

Industry Tries to Derail Wisconsin Ban Legislation



Last week I got this flier which is being circulated around Wisconsin trying to stop the bi-partisan effort to ban coal tar and high polycyclic aromatic hydrocarbon (PAH) asphalt sealers in that state. Last session it passed the State Assembly unanimously before the session ended because of the pandemic.

That was the first time that any state-level chamber unanimously passed coal tar legislation and it is tribute to the work put in by members of both parties who held listening sessions around the state about what can be done to protect Wisconsin water resources.

In order to address these industry comments I have sliced up their document and will address each of their issues. For clarity, the industry comments are in a double-lined border.

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.

This is a classic distraction argument. They would like to have an argument over statistical methods to distract from the simple fact that when compared to other mobile sources of PAHs, coal tar pavement sealers are some of the most potent, mobile sources, as you can see in the following table. And they have to be replaced every few years.

*In more than 15 years the sealcoat industry has offered no coherent explanation about where their product goes when it is worn off of pavement, but have actually blamed high PAHs in streams on volcanoes and space dust.
[Reference 1]*

PAHs in urban sources

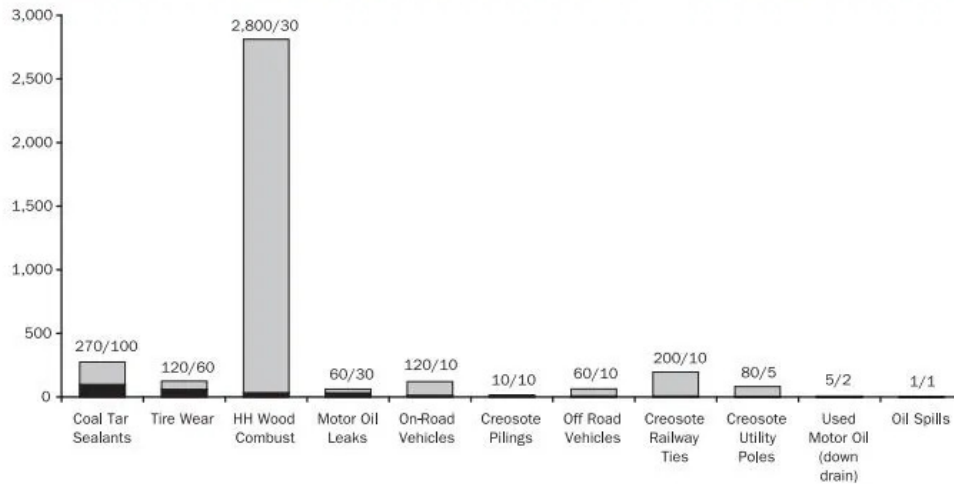
All concentrations in mg/kg (averages of up to 6 studies)

• Fresh asphalt	1.5	Pavement Sealcoat
• Weathered asphalt	3	
• Fresh motor oil	4	•Asphalt Based
• Brake particles	16	~ 50
• Road dust	24	
• Tire particles	86	•Coal-tar-based
• Diesel engine	102	~70,000
• Gasoline engine	370	
• Used motor oil	440	

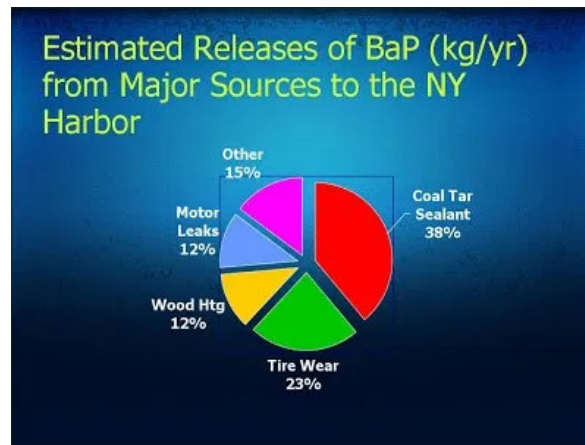
Industry also misquotes the New York Academy of Sciences finding re: the Harbor Study for PAHs in 2007. They cite the level of PAHs emitted (gray bars in graphic below), not the effective loading (black bars in the same graphic) to the Harbor . This image is clipped directly from the report. Note that the largest single source for effective loading is coal tar sealers, not wood burning stoves.

The following pie chart uses this data to more clearly show the loading and differences. The largest single source is coal tar sealers at 38% in the most compact urban area in our nation with the fewest surface parking lots per capita. [Reference 2]

Figure 8. Estimated releases of BaP (kg/yr) from the major sources of PAHs in the Watershed (gray) compared with estimated loadings (black)



9. For more information on PBTs, visit the EPA web site at <http://www.epa.gov/pbt/>.



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 compounds³. 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

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.

Well the most respected group of doctors in the United States, the AMA, says that it should be banned. Do you want to know more than that? [Reference 3]

AMA urges legislation to ban dangerous coal-tar sealcoats



NOV 16, 2016

ORLANDO, Fla. — The American Medical Association (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 polycyclic aromatic hydrocarbons (PAH) or to mandate 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, M.D. “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.”

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 PAHs and are available at a similar cost.

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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.

This is a classic straw man argument. No one claims that PAHs from coal tar sealers are contaminating water supplies. The biggest risk to the human community is children playing or living near coal tar sealer surfaces. Period.

We consistently argue that the impairment of the ecosystem begins in sediment, not in water. In other words they are trying to counter an argument no one is making.

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.

The old expression is that if it looks like a duck, quacks like a duck and swims like a duck, then that is what is probably is.

What is the number 1 most common contaminant the United States has cleaned up at hazardous waste facilities?

Coal tar.

What contaminant was responsible for the largest fine in EPA history?

Coal tar.

What contaminant required a special exception from the EPA so that it wouldn't be classified as hazardous waste?

Coal tar.

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.

These statements here are full of outdated, false notions.

First of all, Home Depot and Lowes stopped selling coal tar sealers more than a decade ago. In 2007, I worked with the City of Austin team advising the New York Academy of Sciences on PAH pollution in the NY Harbor. At those meetings, the Chief Sustainability Officer for Lowes, Michael Chennard, said that they stopped selling coal tar sealants after learning about it from Austin, based upon a business model. Here's the Lowes' equation:

- 1. Identify products that have a high potential liability. He said their pockets were now deeper than many of their suppliers, so they have more to lose.*
- 2. Find out if there are suitable alternatives in quality and price.*

3. *If both the quality and prices are similar, then remove the problematic product from the shelves*

The one-time great benefit of coal tar sealer being fuel resistant no longer matters. Fuel resistant, hot mix asphalt is currently being used around the country.[Reference 4]

They mention there is no standard for asphalt based sealcoat. It actually was developed by the Asphalt Sealcoat Manufacturer's Association more than 20 years ago. Below is the heading clipped from that standard. [Reference 5]

N.A.S.M.A Specs

National Asphalt Sealcoating Manufacturing Association

1-3 ASPHALT SEALCOATS

1-3.01 Descriptions

The work covered by this specification includes the design, testing, and quality control required for the proper production of an Asphalt Sealcoat product and all materials, equipment and workmanship required for the application of an Asphalt Sealcoat to an existing asphalt concrete pavement where shown on the plans, as specified in these specifications and the special provisions, and as directed by the Engineer.

Asphalt sealcoats are recommended for minor repair and maintenance and for the protection of existing asphalt concrete pavements such as low volume city streets, parking lots, highway shoulders, airport taxiways, tarmacs, and aprons, bike paths, driveways, or any asphalt concrete pavement.

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.

The main point of this section is the claim that sealcoater's business will drop 20% if a ban goes into effect.

There are two angles to approach this. First, the owner of a franchise sealcoat business with locations in Wisconsin, Michigan, Minnesota, Illinois, South Dakota and 13 other states said that banning coal tar sealer would not affect their business in the long run. Specifically Nick Kelso of Jet-Black said:

"There are pros and cons to both," Kelso said. "We don't think (the bans) will affect business in the long-term." [Reference 6]

Second, the prospects are good for the sealer industry in the US even without coal tar.

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 2027, 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..."

[Reference 7]

Train Photo by Mark Loewe on Flickr

References

Reference 1: Industry webinar. <https://coaltarfreeusa.com/2013/02/space-junk-volcanoes-and-coal-tar-sealers-industry-webinar-to-stop-bans-has-some-surprises/>

Reference 2: Pollution Prevention and Management Strategies for Polycyclic Aromatic Hydrocarbons in the New York/New Jersey Harbor, New York Academy of Sciences, 2007. https://austintexas.gov/sites/default/files/files/Watershed/coaltar/nyas_pah_harbor_study_final.pdf

Reference 3: AMA Press Release 2016: <https://www.ama-assn.org/press-center/press-releases/ama-urges-legislation-ban-dangerous-coal-tar-sealcoats>

Reference 4: Bob Sikes Airport Installs New Fuel Resistant Asphalt, Airport Improvement Magazine, July-August 2012.

<https://airportimprovement.com/drupal778/index.php/bob-sikes-airport-installs-new-fuel-resistant-asphalt?q=article/bob-sikes-airport-installs-new-fuel-resistant-asphalt>

Reference 5: National Asphalt Sealcoat Manufacturers' Standard Specification. <http://www.sealcoatmfg.org/asma-spec.pdf>

Reference 6: Quad City Press, March 16, 2011. https://www.presspubs.com/quad/news/tar-sealant-still-ok-for-lino-driveways/article_679065f5-0868-54f6-83ec-b6c9c2f22dbb.html

Reference 7: <http://www.transparencymarketresearch.com/north-america-sealers-market.html>

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