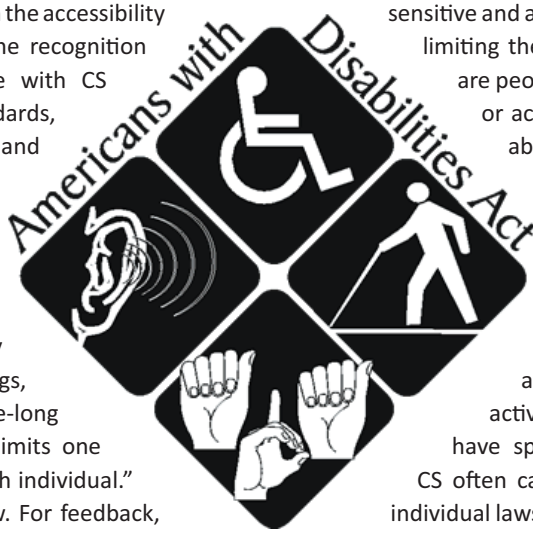
Chemical Sensitivity and the ADA

Beyond Pesticides asks the Department of Justice to recognize accessibility issues for those with Chemical Sensitivity and Environmental Illness

With a tremendous showing of support from organizations and individuals, Beyond Pesticides submitted a comment to the Department of Justice to request stronger protections under the *Americans with Disabilities Act* (ADA) for those with chemical sensitivity (CS) or environmental illness. Currently, CS is recognized as a disability on a case by case basis, but no provisions have been made in the accessibility standards for those with CS. Without the recognition of accessibility requirements for those with CS and the adoption of accessibility standards, accomodation at work, school, housing, and recreation areas is extremely difficult for many who suffer from CS with debilitating effects.



Of the individuals and organizations who signed on to the comment, many had personal stories of chemical poisonings, often pesticides, that resulted in a life-long chemical sensitivity that "substantially limits one or more of the major life activities of such individual." Read Beyond Pesticides' comment below. For feedback, read the Mail section of this issue on page 2.

CS Should Be Recognized in the Final Rule

A disability is defined as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual" [42 U.S.C. 12102(2)(A)]. While the ADA rules do include the applicability of the act to people with CS on a case-by-case basis, given that the illness "substantially limits one or more major life activities," they do not explicitly state in the proposed accessibility standards specific access requirements to assist people with CS. While recognizing CS is helpful, accessibility issues still pose a great challenge to those with chemical sensitivities. We encourage the adoption of language in the ADA regulations that explicitly acknowledges access issues and delineates accommodation for those with CS in order to ensure that public spaces are accessible to them.

The proposed rule errs in omitting environmental illness and chemical sensitivity as a standard disability (as opposed to a "case-by-case"), with a justification that people with the illness may have a "sensitivity [that does] not rise to the level needed to constitute a disability." This statement is false and out of step with environmental medicine which diagnoses CS as a chemical-induced illness from which patients suffer with debilitating effects that need accommodation. Similar to other disabilities, a diagnosis reflects a finding that patients' function is impaired, with varying severity, as a result of exposure to toxic chemicals. Eliminating the chemical exposure substantially increases their ability to function and lead normal lives.

As an organization whose primary focus is pesticides, Beyond Pesticides is in contact with people who are chemically sensitive and are exposed to pesticides, thus substantially limiting their life activities on a regular basis. These are people whose disability is not well understood or accepted by the general public, uninformed about the condition. In conveying their concerns to neighbors, employers or landlords they often receive ridicule instead of respect and accommodation. Without mentioning in the text of the accessibility standards of the ADA that those with chemical sensitivities are indeed uniformly protected when life activities are substantially limited and that they have specific access requirements, people with CS often cannot get their needs addressed without individual lawsuits to prove their disability. This becomes a burden and barrier to protection.

Preventing Future Disabilities from CS

From a societal perspective, improving accessibility standards for those with CS in housing, education, health care and employment would benefit entire communities and prevent more people from developing chemical sensitivities that can become disabilities. Many of the neurotoxic chemicals to which CS patients are sensitive have also been linked to cancer, endocrine disruption, birth defects, asthma, autism, diabetes, and other major public health threats. While it is understood that the role of the ADA is not to protect the public health of all Americans, it is important to understand the far-reaching effects on public health of improving accessibility for those with CS. In this situation, the ADA has the potential to prevent more disabilities from occurring, as CS itself and other disabilities are often induced by chemical exposure.

IPM in Public Spaces

Beyond Pesticides has targeted several key areas of access because of health threats to the general population. In Beyond Pesticides' campaigns, we have helped health care facilities and educational facilities adopt Integrated Pest Management (IPM) policies that eliminate the use of highly toxic pesticide use and make the environment healthier for patients, visitors and health care facility staff, educators, students and school staff. For those with CS, the toxic nature of the chemicals used at many hospitals,

IPM is possible for schools, public housing, prisons, and public parks—all areas that are addressed in the accessibility standards for the ADA.

health care facilities and schools makes it impossible for them to receive adequate health care or an education. Alternatives such as IPM for pest management are effective, economical, better for public health, and enable those disabled with CS to utilize the facilities. For more information on IPM in hospitals, see attached copy of Healthy Hospitals. This report outlines the deficiencies in the regulatory process for pesticides as well as the availability and economic advantages of using IPM.

More information on the total health effects of hospitals from building materials to pesticide use is available from the organization Health Care Without Harm (www.noharm.org). The issue of access and building health from a chemical sensitivity perspective requires a holistic view of the problem. Health Care Without Harm has reported on building materials, pesticide use, waste disposal and other focal points for those with CS and the general population. This information is applicable to all public buildings, not just hospitals and health care facilities.

In addition to hospitals, IPM is possible for schools, public housing projects, prisons, and public parks—all areas that are addressed in the accessibility standards for the ADA. Considering the number of people who are chemically sensitive in this country (6% of the population is identified as "unusually sensitive"), not addressing in the ADA access issues for these people undermines efforts at all levels to ensure that such illnesses are treated as genuine disabilities. This unfortunately contributes to the continued public misunderstanding of CS as a disability.

Multiple Agency Involvement

In deferring judgment on whether to include specific provisions for environmental illnesses in the ADA, the text says, "The addition of specific regulatory provisions relating to environmental illness in the final rule would be inappropriate at this time pending future consideration of the issue by the Architectural and Transportation Barriers Compliance Board, the Environmental Protection Agency, and the Occupational Safety and Health Administration of the Department of Labor." This interagency paralysis effectively limits movement forward on this issue.

Despite a lack of rulemaking, EPA has recommended that schools use IPM practices because, "Children are more sensitive than adults to pesticides." Likewise, people with chemical sensitivities are more sensitive to pesticides than the "average" population. If EPA recommends IPM for schools as an effective and less costly method than using pesticides, it makes sense that these principles be applied to other public areas such as hospitals, public housing, public buildings, and other public sites. The ADA has the capability to address this issue in its accessibility standards, and according to the EPA's own judgments, a cost-benefit analysis would clearly be in favor of adopting IPM methods, especially as it relates to those diagnosed with CS. There are numerous other sources that find IPM approaches to be cost-competitive and efficacious.

One common misperception is that pesticide registration by EPA means a pesticide is "safe." There are myriad examples of pesticides for which this is not the case. Some of these products have been cancelled, but many remain in common usage. EPA's risk assessments for pesticide registrations allow toxicity, and do not ensure regulation to protect those who are disabled by CS. Rather, pesticide testing methodology and risk assessment calculations only focus on healthy population groups. These products are often debilitating for those with CS, hindering "one or more major life activities." When these major life activities include getting proper health care, people are placed in impossible predicaments. Given that toxic pesticides are unnecessary if public spaces are maintained using IPM practices, the acknowledgment of CS as a disability under the ADA accessibility standards and the implementation of IPM practices would not only address access issues, it would save money and make public spaces healthier.

Imposing stricter regulations than those enforced by EPA for specific pesticides or in certain areas has a precedent in state and municipal regulations of pesticides. In many states, pesticides approved by EPA are not approved by the state pesticide regulators because of local environmental or public health issues, sensitive areas or exposures not considered by EPA. Many municipalities throughout the country have implemented IPM practices for their buildings and grounds. These examples are merely to illustrate that EPA's regulations are a baseline, not standards that universally protect public health, especially those disabled by CS or environmental illnesses. Requiring tougher standards under the ADA would not be without precedent, but would be an extension of the realization that many of the products used on buildings and grounds are toxic and disabling for a substantial subset of the population.

HUD Recognizes CS as Handicap

The final regulations should extend and strengthen the standard embraced by the Department of Housing and Urban Development (HUD) in recognizing CS and environmental illness can be a

"handicap," with all the protections afforded those disabled by this illness. In a 1992 memorandum entitled "Multiple Chemical Sensitivity Disorder and Environmental Illness as Handicaps," the Office of General Counsel in the Department of Housing and Urban Development clearly defines CS and environmental illness as possible "handicaps" within the meaning of subsection 802(h) of the Fair Housing Act, 42 U.S.C. Section 3602(h), and the Department's implementing regulations, 24 C.F.R. Section 100.201 (1991)." Rather than equivocate on this debilitating condition, protection should be ensured under the proposed rulemaking including one's place of residence. HUD recognizes under its governing statute that, "While MCS or EI can be handicaps under the Act, ordinary allergies generally would not be." The Department of Justice under the ADA should strengthen HUD's approach, rather than dismiss CS and the protections that should be afforded those with the illness, simply because there are others in the population whose conditions "will not rise to the level needed to constitute a disability."

People with CS Want to Participate

Some of Beyond Pesticides' members suffer from CS as a result of pesticide exposure, and their difficulty finding suitable housing, employment, healthcare and protection under the law is a testament to how disruptive this disability is in their lives. Linda Baker, a former teacher and coach in Kansas who was poisoned by the pesticides used at her school writes:

With proper accommodation, I would still be teaching and coaching today! Officially recognizing not only the life-changing severity of CS, but also the value of "avoidance" in treating it would help building administrators understand how to keep employees with this disability on the job. I have many friends who are also disabled by CS. Not one of them wanted to quit their job! But lack of accommodation caused their illness to progress to the point where they could no longer work. CS takes a huge toll on individual lives and results in unnecessary loss of productivity. I urge you to officially recognize CS/Environmental Illness as a disability requiring accommodation for accessibility. The chemical barriers that prevent those with CS from entering buildings are every bit as limiting as lack of a ramp would be to someone in a wheelchair. Those with CS deserve the same rights as other citizens.

In Ms. Baker's case, she was able to hire a lawyer and settle for a small amount, but this by no means met her medical costs or her lost retirement earnings. It also limited her ability to feel productive and continue doing what she loved to do. This situation was completely avoidable if school IPM practices had been adopted, but her access issues were misunderstood and dismissed. Life becomes a constant battle of finding a suitable place to live and work once someone has become chemically sensitive.

Proposed Language for Rulemaking

Beyond Pesticides suggests that the rulemaking include the following language: "Integrated pest management (IPM) practices to protect those disabled with chemical sensitivity (CS) or environmental illnesses and ensure access are required in public facilities or properties to include the following practices: identification of pests and conditions that attract pests; prevention techniques, such as sanitation, vacuuming, structural repair and sealing; monitoring; education and training; approved least toxic chemicals whose use does not, by virtue of its neurotoxic or other properties, impair the abilities of those with CS; and pre-notification and posting of chemical use."

Conclusion

Not codifying CS and environmental illness as disabilities with specific access requirements and forcing a case-by-case analysis effectively creates an excessive burden and barrier to protections that are critical to the survival of those with the illness. Recognizing CS as a potential disability is a step forward for those whose lives have been impaired by chemical sensitivities, but the ADA rules must take the next step forward and recognize the accessibility issues that those with CS face in their daily lives for housing, employment, education, recreation, and transportation. This would be a tremendous step forward in enabling equal access. While the proposed rulemaking recognizes CS as a disability on a case-by-case basis, in its failure to adopt a uniform response to CS disability and identify accessibility issues and accommodation for those with CS, it violates the spirit, intent and letter of the *Americans with Disabilities Act.*

Beyond Pesticides
701 E Street SE #200 Washington, DC 20003
(202) 543-5450 | www.beyondpesticides.org