



Twenty years of preventing accidental injury.

March 28, 2008

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814-4408

RE: Pool & Spa Safety Act, Section 1404, Call for Public Comment

To Whom It May Concern:

On behalf of Safe Kids USA, a member of Safe Kids Worldwide (hereinafter "Safe Kids"), I am writing in response to a request for comments about the U.S. Consumer Product Safety Commission's (CPSC) staff guidance document for Section 1404 of the *Virginia Graeme Baker Pool & Spa Safety Act* (hereinafter "P & S Act").

I. Introduction and Background

Safe Kids has been intimately involved with the advocacy, passage and education surrounding the new law. Our history with the P & S Act uniquely qualifies us to offer comments on the guidance document and the safeguards needed for public and residential pools and spas. Although Safe Kids does not have the technical expertise to comment specifically on a large portion of the engineering implementation of the guidance document, we can provide general supportive comments and suggestions on how to improve the public guidance for Section 1404:

II. General Comments of Support and Suggestions for Minor Improvements

A. The General Accuracy of the CPSC Guidance Document

The CPSC guidance document generally interprets the P & S Act accurately. Section 1404 of the Act basically has three requirements that need to be fulfilled by either drain cover manufacturers or public pool owners or operators by December 19, 2008. Section 1404 requires:

- 1404(b): Any pool or spa drain cover in the stream of commerce in the U.S. must conform to the entrapment standards of the ASME/ANSI A112.19.8 performance standard or any successor standard.
- 1404(c)i: Each public pool and spa in the U.S. must be equipped with anti-entrapment drain covers that comply with the ASME/ANSI A112.19.8 performance standard or any successor standard.
- 1404(c)ii: Each public pool and spa in the U.S. with a single main drain must be equipped, at a minimum, with one or more of the following devices that are designed to prevent entrapment incidents: a safety vacuum release system, a suction-limiting vent system, a gravity drainage system, an automatic pump shut-off system, a drain disablement system or another system that meets the CPSC's approval. Public pools and spas with an unblockable drain do not need to install these devices.

The CPSC staff interpretation of the above provisions is generally correct and should provide the necessary guidance to interested parties who need to fully comply with the Act by December 19, 2008. Safe Kids has been informed by other pool safety advocates that there are a few hyper-technical inaccuracies in portions of the document. As mentioned earlier, Safe Kids cannot, of course, comment specifically on those alleged inaccuracies. We will leave that to other interested parties who have more expertise than us. We do, however, urge the CPSC staff to review the tendered comments carefully to determine how the staff interpretation can be made more technically accurate.

Significantly and additionally, Safe Kids would like to emphasize that it is our understanding that the staff interpretations contained in the guidance only applies to Section 1404 and should not necessarily be used when staff publishes future guidance on other provisions of the P & S Act.

B. No Entrapment Requirement for Pools and Spas with Multiple Drains

The CPSC staff guidance document accurately states that the P & S Act only requires additional entrapment prevention "layer of protection" on pools and spas with single main drains. The supplementary device protection in Section 1404(c)ii is not required for pools and spas with multiple drains. The fact that the Act does not require another layer of protection on the latter does not mean, however, that systems designed to prevent entrapment would not serve a safety purpose if installed on those multi-drained pools and spas. If that is the case (i.e., the safety devices/systems would also help prevent entrapments in pools and spas with multiple main drains), then Safe Kids would urge the CPSC to recommend – as opposed to require – their use. If the CPSC determines or has determined, as indicated in its Guidelines for Entrapment Hazards: Making Pools & Spa's Safer, that the devices listed in Section 1404 (c)ii do serve a valuable safety benefit no matter the number of drains at the bottom of a pool, then Safe Kids would suggest the following (or similar) language be included in the guidance document:

“The Pool and Spa Safety Act, as passed, does not require the use of additional devices or systems designed to prevent entrapment on public pools and spas with multiple drains other than anti-entrapment drain covers. The CPSC does believe, however, that these devices/systems do provide an entrapment prevention benefit on pools and spas with multiple drains. Accordingly, the CPSC recommends their use on all pools and spas as a way to provide an additional layer of protection against entrapment injuries and deaths.”

C. The CPSC Guidance Document is Silent as to Policing and Ramifications for Non-Compliance

In its present form, the CPSC staff interpretation document fails to describe how the agency will be policing the marketplace after December 19, 2008 for violations of Section 1404, nor does it describe the ramifications for failing to comply with the requirements. Safe Kids strongly believes that the public guidance document should address both these concepts.

Manufacturers of pool/spa drain covers and public pool/spa operators should know, at least generally, how the agency will be policing the shelves for standard compliant drain covers and public pools/spas for retrofitted devices. Safe Kids would expect that the agency will be training its field investigators and other staff on what to look for. In fact, Safe Kids believes that at least some of the money that will most certainly be appropriated for Act implementation can and should be used for that training/policing purpose.

Additionally, we suggest that manufacturers and public pool/spa owners and operators be informed specifically of the statutory ramifications and penalties for non-compliance. Significantly, the P&S Act explicitly states that the requirements of Section 14(b) should be treated as a consumer product safety rule under the Consumer Product Safety Act (CPSA) and that non-compliance with Section 1404 (c)(i) or (ii) [i.e., failing to retrofit public pool & spas with safety devices or selling non-compliant drain covers] should be considered a violation of Section 19(a)(1) of that same Act. In other words, Congress has determined that failing to comply with this Section carries the same ramifications that would apply to a company who fails to report under Section 15 of the CPSA. Public pool and spas owners should know that violations of Section 1404 can result in civil penalties of as much as \$1.8 million. When (as opposed to if) the President signs the CPSC Reform Act of 2008, which will most certainly increase the cap on civil penalties, the CPSC should re-issue its guidance document to reflect the new higher penalties. Safe Kids believes that including this type of information in its guidance document demonstrates the gravity of non-compliance and clearly communicates the CPSC's intent to aggressively enforce the new law.

III. Conclusion

Safe Kids believes that implementation of the *Virginia Graeme Baker Pool & Spa Safety Act* is key to preventing childhood drowning related incidents. We commend the staff of the CPSC for taking a good first step at enforcing this important new law. I am available to answer any questions that the CPSC might have relating to our comments. As always, Safe Kids looks forward to working with the CPSC on this and other issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Korn", with several overlapping strokes.

Alan Korn
Director of Public Policy & General Counsel