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November 3, 2021

Rajiv Shah
Assistant Counsel to Governor for Energy and the Environment
NYS State Capitol Building
Albany, NY 12224

RE: **A.518/S.4095**

Dear Mr. Shah:

On behalf of the Pavement Coatings Technology Council (PCTC), we note that Assembly bill 518/Senate bill 4095 has been delivered to the Governor for executive action. On behalf of PCTC, we urge the Governor, based on the below, to veto the above-referenced bill.

The bill, if signed into law, would prohibit the use of refined coal tar-based sealers in New York. As way of background, there are two common types of pavement sealers, one uses an asphalt base and the other a refined coal tar base. These sealers are routinely used by many businesses, colleges and universities, school districts, municipalities and residential consumers to seal asphalt parking lots and driveways to protect against the environmental degradation and promote longevity of the underlying pavement. Use of sealants in a protective maintenance program has been demonstrated to significantly reduce costs of pavement upkeep. Enactment of this bill will not only increase costs of parking lot maintenance, it will significantly impact employers. For instance, the bill is an threatens both the direct employees of Cosmicoat of Western New York at its manufacturing facility in Gasport and the many independent businesses in Buffalo and throughout the region that distribute and use Cosmicoat's products. It is notable that, in the decades in which sealant products have been used throughout New York State, there have been few health or environmental complaints, demonstrating PCTC's contention the bill is a solution in search of a problem.

Refined coal tar-based sealers last longer, provide more effective protection of paved surfaces, and have a lower life cycle costs than the alternative asphalt-based sealer. With respect to claims regarding human health concerns, it is instructive to look at other products consumers use that contain the chemicals of a similar quality. For instance, the Food and Drug Administration (FDA) has approved coal tar for decades as a base ingredient for skin creams and shampoos that fight certain skin conditions. Coal tar is designated as "Generally Regarded as Safe and Effective" by FDA, which has received only 82 case reports (less than 2 per year) of adverse effects related to

exposure to coal tar from 1975 to June 30, 2021. The most common reported effect has been itching (11 of 82 reports) followed by ineffectiveness (8 of 82), hypersensitivity (6 of 82), and a variety of diverse reactions with 5 or fewer reports. No death cases have been reported. For context, compare those data with an ubiquitous “Generally Regarded as Safe and Effective” substance, dextrose – a simple sugar. From 1969 to June 30, 2021, FDA has received 4,304 case reports (over 82 per year) of adverse effects related to exposure, including 501 death cases. <https://www.fda.gov/drugs/drug-approvals-and-databases/fda-adverse-event-reporting-system-faers>.

While this alone should eliminate any concern that coal tar-based sealer is harmful, this product has been used for over six decades and there has not been a single study, properly researched, that has found any harmful impact to humans or animal life attributed to coal tar sealer. In fact, coal tar sealer has never been classified as a hazardous material by the Environmental Protection Agency (“EPA”) or as a known human carcinogen by the United State Department of Health and Human Services. In short, to date, there is no objective evidence that this product poses a danger to human health. To the contrary, consumer products have been used on the human skin and have not been proven to have a negative health impact.

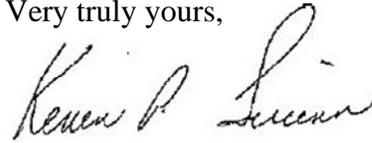
The environmental “claim” is that the coal tar-based sealer releases Polycyclic Aromatic Hydrocarbons (PAHs) into the water and presents a contamination concern. PAHs are naturally occurring and are derived from many natural sources such as forest fires and decaying organic matter (such as leaves) to name a few. PAHs are also present in the environment from many human activities, some of which may include vehicle exhaust, heating of motor oils that occurs in internal combustion engines, electric power generation, wood fireplaces and stoves, asphalt pavement, roofing, grilling meat, shampoos, cosmetics and dyes. The New York Academy of Science studied sources of PAHs in New York-New Jersey harbor sediments, concluding that more than 1/3 of the PAHs present came from fireplaces, wood stoves, and other wood-burning sources. They concluded that less than 1% of PAHs in the harbor were possibly attributable to pavement sealers. PAHs in the environment is simply not significant from the application of a coal tar-based sealer.

While there is an alternative product, an asphalt-based sealer, the product is inferior in terms of effectiveness, especially in the Northeast. The differences between coal tar-based sealer and asphalt emulsion sealers is significant and, as a business owner, the use of the asphalt based product, can present significant customer dissatisfaction and, with the weather in the Northeast, simply does not last as long. Coal tar sealer has been around for over six decades, and coal tar was chosen over asphalt emulsion as a better raw material based on its ability to prevent the penetration from gas, oil, and other petroleum products from damaging the pavement, and the very hard film that coal tar forms over the pavement, making it very durable to heavy traffic. The performance of asphalt emulsions, on the other hand, are inconsistent for use as a raw material in sealer and are generally only as a substitute in areas where the coal tar-based product is not available. Asphalt emulsion sealers only last a couple of years, only one coat can be applied in a day, and wash out areas are very common. Coal tar-based sealers last longer, dry faster, even in colder weather, and prevent erosion and decay of the product. The fact that application of asphalt emulsion sealers requires warmer temperatures means that all New York businesses will be forced to limit the months in which they operate, with more severe impacts to revenue and employment opportunities for businesses the farther north in the state the business is located.

When you are sealing large areas, like college campuses, government and supermarket parking lots and the like, continued sealing with asphalt sealer is costly because it must be done more often. Asphalt sealer simply does not provide that level of protection that a coal tar based sealer does.

For these reasons, we urge the Governor to veto this legislation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kevin P. Quinn".

Kevin P. Quinn