



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON IMPLEMENTATION
OF THE VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT

March 3, 2010

Having spent more time than most people in and around swimming pools as a child and as a parent, I have always had a healthy concern for the risk from drowning. The majority of swimming pool drownings occur in homes where a fence is in place and the swimmer is legitimately at the pool. Kids can drown in an instant. Because drowning happens so quickly, it can happen even in the most watchful families. If parents or grandparents get distracted just for a moment, children can get out a door to the pool or get into trouble underwater. The impact of a drowning on lives and families is devastating, so it is all the more important that we give careful consideration to how we implement laws concerning pool safety.

The Virginia Graeme Baker Pool and Spa Safety Act primarily addresses the miniscule portion of drownings attributable to entrapments in the circulation system of public pools or hot tubs. Congress noted in its statutory findings that drowning is the second-leading cause of accidental, injury-related death among children 1-14, but that statistic is a bit misleading when it comes to the law—and now to this regulation. Of the more than 750 drowning deaths that occur each year in the United States, this regulation on average will affect less than 1 of them. The larger number includes both drownings of toddlers in bathtubs and drownings in natural water settings, such as rivers and lakes, that are completely unaffected by this law. It also includes drownings in residential pools, which this rule does not cover.

To reduce the risk of entrapment in public pool and hot tub drains, the act requires all public pools and hot tubs to have multiple drains, an unblockable drain, or one or more secondary anti-entrapment devices or systems. Today's vote resolves the surprisingly controversial question of whether a drain fitted with an unblockable drain cover becomes an unblockable drain. I support the majority's decision that it does for three reasons: 1) I believe the statutory term "unblockable drain" includes drains made unblockable via an unblockable drain cover; 2) I believe an unblockable drain system is equally if not more effective than other "systems designed to prevent entrapment" and; 3) I am convinced that the staff's recommendation to accept unblockable drain covers will save the most lives and prevent the most injuries.

In the first place, it makes logical sense to treat drains fitted with unblockable drain covers as unblockable drains under the statute. Drains made unblockable through their design or through use of an unblockable drain cover function equally well to maintain the suction flow of water at a safe level when blocked by a person's body, so we should treat them the same. In either case, if the drain cover is removed, the drain ceases to be unblockable—so the issue of an unblockable drain cover dislodging is really a red herring. If other unblockable drains do not require back-up systems, then neither should drains fitted with unblockable drain covers.

Even if I were not convinced that the term “unblockable drain” includes drains fitted with unblockable drain covers, § 104(c)(1)(A)(ii)(VI) of the statute explicitly authorizes the Commission to determine whether other systems are “equally effective as, or better than, the systems described . . . at preventing or eliminating the risk of injury or death associated with pool drainage systems.” Based on the public hearing and briefing by staff—and for the reasons discussed below—I would determine that unblockable drain covers are at least equally as effective in preventing or eliminating injury or death from drain entrapments as the other systems described in the statute.

Finally, it appears to me that unblockable drain covers promise to save more lives and prevent more injuries than other anti-entrapment systems. The risk of drowning due to a circulation-related entrapment in a public pool or hot tub is quite low. CPSC data records 15 deaths in the 15 years from 1990-2004 attributable to pool or hot tub drain entrapments. Twelve of these deaths were entrapment drownings involving hair getting sucked into a drain (and/or entangled behind the drain cover grate). Two deaths involved disembowelments that were not necessarily drownings (*e.g.*, a toddler sitting on a drain in a baby pool). One death involved a body entrapment. Of the 9 entrapment drowning deaths from 1999-2007, only 2 of them occurred in public pools or hot tubs. The remaining 7 deaths, including Virginia Graeme Baker, occurred in residential settings.

Unblockable drain covers are the only solution that prevents all five types of entrapments identified by the staff (body, limb, evisceration, hair, and mechanical-related). An unblockable drain cover with the appropriate flow rating addresses all five entrapment scenarios so long as it remains in place. The back-up systems mentioned in the Act only address some of the potential scenarios. For example, some of the back-up systems deal with suction body entrapment and some limb entrapments but would not handle hair, mechanical, or evisceration entrapments. Given the prevalence of hair entrapments in the mortality data, that failing poses a real problem. Moreover, preventing entrapments in the first place is the best solution to the threat of entrapment drownings. Back-up systems require an entrapment incident to begin to occur before they respond, and they may not prevent the entrapment depending on what kind it is and what type of drain system is involved.

Unblockable drain covers also represent a cost-effective solution for dealing with a relatively remote risk. If we are going to require public pools to change their drain systems, it makes no sense to preclude the best solution—unblockable drain covers that prevent hair and evisceration entrapments—from the market. I am convinced that failing to recognize that unblockable drain covers create unblockable drains would have that effect. Few pool owners would invest in an unblockable drain cover if that owner would also have to purchase another back-up system. CPSC’s requiring unblockable drain covers to be installed with additional back-up systems would thus create a strong financial disincentive to installing such covers and thereby prevent market penetration of what appears to be the safest solution. The expense of forcing pools to acquire more elaborate back-up systems might also encourage some public pools to close altogether, which would reduce the opportunities for learning to swim. This agency should not encourage the closing of swimming pools due to remote risks anymore than we should encourage the removal of playground equipment due to remote risks—at least where no statute compels it and we have a perfectly good alternative available.

Although I am pleased to vote in favor of having the staff draft an interpretive rule on unblockable drain covers as a solution to the problem of circulation-related entrapments in public pools and hot tubs, I do not believe that the risk of such drownings justifies a disproportionate share of the Commission’s attention. To the contrary, I hope and expect that the agency will develop a plan for a public awareness campaign using

the funds appropriated under the VGBA that addresses the greatest risks for drowning and stresses those messages that contain the greatest potential for saving lives. To that end, I do not believe the remote risk of drowning from drain entrapment should figure prominently in the agency's public awareness messaging.

I would like to add a few words about **the risk that the agency will be sued over this policy decision. Certain purveyors of back-up systems have made it known that they will challenge in court any decision like the one made today approving unblockable drain covers. I do not believe that such a threat—or indeed any threatened lawsuit by a group with a vested interest in a Commission decision (financial or otherwise)—should ever influence the Commission's decision process one way or the other.** Taking such threats into account would bias the Commission's thinking toward those special interests most willing to sue (such as self-styled consumer groups, or, as here, an industry group invested in promoting a particular technology). The Commissioners have a duty to implement those statutes Congress puts under our jurisdiction consistent with serving the wider public interest. I firmly believe that today's decision does that.

Highlighting added