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December 3, 2008

**State Senators**

The Honorable Alan Sanborn, Chair,  
Committee on Economic  
Development and Regulatory  
Reform

The Honorable Randy Richardville,  
Buzz Thomas, Bruce Patterson,  
Gerald Van Woerkom, Mark C.  
Jansen, Roger Kahn, John  
Pappageorge, Deborah Cherry,  
Gretchen Whitmer, Tupac A.  
Hunter, Jason Allen, Jud Gilbert,  
Gilda Z. Jacobs

State Capitol  
PO Box 30036  
Lansing, MI 48909-7536

**State Representatives**

The Honorable Kathy Angerer, Chair,  
Committee on Health Policy

The Honorable Mike Simpson,  
Edward J. Gaffney, Marie Donigan,  
Gino H. Polidori, Paul Condino,  
Alma Wheeler Smith, Gabe Leland,  
Barb Byrum, Brenda J. Clack, Marc  
R. Corriveau, Andy Coulouris, Ted  
Hammon, Robert Jones, Mary  
Valentine, Lisa Wojno, Bert Johnson,  
Joe Hune, James Marleau, Kevin  
Green, Richard Ball, Brian N. Calley,  
David B. Robertson, Tim Moore

State Capitol  
PO Box 30014  
Lansing, MI 48909-7514

Dear Senators and Representatives:

The Michigan Water Environment Association is a non-profit organization made up of over 1800 professionals and practitioners who work with Michigan's water environment. We are a recognized authority on and advocate for preserving, restoring, and enhancing Michigan's water resources.

It has come to our attention that HB 6307 has passed the House on November 13, 2008. (A nearly identical bill, SB 1310, awaits action in the senate.) These bills, in their current form, would require many dentists to install Amalgam Separators to prevent high concentrations of mercury from passing through wastewater systems to surface or ground waters. The bill also would preempt local governments from requiring any additional controls. This latter provision may place communities in an untenable position of deciding to violate either this statute or the federal Clean Water Act and Michigan Natural Resources and Environmental Protection Act.

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These existing statutes require communities to comply with the terms of discharge permits issued by the Michigan Department of Environmental Quality (MDEQ). These permits frequently require implementation of Mercury Minimization Programs intended to reduce discharges that contribute to the need for fish consumption advisories in the Great Lakes and elsewhere in Michigan. These bills, while clearly intended to reduce mercury pollution, may actually impede measures already in place to accomplish the same goal.

An additional concern is the precedent these bills may make. We understand that dentists do not like having to comply with ever-changing environmental regulations, but dentists are not alone in this respect. Many elements in the private and public sectors face and have been facing this situation. If local governments are preempted from tightening requirements on dentists, other special interests are likely to seek the same remedy, such as electro-platers, pharmaceutical companies, food processors, etc. Municipalities are having a difficult time complying with the ever-changing environmental regulations placed on them, and these bills would make that task increasingly difficult or impossible.

We request that the legislature re-evaluate the provisions of these bills, and remove the provisions that preempt local governments from requiring necessary controls. This would assure that we appropriately provide needed protections for our shared water resources.

Additional information is provided on the attached fact sheet.

Thank you for your attention to this matter.

Sincerely,



Fred E. Cowles, P.E.  
Chair, MWEA Government Affairs Committee

cc: President Keith McCormack, MWEA  
Director Steven Chester, MDEQ  
Grace Scott, MDEQ

### **Fact Sheet on HB 6307 and SB 1310**

Many communities have discharge permits that contain limitations on their treated sewage discharges that are equivalent to the state's water quality standard for mercury of 1.3 ng/L. This extremely low effluent limit for mercury is not met by many of the permitted dischargers and is based upon wildlife protection criteria.

Because so few Great Lakes NPDES dischargers meet the water quality based effluent limit of 1.3 ng/L, the MDEQ has developed a multiple discharger variance and applies a 10 ng/L limit as the level currently achievable. This level is subject to change and the MDEQ is required to move toward the limit of 1.3 ng/L as soon as possible in order to meet the goals stated in the federal Clean Water Act.

Many studies, including one performed by the American Dental Association, indicate that dental facilities contribute anywhere between 8 to 40% of the influent mass of mercury to municipal sewage collection systems. City of Wyoming, Michigan has collected site-specific data since 2001 that indicate approximately 40% of the mercury entering that city's sewer system can be allocated to dental facilities.

Most of the larger Michigan wastewater treatment systems are required by Federal and State law to operate an Industrial Pretreatment Program and must have the legal authority to enforce technically based limits for specific pollutants contained within the local sewer use ordinance including mercury.

Metal pollutants, such as mercury, that may be introduced into the municipal sewage collection system are best controlled at the source. Once these pollutants reach the treatment facility, little can be done to reduce the concentration. Source reduction is the best way of controlling pollutant discharges into a sewer system and thus the Great Lakes.

While some provisions of HB 6307 and SB 1310 are consistent with the goal of controlling significant sources of mercury entering the Great Lakes, there are some significant problems with the bills. The most important is the provision to "preempt and supersede any local ordinance, regulation, or resolution that imposes conflicting, different, or additional standards or requirements". This provision would remove a local government's legal authority to enforce the industrial pretreatment requirements as mandated by Federal law.

Several other states have developed legislation related to controlling mercury in dental wastewater. In fact, an article in the April 2008 Journal of the Michigan Dental Association (JMDA) listed 9 states as having enacted amalgam separator requirements. The article states that "Similar self-imposed legislation has been successfully instituted in other areas of the country". However, the legislation that has been passed by the other 9 states does not include any language related to preempting or superseding a local ordinance. Nor does the legislation of any other state forbid the local government from requiring a dentist to have a permit as does Senate Bill No. 1310 and House Bill No. 6307.

An additional concern is related to the provisions of the bills that include the requirement for the development of best management practices by the Michigan Board of Dentistry. We believe that oversight by MDEQ and collaboration with many interested parties in developing best management practices will result in more widely accepted best management practices, and a more technically correct work product.