



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

STEPHEN R. PRITCHARD  
Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

**AMALGAM WASTEWATER  
AND RECYCLING REGULATIONS  
FOR DENTAL FACILITIES**

**PUBLIC HEARING DRAFT**

- New Chapter: 310 CMR 73.00
- Regulations Amended: 310 CMR 30.000, 310 CMR 70.00

**SEPTEMBER 2005**

*Prepared by: The Commonwealth of Massachusetts  
Executive Office of Environmental Affairs  
Department of Environmental Protection  
Bureau of Waste Prevention  
Business Compliance Division*

This information is available in alternate format. Call April McCabe, ADA Coordinator at 1-617-556-1171. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>

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September 2005

Dear Citizen:

I am pleased to send you this copy of proposed new regulations that would require Massachusetts' dental facilities to install amalgam separators and to recycle all amalgam waste. This proposal is a key component of the Commonwealth's "Zero Mercury Strategy", which is designed to virtually eliminate releases of mercury into the environment from Massachusetts sources.

The Department is interested in receiving your comments and suggestions on how it can most effectively implement this new program. I hope that you will review this proposal and provide us with your comments. We are holding six public hearings during the week of October 3, 2005. Written comments may be submitted until October 28, 2005.

Please contact James Paterson at (617) 556-1096 if you have any questions. We hope you can attend a hearing, and look forward to receiving your input.

Very truly yours,

James C. Colman  
Assistant Commissioner  
Bureau of Waste Prevention

## **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

### **Program Notice**

Notice is hereby given that the Department of Environmental Protection, acting in accordance with the provisions of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), M.G.L. c. 21C §§ 4 and 6 (the Massachusetts Hazardous Waste Management Act), M.G.L. c. 21A, §§ 2 and 8 and c. 111, § 150A (the Solid Waste Management Act), will hold six public hearings at the times and places set forth below. These proposed regulations would require dentists to install amalgam separators and recycle their mercury-containing amalgam waste. Public hearings will be conducted under the provisions of M.G.L. Chapter 30A on:

**Monday, October 3, 2005 - Worcester - 4:00 p.m.**  
**Department of Environmental Protection, Central Regional Office**  
**627 Main St., Concord Room**

**Tuesday, October 4, 2005 - Haverhill – 4:00 p.m.**  
**Haverhill City Hall**  
**4 Summer St., Room 301**

**Wednesday, October 5, 2005 - Boston - 9:30 a.m.**  
**Department of Environmental Protection**  
**One Winter Street, 2<sup>nd</sup> Floor, Room A-2212**

**Wednesday, October 5, 2005 - Lakeville - 1:00 p.m.**  
**Department of Environmental Protection, Southeast Regional Office**  
**20 Riverside Dr., 1st Floor Conference Room**

**Thursday, October 6, 2005 - Boston - 1:00 p.m.**  
**Department of Environmental Protection**  
**One Winter Street, 2<sup>nd</sup> Floor, Room A-2212**

**Friday, October 7, 2005 - Springfield - 10:00 a.m.**  
**Department of Environmental Protection, Western Regional Office**  
**436 Dwight St., Room 305**

Testimony may be presented orally and/or in writing at the public hearings. The period for accepting written comments will remain open until **5 p.m. on October 28, 2005**. Submit to: MA DEP, Business Compliance Division, c/o James Paterson, One Winter St., 8th Floor, Boston, MA 02108. Copies of the proposed regulations can be obtained by accessing DEP's web site at [www.mass.gov/dep/](http://www.mass.gov/dep/) under "New Additions"; at one of the Service Centers at each of Department's three regional offices; or by contacting James Paterson at (617) 556-1096.

Corrected legal notice – 9/8/05

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>



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## **INTRODUCTION**

### **Summary**

The following regulatory proposal requires dentists to install amalgam separators and recycle their mercury-containing amalgam waste. These regulations are the second phase of the Department of Environmental Protection's (DEP) initiative to limit releases of dental amalgam to the environment. In 2004, DEP implemented a voluntary program for dentists to install amalgam separators. Dentists who participated in that program's initial phase (between January 31, 2004 and January 31, 2005 and extended to February 28, 2005) will not be subject to these regulations until 2010. Dentists who participate in the voluntary program's second phase (between March 1, 2005 and January 31, 2006) will not be subject to these regulations until February 1, 2007.

### **Background**

Mercury is a naturally occurring element that is toxic to humans and wildlife. Materials containing mercury that are thrown in the trash or down the drain can pollute the environment. Amalgam waste from dental practices and clinics has been identified as a small but significant source of mercury releases to the environment. A University of Massachusetts study of several commercially available amalgam separator technologies confirmed that they effectively remove most mercury from dental wastewater.

In 2004, the DEP worked with the Massachusetts Dental Society to establish a voluntary program for dental practices and facilities to certify to DEP that they are using amalgam separators and recycling amalgam waste containing mercury (see attached fact sheet). Dental practices that participated in this voluntary program by February 28, 2005, are exempt from DEP regulations relating to the installation, operation, maintenance and upgrading of amalgam separation systems, and related DEP fees, until February 1, 2010. Since 2661 Massachusetts dentists participated in the voluntary program during its first year (74% of the dentists who generate more than incidental amounts of amalgam waste), a second voluntary opportunity is being offered, which will exempt dental practices that sign up between March 1, 2005 and January 31, 2006 from additional amalgam separator rules and fees until February 1, 2007.

### **Why The Amalgam Separator Initiative Was Launched**

This initiative was implemented to reduce the amount of mercury released into the environment by Massachusetts dental practices and facilities. DEP first implemented the voluntary approach to encourage early installation and use of amalgam separators by dentists before the agency adopted regulations that require these actions. In addition, amalgam waste from the dental sector contributes to the total quantity of mercury released into the environment from Massachusetts sources, and was identified in the "Zero Mercury Strategy" adopted by the Massachusetts Executive Office of Environmental Affairs in 2000 as a potential candidate for pollution prevention.

## **Overview of Proposed Regulatory Requirements**

In parallel with the voluntary programs, DEP is proposing the attached regulations addressing dental amalgam waste that will require the installation and operation of amalgam separators and use of “operational standards” for waste amalgam containing mercury. These regulations, which would take effect by February 1, 2006, impose more stringent requirements than the voluntary program.

Dental practices and facilities that participated in the voluntary program by February 28, 2005, will need to comply with these regulatory requirements as of February 1, 2010. Dental practices and facilities that joined the voluntary program between March 1, 2005 and January 31, 2006 will need to comply as of February 1, 2007.

The proposed regulations would apply to dental practices and facilities that generate waste amalgam-containing mercury: general dentists, pediatric dentists and endodontists. Practices that do not place and do not remove amalgam, such as oral surgeons, periodontists and orthodontists, would not be covered by these rules.

The regulations would require a dental practice or facility to certify to DEP that it:

- Has installed an amalgam separator system that serves every dental chair in the practice or facility where waste amalgam is generated. The system must be one that has been demonstrated to remove at least 98 percent of the amalgam waste containing mercury (using the ISO 11143 protocol or an equivalent method acceptable to DEP). The regulation allows certain exceptions to the requirement for 98% removal efficiency;
- Maintains and operates the amalgam separator system according to its manufacturer’s specifications;
- Uses only pH neutral and biodegradable cleaners to clean vacuum system lines;
- Recycles all amalgam waste containing mercury; and
- Keeps records to document that the program requirements are being met.

## **Opportunity to Join the Voluntary Program Remains Available**

Under the second year of the voluntary program, dental practices and facilities that certify between March 1, 2005 and January 31, 2006 will be exempt from the proposed regulation until February 1, 2007. To participate in the second year of the voluntary program, dental practices and facilities will need to complete a certification form available through DEP’s Web site at <http://www.mass.gov/dep/erp/dentists.htm> and submit the form online.

### **Other Regulations Affected by these Revisions:**

In addition to section 310 CMR 73.00, which is being created for these new requirements, related amendments are also being made to 310 CMR 30.000 (the Hazardous Waste Regulations), and 310 CMR 70.00 (the Environmental Results Program) for consistency.

### **Fees**

In Fall 2005, the Department expects to propose revisions to its fee regulations that would establish a compliance fee to be paid by dentists that generate amalgam waste. This fee would cover the Department's costs associated with implementing this program. Preliminary estimates are that this fee will be approximately \$500, with payment due with each certification (DEP proposes that dental facilities file compliance certifications with the Department every five years). The fee would not apply to dentists who participated in the voluntary program by February 28, 2005 until 2010 (or until 2007 for dentists who certified between March 1, 2005 and January 31, 2006).

### **Contents of this Proposal:**

Section 1 of this package contains a proposal to establish a new section of the Code of Massachusetts Regulations (310 CMR 73.00), which would require dentists to install amalgam separators and recycle their mercury-containing amalgam waste. In addition, related amendments are proposed in existing regulations: 310 CMR 70.00 (Section 2) and 310 CMR 30.000 (Section 3). Issues on which DEP is particularly seeking comment are highlighted with "NOTE TO REVIEWERS." Comments are also solicited on any other aspect of these proposals.

### **How to Submit Comments:**

DEP is holding six public hearings to obtain oral comment on these proposals during the week of October 3, 2005. Please see the attached Program Notice for information about the location and schedule of hearings. Written comments may be submitted to the Department until close of business on October 28, 2005. The attached Program Notice provides the address to which written comments should be submitted.

## SECTION 1

### CODE OF MASSACHUSETTS REGULATIONS

#### **310 CMR 73.00: AMALGAM WASTEWATER AND RECYCLING REGULATIONS FOR DENTAL FACILITIES (NEW SECTION)**

##### **Title 310: Department of Environmental Protection**

##### **Chapter 73.00: Amalgam Wastewater and Recycling Regulations for Dental Facilities**

##### Section 73.01: Purpose and Authority

- (1) The purpose of 310 CMR 73.00 is to protect public health, safety, welfare and the environment. These regulations establish wastewater treatment, operational standards, and amalgam recycling requirements to reduce the amount of mercury discharged from dental facilities, and require a performance-based compliance certification from the owners of dental practices in compliance with 310 CMR 70.00.
- (2) 310 CMR 73.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), M.G.L. c. 21C, §§ 4 and 6 (the Hazardous Waste Management Act), c. 111, § 150A (the Solid Waste Management Act) and M.G.L. c. 21A, §§ 2 and 8.

##### 73.02: Definitions

Amalgam means an alloy containing mercury and other metals used to restore the dentition.

Amalgam Separator means an item of dental equipment designed to remove amalgam particles from the wastewater passing through any vacuum line filters and screens and/or chair-side traps of a dental facility prior to its discharge.

Amalgam Waste means any waste containing mercury amalgam or otherwise associated with preparation or use of amalgam, including but not limited to amalgam collected by chair-side traps, screens, filters, vacuum system filters, amalgam separators or other devices; waste elemental mercury; and waste amalgam capsules.

Approved Amalgam Separator means an amalgam separator that has been demonstrated by the manufacturer to achieve a 98% or greater amalgam particulate removal efficiency determined on the basis of test data generated by the manufacturer:

- (a) using ISO protocol 11143; or

(b) an equivalent method that meets DEP approved quality assurance and quality control criteria.

**[NOTES TO REVIEWERS:**

1. Although most jurisdictions rely on the ISO methodology to evaluate amalgam separators, DEP proposes to retain flexibility in the regulation to allow for the potential future use of other performance-based evaluations. DEP requests input on whether this is a necessary and reasonable approach.
2. The Department may consider allowing a minimum 95% removal efficiency where dental facilities, due to space constraints, cannot install an amalgam separator that can achieve a 98% or greater amalgam particulate removal efficiency. DEP requests comments on whether this is an appropriate approach.
3. The Department is seeking information on the life expectancy of amalgam separators. If they typically last for more than five years on average, the Department may “grandfather” units (for up to five additional years) if they were installed under the voluntary program and they are still achieving a 95% or better dental amalgam removal efficiency when the system would need to comply with these regulations (2010 for systems installed in the voluntary program’s first year, and 2007 for systems installed in the second year).]

Dental facility means any institution, clinic, office or location where dentistry is practiced, as defined in M.G.L. c. 112, § 50.

Department means the Massachusetts Department of Environmental Protection.

ISO means the International Organization for Standardization.

Operational standards means specified business, operational, maintenance and other procedures listed at 310 CMR 73.05 that limit the amount of mercury released to the environment through wastewater and solid waste.

Owner of a dental facility means any person who owns, leases, maintains, or operates a dental facility in any office or other room or rooms where dentistry is practiced, as defined in M.G.L. c. 112, § 50, or who directly or indirectly is manager, proprietor, or conductor of the same.

Reclaimed means processing to recover a usable product or regeneration, but does not include burning (e.g. for energy recovery) or use constituting disposal.

73.03: Applicability

- (1) 310 CMR 73.00 is applicable to all dental facilities except those that do not generate or discharge wastewater from amalgam-related processes (e.g., facilities limited to oral and maxillofacial, orthodontic, periodontic and/or oral medicine practices) or

facilities that use mercury-free filling material, and do not place or remove amalgam (e.g. certain pediatric practices).

**[NOTE TO REVIEWERS:** The Department is seeking input on whether this is the appropriate way of addressing pediatric dentists who do not place amalgam containing mercury, but may occasionally remove mercury amalgam fillings. Should this specific type of pediatric practice be categorically excluded from 310 CMR 73.00, or should it be conditionally excluded as proposed? The Department is concerned that a *de minimus* approach to an exemption (i.e., a maximum number of allowable amalgam filling removals over a period of time) would be difficult to implement and enforce.]

(2) Dental facilities that are subject to 310 CMR 73.00 must comply in accordance with the following schedule:

(a) A dental facility certified by an owner of a dental facility under the Department's voluntary Dental Amalgam/Mercury Recycling Certification program that it installed an approved amalgam separator by February 28, 2005 and maintains compliance with all other requirements of that program is subject to 310 CMR 73.00 effective February 1, 2010.

(b) A dental facility certified by an owner of a dental facility under the Department's voluntary Dental Amalgam/Mercury Recycling Certification program that it installed an approved amalgam separator between March 1, 2005 - January 31, 2006 and maintains compliance with all other requirements of that program is subject to 310 CMR 73.00 effective February 1, 2007.

(c) Dental facilities in operation as of [the effective date of this section] and that did not participate in the Department's voluntary Dental Amalgam/Mercury Recycling Certification program shall comply with all requirements of 310 CMR 73.00 no later than 60 days after [this section's effective date].

(d) A new dental facility (i.e., one commencing operations after [the effective date of this section]) shall install an approved amalgam separator before commencing operation and shall comply with all other requirements of 310 CMR 73.00 in accordance with 310 CMR 70.03(4).

(3) Compliance with 310 CMR 73.00 does not release the owner of a dental facility from the need to comply with other applicable state, federal and local requirements.

(4) Certification Form. Each compliance certification required pursuant to 310 CMR 70.03 shall be on a form prescribed by the Department and shall address compliance with the standards established by 310 CMR 70.00 and 310 CMR 73.00. The certification form may also address compliance with other applicable standards promulgated by the Department.

#### 73.04: Amalgam Separator Requirements

- (1) Each dental facility subject to these regulations shall:
  - (a) install an approved amalgam separator(s) which meets the requirements of this section;
  - (b) ensure that all wastewater that contains amalgam waste from the dental facility, including but not limited to wastewater from chairs and cuspidors, passes through an approved amalgam separator before being discharged;
  - (c) ensure that the installed amalgam separator(s) is properly sized to accommodate maximum amalgam wastewater flow rates at the facility;
  - (d) ensure that all amalgam waste is collected from the amalgam separator in accordance with the manufacturer's instructions;
  - (e) ensure that any amalgam separator is installed, operated and maintained according to the instructions of the manufacturer of the unit;
  - (f) for new or expanded dental facilities that open after the effective date of this regulation, ensure that the amalgam separator is installed prior to commencing operations; and
  - (g) provide to the Department upon request test data generated by the manufacturer that documents the amalgam separator's removal efficiency.

#### 73.05: Operational Standards

- (1) Each dental facility subject to these regulations shall:
  - (a) ensure that no amalgam waste is disposed of with solid waste or medical waste;
  - (b) safely store all amalgam waste generated at the dental facility in containers that are sealed and structurally sound;
  - (c) use only biodegradable disinfectants and cleaning agents that are non-corrosive (pH range between 6.5-8.5) and non-oxidizing (no bleach) in the facility's vacuum lines and all other drains connected to its amalgam separator, which have been demonstrated to be compatible with the unit(s) in use, and use such cleaning agents only in accordance with the unit manufacturer's instructions;

[**NOTE TO REVIEWERS:** The Department is requesting comment on whether this language effectively describes the types of line cleaners and disinfectants that should be used to minimize releases of dissolved mercury.]

- (d) transfer all amalgam waste to a permitted hazardous waste recycling facility, licensed hazardous waste facility, a facility that consolidates shipments of amalgam waste before being shipped off-site for reclamation, or, if shipped out of state, a facility that is authorized to reclaim mercury from amalgam waste.
  - 1. shipments of amalgam waste to facilities described in 310 CMR 73.05(1)(d) shall be transported by either a common carrier or a licensed hazardous waste transporter, and accompanied by information identifying the shipment as amalgam waste containing mercury.
- (e) retain documentation, such as a certificate of recycling, a hazardous waste manifest, bill of lading or contractual agreement, documenting that the amalgam waste has been recycled by being reclaimed and the name and address of the facility at which the amalgam waste is ultimately recycled.

73.06: Recordkeeping.

- (1) Dental facilities shall keep records on-site that demonstrate compliance with manufacturers' recommended maintenance and servicing of installed amalgam separators, that the amalgam waste has been recycled pursuant to 310 CMR 73.05(1)(e), and the supporting information upon which the facility relied to file the certification required by 310 CMR 73.07.
- (2) Records referenced in 310 CMR 73.06(1) shall be retained for five years.

73.07: Compliance Certification Requirements for Dental Facilities

- (1) Certification Form. Within 60 days of a dental facility becoming subject to the requirements of this section, pursuant to the schedule described at 310 CMR 73.03(2), an owner of a dental facility shall submit to the Department a compliance certification. The certification shall address compliance with standards to which the dental facility is subject on a form prescribed by the Department that shall include at least the following information:
  - (a) The type of amalgam separator installed, including manufacturer and model;
  - (b) Date upon which the amalgam separator became operational, and for new or expanded facilities, the date the facility became operational;
  - (c) Identification of the requirements of 310 CMR 73.04 for amalgam separators and certification as to whether or not the system meets all such requirements;

- (d) Certification of compliance with the operational standards of 310 CMR 73.05;
- (e) Certification that documentation and records are being maintained as stipulated in CMR 73.06;
- (f) List of all dentists practicing at the certifying facility; and

**[NOTE TO REVIEWERS:** Should there be an allowance for dental facilities that cannot or choose not to submit their certification electronically? Electronic certifications have been more difficult for facilities that rely on computers that run the Macintosh operating system and for submittals involving modems. A higher fee could be applied to paper submittals to cover the Department's higher processing costs.]

- (g) Certification that at least one staff member is familiar with procedures to follow in order to ensure compliance with the amalgam separator requirements and operational standards described at 310 CMR 73.04-73.05.

(2) No later than five years from the date of the initial certification, and every five years thereafter, each owner of a dental facility subject to 310 CMR 73.07 must recertify electronically that the dental practice continues to be in compliance with all requirements listed in 310 CMR 73.04 through 73.07.

**[NOTE TO REVIEWERS:** See note above about non-electronic submittals.]

## SECTION 2

### **Amendments to 310 CMR 70.00**

#### ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION REGULATIONS

##### **Summary of revisions to 310 CMR 70.000 with Redline/Strikeout:**

1. Amend 310 CMR 70.01(2) as follows:

##### **70.01: Purpose and Authority**

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring a facility-wide, performance-based compliance certification.

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21 §§ 26 through 53 (the Massachusetts Clean Waters Act), c.21A §§ 2, 8, 13 and 16, c.21C (the Hazardous Waste Management Act), ~~and~~ c. 111 §§ 142A through 142M (the Massachusetts Clean Air Act), **and c. 111 § 150A (the Solid Waste Management Act).**

2. Amend the 310 CMR 70.02 definition for “ERP Facility” by adding:

**(e) a dental facility subject to 310 CMR 73.00.**

and the definition for “Standards” by inserting:

**310 CMR 73.00** immediately after “310 CMR 72.000”

3. Amend 310 CMR 70.03(2)(c) as follows:

(c) that systems to maintain compliance are in place at the facility and will be maintained for the ~~coming year~~ **duration of the certification period** even if processes or operating procedures are changed over the course of the ~~year~~ **certification period**; and

4. Amend 310 CMR 70.03(6), Schedule for Submission of Certification Form, by adding the following:

**(d) dental facilities subject to 310 CMR 73.00 shall submit certification forms in accordance with the schedule and conditions referenced in 310 CMR 73.07.**

5. Revise 310 CMR 70.04(4) as follows:

(4) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR ~~70.02~~ **70.03(2)**;

6. Amend 310 CMR 70.04(6) as follows:

(6) violate any other provision of 310 CMR 70.00.

The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§26-53 (Massachusetts Clean Waters Act), c.21A §§2, **8**, 13 and 16, c.21C (Hazardous Waste Management Act), ~~and~~ c. 111 §§142A-142M (Massachusetts Clean Air Act), **and c. 111, § 150A (the Solid Waste Management Act)** in order to obtain full compliance with all requirements applicable to ERP facilities, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

## Revisions to 310 CMR 70.000 with Full Text and Redline/Strikeout

### 310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

#### Section

[70.01: Purpose and Authority](#)

[70.02: Definitions](#)

[70.03: Compliance Certification Requirements](#)

[70.04: Violations of 310 CMR 70.00](#)

#### **70.01: Purpose and Authority**

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring a facility-wide, performance-based compliance certification.

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21 §§ 26 through 53 (the Massachusetts Clean Waters Act), c.21A §§ 2, 8, 13 and 16, c.21C (the Hazardous Waste Management Act), c. 111 §§ 142A through 142M (the Massachusetts Clean Air Act), **and c. 111 § 150A (the Solid Waste Management Act).**

#### **70.02: Definitions**

The definitions found in 310 CMR 70.02 serve only for the purposes of enforcing the compliance certification requirements contained in 310 CMR 70.00 and are not intended to displace the existing definitions of those terms in the underlying standards.

**Department** means the Massachusetts Department of Environmental Protection.

**Environmental Results Program Facility or ERP Facility** means one of the following:

- (a) a dry cleaner subject to 310 CMR 7.26(10)-(16); or
- (b) a photoprocessor subject to 310 CMR 71.00.
- (c) a printer as defined in 310 CMR 7.26(22).
- (d) a boiler subject to 310 CMR 7.26(30) through (37).
- (e) **a dental facility subject to 310 CMR 73.00.**

**Operator** means the person responsible for the over-all operation of an ERP facility.

**Owner** means any person who has legal or equitable ownership, alone or with others, of an ERP facility, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

**Person** means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

**Responsible Official** is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility; or
- (b) For a partnership or sole proprietorship: a general partner with the authority to bind the partnership or the proprietor, respectively; or
- (c) For a municipality, state, federal, or other public agency including any legislatively-created authority, board, commission, district, etc.: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

**Standards** means those requirements listed in the certification form referred to in 310 CMR 70.03(4), including but not limited to regulations contained in [310 CMR 7.00](#), [310 CMR 30.00](#), [310 CMR 71.00](#), [310 CMR 72.00](#), **310 CMR 73.00**, [314 CMR 3.00](#), [314 CMR 5.00](#), or [314 CMR 12.00](#), requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

### **70.03: Compliance Certification Requirements**

(1) **Certification.** Each owner and/or operator of an ERP facility or an industrial wastewater holding tank shall submit to the Department no later than the schedule set forth in 310 CMR 70.03 (6), or as required pursuant to 310 CMR 70.03(4), a certification statement signed by a responsible official which:

- (a) declares applicable standards as listed in the certification form and states whether the ERP facility is in compliance with the applicable standards; and
- (b) identifies the date, type, and reporting date of any violations that were required by applicable law and/or standards as listed in the certification form to be reported to the Department and that occurred within the year prior to the date of the certification statement including, but not limited to, any notifications required pursuant to MGL c.21E, §7 and [310 CMR 40.0300](#) (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to [310 CMR 7.02](#)(6) (air pollution control equipment failures), [314 CMR 12.03](#)(8) (emergency bypasses to sewer treatment works), [310 CMR 30.520](#) (hazardous waste contingency plans) and the terms and conditions of any existing permits issued by the Department.

(2) **Certification Statement.** Each responsible official providing information for an ERP facility is required pursuant to 310 CMR 70.03(1) to make the following certification:

"I, [name of responsible official], attest under the pains and penalties of perjury:

- (a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
- (c) that systems to maintain compliance are in place at the facility and will be maintained for the ~~coming year~~ **duration of the certification period** even if processes or operating procedures are changed over the course of the ~~year~~ **certification period**; and
- (d) that I am fully authorized to make this attestation on behalf of this facility. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

**(3) One-time Certification Statement.** Each responsible official providing information for an industrial wastewater holding tank is required, pursuant to 310 CMR 70.03(1), to make the following certification:

"I, [name of responsible official], attest under the pains and penalties of perjury:

- (a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
- (c) that systems to maintain compliance are in place at the facility and will be maintained even if processes or operating procedures changed; and
- (d) that I am fully authorized to make this attestation on behalf of this facility. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

**(4) New ERP Facilities or New Industrial Wastewater Holding Tanks, Recommencement of ERP Facility Operation, and Transfer of Ownership.** Within sixty days of:

- (a) the commencement of operation of a new ERP facility or a new industrial wastewater holding tank;
- (b) the recommencement of operation of an ERP facility for which no certification was submitted during the year prior to recommencement; or
- (c) acquiring an ERP facility, each owner and/or operator of the ERP facility shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2).

(5) **Certification Form.** Each compliance certification required pursuant to 310 CMR 70.03 shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or the holding tank is subject. The certification form may include specialized forms for specific categories of ERP facilities or holding tanks, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all forms applicable, including but not limited to forms which identify the requirements in violation, what the facility will do to return to compliance, and the date by which compliance will be achieved.

(6) **Schedule for Submission of Certification Form.**

(a) Owners and/or operators of the following types of ERP facilities shall submit certification forms to the Department by September 15th of each year.

- (i) dry cleaners subject to 310 CMR 7.26 (10)-(16);
- (ii) photo processors subject to 310 CMR 71.00;
- (iii) printers subject to 310 CMR 7.26 (20)-(29).

(b) Owners and/or operators of facilities with boilers subject to 310 CMR 7.26 (30) shall submit certification forms in accordance with the schedule set forth in 310 CMR 7.26 (32) (b).

(c) Owners and/or operators of industrial wastewater holding tanks shall submit to the Department one-time certification forms in accordance with the schedule and conditions set forth in 314 CMR 18.11.

**(d) dental facilities subject to 310 CMR 73.00 shall submit certification forms in accordance with the schedule and conditions set forth in 310 CMR 73.07.**

**70.04: Violations of 310 CMR 70.00**

It shall be a violation of 310 CMR 70.00 for any person to:

- (1) fail to submit a certification pursuant to 310 CMR 70.03(1);
- (2) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;
- (3) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;
- (4) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR ~~70.02~~ **70.03(2)**;
- (5) fail to comply with the applicable standards; or
- (6) violate any other provision of 310 CMR 70.00.

The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§26-53 (Massachusetts Clean Waters Act), c.21A §§2, 8, 13 and 16, c.21C (Hazardous Waste Management Act), c. 111 §§142A-142M (Massachusetts Clean Air Act), **and c. 111, § 150A (the Solid Waste Management Act)** in order to obtain full compliance with all requirements applicable to ERP facilities, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

#### REGULATORY AUTHORITY

310 CMR 70.00: M.G.L. c. 21 §§ 26 through 53; c. 21A §§ 2, 13 and 16; c. 21C and c. 111 §§ 142A through 142M

## SECTION 3

### **Amendments to 310 CMR 30.000**

1. Revisions to 310 CMR 30.010

310 CMR 30.010 is amended by inserting the following three new definitions:

Amalgam means an alloy containing mercury and other metals used to restore the dentition.

Amalgam Waste means any waste containing mercury amalgam or otherwise associated with preparation or use of amalgam, including but not limited to amalgam collected by chair-side traps, screens, filters, vacuum system filters, amalgam separators or other devices; waste elemental mercury; and waste amalgam capsules.

Dental facility means any institution, clinic, office or location where dentistry is practiced, as defined in M.G.L. c. 112, § 50.

2. 310 CMR 30.104 is amended by inserting 310 CMR 30.104(2)(u)

30.104(2) Wastes Otherwise Excluded from 310 CMR 30.000:

(a) .....

(t) Wastes with infectious characteristics, which are regulated by the department of Public Health pursuant to M.G.L. c. 111, §§ 3 and 51 through 56.

(u) Amalgam waste that is hazardous solely because it fails the test for the Toxicity Characteristic of 310 CMR 30.125 for Hazardous Waste Code D009 when managed by dental facilities in compliance with the requirements of 310 CMR 73.00.

1. Massachusetts facilities that reclaim amalgam waste described in 310 CMR 30.104(2)(u) must comply with the requirements of 310 CMR 30.200 and 30.800, as applicable.

2. Massachusetts facilities that consolidate but do not reclaim shipments of amalgam waste described in 310 CMR 30.104(2)(u) must, prior to shipping off-site for reclamation:

a. accumulate amalgam waste in containers that are sealed and structurally sound;

b. accumulate amalgam waste for no more than one year.