SB 372 Coal Tar Pavement Products.pdf
Uploaded by: Doug Myers
Position: FAV

CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

Senate Bill 372

Environment – Application of Coal Tar Pavement Products – Prohibitions
(Safer Sealant Act of 2022)

Date: February 8, 2022
To: Education, Health, and Environmental Affairs

Position: **SUPPORT**
From: Doug Myers, Maryland Senior Scientist

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 372 which limits the use of coal tar sealants with more than 1000 mg/kg of polycyclic aromatic hydrocarbons (PAH), known carcinogens for aquatic and marine life.

Coal tar is linked to greenhouse gas intensive coal combustion that negatively affects the Bay
Coal tar is the byproduct of bituminous coal combustion, a process that creates greenhouse gases that contribute to climate change. Greenhouse gases also deposit nitrogen oxide into the Bay. Warmer bay temperatures contribute to excess algae growth and low dissolved oxygen levels.

A coal tar ban could accelerate reductions in polluted stormwater runoff
One of the biggest challenges to meeting the Chesapeake Bay Blueprint in Maryland is the increasing pollutant load of stormwater runoff. Permits from Maryland Department of Environment require the removal or retrofit of impervious surfaces, including pavement to replace coal tar with asphalt. A ban on additional sales of coal tar will help expedite the reduction of PAH contamination of surface waters more rapidly than any commercially driven phase-out or transition.

Safer sealant alternatives to coal tar exist
Coal tar has been used as a sealant for asphalt and roofing material for many decades. Nowadays, however, superior and less-toxic alternatives are available. Petroleum asphalt mixed with clay and other minerals creates superior composite sealants that are more durable and release far less toxic polycyclic aromatic hydrocarbon (PAH) into the environment. Recent studies comparing coal tar to asphalt sealants reveal the considerably greater risk of PAH leaching into groundwater and becoming airborne dust from surface cracking.

Coal combustion is declining and other states are considering coal tar bans
Bituminous coal combustion is declining as a source of energy production in Maryland and throughout the United States in recognition of its negative effects on the climate. For this reason, several states are considering bans on coal tar. Previous versions of this bill sought to ban the sale of coal tar in Maryland which would have sent a more potent market signal about its toxicity and the environmental impacts associated with its manufacture.

CBF urges the Committee's FAVORABLE report on SB 372. For more information, contact Robin Jessica Clark, Maryland Staff Attorney at rclark@cbf.ogr and 443.995.8753.

Maryland Office ▪ Philip Merrill Environmental Center ▪ 6 Herndon Avenue ▪ Annapolis ▪ Maryland ▪ 21403
Phone (410) 268-8816 ▪ Fax (410) 280-3513

SB372_eranson_fav.pdf
Uploaded by: Emily Ranson
Position: FAV

SB 372 - Environment - Sale and Application of Coal Tar Pavement Products - Prohibition

Senate Education, Health, and Environmental Affairs
February 8, 2022

Position: Favorable

Dear Chairman Pinsky and Members of the Committee,

Clean Water Action supports SB372 to ban the use and sale of coal tar containing pavement products.

Coal-tar based sealant is a major source of polycyclic aromatic hydrocarbon (PAH) contamination in urban environments, according to studies conducted by the U.S. Geological Survey. Polycyclic aromatic hydrocarbons are suspected human carcinogens and are toxic to aquatic life. They are linked to cancer, mutations, and birth defects. Some PAHs are more toxic when exposed to sunlight, to which is the exact condition coal-tar-based sealants are exposed.

PAHs are present in various products, but coal-tar-based sealants have far higher concentrations of PAHs than other products:

- Asphalt: 2-9 mg/kg
- Tire particles: 84 mg/kg
- Used motor oil: 730 mg/kg
- Coal-tar-based sealcoat: 34,000 to 202,000 mg/kg[1]

Fortunately, alternatives without coal-tar are widely available. Many jurisdictions, including Howard, Montgomery, and Prince George's Counties, have banned sealants containing coal-tar. These other products do not pose the risk and are cost-effective.

For these reasons, we urge a favorable report.

Thank you,

Emily Ranson
Clean Water Action
eranson@cleanwater.org

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1 https://www.usgs.gov/mission-areas/water-resources/science/coal-tar-based-pavement-sealcoat-pahs-and-environmental-health?qt-science_center_objects=0#qt-science_center_objects

SB372_MDSierraClub_fav - 8Feb2022.pdf
Uploaded by: Josh Tulkin
Position: FAV

P.O. Box 278
Riverdale, MD 20738

Committee: **Education, Health and Environmental Affairs**
Testimony on: **SB 372 - "Environment – Coal Tar Sealant Products – Prohibitions (Safer Sealant Act of 2022)"**
Position: **Favorable**
Hearing Date: **February 8, 2022**

The Maryland Chapter of the Sierra Club supports SB 372 to prohibit the supplying, selling, manufacturing, applying, or soliciting the application of a high-PAH coal tar sealant product to a driveway or parking area in the State unless the product is labeled in accordance with standards adopted by the Maryland Department of the Environment (MDE). Labeling standards as well as regulations to implement the standards must be developed by MDE for both high and low-PAH coal tar sealant products.

Under the bill, a county, municipality, or unit of local government in the state may not enact and enforce standards or requirements on coal tar sealant products that are any less stringent than the state's regulations but may enact or enforce regulations that are more stringent. A person who violates state regulations regarding coal tar sealants would be subject to a civil penalty not exceeding $2,500 for each violation; each day a violation occurs in a separate violation. All penalty payments would be made into the Maryland Clean Water Fund.

Coal tar is a byproduct in the making of coking coal for steelmaking and other industrial uses. Pavement sealant products containing coal tar are highly hazardous to public health and the environment. The coal tar ingredient in pavement sealants, polycyclic aromatic hydrocarbons (PAH), can cause rashes, skin irritations, cancers, mutations, birth defects and death. Workers employed to apply these sealants, as well as pregnant women and young children are particularly susceptible. PAH is also toxic to aquatic animals. Coal tar does not remain just where it is applied but is distributed throughout the environment by weathering and friction from vehicle tires and foot traffic. PAH particles then travel in airborne dust and water runoff.

PAH levels in coal tar sealants are 1000 times higher than in asphalt-based products. Selling or using coal tar sealants is unnecessary because many product alternatives such as asphalt and latex-based sealants are safer and affordable substitutes, and are widely available. Coal tar sealant restrictions are already in effect in Montgomery, Prince George's, Anne Arundel, and Howard Counties.

The Safer Sealant Act of 2022 provides an opportunity to extend vital health and environmental protections for the benefit of all Marylanders. We urge the committee to issue a favorable report on this bill.

Brian Ditzler
Transportation Committee Chair
Brian.Ditzler@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org

SB 372 - Coal Tar Sealant Products.pdf
Uploaded by: Matt Peterson
Position: FAV

BALTIMORE JEWISH COUNCIL

WRITTEN TESTIMONY

Senate Bill 133 – Environment – Coal Tar Sealant Products – Prohibitions (Safer Sealant Act of 2022)

Education, Health and Environmental Affairs Committee

February 8, 2022

SUPPORT

Background: Senate Bill 133 (SB372) would prohibit the sale or manufacture of polycyclic aromatic hydrocarbons (PAH) coal tar sealant products. Additionally, it would prohibit the use of these products from being applied to a driveway or parking area and would instruct the Department of the Environment to adopt standards for the use of low-PAH coal tar sealant products.

Written Comments: Long term exposure to coal tar sealants has been linked to cancer since as far back as 1795. Coal tar sealants contain high levels of PAHs, and when humans come into contact with them, they bind to DNA. This has shown to lead to cancer, mutations, birth defects, death in fish, wildlife, and invertebrates. The Environmental Protections Agency has classified seven PAHs as probable human carcinogens, and 16 PAHs as Priority Pollutants. Simply put, no one should be coming into contact with these toxic substances.

When coal tar sealants dry and wear off the surface they have been applied to, they become highly fine dust particles. Not only is this dust breathed in by humans, but it is also tracked indoors settling on carpets where infants may be playing. Furthermore, it is susceptible to becoming run off, posing significant environmental and health threats to marine life and drinking water. It is clear that coal tar sealant products are harmful and it is why they have already been banned in several Maryland counties.

The Jewish concept of *tikkun olam* teaches us to repair the world in which we live in. Jewish law clearly states that we are not to destroy the public domain. If passed, this bill would immediately put a stop to the significant damage that has been caused against both the environment and people.

The Baltimore Jewish Council and The Associated Jewish Community Federation of Baltimore are committed to repairing our world. We represent The Pearlstone Center in Reisterstown, MD, a conference center and farm that employs and teaches sustainable practices. We encourage this committee to join us in our mission to create Maryland that is healthier for everyone. With this in mind, the Baltimore Jewish Council urges a favorable report of SB372.

BALTIMORE JEWISH COUNCIL
5750 Park Heights Avenue, Suite 329 • Baltimore, Maryland 21215
410-542-4850 • fax 410-542-4834 • baltjc.org
Member of the Jewish Council for Public Affairs

BALTIMORE JEWISH COUNCIL

The Baltimore Jewish Council, a coalition of central Maryland Jewish organizations and congregations, advocates at all levels of government, on a variety of social welfare, economic and religious concerns, to protect and promote the interests of The Associated Jewish Community Federation of Baltimore, its agencies and the Greater Baltimore Jewish community.

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410-542-4850 • fax 410-542-4834 • baltjc.org

Member of the Jewish Council for Public Affairs

Letter to Maryland Legislature.pdf
Uploaded by: Robert Archie
Position: FAV

https:www.gopitchblack.com

02/03/2022

900 Feather Ridge
Cheyenne, WY 82009
775-232-1055

Dear Paul Pinsky,

My name is Robert (Robb) Archie. I am the president of ASMA-USA. (Asphalt Sealcoat Manufacturers Association). ASMA has a long history dating back to the early 1990s. It was first started to bring all of the contractors and manufacturers together in the western states. Its primary mission was to get everyone on the same page, to make sure that quality and safe sealcoats were being applied, and that the work was being done correctly. That was over 40 years ago. It worked, and the West Coast has enjoyed the use of asphalt emulsion seal coat since the 1980s.

Once asphalt emulsion seal coat came upon the scene in the early 1980s, coal tar emulsion was pretty much abandoned by all of us. Although we and other emulsion plants were capable of making coal tar emulsion, none of the contractors wanted to use it. Why? Because there was now a viable, safer alternative, asphalt emulsion seal coat.

The reasons for this change were simple. Coal tar emulsion burned your skin, irritated your airways and was difficult, if not impossible to get off. The only way to remove it from your body and equipment was to use Xylenol and Xylene! These chemicals are highly explosive and flammable. But that was the only way to remove it at that time.

In the early 1970s, my dad had a coal tar emulsion and application facility in Orlando, Florida. We had the contract to sealcoat all of Disney World. We applied it to most of their asphalt pavements, asphalt sidewalks and parking facilities. As a young man applying coal tar emulsion, I and some of the other workers, would take our shirts off and wear shorts because of the high heat and humidity. Big mistake! Why? Because, we wound up in the emergency room later that night, with severe burns from the overspray that had sprayed upon our arms, legs, and torsos. Did it burn us at first? No. That's because you don't realize what it is doing to you until it is left on for a short time.

Needless to say, it took a week for me to recover, but the damage was done. Coal tar was in my tissues. Has it caused medical issues for me specifically now, no one knows for sure. Do workers applying it now know this? Well, if the manufacturers of coal tar are saying it's safe, then I doubt it since they may not be offering additional information regarding possible harm.

Some of the ingredients in coal tar emulsion are: Coal Tar/Cresylic Acid. Yes acid! Does that sound friendly to the human body? No, it is not.

I remember once as a young boy at my dad's plant, I leaned over a vat of Cresylic Acid to smell it. I passed out from the fumes. If my dad hadn't caught me, I would have landed in it. Sound like a safe chemical to you?

I'm also the owner and president of U.S. Seal International, Inc. We manufacture asphalt emulsion sealcoat plants. These plants manufacture "Pitch Black" asphalt emulsion sealcoat materials. Currently, we have 11 Seal Coat Plants in the USA. The list is as follows: Seattle, Idaho, Nevada, Utah, Minnesota, Wisconsin, Texas, Illinois, Michigan, South Carolina and South Dakota, with two new plants going online this year in Colorado and Connecticut.

We tested Pitch Black Asphalt Emulsion Seal Coat for PAHs (Polycyclic Aromatic Hydrocarbons). The test determines to what degree of PAHs are in the seal coat being tested. PAHs are harmful toxins believed to lead to cancer and are harmful to the environment. The seal coat being tested, must have less than 1000 parts PAHs per million in it to pass the test. Pitch Black came back with a 0.00% PAH's.

Does asphalt emulsion seal coat work? Yes, it does. Our Wisconsin plant sold over 700,000 gallons last year in just a 6-month period. Does it stay on the ground? Yes, it's still there after tough winters. The contractors who were using coal tar but have switched to asphalt emulsion seal coat say they will never go back to coal tar emulsion.

Our plants in Michigan and South Carolina are doing well and are converting people from using coal tar to asphalt emulsion seal coat. The East Coast plants making coal tar could make asphalt emulsion but won't. Why? Why do you think! With close to 100 million people living in the West Coast regions, why are they all using asphalt emulsion sealcoat? The reason is simple. It's safe, it works, it lasts a long time and no one's out of work because of the change. It started to happen 40 years ago and no one has regretted it.

My family stopped using coal tar emulsion over 40 years ago and we will never ever use it again.

The Archie family has a very long history of being in the asphalt industry. First my grandfather in the early 1930s and then my dad as his partner in 1946, and then me in the 1960s. Our family had used coal tar for many years.

Currently, I'm 70 years old and probably the oldest person in the room who has used coal tar since 1959. I was 8 years old then, helping my dad on weekends in his asphalt business. In the early 1960s I also worked there as a teenager in the summertime, helping my dad when he worked on Route 66. In total, my family's been in the asphalt business for over 70 years. The experience and wisdom I've gained from my family, the thousands of jobs we've done, as well as the exposure to many engineers, has been invaluable.

As we speak, there are currently over 30 prestigious organizations who have come up with the same results in testing coal tar as the USGS has. The results aren't good for the coal tar manufacturers. If you're hearing that USGS lost a skirmish with the coal tar manufacturers, there is more to the story. The chemists' notes referenced in the court case were from the early stages of their testing. These notes from 12 years ago or more, from the chemists who did the research, do not negate the final findings from the USGS in regards to coal tar. Unfortunately, the chemists are now deceased. In my opinion, if this is all the coal tar manufacturers have, it's a pretty weak argument.

Interestingly enough, I am a Republican, who supports small business, common sense and reason. But I also support safe products, and protecting human health. More important than ever, the American public deserves to know the ingredients in every product that may have a harmful effect on current and future generations.

In closing, Minnesota banned coal tar. New York banned coal tar. Maine banned coal tar as well as the state of Washington. This is your opportunity to do the right thing and protect your constituents.

Sincerely,

Robert B. Archie
President

U.S. Seal International, Inc.

SB372_ Coal Tar Sealants Testimony .pdf
Uploaded by: Sen. Cheryl Kagan
Position: FAV

CHERYL C. KAGAN
Legislative District 17
Montgomery County

Vice Chair
Education, Health, and
Environmental Affairs Committee

Joint Audit Committee
Joint Committee on Federal Relations

Miller Senate Office Building
11 Bladen Street, Suite 2 West
Annapolis, Maryland 21401
301-858-3134 · 410-841-3134
800-492-7122 *Ext.* 3134
Fax 301-858-3665 · 410-841-3665
Cheryl.Kagan@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB372: Coal Tar Sealant Ban

Senate Education, Health, and Environmental Affairs Committee
Tuesday, February 8, 2022 | 1:00 pm

Coal tar sealants are used to protect and brighten driveways, parking lots, and even playgrounds. Unfortunately, this material is incredibly toxic—containing extremely high levels of Polycyclic Aromatic Hydrocarbons (PAHs). ***Six years ago***, the American Medical Association advocated for a nationwide ban on coal tar.

We track coal tar from our driveways into our homes on the bottom of our shoes, our dog's paws, etc. These PAHs can cause many health problems, including eye and skin irritation, nausea, and diarrhea. Long-term exposure can lead to asthma-like symptoms, decreased immune function, cataracts, organ damage, or cancer.

Marine life is also damaged by dangerous PAHs that seep into our waterways. The chemicals hinder growth in salamanders; impair development in frogs; cause liver damage in fish; and decrease the population of crabs, clams, and oysters.

SB372 would simply ban the use of coal tar sealants.

Ace Hardware, Lowe's, Home Depot, and many other stores stopped selling coal tar due to liability concerns. Anne Arundel, Howard, Montgomery, and Prince George's Counties have already banned this toxic product. There are many affordable alternatives. It's time to expand the ban of coal tar sealants statewide to protect our ecosystems and all Marylanders.

I urge a favorable report on SB372.

CoalTarFreeAmericaLetter4.pdf
Uploaded by: Tom Ennis
Position: FAV

Coal Tar FREE AMERICA

TESTIMONY FOR SB 0372

February 4, 2022

Maryland Senate Education, Health, and Environmental Affairs Committee

Dear Senators:

Thank you for taking up this life-saving legislation to restrict the use of coal tar and high PAH pavement sealers in the State of Maryland. Perhaps this year Maryland will become our 5th state to pass a coal tar ban!

My name is Tom Ennis and I helped Austin, TX pass, defend and implement the nation's first coal tar sealer ban. I have supported many others across the US since then and **I support this bill as well**.

This is **a bill that is ripe for passage.**

The SCIENCE is clear. Over 26 research institutions have found that coal tar sealers are a danger to humans and the environment.[1] That's why the AMA supports the elimination of this product.[2]

It is also why Morgan State University found that Chesapeake Bay oysters are affected by the chemicals from this product and said,

> *This study's results provide evidence that PAHs entering an aquatic ecosystem from runoff from road surfaces have the potential to inhibit oyster reproduction by negatively impacting three critical processes in the early life cycle of the Eastern oyster.*[3]

The SUPPORT is clear. Local government restrictions on this product apply to more than 40% of Maryland's population. It is time to make that 100%. A map showing these bans is at the footnoted link.[4]

The SUPPLY is ready. Non-toxic sealers are numerous and similar in quality and price.[5]

In 2007 Home Depot and Lowes stopped selling coal tar products because of their liability.[6] I hope that Maryland will heed the advice of a Councilmember from Montgomery County: "*If coal tar sealers are not good enough for the shelves of Home Depot and Lowes, then it isn't good enough for the paved surfaces of our community."*

Attached are responses to claims made by industry in opposition to this legislation and additional references.

If I can answer any of your questions, please don't hesitate to reach me at coaltarfreeamerica@gmail.com.

Sincerely,

Thomas E. Ennis, PE, LEED AP

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[1] https://www.scribd.com/doc/282979737/Hyperlinked-Coal-Tar-Sealer-Research-2015
[2] https://www.ama-assn.org/press-center/press-releases/ama-urges-legislation-ban-dangerous-coal-tar-sealcoats
[3] https://rosap.ntl.bts.gov/view/dot/24488
[4] https://www.arcgis.com/home/webmap/viewer.html?webmap=5b2684d1744b4b73b9beb0e4b899b2d2
[5] https://coaltarfreeusa.com/p/
[6] https://coaltarfreeusa.com/2017/02/top-5-business-reasons-to-stop-the-use-of-coal-tar-sealers/

INTERIM MEETING

Public health concerns prompt physician policy

NOV 16, 2016

Troy Parks
News Writer
American Medical Association
Full Bio

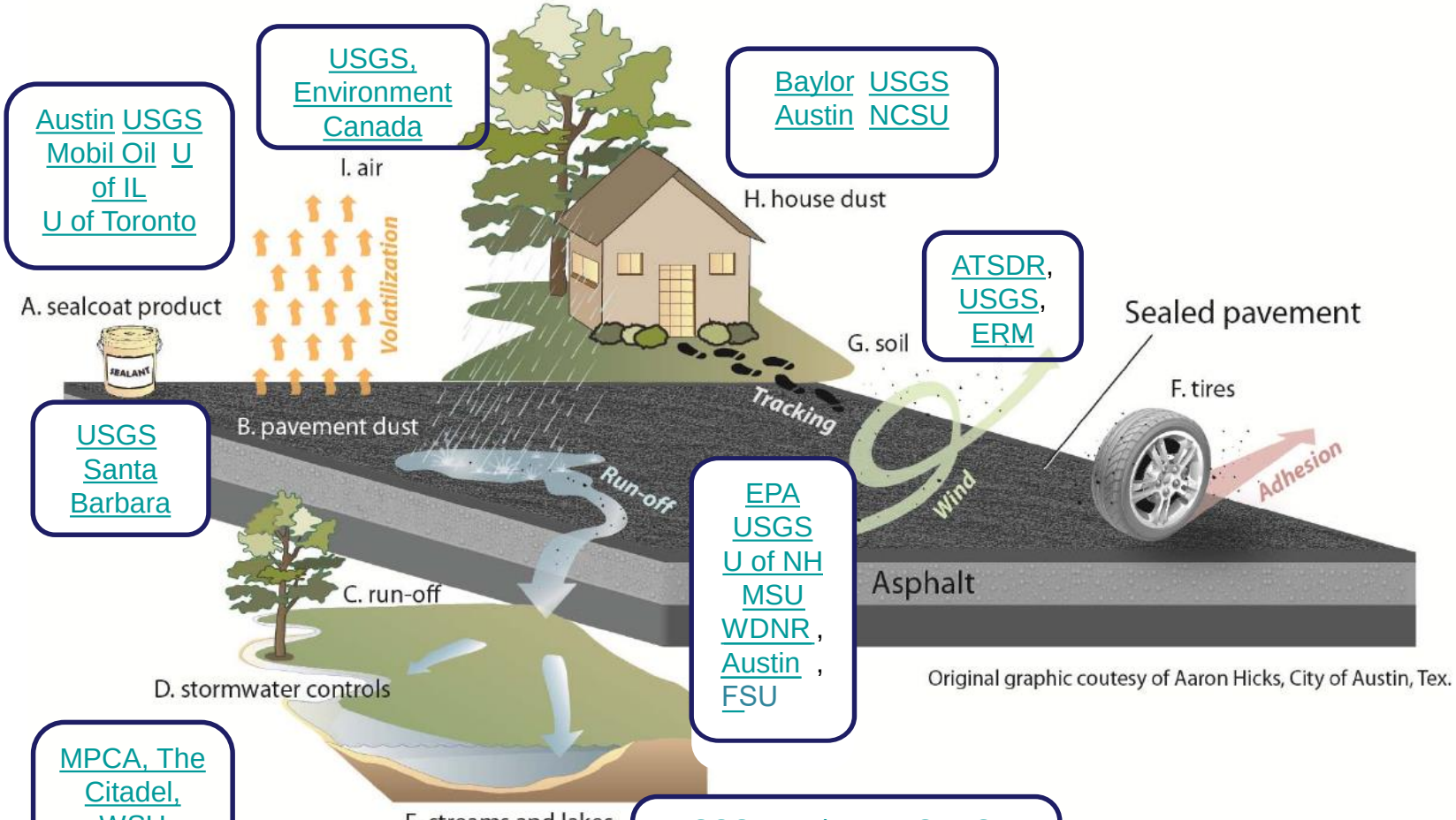
Banning dangerous coal-tar sealcoats

Studies show that individuals with lifelong exposure to coal-tar sealcoat-treated pavements and playgrounds have a 38-fold higher risk of cancer. Already, Washington, Minnesota, Washington, D.C., and counties, townships and municipalities in many other states, including Michigan, have banned the use of coal-tar sealcoats. Alternatives to coal-tar-based sealcoats, including asphalt, acrylic or latex sealcoats, have low or no polycyclic aromatic hydrocarbons (PAH) and are available at a similar cost.

The AMA adopted new policy aimed at reducing or ending the use of common coal-tar-based sealcoats that are used and applied on pavement and playgrounds across the country. The new policy advocates for legislation either to ban the use of pavement sealcoats containing PAHs or to require the use of sealcoat products with minimal PAH. According to the International Agency for Research on Cancer, PAH compounds have been proven to be carcinogenic, mutagenic and teratogenic to humans.

"Whether they are sending their children to a playground or repairing a driveway, Americans are potentially being exposed to harmful carcinogens in coal-tar-based sealcoats," said AMA Board member Albert J. Osbahr III, MD. "Even if one's exposure is limited, as sealcoats erode over time, PAHs leach into the water, soil and air, finding their way into sediment and eventually into aquatic wildlife. We must take action to either eliminate the use of PAH altogether or dramatically reduce its concentration in coal-tar sealcoats."

Sealant Research



Original graphic coutesy of Aaron Hicks, City of Austin, Tex.

USGS, Environment Canada

Baylor USGS Austin NCSU

Austin USGS Mobil Oil U of IL U of Toronto

ATSDR, USGS, ERM

USGS Santa Barbara

EPA USGS U of NH MSU WDNR, Austin, FSU

MPCA, The Citadel, WSU MPCA

USGS, Austin, NYAS. MSU, SIU, TSU, DuPage, Dickinson, U of Lyon ASU

Coal Tar Free America's Response (red)

The following type in black was produced in January of 2022 by the opponents of this bill. Coal Tar Free America's responses to these claims are in red type.

HB – 133 - Coal Tar Sealant Products – Prohibitions

You'll notice that there isn't a single reference for any of these claims. They say the moon is made of blue cheese and then we provide a reasoned, scientific response. For any comment to be taken seriously, they should show where and by what research these claims are made.

Coal Tar Pavement Sealers ~~Are Safe~~

- Sealers are an insignificant source of PAH in the environment. The foundational study that pointed the finger at sealants is in question.

  FALSE.

  The findings are a decades' long legal battle over draft model runs for entire watersheds. This has very little to do with the potent toxicity posed to parking lot applicators and users. At best it is an academic exercise about theoretical watershed loading.

  Nonetheless, even the New York Academy of Sciences found that the most significant load of toxic PAHs to NY Harbor were from coal tar sealers in 2007 which is BEFORE the USGS modeling research even took place.
  https://www.austintexas.gov/sites/default/files/files/Watershed/coaltar/nyas_pah_harbor_study_final.pdf

- Bans on coal tar sealant has had no impact on the level of PAHs in the environment.

  FALSE

  Nonsense. How do you decrease the load of millions of pounds of toxins to a state environment and not have positive effects? USGS research in Austin found PAH values decreased nearly 60% in 8 years after the ban went into effect there.

- A child's most significant exposure to PAHs comes from wood stoves and fireplaces, as well engine emissions (including cars, lawn and garden equipment, etc.). The PAH from these products is hundreds and thousands of times more prolific than coal tar sealant.

  FALSE

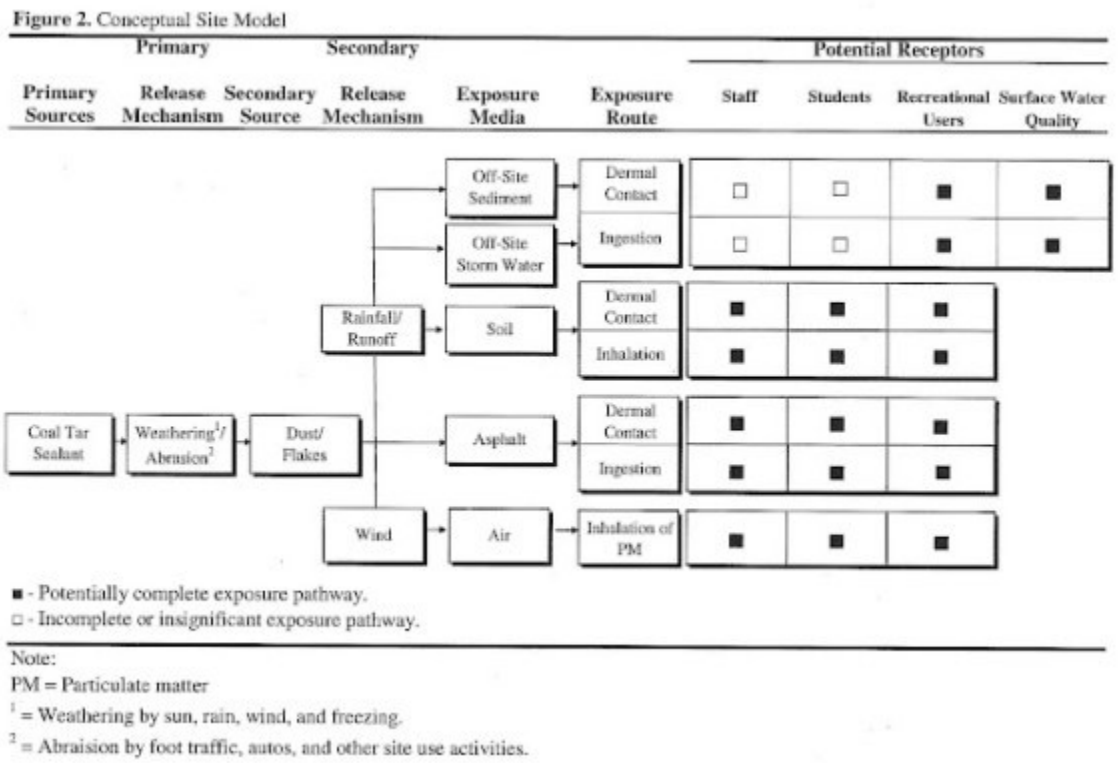
  It is well understood that different PAHs have different toxicity. The heaviest and most toxic PAHs are in sealers, not from these other sources.

- There is NO scientific evidence that children or adults are at risk if they stand or touch dry pavement sealant.

  FALSE

  In 2009 the Austin Independent School District (AISD) began to look into this issue at their schools. Below is a link to an interview that was made just as the study was getting started. Since then their toxicologist consultant found that there exist 5 complete CTS exposure pathways from paved surface to child or adult at the school! AISD has since begun a program to prioritize and remove all coal tar sealant remnants from their facilities. They are the first in the nation to do so.

  An exposure pathway is defined by the ATSDR as follows: The route a substance takes from its source (where it began) to its end point (where it ends), and how people can come into contact with (or get exposed to) it. An exposure pathway has five parts: a source of contamination (such as an abandoned business); an environmental media and transport mechanism (such as movement through groundwater); apoint of exposure (such as a private well); a route of exposure (eating, drinking, breathing, or touching), and a receptor population (people potentially or actually exposed). When all five parts are present, the exposure pathway is termed a completed exposure pathway.



Complete Exposure Pathways at Schools from Coal Tar Sealants

- Sealants are a safe, effective product, especially when properly used.

  FALSE.

  With 5 complete exposure pathways for kids with a toxic product that statement is irresponsible at best.

- **No** regulatory agency, including the United State Environmental Protection Agency (EPA), the Maryland Department of the Environment (MDE), or The Occupational Safety and Health Administration (OSHA) have taken steps to ban the use of refined tar sealants. In fact, refined coal tar pavement sealant is not, nor has it ever been classified as a hazardous material by the EPA.

  FALSE.

  The EPA doesn't classify products as hazardous only ingredients. And their own research recommends local bans as a strategy to control pollution from this product.

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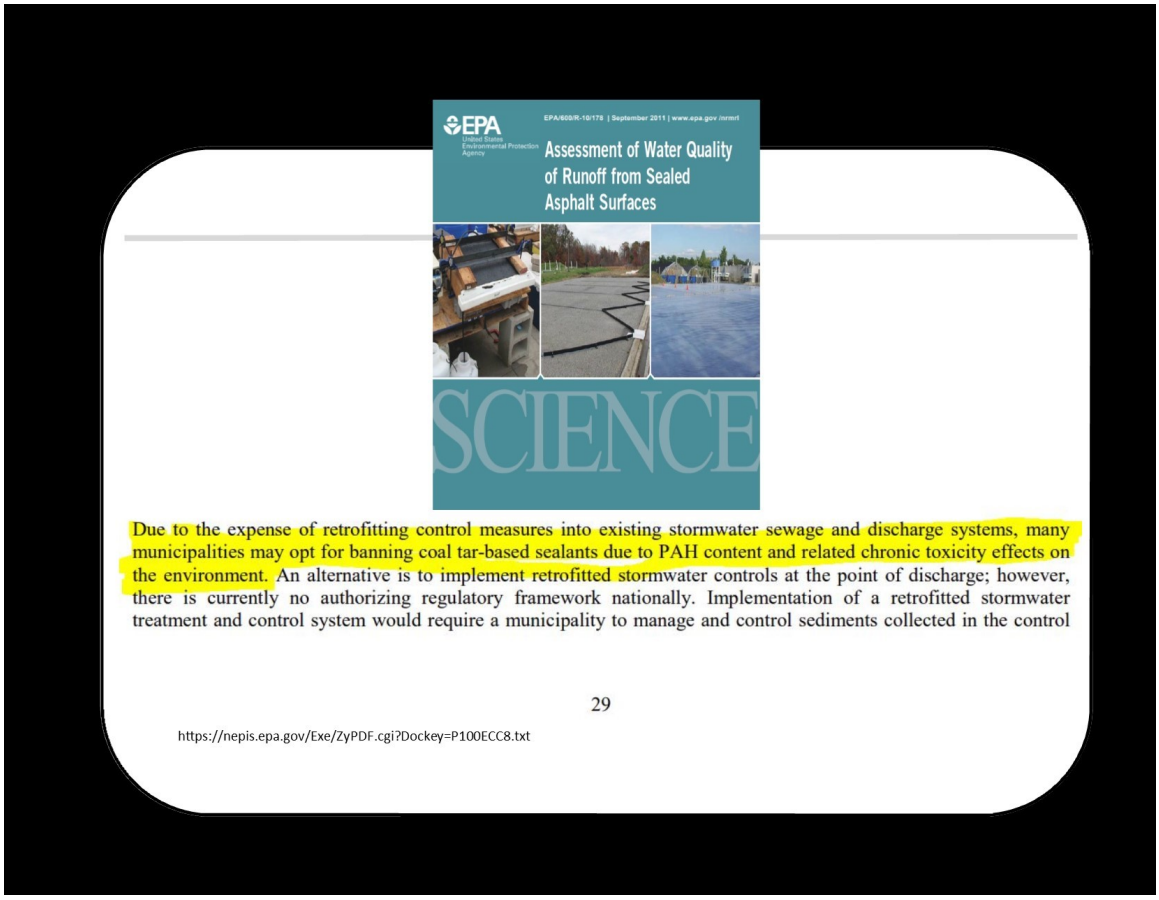

are used to coat the insides of pipes that distribute drinking water and are a critical product for wastewater treatment systems.

TRUE, BUT MISLEADING AND IRRELEVANT

Coal tar is generally does not dilute in water without significant wearing like cars on a parking lot. And we don't let our kids play on the inside of pipes at wastewater treatment plants.

- If sealants are as harmful as the advocates say, why are advocates amending the bill to permit the manufacturing of the product?
-

This is a decision for the sponsor and other policy-makers based upon a variety of circumstances.

- Advocates say a manufacturing exemption will protect a few dozen union jobs in Baltimore City. However, hundreds of applicator jobs throughout the state would be at risk. This makes no sense.

FALSE.

Even leading industry analysts say that the future is bright and full of growth EVEN WITH BANS.

A market research company recently confirmed what one CEO of a sealer company said a few years ago:

> *bans really won't hurt the sealcoat business.*

In the projected period through 2024, the industry is expected to experience "moderate growth" but "rising bans on coal tar-based sealers, the improved performance of asphalt-based sealers, and competitive pricing are expected to result in the increased consumption of bitumen and asphalt sealers…"

http://www.transparencymarketresearch.com/north-america-sealers-market.html

Coal Tar Sealants are Safe - SB 372.pdf
Uploaded by: Josh White
Position: UNF

SB 372 - Coal Tar Sealant Products – Prohibitions

Coal Tar Pavement Sealers Are Safe

- Sealers are an insignificant source of PAH in the environment. The foundational study that pointed the finger at sealants is in question.

- Bans on coal tar sealant have had no impact on the level of PAHs in the environment.

- A child's most significant exposure to PAHs comes from wood stoves and fireplaces, as well engine emissions (including cars, lawn and garden equipment, etc.). The PAH from these products is hundreds and thousands of times more prolific than coal tar sealant.

- There is NO scientific evidence that children or adults are at risk if they stand or touch dry pavement sealant.

- Sealants are a safe, effective product, especially when properly used.

- **No** regulatory agency, including the United State Environmental Protection Agency (EPA), the Maryland Department of the Environment (MDE), or The Occupational Safety and Health Administration (OSHA) have taken steps to ban the use of refined tar sealants. In fact, refined coal tar pavement sealant is not, nor has it ever been classified as a hazardous material by the EPA.

- Sealants are used to coat the insides of pipes that distribute drinking water and are a critical product for wastewater treatment systems.

- If sealants are as harmful as the advocates say, why are advocates amending the bill to permit the manufacturing of the product?

- Advocates say a manufacturing exemption will protect a few dozen union jobs in Baltimore City. However, hundreds of applicator jobs throughout the state would be at risk. This makes no sense.

DC Circuit Court's Exploratory Data Ruling Is A Wi

Uploaded by: Josh White

Position: UNF

DC Circ.'s Exploratory Data Ruling Is A Win For Transparency

By **Lawrence Ebner and David Kanter** (October 5, 2021)

Lawrence Ebner

David Kanter

When scientists employed by universities, nonprofit institutes or corporations publish scientific studies, they routinely make their underlying research data available to peer reviewers and anyone else who is interested.

A recent U.S. Court of Appeals for the District of Columbia Circuit decision¸ Pavement Coatings Technology Council v. United States Geological Survey,[1] confirms that federal government scientists should be no different.

They cannot shield their published work from professional, industry or public criticism by invoking Freedom of Information Act Exemption 5 ð the deliberative process privilege ð as a reason for refusing to disclose their exploratory research data.

Exploratory Data

Federal departments and agencies employ tens of thousands of scientists.

Every one of them uses the centuries-old scientific method when engaged in scientific research.

According to the Encyclopedia Britannica, the scientific method "is the technique used in the construction and testing of a scientific hypothesis ... a researcher develops a hypothesis, tests it through various means, and then modifies the hypothesis on the basis of the outcome of the tests and experiments."[2]

Computer modeling has become a common way that scientists use the scientific method. They test hypotheses by constructing complex computer models of physical, biological or other systems, and then repeatedly run the model with various combinations of inputs to see how they affect the model's outputs.

The question of whether federal government scientists' computer model runs are exploratory data exempt from disclosure under the FOIA Exemption 5 deliberative process privilege was at the heart of the Pavement Coatings case.

This seemingly esoteric question actually has far-reaching implications for all federal government scientists, and for any company whose products or services may be affected by federal government research.

The USGS Urban Lakes Study

In the Pavement Coatings case, U.S. Geological Survey, or USGS, scientists obtained the agency's authorization to publish a modeling study that they designed and conducted to determine whether refined tar sealant, also known as sealcoat ð a coal tar-based product used to prolong the service lives of asphalt surfaces such as residential driveways, parking lots and airport runways ð is the principal source of environmentally ubiquitous, polycyclic aromatic hydrocarbons, or PAHs, in urban lakes.

The study, published in 2010 with the USGS imprimatur,[3] indicated that the study authors had performed more than 200 computer model runs. But based on what the authors claimed were their four best modeling scenarios, they concluded that refined tar sealant accounts for at least 90% of the PAHs in urban watersheds.

Relying primarily on the USGS urban lakes study, and on USGS' thinly veiled regulatory advocacy,[4] an increasing number of state and local governments have banned use of refined tar sealant.

FOIA Request and Response

In 2011, the Pavement Coatings Technology Council, which represents the producers and distributors of refined tar sealant, filed a FOIA request seeking, among other documents, printouts of the input and output data for the 200 computer model runs that were not analyzed or discussed in the published urban lakes study.

PCTC needed these data to determine whether USGS scientists had manipulated their computer model until they found input combinations ð what the published study describes as the four best modeling scenarios ð that supported their preconceived identification of refined tar sealant as the predominant source of urban PAHs.

More specifically, PCTC required the data not only to attempt to replicate the study conducted by USGS ð an essential element in the scientific method ð but also to determine whether USGS had cherry-picked the model runs used in its study in order to reach a desired conclusion.

In response, USGS dumped thousands of pages of useless raw data on PCTC, but refused to produce the 200 urban lakes computer model runs, claiming that they represent exploratory analysis of data and fall within FOIA Exemption 5's deliberative process privilege.

According to USGS, the withheld model runs were covered by this privilege because releasing them "would inhibit the ability [of USGS scientists] to freely explore and analyze data without concern for external criticism," and would "confuse the public on the approach and conclusions of the final published study."

FOIA Litigation

In 2014 PCTC sued USGS in the U.S. District Court for the District of Columbia. The parties filed cross motions for summary judgment. After sitting on the case for three years, U.S. District Judge Ketanji Brown Jackson, subsequently elevated to the D.C. Circuit, finally issued a ruling, granting summary judgment to USGS.[5]

PCTC appealed to the D.C. Circuit. Following briefing and oral argument, the court of appeals issued its decision in May 2021. In pertinent part, the court agreed with PCTC and held that USGS has not sustained its burden of demonstrating that the 200 withheld model runs qualify for Exemption 5's deliberative process privilege.

The opinion explains[6] that Exemption 5 "covers deliberative, pre-decisional communications within the Executive Branch ... and was intended to protect not simply deliberative material, but also the deliberative process of agencies."[7] "To qualify for withholding, information must be both pre-decisional and deliberative."[8]

The D.C. Circuit's panel opinion, authored by U.S. Circuit Judge Robert L. Wilkins, holds that the withheld model runs are neither predecisional nor deliberative.

Not Predecisional

The court found that USGS "failed to introduce any evidence establishing what role the requested model runs played in its decision to publish the urban lakes study."[9]

Although USGS argued that the relevant decision for Exemption 5 deliberative process privilege purposes was USGS's decision on whether to authorize publication of the study, the court of appeals was "faced with a record devoid of evidence that any decision-maker at USGS considered the discarded model runs in determining whether and in what form to publish the urban lakes study."[10]

Not Deliberative

The deliberative prong of the deliberative process privilege "focuse[s] on whether disclosure of the requested material would tend to discourage candid discussion within an agency."[11]

Based on the affidavits provided by USGS, the court found that "USGS failed to establish how or why disclosure of the model runs would chill scientists' use of exploratory model runs in the future or impact the accuracy or efficiency of the Survey's operations. The agency's affidavits contain no explicit statement that disclosure will harm the agency's decision-making."[12]

As to "claims that releasing the model runs will enable criticism of USGS," the court emphasized that "criticism is not a recognized harm against which the deliberative process privilege is intended to protect."[13] Further, USGS "does not explain how, if these model runs are disclosed, scientists will cease to conduct model runs in the future or do them differently."[14]

Conclusion

USGS, represented by the U.S. Department of Justice, contended that the working thoughts of a scientist, reflected by computer modeling exploratory analyses, fall within the deliberative process privilege.

As the D.C. Circuit confirmed in its Pavement Coatings decision, however, such intellectual exercises, i.e., the scientific method's trial-and-error process, are not legal or policy deliberations, which is what Congress intended to protect when it enacted Exemption 5.

Equally important, the Pavement Coatings decision makes it clear that federal government scientists are no different than nongovernmental scientists when it comes to making a published study's underlying data available to interested parties, including for the purpose of replicating a study to assess its validity and credibility.

Like every other published study, a federal agency's published studies should not be immune from criticism. Indeed, because government-sponsored studies often influence federal, state and local policies, as they have in the case of refined tar sealant, they should be subjected to heightened scrutiny.

The Pavement Coatings decision advances this objective by precluding federal government

scientists from hiding behind Exemption 5. Their ethical obligations should be no different from those of private or nonprofit sector scientists.

As a practical matter, the Pavement Coatings decision will deter government agencies from attempting to manipulate computer modeling in a way that supports individuals' preconceived results regulatory agendas.

Although the rigging of federal government studies is presumably rare, it can have undue influence on federal, state and local decisionmakers. This is exactly why FOIA was enacted ð to shed light on Executive Branch activity and make government personnel, including government scientists, accountable.

For this reason, when a lawyer is confronted with a federal government-conducted scientific study that is being used to disparage their client's products of services, they should not hesitate to file a FOIA request to obtain all relevant underlying data, including all computer model runs or other exploratory data.

Lawrence S. Ebner is the founder of Capital Appellate Advocacy PLLC.

David A. Kanter is a partner at Swanson Martin & Bell LLP.

Disclosure: Ebner and Kanter represented the Pavement Coatings Technology Council in the FOIA litigation discussed in this article.

[1] Pavement Coatings Technology Council v. United States Geological Survey, 995 F.3d 1014 (D.C. Cir. 2021)

[2] Encyclopedia Britannica, Scientific Method (Jan. 16, 2020), available at https://www.britannica.com/science/scientific-method.

[3] Van Metre, P.C., and Mahler, B.J. 2010, Contribution of PAHs from coal tar pavement sealcoat and other sources to 40 U.S. Lakes, Sci. Total Environ., 49: 334-344.

[4] See, e.g., USGS, Coal-Tar-Based Pavement Sealcoat, PAHs, and Environmental Health, available at https://tinyurl.com/rrz6pt8z; USGS Fact Sheet 2011 ï3011 (Feb. 2011), Coal-Tar-Based Pavement Sealcoat, Polycyclic Aromatic Hydrocarbons (PAHs), and Environmental Health, available at https://tinyurl.com/ntk4kw2w.

[5] 436 F. Supp. 3rd 115 (D.D.C. 2019).

[6] 5 U.S.C. § 552(b)(5).

[7] 995 F.3d at 1021.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id. at 1023.

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February 4, 2022

Re: SB 372 - Banning coal tar pavement sealer

Mr. Chairman and Members of the Committee:

This may be my last chance to ask you to reconsider your bill that would effectively end Maryland's coal tar sealing industry. For many years, you have sponsored a bill that could put many other Marylanders and me out of business. We believe your intentions are sincere, but this legislation is misguided and will be an insignificant environmental law that will lead to genuine harm to Maryland workers.

I am the owner of SealMaster-Delmarva, a pavement sealer manufacturer in Cockeysville, Maryland, employing 22 workers with good-paying jobs with benefits. We have been in business for decades, and last year we made 634,000 gallons of coal tar sealer. In all that time, we have never been cited for health, safety, or environmental violations. Likewise, hundreds of pavement sealer contractors have operated in Maryland. After working on countless parking lots and driveways, the industry maintains an excellent reputation for health, safety, and environmental stewardship.

Unlike other products banned by this state's legislature, the Maryland pavement sealant industry has not been sued for health and safety. More remarkably, going back twenty years of worker's compensation reports, the industry has not identified one worker's compensation claim due to exposure to coal tar sealant. Despite a health, safety, and environmental record that would be the envy of many products and industries, Maryland's coal tar industry faces an existential crisis.

Over the past few years, Montgomery, Prince George's, Anne Arundel, and Howard County have effectively banned coal tar sealant application. Commercial property owners and homeowners do not know the difference between so-called "Low" and "High" PAH sealant. Moreover, knowledgeable customers are very skeptical that "Low PAH" products are worth the cost. The drop in sealcoating in Maryland decreased to the point that GemSeal Corporation closed its 30-year-old White Marsh manufacturing plant and its Rosedale storefront, eliminating 22 good-paying jobs with benefits.

All these new bans are due to, at best, a misunderstanding of coal tar sealant's insignificance as a source of Polycyclic aromatic hydrocarbons (PAHs), and at worse, the bans are based on studies that have never been peer-reviewed. Moreover, there is little to no evidence that bans on coal tar sealants have made any difference in PAH levels in the environment.

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What's ironic is that a coal sealant ban would increase repaved parking lots and driveways, which may be a much more significant source of PAHs. A commercial property owner in Maryland could sealcoat their parking lot seven (7) times before they reach the cost of repaving with new asphalt. A parking lot that is sealcoated properly every 4 to 5 years can extend its useful life to 25 years and beyond. With the current quality of asphalt being mixed in asphalt plants in Maryland today with up to 40% of recycled asphalt millings, repaving is becoming necessary in 10 to 12 years.

For all these reasons, we hope you and your colleagues will reconsider this legislation. Thank you.

Sincerely,
Tom Decker, Jr.
President
SealMaster-Delmarva

SB0372 LOI.pdf
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Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 8, 2022

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
Miller Senate Office Building, Suite 2W
Annapolis, Maryland 21401

Re: Senate Bill 372- Environment – Coal Tar Sealant Products – Prohibitions (Safer Sealant Act of 2022)

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed SB 372 entitled *Environment – Coal Tar Sealant Products – Prohibitions (Safer Sealant Act of 2022)* and would like to provide the committee additional information regarding this bill.

Beginning October 1, 2023, a person would be prohibited from supplying, selling, or offering for sale a high-polycyclic aromatic hydrocarbon (PAH) coal tar sealant product for application to, or applying or soliciting the application of a high-PAH coal tar sealant product on, a driveway or parking lot area in the State. Additionally, beginning October 1, 2023, a person would be prohibited from manufacturing, supplying, or selling a coal tar sealant product for use in the State unless the coal tar sealant product is labeled in accordance with labeling standards developed by MDE. A high-PAH coal tar sealant product is defined as a sealant product containing coal tar or coal tar pitch volatiles containing more than 0.1% PAH by weight that is intended for application on a surface. MDE would be required to develop certain labeling standards for a person manufacturing, supplying, or selling a coal tar sealant product for application to a driveway or parking lot area in Maryland, and to adopt regulations that allow a manufacturer to label a coal tar sealant product containing less than 50 ppm (0.005%) PAH by weight as a low-PAH coal tar sealant product. The bill authorizes the use of the Maryland Clean Water Fund to implement this bill and to collect penalty revenues.

Under SB 372, the existing enforcement provisions of §§9–334 through 9–344 of the Environment Article would apply to violations of the bill and regulations adopted thereunder. The bill would also establish a civil penalty of up to $2,500 for each violation of Subtitle 24 of Title 9 of the Environment Article, a new subtitle in which the bill's provisions would be codified. Section 9-342 of the Environment Article already provides for civil and administrative penalties of up to $10,000 per violation. As currently written, a person who violates Subtitle 24 of Title 9 of the Environment Article could pay a substantially higher penalty than $2,500 per day for each violation in an administrative action brought by MDE under §9-342(b) of the Environment Article. If this is not the intent, the bill could be revised to provide that $2,500 is to be the daily civil and administrative penalty maximum for violations of the proposed Subtitle 24, however the other penalty provisions established under §9-342 of the Environment Article still apply. MDE is working with the bill sponsor on an amendment to clarify these provisions.

MDE supports the concept of reducing the use of products containing PAHs to protect public health and the environment. Pavement sealants contain PAHs, persistent organic compounds, of which several are known or probable human carcinogens and toxic to aquatic life. Sealants applied to pavements can erode due to weathering, abrasion from vehicles or foot traffic, and can break down into fine dust or particles. The PAH-contaminated dust or particles can contaminate soil, bodies of water, and homes. MDE sets in regulation a maximum concentration level for Benzo(a)pyrene, a PAH found in coal tar sealant products, in surface waters used as a public water supply. Approximately 70% of Marylanders' water supply comes from surface waters.

The District of Columbia (D.C.) and several states and localities have banned the sale and use of coal tar sealant products for application on pavement, including Anne Arundel, Howard, Prince George's, and Montgomery Counties in Maryland. In 2018, the definition of sealant products banned under D.C.'s law was broadened to include sealant products that contain more than *de minimis* levels of PAHs, referred to as a high PAH sealant product. D.C. is currently developing a pavement sealant certification program to identify noncoal tar sealant products with less than 0.1% PAH by weight, and thus not considered a high PAH sealant product. Under SB 372, alternative sealant products identified by D.C. could be used in Maryland if there are limited inventories of coal tar sealants products with 0.1% or less PAH by weight or that comply with labeling standards to be developed by MDE.

MDE's enforcement would occur on a complaint basis, with the performance of targeted inspections and compliance activities. The complaint-based approach would be necessary because MDE would not typically be present for the application of coal tar sealants to driveways or parking lot areas of the State, and the bill contains no mechanism to notify MDE of where and when applications of sealant products occur.

Thank you for your consideration. We will continue to monitor SB 372 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at *tyler.abbott@maryland.gov*.

Sincerely,

Tyler Abbott
Director, Legislative and Intergovernmental Relations

cc: Kaley Laleker, Director, Land and Materials Administration