



August 5, 2009

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

RE: Unblockable Drain Guidance

Dear CPSC Secretary:

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 CPSC staff’s technical guidance on the unblockable drains provision of the *Virginia Graeme Baker Pool & Spa Safety Act* (VGB Act). **Safe Kids respectfully disagrees with the CPSC staff’s contention that an otherwise swimming pool or spa with a single main drain can be made “unblockable” by the simple installation of a drain cover that meets certain dimensions.**

I. “Unblockable Drain” Not “Unblockable Drain Cover” Triggers Additional Layer of Protection Exemption

According to the VGB Act, Section 1404(c)(1)(A), public pools and spas in the U.S. must be equipped with both an anti-entrapment drain cover and another layer of anti-entrapment protection unless the pool or spa has an “unblockable drain”. Significantly, “unblockable drain” is defined earlier in the Act as “a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard” (emphasis added). In other words, if a drain, as opposed to a drain cover, is of a certain size and possesses characteristics that make entrapment impossible, then the second layer of protection is not needed.

Safe Kids believes that the CPSC staff is misguided in their reading of the Act by erroneously allowing a drain coupled with a drain cover of specific larger dimensions to be considered an “unblockable drain”. A dangerous drain outlet cannot be made fully safe by only using an anti-entrapment drain cover. The Act, in our view and by its plain language, does not allow for an

exemption to the requirement for a second layer of protection simply by using an “unblockable drain cover” of certain larger dimensions over an otherwise hazardous single drain outlet. Safe Kids recognizes that the marketplace may already have or will have in the future an effective unblockable drain cover, but the law does not contemplate an exemption of the additional layer of protection in that situation. Safety demands and the Act requires that the all-important second layer of anti-entrapment protection also be used.

II. Staff Interpretation May Allow a Dangerous Scenario

If use of the so called “unblockable drain cover” triggers an exemption of the additional layer of protection, there would be a significant entrapment risk should that drain cover come off (and they often do). In fact, the staff mentions this very possibility and the accompanying dangerous risk it poses in its technical guidance. Such a situation would create a serious threat to swimmers and bathers, and if staff guidance allowed that potential scenario to exist, it would thwart the intent of the law. In the end, the law should be interpreted so as to require an additional layer of protection if the single main drain itself is not unblockable.

Safe Kids is extremely appreciative of the CPSC’s work to enforce the VGB Act, and hopes that the staff will reconsider its interpretation of unblockable drains. The VGB Act was carefully crafted so as to best protect swimmers, especially children, from suction entrapment. The Act should be implemented and the marketplace policed in a manner consistent with that goal. We hope that the CPSC staff would revise its technical guidance to ensure that an “unblockable drain cover” is no substitute for an “unblockable drain”. 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 be 'Alan Korn', with a long horizontal line extending to the right.

Alan Korn
Executive Director & General Counsel