United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: March 31, 2003

TO : Patricia Bittner, HS

Through: Todd A. Stevenson, Secretary, OS

FROM : Martha A. Kosh, OS

SUBJECT: Petition HP 01-3: Petition for Ban on Use of CCA Treated Wood in Playground Equipment

ATTACHED ARE COMMENTS ON THE CH01-4a

Cont'd (CH01-4)

COMMENT	DATE	SIGNED BY	AFFILIATION
CH01-4-29	2/12/03	Merrill Clark	Macmerrill@aol.com
CH01-4-30	2/24/03	Dimitra Bechstein	pctrnr@rcn.com
CH01-4-31	2/24/03	Betsy Ehrlich	6130 Jefferson Blvd Frederick, MD 21703
CH01-2-32	2/24/03	Stephen Rodia	7220 Prestwick Lane Portage, MI 49024
CH01-2-33	2/24/03	Connie Brunelle	4274 N. Lakeshore Dr. Holland, MI 49424
CH01-2-34	2/24/03	Kristine Townsend	2119 Corn Drive Papillion, NE 68046
CH01-2-35	2/25/03	Peter Vogt	petervogt@videa-tv.com
CH01-2-36	2/27/03	Tim McMahon	St. Paul, MN Timmc@attbi.com
CH01-2-37	2/27/03	Tom Wittek Vice President	Woods Run Forest Products, Inc. 310 West Third Ave. Colfax, WI 54730
CH01-2-38	3/10/03	Theodora Sweeney	Briggswe@aol.com
CH01-2-39	2/24/03	Enid Narver	P.O. Box 203 Elsah, IL 62028

Petition HP 01-3: Petition for Ban on Use of CCA Treated Wood in Playground Equipment

CH01-2-40	3/17/03	Jeff Moreau CEO	Northstar Vinyl moreau@northvinyl.com
CH01-2-41	3/17/03	Carol Dawson	Consumer Alert 1001 Conn. Ave, NW Suite 1128 Washington, DC 20036
CH01-2-42	3/17/03	Joseph Prager Publisher	mail@bancca.org
CH01-2-43	3/17/03	T. Lafantaisie	samgd11@attcanada.ca
CH01-2-44	3/17/03	M. Lafantaisie	30 Marco Lane Ottawa, Ontario K1S 5A2
CH01-2-45	3/19/03	Don Eaise Sr.	DEaiseLmbr@aol.com
CH01-2-46 **Video in OS**	3/14/03	Al Sunshine Consumer-Investigative Reporter	CBS 4 South Florida 8900 NW 18 Terrace Miami, FL 33172
CH01-2-47	3/27/03	Michael Draper LMC Chairman & Vice Chairman Western Region United Brotherhood Of Carpenters and Joiners of America	Forest Products Industry, National Management Committee P.O. Box 65175 Washington, DC 20035
CH01-2-48	3/28/03	Terrance Scanlon	Capital Research Center 1513 16th St, NW Washington, DC 20036
CH01-2-49	3/28/03	Jan Schakowsky Member of Congress	Congress of the U.S. House of Representatives Washington, Dc 20515
CH01-2-50	3/28/03	Wendy Gramm Director, Regulatory Studies Program & Susan E. Dudley Sr Research Fellow Regulatory Studies Program	Mercatus Center George Mason Univ. 3301 N Fairfax Dr. Suite 450 Arlington, VA 2201

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CH01-2-51	3/28/03	Seth Goldberg Atty	Steptoe & Johnson LLP 1330 Connecticut Ave. NW, Washington, DC 20036
		Barbara D. Beck PhD, Toxicologist Gradient Corp.	On behalf of the Wood Wood Preservative Science Council(WPSC) P.O. Box 293 Mt. Vernon, VA 22121
		Floyd Frost, PhD Epidemiologist, Lovelace Respiratory Research Institute;	**Address same as above**
		Joyce S. Tsuji, PhD DABT, Exponent;	**Address same as above**
		Gary M. Williams Director of Pathology and Toxicology New York Medical College;	**Address same as above**
		Steven H. Lamm President, Consultants in Epidemiology	**Address same as above**
CH01-2-52	3/28/03	Sharon Kneiss Vice President	American Forest and Paper Association 1111 Nineteenth ST NW Suite 800 Washington, Dc 20036
CH01-2-53	3/28/03	Hal Storey	S.I. Story Lumber Company, Inc.
CH01-2-54	3/28/03	Debbie Burns Vice President Public Affairs	Southeastern Lumber Manufacturers Assoc.
CH01-2-55	3/28/03	Kenneth Brown Ph.D	KBinc P.O. Box 16608 Chapel Hill, NC 27516
CH01-2-56	3/28/03	David Crowe Sr. Staff Vice President	National Association of Home Builders 1201 15th St, NW Washington, DC 20005
CH01-2-57	3/28/03	Gloria Tilley	5783 Dover Road Lakeview, NY 14085

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CH01-2-58	3/28/03	Colleen Murphy Esq.	30c Autumn Creek Ln East Amherst, NY
CH01-2-59	3/28/03	Sherrie Maykut	1432 Field Ave Metairie, LA 70001
CH01-2-60	3/28/03	Angela Logomasini Director of Risk & Environmental Policy	Competitive Enterprise Institute 1001 Connecticut Ave, NW, Suite 1250 Washington, DC 20036
CH01-2-61	3/28/03	Jody Clark Vice President of Communications	Competitive Enterprise Institute **address same as above**
CH01-2-62	3/28/03	Darrell McKigney President	Small Business Survival Committee 1920 L St, NW Suite 200 Washington, DC 20036

cut 29

Stevenson, Todd A.

From: Information Center
Sent: Wednesday, February 12, 2003 12:28 PM
To: 'Macmerrill@aol.com'
Subject: CCA

Hello,

We have forwarded your comments to the appropriate agency personnel for their review. If additional information is needed, someone from the agency will be in contact with you.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----
From: Macmerrill@aol.com [mailto:Macmerrill@aol.com]
Sent: Tuesday, February 11, 2003 5:09 PM
To: info@cpsc.gov
Subject: CCA

We are pleased to see that CPSC along with US EPA have determined that copper chromated arsenate-treat wood should be kept from children's playgrounds.
Indeed, there is really no reason to allow toxic-treated woods into the environment inthe first place, given the fact that non-toxic alternatives and alternative materials are readily available. I was never able to understand where the CCA-treated wood idea came from in the first place, and then, get allowed by people who ought to know FAR better, especially toxics experts in the EPA. The "precautionary principle" appears to be completely defunct or disfunctionary in today's regulatory affairs. It is inconceivable that **any** agency would OK toxic-releasing products (and they do release toxics) particularly in a child's play environment, not alert their parents, and also not oversee whether the required toxic notices were placed on all CCA-treated wood ... and then .. finally ... decide to "phase out" the materials "in order to assist" those manufacturing the material or the product as they try to get rid of their toxic commodity on more unsuspecting parents and consumers.
Merrill Clark

CCA comm 30

Stevenson, Todd A.

From: Information Center
Sent: Monday, February 24, 2003 8:54 AM
To: 'pctrnr@rcn.com'
Subject: CCA-treated wood

Hello,

Thank you for your comments.

We have forwarded your comments to the appropriate agency personnel for their review. If additional information is needed, someone will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----
From: dimitra gianes bechstein [mailto:pctrnr@rcn.com]
Sent: Sunday, February 23, 2003 9:52 AM
To: info@cpsc.gov
Subject: CCA-treated wood

Hal Stratton, Chairman
U.S. Consumer Product Safety Commission
Washington, D.C. 20207-0001

Dear Chairman Stratton:

Your recent statement about CCA-treated wood in playground structures was brilliant since it publicly validates that a health risk exists.

However I am puzzled that you only singled out play equipment, even though picnic tables and decks pose similar risks to children.

My query for you is why hold a public hearing on a possible ban of arsenic-laden play equipment?...if "...CPSC staff has already advised against action until the EPA and the wood industry complete a phase-out plan." This is illogical and would produce a plan that would take in 2004-2005 leaving the wood in circulation.

The EPA and industry have dragged their feet enough on this matter, and the end of this year isn't soon enough for a phase-out. The longer the wood stays on the shelves, the more health problems it will cause. I urge you to immediately ban the use of CCA-treated wood in all consumer uses.

Do you have children or grandchildren??? I do not and I am totally outraged at the disrespect

political administrations show to children who have no voice. We need to start governing with a heart…business and ethical behavior can coexist…many companies are showing us that!!!

With great respect for your complex job,

Dimitra Gianes Bechstein

Stevenson, Todd A.

CCA comments 31

From: Information Center
Sent: Monday, February 24, 2003 11:56 AM
To: 'Elizabeth Ehrlich'
Subject: RE: Hal Stratton

Hello,

Thank you for contacting the United States Consumer Product Safety Commission (CPSC). We have forwarded your inquiry to the appropriate agency personnel. If additional information is needed or available, someone will be in contact.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

mks

-----Original Message-----
From: Elizabeth Ehrlich [mailto:betsylarry@yahoo.com]
Sent: Sunday, February 23, 2003 2:33 PM
To: info@cpsc.gov
Subject: To: Hal Stratton

Dear Chairman Stratton:

Your recent statement about CCA-treated wood in playgroundstructures was a welcome sight in one respect: It publicly validates that ahealth risk exists.

But two things dismayed me. One, you singled out playequipment, even though picnic tables and decks pose similar risks to children.Second, though you will soon hold a public hearing on a possible ban ofarsenic-laden play equipment, your statement indicates that CPSC staff hasalready advised against action until the EPA and the wood industry complete aphase-out plan. A plan that wouldn't take effect until theend of this year and would leave the wood in circulation well into 2004.

The EPA and industry have dragged their feet enough on thismatter, and the end of this year isn't soon enough for a phase-out. The longerthe wood stays on the shelves, the more health problems it will cause. I urgeyou to immediately ban the use of CCA-treated wood in all consumer uses.

Sincerely,

Betsy Ehrlich
6130 Jefferson Blvd
Frederick, MD 21703

Stevenson, Todd A.

CCA comments 32

From: Information Center
Sent: Monday, February 24, 2003 8:53 AM
To: 'srodia@ameritech.net'
Subject: Ban the use of CCA-treated wood

Hello,

Thank you for your comments.

We have forwarded your comments to the appropriate agency personnel for thier review. If additional information is needed, someone will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----
From: Stephen J. Rodia [mailto:srodia@ameritech.net]
Sent: Sunday, February 23, 2003 11:51 AM
To: info@cpsc.gov
Subject: Ban the use of CCA-treated wood

Hal Stratton, Chairman
U.S. Consumer Product Safety Commission
Washington, D.C. 20207-0001

Dear Chairman Stratton:

Your recent statement about CCA-treated wood in playground structures was a welcome sight in one respect: It publicly validates that a health risk exists.

But two things dismayed me. One, you singled out play equipment, even though picnic tables and decks pose similar risks to children. Second, though you will soon hold a public hearing on a possible ban of arsenic-laden play equipment, your statement indicates that CPSC staff has already advised against action until the EPA and the wood industry complete a phase-out plan. A plan that wouldn't take effect until the end of this year and would leave the wood in circulation well into 2004.

The EPA and industry have dragged their feet enough on this matter, and the end of this year isn't soon enough for a phase-out. The longer the wood stays on the shelves, the more health problems it will cause. I urge you to immediately ban the use of CCA-treated wood in all consumer uses.

Sincerely,

Stephen J. Rodia
7220 Prestwick Lane
Portage, MI 49024

CCA comment 33

Stevenson, Todd A.

From: Information Center
Sent: Monday, February 24, 2003 2:30 PM
To: 'conniejo@chartermi.net'
Subject: arsenic-laden wood

Hello,

We have forwarded your comments to the appropriate agency personnel.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

myg/tm

-----Original Message-----
From: Connie Brunelle [mailto:conniejo@chartermi.net]
Sent: Saturday, February 22, 2003 10:44 AM
To: info@cpsc.gov
Subject: arsenic-laden wood

Hal Stratton, Chairman

U.S. Consumer Product Safety

Commission

Washington, D.C. 20207-0001

Dear Chairman Stratton:

Your recent statement about CCA-treated wood in playground structures was a welcome sight in one respect: It publicly validates that a health risk exists.

But two things dismayed me. One, you singled out play equipment, even though picnic tables and decks pose similar risks to children. Second, though you will soon hold a public hearing on a possible ban of arsenic-laden play equipment, your statement indicates that CPSC staff has already advised against action until the EPA and the wood industry complete a phase-out plan. A plan that wouldn't take effect until the end of this year and would leave the wood in circulation well into 2004.

The EPA and industry have dragged their feet enough on this matter, and the end of this year isn't soon

enough for a phase-out. The longer the wood stays on the shelves, the more health problems it will cause. I urge you to immediately ban the use of CCA-treated wood in all consumer uses.

Sincerely,

Connie Brunelle 4274 N. Lakeshore Dr. Holland, MI 49424

CCA comm 34

Stevenson, Todd A.

From: Information Center
Sent: Monday, February 24, 2003 3:05 PM
To: 'katownsend@cox.net'
Subject: Chairman Stratton re. arsenic treated wood

Hello,

We have forwarded your electronic message to the appropriate agency personnel for their review. If additional information is needed, someone will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----
From: Kristine Townsend [mailto:katownsend@cox.net]
Sent: Friday, February 21, 2003 9:15 PM
To: info@cpsc.gov
Subject: Chairman Stratton re. arsenic treated wood

Dear Chairman Stratton:

Your recent statement about CCA-treated wood in playground structures was a welcome sight in one respect: It publicly validates that a health risk exists.

But two things dismayed me. One, you singled out play equipment, even though picnic tables and decks pose similar risks to children. Second, though you will soon hold a public hearing on a possible ban of arsenic-laden play equipment, your statement indicates that CPSC staff has already advised against action until the EPA and the wood industry complete a phase-out plan. A plan that wouldn't take effect until the end of this year and would leave the wood in circulation well into 2004.

The EPA and industry have dragged their feet enough on this matter, and the end of this year isn't soon enough for a phase-out. The longer the wood stays on the shelves, the more health problems it will cause. I urge you to immediately ban the use of CCA-treated wood in all consumer uses.

Sincerely,

Kristine Townsend

2119 Corn Drive

Papillion, NE 68046

CCA comment 35

~~Stevenson, Todd A.~~

From: Information Center
Sent: Tuesday, February 25, 2003 4:35 PM
To: 'Peter Vogt'
Subject: RE: Hal Stratton, Chairman

Hello,

Thank you for contacting the United States Consumer Product Safety Commission (CPSC). We have forwarded your inquiry to the appropriate agency personnel. If additional information is needed or available, someone will be in contact.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

mks

-----Original Message-----
From: Peter Vogt [mailto:petervogt@videa-tv.com]
Sent: Tuesday, February 25, 2003 4:21 PM
To: info@cpsc.gov
Subject: To: Hal Stratton, Chairman

Dear Chairman Stratton:

Your recent statement about CCA-treated wood in playground structures was a welcome sight in one respect: It publicly validates that a health risk exists.

But two things dismayed me. One, you singled out play equipment, even though picnic tables and decks pose similar risks to children. Second, though you will soon hold a public hearing on a possible ban of arsenic-laden play equipment, your statement indicates that CPSC staff has already advised against action until the EPA and the wood industry complete a phase-out plan. A plan that wouldn't take effect until the end of this year and would leave the wood in circulation well into 2004.

The EPA and industry have dragged their feet enough on this matter, and the end of this year isn't soon enough for a phase-out. The longer the wood stays on the shelves, the more health problems it will cause. I urge you to immediately ban the use of CCA-treated wood in all consumer uses.

Sincerely

Peter Vogt

~~Stevenson, Todd A.~~

CCA comment 36

From: Tim McMahon [timmc@attbi.com]
Sent: Thursday, February 27, 2003 5:03 PM
To: tstevenson@cpsc.gov
Subject: The Banning of CCA

.....is ridiculous. As has been proven by trained medical personnel, the EPA grossly overstated the potential cancerous effects of CCA in treated playground equipment. The "solution" that has been put forth is already proving itself inferior. The new treatments are causing screws to corrode and copper to leach.

The net result of a permanent ban on CCA will be higher priced wood with even more health dangers. Where is the logic in this?

Tim McMahon
St. Paul, MN

Woods Run Forest Products, Inc.

310 West 3rd Avenue Colfax, WI 54730
715-962-3608 • Fax 715-962-3253

(FR) DOC 03-2824
ACCA Ban Petition, Petition HP 01-3@

Office of the Secretary,
Consumer Products Safety Commission
Washington, DC, 20207

2-26-03
RE: Comments to the Consumer Products Safety Commission on banning CCA treated lumber for residential use.

To Whom it May Concern;

I understand that the CPSC is seeking public comment on a possible ban of CCA treated lumber for residential purposes, ie: playground equipment, among other things. First let me thank you for the opportunity to be heard. As a treater of CCA lumber for over 22 years I have a lot of experience working with this chemical. As a parent, and an employer of many parents in a very small town, I have a very vested interest in not putting my community at risk. From what I, and many scientific studies know, my company and the product we use are not.

As you know CCA has been in use well over 60 years. It has been studied countless times, over many decades, by people with differing objectives. One thing that all the studies to date have in common is that they can find no real or quantifiable danger from exposure to CCA. In your *Handbook for Public Playground Safety,* the Consumer Product Safety Commission (CPSC) affirms the use of wood treated with CCA in accordance with the industry standard for playground equipment. After testing a variety of samples of CCA - treated wood for dislodgeable arsenic during an examination of treated wood in playgrounds, a CPSC official said:"The amounts were much below the level that makes a difference to health. I have no problem with telling consumers it is safe." Further, the Environmental Protection Agency in a press release dated February 12, 2002 stated that "EPA has not concluded that CCA - treated wood poses unreasonable risks to the public for existing CCA - treated wood being used around or near their homes or from wood that remains available in stores. EPA does not believe there is any reason to remove or replace CCA - treated structures, including decks or playground equipment. EPA is not recommending that existing structures or surrounding soils be removed or replaced."

The State of Florida appointed a seven physician panel, called the Florida Physicians Arsenic Workgroup to study the issue of health safety for CCA treated wood, specifically the issue of risk of clinical disease associated with the use of CCA treated wood for construction of playground equipment and recreational facilities. In their report dated June 14, 2002 they stated "The potential risks associated with exposure to arsenic-containing soil or wood products are determined by the bioaccessibility and bioavailability of arsenic. Since the bioavailability of arsenic from playground and recreational wood and soil is low, the amount that could be absorbed also remains low and helps to further explain the absence of arsenic toxicity cases associated with the use of playground and recreational structures containing CCA treated wood." Further they state,"the amount of arsenic

the issue of health safety for CCA treated wood, specifically the issue of risk of clinical disease associated with the use of CCA treated wood for construction of playground equipment and recreational facilities. In their report dated June 14, 2002 they stated "The potential risks associated with exposure to arsenic-containing soil or wood products are determined by the bioaccessibility and bioavailability of arsenic. Since the bioavailability

that could be absorbed from playground soil and CCA treated wood is not significant compared to natural sources and will not result in detectable arsenic intake".

Banning the use of CCA wood has no basis in science. And what do we know of the alternatives being offered? There is no proven track record of longevity of alternative products. In fact some information seems to indicate that the alternatives do not last as well, not to mention the corrosiveness issues with ACQ. If they don't last as long what environmental benefit have we gained? More timber will need to be harvested, more fossil fuels expended in that harvesting and an added cost to the consumer replacing failing structures.

What do we know of any of the alternatives offered in terms of public safety? Are they really safer? Have they undergone the extensive scrutiny over years of study as has CCA? No they have not. What chemicals are leaching from the alternatives and what will their cumulative effects be? These are questions that have yet to be answered.

I am firmly against banning CCA for treating wood for any purpose. There has yet to be any sound scientific information that I have seen to support a ban. CCA is a good product, with well established longevity records, and a long proven safety record.

Many states have looked at the CCA issue. Minnesota, Florida, and Wisconsin, to name a few. None of these states found information that led them to enact a ban on CCA treated lumber in their states. Each state looked at the issue separately and garnered information in their own way. Did the EPA come up with information different from that that the states considered in their decisions? Not that I have seen.

The chemical companies that have volunteered the ban have their own agendas. It could be to boost sales of products that haven't done very well in direct competition with CCA, or to try to distance themselves from a public misconception about the arsenic in CCA. Whatever their agendas may be, none have indicated it is because of a scientifically proven risk to the public.

It is wrong to ban a good product based on poor science.

Thank you for your time,

Tom Wittek, Vice President
Woods Run Forest Products, Inc.

Stevenson, Todd A.

CCA comm 38

From: Information Center
Sent: Monday, March 10, 2003 12:59 PM
To: 'Briggswe@aol.com'
Subject: CCA in playground equipment

Hello,

We have forwarded your comments to the appropriate agency personnel for their review. If additional information is needed, someone from the agency will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----
From: Pucciarelli, Ellen M
Sent: Monday, March 10, 2003 7:50 AM
To: Giles, Ken P.; Information Center
Subject: FW: CCA in playground equipment

-----Original Message-----
From: Briggswe@aol.com [mailto:Briggswe@aol.com]
Sent: Sunday, March 02, 2003 12:55 PM
To: EPucciarelli@cpsc.gov
Cc: Briggswe@aol.com
Subject: CCA in playground equipment

It is incredible to me that more than 25 years after the committee which developed the original Handbook for Public Playground Safety recommended against the use of CCA for use in children's playgrounds, the subject is still being debated. The press release announcing that yet another discussion of the matter is scheduled for March 12th also suggested that parents see to it that children wash their hands after using play equipment treated with CCA. Get serious! Young children will most likely have their hands in their mouths long before they're within view of soap and water. Moreover, when the CCA treated lumber is on the school playground, how realistic is it to expect that the teachers will stop everything to send each child to the lavatory before resuming class?

As a petitioner for the original standard (quickly watered down to guidelines, due to industry presssure) as well as one who helped to draft the principles ultimately published in the mid-seventies, I recall well how vigorously industry representatives lobbied for the weakest standards possible (including allowing the use of CCA in wood products), and how shamelessly the CPSC commisioners at the time caved in to those monied interests, instead of fulfilling their responsibility to protect children. Sadly, it appears that nothing has changed, and that despite some decisions

which reflect flashes of wisdom and good sense, CPSC still too often stands for Cowardly Pack of Sycophantic Commissioners.

I would welcome your response.

Respectfully,

Theodora Briggs Sweeney
215-646-0468

P.S. Since I do not have the e-mail addresses of the commissioners, I would appreciate your forwarding this message to them, as well as to Ken Giles. Thanks!

UCH comment 39

Dearest Folks,

Re CCA-treated wood playsets!

This letter is for all 4 of those + including Claire Leschen-Hoar, writer-in her article in the Christian Science Monitor Feb 24'03:9 of Elsah IL 62028 Edition; Hal Stratton, Environmental Protection agency, Richard Wiles Sr.

Please Mr Stratton forward enc. copies for each of above and thank you not only for this, but your part in alerting and following through in your Mar 12'03 Meeting! I pray it is all and more than our Planet needs, for it is another tip of the Ice Berg (sp?) in Rachel Carson's "Silent Spring" now, Hallelia! - available from Amazon Com enc. Too long ignored by our Government but finally being urged with an irresistible force to do something about the chemical poisons killing not only millions of wild life, but humans!

I have alerted our Sunday School + others here to pray for your meeting to break down this Berlin Wall of resistance to urgent needs not only to ban the 90% Play Sets with CCA-treated wood, but all things (not just food) that have poisoned chemicals + urge our chemists to find a neutralizer!

Bless you All in Christ,

Mrs Enid Narver, POB OX 203
Elsah IL 62028

Enid Narver
PO Box 203
Elsah IL 62028

This is the day which the Lord hath made;
We will rejoice and be glad in it.
Psalm 118:24

Merry Christmas every day this year is putting rubber on the road for God!

Thank you, God, for Anita Roddick, UK, who brings RELATIONSHIPS, PRODUCTS, PROFITS!

Who isn't stretching every part of our mind/body to see and hear as God is so there can be no poisonings? RELATIONSHIPS through Genesis 1:26, maintaining unity with God's total power, God is sending angels who prayerfully care and literally remove all poisons from our Planet! God bless you who are! The more pouring into every thought and body and surrounding with given pure, the more sweetly grateful we can be for God's freedom! We all need all the pure thinking and acting powers we're being given, and no bad!

The time has come for mental and chemical god poisons to be destroyed with their fats and sugar fuels! Until the light of a more clear and purer PRODUCTS are seen and heard, it is necessary to use, "Yes, I use natural soap," and purer nourishment is available, use the present kind diluted and adding pure. Prayerfully surrounding and pouring in Genesis 1:26, with every pure thought and deed, not stopped by false translation, "Take no thought, what we eat or wear" to correct, "Don't be concerned..." We're listening and praying a lot, go again to RELATIONSHIPS Matt Code 18:15-17, forgive like Jesus (separating wrong from chemists and us) and help them find a way spiritually and physically to no longer accept being disease or age scape-goats, victims of mental or chemical poisons. We can and must remove poison gods from our Planet NOW!

The PROFIT (PROPHETS) are the army of folks praying and working for a more pure Planet to do more even! The more we pray, support, use least fuelling fats and sugars in chemically free PRODUCTS, the more we hasten that time assured by real PROPHETS that PROFITS will be guided by God's way! Heb 10:22

over

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OVER

Dear Everyone, Rejoice! Be glad! Bless! Praise! Give God thanks! The following was so terrific in ordering these! This from one who really cares, as you can tell. So, forgive Chemists + ask them for chemicals that purify but not kill! Neh 10: 2 Water; II K 2: 21; 4: 39-41 22

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Mrs Enid Narver, PO Box 203, Elsah IL 62028

CCA lumber 40

Stevenson, Todd A.

From: Information Center
Sent: Monday, March 17, 2003 4:55 PM
To: 'moreau@northstarvinyl.com'
Subject: Please provide this email to CCA lumber regulatory activist.

Hello,

We have forwarded your comments to the appropriate agency personnel. Please note that CPSC does not buy, sell, import, export or endorse products. Please remove us from any mailing list.

tm

-----Original Message-----
From: Jeff Moreau [mailto:moreau@northstarvinyl.com]
Sent: Monday, March 17, 2003 4:58 PM
To: Information Center
Subject: Please provide this email to CCA lumber regulatory activist.

NORTHSTAR

Dear CPSC:

TruSealer has been tested using the CPSC protocol and found to encapsulate CCA preservative.

Northstar is a company that is very active in manufacturing products that solve maintenance and environmental issues, especially with outdoor wooden structures.

In 1997, we introduced 21POLY, a polymer coating that can be sprayed onto treated lumber (which is used in marine applications like pier and mooring piling). It has been proven to stop CCA from leaching.

Most recently, we used the CPSC protocol to test our "residential" sealer, TruSealer, for its ability to encapsulate CCA. Our tests', which were conducted by an independent ISO 9002 certified lab, showed that treated lumber encapsulated with TruSealer, did in fact encapsulate the CCA.

TruSealer is a polymer formulation that forms a plastic seal inside the wood. Other sealers rely on organic waxes and oils.

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TRUSEALER

These organic sealers can't form a long lasting seal.

As far as we know, TruSealer is the only wood sealer on the market that has been tested according to your Agency's protocol.

After reading many articles on this subject, I felt it was necessary for us to bring this solution to your attention. Please feel free to visit the TruSealer website by clicking on the link in the right margin of this document.

Thanks in advance for your consideration.

Sincerely,

Jeff M. Moreau
CEO
800.558-6702
888.558.3182 fax
678.296-3674 cell
Northstar Polymer, LLC
moreau@northstarvinyl.com

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CCA comments 4/1

Consumer Alert Comments to the Consumer Product Safety Commission for the Public Briefing Regarding the Use of Chromated Copper Arsenate in Playground Equipment March 17, 2003 Prepared by Carol Dawson, CA Board Member

Consumer Alert is pleased to submit these comments for a March 17, 2003 CPSC public briefing on the alleged chronic hazards of CCA-pressure-treated wood used to build playground equipment. Almost two years ago, in June 2001, CPSC docketed a petition by the Environmental Working Group (EWG) and the Healthy Building Network (HBN) to ban CCA treated wood for use in playground equipment. CCA treatment protects wood from rotting due to insect or fungus infestation.

Petitioners charged that CCA (or chromated copper arsenate) is hazardous since it contains arsenic, which has been labeled a known carcinogen. CPSC's staff briefing package uses EPA research to make assumptions leading them to conclude that children playing on playground equipment built with CCA treated wood could be subject to a minimally increased lifetime risk of lung or bladder cancer.

CPSC's briefing document claims that hand-to-mouth behavior is the source of childhood exposure. In other words, children can touch the wood on the playset, then put their hands in their mouths and potentially ingest arsenic that has leached from the wood.

The staff recommends that the Commission defer the petition pending expected action by the Environmental Protection Agency (EPA) to complete an industry agreement to phase out the sale of CCA-treated wood for residential use by the end of 2003.

CCA has been used as a chemical wood preservative since the 1930s. Pressure treated wood is resistant to rot caused by insects and fungi. The chemical has been regulated by the EPA and can only be applied by facilities meeting EPA standards. There are also voluntary standards set by the American Wood Preservers Association. ASTM International standards for playground equipment do not specifically address CCA treated wood, but call for the use of materials that do not expose users to potentially hazardous substances.

Dealing with chronic hazards, i.e., those that have long-term rather than immediate health effects, has always proved problematic for the CPSC. Some suggest CPSC is not well equipped to deal with such hazards. Nevertheless, the agency has jurisdiction through its administration of the Federal Hazardous Substances Act (FHSA), of such hazards.

CPSC looked at CCA-treated wood about a decade ago, and the Health Sciences staff of CPSC measured arsenic in samples of CCA-treated wood. In five of the tested samples, the staff could detect no arsenic. In two samples, there were small quantities detectable, and the last sample, which did yield a larger amount of arsenic, was rough-sawn lumber--not acceptable for use in playground equipment.[1]

EPA also conducted an eight-year investigation of the treated wood process and the use of CCA. A 1998 EPA report said that the benefits of using CCA outweighed any minimal risks. EPA also set some precautions for use, and the industry cooperated with a consumer-awareness program. (Information about handling precautions for CCA-treated wood is available at www.ccasafetyinfo.com, or by calling toll-free at 1-800-282-0600.)

As recently as Oct. 24, 2001, Barbara Beck, a toxicologist and principal at Gradient Corp. concluded that CCA-wood poses no significant health risks. The study was presented to a Scientific Advisory Panel (SAP), a peer-reviewing body for the EPA

If the preservative has been used for more than 70 years and no adverse health effects have been measured, why the pressure to ban its use now?

Much of CPSC's risk analysis is based upon reports on increased cancers found in persons living in southwestern Taiwan, some of whom were exposed to very high levels of arsenic in drinking water.[2] This Taiwanese research was the basis for National Research Council (NRC) studies that, in turn, were the basis for EPA's action on arsenic in drinking water.

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[1] "What's the Story? --Pressure Treated Wood." American Council on Science and Health website, reprinted from "Safe, Long-Lasting Pressure Treated Wood" by Craig E. Shuler and Patrick J. Pellicane in cooperation with Garrey Carruthers in *Priorities for Long Life and Good Health*, Vol. 7, No. 3, 1995.

[2] Briefing Package: Petition to Ban Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment (Petition HP 01-3) by the U.S. Consumer Product Safety Commission, February 2003. p.14.

Some who followed that controversy complain that the Taiwanese data are flawed. The population at risk was exposed to *very* high levels of arsenic, and estimates of exposure levels were not precise.

Steven Milloy, publisher of JunkScience.com, commenting on the CPSC risk analysis, writes:

"CPSC estimated the increased cancer risk to range from two cases in every million people to 100 in a million.

"For comparison, about one out of every 10,000 nonsmokers (0.01 percent) gets lung cancer. So based on CPSC estimates, playing on CCA-treated playground equipment might increase someone's lifetime risk of 0.01 percent to between 0.0102 to 0.020 percent."[3]

Milloy said that according to CPSC estimates, CCA-treated playground equipment exposure might increase lifetime bladder cancer risk for men from about 2 percent to between 2.0002. to 2.010 percent. For women the risk increases from about 0.5 percent to between 0.5002 and 0.510 percent.[4]

Milloy says these increase rates are so small as to be almost meaningless. It should be noted that these numbers are based on CPSC's "worst case' assumptions about CCA.

He noted that the Taiwanese studies examined the extremely high levels of arsenic in drinking water, and that other studies looking at lower levels of arsenic in drinking water showed no increased cancer risk.[5]

The benefits of CCA-treated wood for consumers are that the wood may not rot or incur insect damage for several years, in contrast to untreated wood. Some estimate that "treated wood retains its structural integrity 10 to 20 times longer than untreated woods."[6] In terms of deck or playground equipment structural safety, treated wood would thus appear to have significant advantages over its untreated counterparts. Since the CCA-treated wood lasts for considerably longer, that also means fewer trees are needed for replacement of untreated wood structures.

If CCA is banned, what are the alternatives for treating wood? According to CSPC, two possibilities are ammoniacal copper quaternary (ACQ) or copper boron azole (CBA). CPSC admits there

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[3] Milloy, Steven, "Playground Wood: Cancer Cause or Consumer Scare?" Fox News, Feb. 13, 2003.
[4] Ibid.
[5] Ibid.

are no available data to prove the absence of health hazards associated with the use of these two chemicals. Thus, in assessing the possible risk of CCA-treated wood, CPSC is ignoring the possibly greater risk of its substitutes.

CPSC also admits that those alternatives are more expensive. Use of ACQ or CBA would cost wood preservers three to five times more than CCA. Such a cost increase to manufacturers will increase the price of wood by 10 to 20 percent to consumers.

Other alternatives, such as the use of redwood and cedar, which are naturally pest- and fungus-resistant, are much more expensive than treated wood. Increased demand for redwood could also raise environmental concerns.

The use of composite wood for residential decks as a substitute for CCA treated wood might increase the cost of decks by 10 to 30 percent, again according to CPSC.[7]

There are reports that Home Depot and Lowe's, two of the nation's largest building supplies retailers, have had problems with wood treated with the alternatives. They found that builders would not buy the alternative-treated wood. First, it is more expensive, and secondly, it leaches copper, which is corrosive to screws and nails. Some shipments of the alternative-treated woods were found to be covered with white mold. This necessitated the use of moldicides, which cause the wood to be even more expensive.[8]

The Healthy Building Network, one of the two petitioners to ban CCA-treated wood, is a group of "environmentally friendly" contractors who may stand to gain if consumers decide to replace existing playground equipment or residential decks with non CCA-treated wood.

CPSC staff recommends that the Commissioners vote to defer the petition on CCA-treated wood. They say the agency should wait until EPA completes its work and the industry voluntarily phases out the CCA-treated wood.

---

[6] "What's the Story," American Council on Science and Health website.
[7] Briefing Package, "Petition to Ban Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment (Petition HP 01-3)" Directorate for Health Sciences, U.S. Consumer Product Safety Commission, February 2003.
[8] Conversation with Angela Logomarsini, Competitive Enterprise Institute, Mach 4, 2003

But if CPSC continues on the path to regulation of CCA-treated playground equipment, will municipalities be pressured into ripping out the playground equipment and replacing it with the more expensive alternatives or not being able to replace it at all? This could mean that many cities, already hard-pressed to meet their budgets, will let the playgrounds revert to dumping grounds instead. And children will have even fewer places to play more safely than in the streets. What happens to the products already in consumer's homes? Will playground equipment, residential decks, picnic tables and garden landscaping lumber have to be replaced? Will homeowners feel the need to tear out their decks and replace them? Will real estate salesmen have to have home inspections measuring the amount of arsenic in a home's outdoor structures?

Such a scenario is possible unless consumers step up and demand the truth about CCA-treated wood. It is disappointing that, from all indications, they are not likely to get it from either EPA or CPSC.

Stevenson, Todd A.

From: Fran Smith [fbsmith@consumeralert.org]
Sent: Friday, March 14, 2003 12:46 PM
To: Stevenson, Todd A.
Subject: Comments on CCA-Treated Wood

Importance: High

CA
ments-CCA-treated wood

TO: Todd Stevenson

Attached are comments submitted by Consumer Alert relating to the CPSC consideration of the issue of CCA-treated wood.

Thank you for your attention.

Sincerely,
Frances B. Smith
Executive Director
Consumer Alert
1001 Conn., Ave., NW
Suite 1128
Washington, DC 20036
202-467-5809

CCA comment 42

Stevenson, Todd A.

From: J&R Prager [jrprager@gru.net]
Sent: Monday, March 17, 2003 1:55 AM
To: Stevenson, Todd A.
Cc: Bittner, Patricia
Subject: Written Submission for Public Comment on HP 01-3 CCA Wood Use in Playground Equipment

Letter to CPSC March 2003.doc

Dear Commission Secretary:

My name is Joseph Prager, and I am publisher of BANCCA.ORG, an environmental health Web site that focuses on the issue of CCA Treated wood products and its health hazards.

Because circumstances do not permit me to travel to the Washington area to meet with the Commissioners in person on March 17th or 18th, I am submitting my comments in writing instead. Please consider these comments in the same manner as you would those presented orally.

The attached 10 page document is in Microsoft Word 97 format, which should be readable by most word processors. If this format is not acceptable for some reason, please let me know. I would also appreciate the courtesy of an email reply from you that you have received and accepted this submittal, in order to keep from mailing you additional copies by March 28th.

Thank you for your consideration.

Sincerely,

Joseph Prager, Publisher
BANCCA.ORG
mail@bancca.org

March 17, 2003

Chairman Hal Stratton
Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, MD 20814

RE: Petition HP 01-3: Petition for Ban on Use of CCA Treated Wood in Playground Equipment

Dear Chairman Stratton and fellow Commissioners:

My name is Joseph Prager, and I am the publisher of BANCCA.ORG, (http://www.bancca.org), the premier online Web site for information on the health hazards of CCA treated wood products. Because circumstances do not permit me to travel to the Washington area to meet with you in person on March 17th or 18th, I am submitting my comments in writing instead. Please consider these comments in the same manner as you would those presented orally.

First, let me congratulate your research team on their diligent efforts to complete their recently released *Briefing Report on CCA Treated Wood in Playground Equipment*, which we have reviewed thoroughly.

The results published in this new report are helping to focus the attention of Congress, state agencies, city governments and the general public on the hazards of using CCA wood in playground equipment.

Another benefit of this research effort is that the CPSC has now set the standard for testing CCA treated wood products, by fabricating new test equipment and designing new test procedures that can be easily reproduced and utilized by other scientists in their research efforts.

Please understand that these written comments submitted by BANCCA.ORG reflect the views of the majority of my Web site's readers, some 10,000-15,000 visitors per month worldwide, many of whom have suffered personal injuries from exposure to the toxic chemical compound CCA (Chromated Copper Arsenate.

In fact, BANCCA.ORG regularly receives emails and phone calls from some of these individuals who have had their health, and that of their families, ruined unnecessarily by this product. We have even received, via a Freedom of Information Act request, copies of all of the EPA's Incident reports through 2002 for CCA wood-related injuries, and these are published on our Web site [http://www.bancca.org/CCA_Victims/CCA_victims.htm].

We feel that it is important that the public be made aware of the potential health risks to humans and animals posed by exposure to this toxic product. Moreover, we do not believe that the public has been adequately informed about the health risks associated with use of CCA treated wood products.

This leads me now to the purpose of my letter to you. While your latest CCA wood briefing report is very detailed, thorough, and, for the most part complete, when we reviewed this report, we found some discrepancies. In fact, our review of this report has found 12 major

problems that we feel warrant your attention.

In short, we believe that the CPSC research group and their report, while well intentioned, failed to meet its stated objectives, and the paragraphs that follow outline how this latest report falls seriously short of its intended goals. Please keep in mind as you read this next section, that our goal is not to criticize your report, but to focus attention on the areas where improvements are needed.

12 Major Flaws of the HP 01-3 Briefing Report on CCA Wood in Playground Equipment

1. **The Report Fails to Meet Its Primary Goals.** The original petition filed by EWG and HBN requested that the Consumer Product Safety Commission (CPSC) *"enact an immediate ban of CCA treated wood for use in playground equipment AND begin a review of the safety of CCA-treated wood for general use"*. [2003 CPSC CCA Briefing Report, page 39]

Unfortunately, **neither** of these primary objectives has been achieved by the CPSC. While the Consumer Product Safety Commission mentions the upcoming EPA ban on CCA wood for residential purposes, the CPSC has opted to defer making any decision to ban CCA, even though you have the authority to do so. Nor has the CPSC made any attempt to review the safety of CCA treated wood for general use. Instead, the CPSC has chosen to wait on the EPA, who currently is under a federal lawsuit for failing to act to ban toxic treated wood.

2. **Skin Cancer Risk is Ignored.** The report fails to consider the risk of skin cancer from exposure to arsenic in CCA treated wood, even though the prior 1990 CPSC report, which used limited data, showed a worst case risk of 9 in 1 million, which exceeds the regulatory threshold by ninefold. More to the point, the new CPSC report uses a more up-to-date cancer slope (cancer unit risk) value, and if this new cancer slope were applied to the original 1990 risk assessment report, it *"would yield a range of [skin] cancer risks of 2 X 10-6 to 1 X 10-4,* (editor's note: a worst case risk of 1 in 10,000), *which, at the upper end of the range, is more than 50 times greater than the risk estimated in the original 1990 analysis"*. [2003 CPSC CCA Briefing Report, page 25, par. 2].

Instead, the CPSC focused their report solely on lung and bladder cancer risks, without mentioning in its press releases the added skin cancer risk. Their own report admits this when it states in the body of the report that , *"Any increased risk for skin cancer from arsenic exposure would be in addition to the calculated risk for lung and bladder cancer."* This appears to be a deliberate omission of facts. [2003 CPSC CCA Briefing Report, page 12, par. 3].

3. **Alternative Routes of Exposure Excluded.** Several alternative routes of exposure, besides hand-to-mouth exposure, are NOT addressed in this CPSC risk assessment.
[2003 CPSC CCA Briefing Report, page 24, par. 1]

Instead, these exposures are listed deep within the report itself, and include:

a. exposure through direct mouthing of the wood by very young children
b. direct dermal uptake
c. exposure to arsenic-contaminated soil under playgrounds
d. cross-contamination of food, clothing or other articles handled by the child
e. inhalation of airborne soil or CCA wood residue or sawdust

The fact that these other exposure pathways were excluded is alarming!

4. **Other Health Risks Excluded.** The CPSC failed to estimate or publish in its press release the other possible health hazards associated with CCA wood exposure, in addition to the lung and bladder cancer risks from arsenic alone. This 387-page report includes thorough, well-documented summaries of the health risks of CCA's chemical components- arsenic, chromium and copper- yet, they have chosen to disregard other negative health consequences in their own report. The report even mentions additional cancer risks when it says that , *"Strong evidence exists also links arsenic... to other cancers, including lung, bladder, liver, kidney and prostrate."* [2003 CPSC CCA Briefing Report, page 14].

Instead, the CPSC report focuses solely on the arsenic-related risks and glosses over other hazards, stating that, *"Any non-cancer health risks from arsenic or potential health risks associated with the other compounds [in CCA treated wood] are not included..."*

Among the disregarded risks is exposure to hexavalent chromium (or CR 6). Hexavalent chromium is used to make CCA treated wood, and the EPA classifies it as a Group A carcinogen. It is also a known toxin, and can cause birth defects in laboratory animals. In fact, the EPA describes its health hazards in these terms, *"Chronic human exposure to high levels of chromium (VI) by inhalation or oral exposure may produce effects on the liver, kidney, gastrointestinal and immune systems, and possibly the blood." [Source: EPA Web site, "Chromium Compounds", available online here:* http://www.epa.gov/ttn/atw/hlthef/chromium.html]

Second, some researchers conclude that the CCA formula is likely to be more toxic than just the arsenic component alone, due to the negative synergistic effect of the multiple toxic metals contained in CCA. But, CPSC researchers chose to overlook the additive risk of exposure to the combination of toxic metals in the CCA formula in their CCA research and regulatory efforts.

Since contemporary statistical software programs, such as RiskFX, can calculate additive risks from multiple toxic chemicals simultaneously, one has to wonder why these other toxic chemicals in CCA were not included in the CPSC's risk assessment effort. By focusing solely on arsenic, the CPSC has artificially narrowed the actual overall risk factor for CCA exposure to children and others.

5. **Potential Risk for Birth Defects Ignored.** The risk of potential birth defects are another important risk factor associated with CCA exposure, as people are exposed to the arsenic, chromium and copper in the wood. This is also a significant regulatory concern.

During the public comment period in August, 2001, this author brought up the subject of the teratogenic (birth-defect-causing) effects of arsenic and chromium in a letter filed with the CPSC, stating that *"There are serious concerns with regard to both arsenic and chromium, two of the primary chemical components of CCA (Chromated Copper Arsenate), and their potential to cause birth defects in both laboratory animals and humans. Numerous studies have been published since the early 1940s on the teratogenic effects of these toxic compounds... Therefore, the greatest risk may not be in exposing children to these carcinogenic compounds, but may instead be in exposing pre-pregnant, pregnant or nursing women to CCA-treated lumber, mulch or sawdust!"*

The CPSC acknowledged this comment and responded with: *"The CPSC staff agrees that there is sufficient evidence to indicate that arsenic is a probable developmental toxicant and chromium is a probable reproductive and development toxicant in humans. However, the issue of risk depends not only on toxicity, but on the level of exposure...Arsenic causes both cancer and noncancer health effects, but the CPSC staff considers arsenic carcinogenicity to be the most sensitive endpoint... Other exposures to CCA*

treated wood are outside the scope of this assessment."
[2003 CPSC CCA Briefing Report, page 360-361]

So, the CPSC's concerns for our health are limited in scope, or is it in budget? Either way, the mothers of the children that play at the playground will be **unknowingly exposed** to these teratogenic hazards, which the CPSC has so far failed to address.

6. **Special Needs Children Ignored.** The CPSC failed to consider "Special Needs Children" in their review of CCA wood products. As an example, children with Down's Syndrome can be severely injured by exposure to CCA treated wood, due to their predisposition to increased hand-to-mouth and other oral activities, including mouthing and licking the wood.

We are aware of one courageous mother of a Down's Syndrome child, Mrs. Laurette Janak, who wrote to the EPA FIFRA Scientific Advisory Panel about this very matter last summer, and described in detail her daughter's injuries. Her letter is posted on our BANCCA Web site here:

http://www.bancca.org/CCA_Victims/Accounts/Testimony1/LJanakstory.htm

Ignoring the protection of handicapped children with regard to exposure to a toxic wood product used in playground equipment, decks, picnic tables, benches and other structures across our nation is negligence.

7. **Number of Samples is Too Small.** The number of samples in the CPSC's million-dollar report is a very small, as the research team only chose to take wipe test samples from 8 decks and 12 playground structures. This is a very small '*n*' for a major statistical report. In addition, all of these CCA structures were located in Virginia, Maryland and the D.C. area, and no samples were taken of CCA structures in other regions, including the South, the Midwest, or the West Coast.

8. **CCA Retention Levels Not Provided for Tested Structures.** Additionally, the retention level, or percentage of CCA in the wood, is not given for each structure tested. CCA levels in treated wood are typically 0.24 lbs/cubic foot, or 0.40 lbs./cubic foot, although higher retention levels are used for larger poles, and this retention level is very relevant, as higher retention levels will have drastic effects on the amount of dislodgeable arsenic extracted in a wipe test. In fact, in the report of the wipe tests for the 8 decks, the CPSC scientists made note of differences they found, stating, *"There were significant differences in the arsenic levels among the 8 decks."*
[2003 CPSC CCA Briefing Report, page 222, par. 4]

To add to this concern, we note that 50% of the 8 decks tested were treated either with a sealer, oil finish, stain, or water repellant, which can lower the amount of surface arsenic in wipe tests.
[2003 CPSC CCA Briefing Report, page 211, table]

In the study of the 12 playground structures, 5 of the structures are clearly indicated as having been treated with some kind of sealer, and another 5 are listed as "unknown". This certainly adds doubt about the overall levels of arsenic that would be obtained in wipe test samples of these particular structures. While they may in fact be representative of some of the decks and playground equipment, they would not be representative of *untreated* decks and playground equipment, which is more common and therefore a greater concern. Put another way, their study results are skewed because 50% of the structures tested have been treated with a stain, sealer, finish or water repellant.

9. No Interim Advice Offered to Consumers on How to Mitigate Existing CCA Wood.
In their report, CPSC scientists did not explore any method for mitigating existing CCA wood in playground equipment, decks, picnic tables, etc. Knowing that their report would raise consumers' concerns and cause many to want to immediately dispose of existing CCA treated structures, some interim advice should have been provided on how to treat structures to protect consumers.

We note that the newly proposed and much welcomed California Legislature bill to ban toxic treated wood products would remove the hazardous waste exemption currently enjoyed by CCA wood. With legislature like this in the offing, it is possible that the consumer will be "left holding the bag", where their playgrounds and decks are concerned, not knowing whether to remove their CCA structures and risk further exposure, or merely paint over the problem and leave it intact.

The CPSC readily admits the risk of surface arsenic exposure, declaring that they will be *"working with staff in EPA's OPP and Office of Research and Development to study possible mitigation measures, [such as] treating the wood with stains or sealants to decreate the amount of dislodgeable arsenic on the surface of CCA-treated wood, as CPSC studies have confirmed that dislodgeable arsenic is available on the wood surface over a period of years."*
[2003 CPSC CCA Briefing Report, page 31-32]

10. **Incorrect Classification Used for Arsenic.** In their report, the CPSC researchers have used what we believe is an incorrect classification for arsenic under the FHSA regulations. [2003 CPSC CCA Briefing Report, page 26, par. 1] Under the Federal Hazardous Substances Act (FHSA), a substance can be defined as either "toxic" under 15 U.S.C. 1261 (g), or "highly toxic" under 15 U.S.C. 1261 (h). However, the CPSC researchers chose to use "toxic" to describe the arsenic in CCA wood.

Is that correct? What is the difference between these two designations?

The definition for "highly toxic" under 15 U.S.C. 1261 specifically states that:

(h) (1) The term **"highly toxic"** means any substance which falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, **at a single dose of fifty milligrams or less per kilogram** of body weight, when orally administered; or

(b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Commission finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, *the human data shall take precedence.* [italics mine]

CCA contains 34% arsenic pentoxide, which is considered "extremely toxic" *by the EPA's guidelines*. The EPA, under its document for CAS Registry Number 1303-28-2 for Arsenic Pentoxide, describes arsenic's toxicity in these terms:

"Health Hazards (Acute, Delayed, and Chronic): This material is extremely toxic; the probable oral lethal dose for humans is 5-50 mg/kg, or between 7 drops and 1 teaspoonful for a 150-lb. person (*Gosselin 1976). It is irritating to eyes, nose, and throat (Weiss 1980, p. 126). Chronic exposure may cause nerve damage to the extremities, alter cellular composition of the blood, and cause structural changes in blood components (*Goodman 1980). There is sufficient evidence that inorganic arsenic compounds are skin and lung carcinogens in humans (*IARC 1972-85)."

Therefore, by the EPA's own documentation, the CPSC should be required to classify arsenic as a "highly toxic" substance, as it falls under said definition in 15 U.S.C. 1261 (h). It is important to note that the lethal dose for a 150 lb. man is as little as 5 mg/kg, or 7 drops, an amount tenfold less than the amount required as a lethal dose for rats in the FHSA definition for "highly toxic". Therefore, it is surprising that the CPSC chose to use the milder "toxic" definition instead.

By the definitions in the FHSA regulations, common household bleach could even be classified as "toxic". By comparison, arsenic is considered "extremely toxic" by the EPA, and a mere 7 drops can kill a grown man! Yet, the CPSC scientists labeled it merely "toxic". Should arsenic be ranked in the same class as common household bleach? Of course not. Is this an effort to 'soft-pedal' the risk posed by arsenic in CCA wood by giving it a milder ranking? Only the CPSC scientists can answer these questions. It certainly warrants further review.
[2003 CPSC CCA Briefing Report, page 26, par. 1]

One can only wonder what the final outcome of this report would have been if the proper classification had been used for arsenic. If the CPSC researchers had used the correct classification for arsenic and had taken a broader, holistic view of the toxicity of Chromated Copper Arsenate- rather than simply examining only one of its chemical components-their results would likely have been even more severe, perhaps by *"an order of magnitude"*.

11. **Recommendations from the prior 1990 CCA Wood Study Were Ignored.** There has been little effort made to follow up on the recommendations and conclusions drawn from the prior 1990 study. One example of this, as mentioned previously, is that the skin cancer risk is ignored in this new report. But, a more important recommendation from that report appears to have also been overlooked: **exposure of consumers to arsenic from wood working operations.**

On page 7 of the 1990 CPSC report, it clearly states this recommendation:

"d) Examine the possible exposure of consumers to arsenic from woodworking operations, such as sanding and sawing, during construction of playground equipment or other uses of pressure treated wood."

This is a highly important aspect of the health risks associated with CCA wood exposure, as woodworking operations are what account for the majority of the reported injuries from CCA wood. My own family's injuries came from this kind of exposure in the mid-1990s, and at that time, there were no warning labels of any kind on this product. For the most part, this is still the case, and the treated wood industry continues to tout this product as "safe and environmentally sound".

Also, we know now from recent research (Solo-Gabrielle, Townsend 2001), that "the toxicity of CCA wood increases as the particle size decreases" - meaning that exposure to CCA sawdust is much more toxic than previously thought. Because of this, the Florida Department of Environmental Health is also considering classifying CCA sawdust as a hazardous waste.

It is important to note how the CPSC researcher makes mention of "other uses of pressure treated wood". This would include decks, docks, picnic tables, fencing, and other non-playground uses of this treated wood product. However, this latest report seems to have focused only on playground equipment and has glossed over this aspect altogether. If these

issues were important to the CPSC scientists as health risks in 1990, why are they not important now?

12. The Report's Conclusions do not Adhere to the Labeling and Banning Requirements of the Federal Hazardous Substances Act. The CPSC is required to follow the regulations under the FHSA "Labeling and Banning Requirements for Chemicals and Other Hazardous Substances". With this in mind, note these excerpts from your own "unofficial summary" document on these FHSA regulations, and then consider how they apply with regard to CCA treated wood:

"**Are there any chemical products that are so dangerous that they are banned from sale?** Yes. The FHSA allows the Commission to ban a hazardous substance if the Commission determines that the product is so hazardous that the cautionary labeling required by the act is not adequate to protect the public."

It is our view that CCA treated wood falls into this category. More to the point, the "voluntary labeling" programs recommended by the CPSC and the EPA in the past have been complete failures. Even with the labeling programs, some CCA products, such as pressure-treated privacy fence sections, are still not labeled at all. And, the tiny red-and-white labels on other CCA wood, with their microscopic lettering, certainly do not meet the CPSC labeling requirements.

Speaking of labeling, this same FHSA overview document contains a great deal of information about what kind of labeling a hazardous product like CCA wood should have, even as a yet-unbanned product . Among the many points in this document, we noted the following:

" The label on the immediate package of a hazardous product… must have the following information in English…
2) The common or usual chemical name ***for each hazardous ingredient***.
3) The signal word "DANGER" for products that are corrosive, extremely flammable, or highly toxic.
[Note: we believe that CCA would certainly meet this definition.]
4) The signal word "CAUTION" or "WARNING" for all other hazardous products.
5) An affirmative statement of the principal hazard or hazards that the product represents…
6) Precautionary statements telling users what they must do or what actions they must avoid to protect themselves…
8) The word "POISON" for a product that is highly toxic, in addition to the word "DANGER"…
[Note: Arsenic is historically infamous as a poison, and there are now several reports of people who have been poisioned by CCA wood products.]
10) The statement "KEEP OUT OF REACH OF CHILDREN".
[Note: in the case of CCA treated wood, this is certainly irony in this requirement.]

The document goes on to state that, *"[The] information must also be **printed in any literature** [emphasis mine] that accompanies the product and contains instructions for use"* and that, *"all of the safety information about hazardous products must be located prominently on the label and must be in conspicuous and legible type…"*

In summary, safety labeling for CCA treated wood products has been practically nonexistent

until 2002, and even now clearly does not meet the requirements imposed by the FHSA. The actual warning label in use, measures a mere 1" x 3 1/4", and in most cases constitutes the only safety information about this potentially hazardous product that is readily available to consumers at the time of purchase.

The treated wood industry has been given *carte blanche* to police itself for the past few decades with regard to CCA wood safety labeling, and it is now time for the Consumer Product Safety Commission to enforce its own guidelines with regard to this product. Since we now know that normal exposure to this product in playground equipment carries with it a possible 1-in-10,000 risk of bladder and lung cancer, not to mention skin cancer and other health risks, the time has come to take action and issue a ban on this product.

The ban we are requesting that you initiate is a full and complete ban of this product in all of its forms. Not a voluntary phaseout, nor a partial ban that leaves workers and farmers still exposed to non-residential forms of CCA wood, but a complete and total ban of CCA treated wood products,coupled with a recall of any existing stocks of CCA wood products currently on the market. This is the only way to truly ensure the public's safety.

In closing, Commissioners, I would like to draw on the lessons learned from the past about asbestos garments. Today, we would never think about letting our children wear asbestos-containing garments. The mere idea seems ludicrous, as these potentially hazardous products have long ago been removed by CPSC ban. Isn't it true, though, that the health risks of CCA wood exposure can be greater than that posed by garments made from asbestos? Should we not give our children, our families, and our workers today the same protection that has been provided in the past with regard to potentially hazardous products? Should we not follow our published Federal guidelines for banning such products? How can we permit CCA wood to remain on the market with known reports of injuries to adults and children, and known risks of cancer, birth defects and other health hazards? How can we continue to delay?

The time has come to act to protect the public from the hazards associated with this product. The time has come to "do the right thing" to protect consumers and children from toxic CCA treated wood. We hope that you will make the right decision and ban this product once and for all. We hope that there will be no more victims of CCA wood. And, we hope that it will not be too late...

Thank you for taking the time to consider this vital information.

Sincerely,

Joseph S. Prager, Publisher
BANCCA.ORG, LLC
Gainesville, FL
mail@bancca.org

CCA Comment

43

Stevenson, Todd A.

From: Bittner, Patricia
Sent: Tuesday, March 18, 2003 2:58 PM
To: Hammond, Rocky; Stevenson, Todd A.
Subject: FW: a CHILDS LETTER ON CCA WOOD.

Hi Rocky. Here is another letter for public comments. Please forward to Commission. Thanks. Patte
-----Original Message-----
From: michele [mailto:samgd11@attcanada.ca]
Sent: Tuesday, March 18, 2003 3:48 AM
To: Bittner, Patricia
Subject: a CHILDS LETTER ON CCA WOOD.

Dear Pat, Iam in Hopes that my letter, and that of my childs can be heard, at the meetings, on the petition to ban CCA Treated Wood. But do not have Hal Strattens e-mail. can you see if they can be forwarded, thank you, and thank you so much for your call, it has been a hard time, and we are still ill, so unable to come myself. best regards Michele Lafantaisie, (so many other mothers I spoke to, felt Tessa, my childs words should be heard, some will be there)

HOME DEPOT. MY NAME IS TESSA. I GO TO GRADE 1. YOU SOLD US POISON XX WOOD. MY DOG MATTIE IS GONE TO HEAVEN, I GOT SICK,NOW I CANT GO ON THE DECK, OR GO IN MY BACK YARD.YOU ARE BAD TO SALE CCA WOOD. MY MOM IS SICK. AND I WANT YOU TO TAKE THE WOOD AWAY PLEASE. AND MAKE US GET BETTER. AND BRING MATTIE BACK. YOU SHOULD SAY YOU ARE SORRY. FROM TESSA

CCA Board

44

Stevenson, Todd A.

From: Bittner, Patricia

Sent: Tuesday, March 18, 2003 2:53 PM

To: Stratton, Hal; Stevenson, Todd A.; Hammond, Rocky; Moore, Thomas H.; Gall, Mary Sheila

Subject: FW: LETTER TO Hal Stratton, from Michele Lafantaisie a mother and child confirmed posioning from CCA WOOD DECK IN SUMMER 2002.

Rocky: Please file with the official comments, if you haven't received this yet. Thanks.

-----Original Message-----
From: michele [mailto:samgd11@attcanada.ca]
Sent: Tuesday, March 18, 2003 3:40 AM
To: Bittner, Patricia
Subject: LETTER TO Hal Stratton, from Michele Lafantaisie a mother and child confirmed posioning from CCA WOOD DECK IN SUMMER 2002.

March17 2003
Chairman Hal Stratton
Consumer Product Safety Commission.
4330 East west Highway room 20814

Re: Petition HP OI -3:
Petition for Ban of CCA Treated Wood in Playground Equipment

Dear Chairman Hal Stratton and fellow commissioners,
It is my hope that this letter can be read, as I can not attend, because of illness. caused by CCA WOOD.

Attached is a letter which I sent to the EPA about the health effects on our family, of a new CCA-treated wood deck, built for us in July 2003. The photo is of the hand rail of the deck. After it rained the CCA leaked (it didn't "leach") out of our deck. The wood was very white, with cristal-like dust on it before it rained, Then residue and resin ran, all over the floor boards and post of our new deck.

Needless to say, we all became very ill, and did not know why until the early fall. We are still sick. My 6- year-old and I, both had 24-hour urine levels of inorganic arsenic ,that were well above the EPA, World Health Organization, and plant workers levels requiring EMERGENCY MEDICAL TREATMENT.My level was 291 micro grams per liter, and I am a small women.

However, since little could be done, we now have neuropathy ,of our lower legs and hands and my daughter is unable to print or draw (though she was printing and writing before this happened). We also had higher chromium levels than unexposed members of the population. These have returned to normal after weeks away from our deck.

I now have liver and kidney damage, and require surgery. WE ARE OUTRAGED THAT A PRODUCT LIKE CCA WOOD COULD BE ON THE MARKET. I assure you that we are not alone in our suffering, the hospital emergency staff tell us that they see others. And I have talked to many other mothers who have children poisoned by CCA. This has been proven with tests on their children, and tests on their wood.

As we are left trying to find the funds to treat us, and travel in ill health with my daughter, to another city, in hopes that the toxicologist, in Toronto On. Childrens Hospital, may beable to find a safe way to rid her body of the arsenic , still stored in her tissues. (SHE ALREADY HAD A THICKENED BLADDER) so is a sitting duck, for the bladder cancer.

.

When I witnessed my child, acting as if she had ADHD (one doctor suspected she had Aspergers, a form of autism), we thought she had a tumour. Then we saw that we had similar symptoms ourselves, and an observant neurologist asked what was new in our environment, leading us to suspect the deck.

HOW MANY CHILDREN HAVE WE ALREADY FAILED? There are studies showing the link between arsenic poisoning and cancer. after being poisoned by CCA. We can reproduce arsenic-induced cancers in mice,and other animals. What are we? And effects in animal studies showed always be a strong warning to us. Simple science.

I watched in horror, as my bright, active, daughter turned into someone ,we did not know. She had rashes, edema, and seizures, as well as behaviour changes. My own cognitive abilities have been altered. As there is no detectable arsenic in our city's water, or in the background soil test we had done, and no industry close enough to explain our arsenic levels, the only source left was our leaking deck. Are test had also been specific for inorganic forms. (not fish or dietary)

When this wood was delivered to our home, there were no written warnings. from Home Depot. Our contractor commented that the wood was very wet, and that we could not stain. it as we had planned because the wood had not been properly dried. Our contractor is a school teacher who builds in the summer and he is now ill himself with similar problems to ours.

No one speaks of Chromium(hexavalent) a very toxic component of CCA, just as toxic as arsenic. There is no known way to chelate it and remove it from the body. It was leaking out of our deck. It was also found in this form in a play structure tested by a parent in Atlanta. The whole family was poisoned, not just their child.In a study done They found that 60% of the cr6 was leaching in acid rain, conditions, (I have forwarded that report to you)

We all need to concern ourselves with the risk of arsenic exposure, from CCA wood. ARSENIC IN EXTREMELY LOW AMOUNTS CAUSES DNA DAMAGE THE MOMENT IT IS TAKEN INTO THE BODY. THIS IS NOT NEWS THIS IS A SCIENTIFIC FACT. Many children with a pre-existing genetic risk are unable to carry the burden of heavy metal exposure. They may go on to develop cancer at a much younger age than government studies have shown. ALL THREE CHEMICALS IN CCA ARE NEURO TOXIC. There is also a risk to babies in utero. And how much more money needs to be spent,before the public is made aware?

How many more studies are needed? Expectant mothers with toddlers, are often seen on and

under CCA wood structures in parks, making sand castles, building dreams. Effects of arsenic exposure are well established. Unfortunately, it seems we miss a lot while doing studies and cost families their dreams when we have the knowledge and expertise, to prevent these tragedies. My daughter is fully aware of what caused her illness and the loss of our pet dog (our family dog had to be put down due to arsenic exposure from the deck -- her vet was more aware of the dangers of CCA wood for animals than the toxicologists seem to be about the dangers to children). The toxicologists only know what they have been taught, and unfortunately our medical schools have failed them. One toxicologist Dr GEE in Ottawa stated you can eat CCA wood and not come to any harm. When I asked him where he went to school he said Yale. He is Board certified. Of course I called Yale, and they have asured me you can not eat cca wood.

My daughter tells me of her friends sticking gum to the playground structures at her school then peeling it off and chewing it again. The studies somehow forget that the average age for tooth loss is five to eight years old. My child wiggled her tooth the entire summer while playing on our deck. Try telling a child to keep her hands out of her mouth or nose for that matter, especially when they have loose teeth .

Arsenic poisoning is more than any parent should have to deal with. The cost to our medical system, the financial burden to the parents to pay for detoxification and to try and deal with the damage, not to mention the fear, of what is to come (due to the increased risks of cancer down the road), is criminal. We protect our children with sunscreen and hats, then take them to the park or school grounds or our own back yards, and expose them to arsenic and chromium. I ask myself: how did this product ever make it onto the market?

Environment Canada says that CCA wood never went through any regulatory bodies, and was never intended to be used for play structures or decking material. So how many poisoned people will it take for some one to do the right thing now. How many lawsuits, how many ruined lives. How many six-year-olds to whom parents have to say: I'm sorry.
Michele Lafantaisie Feb,28 2003

Below is the letter to Dr. Dang of the EPA.

Winston T. Dang, Ph.D, MPH
Senior Scientist, Antimicrobials Division(7510C)
Office of Pesticide Programs, U S EPA
Tel: 703-308-6216 Fax: 703-308-6466
Email: dang.winston@epa.gov

Dear Dr Dang,
Thank you for speaking to me on the phone. Dieter Riedel asked me to contact you. Thank you for the contacts at the ATSDR. I have called Dr. Chou and left a message, as well as Dr. Sharon Wilbur regarding our Chromium levels.

We had built a CCA wood deck in July 2002. All of August, my daughter, my husband , myself and my dog (now deceased), practically lived on this deck, as we live in a condo without a yard. The timber on the deck was very white when it was first built and seemed to have a light dust covering it.

Early in August, I noticed that my daughter did not look well and I also felt a sore throat and my eyes were burning. I felt unwell when I was on the deck at times. My daughter developed sores in her mouth around the same time. A few days later, I noticed that my daughter had a rash on the back of her legs after sitting on the stairs of the deck with the dog. Nothing helped, so I took a photograph of it to show the doctor. My daughter said the rash burned. On August 13th, I was watering plants on the deck and noticed burning pains on my skin, that later developed into rashes. I had difficulty breathing and abdominal pain. On the 15th of August, I was vomiting and there was blood in the vomit and I had diahrrea. On the 16th, I felt pain everywhere, I was very weak and had abdominal and leg pain and muscle spasms in the lower parts of my legs. I did not suspect the deck at the time because it appeared normal. I thought we all had a virus because we all had flu-like symptoms. On the 17th of August while I was on the deck, I had a sore throat. When I touched the plants to move them, I felt a burning pain. Later I had nausea and my feet were swollen and I still had spasms. On the 19th of August I went to the hospital with difficulty breathing, chest pain and nausea. On this same day, my 6-year-old daughter told me that she felt very sick and had a headache. Tuesday August 20th, I woke up in pain and spasms and found it difficult to walk. By this time, my child had changed radically. She acted as if she had suddenly developed ADHD, a brain tumour, or had sustained a head injury. She has always been a really easygoing child with a calm disposition. She showed no fear of traffic and would race down the streets on her bike, she could not concentrate or listen to anything we spoke about. She would either sleep too much, scream and run when she was awake and not hold still for anyone.We took her to the hospital, I called her neurologist, worried that something terrible was going wrong. She is a very bright child, reading at a grade 3 level and entering the gifted program, and one night all she could do was babble.And she is six years old.

On August 23rd, I was back in the hospital, now with a numb hand, numbness from my feet to my knees, with tingling sensations. They noticed that my left pupil was dilated. On Aug. 24th, my daughter started having seizures, and once again we took her to the emergency. On August 25th the Emergency Dept.contacted a neurologist for me. I was out of the hospital with my hand still numb, my feet still numb and tingling and I also had a headache.

On August 26th a dog we've had for 8 years, a very loyal pet, had a behaviour change and she bit me without provocation. The dog had been vomiting, had bloody loose stools and I noticed that day that she was starting to lose most of her coat. On the same day, I was back in the Emergency, not understanding why my hands and feet were still numb and felt like they were burning. These symptoms continue to this day. My daughter was still extremely hyperactive and my husband was complaining of dizziness and headaches (he never gets headaches).

On August 27th, I had a hyda scan.The physician noticed that I was bleeding too much from the needle, and I told someone they should check out my clotting factor. I had noticed that I was bleeding too much when they were rehydrating me on my other Emergency visits. The other physicians also noticed this when they were trying to diagnose the numbness by pricking me with small needles.

On Aug. 29th, the neurologist ordered L.P., MRI, ENGs and stated that she felt I had either arsenic poisoning or MS. On the 30th, I could no longer use the stairs. On the 31st, my child had many seizures in a row, dark swollen red circles under her eyes, and was complaining of headache. The dog had deteriorated to the point that I had to hand feed her and all my husband could do was sleep, because of his headaches and dizziness.

On the 3rd of September, we took the dog to the vet. He suggested we put her down. When I asked the vet about the deck, he said she could have arsenic poisoning. The same evening we took our daughter to the Childrens' Hospital of Eastern Ontario (CHEO), she had an EEG done in the morning and it was abnormal. It showed slowing of brain waves which indicated that she had exerienced many seizures. They diagnosed her with complex-partial seizures and started her on Tegitratol. On the 7th of September, we took our daughter by ambulance to the hospital. She was still having seizures, was very confused, had more rashes and she complained the her feet felt like they were sleeping. I understood this because my own feet and lower legs were tingling and I also had a rash.

September 8th I spent the night in the General Hospital, with the worst headache I had every experienced, burning of my extremities and mental confusion. The doctor suspected arsenic poisoning or MS, he was not sure which. On the 9th of September I had my blood drawn for inorganic arsenic and my urine for chromium and started to look for the cause of all our symptoms. The only thing that was new in our lives was the CCA deck we had recently built, and a central air unit.

I spoke to Dr Napki, with the World Health Organization and Poison Control. We closed off the back doors and said we would not use the deck again until we were sure. On September 12th, I had more blood and arsenic tests done. On September 14, my child, Tessa, developed a bad rash, was sick to her stomach and still hyperactive. We were tired and worried, and went back to the hospital. We had her arsenic levels done, and she was taken off the Tegrital.

September17th I still suffered from headaches, numbness, swollen eyes and a dilated pupil. I felt I had lost cognitive abilities, which was very concerning. My daughter's behaviour was starting to improve. On the18th of September, I was back in the hospital, with no changes. On September 20th we saw my daughter's neurologist who stated that since she had febrile seizures as an infant, he felt her threshold was low and her exposure to chromium and arsenic had made her a lot worse. There was an evening where she lost her ability to speak.

On September 28th, my daughter and I were still sick. I had been out sampling the deck (to get the wood tested) the day before without her and once again vomited blood and suffered from severe nausea and headache. I can no longer touch this deck without experiencing a rash and severe symptoms. Chromium is a sensitizer and I now appear to be sensitized. By the end of September I knew that my chromium urine levels were 12..7 and my chromium create 1.87.

To-day I learned that my daughter's chromium create level is 2.97 and her blood inorganic arsenic level was 6.7 nmol-l after weeks of being away from this deck.Health Canada states that there is no safe level of these toxins. I understand that the EPA holds a similar view. Toxicology has confirmed that I have arsenic and chromium poisoning / arsenic and chromium skin and inhalation rate. I am still awaiting a toxicology report on my daughter, and hair analysis . As you know this is very frustrating and concerning. The Canadian Cancer Society's position states that pressure treated lumber and CCA contain two substances that are known carcinogens. Later test showed my childs inorganic arsenic level to be much higher. hair test for both arsenic and cr, showed not only exposure. but was segmented so therefor, it showed us when it occured. AT THE SAME TIME WE HAD BEEN USING OUR NEW DECK.

Best Regards,

Michele Lafantaisie
30 Marco Lane.
Ottawa,Ontario
K1S 5A2
phone (613)730-5779
EMAIL: samgd11@attcanada.ca

CA comm 45

Stevenson, Todd A.

From: Information Center
Sent: Wednesday, March 19, 2003 3:33 PM
To: 'DEaiseLmbr@aol.com'
Subject: Alternative to Chromium Copper Arsenic treated lumber.

Hello,

Thank you for contacting the U.S. Consumer Product Safety Commission (CPSC). We have forwarded your comments to the appropriate agency personnel within the agency. If further information is needed, someone will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our toll-free hotline at 1-800-638-2772, Monday - Friday, 8:30am to 5:00pm, Eastern Standard Time. Press 1 to begin and then press 300 to speak with a representative.

myg

-----Original Message-----
From: DEaiseLmbr@aol.com [mailto:DEaiseLmbr@aol.com]
Sent: Wednesday, March 19, 2003 7:05 AM
To: Information Center
Subject: RE: Alternative to Chromium Copper Arsenic treated lumber.

I read an article in our local paper about the EPA wanting to get a ban on the CCA treated playground equipment for children. There is a product on the market called ACQ.
This is an environmentally friendly product. It contains no arsenic, chromium or copper.
If you would like to receive information on this product please contact me.

Regards,

Don Eaise Sr.
Fax (856) 629 8523
E-Mail DEaiseLmbr@aol.com

4/6

CCA comm

CBS 4 SOUTH FLORIDA

March 11, 2003

OFFICE OF SECRETARY

2003 MAR 14 A 10: 19

Todd Stevenson
U.S. Consumer Product Safety Commission
Office of Secretary
4330 East West Highway
Bethesda, MD 20814

Re: Public Record Submission

Dear Mr. Stevenson,

Enclosed is a VHS dub of a recent investigation conducted by WFOR Television into CCA-Contaminated wood reaching the consumer market after being turned into mulch by wood re-processors.

VIDEO TAPE IN OS

We request this videotape be part of the Public Record on CCA treated wood and shown for administrative purposes. As copywritten material, it is not to be duplicated, republished, or re-broadcast without specific prior written permission of WFOR Television.

This tape details the alleged illness of a local South Florida family after handling CCA contaminated mulch apparently made from CCA treated wood. We have also detailed the lack of any state or federal regulations protecting consumers from this type of possible hazard, or any requirement warnings to consumers that these kinds of landscaping materials could be contaminated with potentially hazardous chemicals.

In addition, with the assistance of a local certified laboratory, we bought several bags of mulch at several local home improvement centers. We were able to detect arsenic contamination at higher than allowable levels for arsenic allowed by the State of Florida in clean, residential soil, but since there are no arsenic limits imposed on mulch, the product was not in violation of any Florida environmental protection laws.

Please do not hesitate to contact me for any additional information on our investigation. I can be reached at CBS-4 News, WFOR Television Miami, 305-639-4524. I can also be reached through e-mail at asunshine@cbs.com.

Yours' Truly,

Al Sunshine

Al Sunshine
Consumer-Investigative Reporter

cc: Jacqueline Elder, Asst. Exec. Dir. Office of Hazard Identification & Reduction, Patricia Bittner CCA Project Manager

BUS: 305-591-4444
E-MAIL: wfor.cbs.com
8900 NW 18 Terrace, Miami, FL 33172

FOREST PRODUCTS INDUSTRY NATIONAL LABOR MANAGEMENT COMMITTEE

International Unions:

International Association of Machinists and Aerospace Workers

PACE International Union (Paper, Allied-Industrial, Chemical and Energy Workers)

United Brotherhood of Carpenters and Joiners of America

United Mine Workers of America

Regional Affiliates:

Association of Western Pulp and Paper Workers

Southern Council of Industrial Workers

Western Council of Industrial Workers

Woodworkers District Lodge 1, IAM

Woodworkers District Lodge 2, IAM

CCA comment 47

March 27, 2003

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway
Room 502
Bethesda, MD 20814

Re: ACCA Ban Petition, Petition HP 01-3; 68 Fed. Reg. 7510 (February 14, 2003)

Dear Sir or Madam:

The Forest Products Industry National Labor Management Committee submits the following comments on the above-captioned petition ("Ban Petition"). We urge the Consumer Products Safety Commission ("CPSC") to deny the petition, because that action is required by principles of good government and by sound science.

Our members work in the forest products industry, which supplies wood to treating facilities. They are, therefore, personally concerned about on-the-job safety and health issues affecting materials used in their workplace or that of fellow workers. They are, in addition, concerned about the safety of their families and friends, who may use CCA-treated wood structures at home or in playgrounds. We urge you to deny the petition, because we are convinced for the following reasons that protection of public health does not require that CPSC ban CCA for consumer use.

First, principles of good government require that federal agencies act only when necessary and, then, only to the extent authorized by statute or required to fulfill the agency's statutory responsibility. As the CPSC Staff Briefing Package acknowledges, CCA registrants have agreed to "terminate essentially all residential uses of CCA, including use in playground equipment, effective December 31, 2003." There is simply no need for CPSC to act on the ban petition, as the petitioners have already gotten the remedy they seek.

Moreover, CPSC must base its actions on sound, complete science. That principle would be undercut if the Commission banned CCA, because such action would be inconsistent with the U.S. Environmental Protection Agency's conclusions about CCA risk and is not supported by the Florida Physicians Arsenic Workgroup findings.

P.O. Box 65175
Washington, D.C. 20035

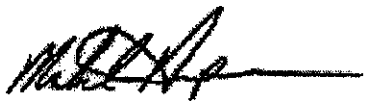
EPA's Jack Housenger (Associate Director, Antimicrobrials Division, Office of Pesticide Programs) reminded CPSC in his March 17, 2003 testimony that "it is important to note also that EPA has not concluded that CCA-treated wood poses unreasonable risks to the public for existing structures made with CCA-treated wood," echoing Administrator Whitman's similar statement when she announced the registrants' voluntary action. The Florida Secretary of Health's Physicians Arsenic Workgroup, "'agrees with and supports the United States Environmental Protection Agency's directive that "EPA does not recommend consumers replace or remove existing structures made with CCA-treated wood or the soil surrounding those structures.'"

In addition, action now on CPSC staff's risk estimates would be premature, because it would not reflect the results of on-going risk assessment work by EPA, some of which is joint research with CPSC itself. EPA's Jack Housenger testified March 17 that EPA will soon complete three research projects—a surface residue bioavailability study, soil residue bioavailability study, and a hand wipe study. In addition, EPA and CPSC are engaged in joint research on the effectiveness of exposure mitigation measures. All of these studies bear substantially on how CPSC should address the ban petition. It simply makes no sense to act before they are completed later this year.

Finally, any CPSC action suggesting that CCA-treated wood poses risks to human health may affect adversely the market for continuing, industrial uses of CCA-treated wood and may even disrupt the market for wood treated with non-arsenic-based preservatives. That could cost our members their jobs. CPSC should not, therefore, act lightly. It must understand the serious economic consequences of its pronouncements about products and be very careful to act only when necessary and when supported by sound science. Neither of those conditions is present in this proceeding.

In sum, we urge CPSC to adhere to principles of good government, base its actions only on complete, sound science, and avoid possible disruption to a $40 billion industry when no action is warranted.

Respectfully submitted,



Michael Draper
LMC Chairman and
Vice President, Western Region
United Brotherhood of Carpenters
and Joiners of America

Stevenson, Todd A.

From: Stanko, Greg [Greg.Stanko@ogilvypr.com]
Sent: Thursday, March 27, 2003 4:15 PM
To: Stevenson, Todd A.
Subject: Re: ACCA Ban Petition, Petition HP 01-3; 68 Fed. Reg. 7510 (February 14, 2003)

Dear Sir or Madam:

Please accept the following comments from the Forest Products Industry National Labor Management Committee.

<<LMC Letter to CPSC on CCA.pdf>>

CCA comments 48

March 28, 2003

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207

Dear Consumer Product Safety Commissioners:

The Commission invites written comments on the CPCS staff briefing package on petition HP 01-3 requesting a ban of chromated copper arsenate (CCA)-treated wood in playground equipment. The petition alleges adverse health effects from exposure to CCA-treated wood, which is infused in pressure-treated lumber. As a past chairman of the CPSC and the current president of the Capital Research Center (CRC), I take a particular interest in this proposed ban on CCA-treated wood because it raises important issues concerning the impact of advocacy organizations on consumer well-being. CRC is a philanthropy watchdog organization, which examines the leadership, activities and funding of nonprofit advocacy organizations and their role in society and politics.

Because of recent reports, I believe the human health risk associated with exposure to CCA is unsettled. Indeed, the American Council on Science and Health has concluded that CCA-treated wood poses *no* known health risks. Moreover, economists estimate that a ban on CCA-treated wood will raise the price of consumer wood products used in outdoor structures, and this will place an economic hardship on lower income families. Home Depot tested CCA alternatives in their stores and found them not meeting consumer satisfaction. CCA-treated wood sold better than its alternative.

As past chairman of CPSC, I know a regulatory rush to judgment often has unintended consequences. A CCA-treated wood ban may cause consumers to needlessly replace decks and playground equipment. In inner-cities, where budgets are tight and playground equipment replacement costs are high, children will lose recreational opportunities if the ban is implemented.

As chairman of Capital Research Center, I know that advocacy groups often attempt to stampede regulatory agencies to take unconsidered actions. For instance, the Environmental Working Group is a nonprofit advocacy group that petitioned the CPSC to enforce this ban. They do not conduct independent scientific analysis or economic

research. They are notorious for using scare tactics about tiny traces of chemicals that are a distraction from important risks. Often their aim is to attract media and political attention for the causes they support. When I was chairman of the CPSC I felt the pressure tactics groups like these use. Now I have a better understanding of their goals and motivation. I would urge you to be careful and critical in reviewing their claims.

If a ban were promulgated, it is likely that consumers will receive little information about the true risks associated with CCA-treated wood. Groups like EWG are then able to engage in alarmist politics with the tacit approval of the CPSC. Banning CCA-treated wood can have grave public consequences.

Thank you for your consideration of this important matter.

Sincerely,

Terrence Scanlon

(address on last page)

Stevenson, Todd A.

From: David Riggs [driggs@capitalresearch.org]
Sent: Friday, March 28, 2003 2:57 PM
To: Stevenson, Todd A.
Subject: FW: Comments on CCA-Treated Wood

Comments on CCA-Treated Wood.d...

> -----Original Message-----
> From: David Riggs
> Sent: Friday, March 28, 2003 2:51 PM
> To: 'tstevens@cpsc.gov'
> Subject: Comments on CCA-Treated Wood
>
> Dear Todd,
> Attached please find comments from Terrence Scanlon, former chairman of the Consumer Products Safety Commission.
> Thank you.
> Dave
> > <<Comments on CCA-Treated Wood.doc>>
> David W. Riggs, Ph.D.
> Senior Research Fellow
> Capital Research Center
> 1513 16th Street, N.W.
> Washington, DC 20036
> 202/483-6900
>

address

CCA comment

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JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

CHIEF DEPUTY WHIP

515 CANNON HOUSE OFFICE BUILDING
Telephone: 202-225-2111
Fax: 202-226-6890
TTY: 202-225-1904

Congress of the United States
House of Representatives
Washington, DC 20515-1309

5533 N. BROADWAY
CHICAGO, IL 60640
Telephone: 773-506-7100
Fax: 773-506-9202

820 DAVIS STREET, SUITE 105
EVANSTON, ILLINOIS 60201
Telephone: 847-328-3409
Fax: 847-328-3425

6767 N. MILWAUKEE AVENUE
NILES, IL 60714
Telephone: 847-647-6955
Fax: 847-647-6954

Arsenic Comments for the Consumer Product Safety Commission

As much as 90 percent of the lumber sold for outdoor use in the U.S.— for school playgrounds and decks of private homes—is pressure-treated and injected with toxins to preserve the wood and prevent insect infestation. The most common wood preservative and pesticide used is chromated copper arsenate (CCA), which is 22 percent pure arsenic. A 12-foot section of pressure-treated lumber contains about an ounce of arsenic, enough to kill 250 people. An Environmental Working Group and Healthy Building Network study found that an area of arsenic-treated wood the size of a four-year-old's hand contains an average of 120 times the amount of arsenic allowed by the EPA in a 6 ounce glass of water. According to the report, an estimated one out of every 500 children, who regularly play on playground equipment or decks made from pressure-treated wood, can be expected to develop cancer later in life as a result of the exposure. Recently, the U.S. Consumer Product Safety Commission released a report that reaffirmed the EWG's study. The report stated that children may face an increased risk of developing lung or bladder cancer over their lifetime from playing on playground equipment made from CCA pressure-treated wood.

The EPA reached an agreement with the home-improvement industry to voluntarily move away from the production and sale of arsenic treated lumber and transition to the use of alternative wood preservatives. I applaud the EPA for its awareness, but when it comes to protecting our children and families from the dangers of arsenic, a voluntary agreement doesn't make the grade.

Arsenic can kill, and it causes cancer and other life threatening diseases. We can no longer ignore the dangers posed by exposing our children to this poison. We must act now to protect the health of American families and end the dangerous use of CCA treated lumber once and for all.

We need to remove the threat of arsenic-treated wood from our homes, parks and schools. By removing this threat we are saving lives and protecting our environment. Last Congress, I introduced H.R. 4707, the Arsenic Treated Lumber Elimination and Education Act, and I plan to reintroduce similar legislation this Congress. This bipartisan legislation will protect children and families by phasing out the use of arsenic in pressure treated lumber and will ensure that arsenic treated lumber is disposed of safely. Specifically, my bill will: phase-out the use of arsenic-treated wood in residential settings; require the disposal of arsenic-treated wood in lined landfills to prevent contamination of groundwater; require the EPA to finally complete its risk assessment regarding arsenic-treated wood; and provide monetary assistance to schools and local communities to remove arsenic-treated wood from their playgrounds. I urge the CPSC to take strong measures to remove the threat of arsenic-treated wood from our lives.

Sincerely,

Jan Schakowsky
Member of Congress

WEBSITE: http://www.house.gov/schakowsky/

PRINTED ON RECYCLED PAPER

E-MAIL: jan.schakowsky@mail.house.gov

MERCATUS CENTER
GEORGE MASON UNIVERSITY

CCA Petition Comment

March 28, 2003

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, MD 20814
Washington, DC 20207

Reference: ACCA Ban Petition, Petition HP 01-3@

Dear Secretary:

Please find the attached comments on the Consumer Product Safety Commission's (CPSC) request for comment on "Petition HP 01-3 Requesting a Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment."

The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of regulations and their impact on society. As part of its mission, RSP produces careful and independent analyses of agency rulemaking proposals from the perspective of the public interest. The enclosed comments do not represent the views of any particular affected party or special interest group, but are designed to evaluate the effect of the proposed guidelines on the public interest generally.

The Regulatory Studies Program appreciates the opportunity to comment.

Sincerely,

Wendy Gramm
Director
Regulatory Studies Program

Susan E. Dudley
Senior Research Fellow
Regulatory Studies Program

3301 NORTH FAIRFAX DRIVE, SUITE 450, ARLINGTON, VIRGINIA 22201-4433
PHONE: (703) 993-4930 FAX: (703) 993-4935 www.mercatus.org

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MERCATUS CENTER
GEORGE MASON UNIVERSITY

REGULATORY STUDIES PROGRAM

Public Interest Comment on the Consumer Product Safety Commission's Briefing Package Prepared to Evaluate a Request to Ban Chromated Copper Arsenate in Playground Equipment[1]

The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of the impact of regulation on society. As part of its mission, RSP conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest. Thus, these comments on the Consumer Product Safety Commission (CPSC) staff's briefing materials developed in response to a petition to ban chromated copper arsenate (CCA) from playground equipment[2] do not represent the views of any particular affected party or special interest group, but are designed to evaluate the effect of the Agency's proposals on overall consumer welfare.

This comment first provides background on the legal and administrative history behind the CPSC staff's recommendation, and the characteristics and use of CCA as a wood preservative. Section II summarizes the statutory basis for CPSC and Environmental Protection Agency (EPA) action with respect to CCA. Section III examines the costs and benefits of a ban on CCA-treated playground equipment. Section IV examines competitive issues related to canceling the registration of CCA and banning it in playground equipment. Section V concludes the comment and offers recommendations. The appendix evaluates the staff briefing package against the elements of the RSP checklist.

I. Introduction

A. Legal/Administrative History

On May 22, 2001, two environmental groups, the Environmental Working Group (EWG)[3] and the Healthy Building Network (HBN),[4] filed a request with the Consumer Products Safety

[1] Prepared by Daniel R. Simmons. This comment is one in a series of Public Interest Comments from Mercatus Center's Regulatory Studies Program. The views expressed herein do no reflect an official position of George Mason University.

[2] Petition HP 01-3 Requesting a Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment, 68 Fed. Reg. 7,510 (Feb. 14, 2003).

[3] According to the Environmental Working Group's website, "The Environmental Working Group (EWG) is a not-for-profit environmental research organization dedicated to improving public health and protecting the environment by reducing pollution in air, water and food." Environmental Working Group, *About the Environmental Working Group*, http://www.ewg.org/about.html (last visited Mar. 22, 2003).

[4] According to the Healthy Building Network's website, "The Healthy Building Network (HBN) is a national network of green building professionals, environmental and health activists, socially responsible investment advocates and others who are interested in promoting healthier building materials as a means of improving public

Commission requesting that the Commission ban wood that has been treated with chromated copper arsenate (CCA) for use in playgrounds.[5] CCA is the chemical compound that is most frequently used in treating pressure treated wood. EWG and HBN argued that arsenic was more carcinogenic than previously believed and that previous risk assessments involving arsenic in wood were incomplete.[6] CPSC staff studied the petition and assembled a briefing package to the Commission.[7] The Briefing materials assembled by CPSC staff estimated that a child who plays on playground structures made of CCA-treated wood 156 days per year between the ages of 2 and 6 has an increased risk of 2 to 100 per million of developing lung or bladder cancer. CPSC staff also concluded that the Commission should wait for the Environmental Protection Agency (EPA) to take its proposed regulatory action.[8]

The EPA regulates CCA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).[9] FIFRA defines CCA as a pesticide which must be registered before it can be sold or produced in the U.S.[10] FIFRA also allows for registrants to cancel their registration. On February 4th, 5th, and 6th of 2002, all four producers of CCA sent a letter to the EPA to have their registration of CCA cancelled.[11] This means that if the EPA takes the action requested by these companies, by December 31, 2003, "it will be illegal to use CCA to treat wood for most consumer uses."[12] The action by these four companies is peculiar. Why would the four companies all file, at the same time, to have their registrations cancelled? Even if the EPA's assessment is correct that the companies filed their cancellations as a result of "current and projected market demand and availability of new generation wood treatment products"[13] that still does not explain why these companies would give up their valuable permits and the ability to make CCA. Even if the market is indeed moving toward next generation products, older generation products can still retain some value.

B. Introduction to Chromated Copper Arsenate

Although wood is a cost-effective and renewable building material for outdoor structures, untreated wood is easily destroyed by rot, insects, and microorganisms.[14] Damage may occur

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health and preserving the global environment." Healthy Building Network, *About the Healthy Building Network*, http://www.healthybuilding.net/about.html (last visited Mar. 22, 2003).

[5] Petition HP 01-3 Requesting a Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment, 68 Fed. Reg. 7,510 (Feb. 14, 2003). The petition is available at http://www.healthybuilding.net/pdf/petition.pdf (last visited Mar. 24, 2003).

[6] *Id.*

[7] The Briefing Package is available at: http://www.cpsc.gov/phth/ccafact.html (last visited Mar. 13, 2003).

[8] Petition HP 01-3 Requesting a Ban of Chromated Copper Arsenate, 68 Fed. Reg. at 7,511.

[9] 7 U.S.C. § 136 et seq. (2000).

[10] FIFRA § 3(a), 7 U.S.C. §136a (a) (2000).

[11] Notice of Receipt of Request to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amend to Terminate Certain Uses of CCA Products, 67 Fed. Reg. 8,244 (Feb. 22, 2002). Specifically, the letter from Chemical Specialties, Inc. was dated February 4, 2002, the letter from Arch Wood Protection, Inc, was dated February 5, 2002, and the letters from Osmose, Inc. and Phibro-Tech, Inc. were dated February 6, 2002. *Id.* at 8,245.

[12] CONSUMER PRODUCTS SAFETY COMMISSION, BRIEFING PACKAGE: PETITION TO BAN CHROMATED COPPER ARSENATE (CCA-TREATED WOOD) IN PLAYGROUND EQUIPMENT (PETITION HP 01-3) 2 (2003).

[13] Notice of Receipt of Request to Cancel Certain CCA Wood Preservative Products, 67 Fed. Reg. at 8,245.

[14] Osmose Inc, *What is Preserved Wood, at* http://www.osmose.com/wood/usa/preservatives/what/ (last visited Mar. 13, 2003).

rapidly and usually occurs within three to five years, but sometimes within one year.[15] To combat this deterioration, wood can be protected through a pressure treating process. The wood is placed in a chamber, a preservative chemical mixture is pumped into the chamber, and the pressure of the chamber is increased to force some of the preservatives into the wood.[16] The wood is then resistant to insect and fungal attack,[17] which extends the life of pressure-treated wood 10 to 20 times beyond untreated wood.[18]

Introduced in the 1930's, CCA is the most commonly used preservative to treat wood.[19] As its name suggests, CCA is a mixture of chromium, copper, and arsenic.[20] The current formulation of CCA is 47.5 percent chromic oxide, 18.5 percent cupric oxide, and 34.0 percent arsenic pentoxide.[21] It is the most common of the three main types of wood preservatives.[22] Unlike other wood preservatives, CCA-treated wood is easily painted and does not give off odor or vapor.[23] Because of these properties, CCA is most frequently used in consumer products such as fences, decks, and playground equipment.[24] In fact, in 2001 CCA was used in 98 percent of the pressure-treated wood produced for residential uses.[25]

II. Statutory Basis for Regulation

The CPSC regulates CCA under the Federal Hazardous Substances Act (FHSA).[26] As noted above, the EPA regulates CCA under FIFRA. Section 2(f)(2) of the FHSA excludes pesticides that are regulated under FIFRA from its definition of "hazardous substances."[27] However that exclusion contains a caveat that allows the CPSC to regulate pesticides under the FHSA if the pesticide is borne or contained in a substance that meets a two-part test.[28] First the substance "(i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition."[29] Second, the substance may be regulated only if it "may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including

[15] American Council on Science and Health, *What's the Story? Pressure-Treated Wood at* http://www.acsh.org/publications/story/wood/index.html (last visited Mar. 13, 2003).
[16] *Id.*
[17] Florida Center for Solid and Hazardous Waste Management, *What is CCA-Treated Wood?, at* http://www.ccaresearch.org/about_cca.htm (last visited Mar. 13, 2003).
[18] *See* American Wood Preservers Institute, *Frequently Asked Questions: How Long Will Preservative-Treated Wood Last?, at* http://www.preservedwood.com/faqs/faqs44.html (last visited Mar. 13, 2003).
[19] CONSUMER PRODUCTS SAFETY COMMISSION, BRIEFING PACKAGE: PETITION TO BAN CHROMATED COPPER ARSENATE (CCA-TREATED WOOD) IN PLAYGROUND EQUIPMENT (PETITION HP 01-3) 5 (2003).
[20] Environmental Protection Agency, *Chromated Copper Arsenate (CCA) and Its Use as a Wood Preservative, at* http://www.epa.gov/pesticides/factsheets/chemicals/1file.htm (last visited Mar. 13, 2003).
[21] CONSUMER PRODUCTS SAFETY COMMISSION, BRIEFING PACKAGE: PETITION TO BAN CHROMATED COPPER ARSENATE (CCA-TREATED WOOD) IN PLAYGROUND EQUIPMENT (PETITION HP 01-3) 5 (2003).
[22] *Id.*
[23] Florida Center for Solid and Hazardous Waste Management, *What is CCA-Treated Wood?, at* http://www.ccaresearch.org/about_cca.htm (last visited Mar. 13, 2003).
[24] *Id.*
[25] CONSUMER PRODUCTS SAFETY COMMISSION, BRIEFING PACKAGE: PETITION TO BAN CHROMATED COPPER ARSENATE (CCA-TREATED WOOD) IN PLAYGROUND EQUIPMENT (PETITION HP 01-3) 5 (2003).
[26] 15 U.S.C. §§ 1261–78 (2000).
[27] FIFRA §2(f)(2), 15 U.S.C. § 1261(f)(2) (2000).
[28] FIFRA § 2(f).
[29] FIFRA § 2(f)(1)(A).

reasonably foreseeable ingestion by children."[30] With regard to children, the FHSA requires that an "article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child" is to be banned.[31] In other words, if playground equipment, which is obviously an "article intended for use by children" contains a substance which is toxic (among other things), and causes substantial personal injury or illness, the CPSC must ban the product.

III. Costs and Benefits of Regulation

A. What Are the Benefits of Banning CCA-Treated Wood in Playground Equipment?

What would be the benefits of banning CCA-treated wood? To understand the benefits, we must first understand the possible problems posed by CCA-treated wood. The CPSC briefing materials suggest that a young child who plays on CCA-treated wood playground structures has in increased risk of between 2 to 100 per million of developing lung or bladder cancer above the risk of these cancers dues to other factors.[32] This calculation is based on a number of assumptions, discussed below.

1. Children's Use of Playground Equipment

CPSC staff believes that that children will ingest arsenic by first rubbing their hands on CCA-treated wood and then ingesting the arsenic through either licking their fingers, or touching food and eating the food.[33] They argue that children ages 2 to 6 are the "at-risk" group since they exhibit the most hand-to-mouth behavior.[34] They assume that children visit playgrounds 156 times a year.[35] They assume that arsenic levels on CCA-treated wood in the Washington, D.C. metropolitan area are representative of playgrounds nationwide.[36] Also, CPSC staff assumes that children will pick up 7.6 μg of arsenic on their hands every time they play on playground structures made of CCA-treated wood, and that they will ingest 43 percent of this arsenic.[37] Assuming all of CPSC staff's assumptions are correct, this means that a child could ingest 510 μg of arsenic each year.

CPSC staff conducted a couple of studies to quantify the amount of arsenic transmitted from CCA-treated wood to children's hands. In total, the CPSC staff examined CCA-treated wood-to-hand transmission on 20 CCA-treated surfaces.[38] Because of outliers, the mean values were much higher than the median values of CCA to hand transmission. In the two studies conducted by CPSC staff, the median values were 3.5 μg and 4.8 μg while the mean values were 7.6 μg and 7.7 μg.[39] Whenever there are outliers, as is the case here, the mean is not necessarily the best

[30] *Id.*
[31] FIFRA § 2(q)(1).
[32] CPSC BRIEFING PACKAGE AT 1.
[33] CPSC BRIEFING PACKAGE AT 14–15.
[34] CPSC BRIEFING PACKAGE AT 15.
[35] CPSC BRIEFING PACKAGE AT 15
[36] CPSC BRIEFING PACKAGE AT 187.
[37] CPSC BRIEFING PACKAGE AT 19–20.
[38] CPSC BRIEFING PACKAGE AT 170.
[39] CPSC BRIEFING PACKAGE AT 170.

statistic to use because it represents the average, but not necessarily the typical data point.[40] If the distribution of data points is representative of the population (for example, the outliers may represent a subset of CCA-treated structures that pose a more significant hazard), and if the dose-response function is linear, then the use of the mean will give the most accurate forecast of cancer cases. On the other hand, the skewed distribution of data points may simply be an artifact of the particular studies and methods used. With a sample size of only 20, it is not possible to draw any robust conclusion about the shape of the distribution of exposure in the population. Therefore it is imprudent to use the mean and thereby give disproportionate weight to the outliers in this limited data set.

2. Toxicity of Arsenic

CPSC staff examined several studies and made a number of assumptions in determining that the children can be exposed to a dangerous amount of arsenic on playgrounds.[41] Even though CPSC staff recognized that "significant variability and uncertainty exist the available data, statistical modeling, and extrapolation and that several reasonable approaches could be that would result in estimates of cancer that differ by an order of magnitude or more" they considered the toxicity assessment to be reasonable.[42] However, there are many problems inherent in the CPSC's approach.

a) Limitations in the Studies CPSC Staff Relied Upon in Comparison to Arsenic Ingestion by Children from CCA-Treated Wood

To determine toxicity, CPSC staff examined studies from Taiwan, Argentina, and Chile. However, every one of the studies that CPSC staff cites approvingly is of questionable significance for people living in the United States, and especially for children playing on playground equipment.

The first major problem is comparing doses of arsenic consumed these studies with doses of arsenic consumed by children. CPSC staff cites studies conducted in by Tseng in 1968 and 1977 in Taiwan that found a dose-related increase in skin cancer. The arsenic concentration in wells was found to be on average between 400–600 μg/L.[43] A 2001 study by Chiou et al. found "significant dose-response relationship between the incidence of bladder and kidney cancer and drinking water containing arsenic at concentrations greater than 100 ppb."[44] (100 ppb is equal to 100 μg/L). The CPSC staff also cites a study conducted in Chile where average drinking water arsenic levels were between 200–400 μg/L. The staff also noted that the "data [from the Chilean study] also suggest a synergistic interaction between arsenic ingestion and cigarette smoking."[45] However, the fact that there may be a synergistic relationship between arsenic ingestion and smoking seems of very limited importance in this case since not many children between the ages of 2 and 6 smoke. Lastly, CPSC staff cites an Argentine study suggesting an increased risk of

[40] *See* DAVID S. MOORE & GEORGE P. MCCABE, INTRODUCTION TO THE PRACTICE OF STATISTICS 41–44 (1999).
[41] CPSC BRIEFING PACKAGE AT 14.
[42] CPSC BRIEFING PACKAGE AT 23.
[43] CPSC BRIEFING PACKAGE AT 88.
[44] *Id.* at 89.
[45] *Id.*

lung and kidney cancers due to arsenic ingestion.[46] The average concentrations of arsenic in the water in the Argentine study were 178 μg/L for the highest exposure group.[47]

The amount of arsenic children would consume by playing on CCA-treated wood, even assuming all of the CPSC staff's assumptions are correct, is far lower than any of these studies. As noted above, the CPSC staff calculates that a child will consume 510 μg of arsenic a year. If the same child lived in the area studied by Chiou et al., she would consume the same amount of arsenic by drinking a mere 5 liters of water. If this child lived in the area of Chile where the Chilean study was conducted, she could ingest 510 μg of arsenic in a mere 1.275 liters of water. Put in the most simplistic terms, CPSC staff finds it reasonable to compare the amount of arsenic a child consumes over the course of an entire year, to the amount of arsenic people consume every day in areas with high concentrations of arsenic.

Even though the amount of arsenic potentially consumed by children via exposure to CCA-treated playgrounds is very low compared with studies that show that arsenic can be carcinogenic, CPSC staff believes it is possible to extrapolate from chronic doses to the low doses children would consume. It adopted a linear dose-response function in order to extrapolate cancer risks from the relatively high exposure levels observed in the Taiwanese and Chilean studies to the much lower concentrations to which American children may be exposed.[48] CPSC staff refer to studies by the National Research Council (NRC) of the National Academy of Sciences to support a linear extrapolation of risks to low doses. However, the NRC panel fit a number of models to the Taiwanese data, but none of the models provided a good fit to the data and their estimates of risks at low doses fluctuated wildly.[49] As one scientist who served on NRC's subcommittee on arsenic in drinking water explains, "given what is undoubtedly a high error rate in exposure classification in the data, there would be little basis for much credence in any model to fit the data."[50] In other words, the data the NRC relied upon are not robust enough to provide scientific credence to the extrapolation of cancer risks of chronic arsenic exposures to cancer risks at lower levels.

CPSC staff explains that they chose a linear model because there is an "absence of data that the shape of the dose-response at low doses is not linear."[51] However, the NRC expert panel believes, based on the evidence on the mode of action for arsenic-associated cancers, that the dose-response function is more likely to be sublinear – meaning that the linear extrapolation used by the CPSC significantly overstates the expected risk at low doses.[52]

Another problem with the CPSC staff's extrapolation is the duration of exposure to the carcinogen. As one scientist who has studied arsenic toxicity explains, "even if the risk of low

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[46] *Id.*
[47] *Id.*
[48] CPSC BRIEFING PACKAGE AT 315.
[49] *See* National Research Council, Arsenic in Drinking Water (1999), KENNETH G. BROWN, COMMENTS ON CPSC'S ANALYSIS OF CANCER RISK TO CHILDREN FROM CONTACT WITH CCA-TREATED WOOD PRODUCTS 3 (2003).
[50] KENNETH G. BROWN, COMMENTS ON CPSC'S ANALYSIS OF CANCER RISK TO CHILDREN FROM CONTACT WITH CCA-TREATED WOOD PRODUCTS 3 (2003).
[51] CPSC BRIEFING PACKAGE AT 315. They further argue that "data do not exist that elucidate the mechanism of arsenic-induced carcinogenicity or define a non-linear effect, and that linear extrapolation at low doses is appropriate in this case." *Id.*
[52] *See* National Research Council, Arsenic in Drinking Water (1999).

concentrations in drinking water were reliable . . . extrapolation of risk estimates based on chronic exposure to children who are intermittently exposed to CCA-treated wood in childhood is speculative."[53] The CPSC staff cites no data to show that intermittent exposures for a short period of time can be compared to lifetime chronic exposures. This is problematic because the body can apparently repair itself over time.[54] In fact, if a heavy smoker quits, 20 years later his lungs can be "restored to a fully healthy condition in which the risk is as low as nonsmokers."[55]

b) Studies in the United States that CPSC Staff Omitted

Despite citing all the Taiwanese, Chilean, and Argentine studies approvingly, CPSC staff fails to give any credence to what they acknowledge are "several epidemiological studies in the U.S. [that] have not [shown] increased cancer incidence in populations with elevated drinking water levels (up to about 200 [μg/L])".[56] First of all, CPSC staff argues, "these studies did not have sufficient statistical power to detect the small increases in cancer incidence that would be expected at the relatively low doses experienced by the U.S. population."[57] However one of the studies led by an EPA researcher was conducted on a cohort of 4,058 individuals who were exposed to waterborne arsenic at levels of 14 to 166 μg/L.[58] Despite consuming arsenic at levels comparable to those in some of the other studies, the study did not indicate higher levels of bladder cancer.[59] In fact, the authors of the study observed only 39 deaths from bladder and lung cancer, far below the 63.5 that would be predicted in the normal population.[60] To justify excluding this study, CPSC staff argues "this cohort differed from the larger population in important ways."[61] Specifically, the "cohort was rural and belong to a religion with strict lifestyles rules."[62] The members of the cohort were mostly members of the Church of Jesus Christ of Latter-day Saints, and as a result most did not drink alcohol, coffee, tea, and most did not smoke. CPSC staff points out this fact as if this were a confounding factor. However, the members of the cohort merely reduced the confounding influence of other possible causes of cancer, thus making it easier to discern any influence elevated levels of arsenic could have in incidents of cancer.

Another reason the CPSC staff should have paid close attention to this study, instead of discounting it, is because the diet of most members of this cohort is closer to the diet of children. Like the members of the cohort, few children between the ages of two and six consume alcohol,

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[53] KENNETH G. BROWN, COMMENTS ON CPSC'S ANALYSIS OF CANCER RISK TO CHILDREN FROM CONTACT WITH CCA-TREATED WOOD PRODUCTS 2 (2003).
[54] *See* Medscape.com, *Urge Smokers to Quit, Whatever Their Age*, www.medscape.com/viewarticle/407272 (last visited Mar. 22, 2003).
[55] UC Davis Health System, *How Can Lung Cancer Be Prevented?*, http://www.ucdmc.ucdavis.edu/ucdhs/health/a-z/72NonSmallCellLung/doc72prevent.html (last visited Mar. 22, 2003).
[56] CPSC BRIEFING PACKAGE AT 89.
[57] *Id.* at 89–90.
[58] Denise R. Lewis et. al., *Drinking Water Arsenic in Utah: A Cohort Mortality Study*, 107 Enviro. Health Perspectives 359 (1999).
[59] *Id.*
[60] *Id.*
[61] CPSC BRIEFING PACKAGE AT 90.
[62] CPSC BRIEFING PACKAGE AT 90.

coffee, or tea, and most do not smoke. The studies from Taiwan are not necessarily comparable to the United States, and especially to children, because the members of the Taiwanese cohorts had higher incidents of smoking and poorer nutrition.[63]

c) CPSC Expects the Data to Prove a Negative

In the end, CPSC staff accepts the aforementioned Taiwanese, Chilean, and Argentine studies, "despite the weakness in the epidemiological studies and the uncertainties about extrapolating to the U.S. population."[64] Instead of showing any evidence that any of the studies cited by CPSC staff has any relevance to incidents of cancer in the United States, CPSC staff argues that the evidence does not disprove them. In other words, CPSC staff first cites studies approvingly that are of questionable application to the situation of children in the United States. Second, they discount any studies that tend to prove them wrong (and which happen to be the only studies conducted in the United States, and also happen to be on people who have a diet similar to children). Third, after discounting any contrary evidence, CPSC staff argues, "[t]hus, there is no convincing evidence that arsenic does not cause cancer at relatively low exposures."

This is equivalent to requiring a defendant to prove that he is not guilty, without the prosecution providing any evidence of the defendant's guilt. Besides the impossibility of proving a negative as the CPSC staff implicitly argues should happen, they also fail to state the obvious, which is exactly the opposite of their claim. Given the evidence presented by CPSC staff, it is easier to draw the conclusion that "there is no convincing evidence that arsenic ***causes cancer*** at relatively low exposures."

Also, the CPSC is only given statutory authority to regulate substances if they "may cause substantial personal injury."[65] The statutory language does not give the CPSC authority to regulate a substance if "there is no convincing evidence that it does not cause substantial personal injury." Under the FHSA, the CPSC has to show that there is a possibility or probability of substantial personal injury. Because they fail to provide any evidence that arsenic is carcinogenic at the levels ingested by children from CCA-treated wood, they fail to meet their statutory mandate.

d) Other Studies on Arsenic

Besides the two studies on arsenic conducted in the United States that CPSC staff cites, there are many others. In Florida, six doctors, including the chief epidemiologist at the state Department of Health, were appointed to study arsenic risks from playground equipment and recreational facilities.[66] The workgroup concluded that, "[t]he available data have not demonstrated any clinical disease associated with arsenic exposure from this use of CCA treated wood."[67] The workgroup also explained that "CCA-treated wood has never been linked to skin disease or

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[63] ROBERT RAUCHER, PUBLIC INTEREST COMMENT ON EPA'S NATIONAL PRIMARY DRINKING WATER REGULATIONS; ARSENIC RULE, REGULATORY STUDIES PROGRAM, MERCATUS CENTER, GEORGE MASON UNIVERSITY (2000).
[64] *Id.*
[65] FIFRA § 2(f)(1)(A).
[66] Tallahasee.com, *Doctor's: Amount of Arsenic in Playground Wood Not Harmful, at* http://www.tallahassee.com/mld/tallahassee/news/local/3821283.htm (last visited Mar. 15, 2003).
[67] Letter from Florida Physicians Arsenic Workgroup, to John Agwunobi, M.D., Secretary of Health, State of Florida 1 (June 14, 2002) (available at http://www.citw.org/FL_Physicians.pdf) (last visited Mar. 15, 2003).

cancer in children exposed during recreational use"[68] and that "arsenic that could be absorbed from playground soil and CCA treated wood is not significant compared to natural sources and will not result in detectable arsenic uptake."[69]

A study conducted by Dr. Christopher Teaf, director of the toxicology program at Florida State University, found that 420 μg of arsenic per 100 cm^2 would be safe for occasional childhood exposure (5 years).[70] By way of comparison, the CPSC staff estimates that CCA treated wood used in playground has 6.3 μg of arsenic per 100 cm^2.[71]

A study conducted by Dr. Barbara Beck, an expert in health risk assessment and a lecturer in toxicology at Harvard, found that "CCA-treated wood in both a residential and playground setting does not pose a significant health risk to children or adults." [72] In fact, "all of the exposure estimates (and associated risk estimates) in this report for CCA-treated wood are below the exposure and risk estimates associated with the proposed drinking water standard for arsenic and the levels of naturally occurring arsenic in food."[73]

e) Conclusion on Arsenic Toxicity

As the aforementioned studies indicate, there is controversy over the carcinogenicity of arsenic at low levels. Further, there is not a single study that shows arsenic to be toxic at low levels. There are also no studies conducted in the United States showing that arsenic is carcinogenic at the levels present in the United States. As a member of National Research Council's Subcommittee on Arsenic in Drinking Water explains,

> there is clear evidence of cancer and non-cancer effects [of arsenic], but at or below 50 μg/L, limitations regarding the epidemiological data and the mode-of-action or arsenic toxicity are inadequate to support the conclusion that there are adverse health effects in the United States. The implications for the CPSC analysis is that they are trying to ferret out cancer risks at extremely small arsenic intakes for which it is not at all clear that there even is an cancer risk.[74]

3. Significance of Risks as Calculated by CPSC Staff

If we give CPSC staff every benefit of the doubt on their assumptions (and as noted above there are many reason to believe that the estimates of arsenic carcinogenicity are overstated), this

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[68] *Id.*
[69] *Id.* at 2.
[70] *See* HAZARDOUS SUBSTANCE & WASTE MANAGEMENT RESEARCH, INC., DEVELOPMENT OF WOOD SURFACE TARGET QUANTITY FOR ARSENIC BASED ON EXPOSURE TO DECKS OF PLAYGROUND EQUIPMENT CONSTRUCTED OF CCA-TREATED WOOD (2001) (available at http://www.preservedwood.com/safety/wsqreport.pdf) (last visited Mar. 15, 2003).
[71] American Wood Preservers Institute, *Assessment of Risks from Exposure in Decks, Playground and Soil Beneath Them, at* http://www.preservedwood.com/safety/research_teaf.html (last visited Mar. 15, 2003).
[72] GRADIENT CORP., EVALUATION OF HUMAN HEALTH RISKS FROM EXPOSURE TO ARSENIC ASSOCIATED WITH CCA-TREATED WOOD ES-1 (available at http://www.preservedwood.com/safety/011020cca-body.pdf) (last visited Mar. 16, 2003).
[73] *Id.* at ES-3.
[74] KENNETH G. BROWN, COMMENTS ON CPSC'S ANALYSIS OF CANCER RISK TO CHILDREN FROM CONTACT WITH CCA-TREATED WOOD PRODUCTS 4 (2003).

possible additional risk of cancer from CCA-treated wood is nevertheless very slight. CPSC staff estimates the increased risk of lung or bladder cancer because of arsenic in CCA-treated wood is between 2 per one million and 100 per one million. To put this risk in perspective, about one of every 10,000 non-smokers (0.01 percent) develop lung cancer.[75] According to CPSC staff's estimates, the risk of developing lungcancer would increase from 0.01 to between 0.0102 and 0.020 percent.

The lifetime risk of developing bladder cancer is about 2.0 percent for men and 0.5 percent for women. The risk estimated by CPSC staff would increase this risk for men from 2.0 percent to between 2.0002 and 2.02 percent and for women from 0.5 percent to between 0.5002 and 0.51 percent.

To compare these risks to other risks of everyday life, the following all increase the annual risk of death by one in one million: Traveling 10 miles by bicycle, drinking Miami drinking water for one year, traveling 150 miles by car, flying 1,000 miles by jet, living 2 months in Denver, living 2 months in a average stone or brick building, or having one chest x-ray at a good hospital.[76] There is a 4 per one million chance of a resident on the ground dying from a plane crash.[77] There is a 122 per million chance of a woman dying during two childbirths.[78] There is 900 in a million (9 in 10,000) chance of a women being killed by a husband/lover and there is a 6,000 in a million (6 in 1,000) chance that during your lifetime, as a pedestrian you will be killed by a car.[79] Put in this perspective, the risk to a child playing 156 days per year on a CCA-treated playground structure is less than the risk of dying from being hit by a plane falling from the sky, at the low end of the risk spectrum or at the high end, dying by bearing two children.

4. Conclusions on the Benefits of Banning CCA-Treated Wood in Playground Equipment

Even if CPSC staff is given the benefit of the doubt on their assumptions, analysis, and conclusions, the benefits of banning CCA-treated wood in playground equipment are small. However, there are many reasons to believe CPSC staff's estimates grossly overestimate the risk. Key assumptions—that children will ingest 43 percent of everything their hands come in contact with, or that children between the ages of 2 and 6 will play on CCA-treated wood 156 times a year—seem likely to overstate actual expected values significantly. Further, the small sample size (20 playgrounds) and the large difference between the mean and median suggest that the sample mean may overstate the average arsenic transmission levels in CCA-treated wood by 100 percent or more. CPSC staff cites no studies to show that arsenic is carcinogenic at low doses or that a linear response curve is appropriate to extrapolate arsenic levels from high chronic exposures to low exposures. This is particularly important since even with CPSC staff's generous assumptions, a child only consumes 510 μg of arsenic a year compared to people in the study areas who consume that amount during a typical day, or even during a single meal. While

[75] Steven Milloy, *Playground Wood: Cancer Cause or Consumer Scare?, at* http://www.foxnews.com/story/0,2933,78551,00.html (last visited Mar. 14, 2003).
[76] W. KIP VISCUSI ET. AL, ECONOMICS OF REGULATION AND ANTITRUST 642 (2000) *citing* Richard Wilson, *Analyzing the Daily Risks of Life,* 81 Tech. Rev. 40, 45 (1979).
[77] John D. Graham, *The Risk Not Reduced,* 3 N.Y.U. ENVTL. L.J. 382, 391 (1995).
[78] *Id.*
[79] *Id.*

relying on studies conducted in other parts of the world where people have higher rates of smoking, poorer nutrition, and different genetic susceptibilities to bladder and lung cancer, CPSC staff disregards the only study conducted in the United States. This study seems a far more appropriate one from which to extrapolate health effects because (a) the doses of arsenic to which people were exposed were lower than the Taiwanese and Chilean studies (though still much higher than the doses to which children would be exposed) and (b) the study population has similar life-style and nutritional habits to children. The American studies did not show a link between arsenic and cancer.

One way the CPSC staff could have easily demonstrated if their estimates had any scientific validity would have been to conduct urine tests in children exposed to CCA-treated wood. Such a study could easily show if children who are exposed to arsenic in CCA-treated wood have elevated arsenic levels in their blood. Such as study could serve as a useful control to the estimates generated by CPSC staff about arsenic uptake by children.

In conclusion, from the evidence that CPSC staff presents, there is no evidence that there are any benefits of banning CCA-treated wood because of possible arsenic ingestion.

B. What Are the Costs of Banning CCA-Treated Wood in Playground Equipment?

Despite a lack of evidence that banning CCA-treated wood in playgrounds would produce benefits, there is plentiful information that doing so would be very costly, not only economically but environmentally and in terms of public health.

1. Environmental Costs

Pressure treated wood is produced from plentiful tree species.[80] Almost all of the trees that are used to make pressure treated wood are grown on tree farms, not third world rain forests or old growth forests.[81] Using pressure treated wood instead of untreated wood saves as many as 226,000,000 trees from being harvested every year.[82] Using CCA pressure treated wood instead of more energy intensive products such as concrete, steel, or plastic saves as many as 32 million barrels of oil a year.[83] Because one substitute for pressure treated wood is using harder woods, like redwoods, using pressure treated wood saves redwoods.[84] CCA-treated wood is made partially from recycled wastes and the preserving process does not produce air pollutants or water-waste discharges.[85] By using pressure treated wood "we have saved a forest two times the size of New England."[86] Pressure treated wood is also used as walkways over environmentally

[80] Osmose, Inc., *CCA Pressure Treated Wood: Quick Facts, at* http://www.osmose.com/wood/usa/preserved/treated/facts/ (last visited Mar. 15, 2003).
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] David Stilwell, *Arsenic in Pressure Treated Wood, at* http://www.caes.state.ct.us/PlantScienceDay/1999PSD/arsenic99.htm (last visited Mar. 15, 2003).
[85] American Council on Science and Health, *What's the Story? Pressure-Treated Wood at* http://www.acsh.org/publications/story/wood/index.html (last visited Mar. 13, 2003).
[86] DIXY L. RAY, TRASHING THE PLANET (1999).