



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Hal Stratton
Commissioner Thomas H. Moore
Commissioner Mary Sheila Gall

ITEM:

Draft Denial Letter for Petition (HP 01-3) to Ban Use of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment
(Briefing package dated November 21, 2003, OS No. 4161)

DECISION:

The Commission voted unanimously (3-0) to approve the denial letter as drafted to communicate to petitioners the denial of Petition No. HP 01-3, Petition to Ban the use of CCA-Treated Wood in Playground Equipment. The petitioners are Richard Wiles of the Environmental Working Group and Bill Walsh of Healthy Building Network, The Institute for Local Self-Reliance. At the Commission meeting and briefing on November 4, 2003, the Commission voted unanimously (3-0) to deny the petition to ban the use of CCA-treated wood in playground equipment and direct the staff to: (1) draft a denial letter; and (2) continue efforts to identify stains and sealants to reduce exposure to arsenic from CCA-treated wood structures. The final letter is attached.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", is written over a horizontal line.

Todd A. Stevenson
Secretary

* Ballot vote due November 21, 2003



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Todd A. Stevenson
Secretary to the Commission

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December 3, 2003

Richard Wiles, Senior Vice President
Environmental Working Group
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Washington, DC 20009

Bill Walsh, National Coordinator
Healthy Building Network
c/o The Institute for Local Self-Reliance
2425 18th Street NW
Washington, DC 20009

Gentlemen:

This letter concerns your letter of May 22, 2001, in which you asked the Consumer Product Safety Commission to ban the use of wood treated with chromated copper arsenate (CCA) in playground equipment. Your request was docketed as petition number HP 01-3 pursuant to the Federal Hazardous Substances Act (FHSA).¹ As discussed in detail below, under applicable regulations the Commission has voted 3-0 to deny the petition because, based on available information, it cannot find preliminarily that:

¹ 15 U.S.C. 1261-1278.

- A mandatory performance standard is reasonably necessary to eliminate or reduce the risk in question²
- Failure to begin rulemaking would unreasonably expose consumers to the risk of injury in question³

In reaching its decision, the Commission considered your letter of May 22, 2001, and the materials submitted with it, the extensive materials prepared by the Commission staff and presented in the staff briefing package *Briefing Package, Petition to Ban Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment (Petition HP 01-3)* (the February 2003 Briefing Package), February 4, 2003, and the memorandum of September 29, 2003 from Patricia M. Bittner, M.S., Project Manager for Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment, CPSC Directorate for Health Sciences and Jacqueline Elder, Assistant Executive Director, Office of Hazard Identification and Reduction, to the Commission, *HP 01-3, Petition to Ban the Use of CCA-Treated Wood in Playground Equipment*, and attachments thereto (the September 2003 Briefing Memo); information presented to the Commission at and in connection with the August 6, 2001, October 3, 2001, and March 17, 2003 public meetings on the petition; the comments received on the petition, the February 2003 Briefing Package and the September 2003 Briefing Memo; and other information. As required by applicable regulations, the Commission also considered the relative priority of the risk of injury associated with playground equipment made with wood treated with CCA and Commission resources available for rulemaking activities with respect to that risk.⁴

Basis for Denial

In February of 2002, the United States Environmental Protection Agency (EPA) announced that the CCA pesticide registrants had requested that agency to cancel essentially all uses of CCA for treating wood for residential uses, including for treating wood to be used in playground equipment, effective December 31, 2003. 67 FR 8244 (February 22, 2002). In April of 2003, EPA finalized the cancellations, effective December 31, 2003, essentially as requested by the CCA registrants. 68 Fed. Reg. 17366 (April 9, 2003). EPA has stated that it expects that most wood treated with CCA for which the uses are cancelled will be out of the stream of commerce by mid-2004.⁵ CPSC staff has evaluated the impact of EPA's action and concludes that as a result of it, essentially all CCA-treated wood suitable for consumer uses, including for use in playground equipment, will be off of the market by June 2004.⁶ Most major

² 16 CFR 1051.9(a)(2).

³ 16 CFR 1051.9(a)(3).

⁴ 16 CFR 1051.9(b).

⁵ February 2003 Briefing Package at Executive Summary, p. 2.

⁶ September 2003 Briefing Memo at 1.

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manufacturers of playground sets have ceased using CCA-treated wood.⁷ Based on the foregoing the Commission has concluded that a rule is not reasonably necessary to eliminate or reduce the risk of injury because EPA's action on the CCA cancellation will eliminate further availability to consumers of CCA-treated wood for use in playground equipment by June 2004, likely before any mandatory ban could become effective. 16 CFR 1051.9(a)(2).

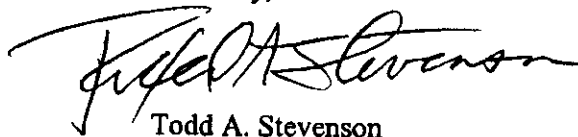
EPA's CCA pesticide cancellation action will cause disappearance of the CCA-treated wood product from the consumer market independent of Commission action. Also, as noted previously, playground equipment makers have represented that they have ceased using CCA-treated wood in their products. Thus, the Commission's decision not to initiate the requested rulemaking will have little, if any, effect on availability to consumers of playground equipment made with CCA-treated wood. 16 CFR 1051.9(a)(3).

Conclusion

Based on the foregoing analysis and the information before it, the Commission has denied the petition. In making that decision, the Commission also considered the relative priority of the risk associated with playground equipment made with wood treated with CCA and the Commission's resources available for rulemaking activities with respect to that risk of injury.⁸ After doing so, the Commission concluded that under the circumstances here staff resources would be better applied to continuing efforts to identify stains and sealants to reduce exposure to arsenic from CCA-treated wood structures than to rulemaking.

In closing, the Commissioners have asked me to convey their thanks to you for bringing this aspect of the use of CCA-treated wood to the attention of the CPSC.

Sincerely,



Todd A. Stevenson

⁷ *Id.*

⁸ 16 CFR 1051.9(b).