H. R. 3629

To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to establish prohibitions and requirements relating to arsenic-treated wood, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Ms. SCHAKOWSKY (for herself, Ms. SOLIS, Ms. CARSON of Indiana, Mr. NADLER, Ms. NORTON, Mrs. JONES of Ohio, Ms. DELAURA, and Mr. HINCHLEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to establish prohibitions and requirements relating to arsenic-treated wood, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Arsenic-Treated Wood Prohibition Act”. 
SEC. 2. PROHIBITION OF CERTAIN USES OF ARSENIC-TREATED WOOD; AMENDMENT TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

(a) IN GENERAL.—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is amended—

(1) by redesignating sections 33 and 34 as sections 34 and 35, respectively; and

(2) by inserting after section 32 the following:

“SEC. 33. PROHIBITION AGAINST USE OF ARSENIC-TREATED WOOD TO MANUFACTURE CERTAIN PRODUCTS OR STRUCTURES.

“(a) IN GENERAL.—Notwithstanding any other provision of law, not later than 90 days after the date of the enactment of this section, the Administrator shall promulgate regulations that prohibit—

“(1) the use of arsenic-treated wood to manufacture any product or structure that may be used for or by children, including—

“(A) playground equipment, play houses, or other structures designed for frequent use specifically by children;

“(B) fences;

“(C) walkways;

“(D) decks;
“(E) docks and boat houses; and

“(F) structures or products used in residential landscaping;

“(2) the use of arsenic-treated wood to manufacture mulch, compost, or soil-amendment products;

“(3) the use of arsenic-treated wood to manufacture railroad ties, marine pilings, or utility poles, except that this subsection does not apply to such a product or structure to the extent that the Administrator determines that the use of arsenic-treated wood in the product or structure is safe; and

“(4) such additional uses of arsenic-treated wood to manufacture products or structures as the Administrator determines to be appropriate, whether such products or structures are intended for residential use or commercial use.

“(b) DEFINITIONS.—For purposes of this section:

“(1) ARSENIC-TREATED WOOD.—The term ‘arsenic-treated wood’ means wood that is treated with a pesticide that is a chromated copper arsenical or is treated with any other arsenical pesticide.

“(2) MANUFACTURE.—The term ‘manufacture’, with respect to the use of arsenic-treated wood in products and structures described in subsection (a), includes—
“(A) the creation of a product designed to be assembled by a consumer; and

“(B) the building of a product on behalf of a consumer in accordance with specifications given by the consumer.”.

(b) RISK ASSESSMENT.—

(1) IN GENERAL.—Not later than March 15, 2004, the Administrator, in consultation with the Consumer Products Safety Commission, shall publish in the Federal Register an assessment of the risks posed by the production, cutting, milling, sanding, mulching, and use of CCA-treated wood.

(2) METHODOLOGY.—In conducting the risk assessment, the Administrator shall follow the methodology recommended by the Scientific Advisory Panels that were organized by the Environmental Protection Agency and that met in October 2001.

(3) DEFINITIONS.—For purposes of this subsection:

(A) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(B) The term “CCA-treated wood” means wood that is treated with a pesticide that is a chromated copper arsenical.
(c) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prece. 121) is amended by striking the items relating to sections 30 and 31 and inserting the following:

"Sec. 30. Minimum requirements for training of maintenance applicators and service technicians.
"Sec. 31. Environmental Protection Agency minor use program.
"Sec. 32. Department of Agriculture minor use program.
  "(a) In general.
  "(b)(1) Minor use pesticide data.
  "(2) Minor Use Pesticide Data Revolving Fund.
"Sec. 33. Prohibition of certain uses of arsenic-treated lumber.
  "(a) In general.
  "(b) Definitions.
    "(1) Arsenic-treated wood.
    "(2) Manufacture.
"Sec. 34. Severability.
"Sec. 35. Authorization for appropriations.").

SEC. 3. DISPOSAL OF ARSENIC-TREATED WOOD; AMENDMENT TO SOLID WASTE DISPOSAL ACT.

Section 3001(e) of the Solid Waste Disposal Act (42 U.S.C. 6921(e)) is amended by adding at the end the following:

"(3)(A) Discarded arsenic-treated wood and sawdust from such wood shall be deemed, for purposes of this Act, to be a listed hazardous waste under subsection (b)(1) and shall be disposed of in a lined landfill with a leachate collection system and groundwater monitoring system (or such other system as the Administrator determines is appropriate to capture arsenic and prevent arsenic from contaminating groundwater).

(B) As used in subparagraph (A):
“(i) The term ‘arsenic-treated wood’ means wood that is treated with a pesticide that is a chromated copper arsenical or is treated with any other arsenical pesticide.

“(ii) The term ‘pesticide’ has the meaning given such term in section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136).”.

SEC. 4. ASSISTANCE TO CONSUMERS, STATE AND LOCAL GOVERNMENTS, AND SCHOOL SYSTEMS.

(a) Educational Program.—Not later than 180 days after the date of the enactment of this Act, the Administrator, in consultation with the Consumer Product Safety Commission, shall develop and conduct an educational program to assist consumers, State and local governments, school systems, and other institutions in—

(1) testing arsenic levels in arsenic-treated wood and soil surrounding arsenic-treated wood;

(2) making decisions relating to the containment and removal of arsenic-treated wood from homes, playgrounds, schools, and other facilities designed primarily for use by children; and

(3) providing guidance regarding the decontamination of soils, mulches, and other media under structures made of arsenic-treated wood where children or pets may be exposed to arsenic.
(b) Assistance for Schools.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a pilot program to provide grants and technical assistance to school systems to assist the school systems in—

(A) removing playground and other equipment containing arsenic-treated wood from grounds of the school systems;

(B) applying sealant to arsenic-treated wood structures; and

(C) conducting any necessary remediation relating to use of arsenic-treated wood.

(2) Certain uses of grant.—The Administrator may authorize a grant under paragraph (1) to be used for the purpose of replacing playground equipment and related items that are removed because the equipment or items contain arsenic-treated wood. With respect to any portion of a grant under such paragraph that is authorized to be used for such purpose, the Administrator may require that the applicant involved make non-Federal contributions toward the cost of replacing the equipment or items.

(c) Definitions.—In this section:
(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “arsenic-treated wood” means wood that is treated with a pesticide that is a chromated copper arsenical or is treated with any other arsenical pesticide.

(3) The term “pesticide” has the meaning given such term in section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136).

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 2004 and each subsequent fiscal year.

SEC. 5. CONSUMER PRODUCT SAFETY COMMISSION; REPORT ON MITIGATION MEASURES REGARDING CHILDREN AND ARSENIC-TREATED WOOD.

Not later than August 1, 2004, the Consumer Product Safety Commission shall submit to the Congress a report on the status of the efforts of the Commission to identify stains, sealants, or other measures for reducing the exposure of children to arsenic from products or structures that—

(1) are constructed in whole or part with arsenic-treated wood, as defined in section 33 of the
Federal Insecticide, Fungicide, and Rodenticide Act, as added by section 2 of this Act;

(2) may be used for or by children; and

(3) will remain in use after the effective date of the prohibition established in regulations under such section 33.