



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON A PROPOSED INTERPRETIVE RULE ON UNBLOCKABLE DRAIN COVERS
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A major impetus for the Virginia Graeme Baker Pool and Spa Safety Act (“Pool and Spa Act”) was, of course, the tragic entrapment death of the young girl for whom the Act was named. The framework for that bill was laid out by this agency in a March 2005 report on entrapment hazards in pools and spas.

The report acknowledged that layers of protection are just as necessary to prevent entrapment situations as they are in preventing drowning deaths: “The approach taken in the guidelines is to present various options to attain ‘layers of protection’ against entrapment in pools and spas.”¹

Our agency recognized then that pools or spas with single main drains are potentially the most dangerous water environments for children and that even the best drain cover has its limitations. To quote from our report again:

“Due to the ‘human element’ involved in the care and maintenance of pools and spas, it is strongly recommended that consideration be given to including an additional and final layer of protection in all pools and spas that use submerged suction outlets, to relieve an entrapping suction force should outlets become blocked or if covers are broken or removed. Options for new construction include, but are not limited to, a properly designed atmospheric vent system, SVRS or other technology. For existing facilities, options include the installation of an SVRS or other technology. This is especially important in wading pools and older pools with single main drains.”²

I was particularly struck by the role of the ‘human element’ in pool and spa maintenance as I read the Minnesota Department of Health’s report on the disembowelment of 6-year old Abigail Taylor, which occurred in a wading pool at a golf club in 2007.³ The report found the following poor operational practices:

¹ *Guidelines for Entrapment Hazards: Making Pools and Spas Safer*, U.S. Consumer Product Safety Commission, March 2005, page 6.

² *Id.*

³ “Evisceration Incident at a Wading Pool—Executive Summary, Minneapolis Golf Club, St. Louis Park, Minnesota,” June 29, 2007.

- The drain cover had been attached using improper fasteners and screws in a worn mounting ring. The screws used to secure the drain cover were not stainless steel, were not the original screws supplied with the drain cover and did not adequately secure the cover to the frame. This allowed the cover to become detached.
- The pool water was cloudy so that the bottom of the pool, including the drain, was not clearly visible. This was evidence of poor maintenance.
- The staff was not adequately trained to respond to unsafe conditions at the pool.

Abigail subsequently died following a triple organ transplant, which would have restored her ability to eat and digest food normally.

While eviscerations are rare (two were reported during 1999-2008), suction or circulation entrapments are more frequent, with 78 reported during the same ten-year period, resulting in 11 deaths. CPSC's count of deaths due to entrapment is most likely an undercount as some deaths that are reported as drowning may have been the result of entrapments that were not reported as such. Most entrapment protection devices are geared toward preventing the more frequent suction or entanglement entrapments.

The 2005 CPSC report goes on to say:

“Regardless of the number of outlet drains provided, because of the shallow depths of wading pools, spas, and hot tubs, and the easy access to their suction outlets, the installation of a safety back-up system that monitors the function of drain outlet/circulation systems and relieves suction forces in the event of entrapment should be seriously considered.

For existing pools and spas where water depths are over four feet, a back-up system should be installed where a single drain currently exists, or a drain can become single upon activation of valves or as result of poor maintenance, and rework is not possible. While access to the suction outlets in deeper pools is less likely, the potential for a broken or missing cover(s) and subsequent entrapment still exists.”⁴

No matter how good a drain cover is, it only works when it is properly attached. That was the message from our own 2005 report and it is the underlying rationale for the second layer of entrapment device requirements, which are **in addition to** the ASME/ANSI drain cover mandate, in the Pool and Spa Act. Our most recent report on circulation/suction entrapments found that in 37 percent of the incidents where the hazard scenarios could be classified, a broken, missing, removed or disengaged outlet cover was cited as the hazard associated with the death or injury.⁵

⁴ *Guidelines for Entrapment Hazards*, page 11.

⁵ *1999-2008 Reported Circulation/Suction Entrapments Associated with Pools, Spas, and Whirlpool Tubs, 2009 Memorandum*, May 14, 2009.

While I appreciate that installing an unblockable drain **cover** over a single main drain that can be blocked by the human body may be the most cost effective short term “solution” to bring a noncomplying pool into compliance, I do not believe it comports with the intent of the law or with our own public guidance on the subject. There is no cost/benefit analysis requirement in the Pool and Spa Act. As in so many other laws where the primary thrust is to save children’s lives, Congress was loath to engage in a weighing of children’s lives saved versus the cost of compliance. State and local jurisdictions have been putting additional safety requirements on, or prohibiting the construction of, pools with single main drains for some time. The Pool and Spa Act’s grant program also provides incentives for States to eliminate pools with single main drains. Equating an unblockable cover with an unblockable drain strikes me as a step backward as it relies on a drain cover as the sole protection from a single blockable main drain. It is an interpretation that I cannot support.⁶

⁶ The Washington State Department of Health has stated in its Guidelines for Regulated Pool Owners, Designers, and Builders dated December 2008: “An unblockable drain consists of an entire unblockable drain outlet, including the cover, sump, frame and fasteners. Placing an unblockable drain cover over a blockable drain sump does not constitute an unblockable drain.”