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November 23, 2011

Water Docket
Environmental Protection Agency
Mailcode 4203M
1200 Pennsylvania Avenue NW
Washington, DC 20460
ATTN: Docket ID No. EPA-HQ-OW-2008-0517

Subject: Comments on the Final 2010 Effluent Guidelines Program Plan

Tri-TAC is pleased to submit comments to the U.S. Environmental Protection Agency (USEPA) on the Federal Register Notice for the Final 2010 Effluent Guidelines Program Plan, and specifically the decision to develop pretreatment requirements for the Dental Industry. As background, Tri-TAC is a technical advisory group for publicly-owned treatment works (POTWs) in California. It is jointly sponsored by the California Association of Sanitation Agencies, the California Water Environment Association, and the League of California Cities. The constituency base for Tri-TAC collects, treats, and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

In anticipation of a federal ruling regarding regulations for the Dental Industry, Tri-TAC submitted a comment letter to USEPA expressing our concerns in July 2011 (attached). As indicated in the Federal Register Notice, these comments were not considered by USEPA while finalizing the 2010 Effluent Guidelines Plan. Therefore, Tri-TAC would like to reiterate our comments regarding the development of pretreatment requirements for the Dental Industry, as described below.

As USEPA moves forward with the development of pretreatment requirements for the Dental Industry, Tri-TAC would like to emphasize that a different approach from the typical federal pretreatment program design is critical to the success of controlling the discharge of dental amalgam to sanitary sewers. The pretreatment program should not be developed to simply “fit” the 40CFR403 regulations currently in place. The uniqueness of the services dentists provide and the professional nature of dentists must be considered during the program development process. The regulations should be devised to maximize effectiveness while allowing flexibility to implement the standards in order to optimize state and local agencies’ resources. Specifically, factors Tri-TAC urges USEPA to consider as part of the Dental Industry pretreatment regulations include mercury impairments, program applications, and program implementation—including best management practices (BMPs) and a registration and/or certification program.

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First, the dental program regulations should take into account the linkage between discharges of mercury and impaired water bodies. Particularly, Tri-TAC recommends that the new standards apply to amalgam generating dental practices' discharges and any standards applicable to POTWs should only be considered when the receiving water body is mercury-impaired. Specifically, POTWs that discharge to receiving waters identified as mercury-impaired on a 303(d) list under the Clean Water Act should require dentists in their service area to meet the federal standards to control the discharge of dental amalgam to sanitary sewers. The federal pretreatment program is very comprehensive and requires significant staffing and other resource demands for local municipal agencies. As such, scarce public resources should only be directed toward efforts that produce clear water quality benefit.

The USEPA should also consider how the pretreatment program will apply to municipalities. Currently, POTWs with a design flow of less than 5MGD are not generally required to participate in the federal pretreatment program. Tri-TAC requests that this exemption also apply to the Dental Industry pretreatment requirements to be developed. Furthermore, agencies in the United States that already have successful dental amalgam control programs in their local communities should not have to alter their programs according to new federal regulations developed. The pretreatment regulations should be written such that effective dental amalgam programs can continue to be administered in the same manner without mandating additional requirements for dentists participating in the programs.

Lastly, implementation of the Dental Industry pretreatment program is a key aspect of the regulation and should be carefully considered by USEPA. As part of the implementation of the dental pretreatment program, Tri-TAC requests that the regulations be based on BMPs developed in conjunction with interested stakeholders as opposed to effluent limitations. The BMPs should allow for local flexibility so site-specific models can take into account size of community, number of dentists, mercury impairments, etc. There are many well-developed BMP-based models that USEPA could refer to as examples throughout the United States. Examples of successful models are being implemented in the San Francisco Bay Area, where 85% or more of dentists are already participating in control programs, and programs in New England, where several states have strong dental amalgam control programs. As mentioned previously, implementation requirements for the Dental Industry should not be subject to the current standards found in 40CFR403 (i.e. baseline monitoring reports, compliance schedules, compliance reports, publication of Significant Non-Compliance, etc.) including specific implementation standards by POTWs (e.g. control mechanisms, sampling, inspections). Instead, the Dental Industry pretreatment program should require a one-time registration and/or certification, preferably a system administered by the USEPA to achieve efficiently through economies of scale to develop the new system.

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Tri-TAC is in agreement with USEPA's goal of reducing mercury in the receiving environment and would support a federal dental pretreatment program that incorporates the comments and recommendations herein. We would be happy to answer any questions or provide additional information. Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terrie L. Mitchell".

Terrie L. Mitchell
Tri-TAC Chair

Attachment



Ben Horenstein
Tri-TAC Chair
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July 15, 2011

Mr. Damon Highsmith
Office of Science and Technology, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW 4303T
Washington, DC 20460

Subject: Comments on Federal Dental Amalgam Program Currently Under Development

Dear Mr. Highsmith:

Tri-TAC appreciates the opportunity to provide comments to you as you develop a potential federal rulemaking regarding dental amalgam control requirements that would apply to the entire United States. Tri-TAC is a technical advisory group jointly organized by the California Association of Sanitation Agencies (CASA), the California Water Environment Association, and the League of California Cities. Together these statewide associations comprise many cities and special districts that provide wastewater collection and treatment for most of the 37 million people in California.

Tri-TAC is very concerned about the direction that USEPA appears to be moving toward in designating dentists Categorical Industrial Users (CIUs) under the federal pretreatment program. We believe it is inappropriate to classify dentists in this way. The uniqueness of the services dentists provide, and the professional nature of dentists, means that a different approach is critical to the success of controlling the discharge of dental amalgam to sanitary sewers.

Further, nationally regulating dentists that may discharge dental amalgam as Significant Industrial Users (SIUs) is a very extreme way to control the discharge of mercury to the environment. Tri-TAC suggests that only publicly-owned treatment works (POTWs) that discharge to receiving waters identified as impaired on a 303(d) list under the Clean Water Act should be considered by USEPA to require dentists in their service area to control the discharge of dental amalgam to sanitary sewers. It is a waste of public resources for local agencies to set up programs when a receiving water impairment does not exist. In addition, for those hundreds of agencies around the United States that already have successful dental amalgam control programs in their local communities, a new federal program that adds bureaucracy without any significant benefits is not good public policy.

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Another significant problem in classifying dentists as CIUs is that many POTWs around the country that do not currently operate a pretreatment program may all of a sudden, under this approach, be required to develop a pretreatment program. Currently, POTWs with a design flow of less than 5 MGD are not generally required to participate in the federal pretreatment program, a very comprehensive program with significant staffing and other resource demands for local municipal agencies. However, based on current practices, designating dentists as CIUs would most likely result in the receiving POTW being required to develop a pretreatment program which would be a potentially large burden for small agencies. In addition, even for those agencies that currently have a pretreatment program, adding dentists to their program could increase the program scope and costs by 100-1,000% or more, given there are many more dentists than the current number of SIUs in most communities.

Tri-TAC understands that USEPA is under congressional pressure to do something to control mercury discharges to the environment, including minor sources such as dental amalgam. Tri-TAC recommends that USEPA take no action in regulating dental amalgam on a national level. However, in the event dental amalgam regulations are developed, Tri-TAC believes that USEPA should reduce the magnitude of the costs to dentists and pretreatment programs by ensuring the proposed dental amalgam regulations specify that all dischargers subject to the dental amalgam regulations are non-significant CIUs, not subject to requirements found at 40 CFR 403.3 (v)(2) and that Baseline Monitoring Reports, compliance schedules, and 90-day compliance reports not be required. Furthermore, the dischargers subject to the dental amalgam regulations should not be subject to publication in Significant Non-Compliance. Tri-TAC also believes that instead of effluent limitations, any proposed dental amalgam regulation should be based on BMPs developed by USEPA in conjunction with interested stakeholders. Additionally, the proposed dental amalgam regulations should require a one time registration and/or certification by the dental offices in lieu of control mechanisms, sampling, and inspections by the POTWs.

If USEPA proposes a regulation based on BMPs, they can rely on many previously well developed non-SIU-based models as examples. Different localities use different models, depending on such criteria as the size of the community, number of dentists in a community, whether local waterway(s) are impaired for mercury, etc. Examples of successful models are being implemented in the San Francisco Bay Area, where 85% or more of dentists are already participating in control programs, and programs in New England, where several states have strong dental amalgam control programs.

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Tri-TAC hopes that USEPA will incorporate these comments and suggestions into the development of the federal dental amalgam control program. We would be happy to answer any questions or provide additional information. Thank you very much.

Sincerely,



Ben Horenstein
Tri-TAC Chair

cc: Senator Diane Feinstein, CA
Senator Barbara Boxer, CA
Alexis Strauss, USEPA Region IX
Tom Howard, California State Water Resources Control Board
Gene Wurth, Executive Director, American Dental Association