

**STATEMENT
Of
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***Domestic Policy Subcommittee
Oversight and Government Reform Committee***

***“Assessing State and Local Regulations to Reduce Dental Mercury
Emissions”***

***Tuesday, July 8, 2008
2154 Rayburn HOB
2:00 P.M.***

Good afternoon, Mr. Chairman, Mr. Issa and Members of the Subcommittee. I am Curt McCormick, Principle and Owner of CWA Consulting Services, LLC (www.CWACS.com). I was previously employed by the US Environmental Protection Agency for over 20 years. The last 17 years was spent as the Regional Pretreatment Coordinator in the EPA Denver Regional office. I appreciate this opportunity to discuss my efforts while at the Agency to develop a Strategy that local and state governments would use to control discharges from dental and other facilities when mercury was identified as a pollutant of concern.

INTRODUCTION

Your Subcommittee has heard the testimony from EPA and others in the past about the importance of reducing mercury in the environment and the contribution of waste dental amalgam. The program that I oversaw for much of my career is the pollution control program that local governments implement to reduce pollutants being discharged to the sanitary sewer system from commercial and industrial businesses. Sewage treatment plants are owned by municipal governments, typically a city or a district, and are termed a *Publicly-Owned Treatment Works* or **POTW**. The local pretreatment program regulates pollutants in the discharge from commercial and industrial dischargers to prevent (1) contamination of receiving waters; (2) interference with the operations of the POTW; (3) contamination of the sewage sludge; and (4) adverse effects to worker health and safety. These local pretreatment programs operate a permits and enforcement program similar to the EPA Clean Water Act permitting program. These approved pretreatment programs are federally enforceable.

SETTING OF POLLUTANT CONTROLS ON COMMERCIAL AND INDUSTRIAL USERS

Local pretreatment programs have been required to establish specific pollutant limits for *Industrial Users*. In the early to mid-1990's, POTWs, began to identify that some smaller, commercial users were discharging significant quantities of pollutants. The discharge of silver from photo and X-ray processing related activities was a common example. While the volume of each discharge was low, the cumulative effects of many photo and X-ray processing facilities did cause problems for the environment and POTWs.

Pretreatment Programs did not want to convert these commercial users to SIUs, which under EPA regulations would require that permits be issued to these commercial users. POTWs opted to develop *Best Management Practices (BMPs)* for these silver dischargers, which included silver capture or treatment, in most cases. EPA Region 8 was one of the offices that supported and promoted the use of enforceable BMPs to control the discharge of silver from photo processing operations.

MERCURY AND PRETREATMENT PROGRAM LIMITS AND CONTROLS

Mercury water quality standards are often in the low parts per trillion. Many critics of mercury regulation liken it to a drop in a swimming pool or some other analogy. What you should take from those critic's analogies is just how toxic mercury can be.

Prior to the year 2000, EPA approved test methods dictated that mercury was measureable down to a level of 200 parts per trillion. Water Quality Standards and discharge permit limits were usually well below this level. A discharger had no real way to determine compliance with a mercury limit at environmentally relevant levels. Since that time, EPA has an approved mercury test method that can measure mercury in the 2 to 5 parts per trillion level. POTWs now can accurately evaluate compliance with permit limits and water quality standards. This evaluation has shown that there are many POTWs with mercury levels that exceed permit limits and water quality standards.

MERCURY SOURCES IN DISCHARGES TO POTWS

As POTWs began to identify these mercury problems, they implemented a typical pretreatment program scenario: Sample, Track Down, and Control. Many of these POTWs around the Great Lakes, San Diego, and a few other areas provided much of the original data on mercury sources. While there may be some unique industrial discharges that contain mercury, dental offices became one of the most significant sources of mercury discharge to POTWs. The total loading from dental offices could be 40% or more of the total mercury being discharged to the POTW.

REGULATING DENTAL DISCHARGES

In a very similar attempt by POTWs to control mercury discharges to the POTW, they began designing programs similar to the silver control programs that proved so successful in the past.

The POTW designed BMPs to be used by dentists to reduce the discharge of amalgam waste rather than applying specific limits that dental facilities could not meet. This is where the problems start. One BMP recognized by many regulators, including EPA Region 8, is treatment to remove solids from the dental discharge, most commonly referred to as an amalgam separator. The *American Dental Association (ADA)* was actively opposed to any mandatory requirements for treatment at dental facilities. It was not until late 2007 that the ADA included amalgam separators in its list of BMPs. This is around the same time that EPA had intended to issue a final methylmercury water quality criterion document that also includes the use of amalgam separators. This document will move regulatory activity away from mercury to focusing on methylmercury in fish tissue. Though the Office of Management and Budget (**OMB**) cleared this document earlier this year, EPA has not issued this document final.

EPA EFFORTS TO ADDRESS MERCURY DISCHARGES AT POTW_s

EPA Region 5 was on the cutting edge of mercury control and pretreatment programs. The *Great Lakes Initiative (GLI)* allowed Region 5 to develop an approach for reducing mercury discharges from POTW_s through pretreatment program efforts to regulate discharges from dental offices. EPA Region 5 had extensive input and participation from the American Dental Association (ADA) during the development of its Mercury Pollutant Minimization Program Guidance (November 2004). The ADA was pleased with the final Region 5 document and the use of language allowing voluntary BMPs without a requirement to install amalgam separators. I have no documentation on the degree of ADA influence with Region 5 and EPA Office of Water during the finalization of this document, but the high degree of influence of the ADA was common knowledge.

EPA Region 8 did not receive such positive accolades from the ADA for its efforts during 2004 and 2005 to develop a strategy for controlling mercury. EPA Region 8 had long recognized that its high quality surface waters are the headwaters for many other states and the local fisheries were a valuable resource. Region 8 believed that mercury control could be achieved in a manner similar to that of silver. This approach included two concepts (1) Where a mercury problem exists, action by the POTW was mandatory; and (2) the dental office can either comply with specific limits or comply with BMPs. Region 8 identified treatment as a component of dental BMPs. The final draft Strategy document was titled: *May 9, 2005, POTW Mercury Control Strategy, Addendum to the Region 8 Strategy for the Development of Local Limits, U.S. EPA Region 8, Industrial Pretreatment Program* (www.epa.gov/region08/pretreatment).

EPA REGION 8 AND THE ADA

EPA Region 8 worked with its regulatory partners at states and local governments to develop an approach to controlling mercury at POTW_s where mercury problems were identified. Comments were received from municipal governments, states, EPA OW pretreatment staff, the Office of General Counsel (OGC), and the ADA in draft versions of the Strategy in late 2004. The draft Strategy endorsed the implementation of voluntary programs before mercury problems occurred, as well as, requiring mercury control programs where mercury was a problem. Early on, the ADA expressed its displeasure with Region 8, and in particular, my

program. The ADA believed that the requirement of a mandatory mercury reduction program was unreasonable and that amalgam separators should not be required in any case.

Direct ADA action to stop the Region 8 Strategy was largely ineffective at the EPA Region 8 senior management level.

My office public noticed and approved changes to local government pretreatment programs. The ADA attempted to get involved in that process. In one example, the ADA supplied state dental associations with support to fight efforts by Laramie, Wyoming to adopt a mercury control program. After receiving adverse comment to the proposed regulations for mercury control, the Laramie City Council held a public meeting. I represented EPA and gave a presentation about mercury and Region 8's position on mercury control by pretreatment programs. A presentation was also made by Jerry Bowman, Assistant General Counsel for the ADA that clearly demanded that efforts to control dental amalgam remain as a voluntary approach. Interestingly, regulated industries provided positive support to the proposed regulation. They argued that they had done their part, often installing expensive treatment systems to meet limits. The Laramie City Council rejected the ADA stance and approved the pretreatment program mercury control program. The ADA was less than pleased with this outcome and intensified its efforts to work through the EPA Office of Water.

During the course of its work with Region 5, the ADA appears to have obtained a communication pathway with the Office of Water (OW). In particular, the ADA had identified the AA for Water (Ben Grumbles) as an effective contact, in addition to an assistant, Sharon Frey, who dealt with mercury issues for the Office of Water. There were many communications from the ADA to EPA OW during this time. One email I recall referred to EPA Region 8 as "out of control". I was told by Ms. Frey that there were a number of phone calls and emails that referred to me and my program directly that were less than professional or flattering. The February 16, 2005, ADA letter to the AA for the Office of Water was typical of the influence that the ADA exerted. As quoted by the opening paragraph from the letter states:

"We appreciate the opportunities you have afforded us to meet with you in the past. On December 15, 2004, representatives from the American Dental Association were able to spend approximately an hour with you discussing among other things the Association's deep concern with the contemplated approach of EPA Region 8 to dental wastewater. As we discussed, the Region's draft guidance, on which the ADA submitted extensive comments, prohibits the very type of voluntary partnership" which the administration otherwise supports. Moreover, the draft guidance requires amalgam separators whenever a POTW has a need to address mercury. At the end of our meeting, you indicated that you would speak to the Region 8 Administrator on these topics. We have not heard back from you".

The letter continues:

"Region 8 has clearly not shifted its position one inch since our meeting with you. And, as we stated then, this is a very damaging position. It undermines all of the efforts by the ADA (and EPA) to promote voluntary steps by dentists to reduce amalgam discharges and to promote recycling. Every dentist in Region 8 (and likely elsewhere) will ask why he or she should join with EPA in a partnership or undertake voluntary measures when mandatory separators is the only solution acceptable to EPA. *Thus, through its proposed guidance, Region 8 will wipe away EPA's efforts to reach consensus to work with small businesses and to encourage*

voluntary efforts and replace those goals with a rigid command and control strategy. Of course, action in Region 8 will influence the rest of the country as well."

Region 8 was not part of the December 15, 2004, meeting that I am aware of. I was also not provided with copies of any final written communications from the Office of Water regarding this letter. Subsequent to receipt of the letter cited above, Region 8 requested that OW provide a direct statement to the ADA saying that the use of amalgam separators was effective at reducing the loading of mercury discharged into a POTW. This is a statement of irrefutable fact. This request was not granted.

EPA Region 8 Senior Management responded directly and independently to the ADA in a letter dated April 22, 2005, stating that the Region 8 supported the approach by my program and that the final Strategy document would be consistent with the Clean Water Act and its implementing regulations.

STATUS OF THE EPA REGION 8 STRATEGY DOCUMENT FOR MERCURY CONTROL

Subsequent to the April 22, 2005, letter from Region 8 to the ADA and a briefing to the AA for the Office of Water, I was told that the document would not be issued final. The general message was that the Office of Water did not want it published final (an August 16, 2005 final Strategy document had been prepared). The final document did not deviate from the proposed approach. EPA Region 8 Senior Management told me that the May 9, 2005, draft version would be made available to anyone requesting a copy. It is currently available on the EPA Region 8 website. No final document has ever been issued.

PERSONAL STATEMENT

In the years since 2000, it has not been unusual that guidance and strategy documents that were controversial or opposed by a vocal and influential group would be held up. This approach did not seem to be a secret at the EPA OW level or at the Regional level. This approach to dealing with political controversy became a way of doing business.

This cooling of EPA staff's ability to provide guidance and technical support was formalized by the integration of the Office of Management and Budget into the review process for all regulations, guidance and policy that EPA intends to issue. This integration has provided OMB a direct role in the formulation of guidance, policy and regulation, and with more direct influence than the EPA regional offices. The perception is that the OMB represents interests that are often the target of environmental regulation thus thwarting efforts by EPA to protect the environment. I am not suggesting bias of one political party over another. A prior Republican Administration had William Riley serve as the EPA Administrator. During his tenure as Administrator, he provided leadership that made the Agency a respected scientific and technical resource that focused on implementing the Agency's mission that was defined during the previous 20 years.

Mr. Chairman, this concludes my statement. I would be happy to try to answer any questions you or your colleagues may have.