AN ACT

RELATING TO WATER QUALITY; ENACTING THE DENTAL AMALGAM WASTE REDUCTION ACT; REQUIRING A DENTAL OFFICE TO REMOVE DENTAL AMALGAM PRIOR TO DISCHARGE OF ITS WASTEWATER; AMENDING A SECTION OF THE DENTAL HEALTH CARE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Dental Amalgam Waste Reduction Act".

SECTION 2. DEFINITIONS.--As used in the Dental Amalgam Waste Reduction Act:

A. "amalgam" means a dental restorative material that is typically composed of mercury, silver, tin and copper, along with other metallic elements, and that is used by a dentist to restore a cavity in a tooth;

B. "amalgam separator" means a device that removes dental amalgam from the waste stream prior to discharge into either the local public wastewater system or a private septic system and that meets a minimum removal efficiency in accordance with international standards contained in ISO 11143, Dental Equipment-Amalgam Separators, published by the international organization for standardization; and

C. "dental office" means a fixed physical structure in which dental services are provided to patients by dentists and dental professionals licensed or certified by
the New Mexico board of dental health care under the
management of a licensed owner, operator or designee.

SECTION 3. INSTALLATION OF AMALGAM SEPARATOR
REQUIRED.--By December 31, 2014, a dental office shall
install an appropriately sized amalgam separator system and,
upon inspection for cause, shall demonstrate to the
New Mexico board of dental health care proper installation,
operation, maintenance and amalgam waste recycling or
disposal in accordance with an amalgam separator
manufacturer's recommendations. The New Mexico board of
dental health care shall consider noncompliance with the
Dental Amalgam Waste Reduction Act as unprofessional conduct
subject to the penalties and discipline of the board pursuant
to the Uniform Licensing Act and the Dental Health Care Act.

SECTION 4. EXEMPTION FOR CERTAIN DENTAL OFFICES.--An
amalgam separator system shall not be required for the
offices or clinical site of:

A. a dental office that is not engaged in amalgam
placement, removal or modification;

B. an orthodontist;

C. a periodontist;

D. an oral maxillofacial surgeon;

E. an oral maxillofacial radiologist;

F. an oral pathologist; or

G. a portable dental office without a fixed
connection for wastewater discharge.

SECTION 5. REPORTING.--A dental office shall report the model and size of its amalgam separator system within ninety days of installation to its local publicly owned water treatment facility, where applicable, and to the New Mexico board of dental health care. A dental office shall report its compliance and maintain records of the operation, maintenance and recycling or disposal of amalgam waste for every consecutive three-year period following the installation of its amalgam separator system and shall report the information upon request for cause to the New Mexico board of dental health care. The New Mexico board of dental health care shall retain the reported information for review coincident with the board's licensing and renewal functions.

SECTION 6. ENFORCEMENT.--The New Mexico board of dental health care shall initiate disciplinary proceedings for willful and persistent noncompliance with the provisions of the Dental Amalgam Waste Reduction Act.

SECTION 7. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 10, as amended) is amended to read:

"61-5A-10. POWERS AND DUTIES OF THE BOARD AND COMMITTEE.--In addition to any other authority provided by law, the board and the committee, when designated, shall:

A. enforce and administer the provisions of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act"
Act;

B. adopt, publish, file and revise, in accordance with the Uniform Licensing Act and the State Rules Act, all rules as may be necessary to:

(1) regulate the examination and licensure of dentists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;

(4) regulate the practice of dentistry and dental assisting and, through the committee, regulate the practice of dental hygiene; and

(5) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental assisting and, through the committee, dental hygiene and
censure, reprimand, fine and place on probation and
stipulation dentists, dental assistants and, through the
committee, dental hygienists, in accordance with the Uniform
Licensing Act for any cause stated in the Dental Health Care
Act and the Dental Amalgam Waste Reduction Act;

G. grant, deny, review, suspend and revoke
licenses to own dental practices and censure, reprimand, fine
and place on probation and stipulation non-dentist owners, in
accordance with the Uniform Licensing Act, for any cause
stated in the Dental Health Care Act and the Dental Amalgam
Waste Reduction Act;

H. maintain records of the name, address, license
number and such other demographic data as may serve the needs
of the board of licensees, together with a record of license
renewals, suspensions, revocations, probations, stipulations,
censures, reprimands and fines. The board shall make
available composite reports of demographic data but shall
limit public access to information regarding individuals to
their names, addresses, license numbers and license actions
or as required by statute;

I. hire and contract for services from persons as
necessary to carry out the board's duties;

J. establish ad hoc committees whose members shall
be appointed by the chair with the advice and consent of the
board or committee and shall include at least one member of
the board or committee as it deems necessary for carrying on its business;

K. have the authority to pay per diem and mileage to individuals who are appointed by the board or the committee to serve on ad hoc committees;

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

M. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

N. have the authority to sue or be sued and to retain the services of an attorney at law for counsel and representation regarding the carrying out of the board's duties;

O. have the authority to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental hygienist may prescribe, administer or dispense in accordance with rules the board has promulgated; and

P. establish continuing education or continued
competency requirements for dentists, certified dental
assistants in expanded functions, dental technicians and,
through the committee, dental hygienists."

SECTION 8. TEMPORARY PROVISION--RULEMAKING BY THE
NEW MEXICO BOARD OF DENTAL HEALTH CARE.--The New Mexico board
of dental health care shall promulgate rules by June 30, 2013
to require that a dental office maintain records of
maintenance and inspection for the three years following the
most recent inspection of an amalgam separator. Use of an
amalgam separation method or technology that is approved by
the department of environment, the water quality control
commission or the New Mexico board of dental health care is in
compliance with the requirements of this section.