



October 14, 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 1406, Public Comment Period**

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) draft staff guidance document for Section 1406 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 awareness efforts surrounding the new law. Our history with the P & S Act uniquely qualifies us to offer comments on the draft guidance document and the minimum state law requirements needed to qualify for a grant. Although Safe Kids does not have the technical expertise to comment specifically on the engineering implementation of the guidance document, we can provide general supportive comments and suggestions on how to improve the public guidance of Section 1406:

**II. General Comments of Support and Suggestions for Improvements**

**A. Additional Technical Advocacy Support Documents Needed**

There is no doubt that the P & S Act is a complicated and highly technical law that may prove confusing to state legislators interested in preventing drownings or entrapments in residential pools by enacting or amending pool/spa safety statutes. The guidance provided in the CPSC draft document, however, may not provide enough assistance to interested state legislators.



Safe Kids has worked for several years with our coalition network to help enact public policy changes in the states for various injury prevention risk areas (i.e., child safety seat use laws, bike helmet use laws and smoke alarm use laws). Through our experiences, we have found that well-crafted model/sample legislation is often the catalyst for a bill's introduction and ultimate passage. While this draft guidance document contains helpful information, the addition of technical assistance tools (model legislation and a layman's explanation/FAQs about the CPSC' recommended pool and spa requirements) would prove most helpful for state legislators who are most likely unfamiliar with the breadth and depth of pool safety devices. Our nationwide Safe Kids coalitions, who are often at the forefront of injury prevention policy improvements, would also benefit greatly by a CPSC provided model legislation that, if used and passed by state legislators, would trigger receipt of the incentive grant at the state level.

#### **B. Isolation Fencing Not Required, but Should be Strongly Recommended**

The barrier requirements contained in the draft technical guidance document, in most instances, accurately reflects the directives of the P & S Act, but those directives and their safety benefits represent the minimum standard of protection needed to prevent or reduce the incidences of unintentional drownings in at least one respect. For instance, the P & S Act allows a state to enact a requirement that allows a dwelling wall that has a door to serve as part of the barrier if there are also secondary devices in place (i.e., audible door alarms or power safety covers). The dwelling wall with backup secondary devices was allowed in lieu of isolation fencing in the P & S Act not because that safety framework offered better or at least equal protection as isolation fencing, but rather was included as a political compromise to some Members of Congress to illicit or retain their support. Admittedly, these secondary safety devices are better than no backup at all when a dwelling wall counts as a side of the barrier around the pool/spa, but public health authorities agree that true four-sided isolation fencing is the ideal way to prevent unfettered access to the water. Significantly, Safe Kids notes that the draft guidance document fails to mention the superior safety benefits of isolation fencing despite the fact that the CPSC website and its educational materials regularly tout their efficacy. The CPSC should better emphasize that the P & S Act and the accompanying guidance document represent only the minimum states can enact in order to protect children from traditional forms of drowning receive and still receive an incentive grant. In fact, the true pursuit of drowning prevention demands that states go further by passing laws to require the most effective way of preventing young children from wandering into a backyard pool or spa – isolation fencing. The guidance draft document should directly promote their use even though the Act does not require it.



## **C. Above- and On-ground Pools/Spas and Inflatable Pools Need the Barriers Contemplated by the P & S Act**

### **1. Above-and On-ground Pools/Spas Need Constructed Fencing**

The CPSC staff guidance document allows above-ground pools or on-ground pools with certain “barrier” features built in to the product itself to escape the barrier requirements contemplated and required by the P & S Act. We believe the CPSC interpretation is misguided and is not consistent with the Act. The P & S Act defines “swimming pool” as “any outdoor or indoor structure intended for swimming or recreational bathing, including **in-ground and aboveground structures**, and includes hot tubs, spas, portable spas, and non-portable wading pools” (emphasis added).

Congress also directed in the P & S Act that all outdoor residential pools, as defined above, need to be enclosed by “barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access”.

The Act does not allow engineered features in the product itself to serve as the barrier to prevent access to the pool. To the contrary, the Act’s definition of pool combined with the barrier directive contemplates that above-ground and on-ground pools should be protected by the same barriers as traditional, in-ground residential pools.

Not only does the law itself require constructed barriers, but Safe Kids believes that public safety demands this level of protection. According to the CPSC’s *Pool and Spa Submersion: Estimated Injuries and Reported Fatalities Report*, above-ground pools accounted for 18 percent of fatalities to children less than five years of age from 2003 – 2005. Above-ground pools also have low construction costs when compared to in-ground pools, so we expect their popularity to only increase. Safe Kids strongly recommends that the CPSC re-consider exempting above-ground pools from the constructed barrier requirements of the P & S Act.

### **2. Inflatable Pools Need Constructed Fencing**

In addition, Safe Kids believes that the definition of a “pool” in the P & S Act includes larger inflatable pools. While the law exempts portable wading pools, Safe Kids would make the case that larger inflatable pools are not moveable once they are filled with water, so they should also be subject to the barrier requirements of the P & S Act. Once the larger inflatable



are filled with water (in some cases, such a pool can hold close to 6,000 gallons of water), then these products are certainly not portable. In fact, one manufacturer states that an inflatable pool can be left assembled year round depending on the climate where one lives. Depending on the size, inflatable pools should be viewed the same as their constructed, hard-sided counterparts, and thus should be required to have barriers under a state's law in order for an incentive grant to be awarded.

Inflatable pools have also grown in popularity due to their relatively inexpensive cost. According to the CPSC, small inflatable pools can cost \$50 and larger pools can cost close to \$200. Furthermore, the CPSC received reports of 47 child fatalities due to inflatable pools between 2004 – 2006. The Agency itself recommends that parents consider additional layers of protection for inflatable pools since these products are often not accounted for in building codes, so barriers are not required by law. If the CPSC is advocating for parents to consider safety precautions for inflatable pools, then Safe Kids hopes a state will need to require barriers for this type of pool in order to qualify for a grant.

#### **D. Entrapment Prevention Benefitted by Layers of Protection on All Existing Residential Pools**

There is no doubt that portions of Section 1406 are also confusing and subject to multiple interpretations. The fact that the CPSC staff felt it was necessary to issue “revised” guidance is proof positive. Safe Kids believes that when the language of the P & S Act is subject to different, reasonable explanations, the CPSC should interpret the law as to benefit maximum safety. For instance, some interpret the introductory language of Section 1406(d)(1), “...requiring, at a minimum, 1 or more [anti-entrapment devices] (except for pools constructed without a main drain)” (emphasis added), as requiring the listed anti-entrapment devices on every pool no matter the number of drains, except for those without a drain at all. Others believe the introductory language requires the listed safety devices only on residential pools with a single main drain that is not otherwise unblockable. Each interpretation is possible, but Safe Kids would urge the CPSC to interpret and implement in a manner that promotes safety and prevents entrapment in all configurations that pose a real risk. In other words, if the CPSC determines or has determined, as indicated in its *Guidelines for Entrapment Hazards: Making Pools and Spas Safer*, that the devices listed in Section 1406(d)(1)(A-F) do serve a valuable, real safety benefit regardless of the number of drains at the bottom of a pool/spa, then the law should be interpreted so as to require the entrapment prevention devices.



### III. Conclusion

Safe Kids commends the staff of the CPSC for their efforts to properly implement the *Virginia Graeme Baker Pool & Spa Safety Act*. We realize that there are many intricate details to consider in the implementation process, and we thank the staff for their hard work and outreach to safety organizations like Safe Kids. As always, we look forward to working with the CPSC on this and other issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to be 'Alan Korn', with a long horizontal line extending to the right.

Alan Korn  
Director of Public Policy & General Counsel