



February 20, 2015

Via email: OW-Docket@epa.gov

Water Docket - EPA Docket Center
Environmental Protection Agency
Mail Code: 4203M
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OW-2014-0693

SUBJECT: Docket ID No. EPA-HQ-OW-2014-0693. Comments on Effluent Limitations Guidelines and Standards for the Dental Category, 40 CFR Part 441

The Bay Area Clean Water Agencies (BACWA) appreciate the opportunity to comment on the Proposed Federal Dental Amalgam Rule (Proposed Rule). BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 6.5 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health.

BACWA applauds the efforts of the U.S. Environmental Protection Agency (EPA) to control the discharge of mercury to sanitary sewer systems as a means of protecting water quality. BACWA also recognizes the effort of EPA to modify the strategy of regulating dental practices that will be subject to the Proposed Rule rather than using the traditional Categorical Industrial User elements. However, without substantial changes the Proposed Rule will significantly impact BACWA member agencies' pretreatment programs with minimal environmental benefit. The comments provided below identify the concerns with the Proposed Rule's elements and provide proposed changes to make the rule more effective with efficient use of limited public resources.

BACKGROUND

The San Francisco Bay Regional Water Quality Control Board (RWQCB) adopted a Mercury Watershed NPDES Permit in 2007 to implement the San Francisco Bay Mercury TMDL. This Mercury Watershed Permit required the POTW community to achieve a dramatic reduction in mercury loading to SF Bay and required the specific action for POTWs to implement dental amalgam programs in their service areas. As a result of implementation of these requirements, a high percent of amalgam generating dental practices in the San Francisco Bay Area use amalgam separators to pre-treat the

wastewater prior to discharge to the sanitary sewer system. These existing programs have achieved very significant reductions of mercury discharges to the receiving waters of San Francisco Bay as well as to the land via biosolids reuse options.

Dental practices do not individually discharge significant amounts of mercury to a sanitary sewer system. However, because of the relatively large number of dental practices, they could collectively discharge up to 50% of a POTW's influent mercury.

GENERAL COMMENTS

1. For BACWA member agencies, the Mercury TMDL and associated watershed permit requirements, have resulted in significant success in reducing mercury in influent, effluent, and biosolids. The Proposed Rule requires BACWA member agencies to redirect significant resources to implement additional requirements, yet it will not yield any measurable additional reductions in mercury loading from dental practices as the vast majority have dental amalgam separators installed and working successfully.

BACWA RECOMMENDATION: Modify the Proposed Rule as indicated below to minimize the burden placed on POTW pretreatment programs to implement the standards and exempt existing local programs already complying with mercury TMDLs that include dental amalgam control programs such as the San Francisco Bay Area from the Proposed Rule.

BACWA has a small number of members that, due to their small size, do not have approved pretreatment programs. It would be a substantial burden on these agencies to develop the elements of an approved pretreatment program let alone the resources to implement the Proposed Rule for a relatively small number of dental practices

BACWA RECOMMENDATION: Modify the Proposed Rule to expand the exemptions from the rule to include dental practices in POTW service areas that, due to their very small size, do not have an approved pretreatment program.

2. The Proposed Rule's requirement to reclassify a DIU as a SIU are not necessary and create a substantial burden on POTWs required to implement the standards. The current federal regulations for a POTW to regulate a SIU, which are not modified by the Proposed Rule, require the POTW among other standards to issue a control mechanism (permit), conduct sampling at least twice annually, and conduct at least an annual inspection. Having to conduct these tasks for any number of dental practices will create a substantial burden on POTWs without obtaining any net environmental benefit. Conducting compliance sampling at dental practices poses significant logistical barriers due to the disruption of the services by dental health providers. Furthermore, requiring a dental practice to establish an appropriate sampling location would be costly for the dental practice and the extensive experience of the BACWA has found that sampling is not

necessary to achieve the desired results in the this program . We can find no environmental benefit for requiring POTWs to process the non-compliant status of dental practices as Significant Non-Compliance (SNC). The Pretreatment Streamlining Rule limited the publication of SNC to SIUs, therefore removing reference to reclassifying DIUs to SIUs will remove the SNC requirement to publish in the local newspapers all the DIUs that are non-compliant during a given year. Further, the Proposed Rule does not clearly identify the process which a POTW needs to follow to reclassify a dental practice that has been classified as SIU back to DIU status (e.g. do all SIU standards need to be met before this DIU reclassification would be allowed?). If not, the benefit of having this reclassification standard in the rules is even less clear. In addition, this reclassification poses significant logistical problems for certain dental practices:

- Shared amalgam separators – Are all contributing dental practices considered to be SIUs if the one practice that assumed responsibility for the shared separator does not comply with the standards?
- Mobile practices – If a mobile dental practice is SIU in one POTWs service area, would it now become a SIU for all POTWs where it practices?

BACWA RECOMMENDATION: Delete all references in the Proposed Rule to reclassifying DIUs as SIUs, including the requirement for POTWs to process non-compliance by DIUs as SNC. Instead, rely on the POTWs' ERP processes to ensure DIUs achieve and maintain compliance with the proposed federal standards.

3. The Proposed Rule is ambiguous and provides too much room for interpretation. For example, POTWs with approved pretreatment programs are routinely reviewed through the Pretreatment Compliance Inspection and Audit (PCI/PCA) process. One element of the traditional PCI/PCA process is to determine if a POTW is properly classifying IUs under the appropriate federal categorical standards. The large number of dental practices and the high turnover of this service sector create exposure to POTWs to receive findings in PCI/PCA reports for not maintaining a completely accurate DIU inventory, or for not reclassifying a DIU to SIU under certain circumstances. Such findings will require POTWs to allocate onerous resources to maintaining a current up to date DIU inventory, or to respond to PCI/PCA findings without gaining any environmental benefit.

BACWA RECOMMENDATION: Modify the rule to ensure that currently ambiguous standards (examples identified below) are clarified.

SPECIFIC COMMENTS

1. The effective date of the Proposed Rule should be the same for all affected POTWs. The Proposed Rule has an effective date three years after the final rule is published with PSNS standards apparently effective immediately. It is unclear if an existing POTW program is expected to implement the standards immediately,

or if a POTW implements a new program in advance of the effective date, it will be expected to comply with the standards earlier. Early action should not be penalized or disincentivized.

BACWA RECOMMENDATION: Modify the Proposed Rule to clarify that any POTW compliance assessment using the PCI/PCA or other processes shall be three years after the final rule is published to allow adequate time for POTWs to develop or modify their programs to implement the Final Rule's conditions.

2. A POTW should not be considered deficient if it does not fully account for minor issues with maintaining a DIU inventory. Developing and maintaining a DIU inventory takes substantial POTW resources which involves a very substantial effort for agencies with larger service areas. This effort can become more complex for POTWs with multi-jurisdictional agreements. The large number of dental practices and their high turnover rate further complicates the inventory maintenance process. It is common to find out that a new dentist has taken over a previously existing practice when an annual compliance report that was mailed to the prior dentist is returned by the new dentist. During the period of time from changeover of ownership to the submittal of the annual compliance certification report, is the POTW considered deficient for not maintaining an accurate DIU inventory?

BACWA RECOMMENDATION: Modify the Proposed Rule to clarify that a POTW needs to have a system in place by the effective date of the rule to establish and maintain a DIU inventory but the POTWs will not be considered deficient for individual dental practices not in the POTW's DIU inventory, or if the inventory is not current with ownership changes.

3. The standards applicable to applications (BMR) and Initial Compliance Reports should be functional and POTWs should not be responsible for the accuracy or timeliness of the documents. It is not clear why certain information is required to be on the required submittals (e.g. dental license number). Extraneous information generates expectations that the data should be managed so the rule should avoid including it in the standards. POTWs are not expected to issue permits or conduct routine inspections in the Proposed Rule, so they should not be expected to ensure the information on the required documents is accurate or that the documents were submitted in a timely manner (i.e. new dental practice start up). For example, POTWs that conduct construction of tenant improvement plan checks on new dental practices have experienced situations where a set of plans for a new dental practice is approved but the operation does not start for more than a year.

BACWA RECOMMENDATION: Modify the Proposed Rule to clarify that DIUs are responsible for the accuracy and timeliness of documents required to be submitted and that POTWs are only responsible for receiving the documents, and for taking enforcement only when the POTW becomes aware that the documents were not submitted in compliance with the standards.

4. POTWs with existing dental amalgam programs that have obtained compliance documents from dentists (e.g. applications, initial compliance certifications) should be considered functionally equivalent (i.e. in compliance) to the Proposed Rule's certification standards even if the documents did not contain all the information required in the Proposed Rule.

BACWA RECOMMENDATION: Modify the Proposed Rule to clarify that the compliance documents obtained by POTWs with existing amalgam separator programs are functionally equivalent to the documents specified in the Proposed Rule.

5. The requirement for a POTW to inspect a DIU within 90 days of being in non-compliance with submitting inaccurate or late documents required under the Proposed Rule creates a burden to the POTW without significant environmental benefit. The Proposed Rule does not require site inspections unless a DIU does not file accurate paperwork in a timely manner. However, the POTW will have to reclassify the DIU as SIU if the POTW does not complete a site inspection of the dental practice within 90 days of the non-compliant event, even if the DIU has filed the original paperwork in the meantime. The Proposed Rule does not clarify if the POTW is only required to inspect for the non-compliant event (late submittal of a document that they may have in their possession) or if a comprehensive inspection is required (e.g. monthly inspections of amalgam separators, use of compliant line cleaner). The Proposed Rule relies on paperwork submittals to ensure compliance with standards and therefore a return to compliance should be allowed through paperwork submittals as well.

BACWA RECOMMENDATION: Modify the Proposed Rule to specify that a DIU returns to compliance when the required paperwork is received and remove the requirement that POTWs need to conduct a site inspection to verify each time a DIU has returned to compliance based on deficient or late paperwork.

6. The Proposed Rule establishes deadlines that may not be needed or that exceed the scope of the rule. For example:
 - a. The standard requiring dental practices to conduct monthly inspections of amalgam separators is too restrictive and will create compliance problems for dental practices. A more appropriate standard is to conduct inspections at a frequency appropriate to ensure the amalgam separator is in proper working condition, not to exceed six (6) months.
 - b. The standard to replace existing amalgam separators within ten years of the effective date of the final rule does not appear related to the functional life of the amalgam separator. If the tolerance for amalgam separators that do not meet the 99% removal efficiency is 10 years, then the Proposed Rule should justify their replacement on this basis rather than on an unsubstantiated statement about their functional life.

- c. The standard to conduct line cleaning with non-chlorine bleach line cleaner weekly appears to exceed the scope of the regulation. Line cleaning is performed for health and safety reasons, not for environmental protection objectives.

BACWA RECOMMENDATION: Modify the Proposed Rule to remove references to deadlines that are not applicable to the implementation of the Proposed Rule.

BACWA appreciates the opportunity to comment on the Proposed Rule and our member agencies are available to provide additional detail on how to modify the Proposed Rule if such input would be helpful to USEPA. Thank you for considering our concerns.

Respectfully Submitted,

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