

## Rebuttal regarding Coal Tar Free America's "A Worry-Free Guide to Implementing a Coal Tar Sealant Ban".

It would appear that the Tom Ennis-City of Austin Watershed Protection Department and the City of Austin, TX is attempting to squash the small business owner by advocating the ban of refined tar based sealers. This is an interesting posting on Tom Ennis' blog since it gives insight into how far activists will go to destroy small American businesses.

### [Website source](#)

Sunday, August 21, 2011

### A Worry-Free Guide to Implementing a Coal Tar Sealant Ban



I've heard a lot of speculation over the last few years about how difficult it is to implement a ban of coal tar sealants. Most of the time it is from purported experts that are attempting to make it seem "just too hard" or those that are just guessing and haven't done their homework. No more guessing, this is being written by the person that helped craft the first ban in Austin, worked to get it implemented, and then oversaw the enforcement program for 5 years.

Note: Nothing like getting information from a bias source! Did you know that Tom Ennis is a co-author on a [USGS study](#)? Do you think that a known activist against refined tar sealer could bring bias and a lack of objectivity to this study?

A coal tar sealant ban can be implemented:

- as part of a community-wide effort to reduce toxins and water pollution (after Austin's ban, there was no change in the amount and types of PAHs after the ban)
- with minimal additional workload to staff (this sounds like a lot of extra work)
- with no expensive equipment to buy
- with no fees or costs to applicators (unless they are in violation)
- with no delays to applicators
- Activist get their way based upon clearly questionable evidence
- Activist claim yet another thing that "is bad for you"

Note: Notice how easy Tom Ennis make it seem to ban a product; however no mention is made how these businesses that are displaced by a ban are supposed to earn a living. It would seem that USGS, City of Austin and Tom Ennis forgot about that part.

The key elements to a ban are:

1. Clear Ban Language
2. Communications Plan
3. Enforcement Staff Training
4. Enforcement Strategy

### Clear Ban Language

Just like any other ordinance, a ban should seek to encourage compliance without unreasonable consequences. For example one community passed a ban that had such a low penalty for violations that it didn't discourage applicators from using coal tar sealants. It was just a cost of doing business. On the other hand, if the remediation of a violation is so expensive that it will bankrupt the applicator, then that is also a problem. Let your community attorney give some guidance after you've figured out the going rate for a remedy.

Note: If you notice the activists want large penalties, to institute a *de facto* ban and it is another source of revenue to the city or town at the expensive of taxpayers and business.

Speaking of remedies, what are you going to do if you do have a violation? My

suggestion is to remove it, if it is anything but a low traffic volume driveway or very small parking lot. See this reference for information on how to do this.

**Note:** I am sure no dust is generated with the sandblasting method that the activists recommend. Great idea!

## Communications Plan

Before you start, you'll need to do some homework. Figure out where or if coal tar is sold retail and where commercial applicators in your area go to get their sealant.

The best way to ensure a successful, low-cost enforcement program is to communicate with your community. Use what media you have to put the word out. Others have used community newsletters. The City of Austin included a piece in the electric utility's flier as well.

An interesting note-The electric utility is owned by the City of Austin. Austin's electric utility also is a contributor to Environmental and Energy Study Institute ([EESI](#)), who has joined forces with U.S. Geological Survey to promote the ban of sealer. This is the link to [IRS 990 for EESI](#).

Figure out who the largest users in the area are for sealants. Typically they are:

- Schools
- Commercial stores
- Industrial sites
- Churches
- Apartments and condominiums
- Hospitals

Send them a letter telling them about your ban a few months before it goes into effect. Be sure to let them know when it is effective so they don't think you are coming after them for a past sealant job.

**Note-**Is this an example of Austin's due process? Austin actually promoted a *de facto* ban well before their city council voted to ban sealer.

Let your local applicators know by letter as well.

If the retail sale of coal tar sealant is banned, then contact both the store manager and the regional manager of the store if it is a chain. These folks have thousands of products to juggle and my experience is that it is best to have more than one person in these organizations mindful of your ban.

Note: Tom Ennis claims that he convinced the big box stores to drop refined tar based sealer based upon a business model (???). **To date, Tom Ennis has never produced this wonderful model. Perhaps Tom Ennis could share this business model with the rest of the world?** In addition, one would suppose that activist in Austin's government and environmental groups would never pressure [Lowes](#) , [Wal-Mart](#) or Home Depot

Now this next recommendation will go a long way to having a successful ban implementation. Most likely you will have applicators coming a long distance to your community to apply sealant. They get regional contracts with chain restaurants and big box stores and may travel over a 1000 miles to come to your town.

You need to prevent the application of coal tar by these out-of-town applicators. The good news is that most often they come to town, fill up at the local distributors of sealants and drive to their jobs. **If you can get the support of these distributors to post signs like "Attention: Coal Tar Sealants Banned in Anywhere, USA", then you can educate them before they make a big mistake.** By the way, the farthest I've seen someone drive in a load of sealant is about 200 miles.

### **Enforcement Staff Training**

Most likely you will need to find one person that "owns" this, meaning that they are willing to learn something new, have a desire and some experience in regulatory enforcement, and are willing to become somewhat of a content resource in this area. Some knowledge of construction would also be helpful.

Some communities have offered to train enforcement staff for others. **Austin did this for Washington, D.C.** If you know of a ban near you, contact them and see if your go-to person can "shadow" their enforcement staff for a day or so. Otherwise, contact this blog for assistance.

**Note-It would appear that the City of Austin, TX is promoting bans of sealer by training other communities' enforcement staff.**

Have your staff learn the "coffee-tea test" for the difference between coal tar and asphalt based sealants. This low-cost, screening technique using materials found in any hardware store is on this website, [here](#).

**Note-This test is not recognized by any standardization organization.**

In other parts of the country, some communities have discussed having one enforcement person for several suburban communities. This may work if several bans go into effect at about the same time. For a city the size of Austin though,

there is just one part-time enforcement person. That's for the nation's 16th largest city with a population over 700,000.

## **Enforcement Strategy**

And these leads to the final element, Enforcement Strategy. Learn the limits of the pavement sealant season in your area. In southern states it can be more than 9 months out of the year, but in some northern states the season is less than 3 or 4 months. This will enable your enforcement to be attentive to changes in parking surfaces during this period.

And speaking of attentive, here is another way to broaden your enforcement capabilities. Train other field staff to recognize the tell tale signs of a new pavement sealant job. Have them pay particular attention to the largest lots. Make a list of what they are.

Many governmental workers are in the community as part of their normal job duties. If they suspect a new sealant job is taking place, then they can contact your key enforcement person. This way you increase your eyes in the community and increase your chances of success. Over time you and your staff will learn to differentiate between the compliant sealant companies and those that aren't.

This post is intended to show that a sealant ban can include these 4 elements of a ban and it can be done with minimal distraction to existing staff, without a regulatory burden on the business community and without raising taxes or fees. Specific questions or comments are always welcome.

There are several questions that arise from this posting:

**1) Is the City of Austin promoting the ban of refined tar based sealer since they are training other cities how to regulate a ban, the city contributes to the environmental NGO that has joined forces with USGS to promote further bans and Tom Ennis, a city employee posts on his activist blog on taxpayer time. How much of the taxpayers money is being spent on the "pet projects" of activists city employees?**

**2) This is a "how-to-destroy small, family owned business" guide. Is the official position of the City of Austin?**

**3) Is this an example of the City of Austin's version of "science" considering they ignore the obvious bias by city and USGS employees? Are these "scientists" using their version of the scientific method?**

4) **If a know activist is a co-author of a USGS study (Tom Ennis), would that make that study biased and therefore flawed? Is this an example of effective use of our tax dollars?**

5) [Tom Ennis and the City of Austin](#) have claimed they have reduced PAH loading in their community by over a million pounds. **What they fail to mention that this is merely a guess.** One study has shown that over two years after Austin's ban there was no change in the concentration and types of PAHs.

4) [Congressman Lloyd Doggett](#) (representing Austin, TX) has backed the City of Austin's assumptions about sealer. Congressman Doggett even gets a congratulatory write up from city employee, Tom Ennis. Has the Congressman even met with industry to get the other side of story? **The answer is no. One must assume that he does not care about the welfare of small, family owned business manufacturing a US made product. Congressman Doggett would rather cater to the "need" of his activist constituents than do find the Truth and help promote business within the United States.**

**For additional information:**

[The Truth about Coal Tar](#)

[The Paralyzing Precautionary Principle](#)