

LOG OF MEETING

U.S. CONSUMER PRODUCT SAFETY COMMISSION OFFICE OF COMMISSIONER THOMAS H. MOORE

REMOVED BY PUBLIC
1/25/07
NOTED SPENT LBS OF
PRODUCTS IDENTIFIED
EXCEPTED BY SECTION
RULEMAKING ADMIN. PROCES
WITH PORTIONS REMOVED

SUBJECT: Meeting on ANPR on cigarette lighter safety

DATE OF MEETING: December 6, 2006

PLACE: Room 725, CPSC headquarters

LOG ENTRY SOURCE: Michael Gougisha, Pamela Weller

DATE OF ENTRY: January 18, 2007

COMMISSION ATTENDEES: Michael Gougisha - Counselor to Commissioner Thomas H. Moore, Pamela Weller - Counselor to Commissioner Thomas H. Moore, Joe Vogel of CPSC

NON-COMMISSION ATTENDEES: Thomas M. Kelleher of BIC Corporation and David Baker, Law offices of David H. Baker LLC; Sean Oberle of the Product Safety Letter

SUMMARY OF MEETING: David Baker began the substantive discussion by going through a sort of chronology on the issue of the development of a mandatory cigarette lighter safety standard, which is currently at the ANPR stage before the Commission. Mr. Baker suggested that if a mandatory standard was in effect, current levels of compliance experienced with the voluntary standard, ASTM F400, would undoubtedly be increased. Mr. Baker also suggested that rather than going through all of the rulemaking requirements set forth in Section 9 of the Consumer Product Safety Act (CPSA), it would be less burdensome on the Commission's resources if the Commission would terminate its rulemaking and officially rely on the voluntary standard under Section 9(b)(2) of the CPSA. When questioned by Commissioner's Moore's staff about the enforcement affect of such reliance, Mr. Baker suggested that, while he does not think that such an action would create the effect of a mandatory standard, there could be a greater degree of enforcement potential than that which exist with a voluntary standard.

Additionally, Mr. Baker said he had some issues with the way that CPSC's staff did the lighter testing provided for in the October 2006, Cigarette Lighter Status Report to the Commission. There was no summary page so you could not readily tell what a pass was and what a fail was. He also indicated the failure rate was more in the 85% range if you include things like labeling violations.

Mr. Gougisha indicated that no relationship had been established between the injuries and non-complying lighters. Mr. Baker responded that while

that was true, it was intuitive that the connection was there. Mr. Baker said that injuries were relative to costs and that there would be no cost to the industry to comply with the standard.

Mr. Kelleher added that, if the U.S. does not develop a mandatory standard, the U.S. market would be flooded with non-complying lighters because other countries have adopted the ASTM F400 as a mandatory standard. He also suggested that reliance on the voluntary standard would be efficient and, while the rule may not be a Commission mandate, it would be very important in leveling the playing field for domestic manufacturers and such Commission action could prevent domestic manufacturers from going out of business. In response to a question by Commissioner Moore's staff, Mr. Kelleher provided that, notwithstanding Commission action, most future domestic production of lighters could be moving to China. In response to another question, Mr. Kelleher also indicated that he thought that providing a level playing field for domestic manufacturers is an important role for the Commission to play.

Mr. Baker then reiterated that increased compliance could be expected with Commission reliance on the voluntary standard and further suggested that a reduction in injuries and deaths associated with non-complying lighter would therefore ensue.

The meeting was concluded and Commissioner Moore's staff thanked Mr. Baker and Mr. Kelleher for their input.

The talking points presented by Mr. Baker in anticipation of the meeting are attached.

TALKING POINTS FOR MEETINGS WITH CPSC COMMISSIONERS ON ANPR ON LIGHTER SAFETY

History of Issue:

1960's – Disposable lighter invented.

1970's – ASTM F400 lighter safety standard developed (ASTM F400-75).

1980's – Child resistancy mandatory rule for cigarette lighter developed (Part 1210).

1989--- Canada adopts ASTM F400 lighter safety standard as mandatory standard.

1994 -- Mexico adopts ASTM F400 lighter safety standard as mandatory standard.

2000 -- Imports of lighters from China exceed 400 million units.

2001 -- Lighter Association files Petition under Section 7 of CPSA requesting that CPSC adopt a mandatory lighter safety standard.

2004 -- EU adopts ISO/ASTM safety standard for lighters as mandatory standard in 25 member states in Europe.

2004 -- Staff recommends against Lighter Association Petition; finds only 1000 injuries and one death per year from malfunctioning lighters.

2004 -- Lighter Association testifies at CPSC Public Briefing Conference; demonstrates that according to BV testing, 100% of the disposable lighters tested from China failed ASTM F400 safety standard for lighters.

2004 -- Commissioners Stratton and Moore vote 2-0 to overrule staff and institute an ANPR on a safety standard for lighters.

2005 -- ANPR published in Federal Register (April 11, 2005); comments requested.

2005 -- All comments filed, both on the Petition, and on the ANPR, **except from the Chinese importers of lighters who continue to violate the standard**, support some form of safety standard for cigarette lighters, including comments in support from ASTM (written comments in support of the ANPR), the National Association of State Fire Marshals (testified at Public Briefing Conference), Consumer Federation of America (written comments in support of the ANPR), National Safe Kids (letter in support of the Petition) and Michael Bogumill, former CPSC Compliance Officer for Lighters (letter in support of the Petition).

2006 -- CPSC Staff Status Report issued; demonstrates that according to BV testing for CPSC, 75 to 77% of all lighters tested from China failed ASTM F400 performance requirements. **(CPSC report does not consider labeling violations; actual failure rate higher, if labeling violations considered)**. All of the Chinese brands (NY Lighter, Spec, Iwax/Wax) that failed our testing in 2002, and again in 2004, failed the CPSC contracted tests. Staff notes again approximately 1000 injuries and one death per year from malfunctioning lighters; staff estimates societal cost of \$31 million a year; makes no estimate of benefit.

Underlying Facts:

- *U.S. is only country in North America that does not prohibit import of unsafe lighters.
- *Yet more injuries and deaths from malfunctioning lighters in the U.S. than any other country in the world (with possible exception of China, however, we have no statistics from China).
- *Canada, Mexico and all of Europe follow some iteration of ASTM F400 standard.
- *Staff estimate is “about 917 medically attended injuries annually that involve lighter malfunctions” Status Report from Rohit Khanna to Todd Stevenson, Page 12
- *Stated differently, 0.9 injuries per million lighter sold! Nearly one injury per one million lighters sold; One billion lighters sold in the U.S. each year.
- *Approximately three million lighters sold every day – three injuries per day. Why does staff want to ignore these injuries?
- *One death per billion lighters sold! Hence, that is one death every year, including one more death, while staff studied problem. Status Report from Rohit Khanna to Todd Stevenson, Page 7.
- *Members of the Lighter Association are routinely sued for these failures, even though more often than not, their lighters are not involved. Lighters are often destroyed by fire incident and plaintiff alleges lighter was from large U.S. company, not small Chinese importer. (See Bigelow v. New York Lighter – multi million dollar settlement for three small children burned by malfunctioning lighter – plaintiff originally considering suing Lighter members.)
- *US companies like Bic in Milford, CT and Zippo Manufacturing in Bradford, PA forced to consider layoffs and production in China to compete with low quality, but cheap Chinese lighters. Zippo just laid off over 10% of its work force this summer.
- *Cost to industry to comply with ASTM F400 is virtually zero; costs relate to quality control, which should be a part of good manufacturing practices anyway. There is no “additional cost” to comply with the ASTM F400 standard.
- *Yet benefit to society is estimated at \$31 million a year, and growing.
- *Failure scenarios of Chinese lighters are consistent with performance requirements in ASTM F400 standard – See Table 2 in Status Report from Rohit Khanna to Todd Stevenson, Page 9.
- *ASTM F400 is a consensus standard developed with input from consumers, Health Canada, CPSC, trading partners such as China, Japan and Thailand.
- *ASTM F400 has been in existence over 30 years and is recognized throughout the world; there is no reason to develop a new and different standard.

Request for Action:

- *CPSC should rely upon standard under Section 9(b)(2) and terminate rulemaking proceeding; reliance is faster and less expensive for agency than continuing with rulemaking.
- *Once relied upon, compliance with consumer product safety standard will increase; CPSC Compliance need only bring one or two Section 15(b) cases and all of industry will follow standard.
- *All of this can be accomplished with minimal cost to CPSC.

*CPSC should be the global leader in lighter safety, as it has been on the child resistancy issue.

*Adopting the ASTM F400 lighter safety standard will be a huge success story for the agency, as has been the child resistancy standard.