

Kuether, Molly

From: Polanco, Joanna
Sent: Tuesday, February 07, 2017 8:38 AM
To: Kuether, Molly
Cc: Owczarski, Jim
Subject: FW: Milwaukee Common Council File #161306
Attachments: PCTC_false_arguments_2017_WI.pdf; Sealcoating Ban_PCTC Petition Signatures.xls
Importance: High

Hi Jim

I see this is a PW file, if you have no other objections, I'll forward it to the SA, Mrs. Kuether Steele

Your generosity is appreciated !!!!!

Joanna

From: Owczarski, Jim
Sent: Tuesday, February 07, 2017 8:32 AM
To: Polanco, Joanna
Subject: FW: Milwaukee Common Council File #161306
Importance: High

For the file if you don't have it yet.

Jim

Jim Owczarski, CMC
City Clerk
(414)-286-2998
@mkeclerk

From: Anne LeHuray [<mailto:alehuray@pavementcouncil.org>]
Sent: Monday, February 06, 2017 4:25 PM
To: Hamilton, Ashanti; Johnson, Cavalier; Kovac, Nik; Bauman, Robert; Bohl, James; Coggs, Milele; Rainey, Khalif; Donovan, Robert; Lewis, Chantia; Murphy, Michael (Alderman); Borkowski, Mark; Perez, Jose; Witkowski, Terry; Zielinski, Tony; Stamper II, Russell
Cc: Owczarski, Jim
Subject: Milwaukee Common Council File #161306
Importance: High

Honorable Aldermen and Alderwomen of the Milwaukee Common Council –

I am the Executive Director of the Pavement Coatings Technology Council (PCTC), the national trade association representing the sealcoating industry. I write to you today concerning File #161306 A *substitute ordinance relating to the use of coal tar sealants*, which is an item on the agenda for the Common Council meeting of Tuesday, February 7, 2017.

For the reasons discussed below, PCTC asks the Milwaukee Common Council to take any one or all of the following actions:

- A. Defer action on banning refined coal tar-based pavement sealant pending a thorough due diligence investigations that includes evidence from academic, industry, and government sources in addition to the activist sources of information that, based on the list of supporting documents given above, have been consulted to date.
- B. Defer action on banning refined coal tar-based pavement sealant pending an opportunity for PCTC to address the Council and/or an appropriate Committee of the Council.
- C. Defer action on banning refined coal tar-based pavement sealant pending the outcome of a 3rd party review, such as the one currently pending before the Alliance for Risk Assessment.

PCTC has asked the public to weigh in on the topic of whether Milwaukee should ban refined coal tar-based sealcoat via online petitions aimed at Milwaukee business and property owners via Facebook and, more generally, at change.org. The attached Excel file lists the 103 Milwaukee business and property owners who signed the Facebook petition opposing the ban. In nearby Illinois, where activists have mounted ban campaigns, a coalition has been formed to oppose a ban that includes the United Steel Workers Union, the AFL-CIO, the Laborers Union, and other workers groups. Jobs in the sealcoating industry offer good pay and safe working conditions, and are unionized in many locations.

This ordinance appears to have been introduced on January 18, at which time it was referred to the Public Works Committee (PWC). The PWC deliberated for about 13 minutes at its Jan. 25, 2017, meeting. Documents in support of banning the sealants that are posted on the Council's web page consist of:

1. Fiscal impact statement – stating that there is no perceived fiscal impact on the revenues or expenditures of the City of Milwaukee.
2. A list of bans from the alarmist web site *CoalTarFreeAmerica*.
3. A newspaper story from the Dec. 25, 2016, edition of the Milwaukee Sentinel-Journal.
4. An article titled *Polycyclic Aromatic Hydrocarbons* from a web site called *Toxipedia* that is part of an organization called *Collaborative on Health and the Environment*. The CHE website (and links on *Toxipedia* itself) seem to be focused on activist “science” on such topics as fracking, bisphenol-A, and other anti-science campaigns.
5. What appears to be a blog post from another activist “science” organization called the *Environmental and Energy Study Institute*.
6. A presentation by Christopher Magruder, described on the title slide as the “SWWT Science Advisory Committee Coordinator” (SWWT = Southeastern Wisconsin Watershed Trust, Inc.). The second slide of the presentation is titled “Who have we met with,” and lists a variety of organizations that do not include any representative of the private sector.
7. A press release/news article published by the US Geological Survey.
8. A letter in support of the ban ordinance from the Kevin L. Shafer, Executive Director of the Milwaukee Metropolitan Sewage District.
9. A copy of an ordinance from the tiny village of North Barrington, Illinois, similar to the proposed Milwaukee ordinance.
10. An email from the Department of Public Works stating that the ban is anticipated to pose no hardship to the DPW.

From this list, it seems clear that the Common Council is being asked to adopt the judgement of a variety of environmental alarmists and activists, who in turn take their lead from advocacy science published by the US Geological Survey (USGS). Missing from this list is the substantial body of work in the peer reviewed scientific literature and other sources that have found the USGS studies to be unscientific in that they are unreproducible and, in some cases, based on scientific misconduct. There is so much information and documentation of the issues with the USGS studies that the issues are as difficult to summarize as any scientific argument. A place to start may be the many post-publication peer review (PPPR) summaries that have been published online, that provide links to (a) original USGS and other papers, (b) PPPR reports that were commissioned by PCTC (c) published comments (summaries of PPPR reports, often) and responses, and (d) other relevant information. Links to PPPRs are given at the bottom of this email. In addition, attached here is a brief summary of the false arguments put forth by some alarmists and activists who argue in favor of banning refined coal tar-based sealants.

That said, PCTC understands that elected officials such as yourselves are, because of a lack of funding and access to scientific expertise, unequipped to sort through the arcane details of science. Often, officials feel faced with a choosing between believing scientists who work for the government and scientists who work for industry. For many years, PCTC had hoped that the USGS would join us in commissioning a 3rd party to review the evidence and bring clarity to policy makers. Since this has not happened, PCTC has petitioned the not-for-profit [Alliance for Risk Assessment](#) (ARA) to establish an independent 3rd party peer review consultation. ARA is a project overseen by federal and state scientists. Members of its current Steering Committee are:

- **Anita Meyer**, United States Army Corps of Engineers
- **Annette Dietz**, Oregon Department of Environmental Quality
- **Michael Habeck**, Indiana Department of Environmental Management
- **Edward Ohanian**, United States Federal Employee
- **Michael Dourson**, University of Cincinnati School of Medicine, Risk Science Center
- **Michael Honeycutt**, Texas Commission on Environmental Quality
- **Moiz Mumtaz**, Agency for Toxic Substance & Disease Registry
- **Ralph Perona**, Neptune & Company, Inc.

PCTC's petition to the ARA is available [here](#). PCTC initiated the petition, but it is with the understanding that interested parties such as the City of Milwaukee or any and all the organizations listed in Mr. Magruder's presentation will be invited to participate in this review.

In the meantime, to repeat myself, PCTC asks the Milwaukee Common Council to take any one or all of the following actions:

- A. Defer action on banning refined coal tar-based pavement sealant pending a thorough due diligence investigations that includes evidence from academic, industry, and government sources in addition to the activist sources of information that, based on the list of supporting documents given above, have been consulted to date.
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Thank you for your attention & consideration. Please contact me for additional information.

Anne LeHuray

Post-Publication Peer Review (PPPR) Summaries:

<https://pubpeer.com/publications/62730EDFFC17A5F85CA9EB7FD04C24#fb42729> (Mahler et al. 2005)
<https://pubpeer.com/publications/C3ADDD65D7FDDDD9D8F3E06EC0B9A2A#fb4273> (Van Metre et al. 2009)
<https://pubpeer.com/publications/DEC6835FF61E589EB95C8597944A7F#fb42759> (Van Metre & Mahler 2014)
<https://pubpeer.com/publications/F7AA69C873AB96CA862322CF1929BF#fb42838> (Mahler et al. 2010)
<https://pubpeer.com/publications/BEE4406AC9EF33CF9E3E6C238F0EDF> (Van Metre & Mahler 2010)
<https://pubpeer.com/publications/C6EE9D26B17539950DFCE21E5BBE2F> (Williams et al., 2012)
<https://pubpeer.com/publications/5EBEB3ACD53C7F2FF65624EC6DDA58> (Williams et al., 2013)
<https://pubpeer.com/publications/D11E6D8EA68C093ACB155A821E5DFB> (Watts et al., 2010)
<https://pubpeer.com/publications/F886AEF6529AA9843114E710B1AC2D> (Pavlowsky, 2013)
<https://pubpeer.com/publications/1BC1FF805A0E9DE96ADBA73AC443AD#fb43811> (Crane, 2014)
<https://pubpeer.com/publications/C95FA81213FD9D30144C36DD6D3DF9#fb44076> (Witter et al., 2014)
<https://pubpeer.com/publications/747B19A6260CA08B9CA4908177268A> (Scoggins et al., 2007)
<https://pubpeer.com/publications/456CA525683D444D8AE75DB9E88554#fb45568> (Van Metre et al., 2012a and 2012b)
<https://pubpeer.com/publications/CA5E52B5AD1819E468B800DB24D261> (Mahler et al., 2015)
<https://pubpeer.com/publications/EFBBA26FDD35EBF21FC7A96538B03E#fb46601> (Kienzler et al., 2015)
<https://www.ncbi.nlm.nih.gov/myncbi/kirk.o'reilly.1/comments/> (McIntyre et al., 2016)

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ACTIVISTS FALSE ARGUMENTS

Activists who are campaigning against the use of refined tar-based pavement sealer (RTS) generally make arguments that rely on distortions and discredited interpretations of environmental and health science evidence.

False Argument #1: RTS is the source of a high percentage of compounds known as polycyclic aromatic hydrocarbons (PAHs) in sediments in lakes, streams and storm water retention ponds.

In the case of sediments in the Milwaukee area, the local office of the US Geological Survey (USGS) has published a paper concluding that RTS is a major source of PAHs using circular reasoning. First, sediment samples that contain PAHs that look similar to what were identified as the signature of RTS were found. Then statistical techniques were used to “prove” that the signature of RTS was the same as those specially selected sediment samples. Statistical manipulation of specially selected samples has been a hallmark of the USGS advocacy-oriented science on the topic of RTS, whether in Milwaukee or Texas or elsewhere. When other common methods are used to identify sources of PAHs, little or no contributions from RTS have been found in most locations. Comprehensive studies of sources of PAHs in New York/New Jersey Harbor and Puget Sound (Seattle) have both found that wood burning from fireplaces and stoves is the largest source of PAHs (about a third in both cases), whereas PAHs from pavement sealants contribute less than 1% of the total.

False Argument #2: RTS is a health hazard.

Across the two, three and four generation memories of the many family-owned companies in the RTS business, there are no reports of adverse chronic health effects directly attributable to RTS. Expanding the search for possible health hazards to other products made from refined tar, every day millions of people world-wide use coal tar soaps, shampoos and creams approved for over-the-counter sales to treat skin disorders such as eczema, psoriasis and dandruff. A refined tar product is used to coat the inside surfaces of pipes used to distribute drinking water in many areas, with no demonstrable adverse effects on the water-drinking public. The false argument is that, theoretically, there could be health effects based on the classification of constituent ingredients as possible human carcinogens, which classifications in turn are based on exposure of laboratory animals to high concentrations of individual PAH compounds¹. Studies of actual human exposures to PAH-containing materials strongly indicate that the animal-based classification should not be extrapolated to humans. Further, the USGS, which has no expertise in this area, claims that RTS is associated with excess risk. Those claims are based on science that was demonstrated to be wrong 2 decades ago. Health Canada evaluated the

¹ PAHs are never found as individual compounds in nature and are rarely isolated for commercial purposes. Individual PAH compounds are artificially isolated for laboratory testing. RTS is a mixture of clays, sand and refined tar that itself is a mixture that includes PAHs..

RTS exposure data relied on by the USGS to make its risk claims, and found levels that are of little concern for public health. There is simply **NO** evidence that RTS causes cancer.

False Argument #3: RTS pollutes water supplies.

The false argument is that PAHs derived from RTS are a threat to water supplies. Even if RTS were an important source of PAHs found in sediments, neither RTS nor PAHs pose any threat to water supplies because RTS and indeed, PAHs in any form, are virtually insoluble in water. Examples of the virtual absence of PAHs in water can be found in every US state’s Clean Water Act Section 303(d) reports, in which reports of PAHs as a cause of impairment of water quality are extremely rare. A review of the past several Wisconsin Section 303(d) reports for PAHs as a cause of impairment found that PAHs have **NO** instance of PAHs identified as a cause of impairment anywhere in the state. Every drinking water system in the US is required to analyze and report chemicals found in water distributed to homes – it is exceedingly rare for drinking water suppliers to find PAHs in drinking water supplies.

False Argument #4: RTS is based on a hazardous waste, and banning it is a factor in approval of MS-4 permits.

Neither RTS nor its coal tar base are hazardous wastes because they pass EPA’s hazardous waste TCLP test, and so are not subject to Land Disposal Restrictions in federal hazardous waste regulation program. This has been affirmed by federal courts. Disposal is an issue in Minnesota, but only because of Minnesota laws, which are not applicable in Milwaukee. Measures to control PAHs or coal tars are not factors in approval of MS-4 permits. PCTC has challenged EPA to correct misinformation about RTS on its storm water web site.

False Argument #5: There’s an alternative product available, so why not just ban RTS?

Asphalt-based pavement sealers (ABS) are indeed an alternative, but they are not a replacement because ABS does not do the same job. Where both are available, RTS is preferred for most applications. This preference is mostly because RTS is resistant to degradation caused by leaks/spills of petroleum-based products (such as gasoline, jet fuel, motor oil, etcetera), to other corrosive materials and because of longevity. ABS needs to be re-applied more often than RTS – depending on the situation, the longevity of RTS can be years longer than ABS. In addition, RTS is manufactured to a standard which, among other things, means its physicochemical properties are predictable. There have been and continue to be attempts to develop standards for ABS manufacture, but there isn’t one at this time. The predictability and performance characteristics of RTS are the prime reasons RTS is specified for many situations.

Most of the companies involved in the RTS industry are small and medium size businesses – just the sort of businesses that are disadvantaged by the rush to regulation that seems to be popular now. RTS manufacturers and suppliers are good corporate citizens, with well paid, often unionized work forces. Recently, the Pavement Coatings Technology Council held a webinar for sealcoating contractors. Of the 265 industry participants who registered for the webinar, 47% were from companies with 10 or fewer employees. Another 32% were from companies with 11 to 35 employees. This reflects the industry, dominated by small to very small local businesses. Contractors in northern states estimate that using ABS rather than RTS reduces their sealcoating season by, at a minimum, 20%, thereby reducing their income by 20% or more.

Milwaukee Campaign Petition Signatures
Name
Nasser Ahmad
Debra Ottaviani
Nichella Thorn
Diane Reichel
Lynnette Stiff
George Cager
Rita Bourragejonesmack
Sal Ciofani
Kathy Smith
Janie Arredondo
Jennifer Kennedy
Molly Peller
Michael W Stinson
john albrecht
Ryan Dane Themba Debuhr
Dora Wirth
Sherry Petz
Myrtle carson
Catherine Wolfe
Jaclyn Helgesen
Shari Eisch
Steven Thomas
Ignacio Silva
Tom Korinek
Candy Jack
Kathy Leonard
David Hansen
David Butzlaff
Patrick Conley
Rodney Schaefer Jr
Gerald Luedke
Chatty Elerson
Steven Kunkel
Barbara H Kuks
Chānel Welch
Marie Jenia Bell
Steve Krejci
Lamont Brown
Dorothy Newell Yelvington

Joan Carman
Michael Ludka
Kimberly Burns
Leroy Johnson
Michael Braun
Shirley L Paige
Brent Landowski
Kathy Lenzey
Thomas Behrens
Don Murray
Nellie Montalvo
Maureen Harnisch
Chad Kraemer
Tyler Holthaus
Rebekha Boehles
Benjamin Cerbe
Mike Palmisano
Tony Salazar
Lameesha Beamon
Dennis Edwards
Christopher H Schultz
Peggy Slatter
David Allen W
Dewitt Brown
Jim Bartholomew
John Sturdevant
Sharon Mahos
Doug Blain
Sharon Shanks Bridgwater
Joann Cauliflower
Danielle Friberg
Madaline Wienke
Larry Schneider
Herb Eales
Jean Rogers
Kristi Parker
Nadine Harder
Sharon Nowak
Jay Kreier
Sherrel Benson
Wanda Williford

Michael James Ralph
Jeesus Alv
Edward Easley
Heriberto Arce
Mich Hawley
Jefri Scott
James A Memmel
Robin Taylor
FoxyLady Williams
Reta Mae Sky
Shirley Lewis
Jason Lucchesi
Jill Lucchesi
william sievert
glena bowen
Richard Schultz
Tyrone Skinner,
Africka Pettaway
Dennis Brewer
Anthony Rosbeck
Gerald Dias
Africka Pettaway
Dennis Brewer
Gerald Dias