



June 9, 2010

The Honorable Robert Adler
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 502
Bethesda, MD 20814-4408

RE: Unblockable Drains Provision of the *Virginia Graeme Baker Pool & Spa Safety Act*

Dear Commissioner Adler:

On behalf of Safe Kids USA, a member of Safe Kids Worldwide (hereinafter “Safe Kids”), we are writing in response to your request for comments about the unblockable drains provision of the *Virginia Graeme Baker Pool & Spa Safety Act* (VGB Act). **Safe Kids respectfully disagrees with your contention that a 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, and asks for you to reconsider your vote if given the opportunity.**

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 was 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” over an otherwise hazardous

single drain outlet. Safety demands and the Act requires that the all-important second layer of anti-entrapment protection also be used.

II. Significant Entrapment Risk if Additional Layer of Protection is not Installed

Under the current CPSC requirements, the use of the so called “unblockable drain cover” will trigger an exemption of the additional layer of protection. As a result, there will be a significant entrapment risk should that drain cover come off, and we know that they often do. In fact, the CPSC 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 would thwart the intent of the law. **The law should be interpreted so as to require an additional layer of protection if the main drain itself is not unblockable.**

Safe Kids is extremely appreciative of the CPSC’s work to enforce the VGB Act, and hopes that you will reconsider your interpretation of unblockable drains. The VGB Act, which bears Graeme’s name, 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. Safe Kids has often testified to the need for multiple safeguards; in Nancy’s testimony to the Senate Commerce, Science and Transportation Subcommittee on Consumer Affairs, Product Safety and Insurance on May 3, 2006, she said, “each of these layers is meant to provide protection should the prior one fail for any reason. And this is the answer to the danger of entrapment”.

Safe Kids also encourages the CPSC to alert pool and spa safety stakeholders that the agency’s recent decision to allow an “unblockable drain” to be created by the use of a drain cover of a certain size is merely a minimum recommendation. We hope that the CPSC would continue to promote its longstanding message about the need for multiple layers of protection, especially for states considering passing a pool safety law in order to qualify for incentive grant funding.

If the opportunity presents itself, we urge you to change your vote in order to ensure that an “unblockable drain cover” is no substitute for an “unblockable drain”. As always, Safe Kids looks forward to working with you and the CPSC on this and other issues in the future.

Sincerely,



Tanya Chin Ross
Interim Director of Public Policy



Nancy Baker
Parent Advocate