SENATE BILL
No. 202

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 substances. 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.


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

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

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

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

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

(3) The continued use of CCA to treat wood therefore poses an imminent danger to public health and the environment.
(c) (1) Because of concerns about its health and environmental hazards, pentachlorophenol has been totally banned or restricted in many countries throughout the world. The United Nations Environment Program classifies pentachlorophenol and its contaminants as “persistent organic pollutants.”

Hexachlorobenzene (HCB), dioxins, and polychlorinated dibenzo-furans (furans), which are some of pentachlorophenol’s carcinogenic contaminants, are restricted by the Stockholm Convention on Persistent Organic Pollutants signed by the United States in 2001.

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

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

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

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

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

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

(4) According to the National Institutes of Health (NIH), in animal studies, benzopyrene induces malignant and benign forestomach tumors, mammary tumors, lung adenomas, skin carcinomas and papillomas, tracheal papillomas and carcinomas, squamous cell carcinomas of the lung, lung tumors,
tracheobronchial tumors, squamous carcinomas of the lung, local
carcinomas, hepatozellomas and lung adenomas, abdominal
fibrosarcomas, mammary and uterine carcinomas, mammary
carcinomas, local tumors, and an increased the incidence of lung
adenomas and initiated skin carcinogenesis in the offspring.

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

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

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

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

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

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

(g) (1) In 1984, after a six-year analysis of pentachlorophenol,
the United States Environmental Protection Agency determined
that the risks associated with the wood preservative uses of the
chemical warrant cancellation of its registration, but for the lack
of economically viable alternatives. Since 1984, economically
viable alternatives for all of pentachlorophenol’s uses have been
developed and made commercially available.

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

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

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

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

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

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

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

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

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

Article 9.45. Wood Preservatives

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

(a) “CCA” means chromated copper arsenate.
(b) “Penta” means pentachlorophenol.
(c) “Wood products” includes, but is not limited to, poles, crossarms, pilings, fence posts, lumber, support timbers, flume lumber, and cooling tower lumber.
(d) “Wood waste” means a wood product that is a waste.

25207.15. (a) On and after January 1, 2005, no person may use CCA, penta, or creosote for treating wood products or manufacture a wood product treated with CCA, penta, or creosote.
(b) On and after January 1, 2005, wood waste containing any measurable levels of CCA, penta, or creosote is a hazardous waste for purposes of this chapter and any person disposing of wood waste containing any measurable levels of CCA, penta, or creosote shall dispose of that wood waste pursuant to this chapter.
(c) A person may dispose of the wood waste specified in subdivision (b) in accordance with the regulations adopted by the department pursuant to this chapter governing universal waste.

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