May 2, 2017 EPA call – Reducing Regulatory Burden

Thank you for the opportunity to speak today.

This is Steve Jepsen, Executive Director for the Southern California Alliance of Publicly Owned Treatment Works (SCAP). We represent over 80 public agencies providing essential wastewater service for 20 million people in 7 counties of southern California.

Our issue of greatest concern is an unpromulgated water toxicity test method being required by EPA in NPDES permits. The "Test of Significant Toxicity" (TST) statistical endpoint has not been adopted into Title 40 of the Code of Federal Regulations, Part 136 and therefore should not be incorporated into NPDES permits.

The TST guidance was not promulgated through notice-and-comment rulemaking, and includes an explicit disclaimer confirming that the document is not "*a permit or a regulation itself*."

The EPA has been incorporating use of the unpromulgated TST into NPDES permits. Furthermore, the State of California, working with EPA, is in the process of adopting a statewide action that would require NPDES permittees to incorporate the TST. Through these actions, the EPA is exceeding its authority by using an unpromulgated statistical procedure.

The false positive error rate, which is the frequency of incorrectly identifying a non-toxic sample as toxic, of the TST is between 15% and 50%. This false positive error rate has and will continue to result in increased rate payer costs with no environmental benefit.

California has approximately 230 wastewater treatment plants. Based on the range of false positive error rates, this regulation would result in an economic impact to the public conservatively estimated at $20 million per year in California.

We are asking the EPA to issue a clarification that the TST is not promulgated under 40 CFR Part 136 and, as such, should not be used to assess toxicity under the NPDES permitting program. This clarification should direct states to formally rescind any previous violations assessed using the non-promulgated TST statistical endpoint.

Thank you.