

LATE BREAKING!
Maine passes state ban on
toylike lighters.
See page 5.



Published by Oregon Office of State Fire Marshal, Juvenile Firesetter Intervention Program

HOT-ISSUES

The toylike lighter campaign goes to Washington, DC

On April 1 members of the fire service will go to Washington, DC, for the Congressional Fire Services Institute's *Fire and Emergency Services Showcase on the National Mall*.

Sponsored by the International Fire Service Training Association, the event will display the many roles of our nation's fire and emergency services, capturing the attention of both legislators in Washington and tourists.

The National Association of State Fire Marshals is partnering with the Oregon Office of State Fire Marshal and the United States Fire Administration to provide a display that will focus on the dangers of toylike lighters.



State Fire Marshal Nancy Orr (right in photo) and Judith Okulitch (left in photo), Program Coordinator of the Oregon Juvenile Firesetter Intervention Program, are shown preparing components for the display. They will also be meeting with the Oregon congressional delegation about this issue.

NFIRS coding to capture toylike lighters

Congratulations to *Hot Issues* partners who have been raising the issue of toylike lighters nationwide. Your efforts are paying off. Effective January 1, 2008, the National Fire Incident Reporting System (NFIRS) will capture information specifically about toylike lighters.

Toylike lighters will be captured in the "Fire Module" under a new code for "Equipment Involved in Ignition," code 877. The "Heat Source" will generally be "Lighter: cigarette or cigar lighter," code 65.

Arson Awareness Week 2008

Hot Issues received word from the United States Fire Administration about Arson Awareness Week 2008. This year it will be May 4 through 10, and the theme is *Toylike Lighters - Playing with Fire*. In addition to the established partnerships with the Oregon Office of State Fire Marshal, Fire Safe Children and Families Program, National Volunteer Fire Council, International Association of Arson Investigators and United States Fire Administration, the Idea Bank, led by Richard Lambert will support the effort. The plan is to have the materials available on partners' Web sites toward the end of March.

Caveat venditor — Let the seller beware!

By Steven A. Burkhart, Vice President and Assistant General Counsel, BIC Corporation

What do Fortune's list of Top 50 Companies, China, retailers, and the U.S. Consumer Product Safety Commission (CPSC) have to do with novelty/toylike lighters?

More than you think.

By now, most readers of this newsletter know about novelty lighters: the lighters that are often made to look like children's toys. They often come in shapes and sizes that look as though they are, for example, a barnyard animal, a Matchbox® car, a flashlight, sporting goods, a Dalmatian dog, radios, musical instruments, cell phones, a lady bug, Gumby®, Santa Claus, Frosty the Snowman, etc.

Complete with flashing lights and attractive sounds, these lighters often are mistaken by children, and adults, to be toys. Costing just a few dollars at retailers across the country, novelty, toylike lighters are inexpensive impulse items that are purchased by adults and are dangerous to children.

So, now that we're clear on what a novelty lighter is, why should a retailer or distributor worry about selling them? After all, they're legal to sell in the U.S. In fact, in 1994 the CPSC specifically permitted the sale of them if they were "child-resistant." Plus, sellers always obtain some kind of legal protection from their suppliers, in the form of indemnification or insurance coverage, so even if the seller is sued, they're protected—right?

Wrong. In fact, even with all of these protections, sellers can still be liable for a judgment resulting from the sale of a novelty lighter. How can this be?

It's complicated. But a big part of the answer is explained by the changing landscape of the U.S. marketplace. Consider this—Which U.S. company was number one on Fortune's list of top fifty largest



This is risky business.

companies in 2007? Hint, it's not a manufacturer. It's Wal-Mart.

When the CPSC began as a federal agency in the early 1970s, how many retailers were listed on Fortune's top fifty companies? None. In fact, in the 1970s and 1980s, companies performing U.S.-based manufacturing were common not just on the Fortune list, but in your small town. But no more. As we all know from news reports of record trade deficits and millions of containers of foreign-made products entering U.S. ports, the business of U.S. manufacturing has changed drastically since 1970.

Where are many of the products, including

novelty lighters, distributors and retailers sell manufactured? China.

Can a U.S. distributor and retailer be sued and held liable in a U.S. court for selling a defectively manufactured product from China? Absolutely!

Does the law require the plaintiff to sue the Chinese manufacturer? No. The plaintiff can choose to sue only the U.S. seller.

If the Chinese company does not honor its obligation to indemnify, insure and defend the U.S. distributor or retailer, can the U.S. company be responsible for defending a product it did not manufacture? Absolutely!

If the product is found to be defective, or unreasonably dangerous, do the distributor and retailer have an obligation to report this fact to the CPSC? Yes.

What happens if the distributor or retailer doesn't notify CPSC? They can be fined. And substantial fines have been levied against sellers for failing to report such hazards.

Okay. But novelty lighters are legal, so what's the worry?

Well, are they “legal”? What makes them “legal”? As a seller, how would you prove that they are “legal”? Is complying with a federal regulation an absolute defense to all liability? The answers to these questions may surprise you.

Again, consider how the U.S. marketplace has changed. In a recent speech to the National Press Club, Acting Chair of the CPSC, Nancy Nord, commented about the changing landscape of the American marketplace. “At the inception of [CPSC], imports were a relatively small percentage of the [15,000] product categories under the CPSC’s jurisdiction. Today, the opposite is true. And the level of imports from all over the world, especially from China, is growing very rapidly.” In response to this change, Ms. Nord continued, “The world has changed quite a bit since the CPSC was established thirty-five years ago. The number of products has changed, the kinds of products have changed, and the places where the products are manufactured have changed. To address this new marketplace, and to remain the world’s foremost authority on product safety, we’re going to have to change as well.”

When asked to assess where responsibilities lie as a result of these changes, Ms. Nord stated, “At the end of the day, the entity that has to assure that the products that are sold in the marketplace, on our store shelves are safe, is the product seller, the U.S. company that sells that product. They have the ultimate responsibility at the end of the day to make sure that their products are safe. If they are not safe, then we will take enforcement activity against those product sellers. Now, as product sellers, they need to look down their supply chain and make sure that they have the process in place to assure that products are manufactured to their specifications, that the types of component parts that go into their products are what they ordered, that the designs have been tested, and that substitutions were not made. They need to test their products and [possibly] certify the products meet U.S. safety standards.”

“Under the Product Safety Act,” Ms. Nord further elaborated, “the person who sells the product to the public is responsible for making sure that that product does not present unreasonable risk of injury. And that does mean the retailer. Now, the focus of the agency has been, up until the early part of the century, focused on product manufacturers. We hadn’t really paid an awful lot of attention to retailers. With a change in the market place, with the big box retailers coming in, that focus has changed.”

But again, aren’t novelty lighters legal to sell? What’s the worry?

Well, in 1994, when CPSC passed a law requiring all lighters to be child-resistant, novelty lighters weren’t so—toylike. Today’s products have microelectronics that did not exist fourteen years ago. So the flashing lights and sounds emanating from today’s toylike novelty lighters can be quite different. Plus, today manufacturers seem intent on making the novelty lighters look like toys. Can a Gumby lighter be explained any other way?

The other aspect of novelty lighters is the incongruity of making child-resistant a product that appears to be a child’s toy. No lighter is child-proof. At best, only some children, sometimes, will be unable to operate a novelty lighter. So when you combine the fact that no lighter is child-proof with the attractive and confusing nature of novelty lighters, you can see why it would be difficult, if not impossible, to prove that a novelty lighter is not defective or unreasonably dangerous.

What excuse is the seller going to articulate to the jury to avoid liability? “It’s the parents’ responsibility to keep the pig lighter away from the child.” Or, “It’s a free country, if you don’t like the Santa Claus lighter, don’t buy it.” Or, “It’s Mom’s fault that she didn’t know Gumby was a lighter—it says keep away from children right on the warning label.” Is this the argument that a seller wants to make to a jury to try and absolve it from liability for selling a novelty lighter that has injured a child?

Perhaps it is for all of these reasons that some states and municipalities have taken matters into their own hands and sought to outlaw novelty lighters. For example, according to recent news reports, in California four towns* (National City, El Cajon, Chula Vista, and Solana Beach) have passed legislation affecting the sale of novelty lighters. In Arkansas, thirteen towns** (North Little Rock, Searcy, Bryant, Sherwood, Pine Bluff, Dover, Clarksville, Jacksonville, Mountain Home, Conway, Rogers, Van Buren, and Hector) have passed similar legislation affecting the sale of novelty lighters. Additionally, Maine and Vermont have statewide legislation pending.

Will the CPSC ultimately weigh in with a modification to its federal regulation and ban the sale of novelty, toylike lighters the way Europe has? No one knows. But in the meantime, it’s important to understand the risk of novelty lighters, not just to the children and families that ultimately use them, but to the businesses that sell them.

*Editor’s note: California had four towns at the time this article was written. As *Hot Issues* goes to press, California’s total is six and Arkansas’ total is at nineteen.

Update from North Little Rock, Arkansas

By Lt. Mark Shoemaker

Editor's note: Lt. Mark Shoemaker is the catalyst behind the ban of toylike lighters passed in North Little Rock, Arkansas. His concern about the issue has been contagious and Arkansas currently leads the nation with the most cities with bans of these lighters in place. Congratulations from *Hot Issues!*



If you've heard it once you have heard it a hundred times: "Kids, don't play with lighters or matches!" If not from your parents, you most likely heard it from a teacher, firefighter or any grown-up who just wanted to pass on a valuable piece of advice. Now, move forward about thirty years. Did you ever think that you would have to tell a child, "Don't play with

that dinosaur, leave the rubber duck alone, and by the way, if you see a race car on the table, make sure you check with mom or dad before you play with it? There is a chance you could set fire to the house." That's easy enough for any rambunctious three-year-old to understand. Or is it?

For that reason, you might have to add those items to your lesson plan if you want to be able to effectively educate adults about fire safety. Educating parents about the dangers of toylike lighters should be as high on our priority list as teaching "stop, drop and roll" or "planning an escape route." Those of us in the fire prevention and education world wouldn't dream of making a presentation without going over these topics in great detail. I used to believe it was something we needed to teach children as well. Now I have changed my way of thinking. After visiting with a fellow fire and life safety educator, I came to the conclusion there is no good way to teach children about novelty/toylike lighters. The only thing you could possibly gain is adding to the confusion.

While I realize there is still a long road ahead, there have been many positive changes over the past year in regard to these dangerous products. It has been a "Hot Issue" (*Hot Issues*, Summer 2006) so to speak. Cities and municipalities across the country (with the help of some great men and women in the fire service) have started to realize what many of us have known for years: there is simply no place for these devices in our communities.

The number of cities that have enacted bans on toylike lighters has grown from two or three in the early part of last year to over twenty-five to date. If we stay on track, by the time this article is released, there will be somewhere in the neighborhood of thirty, with that number growing almost weekly. In fact, there are several states looking at statewide legislation as well. It is a great accomplishment for each city to realize a need to take action, however, to be able to do this, one or even two states at a time would be a huge step forward toward the ultimate goal of doing away with the toylike lighters altogether.

The argument has been made that this initiative is about local government trying to play the role of parent or is just another "feel-good ban." Yes, I read the comments section on all the blogs. While I realize you cannot always teach responsibility, I also know a bad idea when I see it. There is a reason child-proof caps are required on medications. Most of us even have a specific cabinet in our bathroom or kitchen (well out of the reach of children), designated specifically for medications. If we went on the assumption that everything boils down to being a perfect parent, none of us make mistakes. All children do what they are told; we should just be able to keep our meds in an open Skittles® bag on the coffee table. As long as you tell them not to touch it you're covered, right?

When it is discovered that a toy being sold in the U.S. may contain lead-based paint or has tiny pieces



that could cause a small child to choke, it is immediately pulled from the market, no questions asked. According to CPSC a twenty-month-old child swallowed several dozen popular arts and crafts beads and slipped into a comatose state. The beads were immediately taken off store shelves. Now, help me understand this logic. A child, for whatever reason gets hold of a lighter that looks like a frog and starts a fire, well, that's considered poor parenting? I don't buy it. One thing you need to keep in mind, there are enough obstacles growing up. Children rely on us to make the right decisions for them. I think this would fall into that category.

On a positive note, I have received an overwhelming amount of positive feedback on the progress that has been made so far at the state level in Arkansas. When the ban in North Little Rock was initially enacted, we discussed how we were going to handle getting the word out to retailers about the changes being implemented. I personally went to many of the convenience stores and tobacco outlets where the lighters were being sold. I wanted to visit with them one-on-one and explain why we were eliminating this type of lighter from our community and what we hoped to gain from it. Once again, the goal was not to punish, it was to educate.

I was pleasantly surprised to see someone else's view from outside the fire service. The retailers I spoke with were more than happy to remove them on the spot. Many of them wanted to tell me their own story or share their opinion about the ban on these lighters, all of which were favorable. One store owner said, "I am glad to see them go." An employee at another store said, "I would be thrilled to take them off the counter." If that's not a good sign, I don't know what is.

To date, sixteen cities in Arkansas have passed ordinances banning the sale and distribution of toylike lighters. One county recently passed a ban and a handful of cities are proposing or are considering bans of their own. I look forward to the day, hopefully in the not-so-distant future, when we will be able to talk about toylike lighters as a thing of the past. If things keep going as they have, I don't think that is an unreasonable goal. For now, we will take what we can get.

About the author: Lt. Mark Shoemaker is Deputy Fire Marshal for the North Little Rock fire Department. He can be reached via email: mshoemaker@northlittlerock.ar.gov or at his office: (501) 812-5942.

Visit the No Novelty Lighters Coalition's Web site at www.nonoveltylighters.com to see what's new.

Congratulations, Maine!

State Fire Marshal John Dean of Maine called *Hot Issues* staff to let us know that Maine passed a ban on toylike lighters on March 14, 2008. The governor will sign the bill within ten days and, because it was written as an emergency bill, the bill will go into effect upon the governor's signing.

SFM Dean praised Dead River Corporation, a Maine gas and convenience store chain, for its support of the legislation. Dead River Corporation not only removed toylike lighters from all its stores before the ban, but testified at a hearing in support of the ban. For its leadership, the corporation was awarded the Best Practices Award from the Maine Fire Protection Services, a prestigious award that usually is given to a fire service organization.

Congratulations to Maine, SFM Dean, Dead River Corporation and all who made passage a reality.

Check it out

www.oregon.gov/OSP/SFM/Novelty_Toylike_Lighters.shtml

The Oregon Office of State Fire Marshal has dedicated a portion of its Web site to the toylike lighter issue. Cities and other jurisdictions passing, or working toward passing, bans on the sale of toylike lighters are listed as we learn about them.

If your jurisdiction should be listed and has slipped under our "radar," please let us know and we'll add it to the site.

Listed below are jurisdictions that have passed bans.

Arkansas

Atkins, Bryant, Clarksville, Conway, Dover, Heber Springs, Hector, Jacksonville, Jonesboro, Little Rock, Malvern, Maumelle, Mountain Home, North Little Rock, Pine Bluff, Rogers, Russellville, Searcy, Sherwood, Van Buren

California

El Cajon, Highland, National City, Redlands, Solana Beach, Vista

Washington

Yakima, Yakima County

Others considering bans

Alabama, Connecticut, Iowa, Michigan, Ohio, Oregon, Tennessee, Vermont, San Diego, CA, and these jurisdictions in Arkansas: Benton, Cabot, Cove Creek, Dardanelle, Harrison, and Pope County.

Lighter fighters

By Traci Ingleright & Jerri Ayers

Editor's note: Traci Ingleright called *Hot Issues* staff recently to tell us about the passionate campaign one of her students, David Brooks, is waging in Alabama. We felt *Hot Issues* readers should hear the story too and asked Traci to write an article for this edition.

State Fire Marshal Orr extends special thanks to David for his response to her call to action in the Summer 2006 edition of *Hot Issues*. (David reads *Hot Issues* on the Web.)

Congratulations from *Hot Issues* to both teacher and student — Traci for her inspired teaching and David for his creativity and dedication to positive change.

They're cute, pocket-sized and dangerous. They look like something you would find in a toy box. They are novelty (or toylike) lighters!

David "Blaze" Brooks, a fifth grader at Gwin Elementary in Hoover, Alabama, is working diligently to spread the word about the dangers associated with toylike lighters without safety locks. In fact, he is heading up the effort to have the sale of toylike lighters without safety locks banned in Alabama. "They look like toys so kids play with them and get burned," said Brooks.

Alabama ranks among the top ten states for the highest number of fire deaths in the U.S., which makes David's campaign all the more important for the citizens of Alabama.

Brooks has partnered with Hoover Fire Department, the Alabama Risk Watch Program and the Alabama Fire and Life Safety Educators Association in an effort to educate the public and other fire officials on the dangers involved with toylike lighters. He has spoken to several community and fire-related groups such as the Central Alabama Fire Marshal's Association and the Hoover City Council about the lighters. Brooks also spoke recently at the Alabama State Fire Chiefs conference in Tuscaloosa where former Auburn Football Coach Pat Dye, the key note speaker, was astonished that such fire hazards even exist.

State Fire Marshal Ed Paulk has been instrumental in helping "Blaze." Paulk may even be his biggest fan. He continues to praise "Blaze" for championing such an important cause in our state. "Children have been taught from a young age not to play with matches. We are sending mixed messages to our kids by allowing these toylike lighters to be marketed in our state. These lighters send conflicting messages to children who have already been taught valuable fire prevention methods such as don't play

with lighters or matches. Do we really expect a child not to play with a lighter disguised as a toy?" stated Paulk.

If a ten-year-old student recognizes the importance of this safety issue, then what is our responsibility as adults? Shouldn't we all follow Blaze's lead and help spread the word about the dangers associated with these novelty lighters? After all, fire prevention through education is the key.

What can you do to help?

- Educate yourself about the issues concerning toylike lighters.
- Take a proactive approach! Educate children, parents and the community that these lighters are NOT TOYS and can be deadly.

If you are an Alabama resident, you can help David Brooks in his quest to ban the sale of these lighters if they don't have safety locks.

- Write a letter to your city and state representatives asking for their support in banning these lighters from Alabama.
- Write Ed Paulk, the Alabama State Fire Marshal, assuring him of your support in banning the sale and distribution of toylike lighters in Alabama. Regular U.S. mail address: State Fire Marshal Ed Paulk, P.O. Box 303351, Montgomery, AL 36130-3351. Overnight address: State Fire Marshal Ed Paulk, 201 Monroe Street, Suite 1700, Montgomery, AL 36104.

About the authors. Traci Ingleright is an enrichment specialist at Gwin Elementary School in Hoover, Alabama. Jerri Ayers is a public education specialist.

From the Editor ...

The European Union banned the sale of toylike lighters as of March 2007. How were they able to pass this legislation?

The European Union subscribes to the precautionary principle: "The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen by the EU." (*European Commission on the Precautionary Principle, February 2, 2000*)

The United States, however, operates under the principle that action should not be taken without definitive evidence.

Words ... choose carefully.

By Judith Okulitch, MS and Carol Baumann, MA

Language both reflects and molds thinking. The words we choose define our understanding of firesetting behavior and our perception of juveniles displaying this behavior. It follows that the words we choose also drive the intervention juveniles with firesetting behavior receive. While language is a difficult thing to change, we submit that the old labels are no longer useful, productive, or reflective of contemporary understanding of juveniles engaging in activities involving fire.

The Oregon program is the product of over eighteen years of experience and study of the phenomenon of juveniles with fire. Over time, our understanding of firesetting and the interventions designed for these youths have evolved and become more sophisticated. However, the words used to describe this activity and these youths have not evolved.

For example, it's common to label a youth who engages in unauthorized or unsupervised use of fire a "firesetter." Identifying the firesetting *activity* is a useful step toward intervention, but labeling the youth himself as a firesetter may have negative unintended consequences. The label obscures a clear-eyed look at the youth and may result in a one-size-fits-all intervention — typically a session or two of fire education at the fire department. If underlying personal problems exist and go unrecognized, they will be inadequately addressed by fire education alone. More, the firesetter label may make mental health treatment providers in residential treatment facilities wary of providing services.

In the early days of the Oregon program, youths were screened using a FEMA mental-health-based interview tool. A continuum derived from the mental health perspective profiled youths from low, to moderate, to extreme concern. Other models used labels to categorize youth (i.e. curiosity, crisis, strategic, pathological). The labels were intended to describe motivation and risk levels. Over time, the descriptors became labels for the youths themselves. The Oregon program no longer uses them, but they have taken on a life of their own. They are still used, often by fire service interventionists without the required training to make valid determinations of mental health status.

The *Oregon Juvenile with Fire Screening Tool* (or *Oregon Screening Tool*) is an instrument designed for fire service interventionists, taking advantage of what they know best: the physical behavior of fire

and fire safety education. Without labeling a youth, the *Oregon Screening Tool* enables an interventionist to make one appropriate, critical, initial decision: Should the youth be referred for further evaluation to another professional partner?

Oregon's understanding of the evaluation process has evolved and today the program uses "screening" and "assessment" to discriminate between two different protocols. A "screening" using the *Oregon Screening Tool* is the first step in a continuum of service. It is appropriately performed by a fire department interventionist trained in its use and is the precursor to an "assessment," an in-depth analysis of a youth's needs by a trained mental health professional using validated mental health instruments.

The *Oregon Screening Tool* takes fire departments out of the risk determination business and transfers assessment and clinical interventions to trained psychologists, social workers and counselors. The Oregon program assumes that any use of fire by a juvenile is a risky activity — that all fire in the hands of children is of concern since all fires start small with the potential to become destructive.

Likewise, "fireplay" has outlived its usefulness. "Fireplay" minimizes the potential for serious consequences, making it more likely the youth with firesetting behavior won't receive the appropriate, necessary intervention. Unfortunately, NFIRS coding has institutionalized the use of this word — i.e. "children playing." This code reinforces the idea that children with fire are engaging in a play activity.

Help us change the paradigm to a twenty-first century model by changing the words you choose. Let "firesetter" become "juvenile with fire." Let "fireplay" disappear from the vocabulary. Use "screening" and "assessment" to describe two levels of evaluation. Retire words that assign "levels of concern." We're working to change. Will you? Perhaps some day we'll even manage to change NFIRS' coding.

Judith Okulitch, Oregon's statewide intervention program coordinator, has been in the vanguard for over seventeen years. Carol Baumann, *Hot Issues* editor, has a background in teaching and social psychology.



Oregon Office of State Fire Marshal
Department of State Police
Juvenile Firesetter Intervention Program
4760 Portland Road NE
Salem, OR 97305-1760

Save the date!

Juvenile Firesetter Intervention Conference
San Diego, CA
September 17, 18, 19, 2008

Cultivating Partnerships 2, held in Portland, OR, last fall moves to San Diego in September.

Members of a sponsoring coalition that includes the Oregon Office of State Fire Marshal, the San Diego Burn Institute and the Denver Children's Hospital are rotating planning and hosting the conference.

Last year's conference was hosted by the Oregon Office of State Fire Marshal, the Oregon Burn Center, and Fire Safe Children and Families program. The San Diego Burn Institute is planning the conference this year. The conference will feature a mental health forum, the next step in coalition building, firesetter advocacy, issues such as toylike lighters and ideas for Fire Prevention Week.

The conference is still very much in the planning stage, so watch *Hot Issues* for further details as they develop or visit the Burn Institute's Web site: www.burninstitute.org.

Opportunity!

Building Pathways for Successful Interventions
The Beechwood Hotel
Worcester, MA
May 9, 2008

Brandon School, Department of Fire Services, Massachusetts Property Insurance Underwriting Association, and Massachusetts Association of Safety and Fire Educators, are sponsoring this second annual Northeast conference.

Topics planned for the conference include sessions on adolescent female firesetting, how the courts can help, advanced skills workshops, a community program experts panel and national presenters.

Professionals from social services, the fire service, mental health, juvenile justice and education are encouraged to attend.

Early registration is \$125. After April 1, registration is \$139. For more information or to register online go to: www.brandonschool.org.

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State Fire Marshal: Nancy Orr

Program Coordinator: Judith S. Okulitch

Editor: Carol Baumann