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CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION

July 1, 1996

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Mr. Eric Dibner
Governor's Committee on Concerns
of the Handicapped
Lamy Building, Rm. 117
491 Old Santa Fe Trail
Santa Fe, New Mexico 87503

Dear Mr. Dibner:

It was a pleasure to speak with you regarding the implementation of *House Joint Memorial # 6* which authorizes and directs the Governor's Committee on Concerns of the Handicapped to study issues related to "Multiple Chemical Sensitivities" (MCS).

The Chemical Specialties Manufacturers Association (CSMA) is a non-profit trade association representing more than 430 companies engaged in the manufacture, formulation, packaging, marketing and distribution of consumer products for household, institutional and industrial use. These products include home, lawn and garden pesticides, antimicrobial and disinfectant products, automotive specialty products, waxes, floor finish products, and many types of cleaners and detergents. All of these products are packaged in many forms and are for the marketed nationally.

I.

BACKGROUND

As you may know, this year an international group of experts organized by the World Health Organization (WHO), among others, recommended the appellation Multiple Chemical Sensitivities be discontinued because it imputes an unsupported judgement about the causation of the condition. Moreover, even persons alleging MCS report adverse effects from florescent light and electromagnetic fields which are not indicative of a chemically induced condition. The recommended new name is *Idiopathic Environmental Intolerances (IEI)* which we will hereinafter use as a dual nomenclature for purposes of categorizing the condition.

Mr. Eric Dibner
Page Two
July 1, 1996

As you may be aware, the following medical associations have issued position statements which reject recognition of Multiple Chemical Sensitivities/ Idiopathic Environmental Intolerances: The American Academy of Allergy and Immunology (1986); the American College of Physicians (1989); the American Medical Association Council on Scientific Affairs (1992); and The American College of Occupational & Environmental Medicine (1992). In light of these positions, we believe it is presumptuous for the State of New Mexico to establish the existence of, or undertake a needs assessment for, an unverified and unsupported medical condition.

"Multiple Chemical Sensitivities" (MCS) or "Idiopathic Environmental Intolerances" (IEI) is an ill-defined and unverifiable diagnosis in which a range of symptomatic phenomenon are attributed to an averred sensitivity to chemical agents. According to the American Medical Association Council on Scientific Affairs, there are no established clinical criteria for diagnostic confirmation of this condition. Moreover, scientific authorities find no clear evidence to substantiate the contention that symptoms ascribed to the condition are chemically induced. The AMA Scientific Affairs Council recommends, in the absence of accurate, reproducible and well-controlled studies, that "multiple chemical sensitivity not be considered a recognized clinical syndrome".

It is the position of CSMA that official acceptance of MCS alleged etiology without medical or scientific corroboration can result in fundamentally flawed public policy that may provide unreasonable and unwarranted deference to those purported to be affected by chemical sensitivity.

II.

MCS/IEI ARE NOT CATEGORICALLY COVERED UNDER THE AMERICANS WITH DISABILITIES ACT.

CSMA believes that it is not constructive nor appropriate, from a medical or legal perspective, for the State of New Mexico to render an unfounded medical judgement in the context of a policy for access and accommodation. As you may know, the United States Department of Justice has formally refused to recognize Multiple Chemical Sensitivities/ Idiopathic Environmental Intolerance as a condition categorically covered under the Americans with Disabilities Act (ADA). The position of the Justice Department is set forth in 28 CFR Part 35, APP A. p446:

Mr. Eric Dibner
Page Three
June 1, 1996

" The Department, however, declines to state categorically that these types of allergies or sensitivities are disabilities, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstance at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect)... In sum, the determination as to whether allergies to cigarette smoke, or allergies or sensitivities characterized by commenters as environmental illness are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments."

The ADA requires only reasonable accommodations in rules, policies, practices, or services be made when such may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas. ~~With respect to a determination of what standard is reasonable in this area, the U.S. Department of Housing and Urban Development in a memorandum interpreting ADA applicability to MCS/IEI noted:~~

"Moreover, as a number of decisions in this field highlight, the mere fact that a person may be disabled by MCS or EI and makes demands on other people, be they employers or housing providers, does not mean that those demands must be met... Whether a respondent in a case has a met a duty to reasonably accommodate persons disabled by MCS or EI will turn on the facts and circumstances of that case".¹

III.

A POLICY TO ACCOMMODATE MCS/IEI WILL DENY IMPORTANT PUBLIC HEALTH PROTECTIONS TO THE GENERAL POPULATION

All disinfectants and other pesticides are registered with the Federal Environmental Protection Agency in accordance with the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). The use of a "non-toxic" or non-registered product will not disinfect, nor remedy a pest problem. Failure to disinfect surfaces, including those in eating areas and restrooms, and failure to treat pest problems, including vermin, will pose uncontrovertible risks to the general population and to susceptible persons, especially those with compromised immune systems.

¹- Carole W. Wilson, Associate General Counsel Counsel For Equal Opportunity and Administrative Law, U.S. Dept. of Housing and Urban Development, Memorandum for Frank Keating, General Counsel, May 5, 1992.

Mr. Eric Dibner
Page Four
July 1, 1996

It is therefore axiomatic that any policy which seeks to prohibit the use of disinfectant or pesticide products to accommodate persons alleging MCS/IEI will not be reasonable because of a collateral failure to protect the population from the likely transmission of disease that will be facilitated by the abstention from using these products.

In addition, there is now ample scientific evidence to establish that a cleaning regime that employs a broad array of cleaning compounds can significantly improve indoor air quality. These scientific findings demonstrate that cleaning products inhibit and eradicate biological contaminants (ie. mold, mildew, fungus, etc.) that have been demonstrated to significantly contribute to impairment of indoor air quality. A major study prepared in 1994 for the US Environmental Protection Agency, Environmental Criteria and Assessment Office, concluded that:

"an organized cleaning program based upon environmental management principles and fundamental environmental protection guidelines contributed to improved indoor air quality through reduction of total suspended particles, total volatile organic compounds and culturable bacteria and fungi." ²

Industrial, institutional and consumer pesticide products perform vital public health functions in a wide variety of settings, including homes, hospitals, schools, restaurants, etc. The public health benefits of these products include:

- Elimination of rodents, ants and cockroaches;
- Disinfection in hospitals, nursing homes, schools, restaurants and public facilities;
- Protection against disease carrying ticks or mosquitoes which can transmit serious and sometimes fatal disease;
- Elimination of mold and mildew growth which can exacerbate respiratory conditions such as asthma.

²- Research Triangle Institute, "Indoor Environment Characterization of a Non-Problem Building: Assessment of Cleaning Effectiveness" , March 1994 (EPA Cooperative Agreement CR-815509-02-1)

Mr. Eric Dibner
Page Five
July 1, 1996

It should also be noted that persons claiming MCS/IEI do claim mold and mildew as sources of physical irritation. These problems are effectively treated with the use of cleaning and disinfecting products. Furthermore, many of the allergens associated with cockroach and dust mites are considered quite potent. A comprehensive cleaning and maintenance program that eradicates or effectively treats these sources has been documented to mitigate the severity of allergy among the population. Commercial cleaning and disinfecting products and pesticide products are essential to this task.

IV.

A POLICY TO ACCOMMODATE PERSONS WITH MCS/IEI WILL BE IMPRACTICAL AND CANNOT EFFECTIVELY ADDRESS THE ISSUE OF ACCESS AND ACCOMMODATION FOR THIS GROUP

It should be noted that persons claiming MCS/IEI allege a wide variety of sources aggravate their condition. These sources are as omnipresent and diverse as "potpourri", "carpeting", "copy machines", "fluorescent lighting" and "felt tip markers". A policy that would remove all alleged irritants listed by the advocates of MCS/IEI is thus highly impractical and unreasonable.

Recent evidence of the futility of providing an accommodation for this condition can be seen in the results of an experimental housing unit commissioned by the U.S. Department of Housing and Urban Development. The \$1.2 million dollar housing unit was a prototype, designed for persons alleging MCS/IEI was dubbed "Ecology House". The complex was built from materials which were thought to be free of irritants and includes an elaborate ventilation system, fragrance free landscaping and a ban on plywood (which contains formaldehyde). Notwithstanding these elaborate precautions, according to subsequent reports, residents are "sicker now than when they moved in."³

³- Newsweek Magazine, "An Experiment With Mixed Results", November 27, 1995
P.12

Mr. Eric Dibner
Page Six
July 1, 1996

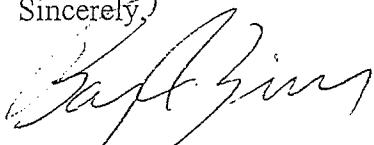
V.

SUMMARY

Any New Mexico accommodation policy with respect to Multiple Chemical Sensitivity /Idiopathic Environmental Intolerances that is established, in the absence of scientific and medical understanding, is a fundamentally flawed approach. Moreover, a policy that contemplates bans or restrictions for commercial products can only, therefore, be based on purely capricious and subjective criteria. Cleaning, disinfecting and pesticide products are vital to maintaining hygienic and sanitary conditions. Thus, any policy that displaces these products with ineffective substitutes is not in the best interest of protecting and preserving the general public health or those whose health may be impaired.

Thank you for your consideration of these comments.

Sincerely,



Barry R. Ziman
Legislative Representative

cc: Ms. Judith K. Myers, Director
Governor's Committee on Concerns of the Handicapped