

ATTACHMENT 1

I. Summary of Proposed Action

On October 22, 2014, the U.S. Environmental Protection Agency (EPA) published in the *Federal Register* a proposed new rule that would require dental facilities (dental offices, schools, and mobile units) to comply with requirements for controlling the discharge of mercury and other metals in dental amalgam into publicly owned treatment works (POTWs) based on the use of amalgam separators and best management practices (BMPs). The proposed rule amends the General Pretreatment Regulations (40 CFR Part 403) to create a new categorical industrial user classification of “Dental Industrial User” (DIU) and includes oversight requirements. The proposed rule also creates a new Effluent Limitations Guideline (ELG), Dental Office (Mercury Amalgam) Point Source Category (40 CFR Part 441), that includes Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS), for regulated dental facilities that discharge into POTWs. The proposed rule includes a compliance date of three years after the effective date of the final rule for existing sources and 90 days from commencement of discharge to the POTW for new sources.

II. Comments

The TCEQ appreciates the opportunity to comment on the proposed rule and offers the following comments.

A. Implementation Burden vs. Environmental Benefit

The TCEQ believes that the EPA significantly underestimated the cost and resource burden to implement the proposed rule.

TCEQ believes that EPA significantly underestimated the resources that would be needed for EPA Regions, states, and POTWs to implement this new rule. The TCEQ recommends that EPA re-evaluate the cost effectiveness of the proposed rule after adjusting the cost estimate to incorporate the following activities and associated costs:

Initial one-time implementation costs:

- *Approved pretreatment program modifications:* The EPA did not include the cost for delegated states to process, review, and approve POTW approved pretreatment program modifications. Although EPA did not specify in the proposed rule if these modifications to the pretreatment programs would be considered substantial or non-substantial, regardless, the proposed rule would result in revisions to existing POTW approved pretreatment program’s legal authority (i.e., ordinance), enforcement response plan, standard operating procedures, and forms used to implement the program.

Texas Commission On Environmental Quality
Comments On Proposed Dental Office Effluent Limitations Guidelines

EPA Docket ID No. EPA-HQ-OW-2014-0693

- **Compliance tracking:**
 - Many states and POTWs would likely need to modify and populate their compliance tracking systems to accommodate the significant increase in the number of newly regulated facilities. In addition, EPA Regions, delegated NPDES states and POTWs would need to collaborate to identify the universe of regulated dental facilities and their respective CAs. The TCEQ is of the opinion that such collaboration would require significant time and effort.
- **Initial outreach and education:** Many states and POTWs would need to develop and distribute initial notification and guidance documents for dental facilities. There would be a need to coordinate with state dental regulatory agencies, dental organizations, and other local organizations; and to conduct outreach.

Annual recurring costs:

- **Inspections:** The EPA may have underestimated the number of dental facilities that would have to be inspected, the time required to conduct each inspection, and the time required for documentation and follow-up activities. According to other states' experience implementing a similar program, it appears that approximately 20% of the dental facilities, unlike the 1% estimated by the EPA, have the potential to require inspections to verify that the proper amalgam separator was installed, operated and maintained properly, and to verify that BMPs were being employed. In addition, larger dental offices or schools would require significantly more time than the 20 minutes that EPA estimates to complete the inspections. The TCEQ believes that EPA has significantly underestimated the additional resources required for inspections.
- **Recordkeeping and Compliance Tracking:** EPA estimated that annual recordkeeping requirements for POTWs would be 10 minutes per office for 0.25% of the dental facilities. The EPA estimated that each delegated NPDES state would spend about 24 hours per year on recordkeeping. The TCEQ believes that this estimate may be overlooking that the compliance tracking systems would need to be queried and updated annually. Based on information from some large POTWs in Texas and other states, the TCEQ is of the opinion that this is an underestimate of the effort involved for recordkeeping. In addition, the TCEQ is of the opinion that EPA's estimate of the number of facilities (e.g., 2 %) and the time it would take to annually verify and maintain accurate facility information (e.g., 10 minutes per facility per year) is significantly underestimated.
- **Enforcement:** The EPA estimates that states and EPA would spend 4.5 hours per dental facility each year on enforcement on 1% of the dental facilities. Once again the TCEQ believes that this is an underestimate of the effort involved in enforcement activities.

EPA Docket ID No. EPA-HQ-OW-2014-0693

- *Facilities in Significant Noncompliance (SNC):* The EPA did not consider the cost burden associated with dental facilities that are in SNC (i.e., issuing permits, inspections to verify compliance and return to DIU status, and the SNC public notification costs). POTWs would have to publish dental facilities that are in SNC in the newspaper at the end of each POTW's pretreatment year and in the larger municipalities this is a significant cost that can easily range from \$1,000 to \$4,000 per publication.
- *Dental facilities as Significant Industrial Users (SIUs):* The EPA did not consider the cost burden associated with dental facilities that are originally designated as DIUs but later become SIUs due to non-compliance. For these dental facilities, the CAs would need to issue an SIU control mechanism (i.e., individual or general permit), inspect, sample, and enforce as required by 40 CFR Part 403. This also has the potential of increasing the SIU universe for POTWs with approved pretreatment programs and for delegated NPDES states and EPA Regions significantly. The increased SIU universe would also impact the pretreatment annual report reviews and the pretreatment audits and inspections conducted by delegated states and EPA Regions.

B. POTW Removal Efficiency

It is TCEQ's opinion that the EPA used an outdated mercury removal efficiency to develop the cost/benefit analysis resulting in an overestimate of the benefit of this rule.

The EPA used a 90% removal rate of mercury by POTWs based on its 1982 "50 POTW Study" to estimate that the 880 pounds of mercury are being discharged into water bodies annually. There have been numerous advancements in municipal wastewater treatment technologies since 1982 that demonstrate removal efficiencies greater than 90%. Consequently, an increase in removal efficiency would directly impact the cost effectiveness value (cost per pound-equivalent removed) of the proposed rule. These numbers should be adjusted accordingly. The TCEQ recommends that EPA collect and analyze more recent POTW influent and effluent data to calculate a more representative removal efficiency of mercury and other metals from POTWs.

C. Dental License Number

The owners of dental facilities, not the licensed dentists, are responsible for rule implementation and compliance.

It is TCEQ's opinion that the requirement to obtain the dental license number is administratively burdensome and unnecessary. 40 CFR §441.10(c)(2)(ii) requires that the dental facility provide the CA with the dental license number

EPA Docket ID No. EPA-HQ-OW-2014-0693

of each of its practicing dentists. Additionally, the rule requires that dental facilities notify the CA of any changes to the information required under paragraphs (c)(2)(i) and (ii). This would include each time the dental facility hires or loses a dentist. The rule is unclear regarding dental schools which have students that are not yet licensed. The TCEQ recommends that the requirement to include the dental license numbers be removed and that instead dental facilities include the following information: the dental facility name, address, and contact information for the dental facility manager and responsible corporate officer.

D. Duplicate Reporting for Existing Sources

The baseline monitoring report (BMR) and the 90-day compliance report should be combined for existing dental facilities to reduce administrative burden.

Based on the proposed compliance date for existing sources, the BMR and 90-day compliance report are due at the same time (i.e. BMR is due 180 days after the rule's publication date and the 90-day compliance report is due 90 days after the established compliance date for existing sources which is 90 days after the rule's publication date). Considering that the information from both reports is similar, and in an effort to reduce paperwork and administrative burden, the TCEQ recommends that EPA combine the requirements into one report that serves as both the BMR and 90-day compliance report. This would allow the existing dental facilities to certify that it has installed, will properly operate an amalgam separator (including the date of installation of the amalgam separator) and will use BMPs that comply with the requirements specified in 40 CFR §441.40 for existing sources. Alternatively, and recognizing that the required reports are not contradicting, the EPA could clarify in the preamble to the rule that an existing dental facility could comply with both required reports by submitting one consolidated report that covers the information required by both reports. This would also allow CAs to more easily track the 10-year useful life of the amalgam separators for existing sources.

E. DIU Reporting Deadline

The rule should require the CA to establish a specific deadline for submitting the annual certification.

The TCEQ recommends that the EPA revise 40 CFR §441.60(a)(3) to include language similar to 40 CFR §403.12(e) regarding the deadline to submit the annual periodic monitoring report (annual certification), and specify the recipient of the reports as follows: "A periodic report of ongoing compliance must be submitted annually *to the CA during the month of [MONTH, e.g., December], unless otherwise specified by the CA or the Approval Authority.*"

EPA Docket ID No. EPA-HQ-OW-2014-0693

Including this language would aid in compliance tracking of non-reporting DIUs and allow CAs and Approval Authorities the flexibility to set deadlines to better allocate resources for report reviews.

F. Compliance Evaluation

The requirements for the annual compliance evaluation are not clear.

The TCEQ recommends that the EPA clarify or define what constitutes the required annual compliance evaluation. As written, this requirement is left open for interpretation that may not be enforceable.

G. Emergency Removals

A definition of emergency removals is needed.

The TCEQ recommends that the EPA define what constitutes emergency removals to allow CAs to provide meaningful input on frequencies. In addition, without a clear definition, this requirement is left open for interpretation and may be difficult to enforce.

H. DIU Non-Compliance Notification (related to monthly inspections conducted by the dental facility)

The process for DIUs to notify CAs of non-compliance is not clear.

The TCEQ recommends that the EPA clarify the requirements and process for dental facilities to notify the CA when a monthly inspection identifies a non-compliance and the timeline for notifying the CA. Additionally, TCEQ recommends that the notification include actions to be taken and a timeline to correct the non-compliance.

I. Temporary Offices and Mobile Units

The process to track compliance for temporary offices and mobile units that are not tied to a specific location is not clear.

The TCEQ recommends that the EPA identify what is expected of CAs to track compliance for temporary offices and mobile units that are not tied to a specific location.

J. Recordkeeping

The type of records that the dental facility must develop and keep is not clear.

The TCEQ recommends that the rule specifically state that all DIUs keep logs/documentation of all maintenance, cleaning, inspection, and implementation records and make them available to the CA for inspection upon request and that they be maintained in accordance with 40 CFR 441.60(c).

K. New Source Implementation

New source dates are unclear.

The TCEQ recommends that the EPA clarify how the rule applies to dental facilities that began operation after the proposed rule date (October 22, 2014) and prior to the effective date of the rule. For example, 40 CFR 441.60(a)(1)(iii) only addresses existing sources and does not address sources that began operations within that date range. Based on when a final rule is published, there could be many new dental facilities commencing discharge into a POTW's collection system during the time gap and some of the rule requirements may be difficult to enforce.

L. Impacts of the proposed rule on other rules and strategies

The proposed rule would impact other Federal rules and strategies.

The TCEQ recommends that EPA carefully consider the impact that this proposed rule would have, if finalized, on other rules and strategies, such as the proposed NPDES Electronic Reporting Rule signed on July 15, 2013, and the NPDES Compliance Monitoring Strategy (CMS) issued July 21, 2014. Several of the requirements in the proposed Dental Amalgam rule, if issued, would have the potential to significantly impact the regulatory, resource, and cost burden for EPA Regions, states, and POTWs to implement and comply with the requirements of those other existing rules and strategies.