

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 5, 2010

The Honorable Inez Tenenbaum, Chairman
The Honorable Thomas Moore, Commissioner
The Honorable Robert Adler, Commissioner
The Honorable Nancy Nord, Commissioner
The Honorable Ann Northup, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Commissioners:

I am writing to urge the Commission to reexamine without delay the manner in which it has implemented the Virginia Graeme Baker Pool and Spa Safety Act (the VGB Act). The VGB Act was intended to protect the public from the danger of pool and spa drownings and entrapments. The Commission's actions to date have not met this goal and, if not reexamined, will leave the public exposed to the threat of serious injury or death.

The VGB Act has two requirements. First, it requires public pools and spas to install an anti-entrapment drain cover. Second, it requires public pools and spas with single main drains to take additional secondary measures to prevent drain entrapments unless they are equipped with an "unblockable drain."

On April 27, 2010, the Commission published a final interpretative rule regarding the term "unblockable drain" that effectively eliminates the requirement that a public pool or spa with a single main drain be equipped with a secondary anti-entrapment device. The Commission reached this result by interpreting an "unblockable drain" to mean any drain fitted with the anti-entrapment drain cover required by the VGB Act that is of an unblockable size. Reading the statute in this way creates an exception so broad that compliance with the Act's drain cover requirement through installation of an unblockable sized drain cover removes single main drain public pools and spas from the reach of the secondary anti-entrapment device requirements, making the secondary requirements superfluous. Contrary to the Commission's interpretation,

Congress specifically enumerated two requirements for public pools and spas with single main drains because it intended these facilities to be equipped with both a compliant drain cover and a secondary anti-entrapment device.

The apparent rationale for the Commission's interpretation is that a drain fitted with a compliant unblockable sized drain cover is safe. There is new evidence that calls this rationale into question.

I have learned that the American National Standards Institute (ANSI) is close to completing an investigation of the testing procedures employed by IAPMO R&T Laboratory to certify drain covers as compliant with ASME/ANSI A112.19.8, which is the standard required by the VGB Act. Among the drain covers tested as part of the ANSI investigation is one that is marketed as "unblockable." A confidential copy of a final report that will be submitted to an ANSI committee overseeing the investigation concludes that the drain covers "allowed for public use due to the original test results could result in serious injuries and or death." The report also concludes that the testing by IAPMO R&T was flawed in five major ways and that the flaws resulted from a lack of clear requirements in the standard itself regarding certain testing procedures. I have included a copy of that final report for your review.

This investigation by ANSI shows that installing drain covers certified as meeting the Act's standard can fail to ensure safety and that a drain cover on its own may not provide an adequate level of protection against drain entrapment.

I appreciate that the Commission has undertaken its own review of certain drain covers that have been marketed as compliant with the standard in the VGB Act so that it can ensure that any products presenting a safety risk are removed from the market as soon as possible. However, as the ANSI report makes clear, there remains a threat of serious injury or death.

I urge the Commission to take swift action on this issue in light of this new evidence, beginning with revisiting its interpretation of the term "unblockable drain." In addition, I ask the Commission to develop a plan with the relevant manufacturers to remove and replace noncompliant drain covers that have been installed in pools across the country. I also ask the Commission to work with all interested stakeholders to make sure that the procedures for testing the drain covers are clear so that no matter who does the testing the results will be accurate and consistent.

Finally, I would like to acknowledge the Commission's decision yesterday to revise its proposed interpretation of the term "public accommodation facility." The broader interpretation adopted yesterday more closely follows Congress' intent that children and adults get the same level of protection against drowning and entrapment hazards regardless of whether they are staying at a small inn or a large hotel with a swimming pool or spa. I believe the Commission's

U.S. Consumer Product Safety Commission
August 5, 2010
Page 3

decision to abandon the size-based proposed interpretation of this term is a step toward implementing the VGB Act in the manner that Congress intended, and I hope you will act quickly to take other steps in this direction.

Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman
Chairman

Attachment