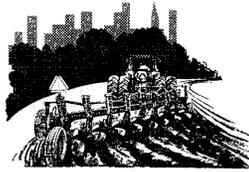


Chairman:  
Agriculture Committee



Member:  
Environment & Utilities  
Government Operations  
Natural Resources  
Rural Affairs

**Al Ott**

State Representative • 3rd Assembly District

**Assembly Agriculture Committee**

**MEMO**

**To: Members of the Assembly Agriculture Committee**

**From: Representative Al Ott, Chair**

**Date: January 27, 1998**

**The following clearinghouse rule has been referred to the Assembly Agriculture Committee:**

**Clearinghouse Rule 97-125  
Relating to pesticide regulation**

**The deadline for action on this rule is 2-26-98. If you would like a copy of the rule, please contact my office at 266-5831.**



FEB 10 1998

## Wisconsin Agribusiness Council, Inc.

2820 Walton Commons West, Suite 132 • Madison, WI 53718-6797 • Phone (608) 224-1450 • Fax (608) 224-1452

February 6, 1998

To: Assembly Committee on Agriculture

From: Russ Weisensel

Re: **ATCP 29 (Now Clearing House Rule 97-125)**

(Also refer to my letter of February 5 which was distributed to all members of the legislature.)

We are in support of this rule with the exception of the continuation of the present advance notice registry which allows a very few activists to harass commercial landscape applicators.

The re-formatting of ATCP 29 makes it easier to understand and follow. This will benefit both the regulated and regulators.

Because "waters of the state" is all inclusive in the statutes, clarifying this phrase as it relates to pesticides removes a major concern voiced by both rights-of-way and agricultural applicators.

The change for posting of applications on farm fields is very positive. (Posting is still required at sensitive areas (schools, etc.), for worker protection (WPS), and when required by the label. In 1996, 99% of our soybean acreage was treated with herbicides. Herbicides were applied to 93% of the corn acreage, with insecticides used on 37%. Wisconsin's 1995 trespass law states it is illegal to enter agricultural land without permission. The message is clear: 1. Most cultivated fields receive crop protection chemicals; & 2. Trespass is illegal!

Because the big white and green trucks are so visible, and because no one wants to make Grandma post her lawn when she dusts her roses, we continue to require commercial applicators to post while excluding the do-your-selfers who are estimated to use 80% of lawn care products.

Of the 1100 to 1200 contacts on this rule received by DATCP, many asked that pesticide applications at schools and other sensitive areas be eliminated. (We expect you may also be asked to add this into the pending rule.) They must not realize that pesticides include disinfectants for the bathrooms and cafeterias, insecticides to kill wasps and cockroaches, fungicides for the showers, and/or rodenticides for the little critters which might enter some of our older buildings.

While we wholeheartly agree with the IPM (Integrated Pest Management) concept for schools, we question the need for a federal grant and a DATCP survey. In 1995 the U.S. EPA published a booklet to help schools adopt an IPM program. This program was supported and endorsed by RISE (Responsible Industry for a Sound Environment), NPCA (National Pest Control Assn.), PLCAA (Professional Lawn Care Assn. of America), and the NSBA (National School Board Assn.). Why does Wisconsin need to create a new recipe, when a "cookie cutter" is available?

- more -

The state registry for advance notice of lawncare applications should be modified to reflect the compromise unanimously recommended by the ARM subcommittee of the DATCP board. The compromise would maintain the "immediately adjoining blocks" but would limit each notification registry to 30 addresses. Allowing unlimited addresses is an abuse of intent of the state registry; and does a disservice to those who have a legitimate concern and wish to protect toddlers and pets from unwanted pesticide exposure on neighboring lawns.

The hearing draft limited the registry to "immediately adjacent" parcels, or those separated by a road, stream, etc. not more than 66 feet wide. **The compromise language is most reasonable.**

The hearings and related responses were most interesting! **Many more people objected to the above change than have requested to be on the state registry.** While all registrants were notified, only 150 of the state's 843 registry participants commented on the rule. Except for a very few activists, a number of people at the hearings who are on the registry, when questioned, indicated they filed less than 20 addresses. Since 90% of the registry participants list 33 or fewer addresses, **and half the current registry participants list 10 or fewer addresses**, the compromise of 30 addresses recommended by the ARM subcommittee should be adopted.

**History:** Wisconsin's registry is free with no medical certification needed. Both of these concepts were supported by industry and the environmental groups. When the registry scheme with the adjoining block concept, rather than the adjoining property concept was first proposed, a number of industry representatives feared it would be abused. DATCP staff stated if that were the case, the rule language could be modified.

In 1993 the program director and lobbyist for the Citizens for a Better Environment submitted 414 separate addresses from her own and adjoining blocks. (See attached)

DATCP staff, in 1995, reported that a few individuals have more than 100 addresses on their registry, and that the 414 address registry continues. It was suggested that the rule be modified.

Nothing happened that year. On February 22, 1996, the Forestry/RoW/Turf Committee of our Council made a formal request to DATCP to have this portion of ATCP 29 publicly reviewed. As part of process which preceded the rule draft before you, DATCP appointed a general and a landscape advisory committee. While not unanimous, the landscape committee did question the abuse of this portion of the rule.

Based on information from a national trade publication (EPA has no update since 1993):

Only 10 states have a registry.

In 2 states the advance notice is voluntary.

In 8 states the advance notice is required only of application on the adjoining, adjacent, abutting, or contiguous property.

Florida can expand this limit to ½ mile with a qualified medical statement. Florida has a \$50 fee.

The Pennsylvania limit is within 500 feet.

Wisconsin, of course, presently continues its ridiculous wide-open 9 block registry limit!

Following are the actual addresses filed by an environmental activist under our present rule. She wanted, and will receive advance notification of each commercial lawncare pesticide application made at these locations!

2405, 2413, 2421, 2427, 2433&2435 (duplex), 2437, 2503, 2511&13, 2517, 2521&25, 2527&29, 2531&33, 2537&39, 2601&03, 2609&11, 2515&17, 2619&21, 2623&27, 2629, 2631&33, 2637 West National Ave.

2422&24, 2426&28, 2430&32, 2436, 2411, 2417, 2423, 2437&39, 2517, 2523, 2514, 2516&18, 2520&22, 2524&26, 2528, 2532&34, 2536, 2609, 2615 West Mineral Street

2400, 2404&06, 2408, 2412, 2416, 2411&13, 2415&17, 2421&23, 2427, 2431, 2433&35, 2437&39, 2501, 2505, 2509, 2511, 2515, 2519, 2521&23, 2527&29, 2531&33, 2535&37, 2504, 2516&18, 2608, 2612, 2616, 2622, 2617 West Scott Street

2400, 2402&06, 2412, 2416, 2420, 2424&26, 2432, 2436&38, 2502, 2506, 2512, 2516&18, 2522, 2526&28, 2534, 2538, 2606, 2610, 2612&20, 2624, 2628, 2632&34 West Greenfield Ave.

821&23, 901, 903&05, 907&09, 911&13, 917, 923&25, 1001&03, 1007, 1011, 1015, 1019, 1021, 1029, 1033&35, 1037&39, 1041&43, 1045&47, 1101, 1105, 1109&11, 1113&15, 1119, 1121&23, 1205, 1207&11, 1215&17, 1223, 1225, 1229, 1231, 1235, 1241, 1305, 1309, 1315, 1323, 1327, 1329 South 24th Street

818&20, 902, 906&08, 912&14, 1006, 1010, 1014, 1016, 1020&22, 1114, 1214, 1220, 1224, 1228, 1234, 1238, 1242, 1300&02, 1304&06, 1310&12, 1314&16, 1318&20, 1324&26, 1331, 1323&25, 1319, 1317, 1309&11, 1305&07, 1301, 1241&43, 1239, 1233&35, 1229&31, 1227, 1221&23, 1217, 1143, 1133&35, 1129, 1125, 1123, 1113, 1109, 1107, 1101&03, 1041&43, 1039, 1031, 1029, 1023, 1017&19, 11013&15, 1009, 1003, 925, 921, 917, 915, 911&09, 907&05, 903&01 South 25th Street

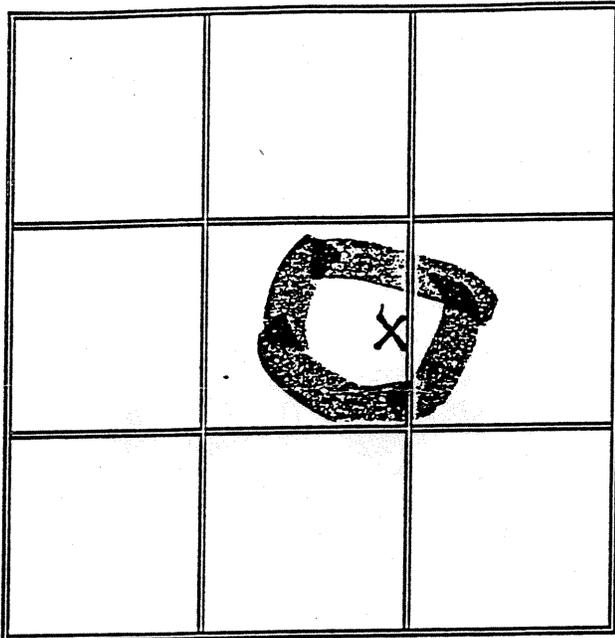
900&02, 906&08, 904, 920&922, 926&28, 932, 938&940, 1002&06, 1008&10, 1014, 1016&18, 1020&22, 1026, 1030, 1038, 1042, 1100&02, 1106, 1110, 1118, 1122, 1126, 1128, 1132, 1136, 1140, 1001&05, 1009, 1013, 1019, 1023, 1027, 1031, 1035, 1039, 1043, 1101, 1107, 1111, 1115, 1117&19, 1123, 1127, 1133, 1135, 1141, 1206&08, 1212, 1216, 1220&22, 1226, 1230, 1234, 1238, 1240&42, 1300, 1306, 1308, 1312, 1316, 1320, 1328, 1336, 1340, 1203&05, 1209, 1211, 1215, 1219, 1221&23, 1227&29, 1231, 1235, 1239, 1243, 1301, 1305, 1309, 1315, 1317&19, 1323&25 South 26th Street

904, 920&22, 926&28, 932, 938&40, 1000, 1018&20, 1022&24, 1028&30, 1034, 1102, 1104, 1110, 1112&14, 1118, 1122, 1126, 1130, 1136, 1146, 1202, 1202, 1208, 1212, 1220&22, 1236, 1308, 1314, 1320, 1326, 1330, 1336, 1344 South Layton Blvd.

**COPY**

FIGURE #1

29

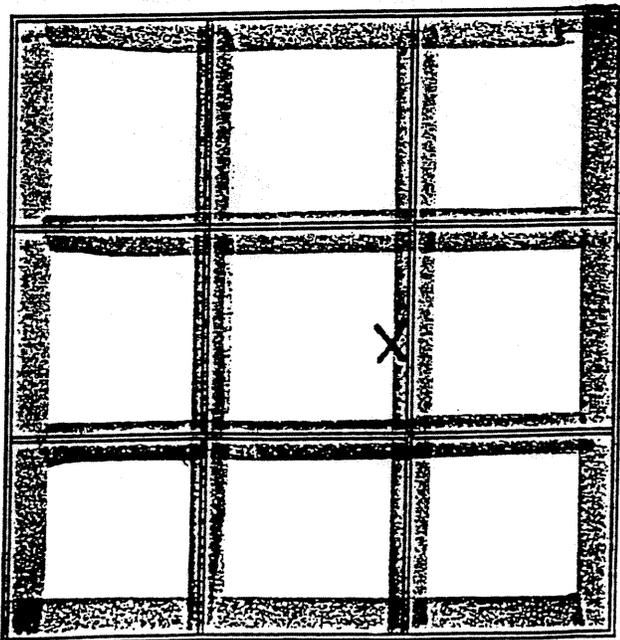


Addresses of applications  
on immediately  
adjoining properties:

Next door,  
directly across the street,  
backyard neighbors.

(Perhaps 3 to 10 addresses)

FIGURE #2



Addresses of applications  
on the requester's block,  
or immediately adjoining  
blocks:

All addresses on nine  
contiguous blocks.

(Includes over 400 addresses)

TURN PAGE FOR EXAMPLE

STATE OF WISCONSIN

To AI

Date 2/9/98 Time \_\_\_\_\_

WHILE YOU WERE OUT

M Russ Weisensel

of \_\_\_\_\_

Phone 224-1450

Telephoned		Please Call	
Called to See You		Rush	
Returned Your Call		Will Call Again	

Message Feb 19 -> 2:30-4:00

for Agri-Bus Panel  
(Black + Welch so far)

- Also wants to speak w/ you

about Restricted rule



Party Receiving Call



# Wisconsin Agribusiness Council, Inc.

2820 Walton Commons West, Suite 132 • Madison, WI 53718-6797 • Phone (608) 224-1450 • Fax (608) 224-1452

February 5, 1998

To: Members of the Wisconsin Legislature

From: Russ Weisensel, Director, Legislative Affairs

Re: Issues related to **ATCP 29 (Now Clearing House Rule 97-125)**

During the drafting and hearing process on this rule, an immense public relations effort distributed much information relating to possible risks associated with the use of pesticides. DATCP, for example, received 830 comments before the start of the public hearings. Most were standard postcards expressing environmental and health concerns.

At several of the DATCP meetings and hearings numerous people asked that parts of the rule be strengthened to protect those with **MCS (Multiple Chemical Sensitivity)**.

Because of the misinformation on this subject we contacted Dr. Jordan Fink, Chief of Allergy at the Medical College of Wisconsin at Milwaukee. [Note: Though we invited Dr. Fink to appear at the DATCP board meeting, he did not come in as a **paid** expert witness. However, we did pay for his round trip mileage from Milwaukee.] Following is the gist of his testimony:

DATCP Board Minutes

December 11, 1998

Page 5

## PUBLIC APPEARANCES

The following persons spoke regarding proposed pesticide rules under ATCP 29 and 30, Wis. Adm. Code:

- Dr. Jordan Fink, Milwaukee, representing the Wisconsin AgriBusiness Council, said that he is a Professor of Medicine and Chief of Allergy at the Medical College of Wisconsin. He is very interested in environmental issues and testified about "Multiple Chemical Sensitivity (MCS)" in relationship to pesticides. MCS was first described 30 years ago by a Chicago physician and since that time, there has not been any scientific evidence that MCS exists. Traditional medicine and its organizations have presented printed position statements saying that the concept of MCS is not scientific and has not been proven. This includes the American Academy of Allergy in Milwaukee, the American College of Physicians, the American College of Occupational and Environmental Medicine, and the California Medical Association. Some recent studies suggest that it may be the result of depression in patients, and that the symptoms are related to panic disorder. Although the reported symptoms are widespread and varied, involving multiple systems, there are no abnormal laboratory findings. Proponents of the MCS theory are mainly clinical ecologists who are not recognized by traditional medicine and are not certified by any board. MCS is not taught in any medical school in the country. Nor do physicians in Canada and England recognize MCS.

Another issue raised as this rule developed relates to **cancer - particularly childhood cancer.**

Because each of our families has been touched by this dread disease, we all favor actions that would prevent even one person from developing cancer. Yet at the same time we must not frighten people nor condemn a product or practice where the benefits exceed the actual risk.

The following quotes are from the **CANCER FACTS & FIGURES - 1997** published by the American Cancer society:

*"Death rates for major cancer sites have leveled off or declined over the past 60 years. When lung cancer deaths are excluded, cancer mortality shows a decline of 16% between 1950 & 1993."*

The publication listed major causes of cancer as smoking, heavy use of alcohol, dietary factors, and over exposure to the sun's rays.

*"... as a childhood disease, cancer is rare.*

**[ While even one case is too many, this quote is confirmed by Wisconsin statistics: In 1966 malignant, benign and uncertain neoplasms were the underlying cause of death for just 15 children ages 0 to 9. [Source Wisconsin Deaths, 1966 page 23 WI DHFS ]**

*" Unproven Risks Public concern about environmental cancer risks often focuses on risks for which no carcinogenicity has been proven or on situations where known carcinogen exposures are at such low levels that risks are negligible. For example: Pesticides Many kinds of pesticides (insecticides, herbicides, etc.) are widely used in producing and marketing our food supply. Although high doses of some of these chemicals cause cancer in experimental animals, the very low concentrations found in some foods are generally well within established safety levels. Environmental pollution by slowly degraded pesticides such as DDT, a result of past agricultural practices, can lead to food chain bioaccumulation and to persistent residues in body fat. Such residues have been suggested as a possible risk factor for breast cancer. Studies have shown that concentrations in tissue are low, however, and the evidence has not been conclusive... When properly controlled, the minimal risks [pesticides] pose are greatly overshadowed by the health benefits of a diverse diet rich in foods from plant sources." (Cancer Facts & Figures-1997 ACS)*

Those who have attempted to blame pesticide use for childhood cancer have quoted a paper recently presented by Sheila H. Zahm and Mary H. Ward to *Environmental Health Perspectives*.

Yet the authors themselves state that based on the research information currently available, you can say little definitively with regard to the role of pesticides as the cause of childhood cancers.

*"Based on the research to date on the role of pesticides in the etiology of childhood cancers, little can be definitively concluded, particularly for specific pesticides."*

A report prepared at the request of Responsible Industry for a Sound Environment (RISE) contains a comprehensive critique of the Zahm / Ward paper. That critique follows:

This critique was contained in a  
REVIEW OF  
**“PESTICIDES AND CHILDHOOD CANCER”**  
(Zahm and Ward, submitted to *Environmental Health Perspectives*, Fall, 1997)

By  
Elizabeth Delzell, S.D.  
Department of Epidemiology  
University of Alabama at Birmingham

## CRITIQUE

The paper is not an objective review of the literature. The authors give the over-riding impression that they have an agenda (the study of pesticides in relation to childhood cancer and other childhood diseases). They attempt to make as strong a case as possible for urgently needed and extensive research in this area. The authors state that the scientific basis for believing that pesticides cause childhood cancer is not conclusive, and this is a reasonable interpretation of the available information. However, the dominant tone of the review contradicts this interpretation and instead implies that a causal association between pesticides and childhood cancer is plausible and that substantial evidence for such a relationship exists for leukemia and brain cancer.

The authors make a number of inflammatory statements that are supported only weakly by scientific evidence, and they fail to mention evidence, which does not support their contentions. For example, they assert, "Children are exposed to potentially carcinogenic pesticides from use in homes, schools, other buildings, lawns and gardens, through food and contaminated drinking water, from agricultural application drift, overspray, or off-gassing, and from "carry-home" exposures of parents exposed to pesticides occupationally" (Abstract). The authors do not indicate that documentation of actual pesticide exposures in children is, in fact, quite limited and that despite considerable evaluation, only one class of pesticide (arsenical insecticides) is classified by the IARC or other agencies as an established human carcinogen. Although Zahm and Ward cite a number of reports dealing with potential pesticide exposure, they present almost no quantitative information on actual exposure levels in children or pregnant women, and they do not provide a critical evaluation of the reports. They state that children "...may be particularly sensitive to toxic effects due to immature metabolism and other factors" (p. 3) but do not provide a clear scientific rationale for this speculation.

Another example of lack of balance is the assertion that the methodologic limitations of existing epidemiologic research "would cause studies to underestimate risk" (p. 18) of childhood cancer in relation to pesticide exposure. In addressing this issue, it is important, first, to recognize that underestimation of risk can occur only if a causal association exists. The review by Zahm and Ward does not provide convincing evidence of causal relationship. As noted earlier, the IARC and other agencies have not classified pesticides as carcinogenic, with one exception. Also, a recent review by an Ad Hoc Panel on Pesticides and Cancer sponsored by the National Cancer Institute of Canada concluded "that it was not aware of any

definitive evidence to suggest that synthetic pesticides contribute significantly to overall cancer mortality" (Ritter L, in *Cancer* 1997;80:1887-8).

Next, it is important to consider Zahm and Ward's statement that "poor exposure assessment...would bias true positive associations towards the null" (p. 18). This claim does not have a firm basis. Nondifferential misclassification of subjects with respect to exposure on average produces bias towards the null (i.e., reduces the strength of a true positive association). However, in studies with low exposure frequencies (as in many of the childhood cancer studies) error in the exposure classification of only a few subjects can have a major impact on results. The direction of any resulting bias would be unpredictable. Recall bias also can contribute to poor exposure estimation in some studies. Such a bias, if due to a tendency for parents' memory of their children's exposure to pesticides to be more accurate for cases than for controls, could have produced overestimates, rather than underestimates, of the association between pesticides and childhood cancer. The authors' statement comparing the strength of the apparent association between pesticides and cancer in children with the strength of the association in adults ("the magnitude of the risks is often greater than among adults, indicating greater susceptibility") (p. 18) also is not objectively supported. Zahm and Ward do not provide examples of specific comparisons between study results for children and results for adults. Although some of the odds ratios for childhood cancer are high, many either are associated with quite wide confidence intervals (e.g., Mulder et al. report an odds ratio of 6.0 for child's pesticide exposure 3+ hours/week, but the confidence interval is 0.3-368.3) or do not have confidence intervals reported. Differences between results for children and results for adults could be due to chance alone or to greater amounts of bias or confounding, rather than to differences in susceptibility. The authors do not mention these alternative interpretations, nor do they provide any rationale for dismissing them.

Zahm and Ward do not discuss the potential for confounding at length, probably because little is known about the causes of childhood cancer. Nonetheless, it is certain that unknown and unrecognized causes of childhood cancer exist, that confounding by these factors could have occurred in the epidemiologic investigations included in the review and that the direction of any resulting distortion of measures of association is unknown. Confounding may either exaggerate or reduce the magnitude of associations.

In discussing methodologic issues regarding the use of children with "other cancers" as controls in case-control studies of childhood cancer (pp. 13-14), Zahm and Ward state, "If pesticides are also associated with the other cancer with which the controls are diagnosed ...false negative results may occur" (p. 14). False negative results may occur, however, only if the other cancer is positively associated with pesticides. Zahm and Ward do not consider the possibility that children with the other, "control" cancer could have lower exposure to pesticides than children in the population giving rise to them. This situation of inappropriately low exposure in the "other cancer" controls could arise because of selection bias, uncontrolled confounding or chance. Irrespective of how it arises, it would produce an overestimation of the strength of the association between pesticides and the cancer under study.

Zahm and Ward's overall evaluation of the epidemiologic evidence on the relationship between pesticides and childhood cancer is unclear and seemingly self-contradictory. As already noted, they conclude that an etiologic role is "highly plausible"; and in the Abstract they assert that "There is potential to prevent at least some childhood cancer by reducing or eliminating pesticide exposure" - a statement which implies that a causal role has already been established. Elsewhere, however, they state, "Based on the research to date on the role of pesticides in the etiology of childhood cancers, little can be definitively concluded, particularly for specific pesticides" (p. 12). The latter conclusion is reasonable, whereas the former statements are misleading.

In epidemiologic research, there are several criteria that must be met in order to determine that a causal relationship exists between an exposure and a disease (Cole P, *The Environmental Law Reporter* 1997;27:102979-85). Criteria for evaluating the validity of an apparent association observed in an individual study are: minimal bias, minimal confounding, minimal random error, strength of association, internal consistency (e.g., dose-response, uniformity of results across subject groups specified on the basis of, for example, gender), temporality (e.g., pesticide exposure precedes the onset of childhood cancer) and biologic plausibility (e.g., an existence of a reasonable mechanism by which pesticides could produce childhood cancer). In the context of a set of reasonably valid studies, the main criteria for assessing causality are external consistency or "replicability" (the same exposure-disease-specific association seen in multiple studies) and coherence. The epidemiologic evidence pertaining to pesticides and cancer in children is not adequate to establish that causal relationships exist for numerous reasons. Many of the individual studies have specific methodologic weaknesses, a detailed critique of which is beyond the scope of this report. Some of the most crucial limitations of the individual studies and, more importantly, of the aggregate evidence are summarized below.

First, exposure assessment research has not established that the pesticide surrogates used in the childhood cancer studies (e.g., parents' occupation, parents' self-reports of their own pesticide use or exposure or of their children's exposure) provide valid estimates of actual exposure. Of the many investigations included in the review, only two contained direct measurements of pesticide levels in the children studied. Accordingly, it remains possible that the children studied had no or extremely low levels of exposure to pesticides. Thus, the plausibility of the observed positive associations is questionable.

Second, the classification of many pesticides as animal carcinogens does not greatly enhance the biologic plausibility of a causal relationship between exposure and cancer in children. Considerable epidemiologic data indicate that established animal carcinogens do not necessarily cause cancer in humans. Examples of animal carcinogens that do not appear to be carcinogenic in humans include unleaded gasoline, DDT, saccharin and acrylonitrile.

Third, as Zahm and Ward note, data on "dose- or exposure-response relationships can aid interpretation of causality" (p. 14). In fact, such data are of critical importance in distinguishing causal from noncausal associations in epidemiologic research and, where

causal relationships are established, in conducting risk assessment. The lack of exposure level-response data on specific pesticides in the childhood cancer studies is a serious deficiency that, coupled with other challenges to the validity of results such as potential recall bias, makes a causal interpretation untenable at this time.

Another important criterion for establishing causality in epidemiologic research is the repeated observation of a given association across many studies. In evaluating the possible relationship between pesticides and childhood leukemia or brain cancer, Zahm and Ward note that most of the studies reported positive associations. However, this pattern of positive results does not convincingly address the issue of replicability. This is because the studies were not specific in terms of the pesticides investigated; thus there is no assurance that the same pesticides were investigated in the various studies.

#### OTHER CONSIDERATIONS

Although Zahm and Ward do not provide strong evidence of a causal relationship between pesticides and childhood cancer, they do present a fairly compelling case for children having potential exposure to multiple pesticides through multiple sources. The possibility of widespread exposure to potentially harmful substances will raise public health concerns, even if data are lacking. This is particularly so if data refuting a widespread, substantial exposure scenario are not available.

Zahm and Ward point out gaps in the data available for evaluating the potential role of pesticides in the etiology of childhood cancers (and other childhood diseases). They call for future research that will use more and better measures of pesticide exposure, focus on allegedly heavily exposed groups ("children of migrant farmworkers") (p. 19), consider interaction and address the problem of statistical imprecision. This is an agenda for a long-term, in-depth research program. It is likely that many studies of the potential health effects of pesticides in children, as well as studies of reproductive effects in women and men, will emerge in the future. Finally, the review by Zahm and Ward does not mention time trends in childhood cancer incidence rates or in pesticide use. It is reasonable to anticipate the publication of research, which evaluates such trends.

RRW/WAC

\* \* \* \*

02/05/98

**Background on pesticide regulations.** Pesticides are biological active chemicals, natural and man-made, used to control unwanted pests such as bacteria, rodents, insects, plants, and fungi. These products which help protect our lives, animals, food, feed and fiber, range from household bleach to flea collars, and from certain soaps to rodenticides.

Pesticides are strictly regulated under FIFRA, enacted in 1947, and under FFDCFA which in 1954, authorized the FDA to set pesticide safety standards for food. In 1970, both responsibilities were transferred to the newly formed federal EPA. Major revisions in FIFRA were made in 1972, 1975, 1978 and 1988. Congress also has mandated the re-evaluation and re-registration of all pesticides registered prior to November 1984. During the re-registration process, EPA requires new and tests to fill any "data gaps" from the earlier test requirements. In 1996 Congress modified FIFRA with the Food Quality Protection Act (FQPA) to further mitigate any possible pesticide risks.

Each EPA-registered pesticide undergoes up to 120 tests (contact us for a listing) designed to determine human health, safety and environmental effects.

Pesticide development, testing and EPA registration takes 8 to 10 years, and costs manufactures \$35 million to \$50 million to complete.

On average, only one in 20,000 chemicals ever makes it from the laboratory to the farmers field. Lawn, garden and household products are subject to the same scrutiny and generally contain the same active ingredients that were developed as agricultural crop and animal protection products.

9910 WEST LAYTON AVENUE  
GREENFIELD, WISCONSIN 53228  
PHONE (414) 529-4705  
FAX (414) 529-4722

MAR 17 1998



# wisconsin landscape federation, inc.

## MEMORANDUM

To: Members of the Assembly's Committee on Agriculture

Fr: Joe Phillips, Executive Director  
WISCONSIN LANDSCAPE FEDERATION

Re: Clearinghouse Rule 97-125

March 16, 1998

On behalf of the nearly 700 members of the Wisconsin Landscape Federation (WLF), I would like to urge approval of the new AG-29 rules governing pesticides (Clearinghouse Rule 97-125) EXCEPT that provision which allows for serious abuse of the free state registry mandating advance notice of commercial lawncare applications.

Only 10 states currently have a registry. All limit notifications to adjacent properties.

The early study committee which helped develop the new AG-29 rules agreed to a modification of the registry limiting notification to persons residing on adjacent properties. The ARM sub-committee of the DATCP Board urged modification by a unanimous vote, limiting each notification registry request to 30 addresses. The DATCP staff has time and again admitted the registry is being abused and should be modified.

Most lawncare companies and other commercial applicators are responsible business people who care for those who have legitimate aversions to pesticides, notably some children and pets. They are willing to notify immediate neighbors but to force them to advance notice everyone within a nine block area of the property to which pesticides are being applied, is absolutely ridiculous.

An enormous amount of study, work and effort has gone into developing workable, meaningful and appropriate rules governing the usage of pesticides in Wisconsin. The last minute action of the DATCP Board to retain current registry practices has no basis of rationale. We urge you to support a measured, realistic approach to this perceived problem. Support the compromise of the ARM sub-committee of the DATCP which limits the registry to 30 names per application.

It's the sensible approach that avoids putting new and unwarranted obligations on those of our members seeking to make a living from their business endeavors without undue interference from government. Thank you for your consideration.

### MEMBER ASSOCIATIONS

Commercial Flower Growers of Wisconsin • Gardens Beautiful Garden Centers • Grounds Management Association of Wisconsin  
Wisconsin Landscape Contractors Association • Wisconsin Nursery Association • Wisconsin Sod Producers Association

**REABE SPRAYING SERVICE, INC.**

W13105 ALP AVENUE  
PLAINFIELD, WISCONSIN 54966  
(715) 335-6810

FEB 25 1998

Feb. 23, 1998

Congressman Alvin Ott  
Wisconsin State Assembly  
P.O. Box 8953  
Madison, WI 53708

Dear Congressman:

Clearing House Rule 97-125 is up for approval after going through over a year of input, thought consideration, and discussion. I personally have testified to the Department of Agriculture on three separate levels of hearings and open meetings. In addition, a public input committee comprised of DATCP staff, ag industry and environmental association representatives were used to develop the initial draft.

I feel that, all-in-all, DATCP did a fine job of developing a balanced rule. Specifically, I feel the Department was fair in reducing the posting requirement along side roads. This proposed rule is still stronger than the Federal posting law and almost all other State laws. But, it recognized that with the new trespassing law, Wisconsin farmers should not have to protect trespassers from the consequences of their own actions.

Some groups wanted to ban the use of pesticides in or around schools, day care centers, playgrounds, athletic fields and other areas children frequent. I believe the Department acted responsibly when the DATCP agreed to study the use of pesticides in these areas. In using and integrated pest management approach, a person must know the extent of the pest problem and then decide what is the best solution. We would hate to "save" the kids from pesticides just to have them suffer from diseases carried by rodents and insects, fungal diseases in shower rooms and ventilation systems, or noxious weeds in the playground.

I feel that DATCP did cave in to the anti-pesticide activist on the commercial lawn care registry. The present rule allows a resident to register for notification by any commercial lawn company before they treat a specific site to within 1 block of their property. For the most part, this has been useful and workable to the registrants. However, some people are using this system to harass the lawn care companies. 50% of the registrants requested notification for 10 or less sites and 90% of the

page 2

registrants requested notification on 33 or less sites. One registrant registered for 414 sites! This is clearly an example of a person using the law to harass a legal enterprise. The initial proposed rule limited the registry to the immediate adjacent sites, but anti-pesticide groups were livid over this reduction in the registry. The DATCP staff proposed a compromise that would have limited the registry to only 30 sites for residents, however, the DATCP board decided not to change the current rule. I feel that this compromise proposal for the registry would have protected those who really use it, and also would have protected the lawn care providers from harassment.

There are a few other points that I feel strongly on and have testified to at the DATCP hearings. I realize though, that I have not generated enough support to force a change in the proposed rule on these points. If the committee decides to open up the rule to another hearing, I would enjoy testifying again. If not, I feel that the DATCP has done a good job with this difficult project. I was once told that if the compromise you came up with makes "neither side" happy, you probably hit the "happy median".

Sincerely,

A handwritten signature in cursive script, appearing to read "JR Reabe".

JR Reabe

February 20, 1998

Rep. Al Ott, Chairperson  
P.O. Box 8953  
Madison, WI 53708

Dear Rep. Ott:

I am writing regarding Clearing House Rule 97-125 (AG-29), referring to Commercial Pesticide Lawn-care Application.

As you review this, please be aware that the pesticide registry in its present form, is effective, appreciated, and critical to maintaining my present state of health.

In 1985 I was diagnosed with an auto-immune disorder which left me with a weakened immune system and severe allergies. As someone who is extremely sensitive to pesticide applications, it is essential that the pre-notification registry remain in tact, with it's 9 block area. This allows me ample warning to take the necessary precautions of closing windows, taking laundry off the line, and avoiding the area to be treated. Since one exposure can take weeks to recover from, the busy Spring and Summer months of lawn-care applications could be deadly, if I could not affectively safe-guard my health.

If this issue goes to hearing, please read this letter into the record.

I am thanking you in advance for keeping the pesticide pre-notification registry as is.

Sincerely,

  
Nancy M. Lemerond  
606 Vroman St.  
Green Bay, WI 54303  
(920) 497-8098

Representative Al Ott, Chairperson, Assembly Committee on Agriculture  
P.O. Box 8953  
Madison, WI 53708

FEB 17 1998

Dear Representative Ott:

I am writing to you as a private Wisconsin citizen because I need your help. Please, as you review Clearing House Rule 97-125 (formerly "DATP 29"), **keep intact the section within this Rule that provides a Registry allowing citizens to receive pre-notification of commercial lawn applications on a resident's block or any adjacent block.** This section is crucial as is, to provide Wisconsin citizens with sufficient warning of nearby pesticide use.

The nine-block pre-notification Registry provides information citizens use to protect themselves from exposure to pesticides. The DATCP Board unanimously voted, following testimony at public hearings and letters sent to the Board during the hearing period, to keep this Registry as it is.

The unanimous vote came after the DATCP Board heard testimony and received individually written (not pre-printed) letters from a large number of citizens who urged the retention of the current nine-block notification (not a reduced) notification area. These residents represented a wide cross section of Wisconsin's people from all walks of life, ranging from medical doctors, chiropractors, University professors, housewives, school teachers, an actuary, environmental groups, and the Wisconsin PTA, to a variety of individuals with various health conditions that are worsened with pesticide exposures.

I ask, as you review Clearing House Rule 97-125, that you also be aware of and alert to misleading information now being circulated regarding issues that arose during the public hearings held by DATCP on this Rule. For example, Wisconsin legislators recently received a memo from the Wisconsin Agribusiness Council that presents incorrect information about a widely-recognized disorder called Multiple Chemical Sensitivity (MCS). Concentration on the existence or non-existence of MCS is a 'red herring' used to divert attention from the real issue. **The real issue is one of basic human rights: individuals have the right to know when substances which are toxic or potential health hazards are used in their proximity.**

Although the issue of MCS is not and should not be the focus of our attention, I am including with this letter fully referenced material that clearly lays out the facts in this matter. In it you will find that twenty-two Federal authorities, (including, for example, the Social Security Administration, HUD, and the U.S. Department of Justice), twenty-three State authorities, Canadian government agencies, and many others have recognized Multiple Chemical Sensitivity as a legitimate (non-psychogenic) medical condition and/or disability. I am also including a brief pamphlet from the American Cancer Society clearly outlining the potential health effects of common pesticides.

Please contact me directly if I can provide additional information or be of any service to you regarding these issues. Once again, I ask that you **keep intact the Registry allowing citizens to receive pre-notification of commercial lawn applications on a resident's block or any adjacent block - we have the right to know when pesticides are being used.**

Sincerely,



Judy Davinich, B.S., M.S., S.F.O.  
P.O. Box 304, Little Chute, WI 54140  
(920) 788-5956

February 16, 1998

# What you should know about pesticides...

## Q. What are pesticides?

**A.** Pesticides are poisons designed to kill a variety of plants and animals such as insects (insecticides), weeds (herbicides) and mold or fungus (fungicides). Pesticides include active ingredients (chemical compounds designed to kill the target organisms) and inert ingredients which may be carcinogens or toxic substances.

## Q. Are pesticides safe?

**A.** No one can assure your safety when using pesticides. Most pesticides are associated with some risk to human health or the environment.

## Q. Are pesticides registered by the U.S. Environmental Protection Agency (EPA) really safe?

**A.** No. EPA registration is not a consumer product safety program. It is not intended to determine the safety of the pesticide, but rather to indicate it will kill a targeted pest. The EPA is now reconsidering the registration of many pesticides which have been on the market for years, registered before the current testing requirements took effect. This re-registration process will take years to complete. Meanwhile, these pesticides are still on the market. The following pesticides are among many that fall into this category: carbaryl, dicamba, glyphosate, malathion, maneb and methoxychlor.

## Q. What are the potential health effects of common pesticides?

**A.** The EPA has identified health effects such as eye, skin, respiratory or throat irritation and muscle spasms in humans and animals. There may be long term health risks from pesticide exposure:

- A National Cancer Institute study indicated that children are as much as six times more likely to get childhood leukemia when pesticides are used in the home and garden.
- The Journal of the National Cancer Institute suggests that non-Hodgkins lymphoma may be linked to pesticide exposure.
- According to a report in the American Journal of Epidemiology, more children with brain tumors and other cancers were found to have had exposure to insecticides than children without cancer.
- As explained in the Journal of the National Cancer Institute, heavy and prolonged exposure to DDT may cause pancreatic cancer.

According to the State Attorney General:

- 95% of the pesticides used on residential lawns are considered probable or possible carcinogens by the EPA.
- Organophosphates, like Diazinon and Dursban, and carbamates are designed to act as nerve poisons and may cause headaches, dizziness, fatigue, twitching muscles and mental confusion. Diazinon is banned for use on golf courses and sod farms, but is widely used on lawns and gardens.

- 2, 4-D was a component of Agent Orange and is used in about 1,500 lawn care products.

## Q. How can pesticides reach people?

**A.** Pesticides can be absorbed through the skin, swallowed or inhaled. During application, pesticides drift and settle on porches, laundry, toys, pools and furniture. People and pets may track pesticide residue into the house.

## Q. Are there healthy alternatives to deal with insects, weeds and fungus?

**A.** Yes. The use of chemicals can be eliminated by natural or mechanical lawn care practices which build a strong vigorous lawn. Healthy lawns are better able to resist weeds and pests.

- Organic natural methods of lawn and garden care, as well as household insect problems are available.
- Pull out weeds manually. Use biological controls or less toxic pesticides like insecticidal, herbicidal, or fungicidal soaps for serious problems.

For more information contact:

**AMERICAN DEFENDER NETWORK**  
P.O. Box 911  
Lake Zurich, IL 60047  
(708) 381-1975

**What do I need to protect myself, family, home and pets?**

**It is a violation of federal law to state that the use of pesticides is safe when used as directed.**

**The benefits of a healthy family and populace outweigh the cosmetic benefits of a picture perfect lawn.**

\* Consumers who use toxic substances and those who cannot avoid its use by others, are urged to learn about the chemicals they are experiencing, their health effects and to take precautions to limit exposure. Be especially careful with children. Depending on the chemical applied, it could remain toxic for over a month. Always request a material safety data sheet on the chemicals used.

For more information:

State Attorney General  
Environmental Protection Bureau  
(716) 847-7149



Environmental Protection Agency  
Pesticide Information Hotline  
(800) 858-7378



American Cancer Society  
(716) 689-6981



"Lawn Care Pesticides: A Guide for Action",  
Attorney General Robert Abrams,  
May 1987, NYS Dept. of Law, 1992  
Environmental Protection Bureau

Special thanks to:  
State Attorney General's Office

**AMERICAN  
CANCER  
SOCIETY**

This publication has been produced  
by the Erie County Unit of the  
American Cancer Society.

**WARNING:  
The use of  
pesticides  
may be  
hazardous  
to your  
health!**



# RECOGNITION OF MULTIPLE CHEMICAL SENSITIVITY

Multiple Chemical Sensitivity or MCS is a chronic condition marked by heightened sensitivity to multiple different chemicals and other irritants at or below previously tolerated levels of inhaled and/or ingested exposure. Smell sensitivity is often accompanied by new food and drug intolerances, photosensitivity to sunlight and other sensory abnormalities, from hypersensitivities to touch, temperature extremes, loud noises and certain tastes to impaired senses of balance, memory and concentration. MCS is more common in women and can start at any age, but usually in one's 20s to 40s. Onset may be sudden (from brief high-level toxic exposures) or gradual (from more chronic low-level exposures), as in "sick buildings."

The syndrome is defined by multiple symptoms occurring in multiple organ systems (most commonly the neurological, immune, respiratory and musculoskeletal) in response to multiple different exposures. Symptoms may include chronic fatigue, aching joints and muscles, difficulty sleeping and concentrating, memory loss, migraines, and irritated eyes, nose, ears, throat and/or skin. The frequency and/or severity of these symptoms are worsened by subsequent "triggering" exposures to many different chemicals and other irritants from a great variety of sources (air pollutants, food additives, fuels, building materials, scented products, etc.). Consistent with basic principles of toxicology, MCS usually can be improved, although not completely cured, through the reduction and environmental control of such exposures. Many different terms have been proposed in professional and lay literature over the past 100 years to describe MCS syndrome and possibly related disorders whose symptoms also wax and wane in response to chemical exposures. Diagnoses listed in the International Classification of Diseases (ICD9-CM) are marked with an asterisk.

## Alternate Names Proposed for MCS

Acquired Intolerance to Solvents  
Allergic Toxemia  
Cerebral Allergy  
Chemical Hypersensitivity Syndrome  
Chemical-Induced Immune Dysfunction  
Ecological Illness  
Environmental Illness or "EI"  
Environmental Irritant Syndrome  
Environmentally Induced Illness  
Environmental Hypersensitivity Disorder  
Idiopathic Environmental Intolerances or "IEI"  
Immune System Dysregulation  
Multiple Chemical Hypersensitivity Syndrome  
Multiple Chemical Reactivity  
Total Allergy Syndrome  
Toxic Carpet Syndrome  
Toxin Induced Loss of Tolerance or "TILT"  
Toxic Response Syndrome  
20th Century Disease

## Disorders Associated With Single or Multi-Organ Chemical Sensitivity

Akureyri Disease \* (coded as EN)  
Asthma \*  
Cacosmia  
Chronic Fatigue Syndrome \*  
Disorders of Porphyrin Metabolism \*  
[Benign Myalgic] Encephalomyelitis \*  
Epidemic Neuromyasthenia \* (EN)  
Fibromyalgia Syndrome \*  
Gulf War Syndrome  
Icelandic Disease \* (coded as EN)  
Mastocytosis \*  
Migraine \*  
[Postviral] Neurasthenia \*  
Royal Free [Hospital] Disease  
Sick Building Syndrome  
Silicone Adjuvant Disease  
Systemic Lupus Erythematosus \*  
Toxic Encephalopathy \*

Listed alphabetically below are the U.S. federal, state and local government authorities, U.S. federal and state courts, U.S. workers' compensation boards, Canadian government authorities, and independent organizations that have adopted policies, made statements, and/or published documents recognizing Multiple Chemical Sensitivity disorders under one name or another as a legitimate (i.e. non-psychogenic) medical condition and/or disability. **A new section summarizes MCS recognition in medical literature.**

The exact meaning of "recognition" varies with the context as each listing makes clear. Recognition by a court of law, for example, usually refers to a verdict or appeal in favor of an MCS plaintiff, while recognition by government agencies varies tremendously--from acknowledgement of the condition in publications and policies to research funding and legal protection of disability rights. [The dates in parentheses refer to the specific references, which are usually but not necessarily the earliest available.] **New entries are in bold.**

Source documentation is available for \$.20/page (\$10.00 minimum) or \$250 for all from MCS Referral & Resources, 508 Westgate Rd, Baltimore MD 21229 or call 410-362-6400 to order by Visa/MC. Please cite reference number [R#] in your order. **See last page for info on Quoting, Reprinting and Subscribing.**

## RECOGNITION OF MCS IN MEDICAL LITERATURE [Updated in Bold]

Based on a master bibliography compiled by MCS Referral & Resources; available sorted either alphabetically or chronologically for \$50. The breakdown by subsets as shown below is available for an additional \$50.

**Among over 425 peer-reviewed scientific papers, reports, editorials, and book chapters on MCS:** (not counting anything from the journal Clinical Ecology, which has specialized in MCS issues for decades)

- **231** present findings of a **physical/organic basis for MCS** and/or critique a psychogenic basis
- **104** present findings of a **psychogenic basis for MCS** and/or critique a physical/organic basis
- **59** present findings of **both perspectives** and/or do not take a clear position either way
- **25** present **research protocols** designed to test hypotheses about the basis of MCS

The peer-reviewed medical literature on MCS dates from 1952 but more than half the 400+ references identified by MCS R&R were published in just the last 5 years. Position papers on clinical ecology and/or MCS by the American College of Occupational and Environmental Medicine, American Academy of Allergy and Immunology, American Medical Association, American College of Physicians, and California Medical Association all predate 1993 and fail to take this new literature (including the majority of references) into account. In recognition of the out-dated nature of their earlier statements, the California Medical Association formally reclassified its 1985 paper as a "historical informational document only" [1995, 1 page, R-146], while the American College of Physicians reported in 1996 that it now has no position on MCS [1 page, R-147].

## RECOGNITION OF MCS BY 22 FEDERAL AUTHORITIES

### ***U.S. Agency for Toxic Substances & Disease Registry***

... in a unanimously adopted recommendation of the ATSDR's Board of Scientific Counselors, which calls on the ATSDR to "take a leadership role in the investigation of MCS" [1992, 24 pages, R-1]. To coordinate interagency research into MCS, the ATSDR co-chairs the Federal Work Group on Chemical Sensitivity, which it convened for the first time in 1994 (see below). The ATSDR has helped organize and pay for three national medical conferences on MCS: sponsored by the National Academy of Sciences in 1991, the Association of Occupational and Environmental Clinics in 1991, and the ATSDR in 1994. The combined proceedings of these three conferences are reprinted in Multiple Chemical Sensitivity, A Scientific Overview, ed. Frank Mitchell, Princeton NJ: Princeton Scientific Publishing, 1995 (609-683-4750 to order). ATSDR also contributed funding to a study conducted by the California Department of Health Services to develop a protocol for detecting MCS outbreaks in toxic-exposed communities via questionnaires and diagnostic tests (see entry below on California Department of Health Services). Officially, however, ATSDR has not "established a formal position regarding this syndrome" [1995, 1 page, R-2].

### ***U.S. Army, Medical Evaluation Board***

... on US Army Form 3947 (from the U.S. Army Surgeon General), the U.S. Army Medical Evaluation Board certified a diagnosis of "Multiple Chemical Sensitivities Syndrome" for a Persian Gulf veteran on 14 April 1993 [1 page, R-3]. MCS is defined on this form as "manifested by headache, shortness of breath, congestion, rhinorrhea, transient rash, and incoordination associated with exposure to a variety of chemicals." The Board's report further recognizes that this patient's particular MCS condition began approximately in April 1991 (while the patient was serving in the Gulf and entitled to base pay), that the condition did not exist prior to service, and that it has been permanently aggravated by service. At least five other active duty Persian Gulf veterans have been diagnosed by the Army with MCS, as reported by the Persian Gulf Veterans Coordinating Board in "Summary of the Issues Impacting Upon the Health of Persian Gulf Veterans," [3 March 1994, 4 page excerpt, R-4]. The Army Medical Department also has requested funding for a research facility to study MCS (reported in an Army information paper on "Post Persian Gulf War Health Issues," 16 November 1993).

### ***U.S. Congress***

... in a VA/HUD Appropriations Bill for FY1993 signed by President Bush in 1992 appropriating "\$250,000 from Superfund funds for chemical sensitivity workshops." These funds were used by the

Agency for Toxic Substances and Disease Registry (see above) to co-sponsor scientific meetings on MCS with various other organizations [1992, 3 page excerpt, R-5].

***U.S. Consumer Product Safety Commission, U.S. Environmental Protection Agency, American Lung Association, and American Medical Association (jointly)***

... in a jointly published booklet entitled Indoor Air Pollution, An Introduction for Health Professionals, under the heading "What is 'multiple chemical sensitivity' or 'total allergy'?", these organizations state that "The current consensus is that in cases of claimed or suspected MCS, complaints should not be dismissed as psychogenic, and a thorough workup is essential." The booklet is prefaced by the claim that "Information provided in this booklet is based upon current scientific and technical understanding of the issues presented..." [1994, 3 page excerpt, R-6]

***U.S. Department of Agriculture, Forest Service***

... in its Final Environmental Impact Statement on "Gypsy Moth Management in the United States: a cooperative approach", people with MCS are mentioned as a "potential high risk group" who should be given advance notification of insecticide treatment projects via "organizations, groups and agencies that consist of or work with people who are chemically sensitive or immunocompromised." MCS also is discussed in an appendix on Human Health Risk Assessment (Appendix F, Volume III of V) under both "Hazard Identification" and "Groups at Special Risk" [1995, 11 page excerpt and 1 page cover letter from John Hazel, the USDA's EIS Team Leader, to Dr. Grace Ziem of MCS Referral & Resources, R-130].

***U.S. Department of Education***

... in the enforcement by its Office of Civil Rights of Section 504 of the Rehabilitation Act of 1973 which requires accommodation of persons with "MCS Syndrome" via modification of their educational environment, as evidenced by several "agency letters of finding" (including San Diego (Calif) Unified School District, 1 National Disability Law Reporter, para. 61, p. 311, 24 May 1990; Montville (Conn.) Board of Education, 1 National Disability Law Reporter, para. 123, p. 515, 6 July 1990; and four letters (along with an individualized environment management program) in the case of the Arminger children of Baltimore County, MD [in 1991, 1992, 1993 and 1994; 20 pages total, R-7]. These accommodations also are required under the terms of Public Law 94-142, now known as the Individuals with Disabilities Education Act (CFR34 Part 300). The Department of Education as a whole, however, has no formal policy or position statement on the accommodation of students with MCS.

***U.S. Dept. of Health and Human Services, National Institute of Environmental Health Sciences***

... in "Issues and Challenges in Environmental Health," a publication about the work of NIEHS, research priorities are proposed for "hypersensitivity diseases resulting from allergic reactions to environmental substances" [NIH 87-861, 1987, 45 pages, R-8]. It is not clear from the context if this statement was meant to include or exclude MCS, since the condition was still thought by some at the time to be an allergic-type reaction. In 1992, then director Dr. Bernadine Healy responded in detail to an inquiry from Congressman Pete Stark about the scope of NIEHS research into MCS: "It is hoped that research conducted at NIEHS will lead to methods to identify individuals who may be predisposed to chemical hypersensitivities. ... NIH research is directed toward the understanding of the effect of chemical sensitivities on multiple parts of the body, including the immune system." [1992, 3 pages, R-9]. In 1996, director Dr. Kenneth Olden wrote US Senator Bob Graham that "NIEHS has provided research support to study MCS. ... NIEHS has also supported a number of workshops and meetings on the subject." [15 April 1996, 2 pages, R-101]. Dr. Olden also states that "Pesticides and solvents are the two major classes of chemicals most frequently reported by patients reporting low level sensitivities as having their initiated their problems."

***U.S. Department of Health and Human Services, National Library of Medicine***

... in the 1995 Medical Subject Headings (MESH) codes used to catalog all medical references, which started using Multiple Chemical Sensitivity (and its variations) as a subject heading for all publications indexed after October 1994 [3 page excerpt, R-10].

***U.S. Department of Health and Human Services, Office for Civil Rights (OCR)***

... in the final report by the Regional Director (of Region VI) regarding OCR's investigation of an ADA-related discrimination complaint filed by a patient with MCS against the University of Texas M.D. Anderson Cancer Center for failing to accommodate her disability and thereby forcing her to go elsewhere for surgery. Prior to completion of the investigation and the issuance of any formal "findings," the OCR accepted a proposal from the Univ. of Texas to resolve this complaint by creating a joint subcommittee of the cancer center's Safety and Risk Management committees. This subcommittee's three tasks (as approved by the OCR) are to "identify a rapid response mechanism which could be triggered by any patient registering a complaint or presenting a special need which is environment related; develop a 'protocol' outlining steps to be taken to resolve environmental complaints by patients ...; and inform the medical staff through its newsletter of the mechanism and the protocol so that they will better understand how to address such questions or concerns." The OCR has placed the M.D. Anderson Cancer Center "in monitoring" pending completion and documentation of these changes, but it may initiate further investigation if M.D. Anderson fails to complete this process within the 13 months allowed. [27 March 1996, 11 pages, R-99]

***U.S. Department of Health and Human Services, Social Security Administration [Updated Entry]***

... in enforcement of the Social Security Disability Act (see Recognition of MCS by Federal Courts, below), and in the SSA's Program Operations Manual System (POMS), which includes a section on the "Medical Evaluation of Specific Issues -- Environmental Illness" stating that "evaluation should be made on an individual case by case basis to determine if the impairment prevents substantial gainful activity" [SSA publication 68-0424500, Part 04, Chapter 245, Section 24515.065, transmittal #12, 1988, 1 page excerpt, R-11]. In 1997, SSA Acting Commissioner John Callahan wrote up SSA's official position on MCS—specifically recognizing it 'as a medically determinable impairment'—in a memorandum requested of him by the U.S. District Court in Massachusetts in *Creamer v. Callahan* (see *Recognition of MCS by US Federal Court Decisions*, below). MCS is also recognized in several "fully favorable" decisions of the SSA's Office of Hearing and Appeals: in case #538-48-7517, in which the administrative law judge, David J. Delaittre, ruled that "the claimant has an anxiety disorder and multiple chemical sensitivity," with the latter based in part on the fact that "objective [qEEG] evidence showed abnormal brain function when exposed to chemicals" [1995, 7 pages, R-12]; in case #264-65-5308, in which the administrative law judge, Martha Lanphear, ruled that the claimant suffered severe reactive airways disease secondary to chemical sensitivity and that this impairment prevented her from performing more than a limited range of light work [1996, 8 pages, R-120]; in case #239-54-6581, in which the administrative law judge, D. Kevin Dugan, ruled that the claimant suffered severe impairments as a result of pesticide poisoning, including "marked sensitivity to airborne chemicals," which prevent her from "performing any substantial gainful activity on a sustained basis [1996, 4 pages, R-135]; in case #024-40-2499, in which the administrative law judge, Lynette Diehl Lang, recognized that the claimant suffered from severe MCS and could not tolerate chemical fumes at work (as a result of overexposure to formaldehyde in a state office building), as a result of which he was awarded both disability benefits and supplemental security income [1995, 8 pages, R-140]; in case #184-34-4849, in which administrative law judge Robert Sears ruled that the claimant suffered from "extreme environmental sensitivities," and particularly "severe intolerance to any amount of exposure to pulmonary irritants" [11 June 1996, 7 pages, R-156]; and in case #246-98-4768, in which the administrative law judge, Frank Armstrong, classified the claimant's "dysautonomia triggered by multiple chemical sensitivities" as severe and said it "prevents the claimant from engaging in substantial gainful activity on a sustained basis" [18 March 1997, 8 pages, R-157].

***U.S. Department of Housing and Urban Development***

... in a letter from HUD Assistant Secretary Timothy Coyle to Senator Frank Lautenberg, confirming HUD recognition of "MCS as a disability entitling those with chemical sensitivities to reasonable accommodation under Section 504 of the Rehabilitation Act of 1973" and also "under Title VIII of the Fair Housing Amendments Act of 1988" [26 October 1990, 2 pages, R-13]. This was followed by a formal guidance memorandum from HUD Deputy General Counsel G.L. Weidenfeller to all regional counsel, detailing HUD's position that MCS and environmental illness "can be handicaps" within the meaning of section 802(h) of the Fair Housing Act and its implementing regulations [1992, 20 pages, R-14]. Also recognized in a HUD Section 811 grant of \$837,000 to develop an EI/MCS-accessible housing complex

known as "Ecology House" in San Rafael, CA, consisting of eleven one-bedroom apartments in a two-story complex. This grant was pledged in 1991 and paid in 1993. [2 pages, R-15] (See also Recognition of MCS by Federal Courts, Fair Housing Act, below.)

***U.S. Department of the Interior, National Park Service***

... in response to a disability rights complaint filed against the Baltimore County Parks and Recreation Department (BCPRD) by Marian Arminger on behalf of her three children, which the National Park Service (NPS) accepted for review pursuant to both Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. The Acting Equal Opportunity Program Manager of the NPS ruled that "the BCPRD must accept the determination of disability by the Baltimore County Public Schools [BCPS, see US Department of Education, above] regarding the children and their disability of MCSS [MCS Syndrome]. This will eliminate possible retaliation with a different conclusion by the same public entity." [Case #P4217(2652), 1996, 4 pages, R-102]. The NPS further ruled that "With the determination that these children are individuals with a disability (MCSS), it is necessary to make reasonable modifications to program facilities. It appears that discontinuing, temporarily or permanently, the use of outside or inside pesticide application and toxic cleaning chemicals is the basic reasonable modification necessary in this case. ... Therefore we believe that steps should be taken by the BCPRD to provide the necessary communication with other affected agencies such as the BCPS and develop, in consultation with the parents and others deemed appropriate, a plan for the reasonable modification of the program environment for these children."

***U.S. Department of Justice***

... in its enforcement of the Americans with Disabilities Act of 1990, under the terms of which MCS may be considered as a disability on a case-by-case basis, depending--as with most other medical conditions--on whether the impairment substantially limits one or more major life activities. The Office of the Attorney General specifically cites "environmental illness (also known as multiple chemical sensitivity)" in its Final Rules on "Non-Discrimination on the Basis of Disability in State and Local Government Services" (28CFR35) and "Non-Discrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities" (28CFR36), as published in the Federal Register, Vol.56, No.144, pages 35699 and 35549 respectively [26 July 1991, 2 pages, R-16]. "Environmental illness," also is discussed in the ADA Handbook, EEOC-BK-19, 1991, p.III-21 [14 page excerpt, R-17], jointly published by the Department and the U.S. Equal Employment Opportunity Commission. The ADA Handbook describes environmental illness as "sensitivity to environmental elements" and, although it "declines to state categorically that these types of allergies or sensitivities are disabilities," it specifically asserts that they may be: "Sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be disabled under the regulations. Such an individual would be entitled to all the protections afforded by the Act..."

***U.S. Department of Veterans Affairs***

... in recognizing MCS as a medical diagnosis (although not as a "disability") in the case of at least one Persian Gulf War veteran [Gary Zuspann, October 1992, 3 pages, R-18]. It is impossible to know exactly how many other Persian Gulf veterans may have been diagnosed with MCS as the diagnostic data recorded in the VA's Persian Gulf Registry are based on the International Classification of Diseases (ICD-9CM), which does not yet include a specific code for MCS. In June 1997, VA released its "Environmental Hazards Research Centers' Annual Reports for 1996." These included preliminary data from the New Jersey EHRC showing that, of the 1161 veterans randomly selected from the VA's Persian Gulf Registry (living in NJ, NY, CT, MA, MD, DE, IL, VA, OH or NC) who completed the center's questionnaire, 12.5% "endorsed symptoms compatible with a conservative definition of MCS" [1997, 5 page excerpt, R-144].

***U.S. Environmental Protection Agency, Office of Pollution, Prevention and Toxics, Health Effects Division, Occupational and Residential Exposure Branch, Special Review and Registration Section***

... in a peer-reviewed memorandum entitled "Review of Chlorpyrifos Poisoning Data" from EPA's Jerome Blondell, PhD, MPH, and Virginia Dobozy, VMD, MPH, to Linda Propst, Section Head, Reregistration Branch. The memo discusses data from several sources on acute and chronic health effects, including MCS, associated with exposure to Dursban and other chlorpyrifos-containing pesticides,

and recommends many changes (subsequently agreed to by DowElanco, the manufacturer) in the use and marketing of these products, including the phase out of all indoor sprays and foggers, consumer concentrates, and all pet care products except flea collars. Most significantly, the memo documents that of 101 cases of unambiguous chlorpyrifos poisoning reportedly directly to EPA in 1995, 38 had chronic neurobehavioral effects (including 4 who also had peripheral neuropathy), while 59 "reported symptoms consistent with multiple chemical sensitivity" [1997, 70 pages, R-145].

***U.S. Environmental Protection Agency, Office of Radiation & Indoor Air, Indoor Air Division***

... in its August 1989 Report to Congress on Indoor Air Quality, entitled Assessment and Control of Indoor Air Pollution (EPA/400/1-89/001C), the Environmental Protection Agency's Indoor Air Division describes MCS as "a subject of considerable intraprofessional disagreement and concern (Cullen, 1987). While no widely accepted test of physiologic function has been shown to correlate with the symptoms, the sheer mass of anecdotal data is cause of concern." [14 page excerpt from Vol.2, R-19]. In 1991, the Indoor Air Division asked the National Research Council to sponsor a scientific workshop on "Multiple Chemical Hypersensitivity Syndrome," the proceedings of which are published in Multiple Chemical Sensitivities: Addendum to Biologic Markers in Immunotoxicology [National Academy Press, 1992].

***U.S. Environmental Protection Agency, Office of Research & Development*** [Updated Entry]

... describes "chemical sensitivity" as an "ill-defined condition marked by progressively more debilitating severe reactions to various consumer products such as perfumes, soaps, tobacco smoke, plastics, etc." in The Total Exposure Assessment Methodology (TEAM) Study, Summary and Analysis: Volume 1, by L. Wallace, Project Officer, Environmental Monitoring Systems Division, EPA Office of Research and Development [1987, 2 page excerpt, R-20]. The Office of Research and Development (ORD) began conducting human subjects chamber research at its Health Effects Research Branch in Chapel Hill (NC) in 1992 to identify possible diagnostic markers of MCS. (See also joint entry under U.S. Consumer Product Safety Commission, above.) In the justification for its fiscal year 1998 budget, ORD devotes one paragraph to MCS in the section on Air Toxics, saying that it plans to release "information comparing individuals who identify themselves as belonging to a particular subgroup (multiple chemical sensitivity) against established norms for a variety of health-related endpoints," and will make "recommendations for follow up to evaluate the potential relationship between the signs/symptoms reported by these individuals and objective/quantitative health endpoints" [1997, 3 page excerpt, R-160].

***U.S. Equal Employment Opportunity Commission***

... in the ADA Handbook EEOC-BK-19 [1991, 14 page excerpt, R-17], jointly published by the EEOC and the Department of Justice (see above) and in a Determination Letter signed by Issie L. Jenkins, the director of the Baltimore District Office, recognizing MCS as a disability under the Americans with Disabilities Act requiring workplace accommodation, consisting in this case of a private office with an air filter, Mary Helinski v. Bell Atlantic, No 120 93 0152, 17 May 1994 [2 pages, R-22].

***Federal Coordinating Council for Science, Engineering, and Technology, Subcommittee on Risk Assessment, Working Party on Neurotoxicology*** [New Entry]

... in its Final Report: Principles of Neurotoxicology Risk Assessment, published in the Federal Register by the US EPA's Office of Health Research [17 August 1994, 45 pages for entire report, R-161, or 3 page excerpt, R-162], which says in Section 2.5.1 on "Susceptible Populations" that: "Although controversial [Waddell 1993], recent evidence suggests that there may be a subpopulation of people who have become sensitive to chemicals and experience adverse reactions to low-level exposures to environmental chemicals [Bell et al 1992]." The report is "the result of the combined efforts of 13 Federal agencies comprising the ad hoc Interagency Committee on Neurotoxicology," including ATSDR, the Center for Food Safety and Applied Nutrition, Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, Consumer Product Safety Commission, Dept. of Agriculture, Dept. of Defense, Environmental Protection Agency, National Center for Toxicological Research, National Institutes of Health, National Institute of Occupational Safety and Health, and the National Toxicology Program.

***Federal Interagency Workgroup on Chemical Sensitivity***

... formed in 1994 to review and coordinate the role of federal agencies involved in research on multiple chemical sensitivity [1 page agenda from 9/14/94 meeting, R-91]. The Work Group is co-chaired by Dr. Barry Johnson, Assistant Surgeon General and Assistant Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and Dr. Richard Jackson, Director of the National Center for Environmental Health at the Centers for Disease Control and Prevention. Other agencies represented include the Departments of Energy, Defense, and Veterans' Affairs, the Environmental Protection Agency and two other institutes within the Department of Health and Human Services: the National Institute for Occupational Safety and Health, and the National Institute of Environmental Health Sciences.

***National Council on Disability (an independent federal agency)***

... in ADA Watch—Year One, its "Report to the President and Congress on Progress in Implementing the Americans with Disabilities Act," which recommends that Congress and the Administration "should consider legislation to address the needs of people with "emerging disabilities," such as those ... "with environmental illness who are severely adversely affected by secondary smoke or other pollutants in public places" [5 April 1993, 8 pages, R-23].

***President's Committee on Employment of People With Disabilities***

... in its report to the President, entitled Operation People First: Toward a National Disability Policy, which recommends that the federal government "develop, refine and better communicate methods of 'reasonable accommodation,' in particular, the accommodation needs of people with ... chronic fatigue syndrome and multiple chemical sensitivity" [1994, 5 pages, R-24].

## **RECOGNITION OF MCS BY 10 CANADIAN AUTHORITIES**

***Canada Department of Finance***

... in a press release from the Minister of Finance announcing that "eight new items will be added to the list of qualifying medical expenses for tax assistance under the Income Tax Act commencing with the 1988 taxation year," including "certain items required by environmentally hypersensitive persons." [2 pages, 20 December 1988, R-124].

***Canada Mortgage and Housing Corporation (a federal government "Crown Corporation")***

... in The Clean Air Guide: How to identify and correct indoor air problems in your home [published by the Public Affairs Centre, 1993, 6 pages, R-25] and in two reports commissioned in 1990: "Housing for the environmentally hypersensitive: Survey and examples of clean air housing in Canada" [by O. Drerup et al, 119 pages, R-26] and "Survey of the medical impact on environmentally hypersensitive people of a change in habitat" [by S.R. Barron, 92 pages, R-27]. Also recognized in This Clean House (1996) a video designed to accompany The Clean Air Guide, and Building Materials for the Environmentally Hypersensitive (1996), which "compiles known or published information on the uses, applications and health effects of building materials together with the experience of environmentally hypersensitive individuals with these materials." [Both of these are available from the CMHS, 416-282-2950]

***Canadian Human Rights Commission***

... in a letter from the Director of Communications, Martin Padgett, stating that the Commission "is well aware of the issue of environmental illness and regards it as a disability. In fact, since 1990, the Commission has accepted three discrimination complaints from people with environmental illness." [4 December 1995, 1 page, R-103] Also in a letter from the Chief Commissioner, Maxwell Yalden, to the Minister of Health and Welfare, stating "It is my understanding that environmental hypersensitivity is a true medical problem, and that we owe it to people who have the misfortune to suffer from this syndrome to be more public and more positive in acknowledging that fact." [3 August 1988, 1 page, R-122]

***Department of National Health and Welfare (now Health Canada, a cabinet department)***

... in the published proceedings of two workshops that it sponsored on MCS in 1990 (Environmental Sensitivities Workshop, a supplement to Chronic Diseases in Canada, January 1991, published by Health & Welfare Canada) and 1992 (Multiple Chemical Sensitivities and Their Relevance to Psychiatric Disorders, Workshop Proceedings, Ottawa, Ontario, 7 December 1992, Health Canada). Also

in a letter from the Minister of NHWC, Perrin Beatty, to the Honourable Charles Caccia, MP for Davenport Ontario, stating that the New Jersey Dept. of Health report on MCS by Dr. Claudia Miller and Dr. Nicholas Ashford (see entry for New Jersey, below) "has been reviewed by officials of my Department. This is considered to be an excellent report. The authors' general conclusion that the search for environmental causes in a patient should proceed psychiatric workup is fully supported by departmental officials." [1 page, 26 September 1990, R-123]

***Nova Scotia Department of Health***

... in establishing and funding the Nova Scotia Environmental Medicine Clinic with the specific purpose of examining and treating "environmental illness" referrals from physicians throughout the province [1990]. In 1994, the Department announced the formation of a permanent Environmental Health Clinic at Dalhousie University (affiliated with the Office of the Dean of Medicine).

***Ontario-Careton Regional District Health Council***

... in a negotiated settlement, achieved and approved by the Ontario Human Rights Commission, with Chris Brown, who filed a complaint against the Council after it refused to include environmental hypersensitivity in its health planning process. The Council agreed to recognize environmental hypersensitivity as a disabling physical condition and to organize an educational workshop (held 6 April 1990) to promote a wider understanding of the problem. [2 pages, 1 February 1990, R-121].

***Ontario Management Board Secretariat***

... in a letter from Project Manager Ekki Bunten to Chris Brown confirming that "the design team for the Whitby Psychiatric Hospital [WPH] is including provisions which will take into account the problem of environmental hypersensitivity and which will provide the healthiest practical indoor environment for all patients and staff." Design features contributing to "a healthier indoor environment" include integrated pest management without pesticides and natural landscaping with chemical-free lawn maintenance. "Scientific testing has been arranged by WPH for key indoor finishes ... Offgassing results will be analyzed with respect to potential effects on the general population as well as ... people who may be environmentally hypersensitive." [2 pages, 29 July 1993, R-128]

***Ontario Ministry of Health***

... in the "Report of the Ad Hoc Committee on Environmental Hypersensitivity Disorders," appointed and commissioned by the Ontario Minister of Health, environmental hypersensitivity is described as "a chronic multisystem disorder, usually involving symptoms of the central nervous system and at least one other system. Affected persons are frequently intolerant to some foods and they react adversely to some chemicals and some environmental agents, singly or in combination, at levels generally tolerated by the majority" [1985, 313 pages, R-28]. This report--and its 30 specific recommendations--were subsequently reviewed and for the most part endorsed in the Ministry's "Report of the Advisory Panel on Environmental Hypersensitivity," also known as the Zimmerman Report [1986, 48 pages, R-29]. The Ministry sponsored a networking workshop for MCS clinicians and researchers in 1990 and every year since it has funded a variety of MCS medical research projects. In 1994, it provided \$1.5 million for the creation of a new environmental health clinic at the Womens' College Hospital in Toronto which will focus on diagnosis and treatment of environmental hypersensitivity/MCS disorders in collaboration with medical research projects at the University of Toronto [1 page press release, 1994, R-30].

***Ontario Ministry of Housing***

... in providing startup funding and low-rate, long-term mortgage guarantees for a project sponsored by the Barrhaven United Church to build seven prototypical "healthy buildings" (a mix of row-houses and stacked dwellings) for people suffering from "environmental hypersensitivity" (finished 1993).

***Ontario Ministry of the Solicitor General, Office of the Chief Coroner*** [New Entry]

... in a letter to Bryan Davies, Deputy Ministry of Housing, documenting the suicide by gunshot of an MCS sufferer (who was distraught over his difficulties in obtaining a disability pension) and encouraging the Deputy Ministers of Housing, Health, Community and Social Services "to begin a consultative process and help to establish some guidelines" spelling out exactly what services and benefits are available to provincial residents with MCS, including

possible admission to treatment facilities in the United States [27 October 1989, 2 page letter and 2 pages of press coverage from the Globe & Mail, R-158].

## RECOGNITION OF MCS BY 23 U.S. STATE AUTHORITIES

### **Arizona Technology Access Program, Institute for Human Development, Northern Arizona University**

... in a report written for the general public entitled Topics: Multiple Chemical Sensitivity with sections on What is MCS, Symptoms of MCS, People Diagnosed with MCS, What Can Cause MCS, Treatments, MCS and the Medical Community, MCS is Now Recognized as a Disability, Accommodating Individuals with MCS in the Workplace, MCS is Preventable, and a list of organizations and government agencies to contact for Help and Information. Funding for this document was provided by the US Dept of Education National Institute on Disability and Rehabilitation Research (NIDRR), grant #H224A40002, but a disclaimer notes that the content does not necessarily reflect the views of the US government [October 1996, 11 pages, R-129].

### **Arizona Department of Economic Security, Rehabilitation Services Administration, and Statewide Independent Living Council**

... in RSA's Interim Fiscal Year 1995 State Plan for Independent Living, specifying that "Services Related to Housing" include "modifications to accommodate people with EI/MCS" [Attachment 12, 1 October 1994, 7 pages, R-31] and in an administrative review decision issued 22 June 1992 in the case of a vocational rehabilitation client determined to be "severely disabled" by "environmental illness, allergies." In addition, training on MCS was presented to both Vocational Rehabilitation and ILRS counselors at the 1994 state staff conference.

### **Attorney General of California**

... in the final report of the Attorney General's Commission on Disability, recognizing environmental illness as a disabling condition [1989, 8 page excerpt, R-33].

### **Attorneys General of New York** (backed by 25 other Attorneys General from AL, AZ, CT, FL, IA, KS, MA, MN, MO, ND, NJ, NM, NV, OH, OK, OR, PA, SD, TN, TX, UT, VT, WA, WI, WV)

... in a thoroughly documented petition to the U.S. Consumer Product Safety Commission, requesting the issuance of safety standards and warning labels governing the sale of carpets, carpet adhesives and paddings suspected of causing MCS and other illness [1991, 1 page excerpt, R-32a, 350 pages total].

### **California Department of Health Services, Environmental Health Investigations Branch**

... in its extensive final report on "Evaluating Individuals Reporting Sensitivities To Multiple Chemicals," funded by the federal Agency for Toxic Substances and Disease Registry under Cooperative Agreement No. U61/ATU999794-01 [September 1995, 6 page excerpt including abstract, advisory panel members, and table of contacts, R-34]. A cover letter sent by the EHIB to the project's Advisory Panel members notes the extraordinary preliminary results obtained from an annual survey of random Californians to which questions about MCS were added for the first time in 1995. Of the first 2,000 people surveyed, 16% reported suffering from MCS symptoms while 7% ("certainly far higher than any of us may have expected") claim they have been diagnosed with MCS by a physician. [3 October 1995, 2 pages, R-100]. Citing personal communication with Dr. R. Kreutzer, the acting chief of the EHIB (also confirmed with Dr. Kreutzer by MCS R&R), Dr. Ann McCampbell reported the study's final results in a letter to the editor published by Psychosomatics (38(3): 300-301, May-June 1997): of 4,000 people surveyed, 15.9% reported chemical sensitivity and 6.3% said they had been given the diagnosis of MCS by a physician [1997, 1 page, R-141].

### **California Energy Commission**

... in its report on California's Energy Efficiency Standards and Indoor Air Quality (#P400-94-003), which says of MCS that "Its increasing incidence is suggested as accompanying the increasingly widespread use of products manufactured with potentially toxic chemical constituents. Available information

points to this condition as an acquired disorder usually resulting from prior sensitization to chemicals in the environment" [1994, 2 page excerpt, R-35].

**California Legislature, Senate Subcommittee on the Rights of the Disabled**

... in its final report on Access for People with Environmental Illness/Multiple Chemical Sensitivity and Other Related Conditions, chaired by Senator Milton Marks, that summarizes four years of investigations by the subcommittee, [30 September 1996, 26 pages, R-109]. The report addresses common barriers to access in public buildings, transportation, institutions, employment, housing, and presents detailed suggested solutions, both those required under law and others recommended. It covers the work of the subcommittee, its outside Advisory Panel, and its MCS Task Forces (on Building Standards and Construction, Environmental Illness, Industry, Medicine and Health).

**Florida State Legislature**

[Revised Entry]

... in legislation that created a voluntary Pesticide Notification Registry for persons with pesticide sensitivity or chemical hypersensitivity, as long as their medical condition is certified by a physician specializing in occupational medicine, allergy/immunology or toxicology [Florida Statute 482.2265(3)(c), 1989, 7 pages, R-38]. The legislation requires lawn-care companies to alert registry members 24 hours in advance of applying chemicals within a half-mile of their home. Note that pesticide sensitivity registries also have been adopted in CO, CT, LA, MD, MI, NJ, PA, WA [1992, 6 pages, R-149], WV and WI, but these do not refer specifically (by any name) to MCS-type illness, and most require notification only of adjacent properties.

**Hawaii State Dept. of Labor and Industrial Relations, Disability Compensation Division**

... in its decision in the workers' compensation case of Perry, William v. NV, Inc. and Inter-Island Adjusting Company [Case No. 49200727, decision letters of 13 November 1992 and 6 December 1994 [6 pages, R-39].

**Maryland State Legislature**

... in Senate Joint Resolution No.32 directing the Maryland Department of the Environment (MDE) to carry out a study of Chemical Hypersensitivity Syndrome [1988, 3 pages, R-40]. The MDE commissioned a state-of-the-art review from Rebecca Bascom, M.D., entitled "Chemical Hypersensitivity Syndrome Study" [1989, 132 pages, R-41].

**Missouri Department of Social Services, Division of Ageing**

... in a detailed response to a request from Dr. Grace Ziem for workplace accommodation of an employee with MCS, the agency agreed to (among other things): make changes in the work schedule; provide a private work area with floor to ceiling walls; provide multiple carbon-fiber air filtration machines; conduct staff education on MCS; adopt and post voluntary fragrance free policy governing all employees; request maintenance staff use cleaning products only from an approved list; and clean the carpet. [3 pages, 1 April 1996, plus 1 of follow-up, R-98]

**New Jersey Department of Health**

... in a comprehensive review of chemical sensitivity with recommendations for state action commissioned from Nicholas Ashford, Ph.D., J.D., and Claudia Miller, M.D., entitled "Chemical sensitivity: a report to the New Jersey Department of Health" [1989, 176 pages, R-45].

**New Mexico Department of Education, School Health Unit**

... in a brochure on "Multiple Chemical Sensitivities" describing the illness and nine "steps schools can take to promote environmental safety." Also lists resource persons and materials [1996 (undated), 2 pages, R-139].

**New Mexico Department of Energy, Minerals & Natural Resources, State Park & Recreation Division**

... in a letter from the director outlining steps the division is taking to reduce barriers to access for individuals with EI/MCS [10 January 1994, 1 page, R-46]. These include prohibiting smoking in restrooms,

temporarily discontinuing the use of certain cleaning and disinfectant chemicals upon special request of EI/MCS individuals, and switching to least toxic/allergenic cleaning and pesticide products.

***New Mexico Department of Health, Community Health Systems Division,  
Emergency Medical Services Bureau***

... in an editorial from Barak Wolff, MHP, chief of the EMS Bureau, entitled "Scared to Death' of Having to Call 911" and an accompanying article by Dr. Ann McCampbell entitled "First ... Do No Harm: The Challenge of Patients with Multiple Chemical Sensitivities," both published in the state's Focus on Emergency Medical Services newsletter [Vol 15, No 3, October 1996, 4 pages, R-117]. The editorial and article discuss the need for emergency service personnel to accommodate people with MCS and they make several specific recommendations for 911 operators, emergency responders and hospital staff.

***New Mexico Governor's Committee on Concerns of the Handicapped***

... in sponsoring and financing a day-long "Town Hall Meeting on Multiple Chemical Sensitivities" on 24 June 1996 with the full support of the governor, despite his earlier veto of a legislative proposal for additional funding (see next entry). Described as "A public forum to discuss the problems faced by chemically sensitive New Mexicans and to propose state level solutions," this was the first state-wide effort to bring together a panel of representatives from state agencies to "hear from persons with MCS and other interested parties on the issues of Housing, Employment, Health Care, Pesticides, Schools, and Access to State Facilities and Services." [Brochure, program and detailed fragrance free policy, 24 June 1996, 3 pages, R-96]. Based on the testimony received at the Town Meeting, the Governor's Committee then issued a "Report to the Legislature on Multiple Chemical Sensitivity," including a "Suggested Public Meeting Policy on Accessibility for Persons with Multiple Chemical Sensitivity [27 August 1996, 8 pages, R-104]. The report recommends six actions "be taken now," including funding the state Office of Epidemiology to study the prevalence of MCS within the general population"; directing all hospitals to "establish written protocols for providing barrier free environments for the use of persons with MCS admitted for any reason"; directing all ADA coordinators of public facilities in New Mexico to adopt public meeting policies "to allow attendance by persons affected by MCS"; creating an "MCS information and assistance" program within State government to "provide ADA coordinators, housing officials, hospitals and other decision makers with the most complete and up-to-date information on MCS as well as ... providing individual assistance to affected persons via an "800" telephone number"; and "conducting a study of the housing needs of persons affected with MCS."

***New Mexico State Legislature***

... in a "Joint Memorial Requesting the Governor's Committee on Concerns of the Handicapped to Study Issues Related to Multiple Chemical Sensitivities." The resolution specifies that the study focus on "issues of health care, insurance, public benefits and services, access to government, legal services and environmental regulation" [Senate Joint Memorial 10-House Memorial 6, Second Session, 1996, 3 pages, R-91]. A follow-up amendment to the General Appropriation Act of 1996 requesting \$50,000 in funding for this "Memorial" also was passed by the legislature (House Bill 2 on 15 February 1996) but then vetoed by the governor on 4 March 1996.

***New York State Department of Health***

... in a \$100,000 grant given to the Mt. Sinai Occupational Health Clinic for MCS research, part of a larger annual grant to the clinic in 1993 [4 page excerpt, R-47]. The report, including a review of MCS cases seen at eight occupational clinics in New York State, originally was supposed to be completed in late 1994 but is now expected in 1997.

***Pennsylvania Human Rights Commission***

... in a decision (upheld on appeal to the Commonwealth Court of Pennsylvania) finding that a landlord must make reasonable accommodation for a tenant who suffers from MCS, including giving tenant prior notification of painting and pest treatments (see *Recognition of MCS by State Courts*, below, for reference).

**Washington State Board of Health**

... in its 1994 Washington State Public Health Report, which says "Several hundred Washington residents have reported a condition diagnosed by some physicians as Multiple Chemical Sensitivity" and goes on to discuss common MCS symptoms and sensitivities. [December 1993, 3 page excerpt, R-55].

**Washington State Departments of Health and Labor & Industries**

... in the joint "Final Inter-Agency Report on Chemically Related Illness" issued by the Secretary of the Department of Health and the Director of the Department of Labor and Industries, which acknowledges that "MCS has become a focus of increasing public health concern in Washington state and elsewhere," cites the 1987 Cullen definition, and says "Public agencies are increasingly recognizing a need to address the public health aspects of the MCS syndrome, without necessarily waiting for conclusive answers from scientific research" [June 1995, 5 page excerpt including table of contents, R-54].

**Washington State Chemically Related Illness Advisory Committee**

... in its final report, in an appendix devoted to MCS, the committee says MCS is "characterized as a condition in which individuals experience symptoms following exposures at low levels to multiple chemical substances. It is a chronic condition that is reproducible with challenge, and which resolves when incitants are removed" [June 1995, 3 page excerpt, R-95]. The committee included representatives of state government, affected business and labor organizations, the medical community, and MCS patients. Its final report also is included as an appendix in the Washington State Final Inter-Agency Report on Chemically Related Illness (see entry above).

**Washington State Governor's Committee on Disability Issues and Employment**

... in a booklet entitled Reasonable Accommodation: A Guide for Employers, Businesses and Persons with Disabilities, signed by the governor and the commissioner of the State's Employment Security Department, which discusses MCS/EI in detail in a section on "Reasonable Accommodation for Persons with Hidden Disabilities" [March 1992, 34 pages, R-53].

## RECOGNITION OF MCS BY 13 U.S. LOCAL AUTHORITIES

**Berkeley (CA) Department of Public Works, Commission on Disability**

... in voting on 30 April 1996 to require a statement about "odor sensitivity" in all City-sponsored event and meeting notices, followed by a memo from the City Manager on 8 August 1996 urging "staff who attend meetings to assist the City in accommodating the needs of persons with sensitivities and to respect those needs in their own use of personal products," and finalized on 13 November 1996 with the adoption of detailed "Procedures to Implement Clean Air Practices for Meetings" for use by city and commission staff [6-page memo from Commission on Disability to the Mayor and City Council, 14 January 1996, R-111].

**Chicago (IL) Transit Authority**

... in its Paratransit Operations Newsletter, people with disabilities who use the Chicago Transit Authority's Special Services and Chicago Taxi Access Program are asked to "assist people with EI by practicing the following suggestions: Keep scented personal care products to a minimum; Never smoke in a Special Services vehicle and refrain from smoking near the vehicle; [and] If possible, please accommodate an EI person's request to sit by an open window in a Special Services vehicle if it doesn't inconvenience other customers who may be sensitive to hot or cold air." [6th edition, Winter 1995, 2 page excerpt, R-36].

**Contra Costa (CA) MediCal Advisory Planning Commission**

... in all public meeting announcements, which include the following notice: "Please help us accommodate individuals with EI/MCS and refrain from wearing scented products to this hearing" [1994, 1 page excerpt, R-37].

**Fairfax County (VA) Public Schools**

... in a detailed 7-page report from the Director of the Office of Human Relations to Dr. Grace Ziem documenting the accommodations that the school system was willing to provide for a teacher with MCS, including changes in her school assignment and the elimination or control of a wide variety of aggravating exposures, from the art clay used in her classroom to custodial use of cleaning fluids, pesticides, carpets, air fresheners, paints, glues, adhesives & other remodelling materials. They even offered to provide a special parking space to limit her exposure to vehicle exhaust. [26 April 1996, 7 pages, R-97]

**Jefferson City (MO) Public Schools**

[Updated Entry]

... in an accommodation plan provided under Section 504 of the Rehabilitation Act of 1973, adopted for a 6th grade student with MCS, asthma and allergies, specifying that a) "classmates will be solicited for cooperation in providing a scent-free environment," b) student "will be allowed to self-limit activities that involve running or other strenuous exercise," and c) if student misses more than two days in a row, "she can request after school help from her teachers to review missing work" [1996, 1 page, R-138].  
**List of reasonable accommodations upheld upon review in 1997 [15 August 1997, 1 page, R-153].**

**Minneapolis Advisory Committee on People With Disabilities**

... in a letter to the Minneapolis Public Housing Authority (see below) about the "expressed need for proper living conditions for people with Environmental Sensitivities." [1994, 2 pages, R-42]

**Minneapolis Housing Finance Agency**

... in awarding a \$6,500 grant from its Capacity Building Grant Program to Twin Cities HEAL to establish an office to better serve the needs of those seeking MCS-accessible housing in the Minneapolis-St. Paul Metro Area. [1993, 2 pages, R-43]

**Minneapolis Public Housing Authority**

... in letters to Twin Cities HEAL and the U.S. Department of Housing and Urban Development expressing "an interest in working with HEAL to assist in the development of suitable housing for persons with chemical sensitivity disabilities" [1994, 3 pages, R-44].

**Northwest Air Pollution Authority (Island, Skagit and Whatcom Counties, WA)**

... in a "Dear Resident" letter from Terry Nyman, Air Pollution Control Officer, to neighbors of "an individual with a disabling condition related to chemical sensitivities [who] has moved into your area. This individual is extremely sensitive to smoke and a health care provider has requested that we send you information about outdoor burning, heating with wood and the health impacts of breathing wood smoke." [21 September 1996, 1 page, R-105]. The letter notes that the NWAPA is empowered to enforce under the WA State Clean Air Act "to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population" (RCW 70.94.011, italics in the original) and says "We want you to be aware of this situation and ask that you read the enclosed literature to see if you can minimize potential smoke impacts caused by these activities."

**Oakland (CA) City Council**

... in the City's "Access Policy for People with Environmental Illness/Multiple Chemical Sensitivity" which requires city departments to "make reasonable efforts to accommodate persons with EI/MCS" in city programs, activities and services. [Administrative Instruction #138, 1995, 9 pages, R-48].

**San Francisco (CA) Board of Supervisors**

... in a resolution requesting citizens attending public meetings "to refrain from wearing perfume or other scented products to allow individuals with environmental illness and MCS to attend" [1993]. Although the formal resolution was subsequently rescinded under pressure from industry opponents, the following notice is still included in all published announcements of public meetings as required by Chapter 66 of the City's Sunshine Ordinance: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, MCS or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals" [Section 66.15(d), as amended 2 August 1993, 2 pages, R-49].

**Santa Clara (CA) City Council**

... in the city's "Public Services Self-Evaluation/Transition Plan" (required by the Americans with Disabilities Act), which includes several provisions for accommodating individuals with "MCS, also known as environmental illness, resulting from acute or chronic chemical exposure" [1993, 6 pages, R-50]. The comprehensive plan requires "wherever possible, purchase and use of less toxic, hypoallergenic and non-fragrance materials"; reasonable accommodations for "employees and persons doing business with the City [who] may have this illness"; and the posting of notices at entrances to public buildings warning of "construction, remodeling or toxic cleaning activities." The City also includes a notice in all City Council agendas and other public program notices, stating that "Individuals with sever allergies, environmental illness, multiple chemical sensitivity or related disabilities should contact the City's ADA office at (408) 984-3222 to discuss meeting accessibility. In order to allow participation by such individuals, please do not wear scented products to meetings at City facilities" as revised by the Santa Clara's ADA Committee [March 1994, 2 pages, R-51].

**Santa Cruz (CA) City Council**

... in a resolution of the City Council (#NS21,285) establishing a Self-Evaluation and Transition Plan (as required by the Americans with Disabilities Act). The comprehensive plan includes provisions requiring smoke and fragrance-free environments for public meetings, the elimination of chemical air fresheners/fragrance emission devices" in all city-owned and managed restrooms and workstations, the use wherever possible of the least toxic maintenance products and application methods in public buildings, and signage warning of the use of hazardous materials in public areas [1993, 6 pages, R-52].

**RECOGNITION OF MCS IN 8 U.S. FEDERAL COURT DECISIONS**

... in decisions affirming MCS (by this or another name) as a real illness, handicap or disability under:

[New Entry]

**Daubert:** Kannankeril v. Terminix International Inc, Third Circuit Court of Appeals (CA 3), No 96-5818 [17 Oct. 1997, 5 pages, R-148], overturning a lower court's summary judgement for the defendant (District of NJ, No 92-cv-03150) on a Daubert motion, saying it had "improperly exercised its gatekeeping role by excluding" the plaintiff's medical expert, Dr. Benjamin Gerson, and his testimony on causation—specifically his view that the plaintiff developed MCS as a result of overexposure to chlorpyrifos. [Terminix had sprayed Dursban in the plaintiff's home 20 times in 17 months.] The court described MCS as becoming "sensitized to multiple other chemicals" and said "It is an acknowledged scientific fact that chlorpyrifos, the active ingredient in Dursban, is harmful to humans and can cause the very symptoms displayed by Dr. Kannankeril," which included headaches, fatigue, numbness, memory and concentration problems, sleeplessness, nausea, and skin rashes. Even though Dr. Gerson had not examined the plaintiff or written about the toxic effects of organophosphates, the court said his "opinion is not a novel scientific theory" and "is supported by widely accepted scientific knowledge of the harmful nature of organophosphates."

**Fair Housing Act:** United States v. Association of Apartment Owners of Dominis West et al, Case No. 92-00641 (D.Ha.) 25 August 1993 [19 pages, R-61], in which a consent order won by the Department of Justice's Housing and Civil Justice Enforcement Section requires the management of an apartment complex in Honolulu to take several steps to accommodate a tenant with MCS.

**Rehabilitation Act:** Vickers v. Veterans Administration, 549 F. Supp. 85, W.D. Wash. 1982 [4 pages, R-56], in which the plaintiff's sensitivity to tobacco smoke was recognized as handicap by the VA and the court, but his request for totally a smoke-free environment was denied on the grounds that the VA had already made sufficient reasonable efforts; Rosiak v. Department of the Army, 679 F. Supp. 444, M.D. Pa. 1987 [6 pages, R-57], in which the court, although finding the plaintiff "not otherwise qualified" to continue working, implicitly recognized his MCS disability, as did the Army, which the court found had made sufficient reasonable (albeit unsuccessful) efforts to accommodate the plaintiff's chemical sensitivity

**Social Security Disability Act:** Slocum v. Califano (Secretary, HEW), Civil No. 77-0298 (D.Haw.) 27 August 1979 [9 pages, R-60], in what is believed to be the earliest decision of any court recognizing MCS, the US District Court of Hawaii awarded disability benefits to a plaintiff whose pro se claim of "chemical

hypersensitivity" dated from 1 May 1968; Kornock v. Harris, 648 F.2d 525, 9th Cir. 1980 [3 pages, R-59]; and Kouril v. Bowen, 912 F.2d 971, 974, 8th Cir. 1990 [7 pages, R-58]; Creamer v. Callahan, Civil No.97-30040-KPN (D.Mass.), 5 November 1997, [5 pages, R-150] reversing and remanding the decision of the SSA Commissioner, who agreed that the administrative law judge's "analysis was flawed with respect to MCS." The court ordered the Commissioner to file a supplemental memorandum on SSA's "position with respect to MCS," which he did—specifically stipulating that SSA "recognizes multiple chemical sensitivity as a medically determinable impairment" (Docket #12).

## RECOGNITION OF MCS IN 20 U.S. STATE COURT DECISIONS

... in decisions affirming MCS illness (by this or some other name) as a handicap or injury in cases regarding:

**Housing Discrimination:** Lincoln Realty Management Co. v. Pennsylvania Human Relations Commission, 598 A.2d 594, Pa. Commw. 1991 [47 pages, R-62].

**Employment Discrimination:** County of Fresno v. Fair Employment and Housing Commission of the State of California, 226 Cal. App. 3d 1541, 277 Cal. Rptr. 557 Cal App. 5th Dist. 1991 [11 pages, R-63]; and Kallas Enterprises v. Ohio Civil Rights Commission, 1990 Ohio App. 1683, Ohio Ct. App. May 2, 1990 [6 pages, R-64].

**Health Services Discrimination:** Ruth, Barbara; June P. Hall; Cricket J. Buffalo; Susan Molloy; and Cathy Lent v. Kenneth Kizer/Molly Coe, Director, CA. Department of Health Services, No. 665629-8, 1989 [1 page, R-65], in which the plaintiffs won the right to receive oxygen treatments for MCS by successfully appealing to the CA Superior Court of Alameda County which overturned the prior ruling of an administrative law judge.

**Negligence/Toxic Tort:** Melanie Marie Zanini v. Orkin Exterminating Company Inc. and Kenneth Johnston, Broward County Circuit Court, No. 94011515 07, verdict of 7 December 1995 and final judgement of 28 December 1995 [4 pages, R-92], in which the jury ruled that the pesticide applicator's negligence in applying Dursban was the legal cause of damage to the plaintiff, who was awarded a total of \$1,000,000 in damages by the jury. This was subsequently reduced to \$632,500 in the final judgement.; Ruth Elliott, et al., v. San Joaquin County Public Facilities Financing Corp. et al., California Superior Court, San Joaquin County, No. 244601, 31 October 1996 [2 page verdict report, R-112] in which a public lease-back corporation was held responsible for 14 awards of partial to permanent disability based on MCS and various other health complaints that started after extensive renovations were inadequately ventilated (half the roof air conditioners did not work). Awards ranged from \$15,000 to \$900,000 each (total \$4,183,528); Linda Petersen and Eleni Wanken v. Polycap of California, California Superior Court, Alameda County, No. H7276-0, 1 April 1988 [1 page verdict report, R-143], in which plaintiffs were awarded \$250,000 and \$13,000, respectively, for MCS they developed after a polyurethane roofing material was installed at two school buildings where they worked. These jury awards led to prompt settlement of a dozen other cases against the same defendant.

**Tort of Outrage and "Deliberate Intention" Exception to Workers Compensation:** Birkliid et al v. The Boeing Company, Supreme Court of the State of Washington, 26 October 1995, No. 62530-1, in which the court issued an EN BANC ruling in response to a question it "certified" from the Ninth Circuit Court of Appeals. By unanimous 9-0 decision, the WA Supreme Court found sufficient evidence of Boeing's deliberate intent to harm its employees from chemical exposure that the 17 workers who claim they were physically and/or emotionally injured as a result (including those with MCS) can sue the company for civil damages in addition to their workers' compensation benefits. (This "deliberate intention" exception was last allowed by the court in 1922). The court also found that the chemically-injured workers had a claim under the Tort of Outrage for recovery of damages arising from Boeing's intentional infliction of emotional distress. The matter now returns to the U.S. District Court for the Western District of Washington for a jury trial. [25 page decision with a 2 page background paper from Randy Gordon, one of the plaintiffs' attorneys., R-66].

**Workers' Compensation Appeals (State Courts only, others follow)**

**Arizona:** McCreary, Robert v. Industrial Commission of Arizona, 835 P.2d 469, Arizona Court of Appeals 1992 [1 page, R-70];

**California:** Kyles v. Workers' Compensation Appeals Board et al, No. A037375, 240 Cal. Rptr. 886, California Court of Appeals 1987 [9 pages, R-68]; Mendez v. Continental Ins. Co., 515 So.2d 525, La.App.1Cir. 1987 [6 pages, R-69];

**New Hampshire:** Appeal of Denise Kehoe (NH Dept. of Labor Compensation Appeals Board), No.92-723, Supreme Court of New Hampshire 1994, 648 A.2d 472, which found that "MCS Syndrome" due to workplace exposure is an occupational disease compensable under NH's workers' compensation statute and remanded to the Compensation Appeals Board "for a determination of whether the claimant suffers from MCS and, if she does, whether the workplace caused or contributed to the disease" [3 pages, R-71, see also ]; (2nd) Appeal of Denise Kehoe (NH Dept. of Labor Compensation Appeals Board), No.95-316, Supreme Court of New Hampshire 13 November 1996, in which the Court again reversed the Compensation Appeals Board, finding both that the claimant had MCS (legal causation) and that "her work environment probably contributed to or aggravated her MCS" (medical causation) [5 pages, R-127];

**Oregon:** Robinson v. Saif Corp, 69 Or. App. 534; petition for review denied by 298 Ore. 238, 691 P.2d 482 [5 pages, R-67]; Saif Corporation and General Tree v. Thomas F. Scott, 824 P.2d 1188, Ore.App.1992 [6 pages, R-89];

**South Carolina:** Grayson v. Gulf Oil Co., 357 S.E.2d 479, S.C.App.1987 [6 pages, R-88];. and Harvey's Wagon Wheel, Inc. dba Harvey's Resort Hotel v. Joan Amann, et al., No.25155, order dated 25 January 1995, Nevada Supreme Court [4 pages, R-93], in an order dismissing the casino's appeal of a district court ruling that reversed the decision of an appeals officer in favor of a group of 23 claimants. The Supreme Court agreed with the lower court's finding that the officer had "overlooked substantial evidence offered by the [23] claimants that clearly supported a causal relation between their work place injuries [due to pesticide exposure] and their continuing disabilities."

**West Virginia:** Arlene White v. Randolph County Board of Education, No. 93-11878, 18 November 1994 decision of Administrative Law Judge Marshall Riley, Workers' Compensation Office of Judges, reversing denial of MCS claim for temporary total disability and medical payments by Workers' Compensation Division [7p, R-131]; Julie Likens v. Randolph County Board of Education, No. 93-14740, 4 April 1995 decision of Chief Administrative Law Judge Robert J. Smith, Workers' Compensation Office of Judges, reversing denial of MCS claim for temporary total and medical disability by Workers' Compensation Division [8p, R-132]; and Barbara H. Trimboli v. Randolph County Board of Education, No. 92-65342-OD, 10 June 1996 decision of Administrative Law Judge Terry Ridenour, Workers' Compensation Office of Judges, reversing denial of MCS claim for temporary total disability and medical payments by Workers' Compensation Division [5p, R-133].

## **RECOGNITION OF MCS IN 14 WORKERS' COMPENSATION BOARD DECISIONS**

... in decisions affirming MCS illness (by this or some other name) as a work-related injury or illness in: **[New Entries in Bold]**

**Alaska:** Hoyt, Virginia v. Safeway Stores, Inc., Case 9203051, Decision 95-0125, Alaska Workers' Compensation Board 1995 [21 pages, R-73].

**Connecticut:** Sinnamon v. State of Connecticut, Dept. of Mental Health, 1 October 1993 Decision of Nancy A. Brouillet, Compensation Commissioner, Acting for the First District, Conn. Workers' Compensation Commission. [10 pages, R-106]. The commissioner, citing testimony from Dr. Mark Cullen, among others, found "the great weight of medical evidence supports the diagnosis of MCS syndrome causally related to the Claimant's exposure while in the course of her employment" in state office buildings with poor indoor air quality. She ordered payment of temporary permanent disability benefits as well

payment "for all reasonable and necessary medical treatment of the Claimant's MCS syndrome."; O'Donnell v. State of Connecticut, Judicial Department, 22 May 1996 Decision of Robert Smith Tracy, Compensation Commissioner, Fourth District, Conn. Workers' Compensation Commission. [5 pages, including cover letter from plaintiff's attorney, R-107]. The commissioner recognized MCS "caused by numerous exposures to pesticides at work ... and exacerbated by repeated exposure to other odors and irritants at work" in a Juvenile Court building. Because "this claimant has been given special accommodations since March 1992 when she was granted an isolated office and the stoppage of spraying of pesticides" that allowed her to continue working full-time, no monetary benefits were awarded.

**Delaware:** Elizanne Shackle v. State of Delaware, Hearing No. 967713, Delaware Industrial Accident Board in and for New Castle County, December 1993 [21 pages, R-142], awarding total temporary disability benefits and "one attorney's fee" based on the IAB's finding that the claimant's work exposure (in a state correctional facility built by prison labor) had "caused her present respiratory symptoms" and that this "has sensitized her to other odors."

**Maryland:** Kinnear v. Board of Education Baltimore County, No. B240480, Md. Workers' Compensation Commission, 28 June 1994 [1 page, R-75].

**Massachusetts:** Sutherland, Karen v. Home Comfort Systems by Reidy and Fidelity & Casualty Insurance of New York, Case No.023589-91, 8 February 1995 decision of Mass. Department of Industrial Accidents [21 pages, R-74]; Steven Martineau v. Fireman's Fund Insurance Co., Case No.9682387, 15 May 1990 decision of Administrative Judge James McGuinness, Jr., Mass. Industrial Accident Board, ordering that the employer pay for disability benefits as well as "all costs, including transportation, lodging and meals, incurred or to be incurred in the course of seeking and obtaining reasonable medical and related care ... including treatment rendered by and at the Center for Environmental Medicine." [18 pages, R-125]; Elaine Skeats v. Brigham & Women's Hospital, Case No.02698693, 24 October 1996, decision of Administrative Judge James McGuinness, Jr., Mass. Industrial Accident Board, ordering that the employer "compensate the employee for expenses incurred in the course of satisfying the historic and prospective prescriptions of Doctors ... prompted by her industrial injury and relative to: intravenous therapy, vitamin and nutritional supplements, massage therapy, air conditioning, air purification, air filtration, masking, water filtration, allergy bedding, laboratory testing and mileage travelled." [14 pages, R-126]

**New Mexico:** Elliott, Erica v. Lovelace Health Systems and Cigna Associates Inc., No. 93-17355, 8 November 1994, decision of Rosa Valencia, Workers' Compensation Judge, finding that MCS was triggered by glutaraldehyde and Sick Building Syndrome for which employer had been given timely notice. Also supported Elliott's refusal to return to work in the buildings that made her sick buildings as "reasonable under the circumstances." Decision granted 3 months of temporary total disability pay followed by permanent partial disability for "500 weeks or until further order of the Court" [15 pages, R-113]

**New York:** Crook v. Camillus Central School District #1, No. W998009, 11 May 1990, decision of Barbara Patton, Chairwoman, NY State Workers' Compensation Board specifies "modify accident, notice and causal relationship to multiple chemical sensitivity" and awarded continuing benefits of \$143.70 per week [1 page, R-108].

**Ohio:** Saks v. Chagrin Vly. Exterminating Co Inc., No. 97-310968, 18 September 1997 [2 pages, R-151], decision of District Hearing Officer Arthur Shantz, recognizing claim of chemical sensitivity; and Kelvin v. Hewitt Soap Company, No.95-599131, 5 June 1996 [2 pages, R-152], decision of District Hearing Officer Steven Ward, recognizing claim of multiple chemical sensitivity as "occupational disease" contracted "in the course of and arising out of employment."

**Washington:** Karen B. McDonnell v. Gordon Thomas Honeywell, No. 95 5670, 22 October 1996 decision of Judge Stewart, WA State Board of Industrial Appeals, recognizing "toxic encephalopathy" as an acceptable diagnosis for MCS-induced permanent partial disability [2 p, R-118].

## RECOGNITION OF MCS BY 26 INDEPENDENT ORGANIZATIONS

### **American Academy of Environmental Medicine (New Hope, PA)**

... the first medical academy in the United States to recognize EI/MCS as a legitimate physical condition (founded 1965). Views detailed in "An Overview of the Philosophy of the American Academy of Environmental Medicine" by Dr. Gary Oberg [1990, 77 pages, R-76].

### **American Council On Education, National Clearinghouse on Postsecondary Education for Individuals with Disabilities, Health Resource Center (Washington DC)**

... in a detailed report on "Students with MCS/EI: An Accommodation Challenge" published in its Information Health newsletter, which is underwritten by a grant from the U.S. Department of Education [Vol 15, No 2 & 3, June/July 1996, 3 pages, R-115].

### **American Lung Association (Washington DC)**

(See joint entry under U.S. Consumer Product Safety Commission, above.)

### **American Medical Association (Chicago IL)**

(See joint entry under U.S. Consumer Product Safety Commission, above.)

### **Association of Occupational and Environmental Clinics (Washington DC)**

... in its directory of American Occupational and Environmental Clinics, which describes the most commonly seen occupational and environmental diagnoses seen at the AOEC's 52 clinics [1993, 53 pages, R-77]. MCS is listed as one of the top three environmental diagnoses by clinics at Massachusetts General Hospital, Johns Hopkins University, Emory University, Robert Wood Johnson Medical School, and many others.

### **Association of Trial Lawyers of America, Consumer & Victims Coalition Committee**

... in a resolution recognizing Ecological Illness (MCS) as "an emerging and potentially major public health problem" [1994, 2 pages, R-78].

### **Civil Service Employees Association, AFSME Local 1000 (Albany NY)**

... in a "Safety & Health" booklet entitled Multiple Chemical Sensitivity, produced by the CSEA Occupational Safety and Health Department through a grant from the New York State Occupational Safety and Health Training and Education Program # 6789 [1994, 20 pages, R-90].

### **Communications Workers of America, AFL-CIO**

[New Entry]

... in a memo from Executive Vice President M.E. Nichols to all local presidents (cc'd to the Executive Board and all staff), requesting that they forward information on MCS and other member health problems associated with workplace indoor air quality (and exposure to carbonless copy paper in particular) to the CWA's Occupational Safety and Health Department [25 July 1997, 2 pages, R-154].

### **The Evergreen State College (Olympia WA)**

... in a memorandum from Jim LaCour, the director of the Office of Human Resources, on "a long-awaited policy that was developed by community representatives to address IAQ issues." The policy states the college's support for "the concept of a fragrance- and pollutant-free environment on its properties and in its programs" and details procedures for public notice, training, information posting, inspection, use of scented products (by students, faculty, and other staff), policy dissemination, facilities' use, complaints, and records maintenance [1996, 8 page memo and 2 page "A Guide to Indoor Air Quality," R-134; policy also posted at [http://192.211.16.12/user/pol\\_proc/g-air.htm](http://192.211.16.12/user/pol_proc/g-air.htm)].

### **First Baptist Church of Houston (TX)**

... in developing a fragrance-free Sunday School department and a "safe worship area" for the benefit of the chemically-sensitive among its more than 21,000 members [1995].

***First Unitarian Society of Chicago (IL)***

... in a plan developed by the society's Environmental Task Force to "purchase, from now on, only those cleaners and other property maintenance products which are safe for people and the environment, in line with the [society's] Model Environmental Community Plan..." The plan was adopted "in light of the fact that our church has chemically sensitive individuals and should be open to others who are chemically sensitive" [1995, 6 pages, R-79].

***Habitat for Humanity International (Americus GA)***

... in its "Tentative Survey Form for those suffering from chemical sensitivity" and accompanying cover letter stating that "The Environment Department is concerned about hazardous chemicals in homes as well as the syndrome they cause, MCS" [1994, 2 pages, R-80]. Although an official HfHI policy has not been formulated, guidelines on "Addressing the Need" have been written by David Ewing, Senior Advisor, HfHI Department of the Environment [1996, 2 pages, R-137], and at least one affiliate (in Athens OH) has built a house for an MCS sufferer.

***Holy Cross Hospital (Taos NM)***

... in a policy statement on the "Management of patients with Multiple Chemical Sensitivities" that identifies 13 steps taken to "reduce the risk of patients or employees developing additional health problems while in the hospital." These range from providing operable windows in all patient rooms to a directive that "scented personal care products should not be worn in the presence of MCS patients." The policy was adopted in conjunction with the opening of a new wing in December 1994 that includes two rooms with two beds each specifically designed for MCS patients, including a separate entrance and private sitting room [1994, 2 pg policy with 1 pg article, R-81].

***International Labor Organization (Geneva, Switzerland)***

... in its 1994 World Labor Report, recognizing Sick Building Syndrome as the major problem specific to office workers in industrialized countries [6 page press release, R-82; full report available for \$18 from ILO, 518-436-9686].

***Jewish Hospital (Louisville, KY)***

[New Entry]

... in its policy to accommodate the needs of "Environmentally Sensitive Patients" on an individual basis, which was developed and approved by the Practice Council of the Nursing Department [1997, 2 pages, R-163]. "To reduce the risk of clients developing additional environmentally sensitive health problems while in the hospital," the policy specifies 4 specific procedures to be followed in admissions and 13 more to be followed in nursing care, including not wearing perfume, make up, hairspray, underarm deodorant or fragrances while caring for the client, if so requested.

***Johns Hopkins Medical Institutions, Kennedy Krieger School (Baltimore MD)***

[New Entry]

... in an "Individualized Environmental Management Program" for student Joseph Armingier designed to accommodate his need to avoid exposures that might aggravate his "MCS Syndrome" [30 May 1996, 2 pages, R-155]

***The Labor Institute (New York City, NY)***

... in Multiple Chemical Sensitivities at Work, "a training workbook for working people" and accompanying video entitled "MCS: An Occupational Hazard" [1993, 95-page book and 1/2 hour video available for \$3 and \$12, respectively, from MCS Referral & Resources, R-83].

***Levi Strauss & Co. (San Francisco, CA)***

... in a formal memorandum on "Reasonable Accommodation" from Ed O'Masta of the company's "Global Human Resources" department that commits Levi Strauss & Co. to making the following accommodations for an employee with MCS: specially selected office location with portable air filtration system, older no-longer-offgassing furnishings, carpet and electronic equipment, less toxic cleaning products and paints, when necessary, no pesticide use in the office and no photocopy machines in the immediate vicinity, scent-free sign on the door, flexible meeting and teleconference arrangements, and

support for requesting (but not requiring) scent-free accommodations from co-workers [26 January 1996, 2 pages, R-116].

**Massachusetts Continuing Legal Education (MCLE)**

[New Entry]

... in sponsoring a half-day educational seminar on "Multiple Chemical Sensitivity Case: A Practical Guide to Understanding the Issues" featuring medical and legal experts representing both defense and plaintiff perspectives. It describes MCS as a "highly controversial diagnosis that is rapidly becoming a hot spot for indoor environmental health cases." [16 April 1997, 1 page announcement, R-159; written materials and audiocassettes available from 800-966-6253].

**National Academy of Sciences / National Research Council**

... in a collection of research papers describing the neurologic, respiratory, and immune impairment of MCS patients, in Multiple Chemical Sensitivities--Addendum to Biologic Markers in Immunotoxicology [1992, book available from NAS]. Note that the NAS/NRC has not made any statements or estimates on the incidence of MCS in the U.S. population. The often quoted figure of 15% attributed to the National Research Council actually refers to an estimate of the percent of the U.S. population with "an increased allergic sensitivity to chemicals commonly found in household products..." made by the *NRC's Committee on Neurotoxicology and Models of Assessing Risk, part of the Commission on Life Sciences' Board on Environmental Studies and Toxicology* [in Evaluating Sensory and Hyperactivity Reactions From Exposures to Inhaled Pollutants, 1987, 6 pages, R-84].

**National Association of Social Workers (Washington DC)**

... in a resolution on MCS approved by the delegate assembly [1993, 1 page, R-85].

**North Seattle Community College (Seattle WA)**

... in its Winter 1996 and Spring 1996 Quarterly Class Schedule catalogs [2 page excerpt, R-94], which includes the following in the description of all courses taught by an MCS member of the faculty: "This classroom accommodates the needs of those suffer from Multiple Chemical Sensitivity (MCS). As a designated scent-free area, students are required to refrain from the use of scented personal care products, such as cologne, aftershave, scented hairsprays, lotions, etc. Your cooperation is very much appreciated."

**Ontario Medical Association, Committee on Public Health**

... in its 1987 Report to Council, reviewing the 1985 report of the ad hoc committee on Environmental Hypersensitivity Disorders which included an OMA representative, and in consultation with OMA's sections on Allergy and Clinical Immunology and General and Family Practice, the committee recommended that the social agencies in Ontario address the social problem of people "not being well served in their need for support services." It also expressed "support for efforts to improve the ability of practising physicians to treat these patients" and recommended that the Ontario Ministry of Health focus its research funding for studies of "environmental hypersensitivity" on etiology, diagnosis, treatment and epidemiology" [1987, 1 page excerpt, R-136].

**Shepherd of the Hills Presbyterian Church (Austin TX)**

[New Entry]

... in its sponsorship of the Jeremiah project, a nationwide "interdenominational ministry with and for people who are chemically sensitive and/or have been chemically injured." Free information available from [www.shpc.org](http://www.shpc.org), [jeremiah@texanet.net](mailto:jeremiah@texanet.net) org, and the Rev. Linda Kay Reinhardt (212-935-4618).

**United Methodist Church, General Board of Global Ministries**

... in a "United Methodist Resource Book about Accessibility" entitled Accessibility Audit For Churches, (prepared for the Health and Welfare Ministries Program Department by the Mission Education and Cultivation Program Department), the church recognizes MCS as an indoor air quality problem, details the types of indoor air exposures that may exacerbate MCS, and provides recommendations for accommodating MCS persons [1994, 7 page excerpt, R-86, full report available for \$5.95 plus \$1.50 shipping from 1-800-305-9857, Stock No.3810].

**University of Minnesota School of Social Work (Minneapolis MN)**

... in a scent-free policy adopted in the fall quarter of 1993 to accommodate "those with MCS who are either students or staff in the School of Social Work" [1993, 3 pages, R-87].

**World Institute on Disability (Oakland CA)**

... in a letter to the Oakland City Council's Health and Human Services Committee supporting "acceptance and implementation of A.I.#138, the City Access Policy for People with Environmental Illness / Multiple Chemical Sensitivity" [see entry for Oakland CA, above] from WID president Ed Roberts, a former director of California's Department of Rehabilitation [1994, 1 page, R-96].

## **CORRECTIONS OR DELETIONS SINCE LAST ISSUE**

None.

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## **THIS ISSUE DEDICATED TO THE MEMORY OF JULIA KENDALL FOUNDER OF CITIZENS FOR A TOXIC-FREE MARIN WHO DIED 12 JULY 1997**

**FOR A FREE COPY OF JULIA'S CLASSIC "MAKING SENSE OF SCENTS"  
AND THE FACTS ON FRAGRANCE-FREE ZONES  
SEND A SELF-ADDRESSED STAMPED ENVELOPE TO MCS REFERRAL & RESOURCES**

# State passes on chance to change pesticide laws

MADISON (AP) - The state Board of Agriculture, Trade and Consumer Protection scrapped a proposed change would have reduced the number of people in a neighborhood who need to be notified by commercial applicators before they spread pesticides.

But the board approved several other changes to the state's pesticide laws.

Residents can request notification under the law if pesticides are being sprayed within a nine-block area.

Lawn care companies complained the requirement was impossible to meet and had at times required them to notify as many as 400 people in the area before spraying. The proposed change would have required notification only if pesticides were being applied on adjacent yards.

But that proposal was opposed by nearly 200 people - from health-care professionals to both Republican and Democratic legislators - who wrote the agency or testified at one of the five hearings around the state. Support for the change came from 56 individuals, mostly people with ties to fertilizer and lawn-care companies.

Ag board member Charles "Pete" Knigge proposed at the meeting Thursday that the process be kept as it is, and the move was approved without opposition.

"We heard lots of people say they wanted this to remain how it was," Knigge said. "I thought it was a no-brainer. The system is working. Why change it?"

But the board approved unanimously other changes that eliminate roadside posting requirements for farmers who apply pesticides on adjacent fields and change residential warning sign requirements so that, in some cases, fewer signs will be required.

The board took the middle road on another proposal that would have moved up the deadline to register for the advance notice registry from a March 1 application deadline to Jan. 15. Under the rule, people who would like advance notification of treatment in their neighborhood must now register by Feb. 1, with an effective date of March 15.

The state Department of Agriculture, Trade and Consumer Protection had suggested to the board changes as a way to streamline and simplify the law.

# Hearings to Be Held on Changing Pesticide Rules

By Jane Fyksen  
Regional Editor

## Menomonie

Farmers and others will get a chance to comment on a plan to reorganize the state's pesticide laws. Meeting in Menomonie last week, the Wisconsin Agriculture Board authorized public hearings on modifications to current pesticide rules.

The state ag department hopes the changes will make the rules easier to read and understand. Its ultimate aim is better compliance.

According to the department, the proposed reorganization of ATCP 29 and ATCP 30 "for the most part...does not change the substance of the current rules." But portions proposed for change drew lots of comments from commodity groups and concerned citizens.

The substantive changes are:

■ **Pesticide application records** - Commercial pesticide applicators must keep records of applications. Current record keeping requirements for commercial applicators (and private applicators applying restricted-use pesticides) are expanded to bring them in line with federal mandates. Types of applications ("restricted use" and "for hire") for which records must be kept are clarified.

■ **Applicator certification** - Individual commercial applicators must be licensed and certified for competence. Current certification categories are modified to reflect current practice. A farmer must also be certified to use restricted-use pesticides, with as a commercial applicator or as a "private applicator." That distinction is clarified, as are the standards and procedures for certifying private applicators.

■ **Waters of the state** - People applying pesticides cannot contaminate waters of the state. The proposal states that this prohibition doesn't apply to: Incidental application of pesticides to temporary rain puddles on target application sites or Unforeseeable leaching or runoff of pesticides applied according to label directions.

■ **Pesticide application warning signs** - Currently, farmers post warning signs along public roads for certain applications made within 100 feet of those roads. It's proposed the current roadside posting requirement be repealed, partly due to recent legislation strengthening Wisconsin's "no trespassing" laws.

However, some ag posting requirements would still apply. Roadside posting would still be required when pesticides are applied via chemigation. Warning signs would still be required whenever the federally approved pesticide label requires them. Warning signs would still be necessary if the application is made within 300 feet of any residence, school,

workplace or nonagricultural area where people are likely to be present.

It's estimated that this change will reduce the number of signs required to be posted on farmland by 80 percent compared to what's currently required. Ag department officials say this will result in a cost and time savings for farmers and commercial pesticide application businesses.

■ **Landscape application warning signs** - Businesses must post warning signs when making a landscape application to a residential, public or commercial site. What these signs say and when and where they need to be posted are revised.

■ **Registry of people requesting prior notification of landscape applications** - Changes are made to the annual registry of people requesting advance notice of landscape applications in their immediate area which the ag department publishes. About 840 people have registered with the state ag department that they want advance notice of pesticide use near their homes. They've identified 13,500 properties for which they demand prior notice.

Further, a special committee of the state ag board recommended the following changes which have been incorporated into the draft rule which will now be going to public hearing. These include:

■ **Deletion of the requirement that an applicator record the "target pests"** because of which pesticide is being applied. (He still has to make note of the treated crop and site).

■ **The provision requiring the applicator to identify the "common chemical name" of the pesticide in his records would be axed.** (An application would still have to record the brand or product name and EPA registration number of the product).

This special ag board committee also urged the ag department to seek EPA funding of a project looking at the use of integrated pest management (IPM) on school grounds, the aim being to minimize pesticide exposure to students. The department is doing just that, and reports that the EPA is enthused about the idea.

Nick Neher, administrator of the state ag department's Agricultural Resource Management Division, told the department's citizen oversight board that state pesticide laws have become "unwieldy" and "difficult for the public to use."

Even though most of the changes are housekeeping in nature, the ag department has received 56 letters and 832 postcards regarding the proposed changes. The postcards all call for: Prohibiting the use of pesticides that are known carcinogens, are acutely toxic and/or have been found to be hormone disruptors from being used for purely aesthetic uses; prohibiting pesticide applications in sensitive areas, such as schools and nursing homes; changing the registry deadline to May 1 for people wanting prior notice of ap-

plying pesticides to a residential, public or commercial site. What these signs say and when and where they need to be posted are revised.

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# PESTICIDES

Continued from Page 6

plications. Most of the letters deal with landscape posting, pesticide use near schools, and general pesticide concerns. The farm-related proposed changes haven't generated anywhere near the correspondence the urban/landscape use has.

Before approving this proposed pesticide rules reorganization for public hearings, the board heard from environmentalists, farm commodity representatives and people claiming ultra-sensitivity and debilitating health problems due to pesticides.

One of those addressing the board was Helen Kees, Durand, an opponent of pesticide use, particularly on potato fields in her western Wisconsin township.

She told board members, "I expect you to do nothing," and that her aim in testifying was "to see if you would squirm." She said the "greed" in the pesticide industry "makes the paparazzi look like philanthropists."

Pam Porter, executive director of the Wisconsin Environmental Decade, the state's largest environmental organization, with over 27,000 members, testified that her group doesn't support these pesticide rules changes. She said they weaken the state's pesticide regulation and "significantly limits the public's right to know," which gives nonfarmers the impression that agriculture has something to hide.

She disagreed with department staff that the proposal is mostly reorganizational and clarification, but instead, makes significant changes.

Liz Wessel, Citizens for a Better Environment, also opposed this proposal going to hearing. She contended that it doesn't reflect the public's concerns about pesticides.

Wendy Baker, a former school teacher who gave her address as "anywhere in the U.S.," told the ag board that she has been forced to look for a safe place to live because she has basically become chemi-

cally sensitive and allergic to the modern world. Recognizing that she's probably "considered a nut case" by some people, she says the health problems she has because of landscape pesticides used by neighbors and other chemicals she runs into in every-day life are all too real. She called for the ag department to strengthen pesticide rules.

Mike Stouffer, Little Chute, a former engineer who is now an actuary for Aid Association for Lutherans, testified how his wife became ill "overnight" and eventually found that her immune system had collapsed. She lives with "incredible pain," he said, noting that to prevent exposure to landscape pesticides, they are on the ag department's registry. That "allows us to take control of our living space" and "solve our own problems."

He said it's crucial for him to "retain the ability to know when someone is applying pesticides so I can keep my wife healthy."

Commodity group and other ag representatives were mostly in favor of the proposed changes. Paul Zimmerman, Wisconsin Farm Bureau, said the state's largest farm organization supported the proposed changes going out to public hearing. The Farm Bureau particularly favors relaxing roadside posting of fields that have been treated, especially considering that the trespassing laws were strengthened recently.

Dean Zuleger, executive director of the Wisconsin Potato and Vegetable Growers Association, told the ag board that his industry strives for "prescriptive," "reasonable" and "smart" use of pesticides and that with the exception of "the People's Republic of California," Wisconsin has the strongest pesticide laws in the U.S.

He favored the proposed changes going to hearings, and backed the changes in the roadside posting requirements. He says his organization did an economic analysis, and that for many growers, it takes 1.25 full-time employee equivalents just to take care of pesticide warning signs all summer.

# Proposed pesticide rule draws many to hearings

By Janelle Thomas  
Regional Editor

**MADISON** — Pesticides and proposed changes to Wisconsin's pesticide law were a hot topic for Department of Agriculture Trade and Consumer Protection officials at five public hearings on the topic in the last 2 weeks.

At an Oct. 22 hearing at the DATCP building, verbal testimony came from 39 people with another 32 completing registration cards.

Most of those testifying last week expressed concerns with proposed changes to ATPC 29, the rule that regulates pesticide use, sale and distribution.

The proposed rule eliminates the existing requirement to post warning signs along fields within 100 feet of public roadsides when treated with a "dual notice" pesticide. The rule still requires warning signs when pesticides are used within 300 feet of other non-agricultural areas where people may be present, such as homes, businesses, schools and parks.

The proposal also changes where landscape pesticide application signs are required when lawn chemicals are commercially applied. It says 8-1/2- by 11-inch warning signs must be visible from any point where people are likely to enter a treated area.

For example, signs must be visible from entrances to fenced yards or from neighboring yards' boundaries. The proposal may either increase or decrease the number of warning signs now

required, depending on the property. If approved, warning signs must have the removal date written on them.

The proposed rule also changes the deadline for the DATCP advance notice registry, which gives participants advance notice when neighbors plan to commercially apply lawn treatments.

The change would move the deadline from March 1 to Jan. 15 of each year to allow participants to receive notice of early applications that start in March and to give DATCP staff time to process the registry and distribute it to commercial applicators.

**"We are concerned about our grandchildren and believe me, it's a strong motivation"**

— Ed Seefelt,  
Amherst Junction

Ed Seefelt, Amherst Junction, opposed eliminating the roadside posting requirement. He said he lives near the Ice Age Trail where many walkers, bikers and children could unknowingly be exposed to chemicals applied to nearby fields.

"We are concerned about our grandchildren and children and believe me, it's a strong motivation," he said.

He suggested requiring farmers to provide pesticide application information to anyone who asks for it. Nick Neher, DATCP Agricultural Resource Management Division administrator, said this is already a provision and, to his knowledge, anytime such information has been requested, it has been provided.

Claire Gervais, M.D., voiced concern about the lack of known information about pesticides and the effects of pesticide exposure

on children. Children are more susceptible to the chemicals because they have frequent hand-mouth activity and absorb chemicals through the skin faster than adults, she said. She recommended that the warning signs have a stronger warning symbol and be printed on both sides.

Dr. Gervais also favored keeping the advance notification registry deadline at March 1, a date that better allows people to consider the service. She wanted not only adjoining properties, but also properties on adjacent blocks, to be included in the registry.

She asked the DATCP to think about citizens instead of "promoting the commercial ventures of lawn care and chemical companies."

Madison resident Mary Sara said the state has gone "hog wild" in protecting agriculture. "DATCP should be in the business of protecting the consumer. ... It's a sick society that we live in that sprays golf courses and athletic fields. ... I'd rather slip on a broad-leaf and break my arm than have my reproductive system destroyed (from pesticides)," she said.

She blamed chemical companies for "the death of the family farm and the literal death of the farm wife," noting increased cases of breast cancer and prostate cancer.

Curt Winter, representing Lawn Care of Wisconsin Inc., supported the rule changes, especially those dealing with the advance notification registry.

He said there is abuse of the existing rule and the number of

properties a citizen is allowed to put on the advance notification list. One Milwaukee citizen lists more than 400 properties for which she wants advance pesticide application notification.

**"Pesticides are truly wonderful"**

— Jim Kazmierczak,  
aerial crop sprayer

"That's harassment," Mr. Winter said.

"We are environmental stewards," he said, referring to commercial lawn care companies. He said they educate customers to accept a few weeds as a natural thing and promote spot application in place of whole-lawn application.

In response to testimony asking the DATCP to ban all pesticides at school playgrounds, day-care centers and parks, Mr. Winter said he's cared for many such areas. He said treatment is necessary if the grass is to repair itself and keep a soft cushion that prevents injuries from falls and sporting activities.

Terry Kurth of the Grounds Management Association of Wisconsin supports the advance notification deadline change. When asked by DATCP officials if he would support creating a supplemental list of people who missed the deadline, he wished to be included; he said his company would put forth a good faith effort to accommodate people who missed the deadline, but "if their fervor is that strong it blows my mind someone would miss that date."

Liz Wessel uses the registry and believes in her right to protect her children. She wants more signs posted on treated areas, including along roadsides, and wants not only adjacent property, but also adjacent blocks included

in the registry. She also opposed a January deadline for the registry, saying many things slip by at that time of year.

"I reject the notion that pesticides are the only way to manage turf," she said.

Jim Kazmierczak, an aerial crop sprayer, commended the DATCP for its efforts to make the rule easier to follow and understand.

"Pesticides are truly wonderful," he said, adding they save lives, land and personal property, keeping hospitals germ-free and homes mouse- and rat-free. He encouraged the DATCP to "educate, not regulate" to keep pesticide use safe.

B a r a r a Schultz, Mount Horeb, told the DATCP staff that her 14-year-old daughter suffers from chemical sensitivity and cannot even attend school because the cleaning agents make her ill. She is most affected by pesticides, becoming violently ill, mentally confused and nauseated.

Ms. Schultz wants the DATCP to require larger warning signs. This would help her daughter more easily avoid areas that make her ill.

"We strongly oppose the concept which would require posting of all pesticide applications on agricultural fields along highways. Our new trespass law expressly prohibits entering agricultural lands without permis-

sion," said Russ Weisenel, Wisconsin Agribusiness Council Inc. legislative affairs director. "We also oppose the continuation of the present registry scheme which may require over 400 addresses to be included on a single registry. This we firmly believe is harassment of the industry rather than a reasonable right-to-know request."

Pam Porter, representing Wisconsin's Environmental Decade, asked for a rule to prohibit pesticides in schools and day-care centers and to develop a statewide pesticide reduction plan. She opposed eliminating roadside warning signs and said current signs are not adequate to warn people. She said reducing the number of properties allowed for advance notification would decrease the public's right to know.

"It seems to me what we've heard today would warrant stricter rules, not looser as it appears," said Tom Eckerle, a Madison resident and grandfather.

The DATCP is accepting written testimony on the rule until Nov. 7. Comments should be sent to: Wisconsin Department of Agriculture, Trade and Consumer Protection Agricultural Resource Management Division, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708-8911. For more information, call (608) 224-4542.

**"We strongly oppose the concept which would require posting of all pesticide applications on agricultural fields along highways."**

— Russ Weisenel,  
Wisconsin Agribusiness  
Council Inc.

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## LOYAL FARM EQUIPMENT

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**Alberta Darling**  
Wisconsin State Senator

OCT 30 1997



October 30, 1997

To: Legislative Colleagues  
From: Alberta Darling  
Re: Revision of ATCP 29, Relating to Pesticide Use and Notification of Use

The regulation of pesticides and notification of their use is critical to the health and safety of our families and children.

The Department of Agriculture, Trade, and Consumer Protection is currently considering revisions to ATCP 29, which regulates pesticide use and notification of use.

Please join me in encouraging the Department to strengthen ATCP 29 to protect our children by signing on to the attached letter.

If you would like to sign on to the letter, please contact Jim Villa in my office (6-5830) no later than 3pm on Monday, November 3<sup>rd</sup>.

**Capitol Office:**

P.O. Box 7882  
Madison, Wisconsin, 53707-7882  
Phone: 608-266-5830  
Fax: 608-267-0588  
Toll-free: 1-800-863-1113

**Distirct Office:**

6373 North Jean Nicolet Road  
Glendale, WI 53217  
Phone: 414-352-7877  
Fax: 414-352-7898



# WISCONSIN LEGISLATURE

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P.O. Box 7882 • Madison, WI 53707-7882

Secretary Ben Brancel  
Department of Agricultural, Trade and Consumer Protection  
2811 Agriculture Drive  
Madison, Wisconsin 53704-6777

Dear Secretary Brancel:

We write to express our deep concern over the use and notification procedures for pesticides. It is our understanding that DATCP is currently considering revisions to ATCP Rule 29, relating to pesticides use and notification of use. The revisions, however, may endanger the health and safety of some Wisconsin citizens, particularly children.

We have heard a great deal of concern and frustration from many of our constituents regarding this issue.

We ask that you include the following in the Department's final revisions to ATCP 29:

- Prohibit pesticide use around schools, playgrounds, hospitals and day care centers to better protect young children and pregnant women from harmful pesticide exposure.
- Continue the current rule that requires posting along public roads following the application of "dual notice" pesticides.
- Require homeowners, as well as commercial applicators, to post pesticide-treated areas with warning signs.
- Continue to require that non-commercial applicators, such as homeowners, receive the information they need to use pesticides more safely.
- Continue the requirements to post alleys and side yards from which children can access pesticide-treated areas.
- Require improvements in the signage that will make the postings more visible and clear for children and adults alike.

- Continue and promote the pesticide registry that allows advance notification of commercial pesticide applications, using the block concept rather than limiting it to adjacent addresses.

There can be no disagreement that exposure to pesticides can be harmful to some people, particularly children. We ask you for your support in protecting the health and safety of Wisconsin's families and children. We ask for your commitment to strengthen regulations on pesticide use and notification of use through the current revision of ATCP 29.

Sincerely,



*File - copy*

## Pesticide Regulations Weakened Public Hearings Announced

Dear Concerned Citizen,

We are writing to alert you to proposed changes to Wisconsin's primary pesticide rule (Ag 29). These changes weaken public health and environmental protections and threaten the pesticide pre-notification registry.

Despite letters from several medical professionals, including Dr. Robert Kliegman, Pediatrician-in Chief of the Children's Hospital of Wisconsin, asking it to strengthen public health and environmental protections, the Department of Agriculture, Trade and Consumer Protection (DATCP) has proposed changes that weaken the rule. Details are outlined on the enclosed fact sheet.

DATCP has just announced five public hearings to hear public comment on the proposed changes. Only with a large turnout can we influence DATCP to improve pesticide protections.

**Please attend the public hearing in your area and write a letter on behalf of stronger pesticide regulations. Let the Department of Agriculture, Trade and Consumer Protection know that you want the pesticide rule STRENGTHENED, NOT WEAKENED.**

(Participating in hearings is very easy and you won't be alone. Simply read through the enclosed recommendations, pick out the points that make the most sense to you and add your own personal story show up at the hearing, sign a speakers slip and tell the DATCP board what you want to see changed.)

### Public Hearings

Appleton; October 13; Holiday Inn, 150 Nicolet Rd; 1-5pm and 6-9pm

Stevens Point; October 14; Comfort Suites, 300 Division St., N; 1-5pm and 6-9pm

Eau Claire; October 15; Quality Inn, 809 W. Clairmont Ave; 1-5pm and 6-9pm

Madison; October 22; DATCP Prairie Oak State Office Building, 2811 Agriculture Dr; 1-5 and 6-9pm

West Allis; October 23; State Fair Park Youth Center, 620 S. 84th St, Gate 5; 1-5pm and 6-10pm

Whether or not you can attend the hearing please also send a letter.  
Send Letters by Nov 7 to: DATCP Secretary; PO Box 8911; Madison, WI 53708-8911

*For More Information: In Madison contact Zev Ross at Citizens for a Better Environment (608) 251-2804 or Wisconsin's Environmental Decade (608) 251-7020; In Milwaukee contact Citizens for a Better Environment; (414) 271-7280.*



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**FOCUS: PESTICIDES**

# Regulation rollback?

■ Pest control practices are under new scrutiny as the state considers relaxing rules requiring public notice of chemical use.

**By Ron Seely**  
Environment reporter

Do you know when your child's school sprays pesticides on its lawns or athletic fields?

Do you know when a lawn company sprays pesticides in your own neighborhood?

Are you aware, when you're biking or walking in the country, whether the roadside or nearby field has just been treated with pesticides?

Critics of a proposal to change the state's pesticide rules say you'll be in the dark about these things if the changes go through. The changes, in the works for a year, have been proposed by the state Department of Agriculture, Trade and Consumer Protection, which regulates pesticide use in the state.

The agency's governing board is expected to receive the proposed changes at its meeting today and approve a series of five hearings on the issue for Oc-

tober.

Intended by the agency to streamline and simplify the existing pesticide rules, the proposed changes have been blasted as a rollback in regulation by groups ranging from Wisconsin Environmental Decade to the Wisconsin Parent Teacher Association.

Under the changes, such groups charge, the public's right to know about pesticide applications will be weakened and children will have less protection from pesticides in their homes, schools and day-care centers.

"At a time when such a review should be expanding protection," said the Wisconsin Sierra Club's Caryl Terrell, "their interest seems to have been in how they can roll it back."

Agriculture Department officials who have worked on the project are quick to admit that this has been a difficult and contentious project on which consensus has been hard to achieve. Still, they add, they tried. Advisory groups organized by the department and made up of everybody from environmentalists to pesticide applicators to cemetery managers have struggled with the issue for several months.

Agreement on anything was elusive, said Ned Zuelsdorff, director of the department's Bureau of AgChem Management.

"I don't think there is anybody who is completely pleased," Zuelsdorff said.

But Zuelsdorff said the rules had simply become too unwieldy and needed to be clarified.

Environmentalists actually welcomed a rewriting of the law and hoped to see stricter regulations in light of recent findings about the dangers of pesticides — the increased susceptibility of children, for example, to neurological impacts from exposure, or the increasing evidence that many pesticides disrupt the human reproductive and glandular systems.

"It seems the Agriculture Board has a chance to do something proactive here," said Pam Porter, director of the Environmental Decade, "and they're not taking advantage of the opportunity. I think these proposed rules are not sufficient to protect children's health. And they're threatening the public's right to know."

Others also are concerned about the department's reluctance to ban the use of pesticides around schools and day-care centers. There are letters in the agency's file from physicians and parent-teacher groups.

## PTA opposes changes

Jane Shibilski, president of the Wisconsin Parent-Teacher Association, said she was writing for the 50,000 members of the organization throughout the state. In her letter, she said the proposed changes "will do nothing to protect children from exposure to dangerous chemicals in schools, day-care centers and playgrounds."

Robert M. Kliegman, pediatrician-in-chief at Children's Hospital of Wisconsin, wrote that the proposed changes eliminate important protections for children and "fail to address the important issue of eliminating pesticides from sensitive areas like schools, day-care centers, camps, playgrounds and parks."

Agriculture Department officials said banning pesticides from schools would be difficult because the use of some substances may be necessary — on athletic fields, for example, where thick sod makes the field safer.

But Zuelsdorff said the depart-

## Pesticide proposals

The pesticide proposals that have caused the most concern are:

■ A reduction in the area of a neighborhood that would have to be notified by the applicator prior to a commercial pesticide application.

■ A change in the deadlines for applying to be in the registry of people who want to be notified of pesticide applications.

■ Changes in where lawn warning signs have to be posted. Signs would only be required at entry points to the property instead of along each border.

■ Elimination of a requirement that warning signs be posted along the roadsides adjacent to treated agricultural fields.

■ Failure to include a provision prohibiting use of pesticides near schools or day-care centers.

ment is applying for money from the federal Environmental Protection Agency for a project that will look more closely at pest control practices and minimize pesticide use in and around schools. The project will encourage voluntary reduction of pesticide use and provide more information about what pesticides are used.

As worrisome to opponents of the proposed changes is a plan to reduce the number of homes that must be notified when a lawn company applies pesticides to a lawn. Current law provides advance notice to registered individuals if they live immediately adjacent to a property that is to be treated, or on property that is on the same or immediately adjacent blocks.

## Rules 'cumbersome'

Zuelsdorff said the notification process has become too cumbersome. He said there were complaints from lawn treatment companies. "It was just getting unwieldy. We've got a few people who have given us 500 addresses in a nine-block area," he said.

Under the proposed changes, lawn companies would only have to provide advance notice of treatment to people on immediately adjacent property and not to other property on the same or adjacent blocks. They would still have to post warning signs at each treated site, although the new rules allow for fewer of those signs.

"In some people's minds, we're taking something away," said Nicholas

Neher, administrator of the department's Division of Agricultural Resource Management. "But have you lost the ability to be notified? No. And the signs will still be there."

Porter, however, said the purpose of the notification system is to allow people to register so they can find out about spraying in advance, so they can close windows or keep children inside. It does no good, she said, if they only find out about the treatment afterward.

Moving up the deadline for getting on the notification list from March 1 to Jan. 15 has also raised the ire of environmentalists and others. There are about 840 people on the list, or Landscape Application Registry, and Zuelsdorff said that under the March deadline, it was difficult for the agency to get notifications out in time for the spring spraying season.

But Terrell said people aren't generally thinking about pesticides in the middle of winter and it's likely many will miss the earlier deadline. It makes more sense, she said, to allow sign-up for the registry any time.

Porter said she hopes the agency's board takes a harder look at the growing number of reports from laboratories around the country about the dangers of pesticides.

"It just seems to me that we should be acting with great prudence," Porter said.

## GET INVOLVED

Though not yet scheduled, hearings on the new pesticide rules will be held around the state in October. Brian Swingle, a pesticide certification and licensing specialist who worked on the changes, said hearing will be held in Madison, Milwaukee, Appleton, Eau Claire and Stevens Point. Dates and times for the hearings should be known sometime in the next couple weeks. If you have comments or questions about the changes, you may contact Swingle at (608) 224-4551.

**Supporters of these recommendations represent hundreds of thousands of Wisconsin Citizens:**

Dr. Robert Kliegman, Professor and Chair, Medical College of Wisconsin and Pediatrician-in-Chief, Children's Hospital of Wisconsin

Dr. Anne Greenlee, Associate Scientist, National Farm Medicine Center, Marshfield, WI

Dr. David Watkins, Associate Professor, UW- Medical School - Madison

Dr. Claire Gervais, Family Practice, Madison

Paul Nannis, Milwaukee Commissioner of Health

Dr. Victoria Vollrath, Family Practice, Madison

Jane Shibilski, President, Wisconsin PTA

Dr. Warren Porter, Chair: Dept. Zoology, UW-Madison

Pam Porter, Executive Director, WI's Environmental Decade

Susan Mudd, Wisconsin Director, Citizens for a Better Environment

Dr. Bernard Micke, Family Practice, Madison

Sara Johnson, Exec. Director, River Alliance of Wisconsin

Rebecca Katers, Exec. Director, Clean Water Action Council

Kathleen Harris, President, WI Breast Cancer Coalition

Karen Etter-Hale, Madison Audubon Society

Dr. Robert Kerwin, Family Practice, Madison

Jan Conley, Lake Superior Greens

Caryl Terrell, Legislative Coordinator Sierra Club-John Muir Chapter

Jennifer Kushner, Executive Director, Madison Physicians for Social Responsibility

## **We Support Changes to Wisconsin's Pesticide Rule that Protect Human Health and the Environment**

Wisconsin's major pesticide rule (Ag 29), the rule that regulates most aspects of pesticide use and control, is undergoing revisions by the Department of Agriculture, Trade and Consumer Protection (DATCP). Unfortunately, while "clarifying" the rule, DATCP has **failed to make changes that protect public health and the environment**. In particular we have the following concerns:

### **(1) The Rule Does Nothing to Protect Children's Health**

#### **Pesticides Should be Prohibited from Sensitive Areas Like Schools, Daycare Centers and Playgrounds**

At a time when other states are reevaluating their pesticide policies based on the growing body of literature documenting the adverse impacts of pesticides on children, *DATCP has done nothing to reduce children's exposure to pesticides.*

DATCP needs to set standards and make rules that protect our most vulnerable, namely children and the unborn. Today's standards are based on the risk of cancer and gross birth defects for a 150-pound adult male. They do not take into consideration the special vulnerability of children before birth and early in life.



Photo: Robert Queen, DNR

Eliminating dangerous poisons from sensitive areas like schools, day care centers and playgrounds, where children spend a large percentage of their lives, is the prudent choice to protect our children's health.

Unfortunately, education and "voluntary minimization" programs aimed solely at schools will not protect our children. **In order to protect children's health, DATCP needs to require the elimination of pesticides from ALL sensitive areas.**

### **(2) The Rule Does Nothing to Reduce Risks from and Exposure to Pesticides**

Pesticides are poisons. Mounting evidence of the adverse impacts on human health (endocrine disruption, cancers, decreased fertility) and the environment (contaminated drinking water, birth defects in wildlife) illustrate the need to reduce overall risks from pesticides and to ***support the broader goal of reduction and prevention.*** DATCP should use the AG 29 revision process to:

- Increase families' right to know about pesticides
- Reduce risks from pesticides
- Encourage alternatives to chemical pest control
- Decrease day to day citizen exposure to these harmful substances

**DATCP should develop a statewide pesticide reduction initiative.**

### (3) Posting Changes Fail to Protect Public Health and Right to Know

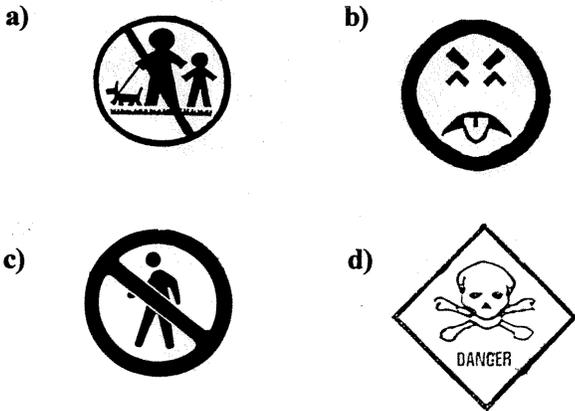
(a) Changes would eliminate posting along public roads:

Under current rules warning signs must be posted along public roads following an application of the most toxic pesticides. Proposed changes eliminate this requirement, leaving those who recreate or work along the road, or wander by accidentally, with no warning. **DATCP should protect the public's right to know about pesticide applications applied along public roads by maintaining current posting requirements.**

(b) Application warning signs are inadequate:

Warning signs need to be improved to keep families, and especially children, off treated lawns.

**DATCP should make warning signs larger and more noticeable. The symbol should be replaced with a more recognizable one (skull and crossbones, "Mr. Yuck"); the signs should be two sided, advertising and corporate logos should be prohibited.**



What do kids recognize? We do not believe that children recognize the current symbol, (a). Children may interpret this symbol as "please do not walk your dog here." b), c) & d) are each more recognizable to children.

### (4) Proposed Changes to the Pre-notification Registry Limit Families' Right to Know

(a) Elimination of the "adjacent block" concept is an unacceptable weakening of families' right to know:

Current rules allow families to receive pre-notification of a commercial lawn application on their *block* or on any adjacent *block*. This pre-notification "registry" is an important tool for families to protect themselves from exposure. Proposed changes would limit the registry to just adjacent *lots*. This is an unacceptable weakening of families' right to know. **To protect families' right to know DATCP should not limit the registry to adjacent addresses, they should instead maintain the registry block concept.**

(b) Proposed Deadline Change Limits Access to the Registry:

The current deadline is March 1. The proposed deadline of January 15 makes it more difficult for families to register for neighborhood notification.

A January 15 deadline requires people to register at a time when no one is thinking about pesticides (winter and holidays). It's only when pesticide season begins that people think about the registry and wish they had remembered to sign up. In addition, if someone moves to Wisconsin anytime after January 15 they would have to wait an entire year to get warnings of toxic applications in their neighborhood.

DATCP should have a February 1 deadline with a May 1 update. The *initial deadline* would allow people who signed up by Feb 1 to get notification of the applications in early March. The *update* would allow new residents and people who heard of the registry after Feb. 1 to receive notifications of the mid-to-late season applications.

**For More Information:** In Madison contact Zev Ross at Citizens for a Better Environment (608) 251-2804 or Wisconsin's Environmental Decade (608) 251-7020; and in Milwaukee contact CBE (414) 271-7280



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