

108TH CONGRESS  
1ST SESSION

# S. 337

To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to prohibit the use of arsenic-treated lumber as mulch, compost, or a soil amendment, and to prohibit the manufacture of arsenic-treated wood for use as playground equipment for children, fences, walkways, or decks or for other residential or occupational purposes, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2003

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to prohibit the use of arsenic-treated lumber as mulch, compost, or a soil amendment, and to prohibit the manufacture of arsenic-treated wood for use as playground equipment for children, fences, walkways, or decks or for other residential or occupational purposes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Arsenic-Treated Resi-  
3 dential-Use Wood Prohibition Act”.

4 **SEC. 2. HAZARDOUS WASTE CLASSIFICATION.**

5 Section 3001(e) of the Solid Waste Disposal Act (42  
6 U.S.C. 6921(e)) is amended by adding at the end the fol-  
7 lowing:

8 “(3) CCA-TREATED WOOD.—

9 “(A) DEFINITIONS.—In this paragraph:

10 “(i) ARSENIC-TREATED WOOD.—The  
11 term ‘arsenic-treated wood’ means wood  
12 treated with an arsenical pesticide.

13 “(ii) CCA-TREATED WOOD.—The  
14 term ‘CCA-treated wood’ means wood that  
15 is treated with any pesticide that is an in-  
16 organic arsenical or chromated copper ar-  
17 senical.

18 “(iii) PESTICIDE.—The term ‘pes-  
19 ticide’ has the meaning given the term in  
20 section 2 of the Federal Insecticide, Fun-  
21 gicide, and Rodenticide Act (7 U.S.C.  
22 136).

23 “(B) REGULATION OF CCA-TREATED  
24 WOOD.—

25 “(i) IN GENERAL.—Notwithstanding  
26 section 261.4(b)(9) of title 40, Code of

1 Federal Regulations (as in effect on the  
2 date of enactment of this paragraph), or  
3 any similar successor regulation, discarded  
4 CCA-treated wood, other arsenical-treated  
5 wood, and CCA-treated sawdust shall be  
6 disposed of in a lined landfill with a leach-  
7 ate system and groundwater monitoring  
8 system (or such other system as the Ad-  
9 ministrator determines is appropriate to  
10 capture arsenic and prevent arsenic from  
11 contaminating groundwater).

12 “(ii) RISK ASSESSMENT.—

13 “(I) IN GENERAL.—Not later  
14 than March 15, 2003, the Adminis-  
15 trator, in consultation with the Con-  
16 sumer Products Safety Commission,  
17 shall publish in the Federal Register  
18 an assessment of the risks posed by  
19 the production, cutting, milling, sand-  
20 ing, mulching, and use of CCA-treated  
21 wood.

22 “(II) METHODOLOGY.—In con-  
23 ducting the risk assessment, the Ad-  
24 ministrator shall follow the method-  
25 ology recommended by the Scientific

1           Advisory Panels which were organized  
2           by the United States Environmental  
3           Protection Agency and which met in  
4           October 2001.

5           “(C) PROHIBITION OF PRODUCTION.—

6           “(i) IN GENERAL.—As soon as prac-  
7           ticable after the date of enactment of this  
8           paragraph, the Administrator shall promul-  
9           gate regulations that—

10                   “(I) provide for the cessation of  
11                   production of CCA-treated wood not  
12                   later than 60 days after the date of  
13                   enactment of this paragraph; and

14                   “(II) prohibit the production of  
15                   CCA-treated wood on and after that  
16                   date.

17           “(ii) EXEMPTIONS.—If the Adminis-  
18           trator publishes in the Federal Register a  
19           notice that the uses of CCA-treated wood  
20           identified in subclauses (I), (II), and (III)  
21           are safe, as of the date of publication of  
22           that notice, clause (i) shall not apply to the  
23           production of CCA-treated wood used  
24           for—

25                   “(I) railroad ties;

1 “(II) marine pilings; or  
2 “(III) utility poles.”.

3 **SEC. 3. PROHIBITION OF CERTAIN USES OF ARSENIC-**  
4 **TREATED LUMBER.**

5 (a) IN GENERAL.—The Federal Insecticide, Fun-  
6 gicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is  
7 amended—

8 (1) by redesignating sections 33 and 34 as sec-  
9 tions 34 and 35, respectively; and

10 (2) by inserting after section 32 the following:

11 **“SEC. 33. PROHIBITION OF CERTAIN USES OF ARSENIC-**  
12 **TREATED LUMBER.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) CCA-TREATED WOOD.—The term ‘CCA-  
15 treated wood’ means wood that is treated with any  
16 pesticide that is a chromated copper arsenical.

17 “(2) MANUFACTURE.—The term ‘manufacture’,  
18 with respect to CCA-treated wood and items de-  
19 scribed in subsection (b)(1), includes—

20 “(A) the creation of a product designed to  
21 be assembled by a consumer; and

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

1       “(b) PROHIBITION.—Notwithstanding any other pro-  
2 vision of law, except as provided in paragraph (3)(C)(ii)  
3 of section 3001(e) of the Solid Waste Disposal Act (42  
4 U.S.C. 6921(e)), not later than 90 days after the date of  
5 enactment of this subsection, the Administrator shall pro-  
6 mulgate regulations that prohibit the use of CCA-treated  
7 wood—

8               “(1) in the manufacture of any product that  
9 may be used for or by children, including—

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

13                       “(B) fences;

14                       “(C) walkways;

15                       “(D) docks, including residential docks,  
16 residential landscaping and boat houses; and

17                       “(E) any other similar product, as deter-  
18 mined by the Administrator; and

19               “(2) for mulch, compost, a soil amendment, or  
20 any other residential or occupational purpose, as de-  
21 termined by the Administrator.”.

22       (b) CONFORMING AMENDMENT.—The table of con-  
23 tents in section 1(b) of the Federal Insecticide, Fungicide,  
24 and Rodenticide Act (7 U.S.C. prec. 121) is amended by

1 striking the items relating to sections 30 and 31 and in-  
 2 serting 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) Definitions.

“ (1) CCA-treated wood.

“ (2) Manufacture.

“ (b) Prohibition.

“Sec. 34. Severability.

“Sec. 35. Authorization for appropriations.”.

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

5 (a) DEFINITIONS.—In this section:

6 (1) ADMINISTRATOR.—The term “Adminis-  
 7 trator” means the Administrator of the Environ-  
 8 mental Protection Agency.

9 (2) CCA-TREATED WOOD.—The term “CCA-  
 10 treated wood” means wood that is treated with any  
 11 pesticide that is an inorganic arsenical or chromated  
 12 copper arsenical.

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

17 (b) EDUCATIONAL PROGRAM.—Not later than 180  
 18 days after the date of enactment of this Act, the Adminis-  
 19 trator shall develop and conduct an educational program

1 to assist consumers, State and local governments, school  
2 systems, and other institutions in—

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

5           (2) making decisions relating to the contain-  
6           ment and removal of CCA-treated wood from homes,  
7           playgrounds, schools, and other facilities designed  
8           primarily for use by children; and

9           (3) providing guidance regarding the decon-  
10          tamination of soils, mulches, and other media under  
11          structures made of CCA-treated wood where children  
12          or pets may be exposed to arsenic.

13          (c) ASSISTANCE FOR SCHOOLS.—Not later than 180  
14          days after the date of enactment of this Act, the Adminis-  
15          trator shall establish a pilot program to provide grants  
16          and technical assistance to school systems to assist the  
17          school systems in—

18               (1) removing playground and other equipment  
19               containing CCA-treated wood from grounds of the  
20               school systems;

21               (2) applying sealant to CCA-treated wood struc-  
22               tures; and

23               (3) conducting any necessary remediation relat-  
24               ing to use of CCA-treated wood.

1       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as are nec-  
3 essary to carry out this section.

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