

VETO MESSAGE - No. 119

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 5419-A, entitled:

"AN ACT to amend the environmental conservation law, in relation to phasing-out the manufacture, sale, and use of creosote, prohibiting combustion thereof, and regulating disposal thereof"

NOT APPROVED

This bill would amend the Environmental Conservation Law to ban the manufacture, sale and use of creosote as a wood preservative, and to regulate the disposal of wood treated with creosote beginning on January 1, 2007. The bill would exempt from the ban wood used by railroads or for utility poles and, until January 1, 2009, wood used in marine structures that service pleasure vessels. Further, the bill would prohibit the burning of creosote, and would bar the burning of creosote-treated wood except in a facility permitted by the Department of Environmental Conservation ("DEC") prior to January 1, 2004. The bill would further ban the disposal of wood treated with creosote, except in a landfill lined to prevent groundwater contamination. The DEC Commissioner would be authorized to adopt implementing rules and to grant waivers allowing the use of wood treated with creosote in the event of an emergency. The bill would authorize DEC to enforce the creosote ban, and would provide: (i) for a first violation, a warning and educational materials; and (ii) for a second or subsequent violation, a fine of up to \$2,500 and an additional penalty of up to \$500 per day for a continuing violation. The bill would take effect immediately.

I disapproved similar legislation last year on the grounds that: (a) a ban on creosote was premature since the Environmental Protection Agency ("EPA") was undertaking a comprehensive study of the health effects of creosote which would help determine if additional restrictions are necessary on the manufacture, sale and use of creosote; (b) there was no exemption for creosote-treated railway ties used in street railway systems, such as those operated by the New York City Transit Authority, or for facilities operated by the Port Authority of New York and New Jersey; and (c) the restrictions on the burning and disposal of creosote-treated wood were unnecessary since either disposal method may be appropriate in certain circumstances.

While the sponsors have addressed one of these concerns by exempting creosote-treated railway ties from the proposed ban, I am nonetheless compelled to disapprove the bill. The EPA is currently evaluating the health effects of creosote and is expected to make a determination by the end of 2006 as to whether to re-register creosote as a restricted-use pesticide and what, if any, mitigation measures must be instituted to protect workplace and environmental safety. In the interim, however, the EPA has instituted an important mitigation measure, at the request of the creosote industry, by prohibiting the non-pressure treated use of creosote, including liquid applications, in New York State as of December 31, 2004. Moreover, the bill remains flawed insofar as it does not exempt the use of creosote-treated wood at facilities operated by the Port Authority. Finally, I am unconvinced that the prohibition on the

burning of creosote or creosote-treated wood is appropriate or necessary.

While I remain committed to ensuring the health and safety of New York State's workers, I am constrained to disapprove the bill based upon the foregoing flaws.

The bill is disapproved.

(signed) GEORGE E. PATAKI
