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April 5, 2006

Docket # EE-RM-PET-100

Ms. Brenda Edwards-Jones
US Department of Energy
Building Technologies Program
Mailstop EE-2J, Room 1J-018
1000 Independence Avenue, SW
Washington DC, 20585-0121

Dear Ms. Edwards-Jones:

The Multi-housing Laundry Association (MLA) is a nonprofit trade association representing the companies that supply professional laundry services in common-area laundry rooms in multi-family residences – such as apartment buildings, college dormitories, and military bases. MLA member companies lease space for common-area laundry rooms, provide and install the machines, service and repair them, and design and operate safe and attractive laundry facilities for residents of multi-family buildings. Tens of thousands of apartment house owners and managers throughout the United States use the services of MLA member companies to provide their tenants with a professionally operated laundry facility. This translates to approximately 3 million machines (washers and dryers) nationwide, serving 35-50 million Americans.

MLA is submitting this letter in support of the State of California's *Petition to Exempt from Preemption California's Water Efficiency Standards for Residential Clothes Washers* ("Petition"). The Department of Energy has requested comments on this Petition by notice in the Federal Register.¹ As described in further detail below, our industry has for more than four years been involved in issues concerning energy and water efficiency of clothes washers. Our goal today, as it has been over the past four years, is to achieve a level regulatory playing field between the commercial and residential sectors of the clothes washer industry, which we believe will also best protect the environment by reducing water and energy use. Although we understand that the manufacturers of clothes washers do not support this Petition, we believe that the goals we seek will be more rapidly attained if the Petition is granted.

¹ Energy Efficiency Program for Consumer Products: California Energy Commission Petition for Exemption from Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers, 71 Fed. Reg. 6022 (Feb. 6, 2006).

1. Federal regulatory system.

The Department of Energy, under the Energy Policy and Conservation Act and the National Appliance Energy Conservation Act (NAECA), sets energy efficiency standards for clothes washers. In 2001, DOE established an updated energy efficiency standard for residential clothes washers.² Although the residential-style commercial clothes washers used by MLA members are virtually identical to the federally regulated residential clothes washers,³ they are not covered by the standards set by DOE under NAECA. This exclusion is not mandated by either statute or regulation; rather, it arises solely from historical DOE treatment of clothes washers used outside individual residences as outside NAECA's purview, despite the similarity of the two kinds of machines and the use of both kinds of machines by consumers.

Because federal regulations, as interpreted by DOE, do not cover residential-style commercial clothes washers, the states are not preempted from addressing the energy efficiency of these appliances.⁴ Therefore, some states took steps to regulate the energy efficiency – and, more important, the water efficiency – of these machines. California was the first state to do so.

2. **Recent History of California Regulation of Clothes Washers.**

A. **California Legislation and Regulation**

In September 2000, the California Assembly passed AB 970, the California Energy Security and Reliability Act, requiring the California Energy Commission (CEC) to institute energy efficiency standards for appliances. In November 2001, the CEC responded to AB 970 by issuing a Notice of Proposed Action that included *both residential clothes washers and residential-style commercial clothes washers* in the list of regulated items.

Residential Clothes Washers. California's inclusion of residential clothes washers on the November 2001 list of regulated appliances was unusual because (as noted above) state regulation of residential clothes washers was at the time and continues to be preempted by Department of Energy federal energy efficiency standards. However, this proposed regulation was identical to the federal standards – which regulate only *energy* efficiency, not *water* efficiency.

Later, in 2002, the California Assembly passed a law requiring the CEC to amend the California appliance energy efficiency regulations to include *water* efficiency standards, even though water efficiency standards are preempted by the existing federal energy efficiency

² Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards, 66 Fed. Reg. 3314 (Jan. 12, 2001).

³ The only differences between the residential clothes washers covered by the federal program and the residential-style commercial clothes washers used by MLA members is that the residential-style commercial clothes washers are outfitted with a payment device and include fewer user options.

⁴ As DOE is well aware, because of the close connection between energy and water usage in clothes washers, preemption from energy regulation also precludes water regulation in these machines. Conversely, if a state is not preempted from energy regulation, then the state may also regulate water usage in this set of appliances.

standards for residential clothes washers.⁵ Therefore, that law also directed the CEC to petition DOE for an exemption from “any relevant federal regulations governing energy efficiency standards that are applicable to residential clothes washers.” The resulting Petition is the subject of this inquiry and MLA’s comments.

Residential-Style Commercial Clothes Washers. Under the November 2001 California regulations, residential-style commercial clothes washers were to be regulated for *both energy and water* efficiency. Both the Association of Home Appliance Manufacturers (AHAM) and MLA were concerned about the impact that these California standards would have on consumers and on the multi-housing laundry market and, as set forth below, opposed these regulations.

B. MLA’s Response to California’s Regulation of Residential-Style Commercial Clothes Washers.

The residential-style commercial clothes washer market is a very small portion of the overall clothes washer market in the United States. Approximately nine million residential-sized clothes washers are sold each year; of these, approximately 230,000 are residential-style commercial clothes washers – 2.5 % of the total residential/residential-style clothes washer market. Of the residential-style commercial clothes washers sold each year, approximately 17% of them are sold in California.

MLA’s Analysis. MLA was concerned that the end result of the California regulation would be the imposition of water and energy efficiency standards on approximately 39,000 residential-style commercial clothes washers, or 0.4% of all clothes washers sold in the US annually. These small numbers mean that production of residential-style commercial clothes washers that would comply with the California standards would be an extremely small, boutique business and could not benefit from manufacturing economies of scale. In particular, there would be little incentive to provide water efficiency in other clothes washer platforms. MLA feared the end result: *Residential-style commercial clothes washers that met the California energy and water efficiency standards would be several times more expensive than the standard models used by MLA members.*

More specifically, while the MLA members purchase the residential-style commercial clothes washers, landlords – who pay the utility bills at the properties where the clothes washers are installed – reap the benefits of any increased energy efficiency. Therefore, to recoup their increased cost of machines, MLA’s members would have to increase the price per load of laundry that consumers pay. This would probably substantially increase the price to consumers if – as we expected – the machines became several times more expensive than the standard models. Consumers using MLA machines – who are often located in poorer, urban areas – would be hard pressed or unable to pay the very high per-load prices that would be required to recoup this cost, with very negative results.

In addition, a substantial increase in prices of residential-style commercial clothes washers, particularly in comparison to residential clothes washers, would provide an incentive for use of in-unit (residential) machines rather than common area (residential-style commercial) machines. To the extent in-unit machines are substituted for common area laundry rooms, this would result in significant increases in water and energy consumption, ultimately damaging the

⁵ California Assembly Bill 1561 (Kelley), Chapter 421, Statutes of 2002, enacting California Public Resources Code section 25402(e)(1).

environment, both because commercial machines would be far more water-efficient and energy efficient than “residential” machines in in-unit laundry facilities, and because consumers run considerably more cycles in in-unit machines than coin-operated machines.⁶

MLA initially resisted the balkanization of commerce that would result if different states should adopt divergent standards. In an effort to preserve lower-cost options and avoid divergent standards, MLA, along with other industry groups (including the Association of Home Appliance Manufacturers), first attempted to have residential-style commercial clothes washers regulated under the Department of Energy’s federal energy efficiency standards.⁷ Our goal was geographic and substantive uniformity, so that residential-style commercial clothes washers and residential clothes washers would *both* be subject to the same federal energy efficiency standards, nationwide, with no segment of the market subject to different state-imposed water efficiency standards. With uniformity, the clothes washers necessary for our business would be part of a much larger design and manufacturing pool; these economies of scale would result in lower prices across the country with concomitant cost savings for the consumer.

MLA’s Federal Efforts. From late 2002 through late 2003, MLA approached both DOE and Congress in attempts to have the existing federal energy standards for residential clothes washers applied to residential-style commercial clothes washers. DOE did not respond, apparently being reluctant to regulate residential-style commercial clothes washers without a clear statutory inclusion of those machines within DOE’s appliance efficiency program. The House and Senate energy committees ultimately decided not to consider any statutory inclusion in the absence of agreement between all potentially interested parties, specifically including both manufacturers and energy efficiency advocacy groups.

Upon realizing that congressional action would not be forthcoming without a policy agreement among all interested parties, MLA engaged in conversations with members of energy efficiency groups. However, these proved unsuccessful. MLA was left with the impression that nationwide *water* efficiency standards for all clothes washers was a key policy objective of the energy efficiency groups, one that they intended to achieve as follows:

- 1) Because energy efficiency is not federally regulated in residential-style commercial clothes washers, states are not preempted from establishing state water efficiency standards. Therefore, states were encouraged to pass energy *and* water efficiency standards for residential-style commercial clothes washers.
- 2) When faced with varying efficiency standards in multiple states, manufacturers – who initially refused to consider water efficiency standards – would eventually agree that nationwide standards are better than piecemeal, state-by-state standards, even if those nationwide standards include water efficiency.
- 3) Once the energy efficiency groups and manufacturers were in agreement, they could go to Congress together and propose “noncontroversial” statutory federal

⁶ See, e.g., National Research Center, A National Study of Water and Energy Consumption in Multifamily Housing: In-Apartment Washers v. Common Area Laundry Rooms, Nov. 2002.

⁷ As noted earlier, the federal energy efficiency program also preempts states from imposing their own water efficiency standards.

energy and water efficiency standards for residential-style commercial clothes washers.

- 4) Once these statutory standards were in place, the existence of national standards for residential-style commercial clothes washers could be used as leverage to implement water efficiency standards for residential clothes washers.

Given their apparent ultimate goal of water efficiency standards for residential clothes washers, the energy efficiency advocacy groups were not willing to join with MLA in its effort to have the energy efficiency (but not the water efficiency) of residential-style commercial clothes washers federally regulated. MLA was slowly but surely losing its fight.

In 2005, the advocacy groups and manufacturers – without MLA involvement or support – apparently reached an agreement that resulted in the inclusion of water efficiency standards for residential-style commercial clothes washers in the Energy Policy Act of 2005. The result of this agreement is contained in the Act: All residential-style commercial clothes washers nationwide are soon to be subject to both energy and water efficiency standards. But residential clothes washers continue to be subject only to federal energy efficiency standards. The playing field is less level than before.

3. MLA Support for the California Petition.

The paramount questions the Petition now pose for MLA are whether residential clothes washers will ever be subject to water efficiency standards, and if so, how quickly might that happen. MLA's principal objective remains gaining a level playing field between residential clothes washers and residential-style commercial clothes washers. Against the backdrop of the Energy Policy Act of 2005, MLA now sees the granting of this Petition as furthering our members' goal of having a uniform regulatory regime for all residential-style clothes washers, whether used in the home or in a common area laundry room.

More broadly, MLA believes that the country is now inexorably moving towards national water efficiency standards for all residential-style clothes washers. MLA believes it is important that those national standards be instituted sooner rather than later. Otherwise, there will be added costs to consumers and injury to our industry caused by the existing disparities. For example, builders of new multi-family housing – a sector that is growing with particular speed in the southwestern United States, where water shortage problems are more pronounced than in other areas of the country – will be likely to build in-unit laundry facilities, rather than common-area laundry rooms. This is because the machines that must be installed in common-area rooms are residential-style commercial clothes washers, which must meet a federal statutory water efficiency standard. For in-unit laundry installations, builders are permitted to use less-water-efficient, less-expensive residential clothes washers. That will result in significant harm to the environment, because, as stated above, the in-unit “residential” machines will be less water-efficient and less energy efficient, and because consumers run far more cycles in in-unit machines than they will run in coin-operated machines in common area laundry rooms.

MLA realizes that the California water factor that would go into effect, were the Petition to be granted, is stricter than the water factor that was statutorily imposed on residential-style commercial clothes washers in the Energy Policy Act of 2005. This disparity is far from ideal. To correct the disparity, we believe that the Department of Energy has the authority to create a

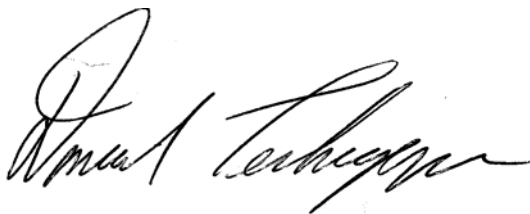
convergence of both energy and water efficiency standards across the clothes washer industry. It is our hope and expectation that – in the best interests of MLA, manufacturers, energy efficiency advocates, consumers, the environment, and states – the Department will do so. MLA strongly urges DOE to accomplish this win/win result by publishing a rule that applies a water factor of 9.5 to *both* residential clothes washers and residential-style commercial clothes washers.

MLA would have preferred that water efficiency standards be established by Congress for both residential and residential-style commercial clothes washers. However, we understand that the manufacturers would not support the application of a water factor to residential clothes washers at this time, and that it may be unlikely that such a Congressional action would occur without manufacturer support. Therefore, when faced with a choice between accepting the discordant status quo (in which water efficiency standards apply only to residential-style commercial clothes washers) and moving towards uniformity (where water efficiency standards apply to all similarly situated clothes washers), we support the progression towards uniformity that we believe will occur by granting of the California Petition.

MLA believes that a California water efficiency standard for residential clothes washers will result in more rapid achievement of nationwide uniformity. As it has in the recent past, we think imposition of disparate individual state water efficiency standards will spur all the interested parties to reach agreement on a national, uniform standard. And, ultimately, as was done in the Energy Policy Act of 2005, we believe the manufacturers and energy efficiency advocacy groups will join together to ensure that new, uniform, federal standards for water efficiency are enacted that apply to both residential-style commercial clothes washers and residential clothes washers. The sooner this happens, the better for all – our industry, consumers, and the environment.

In summary, because we believe in achieving national uniformity between the water and energy efficiency regulation of residential-style commercial clothes washers and residential clothes washers as soon as possible, MLA supports the Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Terheggen". The signature is fluid and cursive, with a large initial "D" and "T".

Daniel Terheggen
MLA President
sns