

**ICPHSO Conference 2006, Section 15  
Actions That a Company Takes Before and  
After Notifying CPSC**

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**Doug Geralde, CSA Group**

- Director of CSA's Corporate Audits and Investigations Group, 28 years with CSA Group.
- Member on the Canadian Council of Fire Marshal & Fire Commissioners, Chair of the Anti-Counterfeiting Task Group for the Canadian Advisory Council on Electrical Safety and is an active member of the International Association of Arson Investigators.
- Special Advisor to the Chief Coroners and Chief Medical Examiners of Canada.

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**Joe Newberg, The Toro Company**

- Manager, Product Safety and Government Relations
- 35 years with The Toro Company, dedicated to the consumer product safety arena
- Designated liaison with CPSC for product recalls and reporting.

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**Alan Schoem, Marsh USA**

- Vice President in the Global Product Recall Solutions and Prevention Practice within the Risk Consulting Practice of Marsh. This global practice specializes in providing professional consulting services for clients who encounter a product recall, product tampering, product contamination, product safety or liability issue.
- He works with companies on regulatory compliance, establishing procedures to conduct recalls, and minimizing risk and liability. Mr. Schoem is primarily responsible for assisting clients who have Consumer Product Safety Commission-related issues.

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**Marc J. Schoem, CPSC**

- Director, Recalls and Compliance Division, Office of the Compliance and Filed Operations, U.S. Consumer Product Safety Commission.
- Responsible for directing headquarters and Commission field office investigations of potentially defective non-regulated and violative regulated consumer products. Additionally, Mr. Schoem directs the negotiations and implementation of voluntary product recalls to ensure timely notification and correction of the hazardous products.

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**Goal**  
**Understand Section 15 reporting to the CPSC**

- A hypothetical situation will be presented, involving a product safety issue.
- Seek your input
- The focus will be on failure analysis and panelists will present typical process steps that may include analysis, testing, checking for historical data of similar issues, simulated tests, hazards analysis and potential fix.

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**Statutory Reporting Language**  
Section 15(b)

- Product fails to comply with mandatory standard or ban
- Product fails to comply with standard relied upon by the CPSC
- Information reasonably suggests product defect that could create substantial product hazard
- Information reasonably suggests unreasonable risk of serious injury or death

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**Hypothetical**

- An importer buys a popcorn maker off the shelf from a Chinese manufacturer with whom it has a business relationship, relying on the manufacturer's specifications. The importer sells to consumers about 100,000 of the popcorn makers through numerous retailers, many of whom make sales through catalogs and the internet. The importer's name is on the product.
- The importer receives a report that its hot air popcorn maker has been involved in an incident. The consumer claims he sustained property damage of \$300 when the unit sparked and damaged a table top. The company's in-house engineer examines the unit and he can find no performance problem.

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**Investigations**

- Popcorn Maker Investigation
  - Incident Summary
  - History of product use
  - Simulative testing
  - Investigation findings
  - Corrective action

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**Report to CPSC?**

- Is a report to CPSC required?
- Should the company perform tests through an independent testing laboratory?

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**Hypothetical cont'd**

- A few months later, the company receives an additional incident report this time claiming the product caused a fire. The popcorn maker is one of several consumer products found at the site of the fire. The unit is too badly damaged to determine if it caused the fire or was the victim of the fire.

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**Report to CPSC?**

- Is any report to CPSC required?
- What should the company be doing?

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**Hypothetical cont'd**

- A few months later, there is a report from a consumer that after cleaning the popcorn maker in a manner inconsistent with the cleaning instructions (he cleaned it with a flammable liquid material) he then used the product. The product reportedly sparked and partially melted spewing smoke into the house. The consumer accepts responsibility acknowledging he cleaned the popcorn maker improperly. The company retrieves the damaged unit and sends the consumer a new unit. The company's in-house engineers examine the incident unit but cannot determine why it sparked, smoked and melted. He tests several new units cleaning them improperly in the same manner as the consumer and cannot create an incident.

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**Report to CPSC?**

- Should the company report or take other action?

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**Hypothetical cont'd**

- The company decides to report to CPSC but takes the position the product is not defective and does not create a substantial product hazard. It does not offer to conduct a recall. It sends exemplar units to the CPSC.
- Over the next few months, the company makes modifications to the product, e.g. it begins using more flame resistant plastic and modifies the circuitry. The company receives four more reports of incidents involving units made to the original design. The company retains an outside testing laboratory. The company sends two incident units and exemplar units to an independent testing laboratory for analyses. The lab determines that one of the incident units was the source of the flame due to a design failure. The independent laboratory cannot replicate the incident with an exemplar unit. The lab hypothesizes a failure mode and conducts tests to substantiate its hypothesis. The lab is able to generate a fire with the original design of the units but cannot generate a fire with current production.

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**Hypothetical cont'd**

- One year after the original notification to CPSC, the company proposes to conduct a Fast Track Recall. During this period, CPSC also has tested the company's exemplar units.
- The company has not determined what remedy to offer. It wishes to develop a repair (rather than a replacement) but it will take several months of technical work to determine if a repair is feasible. The company cannot afford to offer a full replacement.

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**Issues**

- Buying off the shelf products without testing them before selling.
- Testing before placing the product into the marketplace.
- How many incidents does it take before a report to CPSC is required?
- Will CPSC's view be different than the company's?
- If a company cannot determine if its electrical product is the cause or victim of a fire, is a report to CPSC nonetheless required?
- At what point should a company retain an outside laboratory rather than rely on its own engineers?
- If a company reports and offers to conduct a recall but cannot initiate the recall within 20 working days called for to participate in Fast Track, are there options available to the company to avoid a staff preliminary determination of hazard?

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**Issues After a Report**

- What steps should a company engage in after it reports but takes the position that there is no SPH and a recall is not necessary?
  - ◆ Testing of products in the marketplace?
  - ◆ Investigation of any complaints/incident reports?

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**Issues After a Report**

- If a company reports and takes the position there is no SPH and therefore no recall is warranted, what will the CPSC be doing?
  - ◆ Will CPS take the matter to PD?
- Will CPSC advise the company it is taking the matter to PD?

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**Issues After a Report**

- If a company reports and proposes to do a recall but cannot conduct a recall until it performs extensive technical analysis to develop a repair, what steps should it be taking?

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