

analysis. It is noted that exposure is measured at the village level, and that there appears to be variability in the exposure assessment, causing high variability in the risk estimates. The article concludes, however, that *in spite of that*, and other factors that may affect risk but could not be evaluated quantitatively, the current standard of 50 µg/L of arsenic in drinking water is associated with a substantial increased risk of cancer. It is a little difficult to see how the "in spite of" part of the conclusion is justified, without extensive simulations or something else for support.

NRC2 makes almost no mention of treating individuals within a village as if they were all exposed at the same arsenic concentration, even though the well concentrations in a village may cover a wide range. Instead, reference is made to measurement error, which refers to error on the dose scale. An exercise is included in Chapter 5 in which the exposure data in southwestern Taiwan is addressed using theory of measurement error in nonlinear models. Further assumptions are required, however, that appear questionable, and it is concluded that "The analysis reported here is based on strong assumptions and should not be over interpreted as an actual assessment of the measurement error" NRC2 (Ch. 5). Further exploration of the issue is recommended (NRC2, Ch. 5). The executive summary, however, simply notes that statistical analyses were conducted to investigate the sensitivity of the risk estimates to measurement error, as if the issue (Assumption 2) had been addressed satisfactorily. It is not clear to the current author, however, that measurement error is an appropriate approach (aside from the strong assumptions required), because the problem is not being able to match individuals to a specific well(s). Nonetheless, the executive summary concludes that "There is a sound database on the carcinogenic effects of arsenic in humans that is adequate for the purposes of a risk assessment," and "The human data from southwestern Taiwan used by EPA in its risk assessment remain the most appropriate for determining quantitative lifetime cancer risk estimates." NRC2 also analyzed the data from a small case-control study of lung cancer in Chile, that had an issue regarding the selection of controls. NRC2, however, appears to be concluding that the Taiwan data are a sound database for use in risk assessment which, based on Figure 1 alone, is not statistically warranted.

References

EPA (U. S. Environmental Protection Agency). 2001. "40 CFR Parts 9, 141, and 142, Final Rule: National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring." Code of Federal Regulations, 66(14). January 22.

EPA (U. S. Environmental Protection Agency). 1992. *Respiratory Health Effects of Passive Smoking: Lung Cancer and other Disorders*. EPA/600/6-900/006F. U. S. EPA, Washington, D.C.

Morales, K.H., L. Ryan, T.L Kuo, M.M. Wu, and C.J. Chen. 2000. Risk of internal cancers from arsenic in drinking water. *Environ. Health Perspect.* 108(7): 655-661.

NRC1. (National Research Council). 1999. *Arsenic in Drinking Water*. Washington, DC: National Academy Press.

NRC2. (National Research Council). 2001. *Arsenic in Drinking Water: 2001 Update*. Washington, DC: National Academy Press.

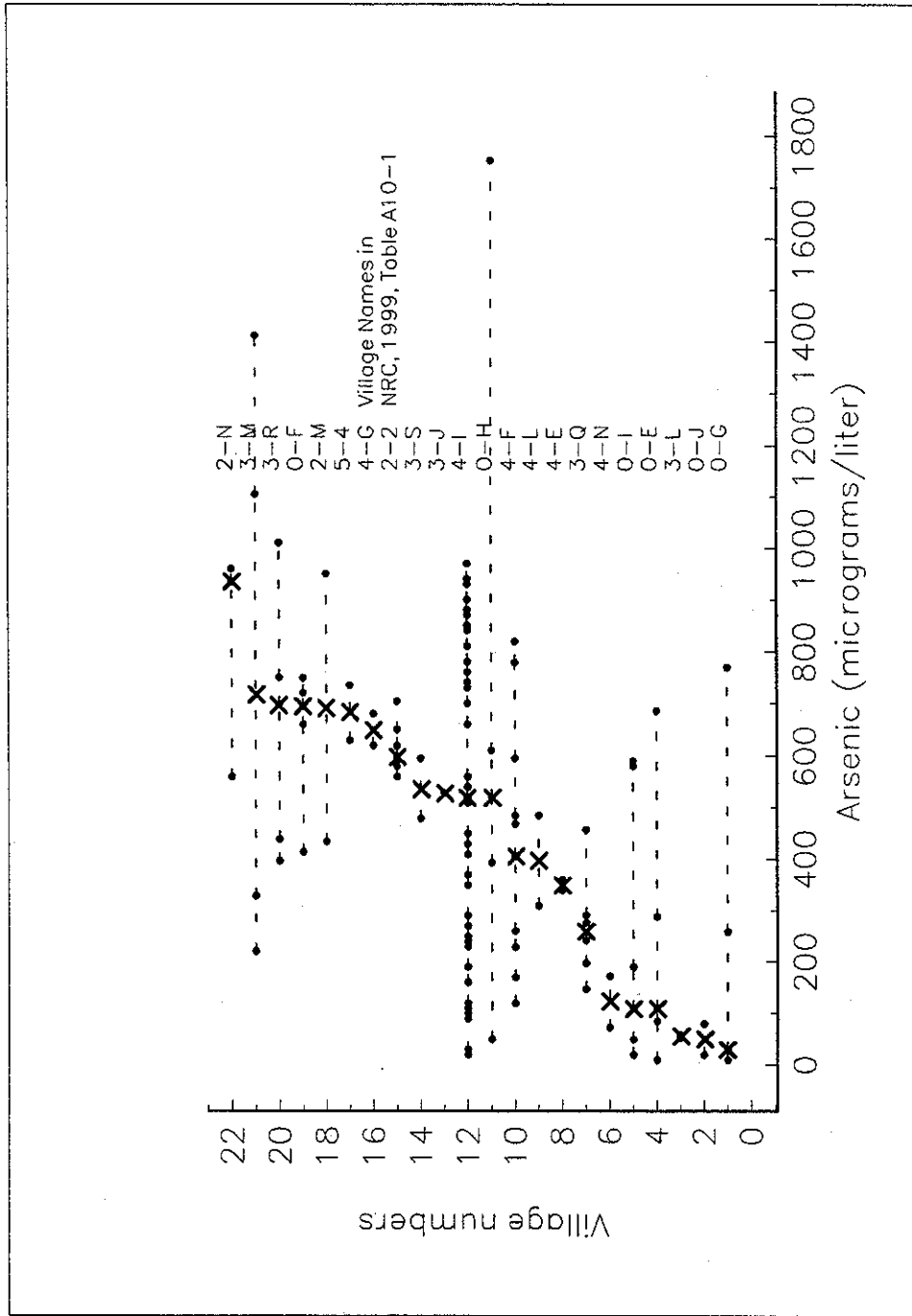


Figure 1. Arsenic well tests from villages with multiple wells in southwestern Taiwan database (NRC1, A10-1)

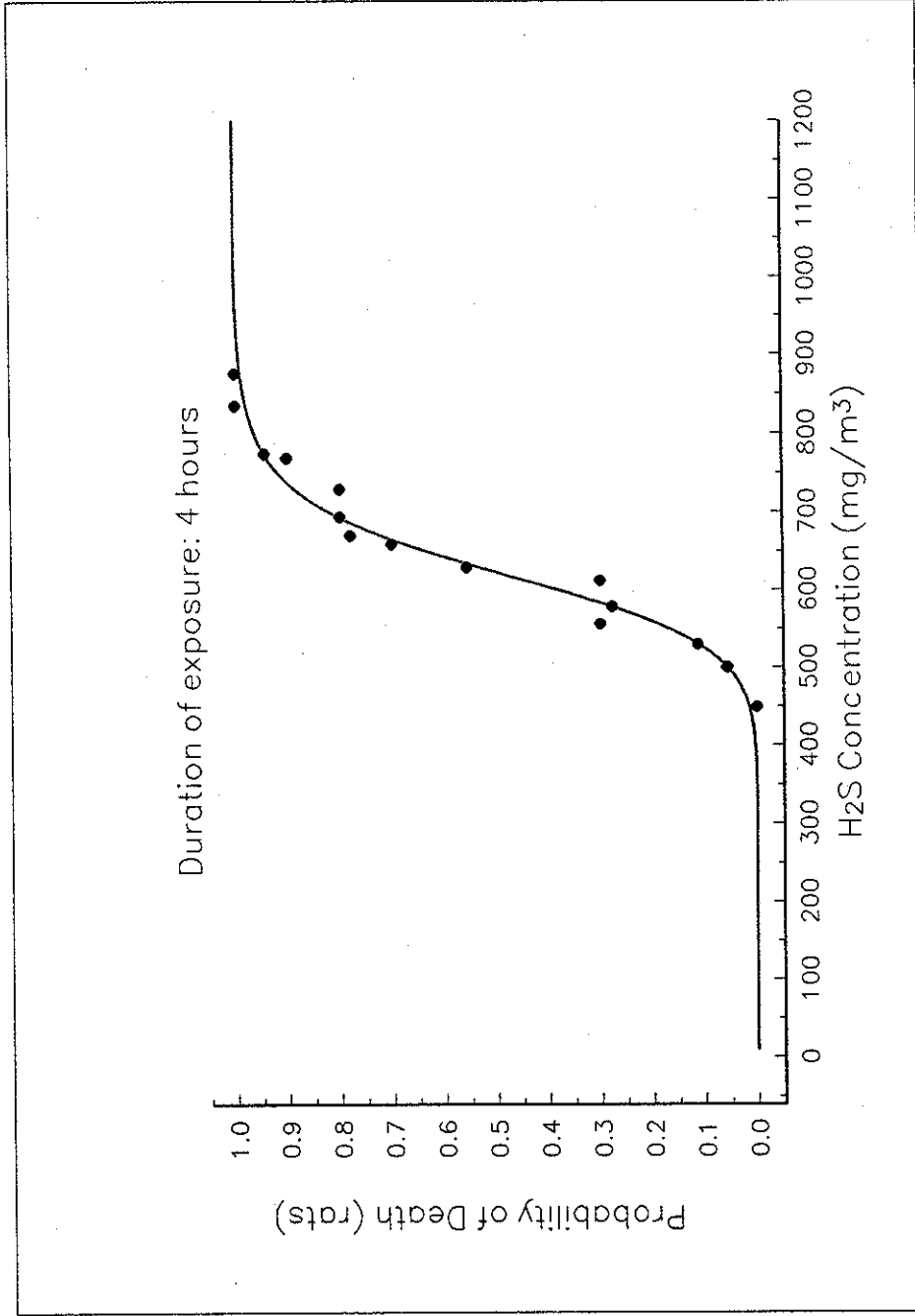


Figure 2. Example of dose-response (mortality of rats exposed to hydrogen sulfide fit with logistic regression to the log-transformed concentration).

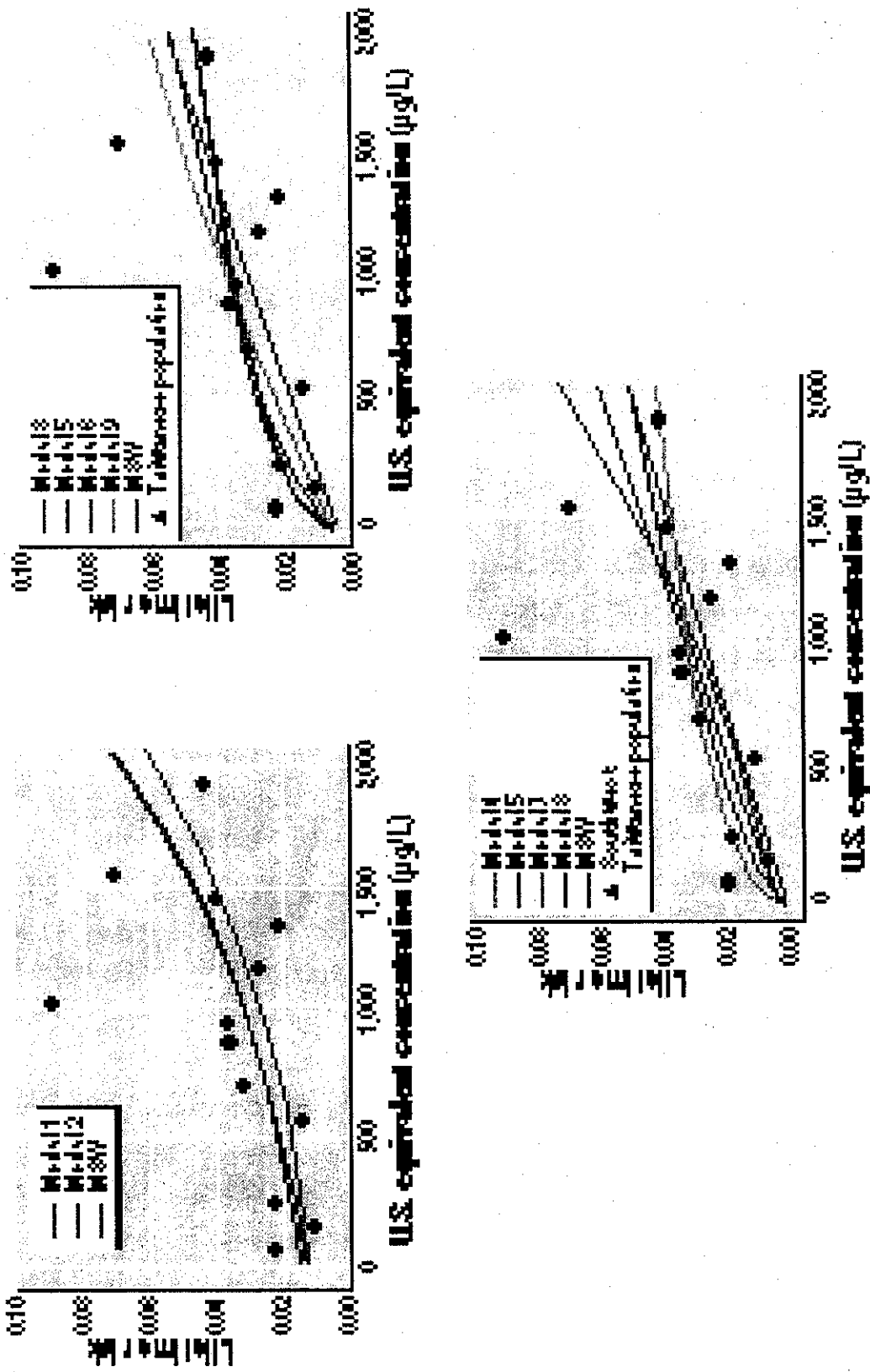


Figure 3. (clockwise from top left) Estimated lifetime death risk for male bladder cancer without comparison population, with Taiwanese-wide comparison population, with southwestern Taiwanese region comparison population. For a description of models, see Table 6 of Morales et al. (2000). (Reprinted with permission of *Environmental Health Perspectives*)

Stevenson, Todd A.

From: Ken [kbinc@mindspring.com]
Sent: Sunday, March 30, 2003 10:04 PM
To: Stevenson, Todd A.
Subject: CCA comments

Todd,

Today I managed to put the figures into the revised comments on CCA that I sent you on Friday, so that everything is in one electronic package. That may be a little more convenient for you. There is no change in the contents of the comments that I sent you on Friday, just a minor change in the format and the addition of a sentence to explain Figure 3 that was downloaded from the web and did not come as clear as I would have liked.

I see that you got some snow over the weekend. We were surprised with a little snow and icy rain.
Ken Brown

3/31/03

Stevenson, Todd A.

From: Ken [kbinc@mindspring.com]
Sent: Friday, March 28, 2003 7:07 PM
To: Stevenson, Todd A.
Subject: Fw: Comments on CCA

Todd,

The message below came back to me with a wrong address. I used t.stevenson@cpsc.gov. I am now trying the same address without a period after "t".

Ken Brown

----- Original Message -----

From: Ken
To: t.stevenson@cpsc.gov
Cc: [Angela Logomasini](mailto:Angela.Logomasini)
Sent: Friday, March 28, 2003 2:02 PM
Subject: Comments on CCA

Happy Friday, Todd!

My comments on CCA that were submitted on behalf of Competitive Enterprise Institute consisted of written text with three figures. I have revised the written text which is attached, but the previous figures still apply. If you would kindly replace the written portion of my previous comments with the revision, while retaining the three figures previous submitted, it would be appreciated.

Thanks in advance, and have a good weekend.

Ken Brown

Kenneth G. Brown, Ph.D.
KBinc
P. O. Box 16608
Chapel Hill, NC 27516
919 960-3619 (fax 919 960-3620)
kbinc@mindspring.com



FEDERAL REGULATORY & HOUSING POLICY AREA

DAVID A. CROWE
Senior Staff Vice President

March 28, 2003

BY FIRST CLASS AND ELECTRONIC MAIL

CCA Ban Petition, Petition HP 01-3
Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway, Room 502
Bethesda, MD 20814
Electronic Mail Address: cpsc-os@cpsc.gov

Re: Comments on Petition HP 01-3, Request for Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Play Ground Equipment

Dear Sir or Madam:

On behalf of the more than 205,000 members of the National Association of Home Builders (NAHB), I am pleased to submit these comments on the *Consumer Product Safety Commission's (CPSC's) Petition HP 01-3, Request for Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Play Ground Equipment* that was noticed in the *Federal Register* on Friday, February 14, 2003. In addition, we are providing comments on CPSC's staff "Briefing Package" that summarize CPSC staff findings and recommendations concerning the health risks associated with CCA. This document has been disseminated to the public and includes CPSC's staff recommendation that the Commission defer further action on this petition pending final action by the U.S. Environmental Protection Agency (EPA) on the request by the registrants of CCA to cancel registration for most consumer uses of CCA, including play ground equipment.

NAHB is a federation of more than 850 state and local home builder associations nationwide. Our members include individuals and firms engaged in land development, single and multifamily construction, multifamily ownership, building material trades, and commercial and industrial projects. Over 80 percent of our members are classified as "small businesses" and our members collectively employ over eight million people nationwide. CPSC's Petition to ban CCA-treated play ground equipment is of considerable interest to our members since CCA-treated lumber is used extensively in residential applications, including in residential decks, patios, and foundations, as well as in picnic tables, fences, and other uses. As such, we are concerned that only high quality information based on sound science and adequate data be disseminated by CPSC concerning CCA and the health risks associated with it. We are particularly concerned that unfounded or inaccurate information concerning risks associated with CCA could cause unintended and unwarranted concerns among the public.

Therefore, in response to CPSC's request for public input on the Petition to ban CCA-treated play ground, NAHB is please to offer the following comments:

1201 15th Street, NW • Washington, DC 20005-2800
(202) 266-8383 • (800) 368-5242 x8383 • Fax: (202) 266-8426

1. **Information disseminated by CPSC concerning CCA is subject to the new federal Information Quality Guidelines.** CPSC should be mindful that on February 22, 2002, the Office of Management and Budget (OMB) issued important new guidelines that define the quality of information disseminated by federal agencies. *67 Federal Register* 5482. These guidelines were required by Congress in Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (P.L. 106-555) and are binding on all federal agencies, including CPSC.

OMB's guidelines define four statutory terms: the "quality, objectivity, utility, and integrity" of information. Information that does not meet these rigid new standards cannot be used or disseminated by agencies. In addition, the guidelines establish special, more rigorous standards for the objectivity of "influential" (financial, scientific, or statistical) information and information concerning "risks to human health, safety, or the environment."

Pursuant to the OMB guidelines, each federal agency was required to issue their own implementing guidelines based on OMB's model by October 1, 2002, when the new information quality requirements took effect. CPSC's Information Quality Guidelines have now been issued and posted on its website at:
<http://www.cpsc.gov/LIBRARY/infoguidelines.html>.

Because certain information contained in the docket and CPSC's staff "Briefing Package" does not appear to meet the new OMB and agency standards, NAHB is concerned that the agency is not meeting its obligations under the new guidelines.

First, under the new guidelines, before information can be disseminated by the agency it must undergo "pre-dissemination" review by the agency. Nowhere in the staff "Briefing Package" does it indicate that the information has been subject to pre-dissemination review by the agency or what procedures were followed.

Second, the staff "Briefing Package" cites numerous studies and risk assessment as the basis for its conclusions, but does not indicate whether these studies meet the new information quality guidelines or whether they have been subject to the standard of "peer review" required by the guidelines. Specifically, OMB adopted the standard for "formal, independent peer review" recommended by the President's Management Council, namely that: (a) peer reviewers are selected primarily on the basis of necessary technical expertise, (b) peer reviewers disclose prior technical or policy positions they may have taken on the issue in hand, (c) peer reviewers be expected to disclose sources of personal or institutional funding, and (d) peer review be conducted in an open and transparent manner. *67 Federal Register* 8454. While the staff "Briefing Package" (p. 24) indicates that staff memoranda and risk assessment underwent peer review, none of the requisite disclosure information is provided so that the public can evaluate the qualifications or objectivity of the peer reviewers. In other places, CPSC indicates that various studies upon which the agency relies (e.g., Ferrante, Hatledid, Osterout) (p. 12) were peer

reviewed, but does not indicate whether the agency's own review of - and conclusion drawn from - these studies were in turn subject to peer review.

It should be noted that while "formal, independent peer review" is not required to meet the "objectivity" standard under the new OMB and agency guidelines, formal, independent peer review does create a rebuttable presumption that the information meets the standard. In addition, OMB has made it clear that third-party information the agency intends to use or rely on in its decision making process must also meet the new information quality requirements. CPSC does not indicate in its staff "Briefing Package" whether the numerous sources and studies it relies on meet the new information quality guidelines and can therefore be properly used or relied on by the agency. For example, while CPSC relies heavily on Ferrante, Hatledid, and Osterout for its toxicity data (p.12), no evaluation of the quality or limitations of these studies is provided.

Third, the information being disseminated by the agency in the staff "Briefing Package" appears to meet the definition of "influential" information under the new guidelines. Influential information refers to (financial, scientific, or statistical) information that "has or is likely to have important public policy or private sector impacts." Under the guidelines, influential information disseminated by the agency must include sufficient "transparency" about data and methods so that the analytical results can be "reproduced" by a qualified member of the public. While NAHB realizes that the staff "Briefing Package" is intended only to summarize the findings of other documents, it does not indicate anywhere that the staff has evaluated whether the information meets the test of influential and whether it accordingly meets these new requirements. If CPSC cannot release certain information because of confidentiality or proprietary concerns, the information must undergo especially rigorous internal "robustness" checks and the agency must document what those robustness checks were.

Finally, under the new guidelines, information concerning "risks to human health, safety, or the environment" must meet the standards of quality contained in the Safe Drinking Water Act (SDWA), which OMB has adopted government wide. Specifically, the SDWA requires that agency actions based on science must use best available, peer-reviewed science (conducted in accordance with sound and objective scientific practices) and data collected must be done by accepted or best available methods. While CPSC's staff "Briefing Package" appears to contain information that is subject to this standard, no mention is made whether the information upon which the agency is relying meets these requirements. In addition, under the SDWA, the agency is supposed to include, in a separate document made available to the public, its evaluation of:

- The population addressed by risk estimates;
- The expected risk for the population;
- The upper and lower bounds of risk estimates;
- Any significant uncertainties;
- Studies that support or contradict the findings;
- The agency's method for reconciling discrepancies.

No information of this nature is included in the staff "Briefing Package" and the public is left wondering whether the information upon which the CPSC staff is basing its findings is of suitable quality that it can be relied on with confidence. For example, as noted above, while CPSC relies extensively on Ferrante, Hatledid, and Osterout for its toxicity data (p.12), no SDWA-type analysis of these studies is provided. Most glaring is the lack of the identification of other studies that support or contradict these studies, or the methods the agency used for reconciling any discrepancies.

(It should be noted that in its own implementing guidelines CPSC has "adapted" the SDWA standards, but seems to have tried to limit application of OMB's definition to formal "risk assessment." However, OMB's guidelines go beyond formal risk assessment and cover all influential information concerning "risks to human health, safety, or the environment," including, presumably, the staff "Briefing Package" and other information being used and relied on by the agency.)

- 2. NAHB concurs with CPSC's staff recommendation that the Commission defer further action on this petition pending final action by the U.S. Environmental Protection Agency (EPA) on the request by the registrants of CCA to cancel registration of CCA for most consumer uses, including play ground equipment.** NAHB does not believe that adequate information exists for CPSC to ban the use of CCA-treated wood for any application at this time. The EPA registration process will result in the discontinuation of use of CCA-treated wood in most, if not all, consumer uses, including play ground equipment. The EPA process will also lead to the use of alternative products and will mitigate potential risks to the public. We are particularly concerned that that unfounded or inaccurate information concerning health risks associated with CCA could cause unintended and unwarranted concerns among the public, or that such a ban could lead to calls for the recall of other existing CCA-treated lumber, such as that used in decks, patios, and foundations.

NAHB is concerned that the agency is drawing unwarranted or unfounded conclusions in its staff "Briefing Package." For example, on page 10 of the staff "Briefing Package," CPSC states that the hand-to-mouth transfer "can occur," that dermal exposure "could contribute," and that leaching "may occur," but offers no evidence that these exposure are actually occurring – or that they are occurring in levels that create a health risk. Further, CPSC goes on to state that children playing near or beneath these structures "could" ingest or absorb arsenic tainted soil or ground cover, but has not determined at what levels they actually do.

NAHB has a number of other concerns with CPSC's staff "Briefing Package." For example, the agency continually suggests (without concluding) that CCA-treated play ground equipment is a health risk to children, but admits that "few data are available on the chemical and physical characteristics of arsenic compounds that result after treatment of wood with CCA." (p. 13). The agency also provides no information of how fast CCA in soil or ground cover dissipates or breaks down in the environment. (p. 13). Further, the agency cites various potential health effects associated with exposure to CCA-treated wood, but gives no indication whether any of these effects have ever actually been

encountered in the real world. (p. 13). Likewise, while the agency indicates that climate, temperature, precipitation, and weathering might affect "dislodgeable" arsenic, it has not fully assessed the effect these factors might have on its analysis. (p. 21).

There are other items of concern in the report. For example, the agency includes an estimate that the average child visits a play ground 156 times a year from ages 2-10, but this seems like an extraordinarily high number. (p. 15). It would seem appropriate to conduct a survey to ascertain the actual figure. Also, the agency stresses the importance of "bioavailability" in its risk estimates, and then states that "[t]he CPSC staff believes that there are insufficient scientific data to address the bioavailability of arsenic from CCA-treated wood surface residues." (p. 21). In discussing cancer risk, the agency states that "[t]he staff believes that significant variability and uncertainty exist in the available data, statistical modeling, and extrapolation..." (p. 23).

It is for these reasons that we concur in CPSC's staff recommendation to defer a decision on the petition at this time. We fully appreciate the staff's concern that "the large variability among individuals in both activities and behavior, and in susceptibility to disease" makes actual risk assessments difficult, especially given the lack of high quality data and analysis on this issue. (p. 23). In addition, we appreciate the conclusion by the staff that "the percent of the industry using alternative treatments is unknown," and that the agency has yet to assess whether "other mitigation measure," short of banning CCA-treated wood may be equally or more effective and less costly. (p. 32). However, given the fact that consumer applications of this material will be discontinued in the very immediate future, we do not believe a ban on this product is warranted.

Thank you for the opportunity to comment on CPSC's Petition HP 01-3, Request for Ban of CCA-Treated Wood in Play Ground Equipment. Please feel free to call either me at (202) 266-8383, or our Regulatory Counsel, Bruce Lundegren at (202) 266-8305 if you have any questions or require additional information.

Sincerely,



David Crowe
Senior Staff Vice President
Federal Regulatory and Housing Policy

Stevenson, Todd A.

From: Lundegren, Bruce [blundegren@nahb.com]
Sent: Friday, March 28, 2003 7:43 PM
To: Stevenson, Todd A.
Subject: Comments on Petition HP 01-3, Request for Ban of Chromated Copper Arsenate (CCA)-
Treated Wood in Play Ground Equipment



CCA.Comments.CPSC..

doc

Dear Sir or Madam:

Attached are comments by the National Association of Home Builders on the above-reference matter. We are also sending you this letter by First Class Mail. Please feel free to contact me at (202) 266-8305 if you have any questions or require additional information.

Sincerely,

Bruce E. Lundegren

<<CCA.Comments.CPSC..doc>>

Bruce E. Lundegren
Regulatory Counsel, Advocacy Group
National Association of Home Builders
1201 15th Street, N.W.
Washington, DC 20005
(202) 266-8305 (Direct)
(800) 368-5242, Ext. 8305 (Toll Free)
(202) 266-8056 (FAX)
blundegren@nahb.com (Email)

ACCA Ban Petition, Petition HP 01-30

Gloria Tilley
5783 Dover Road
Lakeview, NY 14085
716-627-2289
Glorydays65@aol.com

March 28, 2003

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

Re: ACCA Ban Petition, Petition HP 01-30

I would like to bring to your attention a group of children who seem to have been missed in your 1/10,000 risk assessment for cancer. Special needs children deserve your attention to detail. These children are not like typical children. They have different chemistry, different skill acquisition and different learning patterns. I feel that it is necessary to include this group of vulnerable individuals in your risk assessment study.

My story of arsenic exposure began months before I conceived my twin boys. My husband and I built a garden in the spring of 1995. We edged our garden with landscaping timbers - three timbers high. We filled the garden with soil and planted our vegetables. All summer we nurtured our garden and enjoyed fresh salads and vegetables every day never knowing the danger that loomed. There were no warning labels on the lumber. No signs were posted at the store. We had no idea that we could be eating poison. We froze our excess 'chemical-free' harvest for the winter ahead.

In November of 1985, I became pregnant. Much to our surprise, we were having twins. They don't run in our family. I went into labor at 33 weeks...much too early, so the doctors stopped the labor. I spent the next two weeks in and out of labor and finally at 35 weeks, my uterus ruptured and I had an emergency c-section. The following morning our world began crashing in. Kyle had Down Syndrome. Justin, it seemed was unaffected.

I spent the first year after their birth reading everything I could about Down Syndrome and biochemistry. I was determined that Kyle would excel and keep up with his brother but as time progressed, Justin did not. I began to worry about Justin. He cried from the minute he was born until he was two. Most of his milestones were delayed. By the age of two he had nine surgeries. Two were to correct midline

ine defects - a tongue tie and a tethered spinal cord. To make matters worse he was always sick. He received a diagnosis: Pervasive Developmental Delay. I now had two disabled children and all of our hopes and dreams had vanished.

I began reading everything I could about Justin's condition. I met with many doctors in order to combat all of Justin's medical issues. For his third birthday, I decided to have some specialized testing done on him. Since I learned that he shared many of the same concerns with the Down Syndrome community, I had his twin tested as well. Much to my surprise, both Justin and Kyle came up high in ARSENIC!

I began researching the sources of arsenic exposure. We moved from our house in the city of Buffalo to the suburbs of Hamburg when the boys were ten months old. I explored where the exposure could have occurred. The city did not seem plausible. It must be our new house. As I read, I realized that CCA wood seemed to be everywhere we spent time.

We built a pressure treated deck/ playpen for the boys when they were not yet walking. We figured this would keep them safe while they played outside. Once again, there were no warning labels on the lumber or at the store. As we cut the lumber for the railings, the boys crawled on the deck. We placed the baby pool on it and spent hours each day in our sunny safe haven. I realized this was a mistake as I read the literature on arsenic and CCA treated wood.

I thought back to when we would go out after it rained. I would sweep the puddles off the deck as fast as I could because Justin liked to lick them. I put towels around the pool to prevent the licking as well. We would often eat lunch on our CCA treated picnic table. The boys had difficulty with utensils and used their hands. Often the food would fall off their plates and onto the table. They ate it anyway.

Our pool had a CCA wood deck with an indoor/outdoor carpet on it. It was at least several years old when we bought the house. Justin loved to jump into the water and roll on the deck while Kyle was content to sit on the deck and watch us in the water. I began to wonder how much arsenic was in our pool water and on the carpet.

The boys helped me put twenty bags of mulch around the front of the house. Justin began chewing on it. This behavior carried over to the playground that we go to. He would eat the wood chips. I tried to discourage it, but he preferred to play in the chips and skip the playground. When I found out that CCA wood is frequently found in mulch and wood chips, I almost lost it.

The boys frequently have their hands in their mouths even at the age of six. This is how they explore their world. They mouth their toys and their clothes. Not at all unusual for a child with PDD or Down Syndrome. I feel that the exposure to this toxic wood has negatively affected the lives of my boys and our family. I wonder how it might affect my husband, myself, and our two daughters.

Our eldest was almost two when the boys were born. Our youngest was born when the boys were two. A year ago we found out she has problems too. She has Polyarticular Juvenile Rheumatoid Arthritis. It is not responding well to treatment. My research has connected metals to this condition. She and I will be tested soon. I have a MTHFR polymorphism which makes it more likely that I uptake metals. Several months ago I thought about my exposure to metals. The city garden popped into my head. Could it be that my eldest was saved from her siblings' fate because I had not yet been poisoned? Could my chemistry have been somehow changed by CCA wood and could this change cause problems with my pregnancy and my children? Is this why Justin was always so ill? The deck is right outside of his bedroom window. Is his air toxic because of the deck?

Arsenic is an anti-folant. Kyle's Down Syndrome and Justin's midline defects are both supported in the literature as results of maternal folate insufficiency. The possibility that I have three disabled children because of arsenic exposure repulses me. What bothers me even more is that special needs individuals are being poisoned. They are defective because that is who they are, right? Wrong. Their chemistry makes them more susceptible to injury and they must be considered when deciding whether CCA wood should be banned. I think it should be banned and removed from all public areas.

Please remember my family and how fragile human life is. It would be a tragedy for anyone else to suffer a preventable fate such as ours. Thankyou for listening.

Sincerely,

Gloria R. Tilley

58

Stevenson, Todd A.

From: Cmurphyjd@aol.com
Sent: Friday, March 28, 2003 4:39 PM
To: Stevenson, Todd A.
Cc: Laurettejanak@cs.com
Subject: ACC Ban Petition, Petition HP 01-3@

Office of the Secretary
Consumer Product Safety Commission

March 28, 2003

Re: ACCA Ban Petition, Petition HP 01-03@

I am a New York Attorney and the mother of a beautiful and courageous 5 year old boy, Colin, who has suffered greatly because we were not protected from, nor even informed about the toxic hazards posed by our neighborhood playgrounds, picnic tables, decks, and produce stands. All of which were constructed of CCA wood.

Colin was born a beautiful and healthy baby who said his first word at 5 months old, walked on his first birthday, and had over a 500 word vocabulary by age 2. He was very affectionate and loved playing ball, reading books and playing with cars. Oh, and going to the playground too! Because he was an only child, my husband and I decided to get him out to the playground as much as possible so that he could play with other little children. We passed up the plastic playground equipment for the more creative and natural wood play structures.

While I was careful to check the structure for rough edges that could cause splinters, I had no idea that a much more insidious and serious threat was present. Who could have fathomed that the government would allow children's playgrounds to be constructed from material containing compounds long known to be poisonous to humans? Play structures including CCA wood sand boxes and hence, CCA contaminated sand to be sifted by chubby little fingers. One should have rightfully expected that the CPSC would have subjected such play structures, starting with their composite building materials, to an appropriately high degree of scrutiny. The fact that they did not amounts to a grave error or omission for which my little boy, and many like him are paying dearly for, with his health, and his childhood.

By age two and a half, Colin began displaying behavioral and neurological symptoms, including head banging, head shaking, loss of eye contact, and complete loss of functional use of language. He could no longer even answer "yes" or "no" to our questions. Then came staring spells, repetitive behaviors, severe gastrointestinal problems, allergies and many more difficulties. We could not believe what was happening to our bright and loving little boy, and sought the advice of our pediatrician. With virtually no medical investigation, we were given a garbage can diagnoses and pointed toward early intervention. What we had was a very different kind of boy than who we had known and loved for over 2 years. We decided to take matters into our own hands.

In order to provide the medical research, specialized care and rehabilitation Colin required, I left the law firm where I was a partner, and had practiced for ten years. We eventually sold our home to fund the medical investigation and treatment which might bring our little boy, now so lost, back to us. After much searching, we had Colin tested for toxins and found very high levels of not only Arsenic, but copper and chromium as well. He was diagnosed with Neurotoxicity. We were shocked and sickened to learn where the poisons were coming from. Colin had always been a thumb sucker, but sucked his thumb even more after he succumbed to these toxins. Unwittingly, we took him to the CCA wood playgrounds even more after he became sick, in the hopes that being there with the other children would help bring him back.

Colin has been detoxing for over 2 years now and is still excreting arsenic. The CCA wood is hard to get away from, its everywhere. Just yesterday we walked into our local grocery store where Colin was immediately attracted to the tropical fruit produce display (picture to follow) which was adorned with dancing monkeys and a thatched Tikki hut roof. astoundingly, this display and produce bin was constructed of CCA wood! The store manager was not too concerned, but offered to throw it out after the promotion was over in one week! Clearly

3/31/03

The public has not been adequately informed of the dangers of CCA wood, particularly to children.

While Colin continues to improve with chelation treatment, I can assure you that we have all unnecessarily paid an exceedingly high price for something which was completely avoidable. At this time, all we ask is that you do everything possible to contain and rectify the damage caused by this ill-conceived product.

Sincerely,

Colleen M. Murphy Esq.
30c Autumn Creek Lane
East Amherst, N.Y.

59
Stevenson, Todd A.

From: Sherrie Maykut [sherrie.maykut@fedex.com]
Sent: Friday, March 28, 2003 6:24 PM
To: Stevenson, Todd A.
Subject: ACCA BAN PETITION, PETITION HP 01-3@

Date: March 28, 2003

To: Office of the Secretary
United States Consumer Product Safety Commission
Washington, DC 20207

RE: ACCA BAN PETITION
Arsenic in Pressure Treated Wood

My daughter has been diagnosed with heavy metal toxicity. She just turned four years old. Her hair analysis revealed her being in the 95th percentile of arsenic toxicity. She is starting chelation today and will be on chelation for arsenic for four months in the hopes of ridding her body of this poison. Ashley has been suffering with severe eczema for 2 years. Her entire body is peeling off especially the skin on her hands and feet. We have been to several doctors and have finally found the cause of Ashley's torment.

Ashley is one of those children who loves to play and plays hard. One of her favorite things to do was to play in a sandbox that was under the play structure at school. She loves to dig and the shade was a welcome retreat from the hot days in New Orleans. Ashley would come home from school every day extremely dirty and with tons of sand and pebbles in her shoes.

Over the past few months, when Ashley would go to school, the teachers would call me after she played outside because she would be scratching herself so badly and everything they tried did not help her. Her symptoms have worsened over the last several months and when she felt well enough to go to school, most days I was picking her up just a few hours later because of the intense itching and bleeding that resulted. I did not know until 2 weeks ago about the arsenic in pressure treated wood. Ashley has played on the school play yard for the past three years at least 4 hours per day five days per week. The play equipment is made of pressure treated wood and is approximately 19 years old.

After I showed the school your February press release two weeks ago, and shared the recent arsenic test results on Ashley, they closed the wood to the children. They were allowing them only to run on the yard and to swing. The school then called the EPA and was informed that they do not have to do anything at this time, except to make sure the kids wash their hands after playing on the yard. Ashley washed her hands every time she played on the yard and that provided her no protection from the poisoning. The school then re-opened the entire playground and therefore Ashley cannot attend at this time. The Doctor said her system is so compromised she cannot play on the playground if pressure treated wood is present.

My plea to you is that you will please BAN pressure treated wood NOW on school and public play yards and require its immediate removal. The public is waiting for a decision from you on the proper protocol to follow and in the mean time, children are being poisoned. My daughter is so precious to me and she has suffered so much you cannot believe. She sleeps maybe 2 hours per night and the rest of the time she is scratching and crying; it is horrible. PLEASE HELP US!

Sincerely,

Sherrie Maykut
Mother of a Precious Child, Ashley Marie Maykut

Contact Information:

Sherrie Maykut
1432 Field Ave
Metairie, LA 70001
(504)237-2880

Cc: President George Bush, Governor Mike Foster, Senator Mary Landrieu,
Senator John Hainkel, Environmental Protection Agency, Dr. Stephanie
Cave

C | E | I Competitive Enterprise Institute
1001 Connecticut Avenue, NW, Suite 1250
Washington, D.C. 20036
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Written Comments of Angela Logomasini
Director of Risk and Environmental Policy, Competitive Enterprise Institute
To the Consumer Product Safety Commission
Regarding the use of Chromated Copper Arsenate in Playground Equipment
March 28, 2003

The following comments serve two purposes. First they serve as written comments on the petition to ban playground equipment made with wood treated with preservative chromated copper arsenate (CCA). Second, they petition the Consumer Product Safety Commission (CPSC) to comply with federal data quality mandates.

On March 17, 2003, the CPSC heard public comments on this issue. The commission questioned many of the presenters on why the CPSC needed to act given that the EPA is banning CCA. They also inquired as to why the current registrants would consider canceling a product that they maintained was safe. Yet neither of these issues is relevant to the responsibilities of this commission and its decision, as detailed below.

Responsibilities to Taxpayers, Consumers, and Small Businesses

The commission's responsibility is to serve the taxpayers who support our federal institutions. It involves providing accurate and scientifically valid information and not impeding consumer choice unless it is absolutely necessary to prevent a clear and substantial risk. That means the commission's bias should be in favor of consumer freedom. It also demands that the commission avoid actions that can mislead the public; create unwarranted fears; and prompt activities that could impose needless burdens on taxpayers, consumers, and small businesses. In this regard, two actions by this commission are relevant.

First is the commission's action in regard to its study on the topic. The CPSC study appears to significantly overestimate risks and unless corrected, it will create needless burdens for the public, even without any further CPSC actions. In addition, the commission has not met its responsibilities to provide a transparent process and peer review as mandated by the data quality law.

Second, the commission is responsible for the impacts of its decision, whether it involves deferring, accepting, or denying the petition. Acceptance and even deferral of this decision will confuse the public about real risks. This commission was asked to rule on the safety of CCA. Despite the theoretical risks presented by the staff-produced study, there isn't any concrete evidence that CCA-treated wood has ever caused significant problems when used according to label directions. In addition, the theoretical risks suggested by the staff are highly overstated,

and do not justify proceeding with a rulemaking that denies consumer choice and misleads the public. The commission needs to send a clear message to the public by denying this petition.

In contrast to CPSC, EPA is not responding to claims about CCA safety; it is responding to a cancellation request. Some have suggested that the registrants desire to cancel their registration is a market response, as if CCA was not competitive and better options were already winning in the marketplace. This claim should not be used to justify deferral to EPA or to ignore serious problems with CPSC science because the claim is false. If this claim were true, there would be no need to deny other possible registrations of CCA.

In a free society, when superior products are introduced, others may become obsolete via consumer choice; there is no need for government bans. Yet when Home Depot attempted to market the alternative products, they could not sell them and had to restock with CCA-treated wood. The alternatives have failed in the marketplace; they are unable to capture a significant portion as long as CCA remains an option. Clearly, a vigorous market for CCA remains; it is hardly obsolete. Hence, the EPA ban is not the result of a market response — it is the exact opposite. It denies market demand by denying consumers the right to buy a product that they clearly want, and it denies potential registrants the right to sell that product.

Responsibility to Comply with Data Quality Law

Even if the CPSC defers or denies this decision, its legal and moral obligations to the public do not end there. Under the Data Quality Act, the commission is required to show that any information it disseminates meets standards maximizing “quality, objectivity, utility, and integrity.”¹ These mandates were put into place because policymakers recognized that by simply distributing information, government agencies can have profound impacts on public and private sector decisions. The CPSC’s recent study on CCA is highly likely to produce such impacts, and accordingly, the commission must ensure that it complies with the data quality law. The law also demands that government agencies distribute only the best available, peer-reviewed science in a transparent manner. At this point, it appears that the commission has not met these standards and hence it needs to take steps to comply with the law by improving its science and making its data and peer review more transparent.

CPSC is Responsible to Meeting the Highest Scientific Standards: Distribution of “Influential Information.”

OMB requires that information that qualifies as “influential” meet the highest data quality standards. OMB defines “influential information” as that which an agency “can reasonably determine that dissemination of the information will have or does have substantial impact on important public policy or private sector decisions.”² CPSC’s guidelines concur, stating: “Most of the information disseminated by CPSC does not fall under OMB’s definition of ‘influential.’”

¹ 44 U.S.C. 3502.

² Office of Management and Budget, Executive Office of the President, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,” 67 *Federal Register*, no. 2 (January 1, 2002): 369–378. (Corrected version published in 67 *Federal Register*, no. 36 (February 22, 2002): 8451-8460, see: <http://www.whitehouse.gov/omb/fedreg/reproducible.html>.)

However, CPSC's staff and contractor technical reports related to engineering, health science, or hazard analysis issues potentially have impacts on important public policies and private sector decisions, such as changes in voluntary standards."³ It would stand to reason that this risk assessment on pressure-treated wood clearly qualifies as "influential" because it involves both health science and a hazard analysis, and it has potentially significant impacts on public policies and private sector decisions.

In particular, the CPSC's study may prove particularly influential in ongoing litigation regarding the safety of CCA-treated wood. If CPSC's study overestimates risks, it may produce a direct and substantial harm on businesses involved in litigation. If it underestimates risks, it places plaintiffs at a disadvantage.

The study also poses other potentially perilous impacts on private-sector decisions. In particular, it may encourage consumers, day care centers, and cities to tear down playgrounds, decks and other structures based on specious claims. The costs to consumers and small business could prove quite substantial. This concern is warranted by past experience with this issue. Similar state-level studies in Florida on CCA-treated structures sparked a statewide scare that led people to begin tearing out such equipment.⁴ A subsequent study by a group of Florida physicians eventually concluded that CCA treated wood did not in fact pose a significant risk⁵ and the state government eventually rejected legislation banning CCA. However, the costs of the initial scare remain, and the information distributed will likely continue to mislead and confuse the public.

If CPSC's study does have this effect, perhaps wealthy communities will be able to rebuild these structures, but what of the poorer communities? Raising the costs of safe playgrounds may well mean that we will have fewer of them (particularly if localities are prompted to remove playgrounds). Will kids in poor, inner-city neighborhoods be safer without safe play areas? CPSC must consider that the absence of affordable safe playgrounds will create real risks that certainly outweigh theoretical risks of CCA-treated wood.

CPSC's study (in addition to its failure to deny this petition) is likely to have a substantial effect on future regulatory decisions in other agencies. In February 2002, EPA stated its intent to ban all residential uses of CCA-treated wood. Even though the agency announced on March 17 at the CPSC hearings that it would soon issue its final decision in the *Federal Register* on this topic, its deliberations on CCA are not over. There is a high probability that the CPSC study will impact future EPA decisions regarding non-residential uses as well as ongoing consideration as to whether to list CCA as a hazardous waste. CPSC's study is already having impacts at the federal level. Senator Nelson of Florida cited the study in a press release in which he announced

³ Consumer Product Safety Commission, "U.S. Consumer Product Safety Commission Information Quality Guidelines," <http://www.cpsc.gov/LIBRARY/infoguidelines.html>.

⁴ For example, see Stephanie Erickson, "Florida Study Finds Pressure-Treated Wood Can Lead to Arsenic Poisoning," November 9, 2001; and Julie Hauserman, "Alachua County Closes Playgrounds with Arsenic," *St. Petersburg Times*, September 27, 2001.

⁵ Florida Physicians' Arsenic Workgroup, June 14, 2002, available online at: <http://www.preservedwood.com/safety/0730cca-docs1.html>;

his decision to “renew” his efforts to ban CCA-treated wood. He is introducing federal legislation to that effect.⁶

Numerous individuals and businesses stand to loose from such additional regulations. Consider what the costs would be if CPSC actions build pressure for EPA to list CCA-treated wood as a hazardous waste.⁷ Cost of disposal will rise for everyone from consumers to cities to small businesses. CPSC should not underestimate this possibility and the associated welfare losses as prices for disposal rise. For example, families may keep decks longer — even when the decks begin to deteriorate and become safety hazards — if both the costs of disposing the wood and building a new deck grow too high.

CPSC needs to consider the full implications of its actions. That includes consideration of the “risk-risk” implications of every action it takes. Everything in life carries risks and if we demand perfect safety, we can end up trading off small risks for big ones.

CPSC Not In Compliance with Standards for the release of Influential Information

Under OMB guidelines, agencies must meet certain standards for “influential information.” In particular, OMB states: “If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.”⁸ CPSC data quality guidelines agree, stating that such influential information from risk assessments and other scientific reports “should be highly transparent and capable of being reproduced by qualified persons. CPSC strives for a high degree of transparency about information and methods in order to improve understanding and to facilitate reproducibility by qualified third parties.”⁹

Yet the CPSC has failed to provide such transparency because it has failed to release the underlying data in its study as well as the peer review. At the hearing, the commission indicated that it might be willing to release at least the peer review, but it remains unavailable. CEI contacted the CPSC’s legal counsel who informed us that the commission has not decided whether it would release this information and the counsel indicated that the commission could wait until after the public comment. However, the Data Quality Act does not appear to give agencies that option. The law is designed to provide openness so that the public can have access to information before decisions are made or impacts result. Holding up data until after a decision is made or even until the end of a comment period seems to contradict legislative intent.¹⁰

⁶ “Senator Renews Effort to Ban Arsenic-treated Wood,” Press Release, February 10, 2003, <http://billnelson.senate.gov/billsviews/issuesmain.cfm#>.

⁷ Mary Ellen Klas, “Treated Wood Emerges as Environmental Hazard (arsenic pollution in Florida),” *Florida Trend*, October 1, 2001, Volume 44; Issue 6.

⁸ Office of Management and Budget, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.”

⁹ Consumer Product Safety Commission, “U.S. Consumer Product Safety Commission Information Quality Guidelines.”

¹⁰ Telephone communication between Angela Logomasini (CEI) and William DuRoss (Legal Counsel, Consumer Product Safety Commission), March 26, 2003.

OMB and CPSC data quality guidelines also address process for peer review of influential studies. OMB states:

'If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity.' However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance. If agency-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB-OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, 'that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.'"¹¹

CPSC's peer review does not appear to comply with these standards. CPSC's briefing materials provide scant information on the peer reviewers backgrounds, nor is there evidence of disclosure of the reviewers prior policy positions on the issues, nor is there evidence of disclosure of funding sources, and finally the peer review was not conducted in an open and rigorous manner. In fact, the peer review was conducted in private, and little information is on the substance of the peer review.

OMB standards do allow some data to remain protected if it qualifies for an exemption under the Freedom of Information Act, such as a national security or confidential business information exemptions. Yet it is unclear that any such exemption exists in this case. If there is an exemption, the CPSC has not provided any proof or explanation to that effect.

Moreover, if an exemption exists, the agency must comply with additional data quality mandates. In particular, OMB notes that "in situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken." Hence, the agency is required to conduct and document such robustness checks if it claims that it cannot release the data and peer review. CEI found no mention of "robustness" studies and additional external, independent reviews in the CPSC briefing materials. If the commission can demonstrate that it has a FOIA exemption, it needs to perform these studies and provide documentation to the public.

Best Available, Peer Reviewed Science & the CPSC Study

Finally, the data quality law demands that agencies employ the standard set in the Safe Drinking Water Act amendments of 1996, which demands the use of "best available, peer reviewed science." Specifically, OMB states: "With regard to analysis of risks to human health,

¹¹ Office of Management and Budget, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies."

safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g-1(b)(3)(A) & (B)).”

In its data quality guidelines, the CPSC stated that it would comply with this portion for quantitative risks assessments by applying “the best available science and supporting studies conducted in accordance with sound and objective scientific practices.”¹² There is good reason to believe that the commission has not met its standard.

Employing the best science and using the best methods for applying that research would reasonably include appropriate application of studies. Studies used for risk assessments should apply to the issue at hand, and CPSC staff should be expected to consider limitations and recommendations made in those studies regarding proper use of the data. Among the peer-reviewed studies applied by the commission are the research reports published by the National Research Council (NRC).¹³ The NRC studies do qualify as peer reviewed science. However, the CPSC inappropriately applied the NRC findings, which likely results in serious overestimation of risk for pressure-treated wood.

A key problem with CPSC’s application of the NRC reports is its assumption that short-term exposure to arsenic from wood early in life is equivalent to the long-term exposures studied by the NRC. The NRC data relied on data from Taiwanese populations exposed to relatively high levels of arsenic for decades in their drinking water. The relevance of these studies to short-term exposures to trace levels of arsenic early in life here in the United States is highly questionable.¹⁴ The two types of exposures do not likely pose the same risks. The NRC notes that an important risk is caused by the duration of exposure and the fact that exposure continued at old age. Exposure during old age may be a key factor to arsenic exposure and cancer risk.

In addition, the NRC cautioned EPA in its report that there were serious problems with the data that produced great uncertainties,¹⁵ which it noted that EPA should address before using the data in an actual risk assessment. The NRC ran models on this data in its 1999 report, but warned: “this analysis should not be interpreted as a formal risk assessment for arsenic in drinking water or as a recommendation on how the risk assessment should be performed. Rather it is presented only to illustrate points raised earlier in the chapter.”¹⁶ In the interest of reviewing all the relevant scientific studies on the topic, the CPSC staff should have also considered the EPA’s Science Advisory Board’s review of the EPA risk assessment and the 1999 NRC report. It reiterated the importance of not using the NRC report as a risk assessment and how uncertainties in the data warranted caution because they could lead EPA to significantly overstate risks. The SAB expressed concern that EPA had in fact done just that, noting, “The

¹² Consumer Product Safety Commission, “U.S. Consumer Product Safety Commission Information Quality Guidelines.”

¹³ National Research Council, *Arsenic in Drinking Water* (Washington, D.C.: National Academy Press, 1999); and National Research Council, *Arsenic in Drinking Water 2001 Update* (Washington, D.C.: National Academy Press 2001).

¹⁴ For more details, see the written March 28 comments to the CPSC submitted by Dr. Kenneth Brown, who served on the NRC panel in 1999.

¹⁵ National Research Council, *Arsenic in Drinking Water*, p. 294.

¹⁶ National Research Council, *Arsenic in Drinking Water*, p. 264.

agency may have taken the modeling activity of the NRC as prescriptive despite NRC comments about possible limitations.”¹⁷

“Accordance with sound and objective scientific practices” should demand that the CPSC address data limitations noted by the NRC and the SAB. In addition, it should require that the CPSC apply NRC recommendations on the proper use of the data and its findings. Yet, the CPSC seems to have done the opposite, assuming all the worst possible effects based on the NRC report without regard to NRC warning against such application. In fact, CPSC decided to choose a potency factor for arsenic that it notes is 6 to 56 times more potent than an already conservative standard that EPA used to set its drinking water standard. Why CPSC picked such a high potency factor deserves further evaluation or at least a much more convincing explanation. CPSC seems to be operating with the most conservative assumptions about risk even when the NRC noted that the data potentially had already greatly overestimated risks.

Conclusion

CPSC has both moral and legal responsibilities to the public. In addition to ensuring that it has complied with the data quality law, CPSC needs to consider the considerable impacts that its decision and study could have on consumers, small businesses, and taxpayers. Accordingly, these comments petition the agency to produce science that is more grounded in reality and that meet appropriate scientific standards. After all, in our free society, the commission’s bias should be to favor consumer choice, not spread unfounded fears and limit access to safe and beneficial products.

¹⁷ EPA Science Advisory Board, Arsenic Proposed Drinking Water Regulation: A Science Advisory Board Review of Certain Elements of the Proposal, EPA-SAB-DWC-01-001, December 2000, p. 26, available at: <http://www.epa.gov/sab/pdf/dwc0101.pdf>.

Stevenson, Todd A.

From: Angela Logomasini [alogomasini@cei.org]

Sent: Friday, March 28, 2003 6:23 PM

To: Stevenson, Todd A.

Subject: CCA Petition and Data Quality Petition

Todd,

Attached are CEI's written comments on the petition to ban playground equipment made with chromated copper arsenate. They are substantially different than my presentation comments.

I am also submitting them as a petition to the CPSC to comply with the Data Quality Act.

Thanks.

Angela Logomasini
Director of Risk and Environmental Policy
Competitive Enterprise Institute

3/31/03

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**Comments to the Consumer Products Safety Commission
On Pressure-Treated Wood**

Delivered March 18, 2003 by Jody Clarke
9616 Woodedge Drive
Burke, VA 22015
703.250.9616

My name is Jody Clarke. I am vice president of communications at the Competitive Enterprise Institute in Washington, D.C., but today I am here speaking to you as a mother and a concerned citizen.

I'm not only concerned that the federal government is considering a ban on a product that has been safely used for more than six decades; I think it's absolutely outrageous. When people hear the word "arsenic," it conjures up all kinds of images, and I think some groups are trying to use that to their advantage, even though exposure to it in pressure-treated wood, or water for that matter, is extremely small. You, and the Environmental Working Group, are scaring people—and it's completely unnecessary.

As a mother, I am not worried about my son being exposed to the pressure-treated wood that our deck at home is made of, or the playground equipment in our neighborhood. If anything, I worry about my son falling and hurting himself, not about any "phantom" risks from a wood preservative.

Science writer Steve Milloy recently wrote a column about this issue, and he pointed out that quote "there is not the slightest evidence that any child has ever developed cancer from CCA-treated wood." He also pointed out that studies don't show increased health risks for the workers at wood treatment plants and carpenters. If there's a problem, shouldn't we be seeing an increase of cancer in those groups of people?

The increase in the risk of cancer that's been calculated by the Consumer Products Safety Commission—your group—is incredibly small. So small that I find it unbelievable that any action would be taken to ban the product.

I'm sure you're probably aware that studies have been done that show for young smokers who kick the habit by early adulthood, their risk of cancer returns to normal within a few years.¹ It seems to me that would be the same case with children's exposure to CCA-treated wood, and the exposure to that is far less than with smoking.

Groups that support a ban on pressure-treated wood say children are the victims. The real victims are going to be the families, or anyone, who will end up paying 20 to 30 percent more for decks made out of an alternative—and inferior—product, and the wood processors who will be affected by any ban. You could run some people out of business and I think it's a shame.

Working at a public policy group, I probably do know more than the average person about this issue. But I am not a public policy analyst or a scientist; I am here simply as a citizen who is very concerned about what you might do regarding this issue. I'd like to end with that old adage that is so true: If it's not broken, why fix it?

Thank you for listening.

¹ As Dr. Kenneth Brown points out in his comments to CPSC, a key factor in arsenic cancer risk is the long-term exposure. You can't suggest that short-term exposure would produce the same result. It's similar to the findings on tobacco smoke. For example, see: International Agency for Research on Cancer, 1986, *IARC monographs on the evaluation of the carcinogenic risk of chemicals to man. V. 38, Tobacco Smoking*. Lyon, France: IARC Sci. Pub. No. 88, available online at: <http://monographs.iarc.fr/htdocs/monographs/vol38/tobaccosmoke.html>.

Stevenson, Todd A.

From: Jody Clarke [jclarke@cei.org]
Sent: Monday, March 31, 2003 9:24 AM
To: Stevenson, Todd A.
Subject: Footnote to CCA Comments, Requested by Mary Gall

Importance: High



CCA Hearing
Comments.doc

Hello,

During the hearing on CCA-treated wood, Ms. Gall requested more information about one item in my comments. I've added a footnote with that info.

Regards,

Jody Clarke

<<CCA Hearing Comments.doc>>

Small
Business
SURVIVAL
Committee

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2003 MAR 31 10 40

March 28, 2003

Harold D. Stratton, Jr.
Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway, Room 502
Bethesda, MD 20207

Re: Petition HP 01-3

Dear Chairman Stratton,

The Small Business Survival Committee ("SBSC") appreciates the opportunity to submit comments to the Consumer Product Safety Commission ("CPSC) regarding the proposed ban on the use of Chromated Copper Arsenate (CCA)-treated wood for playground equipment. SBSC is a nonpartisan, nonprofit small business advocacy organization with 70,000 members across the country. Small businesses (those with fewer than 20 employees) make up over 90% of all businesses in the U.S. Small business is the engine of economic growth in the United States and each additional regulatory burden imposed upon it drains more and more power from that engine. The Office of Advocacy of the Small Business Administration reports that companies with fewer than 20 employees already spend 60% more per employee than companies with more than 500 employees to comply with federal regulations.¹

The proposed CCA ban threatens the livelihood of a significant number of small businesses around the country that will be burdened with the largest share of costs and losses at a time when a slumping economy has already taken its toll on millions of such businesses and their employees. Most wood treaters are small, family-owned businesses that are incapable of making the \$40,000 to \$200,000 investments to switch to an unproven alternative wood treatment that may, or may not ever achieve consumer acceptance. For that reason, SBSC urges the Commission to deny or at least delay any action until a full impact study, including a thorough review of both the science and the economic impact, can be assessed.

CCA has been on the market since 1938 and represents a four billion dollar industry. It is the predominant wood preservative used for a wide variety of industrial, commercial, consumer and agricultural purposes. CCA is economical and highly effective. There is no alternative wood preservative with a comparable track record of safety and efficacy available in the market today. For example, CCA-treated wood has demonstrated an ability to resist

¹ W. Mark Crain & Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms: A Report For The Office of Advocacy, U. S. Small Business Administration* (2001) available at <http://www.sba.gov/advo/research/rs207tot.pdf>.

deterioration due to water and insects for 30 years or longer. The suggested replacement, Alkaline Copper Quaternary (ACQ) has a *claimed* durability of 10 to 15 years. As a result, under the best circumstances, the end users of ACQ will pay two to three times as much for their lumber over 30 years than would CCA users. It is therefore uncertain that consumers will ever accept this alternative.

Such a risky economic step might be justified if we could be sure of the health benefits. But we cannot be sure. Unlike CCA, ACQ has not undergone EPA scrutiny, including a risk assessment. Therefore, ecological and toxicological dangers have yet to be fully examined for ACQ.

We may, in fact, be substituting the unknown health risks of ACQ for the known and manageable risks of CCA. Arsenic is a natural substance, which is present in many foods and water. Regulatory agencies have studied the potential hazards associated with the chemical components of CCA. Analyses by the EPA, CPSC, and most recently the Florida Physicians Arsenic Workgroup (commissioned by the Florida Department of Public Health), examined the issue and concluded that CCA-treated wood presented no risk to public health, even in the case of playground equipment where children might be exposed through routine contact. In their February 12, 2002 press release the EPA acknowledged:

“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. While available data are very limited, some studies suggest that applying certain penetrating coatings (e.g., oil-based semi-transparent stains) on a regular basis (one re-application per year or every other year depending upon wear and weathering) may reduce the migration of wood preservative chemicals from CCA-treated wood.”

It is very troublesome to the SBSC that the CPSC would consider banning a product on the grounds that it poses a threat to the public when there is no scientific evidence to support such a conclusion and where the supposed risks cited by the CPSC are not significant enough to consider removing existing CCA-treated playground equipment. SBSC supports regulations based on science not on unsubstantiated or questionable assumptions. Regulatory agencies have a duty to policymaking to ensure that the regulatory process is process and content driven and not a pawn of special interests.

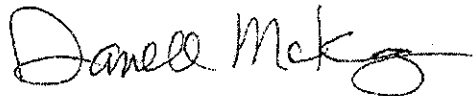
The market implications of a CCA ban are devastating to small businesses and would place government, not the educated consumer, in the role of determining supply and demand. CCA-treated wood products have been on the market for nearly seventy years. Market forces have determined that these products remain in circulation. By arbitrarily removing CCA the government is essentially pre-empting the market and as a result consumers will be denied a choice and forced to purchase more costly alternatives to CCA-treated wood products.

Choice and market forces aside, this situation also raises questions of competition. There are approximately 350 treated wood companies in the United States, each would have to spend \$40,000 - \$200,000 per factory to retool in order to process the alternative products. The wood treatment industry is comprised mostly of small businesses, most of which would not survive the additional costs of retooling and as a result would be squeezed out of the market thereby leaving a vacuum of competition. It is also important to note that many of these plants are located in rural areas where employment opportunities are often fewer and that the negative economic impact of a ban is not restricted to the wood treatment industry but also to construction companies and others.

In sum, although more narrowly focused on playground equipment, CPSC's actions are likely to be studied and impact the decision-making process of other agencies. Given the potential reach and influence on future regulations that will adversely affect small business, SBSC is petitioning CPSC to deny or at least delay such a ban until the Commission is able to fully understand the impacts to consumers, business and the environment of the proposed action.

The SBSC thanks the Commission for its time and consideration of the issues we have outlined above. Small business are a lifeline to millions of Americans and we hope that the Commission will keep their interests at the forefront of your decision making process as it relates to the CCA ban.

Respectfully submitted,



Darrell McKigney
President
Small Business Survival Committee
1920 L St NW, Suite 200
Washington, DC 20036
202-785-0238