



February 17, 2015

Water Docket - EPA Docket Center
Environmental Protection Agency
Mail Code: 4203M
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OW-2014-0693

SUBJECT: Docket ID No. EPA-HQ-OW-2014-0693. Comments on Effluent Limitations Guidelines and Standards for the Dental Category, 40 CFR Part 441

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) is pleased to submit comments on the Environmental Protection Agency's (EPA) October 22, 2014 proposed Effluent Limitations Guidelines and Standards for the Dental Category (40 CFR 441). SCAP acknowledges that EPA made an attempt to balance competing interests while achieving a reduction in the discharge of mercury to surface waters; however, SCAP believes that the rule as proposed is fundamentally flawed for reasons that will be specified below. SCAP requests that EPA consider appropriate, site-specific actions for those Pretreatment Programs that have a demonstrated mercury problem, many of which are already doing so. SCAP also entreats EPA to consider alternative actions that will be outlined below.

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) is an association of cities, special districts, and other public agencies, which was formed to concentrate its resources to effect reasonable local, state and federal regulations impacting Publicly Owned Treatment Works (POTWs) (also referred to as "Water Resource Recovery Facilities" (WRRFs)) and collection systems. SCAP strives to obtain a balance between protection of the environment and the economic reality of existing and proposed regulations. SCAP represents 80 wastewater treatment and collection system agencies and one large regional water treatment agency. Together, SCAP's membership collects and/or treats the wastewater for nearly 19 million southern Californians in seven counties. All of SCAP's non-associate members are public agencies, either municipalities or special districts, charged with the responsibility for treating and disposing of wastewater in a safe and economically viable manner for their ratepayers. SCAP's associate members are associated with the treatment of water and/or the collection, treatment, disposal, recycling, or reuse of wastewater and its residuals within the state of California.

For the most part, SCAP members do not have a mercury issue, as evidenced by a lack of mercury impairments to water bodies, fish consumption advisories, or land usage restrictions. Of

P.O. Box 231565

Encinitas, CA 92024-1565

Fax: 760-479-4881 Tel: 760-479-4880 Website: www.scap1.org Email: info@scap1.org

SCAP's 81 members, only two have mercury issues, and a Total Maximum Daily Load (TMDL) for mercury is in effect in one case, and a TMDL is under development in the other. Therefore, the cost and effort that a majority of SCAP members would encumber to implement the proposed Dental Category regulations would not result in a significant environmental benefit or improvement. In lieu of the proposed Dental Category, SCAP requests that EPA consider the following alternatives:

Alternatives for Consideration

- **Ban Mercury in Amalgam:** EPA's analysis determined that POTWs discharge 880 pounds of mercury from dental amalgam annually (lbs/year) to surface waters. EPA purports that implementation of the Dental Category would reduce the mercury discharge to 14 lbs/year. If EPA is concerned about mercury discharges to surface waters, why doesn't EPA go to zero mercury from dental amalgam by banning it instead? Alternatives exist (e.g., composite resins and glass ionomer cement), and a federal ban of mercury in amalgam would be much more efficient and less costly for everyone. If there is uncertainty about the alternatives, EPA could also pursue a path similar to California's Safer Consumer Products law and conduct an Alternative Analysis to demonstrate whether mercury is essential for dental restorations.
- **Work with POTWs to Develop Guidelines for Implementing Dental Programs:** Rather than developing a new category for dental facilities, with all its associated requirements, SCAP urges EPA to work with POTWs through our associations to develop guidance on when and how to implement a dental program when one is required, i.e., site-specific and fit for purpose.
- **Total Maximum Daily Loads (TMDLs) Program:** Another alternative approach would be to continue using the existing TMDLs Program, which requires states to address impaired water bodies. California has a TMDLs Program, and information is available at the following website: http://www.waterboards.ca.gov/water_issues/programs/mercury/other_programs.shtml#fishadv. As previously noted, two SCAP members are involved with a mercury TMDL.

Resources Required: Even considering the proposed reduction in monitoring and inspection requirements as specified in the proposed revised General Pretreatment Regulations (40 CFR 403) for Dental Industrial Users (DIUs), SCAP believes that EPA has severely underestimated the cost and efforts required for permitting dental facilities. For example, just maintaining an accurate inventory of the dentists will be challenging. Implementation of the Dental Category as proposed would redirect public resources without significant environmental benefit. Consider the following examples:

- **Large Agencies:** The Orange County Sanitation District (OCSD), a SCAP member, estimates that in its jurisdiction there are between 1,200-1,500 dental facilities that would be affected by the proposed regulation. With a staff of 28 full-time employees working on the Pretreatment Program, OCSD is managing 189 permits for facilities governed by federal categorical standards and 144 permits for other facilities subject to OCSD's Local

Discharge Limits. For the initial roll out of the Dental Category, OCSD estimates that at least two to three engineers, two to four inspectors, and one to two clerks would be required to work full time for the first four to six years (OCSD currently renews its permits on a two- or three-year cycle, depending on the type of permit). If the workload settles after a couple of cycles, OCSD may be able to scale back one person of each type. However, this projection is optimistic based on OCSD's last annual dry cleaner recertification. After sending out 320 recertification letters, OCSD received about 56% back (180) after the initial notice, 22% (70) after a second notice, and the remaining 22% required individual inspections and meetings to obtain the paperwork. These figures only indicate the rate at which the material was collected and does not address the fact that the forms were not always filled out correctly, resulting in additional work and follow up. As required by law, OCSD would also store the permits and paperwork, and 1200-1500 new permits would consume significant space.

- **Small Agencies:** SCAP also encourages EPA to consider the impact to smaller agencies. A small agency may not have a Pretreatment Program, but the agency is likely to have dental facilities within its jurisdiction. For example, the City of San Bernardino Municipal Water Department (SBMWD) estimates that it would be required to permit over 100 dental facilities, although a review of its influent showed no detectable mercury and very low levels in its biosolids for the past 5 years. It currently has a Pretreatment Program with seven Significant Industrial Users (SIUs); therefore, this regulation would have major impacts not only on the six full time Environmental Control Division staff at SBMWD but also on the ratepayers. The City of San Bernardino has one of the highest rates of poverty in the nation, with over 32% of its population living below the poverty level, and 43% receiving some type of state and/or federal aid.

Environmental Justice

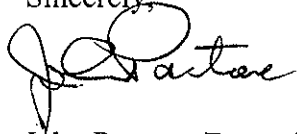
EPA determined that "this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations." SCAP requests that EPA reconsider this statement, because EPA has overlooked a potentially very significant environmental justice issue. Rather than complying with all the requirements of the proposed Dental Category, dental facilities may choose to not use dental amalgam at all. Based on the fact that insurance typically covers the full cost for dental amalgam but only partially, if at all, for alternatives such as the more expensive composite resin, it can be expected that minority and low-income populations would be highly impacted by a dearth in the number of dental facilities from which to choose. If EPA bans dental amalgam, a level playing field for all would be maintained.

90-day Compliance Verification Inspection: Rather than dictating a 90-day time period, EPA should allow the Pretreatment Programs to follow their own Enforcement Response Plans in regards to the timing for compliance verification inspections.

In summary, SCAP requests that EPA reconsider its proposal. SCAP believes that EPA's proposed Dental Category is fundamentally flawed and unjustified in light of the current efforts already underway, particularly at locations that have mercury problems. EPA could pursue alternative actions that would be more efficient and effective and achieve even better results. For

example, if EPA desires to completely reduce the discharge of mercury from dental amalgam to surface waters, EPA might consider a ban on mercury in dental amalgam instead of creating the Dental Category. As proposed, the regulation would severely impact agencies, Pretreatment Programs, and potentially minority and low-income populations by redirecting public resources for insignificant environmental benefit. Thank you for the opportunity to provide comments on the proposed Dental Category. SCAP looks forward to continuing to work with and support EPA in its efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "John Pastore". The signature is written in a cursive style with a large initial "J" and "P".

John Pastore, Executive Director

cc: Robert Ghirelli, President
James E. Colston, SCAP Pretreatment Committee Chair