



Inside Pretreatment – Special Edition Newsletter

April 9, 2009

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Hi everyone,

I hope spring is coming to you soon. We finally started getting snow which is hard to take after all of those 60 degree days. At my previous place of employment, a previous co-worker was disciplined for using my name. Seriously. I feel sorry for my successor. But I miss my previous co-workers. No longer can I use my name when I email them. I only sign them “He Whose Name Shall Not be Spoken” or “HWNSNBS”. Sounds like a Harry Potter movie. Names withheld because I tend to believe in a general quid pro quo concept.

As you read this newsletter, please recognize that without POTW involvement, state and federal regulatory agencies may often make bad decisions or do nothing. You cannot rely on other special interest groups to represent you (though it is easier). Over 90% of the POTW are not represented in pretreatment by any group. Individuals make a bigger difference when they make their voice heard. Below you will read about something where it is too late to intervene at the State level. However, EPA has clear jurisdiction and has so far not taken any identifiable action. With the new philosophy of transparency, I believe they will hear and LISTEN to you. This affects all POTWs, therefore you are truly “Interested Parties”.

It takes time to review documents and make comments. If you read this newsletter (thank you) and you agree with the problems I have identified, you are welcome to forward this newsletter to appropriate EPA contacts. At least make your opinions heard, pro or con. I have provided the EPA contact email addresses in this newsletter.

The Michigan Amalgam Separator Law

House Bill 6307 was signed by the Governor January 12, 2009, and effective January 13, 2009. This Bill was introduced by Reps. Donigan, Polidori, Condino, Alma Smith and Leland.

This Bill prohibits local governments from implementing and enforcing local legal authority on dentists, negates the objectives of the Pretreatment Regulations, and in all cases prohibits the POTW from acting to protect its POTW and the Environment where mercury problems are identified.

This Bill, if allowed to remain in place by EPA, will set a precedent for similar actions across the U.S.

There is already movement to promote this approach in other parts of the U.S. EPA and/or the ADA could tell us where this is occurring. EPA aligned itself with the ADA in a MOU discussed in the previous CWACS newsletter. Forget all the language about protecting mandatory mercury control programs, POTW pretreatment programs and the new partnership being forged. If the ADA knows about any efforts to undermine pretreatment requirements through other state law development, then it should come clean to EPA. Maybe the ADA should even intervene to dissuade this undermining of local pretreatment programs. The ADA spoke about “partnership” with EPA and NACWA at the NACWA National Pretreatment Conference last week. I found their remarks hopeful, but their actions will speak louder. EPA: Don’t wait until someone asks “What did you know and when did you know it”. The EPA Regional Pretreatment Coordinators need to demand transparency and leadership.

If you are in one of those states where this approach is being pushed, let me know.

As a note: CWACS notified EPA of this Michigan Bill in June of 2008 (long before enactment). No action by EPA has been identified. However, EPA did respond to one of my questions by writing (in part): “... *I commend Michigan for taking this much-needed step to put the pressure on the right group to cut this menace out. This bill would actually help bring this pervasive problem to a head, and NACWA? is not expected to sit quiet. This in the end will develop into a real solution. Have a nice day!*”.

I always have a nice day (y’ all know that). Why wouldn’t Region 5 act on this before it hits the fan? I think as they stated, they are waiting for “The End”. Oh well.

This bill and the supporting documents are available at:

[http://www.legislature.mi.gov/\(S\(pkzmon550n3ji0i3vgrmkais\)\)/mileg.aspx?page=PublicActs](http://www.legislature.mi.gov/(S(pkzmon550n3ji0i3vgrmkais))/mileg.aspx?page=PublicActs)

Be sure to have it set to “2008” and enter the keyword “dentists” into the search box. This history and support documents for this bill will be displayed.

You can also go to www.CWACS.com and download a copy of the final Bill that was enacted (see homepage, right hand side).

What does this Bill do (this Bill is in effect. It is self-implementing)

1. Requires dentists to install amalgam separators by December 31, 2013
2. Requires the Michigan Department of Community Health establish BMPs for dentists (these are not specifically established in the Bill). These are required to be established within 90 days. The Community Health people told me 12-18 months (90 days is not even realistic. I think that is why they made the Bill self-implementing. Some special interest group wanted immediate

protection).

3. Exempts dental schools, hospitals, and local health departments. Also *reasonably* exempts certain oral surgeons, orthodontists and periodontists that do not apply or remove amalgam.
4. Preempts and supersedes all local legal authorities that establish conflicting, different, or additional standards or requirements (applies to the requirements implemented by the Bill on January 13, 2009, and any rules adopted in the future).
5. Allows local governments to adopt legal authority consistent with the Bill requiring amalgam separators and BMPs earlier than December 31, 2013.
6. Specifically prohibits a local government from adopting legal authority or enforcing any legal authority that conflicts with, is different from or establishes additional standards or requirements established in this Bill or in future rules that are promulgated.
7. Prohibits POTWs from issuing a permit that limits the discharge of mercury into wastewater with a limitation greater than that capable of being achieved by complying with requirements for amalgam separators and BMPs under the Bill (not the forthcoming regulations).

Discussion (always check with your POTW attorney):

- A. All POTWs (local governments) in Michigan are required to immediately comply with this law (effective January 13, 2009). That includes where a POTW currently issues any permit to a dentist (or enforceable document that is different than the items listed in this Bill), those permits must be terminated. This gets rid of the Region 5 Pollutant Minimization Plans (PMPs) that may deal with dental mercury..... at least when it comes to this State law. Implementing those plans may mean you are violating State Law, but not implementing them may mean you are violating your NPDES permit.
- B. Submit any required changes (based upon the self-implementing law) to the Approval Authority as a modification of your pretreatment program. You must make your legal authority consistent with what you are required to do (including due process and public participation requirements). I wonder if the DEQ will have to put these Clean Water Act exemptions in their regulations.
- C. Revise your mercury local limits. You have to account for the discharge of mercury from dentists (after discharge from the amalgam separators), it is likely that POTWs did not account for the amount of mercury from the dental sector. This accounting for loadings from BMPs is also required by the EPA Streamlining regulation changes (see guidance on BMPs). This sector contribution would be determined by calculating the mercury removal across the separator to get a good (worst-case) representative effluent amount and multiply by the number of dentists (or amalgam separators required to be installed). This sounds like fun. Maybe your Approval Authority and Region 5 will let you use a number like 5 mg/L enter the interceptor and a 95% default removal (this number is really for solids, but until there is good data for mercury removal, what else can you use? I will look for data). You would want to model for worst case

since the NPDES permit limits for mercury are so low. For the people that have taken my 3 day local limits classes, you are probably smiling right now.

- D. Do not hesitate to continue to regulate dental practices at dental schools, hospitals and local health departments. They are exempted. Must be a problem too significant to include.
- E. If you read item 6 above, it seems to create a potential liability problem for the POTW if they wanted to do something before rules are promulgated. It establishes a requirement that POTWs do not adopt or enforce anything that may conflict or be different or more inclusive than what future regulations will require. What happened to Home Rule?

Wow! So, is the City liable if it did something after January 13, 2009, against dentists that turns out to be more stringent, even where actions were required to protect the POTW or environment (and its NPDES permit)? What if you applied an additional BMPS that included using non-oxidizing, pH neutral lines cleaners? Or required certification by a certain date? Or required them to submit receipts showing treatment units were cleaned? Or anything else not specifically addressed in future regulations?

What Can be Done?

I believe that government should be open and transparent. I cannot tell you what to do. I know what I am going to do: I am going to contact EPA Region 5, EPA Headquarters, the Office of General Counsel, the U.S. Congressional Oversight Committee(s), and other interested parties with my concerns.

The State DEQ did not initiate this law. Do not place any blame on them. I am sure that they see potential problems with the Bill as enacted. No one that wants to implement and enforce a pretreatment program would see this Bill as anything other than what it is: Ridiculous. Also, I want to say that the Michigan Department of Community Health and the DEQ have been very responsive to my inquiries. Thank you.

This law is a change to the State's NPDES program. There are specific regulations that require the State to get EPA approval for such changes (40 CFR Section 123.62, among others). The exempting of industrial users from Clean Water Act requirements (including liability), the precedent setting nature of this change, the large number of local government NPDES programs that are impacted and the inclusion of an immediate effective date with this self-implementing law make immediate EPA action critical. Based upon these items, this is a significant change to the State Pretreatment Program requiring public notice and comment in the Federal Register. Remember Section 101(e) of the Clean Water Act?

Who can you contact? Well, that is up to you. In my last newsletter, I never even got an acknowledgement of receipt of my email requesting EPA public notice the Methylmercury permitting guidance (that was under review because of the substantial changes to the draft and the large number of affected regulated entities). Seems a little non-responsive for a government agency.

I now feel that I have to expand my list of recipients. My mom always said “You got to write ‘em to get ‘em”. Until EPA establishes some way to communicate, I suggest emailing everyone that is part of this process. Here are some of the individuals I will be sending comments via email to:

Steven Neugeboren neugeboren.steven@epa.gov EPA-HQ, Office of General Counsel
Joyce Frank frank.joyce@epa.gov EPA-HQ - Congressional and Intergovernmental Relations
Michael Shapiro Shapiro.mike@epa.gov Acting Assistant Administrator – EPA HQ
Jim Hanlon hanlon.jim@epa.gov EPA-HQ, OWM
Linda Boonazian boornazian.linda@epa.gov EPA-HQ, OWM – Water Permits
Bharat Mathur mathur.bharat@epa.gov EPA Region 5 Acting RA
Robert A. Kaplan kaplan.robert@epa.gov EPA Region 5 Regional Counsel (Region’s attorney)
Tinka Hyde hyde.tinka@epa.gov EPA Region 5 Water Director
Ash Sajjad Sajjad.Ash@epa.gov EPA Region 5 Pretreatment Coordinator

Subcommittee on Domestic Policy: <http://oversight.house.gov/contact/>
Just cut and paste your comments.

Local Limits Spreadsheet – Now On Sale

If you need a tool for completing a local limits evaluation and have an easy method for keeping a documented copy of your local limits calculations and assumptions, we are offering a spreadsheet for local governments to calculate local limits (an example version is available for download at www.CWACS.com).

Benefits of the Software

- ✓ Allows the POTW to save its local limits calculations for future reference and to meet recordkeeping requirements.
- ✓ Allows the POTW to choose whether or not to develop local limits for Significant Industrial User (SIUs) only, SIUs and the Trucked and Hauled Waste Sector, or SIU and the Commercial sector.
- ✓ Provides wide flexibility to the POTW in deciding the appropriate Maximum Allowable Industrial Loading (MAIL).
- ✓ Provides the POTW with tools to identify and allocate the MAIL for a pollutant.
- ✓ Shows the immediate impact of changing input data on the final local limits. The User's Guide provides a discussion of the POTW decisions that must be made when using the software.

Training for Local Governments

The Indianapolis local limits' training was great. There were many great questions, discussions and I learned about the Indiana program. I wish I had another training schedule for there or got to spend more time in the State. I really appreciate all of the feedback I have gotten from the attendees. When you decide to do local limits, you will be amazed at how much you've learned!

Local Limits Training: April 28-30, 2009. [Arlington, Texas.](#) Register Now!!!

IU Inspectors Training: May 11, 2009. [Cody, Wyoming.](#)

Local Limits Training: June 9-11, 2009. [Portland, Oregon.](#)

Local Limits Training: July 14-16, 2009. [Orlando, Florida.](#)

These courses are for POTW Pretreatment staff and managers that work for local programs.

Be sure to go to: www.CWACS.com and click on the Training Courses tab. Workshop attendance is limited. The website is updated as registrations are received. On the website, you will find all meeting locations, registration information, registration deadlines, and whether or not spaces are available.

Newsletters reflect the opinions of CWACS. They are not intended to change what a specific state or EPA may require.

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