Request for City Council Committee Action from the Department of Regulatory Services

Date: July 9, 2012

To: Council Member Elizabeth Glidden, Chair – Regulatory, Energy & Environment Committee

Subject: Establishing a ban on the use and sale of coal tar-sealer.

Recommendation: Amend Title 3 of the Minneapolis Code of Ordinances relating to Air Pollution and Environmental Protection by adding a new Chapter 60 to read as follows: ***CHAPTER 60. COAL TAR-BASED SEALER PRODUCTS.*** This chapter would ban the use and sale of coal tar-sealer products in Minneapolis.

Previous Directives: None

Department Information

Prepared by: Daniel Huff (612) 673-5863

Approved by:

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Gregory K. Stubbs, AICP, Director of Regulatory Services

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Noah Schuchman, Interim Director of Licenses and Environmental Services

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Daniel Huff, Manager of Environmental Management and Safety

Presenters in Committee: Scott A. Johnson, Environmental Inspector; Lois Eberhart, Water Resource Administrator Public Works

Financial Impact
- No financial impact

Community Impact
- City Goals

Supporting Information

In support of the 2012 City of Minneapolis Goals and Strategic Directions, specifically Eco Focused:

Stormwater

- Reduce pollutants in stormwater runoff
- Prevent nonpoint source pollution
- Healthy Lakes, Streams, and Rivers
- Keep pollutants out of our lakes
- Lakes receive a ranking of 8 or above (with 10 being excellent) on the LAURI Index

The following prohibitions are included in the proposed addition of Chapter 60 to Title 3 of the Minneapolis Code of Ordinances relating to Air Pollution and Environmental Protection:

Development Process and Background

The proposed ordinance utilizes select language from a model ordinance developed by the Minnesota Pollution Control Agency (MPCA) and the League of Minnesota Cities in 2009. This model ordinance was drafted in the form prescribed by Minn. Stat. § 412.191, subd. 4, for statutory cities.

The City of Minneapolis Citizens' Environmental Advisory Commission submitted the attached official position in support of this ordinance (Attachment 1: CEAC position).

The Mississippi Watershed Management Organization (MWMO) submitted the attached official position in support of this ordinance (Attachment 2: MWMO position).

Currently, twenty Minnesota cities have passed a coal tar sealant ban (Attachment 3: Summary of Minnesota cities). The MPCA has reported four states that have government use restrictions; five states that have ordinance bans or restricted use jurisdictions; the state of Washington has a statewide coal tar sealant ban; and eight major home improvement stores have stopped selling coal tar-base sealants (Attachment 4: Summary of coal tar-based sealant bans in United States).

State Coal Tar Sealant Ban and Proposed Federal Ban

State Representative Bev Scalze (DFL, Vadnais Heights, MN) proposed a ban on coal tar-based sealcoats for use by state agencies in the 2009 Minnesota Legislative session. The main component of her bill restricts state agencies from purchasing and using coal tar-based sealants, and directed the MPCA to study its environmental effects and develop management guidelines that were eventually incorporated into the Omnibus Cultural and Outdoor Resources Finance Bill (HF Number 1231) which was passed by the Minnesota Legislature on May 18, 2009 (Minnesota Legislature 2009). Governor Tim Pawlenty signed the bill into law on May 22, 2009. (Attachment 5: House File 1231, Article 2, Sections 4, 26, and 28).

Congressmen Mr. Keith Ellison (D-Minnesota 5th District), Mr. Doggett (D-Texas 25thDistrict), Mr. Keating (D- Massachusetts 10th District), Mr. Quigley (D-Illinois 5th District), and Mr. McDermott (D-Washington 7th District) have introduced legislation (H.R. 4166 The

Coal Tar Sealant Reduction Act of 2012) that would ban the manufacture, distribution and sale of coal tar sealants, a pavement resurfacing material that contains chemicals that pollute water, cause mutations and birth defects in aquatic life, and have been identified by the Environmental Protection Agency as a probable cause of cancer in humans. If passed, the manufacture of coal tar sealants would be prohibited in one year, the distribution would be illegal in 18 months, and sales would be illegal in two years. (Attachment 6: H.R. 4166 The Coal Tar Sealant Reduction Act of 2012).

Characteristics of Coal Tar-sealant Contamination

Coal tar, a byproduct of coal processing, contains high levels of chemicals called polycyclic aromatic hyrdrocarbons (PAHs). Some PAHs are known human carcinogens. Studies have shown when coal tar-based sealants are applied on parking lots and driveways, the sealant can abrade or breakdown and release PAHs that can be deposited into adjacent land, can be tracked by shoes into dwellings, and most prevalently the dust can be carried by surface water runoff into nearby waters, where the dust can accumulate to potentially harmful levels in sediments. This is a concern for local governments responsible for managing stormwater ponds and disposing of sediments dredged from them as the sediments may require disposal as hazardous waste. Alternatives to coal tar-based sealer formulations are asphalt-based sealants that have far lower levels of PAHs. (Attachment 7 and 8: MPCA Coal-tar-based Driveway Sealcoat Fact Sheet and New Hampshire Sea Grant Sealcoating Driveway Fact Sheet).

Coal tar-based sealants are not now and have not been used by Public Works, Minneapolis Park and Recreation Board, and the Minneapolis School Board.

Disposal Costs of Coal Tar contaminated sediments

Disposal costs of PAH contaminated sediments depend on the concentration of PAHs in the sediment. Typically contaminated sediment is disposed of as a solid waste at a Municipal Solid Waste (MSW) landfill that has a liner and a leachate collection system. Disposal costs include testing and laboratory analysis of the sediment to characterize the waste. Other costs include excavation, transportation, and tipping fees. The MPCA estimates disposal costs can be as much as $250,000 per pond when sediment removal projects include significant PAH contamination, however, typical costs range from $75,000 to $125,000 per pond when sediments need to be disposed of at an MSW facility.

Availability of asphalt-based sealant products

Alternatives to coal tar-based sealer formulations are asphalt-based sealants that have far lower levels of PAHs. Asphalt-based sealers are readily available. The MPCA has compiled a list of home improvement stores which have stopped selling coal-tar-based sealant and which carry asphalt based sealant. See attachment 9 for list of home improvement stores that sell asphalt-based sealant. (Attachment 9: List of major retail distributors in Minneapolis).

Public Notices

This ordinance may affect current blacktop sealer practices within the City's jurisdiction. City staff sent Public Notices of the ordinance change to 24 sealcoat applicators operating in the City of Minneapolis, 32 independent retail establishments selling sealants, and 300 general contractors that have conducted business through the Minneapolis Development Review

(MDR) permit counter. The responses to the public notices will be compiled and presented at the public hearing.