

A Crack in The Wood Preservatives Case

Lawsuit to get EPA to act moves forward

By Jay Feldman

On February 21, the U.S. District Court (Washington, DC) approved a timetable for hearing Beyond Pesticides' claim that EPA has "unreasonably delayed" its review and action on wood preservatives. The decision keeps the slow wheels of justice in motion, setting a schedule running through October 13, 2004.

On January 29, 2004, District Court Judge Richard Leon threw out most of the case filed by Beyond Pesticides, the Communication Workers of America, Center for Environmental Health, and Joseph and Rosanne Prager (*Beyond Pesticides et al. v. EPA*, Case No. 02-2419, December 10, 2002), which asked the court to find EPA in violation of the *Federal Insecticide, Fungicide and Rodenticide Act* (FIFRA) because of its failure to cancel the highly toxic (heavy-duty) wood preservatives pentachlorophenol, chromated copper arsenate (CCA), and creosote. At that time, the Judge found in his opinion memorandum that plaintiffs did not have a right to sue under pesticide law, but allowed the "unreasonable delay" claim under the *Administrative Procedure Act* to go forward. EPA does not concur that it has delayed, but affirms the right of plaintiffs to sue on the matter.

Extraordinary Hazard.

The widespread use of highly toxic wood preservatives is an environmental and public health outrage. These chemicals are among the most toxic chemicals in use, linked to cancer, birth defects, genetic damage, neurological effects and more. The chemicals in question contain arsenic, dioxins, hexachlorobenzene, furans and other deadly compounds, and as a group annually account for the largest volume of pesticide use. They have no place in a modern world with the availability of alternative technologies and approaches that are more respectful of human life and the environment.

EPA's Unreasonable Delay. Central to the original case is a request from the court for a declaratory judgment that EPA has unreasonably delayed in (i) completing its regulatory actions on the three heavy-duty wood preservatives which were initiated in 1978, and (ii) responding to Beyond Pesticides' petitions to cancel and suspend their registrations.

While we feel that the court is wrong on the matter of EPA's failure to protect the public by removing the wood pre-

servatives from the market, at the very least, EPA should be held to a timetable for decision making. The agency has dragged out its review and re-review of the wood preservatives for almost three decades.

EPA continues to drag its feet. In a document that describes excessively high worker risks and potentially hazardous consumer exposure to the wood preservative creosote, on December 5, 2003 EPA announced its preliminary risk findings, and confirmed health effects that have been known to the agency, the wood preservative industry, and the scientific community for over 20 years. Prior to releasing the document, EPA engaged in nearly a year of closed-door meetings with industry, and locked the public out of the review process. The pentachlorophenol draft risk assessment, also subject to industry review, has been sitting at EPA since 1999 even though it discloses excessively high risks. EPA insiders told Beyond Pesticides that the final risk assessment was completed nearly a year ago and was in the hands of EPA's Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Chromium VI Product.

Now in another unbelievable twist, EPA is considering allowing the reemergence in the marketplace of a wood preservative, acid copper chromate (ACC), with highly elevated levels of hexavalent chromium (also known as chromium VI), the chemical Erin Brochovich worked to remove from the environment. While ACC does not contain arsenic, it does contain as much as 65% chromium VI, which is double the amount in CCA. Chromium is a known human carcinogen responsible for drinking water contamination, worker illness, and soil and air degradation and linked to kidney and liver damage, lung cancer and respiratory effects, birth defects, and skin ulcers.

The delays and decisions on wood preservatives can only leave one asking, "Who controls EPA?"

Stopping Toxic Wood. You can stop the continued use of toxic wood preservatives and protect children and the community from existing structures with information and tools for action from Beyond Pesticides. See the wood preservatives issue page at www.beyondpesticides.org.

