decision is driven by a change in Commissioner Adler’s view of the law’s requirements, I do not believe it is necessary to gather additional information unrelated to the legal requirements of the VGB Act

Furthermore, my vote today is consistent with my long held belief that, in light of the intent of the law, it is easily discernable that Congress intended to provide layers of protection, especially when a drain cover is missing or broken. Under these circumstances, it is entirely appropriate for the Commission to revoke the interpretive rule and proceed with implementation of the VGB Act in accordance with the revised legal interpretation.

I share the concerns about the expense to local pools and spas from compliance with the requirements of the VGB Act. Importantly, I want to commend operators of public pools and spas that came into compliance with the Act when it went into effect in December of 2008. The CPSC will continue to work with state and local health departments, as well as the pool industry, to ensure compliance with today’s interpretation.

Based on this concern, I am interested in gathering additional information on the ability of the public pools and spas that have already modified their facilities and installed VGB Act-compliant unblockable drain covers based on the Commission’s previous interpretation of the Act to come into compliance by May 28, 2012. For this reason, I supported the inclusion of a request for public comment on this issue in the Commission’s Notice of Revocation. I encourage interested stakeholders to submit comments during the 60-day comment period to let us know of the successes, as well as challenges, facing those who have installed VGB Act-compliant unblockable drain covers to come into compliance with the requirements of the VGB Act by May 28, 2012.

Although the number of fatalities associated with these hazards is not extensive, the risks of tragic deaths and gruesome injuries involved with noncompliant pools and spas are real. Congress fully understood this when drafting the VGB Act and intended to put an end to these entirely preventable deaths and injuries. I am very pleased to report that there have been no deaths involving the entrapment of children on pool or spa drains since 2009.

Unfortunately, the Commission continues to receive reports of drain entrapment incidents. As recently as three months ago, a four-year-old boy in a wading pool was severely bruised in his rectal area after becoming entrapped on a drain that lacked a cover. This incident and past incidents like it show that drain covers come off, creating exactly the types of serious entrapment hazards that Congress intended for secondary backup systems to prevent.

Seven-year-old Virginia Graeme Baker became entrapped by a hot tub drain. She was unable to free herself, efforts by her mother to pull her from the drain were futile and tragically, she died from drowning. Six-year-old Zachary Cohn lost his life when a drain cover came loose, while seven-year-old Abigail Taylor lost her life after suffering a severe evisceration injury on a drain with a missing cover.¹ I have attached to my statement, letters recently sent to the Commission by Nancy Baker, Karen and Brian Cohn, and Scott and Katey Taylor, to allow their voices to be heard on the importance of the decision we have made today to revoke the previous interpretive rule. Above all, we must not forget Virginia Graeme Baker, for whom this law has been named, nor can we overlook the circumstances of her death, and the deaths of other children, such as Zachary Cohn and Abigail Taylor, whose lives were senselessly cut short. I extend my heartfelt thanks to the families of the victims of entrapment and evisceration incidents and commend them for their tireless advocacy to ensure that no family experiences the pain they have suffered.

I strongly believe in the importance of the agency's efforts to prevent these types of tragedies and under my direction, the Commission will continue to promote its "Pool Safely" education campaign and will work to effectively implement the VGB Act with the goal of preventing any future deaths and eliminating pool and spa entrapment hazards.

¹ <http://www.youtube.com/watch?v=Je293ebR5Bg>