



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

MINUTES OF COMMISSION MEETING
November 4, 2003
4330 East West Highway
Bethesda, Maryland

Chairman Hal Stratton convened the November 4, 2003, 10:00 a.m., meeting of the U. S. Consumer Product Safety Commission in open session. Commissioner Mary Sheila Gall and Commissioner Thomas H. Moore were present.

AGENDA ITEM: Petition (HP 01-3) Requesting a Ban on Use of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment

The Commission received supplemental information responding to questions raised by Chairman Stratton from the staff, Patricia M. Bittner, M.S., Project Manager for CCA-Treated Wood in Playground Equipment for the Directorate for Health Sciences, and Lowell Martin, Office of General Counsel, on the staff's recommendation to deny petition HP 01-3, requesting a ban on use of CCA-treated wood in playground equipment.

On motion of Commissioner Gall and seconded by Commissioner Moore, the Commission voted unanimously (3-0) to deny the petition to ban the use of CCA-treated wood in playground equipment (Petition No. HP-01-3) 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.

Chairman Stratton, Commissioner Gall and Commissioner Moore each filed written statements (attached).

There being no further business on the agenda, Chairman Stratton adjourned the meeting at 10:20 a.m.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", is written over a large, stylized checkmark or flourish.

Todd A. Stevenson
Secretary to the Commission



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

STATEMENT OF THE HONORABLE THOMAS H. MOORE ON THE PETITION TO
BAN USE OF CHROMATED COPPER ARSENATE (CCA)-TREATED WOOD IN
PLAYGROUND EQUIPMENT (PETITION NO. HP 01-3)

November 4, 2003

On May 22, 2001, the Environmental Working Group (EWG) and the Healthy Building Network (HBN) submitted a request that the Commission begin a rulemaking to enact a ban on use of chromated copper arsenate (CCA)-treated wood in playground equipment. On June 20, 2001, the request was docketed as petition HP 01-3 under the Federal Hazardous Substances Act (FHSA). Under its rules governing petition processing, in considering whether to grant, deny, or defer a petition the Commission is to address, among other things; 1) whether the product involved presents an unreasonable risk of injury, 2) whether a rule is reasonably necessary to eliminate or reduce the risk of injury, and 3) whether failure of the Commission to initiate the rulemaking proceeding requested would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product.

CPSC staff performed a quantitative risk assessment for a person using CCA-treated wood playground equipment and estimated an increased lifetime risk of bladder or lung cancer of approximately 2 to 100 per million due to exposure to arsenic for a person who plays on CCA-treated wood playground structures during early childhood. While the staff risk assessment was based on exposure to arsenic from CCA-treated wood playsets, staff acknowledged that risks related to exposures from other wood sources and the soil surrounding these structures would be in addition to those from CCA-treated wood playsets. Therefore, the overall risk to children from playing on or near CCA-treated wood structures is likely to be higher than that estimated in the staff analysis.

Notwithstanding, it should be clearly understood that, over a lifetime, arsenic exposure from food, especially certain foods such as rice, other grains, and meats; drinking water; and other sources could actually be much larger than exposure from playground equipment during childhood. However, it should also be clearly understood that the estimated risk from exposure to arsenic from CCA-treated playground equipment is in addition to the risk of cancer from other sources of arsenic. We must understand that there is actually a piling on effect taking place with these risks.

In February of 2003, the United States Environmental Protection Agency (EPA) announced that the CCA pesticide registrants had requested that EPA 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. In April of 2003, EPA finalized the cancellations and 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. 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 the market by June 2004. In fact, most major manufacturers of wood playground equipment have informed CPSC staff that they have already stopped using CCA-treated wood to make their products. In essence, EPA's action, independent of anything the Commission now does, will effectively cause the disappearance of the CCA-treated wood products from the consumer market and eliminate the availability to consumers of new playground equipment constructed with CCA-treated wood. Therefore, I am comfortable in concluding that EPA's action will effectively address the narrow issue which is sought by the docketed petition.

However, EPA's cancellation of the use of CCA for treating wood for residential uses does not address the question of what do we recommend for existing playsets constructed with CCA-treated wood. This is the hidden question that arises out of staff's assessment that there is an increased risk of lung and bladder cancer above background incidence to children using CCA-treated wood playground equipment. Does this question lead the Commission down the road to a determination of whether such structures are a hazardous substance as defined by the FHSA or a determination of whether these structures contain a defect that create a substantial risk of injury to children? Clearly, we cannot ignore existing playsets constructed with CCA-treated wood once we accept staff's assessment that there is an increased cancer risk associated with these structures.

CPSC staff is currently working with EPA's Office of Pesticide Programs (OPP) and Office of Research and Development (ORD) to study possible mitigation measures (treating the wood with stains or sealants) to decrease the amount of dislodgeable arsenic on the surface of CCA-treated wood. Currently, there are only limited data on the effectiveness of coatings to reduce the potential for exposure to arsenic from existing CCA-treated wood structures. Preliminary findings provide a basis for some optimism about the effectiveness of some stains and sealants. CPSC's staff also acknowledges that hand washing is a very effective means to reduce children's risk to arsenic exposure from CCA-treated wood. These measures may be more cost-effective and workable than the wholesale removal of all CCA-treated playground equipment, an action that could have its own consequences in terms of safe disposal of such a large amount of CCA-impregnated wood at one time.

As I indicated, I am comfortable in concluding that EPA's action will effectively address the narrow issue of enacting a ban of the use of CCA-treated wood in playground equipment - the action sought by the docketed petition. Therefore, I accept staff's recommendation and vote to deny the petition. However, I must stress that I am not totally comfortable with respect to the Commission's lack of a recommendation on existing CCA-treated wood playsets. Consistent with this, I direct the staff to continue efforts to identify stains and sealants and any other means to reduce exposure to arsenic from existing CCA-treated wood structures and I also direct staff to devise strategies to better educate the public about the cancer risk associated with these structures and steps to take to minimize the risk. My decisions on this issue are in consideration of the relative priority of the risk of injury associated with playground equipment made with CCA-treated wood and Commission resources available for rulemaking and other activities with respect to that risk. Given a consideration of all circumstances, I believe that staff resources

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would be best applied working with EPA on mitigation efforts and a campaign to better inform the public on cancer risk associated with exposure to CCA-treated wood products.



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**STATEMENT OF THE
HONORABLE MARY SHEILA GALL
ON DENIAL OF PETITION TO BAN CHROMATED COPPER
ARSENATE (CCA)-TREATED WOOD IN PLAYGROUND EQUIPMENT**

November 4, 2003

Today I voted to deny the petition requesting that the Commission begin a rulemaking to ban the use of chromated copper arsenate (CCA)-treated wood in playground equipment (Petition No. HP 01-3). Rulemaking by this Commission is not necessary, and would be redundant. The Environmental Protection Agency's (EPA's) cancellation of the registration of CCA as a pesticide will have the effect of prospectively banning the use of CCA-treated wood in all residential uses. I urge the staff to continue its work in evaluating the risk posed by CCA wood and in attempting to identify stains and sealants that will reduce exposure to arsenic from existing CCA-treated wood structures.

Rulemaking Unnecessary

The petition asks the Commission to ban the prospective use of CCA wood by rulemaking under the Federal Hazardous Substances Act (FHSA). The Commission regulates CCA-treated wood as a hazardous substance under the FHSA. EPA regulates CCA itself as a pesticide under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). In February 2002, EPA announced that the registrants of CCA pesticides under FIFRA had requested that the agency cancel essentially all uses of CCA for treating wood for residential uses, effective December 31, 2003. This would include use for treating wood to be used in playground equipment. On March 17, 2003, EPA issued a final cancellation order that makes it illegal to use CCA to treat wood intended for most residential uses after December 30, 2003. Declaring such wood to be a banned hazardous substance under the FHSA would be redundant.

CPSC staff evaluated the impact of EPA's action through retail surveillance and has concluded that as a result of the cancellation of the registration of CCA as

a pesticide, essentially all CCA-treated wood suitable for consumer uses will be off the market by June 2004. This includes the use of CCA-treated wood in playground equipment. CPSC staff also found that most major manufacturers of playground sets have already ceased using CCA-treated wood. EPA's CCA pesticide cancellation has made rulemaking unnecessary to eliminate or reduce the risk of injury. Indeed, rulemaking at this stage is not only unnecessary but also redundant, since CCA-treated wood would be off the market before the Commission could promulgate a final rule on this material.

Remediation

Petitioners not only urged the Commission to promulgate a rule banning CCA-treated wood, but also to recall existing playground equipment made from CCA-treated wood. To initiate a recall, the Commission would first have to determine that CCA-treated wood playground equipment structures are "hazardous substances," as defined by FHSA. Specifically, the products would have to be found toxic and to have the ability to cause substantial personal injury or substantial illness during, or as a proximate result of, any customary or reasonably foreseeable ingestion by children. A toxic, hazardous substance present in an article intended for use by children would cause the toy to be banned automatically under section 2(q) of the FHSA if the child could gain access to that substance. After a determination that the structures are banned hazardous substances, the Commission would need to show, after a hearing, that a recall would be in the public interest.

The Commission staff has performed what is the most comprehensive study to date regarding the toxicity of CCA-treated wood. In performing the extensive study, the CPSC staff had to make assumptions regarding the bioavailability of dislodgeable arsenic, the unloading and loading of residue from a child's hands, and the arsenic cancer slope factor. The results of the study suggest that a young child who plays on CCA-treated wood playground structures in early childhood has an increased risk of 2 to 100 per million of developing lung or bladder cancer during his or her lifetime. The risk is an increased risk above the risk of cancer due to other factors during one's lifetime.

While this risk is consistent with a finding that CCA-treated wood is toxic within the meaning of the FHSA, the Commission could not, as petitioners request, immediately recall playground equipment made of CCA-treated wood. Before the Commission could ban the use of CCA-treated wood in playground equipment, the assumptions made in the Commission's staff study would need to be verified.

An immediate recall of CCA-treated wood playground structures is not supported by the existing record. However, the staff's need to continue its mitigation studies to determine the effect of sealants in preventing exposure to residues of CCA on treated wood.

Conclusion

An increased risk of cancer presented by equipment our children use is clearly a serious and emotional issue. Nonetheless, denial of the petition is the proper course of action since a rule is redundant and not necessary to remove CCA-treated wood from the market place for residential purposes. While a recall of CCA-treated playground structures is not supported by the existing record, I urge the staff to focus on mitigation measures for CCA-treated wood structures.

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE
February 7, 2003

CPSC Consumer Hotline: (800) 638-2772
CPSC Media Contact: Ken Giles, (301) 504-7052

A Statement from Chairman Hal Stratton

Public Briefing on CCA Pressure-Treated Wood Playground Equipment Scheduled

I am announcing that the U.S. Consumer Product Safety Commission (CPSC) today scheduled a Commission Briefing for March 12, 2003 to consider the petition to ban the use of chromated copper arsenate (CCA) pressure-treated wood in playground equipment. The staff will brief the Commissioners on the materials submitted in its briefing package and the Commissioners will hear from interested stakeholders.

The CPSC staff has recommended that the Commissioners defer action on the petition, pending finalization of the agreement between CCA manufacturers and the Environmental Protection Agency (EPA) to phase out CCA treatment of wood for most consumer uses by the end of 2003. EPA expects to finalize this agreement in the near future and staff plans to assess its impact. EPA is conducting a study of the risks, which may be associated with CCA-treated wood. EPA's report is expected later this year. In addition, the EPA and CPSC staffs plan to conduct a study to determine effective measures of reducing the amount of arsenic released from CCA treated wood. In the report submitted to the Commissioners, CPSC scientists find that some 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. This risk is in addition to the risk of getting cancer due to other factors over one's lifetime. Not every exposed individual will get cancer at sometime during his/her lifetime.

There are many risk factors that contribute to a person's risk for developing cancer over their lifetime such as environment, genetics, diet, and behaviors such as smoking. The staff maintains that an individual child's risk from arsenic in CCA-treated playground equipment will vary depending on many factors. Those include the amount of arsenic released from the CCA-treated wood, the amount of arsenic picked up on the hands, the number of days and years the child plays on the wood, and the amount of arsenic transferred to the mouth by hand-to-mouth activity. The staff considered these types of exposures in calculating the increased lifetime risk of developing lung or bladder cancer.

CPSC staff states this increased risk to children is primarily due to exposure to arsenic residue on children's hands followed by hand-to-mouth contact. The report says transfer of the arsenic from the hand to the mouth can occur during and after playing on pressure-treated wood playground equipment.

To minimize the risk of exposure to arsenic from CCA-treated playground equipment, the staff recommends that parents and caregivers thoroughly wash children's hands with soap and water immediately after playing on CCA pressure-treated wood playground equipment. In addition, the staff recommends that children not eat while on CCA-treated wood playground equipment.

Arsenic occurs naturally in the air, soil, water, and in some foods. While exposure to arsenic from background sources could be much higher than the exposure from playgrounds for some children, exposure to arsenic from CCA-treated playgrounds could be a significant source of arsenic for other children on those days that include a playground visit.

Several playground companies have already begun to use wood treated with arsenic-free preservatives. In

addition, playground structures can be made of other materials that don't contain arsenic, such as naturally rot-resistant wood (redwood and cedar), metal, plastic, and composite materials. All of these materials could be used for new construction.

Consumers may obtain a fact sheet on the findings of the Commission staff at the CPSC web site or by calling the CPSC hotline at 800-638-CPSC (2772).

Send the link for this page to a friend! The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$700 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children. The CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed significantly to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at www.cpsc.gov/talk.html. To join a CPSC email subscription list, please go to www.cpsc.gov/cpsclist.asp. Consumers can obtain this release and recall information at CPSC's Web site at www.cpsc.gov.