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**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

DATE: September 25, 2019

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Mary T. Boyle, Executive Director
Patricia M. Hanz, General Counsel

FROM: Patricia M. Pollitzer, Assistant General Counsel
Barbara E. Little, Attorney, OGC

SUBJECT: Resubmission of Petition Requesting Approval of Vacuum Diffusion Technology as an "Other System" under the Virginia Graeme Baker Pool and Spa Safety Act

BALLOT VOTE DUE Tuesday, October 1, 2019

On August 28, 2019, PSD Industries, LLC (PSD Industries), submitted a request that the U.S. Consumer Product Safety Commission (CPSC) classify vacuum diffusion technology (VDT) as an "other system" under the Virginia Graeme Baker Pool and Spa Safety Act (VGBA). PSD Industries' request is a resubmission of a prior petition (VGBA 15-1), which the Commission denied. The resubmitted petition contains additional materials and explanation. The Office of the General Counsel (OGC) is docketing PSD Industries' resubmitted request as a petition.

Pursuant to the Commission's Directive No. D302, OGC has drafted the attached notice for publication in the *Federal Register*, inviting comments on the petition for a period of 60 days, should the Commission, in its discretion, decide to request comments on the petition.

Please indicate your vote on the following options:

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with the specified changes.

(Signature)

(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice Regarding Petition Requesting Approval of Vacuum Diffusion Technology as an “Other System” under the Virginia Graeme Baker Pool and Spa Safety Act

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Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. VGBA-2019-00XX]

**Resubmission of Petition Requesting Approval of Vacuum Diffusion Technology as an
“Other System” under the Virginia Graeme Baker Pool and Spa Safety Act**

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) received a resubmitted petition from PSD Industries, LLC (petitioner, or PSD Industries), requesting that the Commission approve Vacuum Diffusion Technology (VDT) as an “Other System” under the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act). The CPSC invites written comments concerning this petition.

DATES: Submit comments by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by Docket No. VGBA-2019-00XX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

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Written Submissions: Submit written comments by mail/hand delivery/courier to:
Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to <http://www.regulations.gov>, including any personal identifiers, contact information, or other personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted by mail/hand delivery/courier.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, insert docket number VGBA-2019-00XX into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Alberta Mills, Secretary, Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301-504-7479; e-mail: AMills@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Section 1404(c)(1)(A)(ii) of the VGB Act requires that each public pool and spa in the United States with a single main drain other than an unblockable drain be equipped, at a minimum, with one or more of the following anti-entrapment devices or systems: (1) Safety vacuum release system; (2) Suction-limiting vent system; (3) Gravity drainage system; (4) Automatic pump shut-off system; (5) Drain disablement; or (6) any other system (“other system”), determined by the Commission to be equally effective as, or better than, these systems

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at preventing or eliminating the risk of injury or death associated with pool drainage systems. 15 U.S.C. 8003(c)(1)(A)(ii).

On June 23, 2015, PSD Industries submitted a petition, docketed as VGBA 15-1, requesting that the Commission classify VDT as an anti-entrapment device or system under the VGBA. Petitioner defined “VDT” as: “a system that removes the intense vacuum draw from the intake point of a pumping system by occluding the intake orifice from swimmers and diffusing the vacuum from a potential blockage immediately in multiple directions from the blockage.” The petition stated that VDT protects against limb, hair, and mechanical entrapment, and mitigates evisceration. CPSC staff recommended that the Commission deny the petition. Staff determined that VDT was not as effective as the anti-entrapment devices and systems listed in the VGBA because VDT did not protect against full body entrapment, mechanical entrapment, or evisceration and could be a potential source of hair and possibly, mechanical entrapment. The Commission voted to deny the petition.¹

PSD Industries has resubmitted its prior petition with additional materials and explanation. The resubmitted petition contains additional information based on third party testing conducted by Penn State University’s Applied Research Laboratory. Petitioner asserts that “VDT demonstrably and unequivocally prevents hair, limb, and mechanical entrapments.” Additionally, petitioner asserts that protection against full-body entrapment is not a requirement to be “equally effective as, or better than” the enumerated anti-entrapment systems under the VGBA.

By this notice, CPSC seeks comments concerning this petition. The petition is available at: <http://www.regulations.gov>, under Docket No. VGBA-2019-00XX, Supporting and Related

¹ March 25, 2016 Record of Commission Action, available at: <https://www.cpsc.gov/content/rca-petition-to-vgba-15-1-petition-for-classification-of-“vacuum-diffusion-technology”-as-an>.

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Materials. Alternatively, interested parties may obtain a copy of the petition by writing or calling the Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-6833.

Dated:

Alberta E. Mills, Secretary
Consumer Product Safety Commission