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Safety Agency, Mattel Clash Over Disclosures

By **Nicholas Casey** and Andy Pasztor
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Amid two high-profile toy recalls this summer, Mattel Inc. has said its highest priority is protecting children by pulling defective products off store shelves as soon as hazards emerge.

But the company's own definition of such a timely response differs sharply from the government's -- as Mattel openly acknowledges. The Consumer Product Safety Commission says that manufacturers must report all claims of potentially hazardous product defects within 24 hours, with few exceptions.

Mattel, in at least three major cases since the late 1990s -- including last month's recall of nearly 18 million playsets studded with potentially dangerous magnets -- took months to gather information. In two of the cases, it collected scores of complaints for months before disclosing them to the agency.

At times, Mattel officials have considered possible remedies for defects before making an initial report to the agency disclosing safety concerns. None of these recalled products have been implicated in any fatalities.

Mattel Chairman and Chief Executive Robert Eckert said in an interview that the company discloses problems on its own timetable because it believes both the law and the commission's enforcement practices are unreasonable. Mattel said it should be able to evaluate hazards internally before alerting any outsiders, regardless of what the law says.

By mandating that companies immediately report any incident that could conceivably expose a hazard, the commission's "standard might apply to almost anything," Mr. Eckert said. "It's very easy for anyone to apply the word 'could' backward," he added.

The CPSC doesn't agree. "It's a statute; it's clear," said Julie Vallese, the commission's spokeswoman, referring to the 24-hour rule. Yet enforcing such rules poses a challenge for the small agency, which has limited resources and is only authorized to impose fines of less than \$2 million against companies that Ms. Vallese says "think they can get away with delaying reporting."

Since 2001, the agency has twice fined the world's largest toymaker for "knowingly" withholding information regarding problems that "created an unreasonable risk of serious injury or death." Mattel settled the cases, denying any wrongdoing or that the recalled toys had a defect. Now, the commission is investigating the timeliness of the company's disclosures before its most recent recall. At the same time internal CPSC documents raise questions about whether Mattel has passed along information to regulators about possible recurring electrical problems with a recalled toy the company has declared fixed.

The clash raises questions about federal safety standards and the enforcement powers of the nation's consumer-safety agency. With one of its three commission seats vacant since late last year due to a standoff between Congress and the White House, the CPSC has been hobbled in ordering recalls, levying fines and updating safety rules. In addition to toymakers, it has come under fire in recent months for being too timid in dealing with other industries that make the roughly 15,000 products under its purview.

Senate Majority Whip Dick Durbin, the Illinois Democrat who heads the subcommittee that oversees the agency's funding, calls the CPSC a "toothless tiger," with an "inability to find offenders and change conduct."

Commission members haven't commented on their recent dealings with Mattel. But Ann Brown, who served as the agency's chairwoman until 2001, calls Mattel's position "fallacious and wrongheaded." Children can be injured while the company takes its time investigating incidents under its own rules, she said. "It's an inhumane way to approach this."

Mattel argues that raw incident reports too often have been blown out of proportion by the government and

industry critics. Even hundreds of incidents don't automatically implicate the safety of a specific toy, according to Mr. Eckert.

"You have to put it in context," he said. Mattel isn't withholding anything from regulators, he said, adding that the only question is "whether we reported the issue in a timely manner."

"We are allowed to investigate" before alerting the commission to consumer complaints, he said, adding that clarifying the issue of response time with agency regulators would avoid some of the conflicts that have plagued Mattel's relationship with them.

Mattel isn't alone in its run-ins with the commission. A number of other large toymakers, including Hasbro Inc., Mattel's largest rival, have been chastised by the CPSC for failing to promptly report problems, and have paid millions of dollars in fines to the government under the current recall system, which relies heavily on voluntary reporting by such companies. In its settlement, Hasbro denied any wrongdoing.

Mattel's conflicts with the CPSC stretch back nearly a decade. The company previously was fined \$1.1 million for failing to promptly report a fire hazard involving its Power Wheels line of motorized minicars, designed to be ridden by children as young as 2 years old. Ten million of the cars were pulled from the market in 1998.

Mattel knew about hundreds of problems with the toy's electrical systems, "yet did nothing for years," said Ms. Brown, then the agency's chairwoman, after announcing the penalty in 2001. The commission said there were reports of 150 fires involving the minicars and more than 10 times as many reports of electrical components overheating, melting, short-circuiting or failing.

Mattel's Mr. Eckert says the company recalled the kiddie cars and agreed to pay the penalty to get the issue behind it. "We investigate every fire. We don't know of a single fire caused by Power Wheels," he said. Even so, the company altered its Power Wheels line by installing a new fuse and other parts.

Less than a year after paying the Power Wheels fine, Mattel again defied the commission's reporting rules. In the fall of 2002, Mattel began collecting a large number of reports involving its popular Little People Animal Sounds Farm. This time, the issue was the safety of screws used in the barnyard-themed toys, which could pose a hazard if swallowed. In one case, a screw had punctured the lung of a 14-month-old baby who had inhaled it. The child required emergency surgery.

"It was not until March 2003 that the company reported the safety hazard" to the commission, an agency investigation concluded. The government discovered that Mattel had collected 32 earlier reports of loose screws before approaching regulators. Denying any wrongdoing, the company signed a settlement in March, agreeing to pay \$975,000.

These settlements didn't resolve the underlying issue of timely reporting of possible safety defects, say current and former commission officials. "The agency has a real problem in finding out about dangerous products. They know after [company] lawyers might know -- that's after a death or injury," said Pamela Gilbert, the former executive director of the commission.

While defending Mattel's past actions, company CEO Mr. Eckert said, "We've gotten better at understanding and investigating. We're generally able to report incidents sooner than previously."

The issue of timely reporting, however, has cropped up anew in the latest round of recalls. Last November, Mattel recalled roughly two million figurines it marketed under the Polly Pocket brand because of high-power magnets in the figurines that could fall off and tear through a child's stomach lining if swallowed. Over the next eight months, the company collected an additional 400 reports of problems with other toy lines studded with magnets before expanding its recall this summer to include an additional 18 million toys.

It isn't clear how long Mattel spent analyzing the reports before advising the CPSC, and agency officials declined to comment because they are investigating the timing of Mattel's disclosures. Last week, Mr. Eckert said he couldn't remember when the company brought the complaints about the magnets to the attention of authorities.

Safety problems involving Mattel's recalled toys, and the disclosure of those incidents, have at times continued to plague the company long after the problems were thought to be fixed. According to internal commission documents gathered by Neil Chernoff, a self-described consumer advocate near Atlanta who has collected documents on Power Wheels cases for several years, CPSC staff believed that some of the ride-on toys continued catching on fire nearly seven years after the initial recall. The incidents prompted at least nine new investigations by the commission.

Some of the victims informed Mattel about fires, and Mattel paid some of them for losses. But so far, the

company hasn't informed consumers of any hazard and, according to the documents, commission staff learned about many of these incidents from other sources. The commission declined to comment on whether it plans to take action on the matter.

Mr. Chernoff, who battled Mattel for years over the release of commission files under the Freedom of Information Act, said, "The bottom line is that the documents show company officials never really fixed the problems; otherwise, how could they continue to have reports of fires?"

The commission documents describe some frightening scenes. For example, Sonya DeAngelo, a real-estate agent from Portland, Ore., says she lost the detached garage in a house she rented when a Power Wheels truck she bought for \$500 caught on fire two hours after her grandson had gotten off. The fire buckled the surrounding asphalt.

"The toy was completely melted, except for the frame," she recalled. Though her landlord was insured, Ms. DeAngelo was without renter's insurance and says she couldn't afford an attorney to pursue legal action against Mattel. Last year, Mattel paid her \$2,500, half of what Ms. DeAngelo had asked for to cover her losses.

According to an internal commission report, Ms. DeAngelo notified Mattel on March 8, 2004 -- two days after the fire occurred. That report, which was prepared two months later, identifies the toy as the cause of the fire but makes no mention of any information received from Mattel. Mattel declined to comment on the specifics of the fire.

In other incidents, the damage has been worse. Before dawn one summer morning in 2000, Todd Kelly, a former National Football League player, and his family were startled awake by the sound of a smoke detector at his red-brick home in Knoxville, Tenn., according to another internal commission report. Rushing into the garage, Mr. Kelly found his two cars, along with his garage door, engulfed in flames. Estimated damages exceeded \$200,000.

The local fire department suspected that the fire originated from a red Jeep Wrangler Power Wheels toy that was being recharged inside the garage, the report says. The document also says that an electrical engineer hired by Mr. Kelly's insurance company determined that it appeared "the fire had started in the wiring harness of that toy." Mr. Kelly couldn't be reached for comment. Mattel officials declined to comment on the case.

Time Lapses

Mattel's toy recalls and trouble with the Consumer Product Safety Commission:

-- Early 1995: Mattel receives first report of electrical problems with Power Wheels car line.

-- March 1997: Mattel informs CPSC of problem after the commission independently learns of it.

-- Oct. 1998: Mattel recalls around 10 million Power Wheels cars.

-- June 2001: Mattel agrees to a civil penalty of \$1.1 million for failing to notify the CPSC promptly of the problem.

-- Sept. 2002: Mattel gets first report of problems with screws in the Little People Animal Sounds Farms line.

-- March 2003: Mattel informs the CPSC after collecting reports of 33 incidents, including a child who required emergency lung surgery after inhaling a screw.

-- 2001-2005: Mattel and CPSC receive reports of additional fires in Power Wheels manufactured after 1998 recall.

-- Nov. 2006: Mattel recalls a limited number of magnetic figurines because of safety concerns.

-- March 2007: Mattel agrees to civil penalty of \$975,000 for failing to notify the CPSC promptly of the Little People incidents.

-- Mid-Aug. 2007: Mattel expands recall to include an additional 18.2 million magnetic figurines after receiving 400 additional reports of problems.

-- Late Aug. 2007: CPSC begins investigating the timing of Mattel's latest disclosures.



Robert A. Eckert

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