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(via email)

January 13, 2020

Chairman Steve Englebright & Members of the New York State Assembly Committee on Environmental Conservation
623 Legislative Office Building
Albany, NY 12248

Re: **Opposition to A-7005**: Removing the Railroad Exemption from Section 27-2513 of the State Environmental Conservation Law

Dear Chair Englebright & Members of the Assembly Committee on Environmental Conservation:

The Treated Wood Council (TWC) would like to thank you for giving us this opportunity to review and respond to A-7005, legislation introduced on April 3, 2019 by Assembly Member Thiele, referred to your Committee and recently re-referred to your Committee on January 8th. A-7005 would amend Section 27-2513 of the NYS Environmental Conservation Law by removing the railroad exemption.

TWC is an international trade association, serving the treated wood industry with more than 440 member organizations, including eleven that have headquarters and/or facilities in New York State [Albany (2), Athens, Buffalo, Cortland, Gouverneur, Margaretville, New York City, Old Forge, Rensselaer and Riverhead]. The TWC membership includes virtually every US manufacturer of treated wood railroad ties.

What Would A-7005 Actually Do?

In order to understand what A-7005 would actually do, we need to understand the provisions of Section 27, Title 25. Title 25 prohibits the manufacture, sale or use of creosote or products containing creosote in the State. Subsection 2513 provides exemptions from the prohibition in Title 25. A-7005 would remove Subparagraphs 1 and 2 from the list of exemptions; thereby prohibiting the manufacture, sale or use of creosote-treated railroad ties, timbers or utility poles used by all railroads in New York State.

Based upon the information provided in this letter, we oppose A-7005, as well as companion bill, S-4982.

Decisions on Creosote and Products Containing Creosote Should Be Based on Sound Science

All wood preservative pesticides must be reviewed and registered by the US Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §§136-136y. This includes creosote, which is used extensively by railroads for ties and other railroad applications such as poles and timbers. FIFRA establishes an “unreasonable adverse effects” standard for registration of pesticides, including wood preservatives. EPA explains this statutory standard as follows (<http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program>):

“When EPA determines that a pesticide product can be registered for use, the Agency has concluded that the use of the pesticide product will not cause unreasonable adverse effects to humans or the environment when applied according to the label directions and restrictions.”

EPA regulates creosote as an antimicrobial pesticide, and explains the process for registering antimicrobial pesticides on the Agency’s website <http://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-4-additional-considerations>. EPA provides an explanation of the registration and periodic re-registration review process, and the requirements for all antimicrobial pesticides. No pesticide may be used unless it has met these requirements. EPA states (<http://www2.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-1-overview-requirements-pesticide>):

“These pesticides must be supported with a complete scientific analysis and show that they can be used without causing unreasonable adverse effects to human health or the environment.”

EPA further provides a list of the agency’s data requirements for pesticide registration (<http://www.epa.gov/pesticide-registration/data-requirements>). As you can see, the requirements are extensive and include potential impacts on ground water. In order for a pesticide to receive and maintain EPA registration, the Agency requires volumes of information and years of scientific studies. Creosote registrants, under the auspices of the Creosote Council, a FIFRA § 3(c)(2)(b) joint development group, had spent millions of dollars conducting EPA-required studies to ensure that creosote continues to meet FIFRA’s unreasonable adverse effects standard.

A-7005 Conflicts with the Science-Based Evaluations Done by the US Environmental Protection Agency

On September 25, 2008, following an extensive review based on scientific studies conducted and submitted by the Creosote Council, EPA issued its Reregistration Eligibility Decision (“RED”) for Creosote (http://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-025004_25-

[Sep-08.pdf](#)). The RED sets forth EPA's determination that the pressure-treatment wood preservative uses of creosote do not pose unreasonable risks to human health or the environment. The RED also resulted in nationally-uniform creosote labeling, which encompasses all American Wood Protection Association (AWPA) use classifications for creosote, including for production of railroad ties and other creosote-treated wood products on which railroads rely. To our knowledge, no other state or local government entity restricts the use of these creosote-treated products by railroads.

EPA has used sound science to reach its conclusions; but the language in A-7005 is in conflict with this science and the findings in the Creosote RED. A-7005 offers no scientific references or citations to support its provisions.

Decades of Use without Incidence of Harm

It is believed that the first US plant, built for the manufacture of creosote railroad ties, was constructed in 1865 in Somerset, MA. Creosote treated ties have been used in our country for about 150 years.

When EPA issued its RED for creosote, it was estimated that approximately 70% of all creosote use was for railroad ties, with 15-20% for utility poles. It has also been estimated that US Class 1 railroads (not counting Short Lines and private railroads) purchase more than 15 million creosote-treated railroad ties each year. It is fair to say that there are hundreds of millions of creosote-treated ties currently in use by US railroads.

Considering more than a century of use and millions of creosote-treated railroad ties throughout all parts of our country (not to mention railroad poles and timbers), we know of no incidence of harm or illness caused by the routine use of these creosote-treated products that might warrant the removal of the exemptions, as prescribed by A-7005.

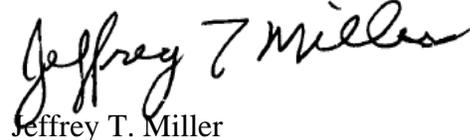
Conclusion

In summary, the US Environmental Protection Agency has thoroughly examined the potential human health and environmental risks, associated with the use of creosote for the treatment of poles, ties and timbers, and has concluded that there is no unreasonable risk. No other state, federal or local authority has restricted such use by railroads of creosote-treated products. Following more than a century of use and millions of creosote ties in use, there is no record of harmful effects associated with such use of creosote.

We oppose A-7005 and are communicating with Member Thiele. We ask you to delay any consideration on this legislation until we can work with Member Thiele to modify A-7005.

Thank you for considering our thoughts on this legislation. We welcome the opportunity to work or meet with you, and please let us know if you have any questions.

Respectfully submitted,



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Treated Wood Council

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