

**Mercury Policy Project * Sierra Club * Clean Water Action * Greenpeace *
US Public Interest Research Group * Health Care Without Harm * Physicians for
Social Responsibility * Int'l Academy of Oral Medicine and Technology
* Consumers for Dental Choice * State Environmental Leadership Program *
Natural Resources Council of ME * Valley Watch IN * OH Environmental Council
* Women's Voices for the Earth MT * LA Audubon Council * PA Coalition for
Mercury-Free Dentistry * CA Indian Environmental Alliance * Clean Wisconsin *
IA Environmental Council * Mercury Free WI * TN Clean Water Network *
MT Environmental Information Center * OR Center for Environmental Health ***

June 15, 2009

Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

jackson.lisap@epa.gov

VIA Email and US Postal Service

Dear Administrator Jackson,

Thank you for your strong leadership and support for mercury reduction initiatives, including regulating coal-fired power plants and for developing a legally binding treaty on mercury. While you are taking a leadership role on mercury, we respectfully urge you to terminate a misguided Memorandum of Understanding (MOU) adopted during the waning days of the Bush Administration between the Environmental Protection Agency (EPA) and the American Dental Association (ADA). We believe that it will be more productive to promote meaningful reductions of dental mercury into the water and air through goal-based regulatory controls on mercury releases by the U.S. dental industry, including mandatory employment of best management practices and amalgam separators.

EPA has had a history under the previous Administration of ignoring the significant discharge of mercury by the dental community and placating the promotion of voluntary initiatives by the ADA even where mandatory programs were indicated. ADA initiated its voluntary program for best management practices when it first published and distributed them to its membership in 2003. In October of 2007, the ADA's Best Management Practices (BMPs) was amended to include the recommended use of amalgam separators. The ADA published its first report in 2002 on amalgam separators, followed by an article in 2003 and 2008. Clearly, there is no longer any novelty to the idea of installing amalgam separators as part of BMPs to protect the environment.

Congressional hearings have failed to elicit sufficient recognition of the dental mercury problem or steps necessary to remedy them by the Agency.^{1,2} In fact, information provided by the Mercury Policy Project to Congress clearly indicates that dental mercury releases are far greater than previously thought.³

While Congress had asked the prior EPA Administrator for a response to the findings of the Congressional hearings, the Agency thus far to our knowledge has not adequately responded or clearly recognized the significance of the Congressional findings⁴ or information from manufacturers indicating sales numbers of amalgam separator in non-regulated areas of the U.S. at only about 1-2 percent. More recent Agency activities, discussed below, suggest that EPA has exerted significant resources to shield the dental sector from meaningful mercury pollution reduction practices when nearly all other sectors using or emitting mercury are under increasing Agency scrutiny and regulation.

On December 29, 2008, EPA, ADA and the National Association of Clean Water Agencies signed a MOU to address the issue of dental mercury discharges and suggests the installation of amalgam separators on a “Voluntary” program. As stated in the MOU, EPA “...did not identify...the dental sector...for rulemaking”...because they have demonstrated “...significant progress through voluntary efforts” and therefore “a lower priority for effluent guidelines, particularly where such reductions are achieved by a significant majority of dentists utilizing amalgam separators.”

The MOU further suggests the ADA will gather data to establish a baseline for the number of amalgam separators installed and educate its membership. This is troublesome based on ADA’s track record of actively opposing any mandatory separator programs or requirements at the local and Federal level. Reading further into the MOU, the discussion appears to indicate that once a baseline is established would be to have a 10% increase in the number of separator installations per year. At our estimate of approximately 30,000 installations it would take 30 years to gain full compliance.

Clearly, the MOU is a stall tactic to buy more time to avoid installation of amalgam separators. It is also inconsistent with the state input in their letter to EPA.⁵ Surprisingly, local governments with pretreatment programs, states and the environmental community were left out of the process that EPA was involved in that originally formulated the MOU. Even more disturbing, EPA Regional Pretreatment Coordinators that oversee the municipalities that are most affected by this MOU were not consulted. Most surprisingly, at a meeting with EPA staff, some of us were informed that our participation in discussions about the MOU is contingent upon ADA’s approval.

¹ <http://domesticpolicy.oversight.house.gov/story.asp?ID=2066>

² <http://domesticpolicy.oversight.house.gov/story.asp?ID=1614>

³ <http://mpp.cclearn.org/wp-content/uploads/2008/08/benders-testimony.pdf>

⁴ <http://mpp.cclearn.org/wp-content/uploads/2008/08/attached-letter-from-the-subcommittee-to-epa-administrator-steve-johnson.pdf>

⁵ http://www.ecos.org/files/3406_file_QSC_Letter_to_US_EPA_on_Dental_Amalgam_12_16_08.pdf

Finalized last fall, EPA's 2008 Effluent Guidelines Plan (EGP) sought to deflect attention from dental mercury emissions. Even where data has clearly shown that voluntary amalgam separator programs are ineffective, EPA used the EGP to take the position that the dental community has "made significant progress through voluntary efforts." This is a clear misrepresentation that must be corrected in order for the Agency to embrace a more facts-based approach before determining next steps for moving forward.

Finally, under your leadership, the New Jersey Department of Environmental Protection mandated separators for dental clinics in the state since so-called "voluntary compliance" did not work there (nor to our knowledge anywhere else.) Therefore, given this and all the other reasons stated above, we, the undersigned, strongly urge you to terminate the EPA MOU with ADA. In its place we would respectfully recommend that the Agency establish goal-based regulatory controls and a nationwide requirement for BMPs, including the installation of amalgam separators, to prevent large amounts of mercury from being discharged from the dental sector. We also respectfully request that we in the environmental, health and consumer organizations be kept informed of all development, and allowed to participate in any Agency policy meetings concerning dental mercury release reduction.

We look forward to your response and respectfully request a meeting to discuss our issues and concerns. Thank you.

Sincerely,

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