

**Introduced by Senator Romero**

February 13, 2003

---

---

An act to add Article 9.45 (commencing with Section 25207.14) to Chapter 6.5 of Division 20 of, and to repeal Section 25143.1.5 of, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as introduced, Romero. Wood waste: preservatives.

(1) Existing law regulates the control of hazardous waste, but exempts from the hazardous waste control laws, wood waste treated with a preservative that is exempt from regulation under the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA), if the wood waste is disposed of in a specified portion of a solid waste landfill and meets other specified requirements. A violation of the state's hazardous waste control laws is a crime.

This bill would repeal the exemption for wood waste and instead would prohibit any person, on and after January 1, 2005, from using chromated copper arsenate (CCA), pentachlorophenol (penta) or creosote to treat wood products or manufacturing a wood product treated with those substaces. The bill would provide, on and after January 1, 2005, that wood waste containing any measurable level of CCA, penta, or creosote is a hazardous waste for purposes of the hazardous waste control laws. The bill would require any person disposing of that wood waste to dispose of that waste pursuant to the hazardous waste control laws, thereby imposing a state-mandated local program by creating a new crime.

The bill would authorize a person to dispose of wood waste in accordance with the regulations adopted by the Department of Toxic Substances Control governing universal waste.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) The process of treating wood with preservatives creates  
4 enormous environmental and public health hazards. Wood  
5 treatment plants often become hazardous substance release or  
6 “Superfund sites” listed under the federal Comprehensive  
7 Environmental Response, Compensation, and Liability Act of  
8 1980, as amended (42 U.S.C. Sec. 9601 et seq.) due to the  
9 contamination of the surrounding environment by wood  
10 preservative chemicals.

11 (b) (1) Chromated Copper Arsenate (CCA) has been shown to  
12 cause cancerous tumors (oncogenicity), and genetic damage  
13 (mutagenicity), as well as displaying fetotoxicity and other  
14 reproductive effects.

15 (2) Both arsenic and hexavalent chromium, two of the three  
16 primary ingredients in CCA-treated wood, are classified by the  
17 United States Environmental Agency as known human  
18 carcinogens. Of the top 275 hazardous substances listed by the  
19 Agency for Toxic Substances and Disease Registry as being  
20 present at Superfund sites in 1997 based on frequency, toxicity,  
21 and human exposure, arsenic and hexavalent chromium were  
22 ranked first and sixteenth respectively. Currently, 51 wood  
23 preservation sites are on the Superfund National Priorities List (42  
24 U.S.C. Sec. 9605(a)(8)(B)) because of contamination from CCA.  
25 Scientific studies demonstrate that arsenic and chromium leach  
26 from treated wood into the environment, posing a threat to humans  
27 and other life forms.

28 (3) The continued use of CCA to treat wood therefore poses an  
29 imminent danger to public health and the environment.



1 (c) (1) Because of concerns about its health and environmental  
2 hazards, pentachlorophenol has been totally banned or restricted  
3 in many countries throughout the world. The United Nations  
4 Environment Program classifies pentachlorophenol and its  
5 contaminants as “persistent organic pollutants.”  
6 Hexachlorobenzene (HCB), dioxins, and polychlorinated  
7 dibenzofurans (furans), which are some of pentachlorophenol’s  
8 carcinogenic contaminants, are restricted by the Stockholm  
9 Convention on Persistent Organic Pollutants signed by the United  
10 States in 2001.

11 (2) Pentachlorophenol and its contaminants are endocrine  
12 disrupters. Pentachlorophenol interferes with hormone function  
13 by mimicing the female hormone estrogen and interfering with the  
14 reproductive system, resulting in malformed sexual organs, and  
15 cancer of sensitive organs.

16 (3) Pentachlorophenol and its contaminants of dioxins, furans  
17 and hexachlorobenzene, evidences oncogenicity, teratogenicity  
18 (causes birth defects), and fetotoxicity.

19 (4) The continued use of pentachlorophenol to treat wood poses  
20 an imminent danger to public health and the environment.

21 (d) (1) Of the three kinds of creosote (coal-tar creosote,  
22 beechwood creosote, and creosote bush resin), the most common  
23 type is coal-tar creosote. Coal-tar creosote results from  
24 high-temperature treatment of coal and, according to the Agency  
25 for Toxic Substances and Disease Registry (ATSDR), coal-tar  
26 creosote is the most widely used wood preservative in the United  
27 States.

28 (2) Creosote is a complex mixture of many chemicals. About  
29 300 chemicals have been identified in coal-tar creosote, but there  
30 could be 10,000 other chemicals present in the mixture. Three of  
31 the classes of chemicals found in coal-tar creosote that are known  
32 to cause harmful health effects are polycyclic aromatic  
33 hydrocarbons (PAHs), phenol, and cresols.

34 (3) In 1999, the Commission of the European Union (EU)  
35 banned the sale and use of creosote.

36 (4) According to the National Institutes of Health (NIH), in  
37 animal studies, benzopyrene induces malignant and benign  
38 forestomach tumors, mammary tumors, lung adenomas, skin  
39 carcinomas and papillomas, tracheal papillomas and carcinomas,  
40 squamous cell carcinomas of the lung, lung tumors,



1 tracheobronchial tumors, squamous carcinomas of the lung, local  
2 sarcomas, hepatomas and lung adenomas, abdominal  
3 fibrosarcomas, mammary and uterine carcinomas, mammary  
4 carcinomas, local tumors, and an increased the incidence of lung  
5 adenomas and initiated skin carcinogenesis in the offspring.

6 (5) Germany banned creosote in 1991 due to its benzopyrene  
7 content. In 1998, Germany submitted a study to a panel of  
8 scientists advising the EU, and the panel found there is sufficient  
9 evidence that creosote does cause cancer.

10 (6) Because creosote displays oncogenicity and mutagenicity,  
11 the continued use of creosote to treat wood poses an imminent  
12 danger to public health and the environment.

13 (e) (1) At least 65 percent of utilities are in the habit of giving  
14 away discarded utility poles that continue to leach toxic chemicals  
15 into the environment to the public.

16 (2) The United States Environmental Protection Agency has  
17 calculated that children face a 220 times increase in the risk of  
18 cancer from exposure to soil contaminated with  
19 pentachlorophenol leaching out of utility poles.

20 (f) (1) For purposes of implementing the federal Resource  
21 Conservation and Recovery Act of 1976, as amended (42 U.S.C.  
22 Sec. 6901 et seq.; RCRA), the United States Environmental  
23 Protection Agency uses the Toxicity Characteristic Leaching  
24 Procedure or “TCLP,” test. The TLCP test is intended to simulate  
25 conditions in a landfill and, in the absence of the special  
26 exemption, if a material fails the TCLP test, RCRA requires that  
27 material to be disposed of in the same manner as other hazardous  
28 waste, using lined landfills designed to prevent infiltration of  
29 water and release of contaminated leachate into the environment.

30 (2) Arsenical-treated wood fails the TLCP test for the leaching  
31 of toxic material, but because arsenical-treated wood is excluded  
32 from regulation as a hazardous waste under RCRA,  
33 arsenical-treated wood may be disposed of as ordinary trash in  
34 unlined landfills.

35 (g) (1) In 1984, after a six-year analysis of pentachlorophenol,  
36 the United States Environmental Protection Agency determined  
37 that the risks associated with the wood preservative uses of the  
38 chemical warrant cancellation of its registration, but for the lack  
39 of economically viable alternatives. Since 1984, economically



1 viable alternatives for all of pentachlorophenol’s uses have been  
2 developed and made commercially available.

3 (2) The failure of the United States Environmental Protection  
4 Agency to act has exposed tens of thousands of workers daily to  
5 chemical wood preservatives that have debilitating effects on  
6 workers’ long term health.

7 (h) Because of the large quantities of arsenically-treated wood  
8 that have been, and will be, disposed of in solid waste landfills, the  
9 exemption of treated wood from the RCRA hazardous waste  
10 treatment requirements results in a major public health and  
11 environmental threat.

12 SEC. 2. Section 25143.1.5 of the Health and Safety Code is  
13 repealed.

14 ~~25143.1.5. (a) For purposes of this section, “wood waste”~~  
15 ~~includes poles, crossarms, pilings, fence posts, lumber, support~~  
16 ~~timbers, flume lumber, and cooling tower lumber.~~

17 ~~(b) Any wood waste, previously treated with a preservative,~~  
18 ~~that has been removed from electric, gas, or telephone service, is~~  
19 ~~exempt from the requirements of this chapter if all of the following~~  
20 ~~conditions are met:~~

21 ~~(1) The wood waste is not subject to regulation as a hazardous~~  
22 ~~waste under the federal act.~~

23 ~~(2) The wood waste is disposed of in a composite-lined portion~~  
24 ~~of a municipal solid waste landfill that meets any requirements~~  
25 ~~imposed by the state policy adopted pursuant to Section 13140 of~~  
26 ~~the Water Code and regulations adopted pursuant to Sections~~  
27 ~~13172 and 13173 of the Water Code.~~

28 ~~(3) The solid waste landfill used for disposal is authorized to~~  
29 ~~accept the wood waste under waste discharge requirements issued~~  
30 ~~by the California regional water quality control board pursuant to~~  
31 ~~Division 7 (commencing with Section 13000) of the Water Code.~~

32 SEC. 3. Article 9.45 (commencing with Section 25207.14) is  
33 added to Chapter 6.5 of Division 20 of the Health and Safety Code,  
34 to read:

35

36 Article 9.45. Wood Preservatives

37

38 25207.14. For purposes of this article, the following  
39 definitions apply:

40 (a) “CCA” means chromated copper arsenate.



1 (b) “Penta” means pentachlorophenol.

2 (c) “Wood products” includes, but is not limited to, poles,  
3 crossarms, pilings, fence posts, lumber, support timbers, flume  
4 lumber, and cooling tower lumber.

5 (d) “Wood waste” means a wood product that is a waste.

6 25207.15. (a) On and after January 1, 2005, no person may  
7 use CCA, penta, or creosote for treating wood products or  
8 manufacture a wood product treated with CCA, penta, or creosote.

9 (b) On and after January 1, 2005, wood waste containing any  
10 measurable levels of CCA, penta, or creosote is a hazardous waste  
11 for purposes of this chapter and any person disposing of wood  
12 waste containing any measurable levels of CCA, penta, or creosote  
13 shall dispose of that wood waste pursuant to this chapter.

14 (c) A person may dispose of the wood waste specified in  
15 subdivision (b) in accordance with the regulations adopted by the  
16 department pursuant to this chapter governing universal waste.

17 SEC. 4. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

