



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

TO THE SENATE:

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

Senate Bill Number 7804, entitled:

**V E T O # 415** "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"

NOI 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 have disapproved similar legislation in each of the past two years 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 material used 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 inappropriate. See Veto No. 119 of 2005 and Veto No. 23 of 2004. Unfortunately, this bill does not address any of these issues. Further, I am advised that the federal government continues to review this issue and intends to issue a determination in the upcoming year 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. Based on the foregoing, I am again constrained to disapprove the bill.

The bill is disapproved