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ACTIVISTS SEEK NEPA STUDY IN BID TO FORCE BAN ON DENTAL MERCURY USE

Activists are seeking an immediate ban on dental fillings that contain mercury by taking legal action against the Food & Drug Administration (FDA) -- arguing that the agency has never considered the environmental impacts of such products as required by the National Environmental Policy Act (NEPA).

The activists argue that mercury from dental amalgam, a mixture of metals that is used in fillings, is one of the three largest sources of the neurotoxic pollutant in the United States. Wastewater utilities around the nation are struggling to limit the volume of mercury entering treatment facilities, and as a result are urging dental practices to reduce their discharge of mercury.

A number of public interest groups including Moms Against Mercury and the Connecticut Coalition for Environmental Justice, as well as a dentist and state lawmaker, filed suit April 27 in the U.S. Court of Appeals for the District of Columbia seeking to have mercury amalgam withdrawn from interstate commerce. The groups argue that FDA ignored its legal obligation to conduct environmental reviews as required by NEPA. *Relevant documents are available on InsideEPA.com.*

“FDA’s decision for the past three decades to neither classify nor to require independent pre-market approval is based in part on its efforts to try to avoid application of the National Environmental Policy Act -- reason enough alone for this Court to order amalgam banned until FDA meets its obligations under law,” the groups’ filing says.

FDA officials declined to comment on the case, but one spokesperson says that if FDA deems an environmental assessment necessary prior to the approval of a product, it is the manufacturer’s responsibility to submit the results of such a study to FDA for evaluation. Guidelines for how and when industry should conduct environmental assessments of FDA-regulated products are outlined in a 1998 FDA document.

Some activists say the suit was filed to limit future use of mercury in dental fillings while other activists lobby state lawmakers to pass legislation to ban the products still in use across the nation.

A slew of state bills were introduced this year that require patient notification of the dangers of mercury in dental fillings, and Maine enacted a law that requires any supplier of mercury to dentists in the state to provide annual data to the Maine Department of Environmental Protection on the volume of mercury supplied. The suppliers must report the data from 2007 through 2009.

“We hope [the Maine bill] will give [state lawmakers] an idea of how much of this stuff is really out there,” one activist says.

Environmentalists and public health advocates say that use of the silver-colored fillings has declined over the past decade, with only about a third of all fillings containing mercury. But the advocates say lower-income

populations receive the largest share of the fillings, with higher income populations opting for alternatives, such as gold or ceramic crowns.

Meanwhile, the National Association of Clean Water Agencies (NACWA), which represents wastewater treatment operations, released a “white paper” earlier this year to highlight options its members can take to limit the amount of mercury effluent that must be treated. Such options include “best management practices” to limit the release into the sewer systems; implementation of numeric wastewater limits for dental clinics; and potential requirements or recommendations of amalgam separators.

The white paper points to recommendations for management practices outlined last year by the American Dental Association (ADA) on how to handle the dental amalgam, such as stocking it and storing it before being shipped to a certified recycling operation.

According to NACWA the dental amalgam is sometimes collected in chairside traps or filters and washed out in sinks, directly discharging the contents into the sewer systems. The group also says the management practices can help ensure that amalgam is not included with other wastes, particularly those that may be incinerated or autoclaved -- which can result in emissions of the mercury.

The white paper also recommends applying for a local limit for mercury, either at the “end of pipe” or on a dental facility’s total discharge. The paper also recommends that a wastewater treatment operation could require or urge the installation of amalgam separators that capture the mercury and other wastes before they enter the sewer system. Installation of such systems could be a more effective way of limiting mercury discharges than setting numeric limits, and could be included in a facility’s Clean Water Act permits, one wastewater treatment industry source says.

ADA did not return calls for comment.