



February 11, 2016

The Honorable John Kerry, Secretary of State
U.S. Department of State

The Honorable Sally Jewel, Secretary
U.S. Department of the Interior

The Honorable Sylvia Mathews Burwell, Secretary
U.S. Department of Health and Human Services

“Citizen Petition” to Phase Out the Indian Health Service’s Dental Mercury Use

Dear Secretary Kerry, Secretary Jewel, and Secretary Burwell:

Dental amalgam, a material for filling tooth cavities, is approximately 50% mercury – a neurotoxin, a reproductive toxin, and a pollutant.¹ Nonetheless, the U.S. government’s Indian Health Service (IHS) still uses dental amalgam in American Indians. In its 2013 resolution, the National Congress of American Indians calls on the IHS to

“phase down, then phase out on a timetable...the use of dental amalgam in IHS programs; favor the use of non-mercury alternatives to dental amalgam in IHS programs in the interim; and provide information to patients and parents regarding the impacts of mercury from [amalgam.]”²

Nevertheless, the IHS has failed to take any action or even to respond. This breaks the U.S. Government’s commitments under the Nation to Nation / Government to Government relationship as established under Nation to Nation Treaties, US Laws and Executive Orders of this Administration; the UN Declaration on the Rights of Indigenous Peoples; the Minamata Convention on Mercury; and federal sustainable acquisition policies.

I. Action Requested

Petitioners call on the Secretary of HHS to:

1. Phase down, then phase out in accordance with a clear timetable, the use of dental amalgam in Indian Health Service (IHS) programs.
2. End the use of mercury-containing dental amalgam in American Indian and Alaska Native children in IHS programs immediately.
3. Provide information to American Indian and Alaskan Native patients, parents, communities and Tribal leaders immediately regarding mercury from dental amalgam (including the risks

to environment, children, and culture) and the availability of mercury-free fillings. This information should be contained in a fact sheet that must be distributed to IHS patients and a poster prominently displayed in each IHS dental clinic.

Petitioners call on the Secretary of the Interior to support these actions in order to protect American Indian land, water, fish, and other resources from dental mercury pollution caused by the irresponsible pro-amalgam policies of the Indian Health Service.

Petitioners call on the State Department to support these actions in order to enforce the Minamata Convention on Mercury and uphold the UN Declaration on the Rights of Indigenous Peoples.

II. Petitioners

The International Indian Treaty Council is an organization of Indigenous Peoples from North, Central, South America, the Caribbean, and the Pacific working for the sovereignty and self-determination of Indigenous Peoples and the recognition and protection of indigenous rights, treaties, traditional cultures and sacred lands. In 1977, IITC was the first Indigenous organization to receive Consultative Status with the UN Economic and Social Council (ECOSOC). In July 2011, IITC became the first Indigenous organization to be upgraded to “General Consultative Status” by ECOSOC.

Consumers for Dental Choice is a national non-profit organization whose mission is to end the use of mercury in the dental industry.

III. Statement of Grounds

The Secretaries of HHS, the Interior, and State need to take the requested actions for the following reasons:

- 1. *Dental amalgam is disproportionately used in dentistry for American Indians and Alaska Natives:*** Dental amalgam is disproportionately used in racial minorities and Indigenous Peoples.³ Nonetheless, the Indian Health Service continues to facilitate the disproportionate use of this mercury product in American Indians by purchasing even more amalgam and amalgam equipment.⁴
- 2. *Dental amalgam use poses a risk to American Indian and Alaskan Native infants and children:*** IHS still uses amalgam in American Indian and Alaska Native children even though the U.S. Food and Drug Administration (FDA) acknowledges that there is very little or no evidence that amalgam is safe for children and the unborn: “Very limited to no clinical information is available regarding long-term health outcomes in pregnant women and their developing fetuses, and children under the age of six, including infants who are breastfed.”⁵ In fact, FDA’s dental amalgam rule concedes that “The developing neurological systems in fetuses and young children may be more sensitive to the neurotoxic effects of mercury vapor.”⁶
- 3. *Dental amalgam use poses environmental health problems for American Indians and Alaska Natives:*** According to the U.S. Geological Survey, “[d]ental amalgam constituted the largest amount of mercury in use in the United States,” accounting for between 35% and 57% of mercury consumption in 2010 alone.⁷ Most of this mercury eventually end up in the environment, where it can become highly toxic methylmercury that can damage infant’s and

children's developing brains and nervous systems even before they are born.⁸ Indigenous Peoples from traditional fishing communities in the Great Lakes Area, California, Alaska and other areas disproportionately pay the high cost of dental mercury contamination impacting their health, environment, and subsistence rights.⁹

4. ***Dental amalgam use threatens American Indian and Alaska Native culture:*** Mercury from dental amalgam and other sources has a profound effect upon traditional American Indian ways of life, which values fish as an integral part of Indigenous subsistence culture.
5. ***American Indians and Alaska Natives are not being informed about the health, environmental, and cultural risks of dental amalgam:*** Despite these risks to American Indians' children, environment, and culture, IHS does not ensure that patients and parents are provided information regarding the mercury from dental amalgam or the availability of mercury-free fillings. A 2014 Zogby poll found that dentists do not provide this information: only 11% of Americans report their dentists even telling them that amalgam is mainly mercury.¹⁰ Few American Indians and Alaska Natives are aware of the mercury that IHS is bringing to the reservations.
6. ***IHS's dental amalgam use interferes with American Indians' and Alaska Natives' rights to subsistence, health, and free prior and informed consent under Articles 20, 24, and 29 of the UN Declaration on the Rights of Indigenous Peoples:*** Article 24 recognizes Indigenous Peoples right of "access, without any discrimination, to all social and health services" and "equal right to the enjoyment of the highest attainable standard of physical and mental health." But IHS continues to use amalgam, an inferior mercury product that can permanently damage tooth structure¹¹, disproportionately in American Indians and Alaska Natives. Article 29 recognizes American Indians' "right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources," which requires that "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent." But IHS has stored large quantities of mercury in the teeth of American Indians, much of which eventually ends up in the environment. Article 20 recognizes Indigenous Peoples' rights "to be secure in the enjoyment of their own means of subsistence."¹² But IHS uses dental amalgam even though its mercury contaminate the fish many American Indians depend on.
7. ***IHS's continued use of dental amalgam violates the Minamata Convention:*** The legally-binding Minamata Convention on Mercury requires the phase down of dental amalgam use. The Convention specifically calls for "Discouraging insurance policies and programmes that favour dental amalgam use over mercury-free dental restoration" and "Encouraging insurance policies and programmes that favour the use of quality alternatives to dental amalgam for dental restoration."¹³ Nonetheless, IHS's dental program continues to favor amalgam use for American Indians.
8. ***IHS's dental amalgam purchases are contrary to federal sustainable acquisition policy:*** Executive Order 13423 calls on federal agencies like IHS to reduce its acquisition of toxic and hazardous materials, like mercury-containing dental amalgam for use in dentistry targeting American Indians and Alaska Natives. It requires every federal agency to "ensure that the agency (i) reduces the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of by the agency."¹⁴ The head of each agency is charged with implementing sustainable practices for "reduction or elimination of acquisition and use of toxic or hazardous

chemicals.”¹⁵ Still, IHS continues purchasing mercury containing dental amalgam for use in American Indians and Alaska Natives.¹⁶

IV. Conclusion

The U.S. government has a history of conducting harmful activities – including nuclear weapons testing and uranium mining – within or near American Indian and Alaska Native lands. The result has been widespread environmental harm and serious health problems among American Indians. As Makhpi-ah-Lut-ah (Red Cloud) of the Oglala Lakota lamented, the U.S. government

“made us many promises, more than I can remember, but they kept but one; they promised to take our land, and they did.”

Today, IHS continues this long tradition: instead of the promised phase down of dental amalgam use, IHS is dumping mercury dental fillings into the teeth and the environment of American Indians and Alaska Natives. It is time for IHS to phase out the use of mercury-containing dental amalgam and take the requested immediate steps to achieve this goal on a timetable.

Respectfully submitted,

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¹ U.S. FDA, *Final Rule for Dental Amalgam*, <http://www.fda.gov/downloads/MedicalDevices/ProductsandMedicalProcedures/DentalProducts/DentalAmalgam/UCM174024.pdf>, p.86; *Minamata Convention on Mercury* (2013)

² National Congress of American Indians, *Resolution #TUL-13-051: Calling for US Ratification of the Minamata Convention on Mercury* (2013).

³ Sonia K. Makhija, Valeria V. Gordan, Gregg H. Gilbert, Mark S. Litaker, D. Brad Rindal, Daniel J. Pihlstrom and Vibeke Qvist, *Practitioner, patient and carious lesion characteristics associated with type of restorative material: Findings from The Dental Practice-Based Research Network*, *J Am Dent Assoc* 2011;142:622-632, <http://jada.ada.org/content/142/6/622.full.pdf+html>, p.629

⁴ Indian Health Service and Wykle Research Inc., *Purchase Order* (2014), <https://www.fpds.gov>; Indian Health Service, *National Supply Service Center (NSSC)*, http://www.ihs.gov/NSSC/index.cfm?module=dsp_nssc_about

⁵ *FDA Special Controls Guidance Document on Dental Amalgam*, <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm073311.htm>

⁶ *FDA Special Controls Guidance Document on Dental Amalgam*, <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm073311.htm>

⁷ U.S. Geological Survey, *Changing Patterns in the Use, Recycling, and Material Substitution of Mercury in the United States* (2013), <http://pubs.usgs.gov/sir/2013/5137/pdf/sir2013-5137.pdf>, p.1 (“Dental amalgam constituted the largest amount of mercury in use in the United States.” And “In 2010, the three leading end-use sectors were dental amalgam (accounting for between 35 and 57 percent of consumption), electrical and electronic instrumentation (29 percent of consumption), and batteries (8 percent of consumption).”)

⁸ U.S. EPA, *EPA will propose rule to protect waterways by reducing mercury from dental offices* (27 September 2010), <http://yosemite.epa.gov/opa/admpress.nsf/6427a6b7538955c585257359003f0230/a640db2ebad201cd852577ab00634848!OpenDocument>.

⁹ National Congress of American Indians, *Resolution #TUL-13-051: Calling for US Ratification of the Minamata Convention on Mercury* (2013).

¹⁰ *Measurably Misleading*, www.mercury-free.org/measurablymisleading.aspx

¹¹ World Health Organization, *Future Use of Materials for Dental Restoration* (2011), p.16 (“Adhesive resin materials [like composite] allow for less tooth destruction and, as a result, a longer survival of the tooth itself.”).

¹² *United Nations Declaration on the Rights of Indigenous Peoples* (2007), http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

¹³ *Minamata Convention on Mercury* (2013)

¹⁴ Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, <http://www.gpo.gov/fdsys/pkg/FR-2007-01-26/pdf/07-374.pdf>

¹⁵ Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, <http://www.gpo.gov/fdsys/pkg/FR-2007-01-26/pdf/07-374.pdf>

¹⁶ Indian Health Service and Wykle Research Inc., *Purchase Order* (2014), <https://www.fpds.gov>; Indian Health Service, *National Supply Service Center (NSSC)*, http://www.ihs.gov/NSSC/index.cfm?module=dsp_nssc_about