

MAINE STATE LEGISLATURE

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A Market Evaluation of the Sale of Arsenic-treated Wood in Maine

Prepared for the Maine Department of Environmental Protection
By
Environmental Management and
Planning Decisions

December 2003

A Market Evaluation of the Sale of Arsenic-treated Wood in Maine

I Introduction:

Environmental Management and Planning Decisions teamed to study and report on the prevalence and use of pressure-treated wood in Maine for the Maine Department of Environmental Protection. The results of our study show that about 55 million board feet of pressure-treated wood will be sold in Maine in the next year. In addition, the shift from **Chromated Copper Arsenate** ("CCA") to **Alkaline Copper Quaternary** ("ACQ" or "Quat"), the most widely used alternative wood treatment in Maine, does not appear to have caused a decrease in the sale of pressure treated wood. Finally, there is little CCA treated lumber left for sale in the state.

The pressure-treated wood industry and the US Environmental Protection Agency reached an agreement that lumber treatment facilities would no longer use arsenic in treating wood for uses where consumers might come in regular contact with the product. The cancellation notice was posted in the Federal Register on April 9, 2003, about the time the Maine legislature began work on its own legislation to ban CCA- treated wood from most residential applications. The EPA response to the industry's request is in the appendix to this report.

By the end of the first session of the 121st legislature, the Maine Legislature, in Chapter 457 of the Public Laws of 2003, established restrictions on the sale of arsenic-treated wood for residential uses in Maine (see appendix). Specifically the law says:

1. Purchase of arsenic-treated wood by retail business. Retail businesses that sell wood for residential use may not purchase arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003.

2. Sale of arsenic-treated wood. Beginning April 1, 2004, a person may not sell or offer for sale arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003. This prohibition does not apply to structures already built containing arsenic-treated wood that are included as part of a residential real estate transaction.

3. Report on arsenic-treated wood uses. The Department of Environmental Protection shall submit a report no later than January 1, 2004 to the Joint Standing Committee on Natural Resources that contains a market evaluation of the sale of "arsenic-treated wood"... For marine and other direct water contact uses of arsenic-treated wood, the report must include information on the market availability of alternatives to wood treated with a preservative containing added copper (see appendix).

In light of the bill and its restrictions on the sale of arsenic-treated wood for residential uses as well as the requirement of a disposal plan, the Maine Department of Environmental Protection needed to:

- 1) Determine how much CCA treated wood was being sold in Maine each year;
- 2) Determine how broadly treated wood containing added copper but no arsenic would be marketed (using compounds other than CCA); and,
- 3) Learn more about alternatives to pressure-treated wood such as the various recycled plastic wood-like products on the market.

II Background

Why Pressure-Treat Wood? Unprotected wooden structures placed out-of-doors begin to rot almost immediately and show clear signs of degradation within a year or two. Decks, picnic tables and docks placed on or near the ground or water or in damp forested situations, as are found near camps or cottages in Maine, may biodegrade to the point of uselessness in a matter of five to seven years. In ground applications, the wood that makes up the foot and a half above and below ground level is the wood that will be most seriously attacked by microorganisms and insects.

Shipworms and other marine invertebrates invade wooden cribwork in a marine environment within a few months. In one example, noted during this study, a wooden lobster trap with untreated wood slats on a treated wood frame was destroyed in six months. The untreated oak was attacked and consumed by shipworms while the treated oaken frame was untouched.

Treated wood lasts considerably longer. According to the American Wood Preservers Association (AWPA), treated wood will last about eight times longer than untreated wood in the same location. In some cases, treated wood lasts as much as sixty¹ years or more, depending on the microenvironment into which it is placed. Decks, stairs, tables and other structures, even if unpainted, easily last ten years with limited degradation, and much longer if stained or otherwise surface treated.

How is wood treated?² Maine has one wood preserver, The Maine Wood Treaters, Inc., located in Mechanic Falls. Owned and operated by Mr. Harold Bumby, the firm has been treating wood in Maine for more than twenty years. The facility treats a significant portion of all the pressure-treated wood sold in Maine.

The wood treatment process involves large “tubes” about six feet in diameter and thirty-five to fifty feet long. Wood to be treated is stacked and chained on trolleys or steel wheeled carts and rolled into the tube. When the tube is full the heavy door is closed and sealed. Next the operator draws a vacuum on the tube, the carts and the wood.

¹ Mr. Harold Bumby, President, The Maine Wood Treaters, Inc., personal communication.

² Personal communication during a site visit to The Maine Wood Treaters, Inc.

The air is extracted at more than an atmosphere of vacuum. When the proper negative pressure is reached, pesticide is flooded into the tube, which now becomes a tank filled with wood and pesticide.

Next, the pressure gradient is reversed and the pumping system, applies pressure to the tank, forcing waterborne pesticide deep into the wood tissue. Held at more than one hundred and fifty pounds per square inch of pressure (about ten atmospheres), the wood is left to soak up the pesticide for hours. Different types of wood require different soaking times.

After the wood has stayed in the treatment tube for the prescribed time, the pesticide is pumped from the tube and back into the storage tank. The carts of newly treated wood are pulled from the treatment tube and dried. Once thoroughly dry, the wood is removed from the carts and stacked out-of-doors to await shipment.

What pesticides are used?³ Arsenic-containing pesticides, the so-called arsenicals, such as CCA and ACZA are waterborne pesticides used to treat wood. CCA, Chromated Copper Arsenate, contains Copper, Chromium and Arsenic. It has been used to treat wood since the 1940s. Since the 1970s, it has been used to treat the majority of wood used in residential settings. ACZA is Ammoniacal Copper Zinc Arsenate, and is the other commonly used arsenical pesticide.

Alkaline copper quaternary (ACQ), nicknamed "Quat" is the compound used by The Maine Wood Treaters to produce their product, "Nature's Wood."®. The USEPA explains, "ACQ formulations combine a bivalent copper complex and a quaternary ammonium compound in a 2:1 ratio. The copper complex may be dissolved in either ethanolamine or ammonia. Carbon dioxide (CO₂) is added to the formulation to improve stability and to aid in solubilization of the copper."

The EPA says replacing CCA with ACQ, as has been done in Maine, is one of the most dramatic pollution prevention advancements in recent history, because more than 90 percent of the 44 million pounds of arsenic used in the U.S. each year is used to make CCA. Replacing CCA with ACQ will virtually eliminate the use of arsenic in the United States they say. In addition, ACQ use will eliminate the use of million pounds of hexavalent chromium. Further, ACQ avoids the potential risks associated with the production, transportation, use, and disposal of the arsenic and hexavalent chromium contained in CCA wood preservatives and CCA-treated wood. In fact, ACQ does not generate any RCRA hazardous waste from production and treating facilities. Finally, the disposal issues associated with CCA-treated wood and ash residues associated with the burning of treated wood will also be avoided.

A second non-arsenic wood preservative is called CBA. According to the Green Resource Center, a non-profit green building project in Berkley, California, CBA is a copper-based preservative with an organic fungicide. The treated wood is a dark honey

³ USEPA, *Residential Uses of CCA-Treated Wood and Response to Requests to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amendments to Terminate Certain Uses of Other CCA Products*

brown color and turns a silver-gray after it weathers. The brown color can be restored by lightly sanding the outer layer. CBA is clean to the touch, not corrosive to metal hardware, and extends the life of wood. It provides long-term resistance to termites and fungal decay in ground contact and aboveground applications. CBA treated wood can be used for most applications where CCA is used, such as decks, walkways, gazebos, picnic tables, play structures, etc. It can also be used in fresh water applications; however it is not approved for saltwater use, round structural poles, or wood foundations.

Other wood preservatives that do not contain arsenic include:

- Acid Copper Chromate (ACC), used for decades for treatment of wood used in cooling towers.
- Ammoniacal Copper Citrate (CC), a recently developed wood preservative that utilizes copper oxide as the fungicide and insecticide, and citric acid to aid in the distribution of copper within the wood structure.
- Copper Azole which is another name for CBA and is listed to avoid confusion.
- Copper Dimethyldithiocarbamate (CDDC), a reaction product formed within the wood after treatment with two different treating solutions. It contains copper and sulfur compounds. Exposure data indicates that CDDC treatment is effective in protecting wood against attack by decay fungi and insects, although a topical preservative finish may be needed to prevent discoloration by mold and mildew.
- Borate Preservatives are sodium salts, such as sodium octaborate, sodium tetraborate, and sodium pentaborate, that are dissolved in water. Borate preservatives have received a lot of attention in recent years because they are inexpensive and have low mammalian toxicity.

III Data Gathering Methodology

Data gathering Dozens of calls were made to lumber dealers, home improvement stores and other outlets of lumber and wood products all across the state. From those calls, it was determined that on the effective date of the law, September 13, 2003, most lumber dealers in Maine stopped purchasing CCA-treated wood and stopped having CCA lumber shipped from stockpiles in other states into Maine. In most of those conversations the lumber dealer explained that they had already shifted their purchasing to ACQ or some other non arsenic-containing lumber. In December of 2003 there was still a small amount of CCA treated wood for sale in Maine, however, and such sales are permitted under the law until April 1, 2004.

Lumber dealers may purchase CCA wood to fill requests for material to build specific kinds of projects. In most cases they say they will require a written request that specifies the use before filling the order. As a result, even though the use of CCA wood is allowed for certain non residential projects, obtaining it will be difficult and it is likely that for the most part, ACQ treated wood will replace CCA treated wood.

The Maine Wood Treaters, Inc. shifted most of its production to ACQ in 2002, as it reported to the legislature last spring. As of October 2003, only a single production tube, of the three at the facility, was being used to make CCA wood for sale outside of

Maine. The other production trains have been changed to ACQ and the remaining CCA tube will be changed soon.

Determining how much pressure-treated wood is sold in Maine is difficult for a number of reasons. Retail lumber dealers are not interested in telling their competitors how much of what type of lumber they are selling, and are therefore unwilling to submit those numbers to a state agency or to a researcher. Short of a complete investigation into purchases and sales over the year, an exercise none of the dealers were willing to undertake for this effort, the answers to our questions were often generalized and estimated in “truckload” units, rather than board feet. (1 board foot = a piece of wood 1 foot tall X 1 foot wide X 1 inch thick.)

Under Maine law, a dual-axle, fully loaded tractor and trailer cannot weigh more than 80,000 lbs (in some cases a 10% overload is allowed for some wood products). However, since the tractor and trailer weigh about 30,000 lbs (15 tons), each dual-axle truck carries about 25 tons of wood⁴. Treated wood weighs significantly more than untreated wood. A truckload of treated wood contains about 15,000 board feet (BF) while a truckload of dry, untreated white pine contains about 20,000 BF/Truckload, or 5,000 BF less.

Truck size is an issue because often the best information that could be obtained in telephone calls around the state was a statement like this: “We use about 4 or 5 truckloads of wood a year with about 20,000 BF per truckload.” Many dealers were contacted, from Aroostook County to York County, and many different estimates were collected but they were always estimates, except with the largest dealers.

Methodology It became clear, after a day or two of phone calls, that the data we were collecting from lumber dealers was inexact at best. We responded to this difficulty by broadening our information gathering to four very different sources of information. Then, by analyzing the data from these disparate places, we determined a range of values for the volume of treated wood sold in the state. The values corroborated each other so we feel we have made a fair determination of the volume of treated wood sold in Maine in the past year.

The four methods used to gather the data were:

1. Telephone interviews with dozens of retail lumber dealers;
2. Meeting and discussions with wood treaters, especially The Maine Wood Treaters, Inc. in Mechanic Falls;
3. National data from the American Wood Preservers Association; and
4. A comparison of lumber sales data among large retail operations.

Individually, none of these methods would be a particularly good source of information. Each method has problems and none yields an accurate number by itself.

⁴ Lt. Bruce Dow, Maine State Police, retired. Past Director of the State Police Traffic Division that includes the Commercial Vehicle Enforcement unit which regulates trucks on Maine’s roads and highways.

By using all four sources, however, we can approximate the amount of pressure treated wood sold in the state in the last year, and use that number to project what will be sold in the future. As a result, however, it is important to be clear that the amounts of treated wood expressed in this report are estimates, not hard and fast numbers, but we feel they are as accurate as can be derived under the circumstances.

IV Sales/Volume Data

Lumber Dealer Data Lumber dealers, and the Maine Retail Lumber Dealers Association, were as helpful as they could be with this report. There are seventy-eight yards in Maine, of various sizes. In collecting information for this report, we discovered that all the lumber dealers we talked with were concerned that their sales data not appear in a state report, thus giving their competitors information that might harm them. Therefore, we agreed not to provide sales data about individual dealers in the report. As a result, we have aggregated the data and not named the dealers, and we have agreed not to release any data that could be used to relate dealer sales to individual dealers.

After interviewing each of the five largest wood and lumber dealers in Maine, it can be said that each of the large dealers in Maine handle about 3.5 to 4 million board feet a year of treated wood. Each of the large dealers in Maine has multiple store locations across the state. The interviews also show that smaller dealers handle between 250,000 and 750,000 board feet per year and are found in all the larger towns in Maine, from Caribou to Saco. Finally, the interviews indicate that almost all the CCA-treated lumber in Maine has been sold already and it is clear that all of the residential CCA-treated wood not included by EPA as a permitted use will be gone well before the April 1, 2004 sales deadline.

As a result, it is reasonable to say that after April 1, 2004, all the treated wood to be used for residential uses is likely to be of the high copper, non-arsenic kind that has supplanted CCA across the state. In fact, except by special order, it is unlikely that CCA will be available even for commercial users in Maine, as most dealers are not going to stock any CCA. Their concern is that obtaining proof that the treated wood will be used in non-residential settings will be impossible, leaving them liable to prosecution or to a lawsuit.

With five large dealers, each one selling about 4 million board feet of treated wood each year, a total of about 20MM board feet a year will be sold by them in Maine next year. If each of the remaining 73 lumber stores, yards and outlets sells about 500,000 board feet, an additional 36.5MM board feet will be sold in Maine.

Using this method of estimation, Maine consumes 56.5 million board feet of pressure-treated wood a year.

Data from Wood Treaters Like lumber dealers, wood treaters are very protective of their sales data. As a result, no names will be used in this section. In talking with wood treaters we have learned that between 52 million and 59 million BF of treated wood will likely be sold in Maine in the coming year, based on last year's sales.

One treater also said that the sales trend is upward and he is not concerned that the legislation has had a chilling effect on his business.

There is a single wood treater in Maine, the Maine Wood Treaters, in Mechanic Falls. That company makes Nature's Wood ® and markets the lion's share of its product in Maine. However, firms in Rhode Island, Massachusetts and New Hampshire also sell treated wood in Maine through the so-called "big box" stores as well as some smaller dealers.

Therefore, using this method of estimation, Maine consumes 52-59 million board feet of pressure-treated wood every year.

American Wood Preserver's Association Data In 1997, James T. Micklewright⁵ reviewed the volume of treated wood produced in the United States for the American Wood-Preservers' Association (AWPA). His twenty-two-page report entitled *Wood Preservation Statistics 1997* is available from the AWPA. The data in the report, while five years old, gives a reference point in this attempt to determine the amount of treated wood used in Maine. Micklewright is a statistician who has been retained several times by the AWPA over the last twenty years to determine how much wood is treated in the United States. The data in the report is national in nature and tells us 3.2 billion board feet (581.4 million cubic feet⁶) of lumber and timbers were treated with waterborne chemicals in the United States that year.

Of that total, the amount treated in the Northeast Region (Delaware, Maryland, Virginia, Pennsylvania, New York, New Jersey and New England) was approximately 274,725,000 board feet (49,950,000 cubic feet). That is about one tenth of the total produced in the US. Since this is an estimate of the amount produced, and not the amount sold, its usefulness is to show that in the northeast we produce far less treated lumber than in the rest of the nation.

Total production of wood treated with waterborne chemicals in board feet, according to the AWPA report for 1997⁷:

Northeast	49,950,000 CF
North Central	86,058,000 CF
Southeast	189,485,000 CF
South Central	164,000,000 CF
Rocky Mountain	17,601,000 CF
<u>Pacific Coast</u>	<u>74,205,000 CF</u>
Total	581,382,000 CF

Based on sales and treatment data, Maine uses about one fifth of the total production in the northeast, which, given the size of the state and the number of camps

⁵ Personal communication with Micklewright indicated that Northeast in the report extended from West Virginia to Maine and included Pennsylvania and New York.

⁶ 1 Cubic Foot equals 5.5 board feet of wood

⁷ Table from *Wood Preservation Statistics 1997*, James T. Micklewright for the American Wood-Preservers' Association

and waterfront properties in Maine, is a reasonable assumption. It is also logical that we produce less treated lumber in the northeast since our temperature regime and the nature of our pests are far less conducive to causing wood to rot or be consumed by insects than in the warmer and wetter areas of the nation, such as the southeast.

Therefore, using this method of estimation, Maine consumed about 55 million board feet of pressure-treated wood in 1997. This estimate is consistent with data obtained from the wood treaters.

Lumber Sales Data Sales data from the five largest firms selling treated wood in Maine shows that, on average, in 2002, their sales of lumber accounted for about 53% of the total lumber sales in Maine. One of the five explained that between 15 and 20% of their sales were in treated wood, and that trend continued after the stock of CCA had been sold and only ACQ was available, even though ACQ is somewhat more expensive.

This information is different from the telephone interview data because it comes from statewide sales tax information as opposed to individual telephone poll responses. In other words, it looks at the same sales, but as collected at the state level, rather than from the individual store level. Using this method of estimation, Maine consumes nearly 40 million board feet of pressure-treated wood every year, which while not the same as the amounts estimated in other ways, is close enough to verify that the other methods yield good estimates.

It is not possible at this time, based on the information available, to make a clear statement about the future sales of CCA treated wood in Maine, no one knows. From conversations with lumber dealers here in Maine as well as managers for the Big Box stores here and at their headquarters, it will not be a large volume.

V Alternative Products and Products for Marine and Water Contact Use

Marine use of wood for docks and wharves is one of the remaining uses allowed in the EPA agreement because wood used in the marine environment must be impervious to shipworms and many other marine organisms that consume untreated wood at a remarkable rate. As a result, lumber dealers along the coast may continue to stock some large dimension CCA treated lumber, of the 8" X 8" or larger sizes, in lengths suitable for cribbing, and dock work. In talking with those dealers, however, we determined that they will likely require the purchaser to specify what they intend to construct from the timbers before they are sold, to prevent their use in a manner not allowed under the law. In addition, since there is not a great deal of such construction, the CCA timbers will probably be special-ordered from out of state. As a result, there is likely to be little CCA-treated dimensions stock kept in state, even for marine uses, and it is fair to assume over time that less will be used just because of the problems associated with obtaining it.

There are no shipworms in lakes and rivers and lakeside wharves and docks must be removed in the winter lest the ice destroy them. Timbers used at the turn of the century are still in place along the Kennebec River in Hallowell, for example, where they

were used in wharves and docks. Similarly, the lakes of Maine all have century old logs of wood on their bottoms; wood that if raised and dried can be used today in finish carpentry it is so well preserved. In short, then, there is little need to use pressure-treated wood in fresh water environments in Maine.

Alternative types of lumber exist that are inherently more rot resistant than spruce, fir and pine. Woods like white oak and cedar, for example, degrade much more slowly than pine or spruce. They are more expensive, however, and are not likely to be purchased in the same volumes as pressure-treated wood for the same purposes. In addition, the marine use of cedar is restricted by its relatively low strength.

The other alternatives to treated wood are various wood and plastic or pure plastic products. The wood/plastic alternatives, while useful, do not have the same strength as treated wood and so cannot be used in foundation work or for carrying timbers. For the most part these alternatives are made of formed shavings and sawdust which is coated in either virgin or recycled plastic and are best used in decking.

Many of the lumber dealers sell alternative wood-like products, but generally in small amounts. For example, one medium sized yard reported sales of about a half a million board feet of treated lumber compared to 45,000 board feet of alternative lumber.

Not only is alternative wood less useful structurally, but dealers also expressed concern that if the plastic cover on the alternative timber were broken, the wood interior would rot.

IV Conclusions

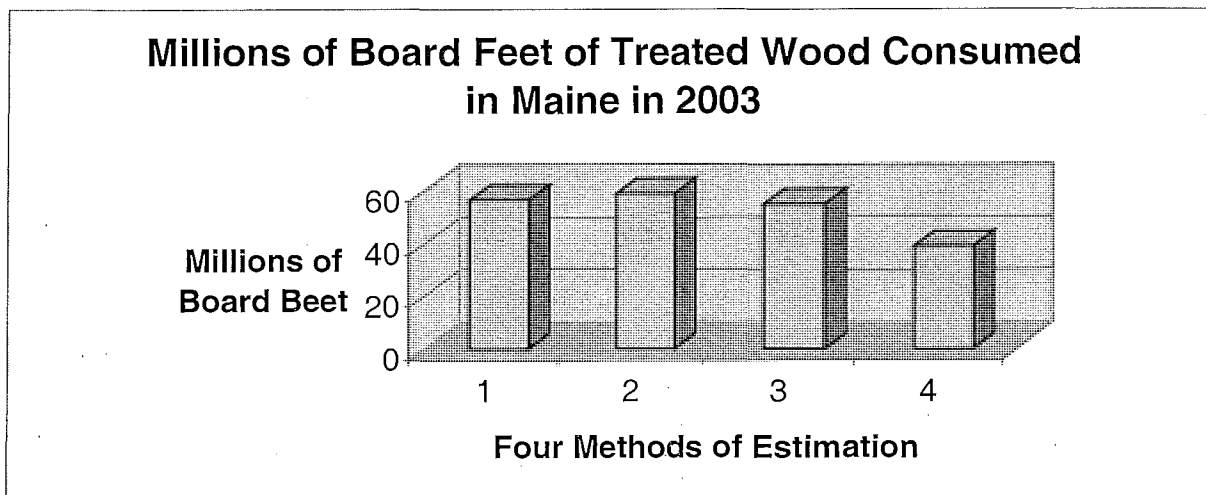
It is very difficult to estimate the total amount of pressure-treated wood produced in Maine and imported for sale in Maine. The barriers to gathering this information are primarily based on the reluctance of lumberyards and producers of treated wood to allow data from their sales or production to be used in a report to the state. Nevertheless, we were able, by using several sources of information; to come to some broadly accepted numbers for the total amount of treated wood sold, and therefore assumed to be used in Maine. The four methods we used would not be reliable if used alone. However, by using all four methods, we believe that they reinforce each other in arriving at the 55 million board feet estimate.

Alternative lumber resources such as cedar and white oak are probably too expensive for general use in Maine. The market for cedar may increase in response to the law removing CCA from the market and the subsequent increase in the price of pressure-treated lumber. Since white oak must be imported from outside the state, and has many high value uses, it is not likely to be used in Maine in place of pressure-treated wood.

Since LD 1309, Chapter 457 of the Public Laws of Maine, became effective, practically all of the CCA-treated wood that can be used for residential construction has been sold. Moreover, except for special orders, only a few of the coastal lumberyards

will be carrying CCA lumber at all as it will only be used in construction along the ocean. It isn't possible to provide a valid estimate of the volume that will be used for marine structures in the present circumstances.

After evaluating all the information collected using the four methods outlined in this report, our summary estimate is that between 55 million and 60 million board feet of treated wood was sold in Maine in 2003. Based on that estimate, and further discussions with many of the interviewees, somewhat more pressure-treated wood is expected to be sold in 2004 as the economy strengthens.



Column 1 = Lumber Dealer data
Column 3 = AWWPA* data

Column 2 = Wood Treater data
Column 4 = Data from Total Lumber Sales

Finally, alternative lumber products, while useful in some forms of construction, are generally not good for uses that are structural in nature and may only amount to a tenth of the volume of treated wood being sold in the market. In addition, the wood chips used as a bulking agent in these "plastic wood" substitutes is often treated with copper compounds similar to those used in pressure-treating wood.⁸

⁸ AWWPA – American Wood-Preserver's Association

APPENDIX A

APPROVED

CHAPTER

JUL 13 '03

457

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THREE

H.P. 963 - L.D. 1309

An Act To Protect Public Health by Reducing Human Exposure
to Arsenic

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 33 MRSA §173-A is enacted to read:

§173-A. Information provided

Beginning January 1, 2004, unless the transaction is exempt under section 172, the seller of residential real property shall provide to the purchaser information developed by the Director of the Bureau of Health within the Department of Human Services regarding what homeowners should know about arsenic in private water supplies and arsenic in treated wood. Copies of this information must be provided to sellers at cost.

Sec. 2. 38 MRSA c. 16-C is enacted to read:

CHAPTER 16-C

ARSENIC-TREATED WOOD PRODUCTS

§1681. Definitions

As used in this chapter, unless the context otherwise indicates, "arsenic-treated wood" means lumber, timber, piles, poles, posts, plywood, shakes, shingles or other wood or forest

products intended for outdoor use that have been pressure treated to reduce decay with a wood preservative containing inorganic arsenic or inorganic arsenic compounds, including, but not limited to, chromated copper arsenate, commonly referred to as "CCA," or similar arsenic-based wood-preserving chemical mixtures.

§1682. Restriction on sale

The following restrictions apply to the sale of arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003.

1. Purchase of arsenic-treated wood by retail business. Retail businesses that sell wood for residential use may not purchase arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003.

2. Sale of arsenic-treated wood. Beginning April 1, 2004, a person may not sell or offer for sale arsenic-treated wood or wood products for residential uses that are not included as permitted uses in a notice of cancellation order issued by the United States Environmental Protection Agency as published in the Federal Register on April 9, 2003. This prohibition does not apply to structures already built containing arsenic-treated wood that are included as part of a residential real estate transaction.

§1683. Statute not admissible in evidence

This chapter may not be admitted in evidence or offered as an exhibit for any purpose in any civil trial against any wholesaler, retailer or installer of arsenic-treated wood. This section does not apply in cases of enforcement actions brought by the State.

Sec. 3. Disposal plan. By January 1, 2005, the Department of Environmental Protection shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a plan for the safe management of arsenic-treated wood waste. The plan must be developed in consultation with interested parties. The plan must include, but is not limited to, recommendations regarding:

1. The separation and segregation of arsenic-treated wood at solid waste handling facilities;

2. Restrictions on the combustion of arsenic-treated wood at incineration facilities, biomass boilers and other boilers; and

3. Restrictions on the disposal of arsenic-treated wood at unlined landfills.

For purposes of this section, "arsenic-treated wood" has the same meaning as in the Maine Revised Statutes, Title 38, section 1681.

Sec. 4. Report on reducing arsenic exposure and ensuring safe drinking water from private wells. The Department of Human Services, Bureau of Health shall submit a report no later than October 1, 2004 to the Joint Standing Committee on Natural Resources and the Joint Standing Committee on Health and Human Services after consultation with a diverse group of interested parties. The report must contain an assessment of the need for a comprehensive safe drinking water program for private wells to address arsenic and other contaminants of human health concern and recommendations to address identified needs.

Sec. 5. Report on arsenic and real estate transactions. The Real Estate Commission, under the Maine Revised Statutes, Title 32, chapter 114, subchapter 2, shall submit a report no later than October 1, 2004 to the Joint Standing Committee on Natural Resources and the Joint Standing Committee on Business, Research and Economic Development after consultation with the Department of Human Services, Bureau of Health and other interested persons. The report must contain a description of efforts within the real estate industry to increase awareness among real estate licensees and buyers and sellers of residential real estate of the hazards of arsenic in water supplies and treated wood, the need to test for arsenic in private water supplies and the need to identify and to regularly coat with a sealant arsenic-treated wood structures, including decks, entryways and play sets. The efforts may include, but are not limited to, information directly used by home sellers and buyers, such as modifications to purchase and sales agreements, modifications to hazardous materials disclosures and educational brochures or other written information.

Sec. 6. Report on arsenic-treated wood uses. The Department of Environmental Protection shall submit a report no later than January 1, 2004 to the Joint Standing Committee on Natural Resources that contains a market evaluation of the sale of "arsenic-treated wood," as defined in the Maine Revised Statutes, Title 38, section 1681, in the State and the remaining uses of arsenic-treated wood that are still allowed in the State. For marine and other direct water contact uses of

arsenic-treated wood, the report must include information on the market availability of alternatives to wood treated with a preservative containing added copper. The joint standing committee may report out legislation to the Second Regular Session of the 121st Legislature to restrict the sale of arsenic-treated wood for all remaining uses.

APPENDIX B

[Federal Register: April 9, 2003 (Volume 68, Number 68)]
[Notices]
[Page 17366-17372]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr09ap03-58]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2003-0104; FRL-7301-2]

Response to Requests to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amendments to Terminate Certain Uses of other CCA Products

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of a **Cancellation** Order.

SUMMARY: This notice announces that a **cancellation** order was signed on March 17, 2003, in response to the use terminations and cancellations voluntarily requested by the registrants of wood preservative pesticide products containing Chromated Copper Arsenate (CCA) pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. In addition to stating the **Agency's** response to the requests for **cancellation** of certain CCA products and amendments to terminate certain uses of other CCA products, this notice also addresses the considerable number of comments received in response to the **Agency's** requests for public comments on the above stated requests. In the **cancellation** order, the **Agency** granted certain of the aforementioned requests and did not take any action regarding certain other elements of the requests. Any sale, distribution, or use of affected products listed in this notice will only be permitted if such distribution, sale, or use is consistent with terms and conditions set forth in the **cancellation** order.

DATES: The effective dates of **cancellation** are as follows: (1) For affected product registrations--March 17, 2003 (2) For affected product registrations amended to delete terminated uses--May 16, 2003.

FOR FURTHER INFORMATION CONTACT: By mail: Bonaventure Akinlosotu, Office of Pesticide Programs (7510C), **Environmental Protection Agency**, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 308, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605-0653; e-mail: akinlosotu.bonaventure@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. The first part contains general information. The second part provides background, and summarizes the use terminations and product cancellations requested by the CCA product registrants. The third part summarizes the comments received in response to the **Agency's** request for public comments on the aforementioned registrants' requests, and provides the **Agency's** response to the comments. The fourth part provides a summary of the **Agency's** decision on the voluntary **cancellation** and use termination requests. The fifth part sets forth the existing stocks provisions that the **Agency** authorized in the **cancellation** order.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use CCA products. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the **Agency** has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select 'Laws and Regulations,' 'Regulations and Proposed Rules' and then look up the entry for this document under the 'Federal Register--**Environmental Documents**.' You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>.

2. In person. The **Agency** has established an official record for this action under docket control number OPP-2003-0104. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Summary of Registrants' Request to Cancel Products and Delete Uses

On February 22, 2002, the **Agency** announced the receipt of requests from the registrants of wood preservative

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pesticide products containing Chromated Copper Arsenate (CCA) to cancel certain CCA products and to amend the registrations to terminate certain uses of other CCA products (67 FR 8244) (FRL-6826-8). Another notice was issued (67 FR 13328, March 22, 2002) (FRL-6831-6) to extend the comment period until April 9, 2002. The requests proposed that only certain uses of CCA be allowed as of December 31, 2003. The registrants stated in their requests that their requests were being made as a result of current and projected market demand for CCA products and the availability of new generation wood treatment products. The **Agency** considers these voluntary moves toward arsenic-free wood treatment products as a positive step, particularly for our nation's children. The **Agency** believes that reducing the potential residential exposure to a known human carcinogen is desirable. This transition affects all future residential uses of wood treated with CCA, including wood used in playground structures, decks, picnic tables, landscaping timbers, residential fencing, patios, walkways and boardwalks.

EPA received requests from four registrants (Table 1 of this unit) to cancel 2 products (Table 2 of this unit), and to amend 17 other affected end-use and manufacturing-use registrations to terminate all uses of such products (Table 3 of this unit) with the exception of the treatment of wood products that fall under the American Wood-Preservers' Association (AWPA) standards (based on the 2001 edition of the AWPA Standards) listed in the text of the requested label amendment stated below.

Table 1.--Registrants Requesting Voluntary Termination of Certain Uses and/or **Cancellation** of Products listed in Tables 2 and 3

EPA Company Number	Company Name and Address
003008	Osmose, Inc., 980 Ellicott Street, Buffalo, NY 14209
010465	Chemical Specialties, Inc., One Woodlawn Green, Suite 250, 200 E. Woodlawn Road, Charlotte, NC 28217
035896	Phibro-Tech, Inc., Fort Lee, NJ 07024
062190	Arch Wood Protection , Inc., 1955 Lake Park Drive, Suite 250, Smyrna, GA 30080

Table 2.--Registrations with Requests for **Cancellation** of Products

Registration Number	Product Name
62190-5	WolmanacR Concentrate 70%
62190-11	CCA Type C 50% Chromated Copper Arsenate

Table 3.--Registrations With Requests for Amendments to Terminate Certain Uses

Registration Number	Product Name
End Use Products	
3008-17	K-33-C (72%) Wood Preservative
3008-21	Special K-33 Preservative
3008-34	K-33 (60%) Wood Preservative
3008-35	K-33 (40%) Type-B Wood Preservative
3008-36	K-33-C (50%) Wood Preservative
3008-42	K-33-A (50%) Wood Preservative
3008-72	Osmose Arsenic Acid 75%
10465-26	CCA Type-C Wood Preservative

	50%
10465-28	CCA Type-C Wood Preservative 60%
10465-32	CSI Arsenic Acid 75%
35896-2	Wood-Last Conc. Wood Preservation AQ 50% Solution CCA-Type A
62190-2	Wolmanac Concentrate 50%
62190-8	Wolmanac Concentrate 72%
62190-14	Wolmanac Concentrate 60%

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Manufacturing Use Products

3008-66	Arsenic Acid 75%
10465-32	CSI Arsenic Acid 75%
62190-7	Arsenic Acid 75%

For affected manufacturing-use products, the label amendments were proposed to read as follows:

Effective December 31, 2003, this product may only be used (1) for formulation of the following end-use wood preservative products: ammoniacal copper zinc arsenate (ACZA) or chromated copper arsenate (CCA) labeled in accordance with the Directions for Use shown below, or (2) by persons other than the registrant, in combination with one or more other products to make: ACZA wood preservative; or CCA wood preservative that is used in accordance with the Directions for Use shown below.

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWPAs Commodity Standards under which the treatment occurred.

For affected end-use products, the label amendments were proposed to read as follows:

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Poles, Piles and Posts Used as Structural

Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWWPA Commodity Standards under which the treatment occurred.

In addition, the registrants requested that EPA allow use of the previous (unamended) labels for a period of 60 calendar days from the date on which the particular affected registrant receives EPA's approval of the amendment(s) to terminate use(s), and that EPA allow a further amendment by notification on or before December 1, 2003, to (1) delete the use directions in effect prior to these amendments, and (2) to delete the preface phrase ``Effective December 31, 2003,`` from the amended labels such that the statement begins by reading, ``This product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers' Association Standards* * *.`` Furthermore, the registrants stated in their letters that they would neither amend nor withdraw their requests for **cancellation**/use terminations before EPA acts on them. Additionally, the registrants will notify their customers of the amended labels by certified mail after EPA acts on the requests.

III. Summary of Public Comments Received and **Agency** Response to Comments

The **Agency** issued a notice of receipt of the aforementioned requests along with a solicitation for public comments (February 22, 2002), followed by another notice to extend the comment period until April 9, 2002 (March 22, 2002). Approximately 6,700 comments were submitted by the wood preservative industry, the chromium industry, the lumber industry, the agricultural industry, Kentucky and Texas State government officials, federal government officials, **environmental** groups, businesses and private citizens of Corpus Christi, Texas, as well as from others. Based on the nature of the concern(s) expressed, the comments were grouped into four major categories: (1) business and economic concerns from the Agricultural Community and Wood Treatment Industry, (2) concerns with the possible adverse economic impact on the Chromium Industry and Corpus Christi, Texas, (3) concerns raised by **Environmental** Groups, and (4) other significant, pertinent comments.

Generally, the purpose of soliciting comments pursuant to Section 6(f) of FIFRA is to give an opportunity to comment to those individuals or businesses that would be affected by a registrant's requested action and to those who may want to apply for a registration for a pesticide for which there is a request to cancel the registration or to terminate use(s). This process helps to ensure that EPA is basing its regulatory decisions on the most up-to-date and complete information. The **Agency** did not specifically solicit comments for the purpose of determining if the voluntary **cancellation**/use termination requests were comprehensive enough or fast enough. Because these are voluntary **cancellation**/use termination requests, the registrants have proposed their own terms of **cancellation**/use termination. This type of public comment opportunity under Section 6(f) differs from the current reregistration public process in that during the reregistration public process the **Agency** solicits comments on a draft preliminary risk assessment and on draft risk mitigation proposals in anticipation of actions that may not be voluntary. Therefore, the scope of the public comment opportunity in the reregistration process is much broader than the scope of the opportunity in this voluntary **cancellation**/use termination.

Below is the summary of the comments received in response to EPA's request for public comments, along with the corresponding **Agency**

response.

A. Business and Economic Concerns from the Agricultural Community and Wood Treating Industry

Comments. The majority of the comments received within this category specifically requested that the **Agency** not accept the request to cancel the use of CCA-treated lumber for agricultural

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fence posts based on the lack of exposure to children and the higher cost of the alternative products. These comments were received from the wood preservative, chromium, lumber, and agricultural industries, as well as private citizens, businesses, and town officials of Corpus Christi. With respect to exposure to children, the commenters stated their belief that there is little exposure to children from agricultural fencing (as compared to a deck or playground constructed of CCA treated wood) because agricultural fences are generally far away from residences and because children typically do not play on a fence as they would a deck or playground. In addition, the commenters stated that the exclusion of CCA-treated wood for agricultural fence posts from the label would cause an adverse economical impact on the agricultural, lumber, and wood treatment industries due to the higher cost of the alternative treatment products. The commenters stated that the wood treatment plants, the agricultural industry, and the chromium industry may suffer considerable financial and market damage due to the cost of converting wood preserving plants currently treating with CCA to an alternative chemical (estimated cost ranges from \$75,000 to \$125,000), and the costs of the alternative treatment products (estimated to be 10-15% higher than CCA products at the retail level and 30% higher than CCA products for the agricultural industry). The commenters stated their belief that as a result of the above stated concerns, there will be loss of employment within the industries concerned. The **Agency** also received a number of comments regarding the use of CCA to treat wood used for permanent wood foundations. The comments received indicated a need to retain this important use and that it posed little opportunity for residential exposure.

Agency's response. The **Agency** is currently separately from this voluntary **cancellation**/use termination action, reviewing the exposure and risk (as well as the benefits) of all uses of CCA through its reregistration process. In light of the issues raised by commenters with regard to agricultural fence post and permanent wood foundation uses, EPA believes it is appropriate to evaluate the commenters' concerns during that review. For example, fence posts treated according to AWP Standard C16 are for agricultural purposes only. This particular type of fence post is used by many farmers and ranchers for barbed and other wire fencing. The distribution channels, aesthetics, size, round shape, and random diameter of that type of fence post effectively limit its use for specific agricultural purposes, and make it inappropriate for residential applications. The **Agency** has determined, based on available information and field investigations, that agricultural fence posts are not sold into the residential market. On the other hand, wood treated for fence posts according to AWP Standard C5 is sold at the retail level for residential fencing and can be used for other residential applications as well.

Rather than delay acceptance of other portions of the voluntary **cancellation**/use termination requests until the reregistration review is complete, EPA has decided to accept the requests for voluntary **cancellation**/use termination for the other uses and defer any action with respect to requests to terminate agricultural fence post and permanent wood foundation uses until the **Agency** has evaluated those uses through the reregistration process. If at any time during the reregistration review the **Agency** determines it has sufficient information to take an action, that is, to either accept or refuse the

requests for use termination of those uses, the **Agency** will take appropriate action. EPA believes this temporary deferral of action is consistent with the principle to phase out CCA for residential uses.

B. Concerns With the Possible Adverse Economic Impact on the Chromium Industry and Corpus Christi, Texas

Comments. Approximately 430 comments were received regarding the potential adverse economic effect from the proposed **cancellation** or termination of CCA products or treated wood uses on the chromic acid manufacturing plant in Corpus Christi, Texas. The residents of Corpus Christi have within their city limits a plant owned by Elementis Chromium L.P. (Elementis), the only major manufacturer of chromic acid in the United States. This chromic acid plant employs more than 100 residents of the Corpus Christi area and by its supply purchases and salaries, inputs about \$40 million per year into the economy of Corpus Christi. Elementis believes the projected 70% decrease in total sales of CCA-treated products 2 years after the amendment is accepted will have adverse economic consequences on the status of the plant operations and the city of Corpus Christi.

Also, the chromium industry and wood treatment industry requested EPA limit its action regarding the phase-out to only CCA-treated playground structures and decks at this time, pending the outcome of the risk assessment being currently conducted by the **Agency**. It was requested that certain uses of CCA-treated wood, which were proposed for termination be allowed to continue. Specifically, the commenters requested that CCA-treated wood continue to be permitted for the following uses under the AWPA Commodity Standards C2 (Lumber, Timber, Bridge Ties, Mine Ties for above-ground, soil and freshwater use), C5 (Fence Posts), C15 (Wood for Commercial-Residential Construction-Preservative Treatment by Pressure Processes), C16 (Agricultural Fence Posts and certain Wood used on Farms), and C22 (Permanent Wood Foundation Material).

Agency's response. By way of background, under FIFRA, a registration or "license" is issued to an applicant for a pesticide product once all necessary data requirements in support of the registration have been satisfied and the application has been found to be acceptable. In order to obtain a registration for a pesticide under FIFRA, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing unreasonable adverse effects on the environment. The term "unreasonable adverse effects on the environment" is defined, among other things, as "any unreasonable risk to man or the environment, taking into account the economic, social, and **environmental** costs and benefits of the use of any pesticide."

Under the statute, a registrant may at any time voluntarily request **cancellation** of a particular pesticide registration or termination of certain uses for the registration. Upon receipt of such requests, the **Agency** acts upon the requests pursuant to section 6(f) of FIFRA by notifying the public and soliciting comments from the public on the requests received. The **Agency** reviews the comments and may, based upon the comments received and/or any information or knowledge it may have concerning the pesticide and its uses in the environment, accept or deny the request either in whole or part.

With regard to the comments received from the chromium industry and on behalf of residents of Corpus Christi, Texas, as stated earlier, at this time, the **Agency** is not acting upon certain use terminations proposed by the registrants. Specifically, the **Agency** is deferring action on two use terminations addressed in the comments, agricultural fence posts and permanent wood

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foundations. The **Agency** will examine such uses as part of its reregistration assessment of CCA products. However, the remaining voluntary **cancellation** requests were finalized on March 17, 2003, and the use terminations are effective as of May 16, 2003.

C. Concerns Raised by **Environmental** Groups

Comments. In their comments, the **environmental** groups (Clean Water Action, Healthy Building Network, and others) expressed concerns with the estimated 75 billion board feet (estimated by the American Wood Preservers Institute) of CCA-treated wood currently in use in residential settings. This proposed voluntary **cancellation** request affects future residential uses of CCA products but does not address existing CCA-treated wood decks and play structures. The **environmental** groups urged EPA to complete the CCA risk assessments to determine the dangers posed by CCA-treated wood currently in use. Concerns were also expressed over the safety of building contractors who come into contact with CCA-treated wood used during building construction and with utility workers working with utility poles. As a result, there were requests to extend use restrictions to include all uses, residential and industrial.

The **environmental** groups also believe that the time frame for the phase-out of CCA-treated wood from residential uses is too lengthy, and that the phase-out is not comprehensive enough. They appeared to assume that CCA-treated plywood would continue to be sold in retail stores indefinitely. The commenters also expressed concerns that the **Agency** doesn't address proper disposal of CCA-treated wood, and treated wood could be burned or dumped in landfills where it can contaminate soil and groundwater. They suggested that the registration be amended to include proper handling, use and disposal of CCA-treated wood.

Agency's response. The **Agency** acknowledges the concerns expressed by **environmental** groups regarding the potential risks of CCA to human health and the environment, and the need to proceed as quickly as possible given the potential risks. The **Agency** intends to address the commenters' concerns in two ongoing **Agency** processes in which the risk of the non-cancelled or terminated uses of CCA are currently being assessed. The **Agency** is currently conducting two risk assessments, one that focuses on children's exposure to CCA from play structures and decks constructed of CCA treated wood (uses of which are terminated pursuant to the **cancellation** order), and one that focuses on the remaining industrial and marine uses. The result of the children's exposure assessment will serve as the basis for determining if further action is needed concerning existing play structures and decks.

The **Agency** is also currently examining the use of CCA-treated wood in light of the latest science and safety standards, under EPA's reregistration process. Upon the completion of the overall risk assessment, which will address the remaining uses of CCA and any occupational hazards that may exist from exposure to CCA, and the benefits assessment, the **Agency** will announce its proposed approach and the public will be afforded an opportunity to provide comments. The **Agency** will then consider any comments received and make a final determination as to the reregistration eligibility of the remaining uses of CCA.

With respect to the disposal of CCA-treated wood, CCA-treated wood is classified as non-hazardous waste under the Federal Resource Conservation and Recovery Act (RCRA). Disposal of CCA-treated wood is addressed via the Consumer Awareness Program (CAP). The CAP is a voluntary program established in 1986 (and later updated in 2001) by the registrants of CCA products, to protect consumers by providing them with information on the proper handling, use and disposal of CCA-treated wood. Under this program, instructions on the proper handling, use and disposal of CCA-treated wood are disseminated to consumers upon purchasing CCA-treated wood products via the Consumer Safety Information Sheets (CSIS) and/or end tag labeling applied to the wood product itself. EPA also disseminates guidance to consumers to advise

against burning CCA-treated wood. Additional information regarding the CAP, handling, use and disposal of CCA-treated wood can be obtained from the **Agency's** Web site at: <http://www.epa.gov/pesticides/citizens/1file.htm>

D. Other Significant Pertinent comments

1. Clarification regarding AWPA Standard C5--comment. An inquiry was made as to the potential decision to allow wood to be treated with CCA for agricultural purposes (fence posts) under AWPA Standard C16 yet questioning why it would be a prohibited use under the AWPA Standard C5.

Agency response. As discussed earlier, the **Agency** is not taking any action on the requests to delete the agricultural fence post use of wood treated with CCA. Fence posts treated according to AWPA Standard C16 are for agricultural purposes only. This particular type of fence post is used by many farmers and ranchers for barbed and other wire fencing. The distribution channels, aesthetics, size, round shape, and random diameter of that type of fence post effectively limit its use for specific agricultural purposes, and make it inappropriate for residential applications. The **Agency** has determined, based on available information and field investigations, that agricultural fence posts are not sold into the residential market. Fence posts treated according to AWPA Standard C5, however, are for residential purposes. Prior to the voluntary **cancellation**/use terminations, the labels permitted wood treated for fence posts according to AWPA standard C5 to be used for residential fencing, and it could also possibly be used for other residential applications as well.

2. CCA-treated wood export restrictions-- i. Comment. Comments sought clarification on whether wood treated with CCA can be exported to other countries for use in residential settings.

Agency response. As stated in this notice, under the **Cancellation** Order, effective December 31, 2003, wood treatment facilities are only allowed to treat wood products with CCA that are intended to be used only for those remaining uses approved on the CCA product label. Wood intended for use in prohibited residential settings may not be treated with CCA after December 30, 2003, unless the product being used is a pre-existing product and such use is permitted by that product label. (See Unit V: ``Provisions for Disposition of Existing Stocks'') Because of the method of product manufacture and distribution used in the wood preservation industry, the **Agency** does not expect any more than de minimus stocks to exist as of December 31, 2003, that do not bear the more restrictive label language. Hence, beginning December 31, 2003, unless the label on the affected product provides otherwise, it would be illegal to treat wood with CCA for any prohibited residential use, regardless of whether the treated wood is to be used in the United States or exported for use in other countries.

3. Request received from American Wood-Preservers Institute (AWPI)--comment. The American Wood-Preservers Institute, which provided comments on behalf of the companies that treat wood, requested that the proposed **cancellation** date of December 31, 2003, be extended an additional 3-6 months to allow further time for

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treating plants' transition/conversion to alternative chemicals.

Agency response. The **Agency** recognizes that the transition to alternative chemicals may pose significant challenges to some stakeholders including wood treaters. However, in their request for voluntary **cancellation**/use termination, the registrants stated that a 22-month phase-in period was practicable based on the amount of time they believed is required to convert and retrofit the treating plants. The commenters did not present any substantial information that would render the requested time period inappropriate, and therefore EPA is not extending the requested time period.

IV. Summary of **Agency's** Decision Regarding the Voluntary **Cancellation/** Use Termination Requests

The **Agency** has accepted portions of the proposed voluntary **cancellation/use** termination requests and is deferring action on other portions. As stated earlier, in light of the issues raised by commenters with regard to the agricultural fence post and permanent wood foundation uses, the **Agency** has decided to defer its decision and action on the registrants' request to terminate these uses until the **Agency** has evaluated these uses through the reregistration process. If at any time during the reregistration review the **Agency** determines it has sufficient information to take any action, that is, to either accept or refuse the requests for termination of those uses, the **Agency** will take appropriate action at that time. EPA's decision on the other portions of the requests for voluntary **cancellation/use** termination is as follows:

1. The following product registrations were cancelled as of March 17, 2003:

62190-5	WolmanacR Concentrate 70%
62190-11	CCA Type C 50% Chromated Copper Arsenate

2. The following manufacturing product registrations were amended to delete certain terminated uses as of May 16, 2003:

3008-66	Arsenic Acid 75%
10465-32	CSI Arsenic Acid 75%
62190-7	Arsenic Acid 75%

For the above identified manufacturing-use products, the accepted amended labeling reads as follows:

Effective December 31, 2003, this product may only be used (1) for formulation of the following end-use wood preservative products: ammoniacal copper zinc arsenate (ACZA) or chromated copper arsenate (CCA) labeled in accordance with the Directions for Use shown below, or (2) by persons other than the registrant, in combination with one or more other products to make: ACZA wood preservative; or CCA wood preservative that is used in accordance with the Directions for Use shown below.

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before

Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only be sold or distributed for uses within the AWPA Commodity Standards under which the treatment occurred.

3. The following end use product registrations were amended to delete certain terminated uses as of May 16, 2003:

3008-17	K-33-C (72%) Wood Preservative
3008-21	Special K-33 Preservative
3008-34	K-33 (60%) Wood Preservative
3008-35	K-33 (40%) Type-B Wood Preservative
3008-36	K-33-C (50%) Wood Preservative
3008-42	K-33-A (50%) Wood Preservative
3008-72	Osmose Arsenic Acid 75%
10465-26	CCA Type-C Wood Preservative 50%
10465-28	CCA Type-C Wood Preservative 60%
10465-32	CSI Arsenic Acid 75%
35896-2	Wood-Last Conc. Wood Preservation AQ 50% Solution CCA-Type A
62190-2	Wolmanac Concentrate 50%
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62190-8	Wolmanac Concentrate 72%
62190-14	Wolmanac Concentrate 60%

For the above identified end-use products, the accepted amended label is to read as follows:

Effective December 31, 2003, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers Association Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34). Forest products treated with this product may only

be sold or distributed for uses within the AWPAC Commodity Standards under which the treatment occurred.

4. Further amendments to the product label will be made by the registrants of the above identified amended registrations via notification to the **Agency** on or before December 1, 2003, to: (1) Delete the use directions in effect prior to these amendments, and (2) delete the preface phrase ``Effective December 31, 2003,`` from the amended labels such that the statement begins by reading, ``This product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers' Association Standards...`` These specific changes may be done via notification.

5. The registrants of the above identified products will notify their customers of the amended registrations/labels by certified mail. This is to ensure that those who are affected by the **cancellation** order are aware of the labeling changes.

6. The **cancellation** order included existing stocks provisions as described in Unit V below.

7. The text in 40 CFR 152.132 provides that a distributor (or supplemental registrant) is considered an agent of the registrant for intents and purposes under the act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

V. Provisions for Disposition of Existing Stocks

For purposes of this Order, the term ``existing stocks`` is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the **cancellation** or amendment. Any distribution, sale or use of existing stocks in a manner inconsistent with the terms of the **cancellation** order or the existing stocks provisions contained in the order will be considered a violation of section 12(a)(2)(K) and/or section 12(a)(1)(A) of FIFRA. The following summarizes the effective dates of **cancellation** as well as the existing stocks provisions for each product subject to the **cancellation** order.

1. Cancelled registrations (Table 2 in Unit II). The effective date of **cancellation** was March 17, 2003, the date upon which the **cancellation** order was signed. Registrants have 60 calendar days following the signing of the **cancellation** order (until May 16, 2003) in which to sell or distribute products listed in Table 2. Registrants were notified of the signing of the **cancellation** order and of the required changes to labels on the date the order was signed by telephone and facsimile transmission. Any sale, distribution, or use by the registrants of these affected products on or after that date is prohibited. Sale, distribution, or use by persons other than the registrants may continue until supplies are exhausted. Additionally, sale, distribution or use of the stocks by persons other than the registrant in the channels of trade may continue until depleted, provided any sale, distribution, or use is in accordance with the existing label of that product.

2. Registrations amended to delete terminated uses (Table 3). The effective date of the **cancellation** effectuating the use terminations is May 16, 2003. The registrants' voluntary requests for termination of uses had requested that EPA allow use of the previous (unamended) labels for a period of 60 calendar days from the date on which the particular affected registrant receives EPA's approval of the amendments. The **Agency** is granting this request by making the effective date of **cancellation** 60 calendar days following the signing of the **cancellation** order. Registrants were notified of the signing of the **cancellation** order and of the required changes to labels on the date the order was signed by telephone and facsimile transmission. This 60-

day period is intended to allow a sufficient period of time for an orderly transition to the amended labels without disrupting supply and availability of product. On or after May 16, 2003, any sale, distribution, or use of existing stocks by the registrants of the subject registrations is prohibited. Sale, distribution, or use by persons other than the registrants may continue until supplies are exhausted. Additionally, sale, distribution or use of the stocks in the channels of trade by persons other than the registrant may continue until depleted, provided any sale, distribution or use is in accordance with the existing label of that product.

List of Subjects

Environmental protection, Chromated Copper Arsenate, Pesticides and pests.

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Acting Director, Antimicrobials Division, Office of Pesticide Programs.

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