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SUBJECT: Washington Update

Over the past month, Congress remained on recess in the run-up to the General Election. Congress will return for the Lame Duck Session November 12 in what promises to be a session dominated by legislation addressing: disaster assistance, finalizing Fiscal Year 2025 spending bills, Farm Bill, water resources, wildfire suppression, and perfluoroalkyl and polyfluoroalkyl (PFAS) liability protections. Whether any or all these policy matters are addressed in final remains an open question since the productivity of the session will hinge upon the election returns.

The following summarizes the status of federal policy matters of interest to OC San

- ***PFAS Rulemakings and Liability Protection Legislation***

The U.S. Environmental Protection Agency's (USEPA's) Office of Science and Technology continues its self-imposed deadline of the end of the year to publish a draft Risk Assessment Model (RA) for PFAS in biosolids. Office staff indicate that the overall model is essentially complete with the only outstanding matters centering quality control reviews. As matters stand presently, the model will rely on several numbers of PFAS concentration tied to identified pathway of exposure. For example, the model is expected to specify risk levels for cattle grazing on lands treated with biosolids. This would be mirrored for other pathways like impacts to soils and groundwater. The USEPA staff insist that the RA is not intended to eliminate land application of biosolids, noting that land application is a vital element of a comprehensive biosolids management program.

The USEPA is expected to publish the RA in draft by the end of 2024 and we anticipate that the agency will accept public comments for a period as long as sixty days. Following the close of public comment period, the agency would review the input, make revisions as deemed necessary and then publish the model as final. Timing of any final rule is unlikely for at least a year following the draft publication.

The Office of Water continues to develop the wastewater influent, effluent and biosolids survey to define the nature and extent of PFAS presence. As of this writing, it appears the agency has decided to pursue a targeted approach by first conducting an influent survey rather than survey all three elements of the wastewater treatment process. Originally the survey was to review 400 utilities across the nation. This number may be more limited as the agency seeks to focus on larger utilities. As stated on the agency's website, "The wastewater sampling data will primarily be used to identify and prioritize industrial point source categories where additional study or regulations may be warranted to control PFAS discharges. The sewage sludge sampling will fulfill the EPA's data needs for the upcoming [National Sewage Sludge Survey](#) (NSSS) by establishing a current national data set of sewage sludge characteristics which the EPA will subsequently use to inform upcoming risk assessments and the need for future regulations and guidance pertaining to the management of sewage sludge."

Within the context of PFAS liability, both the House and Senate continue to consider approaches to develop a policy to protect the water sector against potential clean-up liability. At this writing, consensus on a legislative fix remains elusive. However, a growing recognition, on a bipartisan basis, exists that the potential liability for the water sector is credible. The key stumbling block appears to center on how to define eligibility of a passive receiver for liability protection to fashion a narrow liability exemption that could become part of compromise agreement.

Importance of PFAS Rulemaking and Liability Initiative to OC San

The USEPA's ongoing development of a PFAS RA model for biosolids is of importance to OC San because of two important matters. First, the draft RA will likely set the stage for subsequent compliance standards for biosolids management into the future as part of the "503" program. The U.S. EPA's 503 program, also known as the Standards for the Use or Disposal of Sewage Sludge, regulates how sewage sludge is managed. Of more immediate concern is the draft RA and its impact on current management practices. The numbers identified in the draft RA will carry no immediate mandate for compliance, but states could still adopt these standards, potentially leading to costly changes in management practices for biosolids like land application. The second impact surrounding RA is the increased demand for monitoring and the costs that it may impose.

A final consequence of the RA involves future management practices. There are increasingly vocal calls from the environmental non-governmental organizations for state and local ordinances limiting or banning biosolids land application. This effort is expected to increase demand for biosolids management alternatives such as the OC San demonstration project. Federal assistance to advance the commercialization of such technologies could be an outgrowth of the calls for a transition away from land application.

- ***Fiscal Year 2025 Appropriations***

Upon Congress' return to work in November, a priority is to complete action on the current year's spending bills. For OC San, spending on water infrastructure and water quality programs is expected to be stable at current year level funding for the State Revolving Loan Fund (SRF), Water Infrastructure Finance and Innovation Act, and general aquatic health programs. FY 25 also marks the second to last year of the Bipartisan Infrastructure Law's funding. This means that a supplemental funding of \$9 billion to support water infrastructure will supplement the SRF program.

One of the outstanding matters in any final spending compromise involves policy statements. The USEPA and U.S. Department of Agriculture spending bills contain a handful of these "riders" related to PFAS. Among the riders of note:

- Directives to USEPA to maintain its research into the health impacts of PFAS on soils and biosolids, including treatment standards;
- Directives that USEPA provide Congress a report on progress in the implementation of its policy to not enforce against water sector interests like OC San for clean-up liability created by the PFAS hazardous substance Comprehensive Emergency Response Compensation and Liability Act (CERCLA) designation; and
- Assist dairy farmers adversely impacted by PFAS contaminated soils.

Importance of Spending Decisions to OC San

Aside from the general interest in maintaining a strong federal partnership with local wastewater agencies through a commitment of federal assistance for water quality programs, the ongoing spending debate is important to OC San because of the continued interest in using the appropriations process to address PFAS policy. While the current focus is on research and administrative matters like compliance with PFAS drinking water standards, the potential remains for efforts to legislate, using spending bills, to ban certain biosolids management practices.