



TO: Rebecca Long
FROM: Eric Sapirstein
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SUBJECT: Washington Update

Congressional action during the past month centered on appropriations and development of PFAS legislation in the Senate Committee on Environment and Public Works. Central to the legislative activity surrounding spending bills for the federal government was a growing acknowledgement that enactment of spending bills before the beginning of the new fiscal year, October 1, is impossible. This sets in motion a “will they or won’t they” shut down the government when spending authority lapses on September 30. It is possible that a stop gap spending bill could be approved to avoid a shut down on October 1. But the discord within the House and Senate membership over spending levels could lead to intractable floor debates that force a shutdown for a short time. The following summarizes these activities.

- ***Fiscal Year 2024 Appropriations Moves Forward in House and Senate Committees***

The House and Senate Committees on Appropriations approved key spending bills that fund water quality, water supply and biosolids management programs of interest to OC San. However, the two chambers’ committees are on diametrically opposite paths toward developing final spending bills. As noted previously, the House spending bills collectively cut an additional \$120 billion in spending. This is beyond the spending levels agreed upon in the debt ceiling/budget agreement known as the Fiscal Responsibility Act. The Senate committee, alternatively, boosted overall spending by an additional \$27 billion beyond the Fiscal Responsibility Act’s overall spending levels.

These differences mean that reconciliation of the twelve annual spending bills’ levels by October 1 is impossible. This has been articulated by key congressional spending leaders. Instead, two outcomes are expected. First, and most likely, is passage of a stopgap spending bill that could carry governmental operations forward until December at the latest.

The second scenario envisions an inability to secure a stopgap bill, forcing a governmental shutdown that would likely last a minimum of several days, after which a deal to pass a Continuing Resolution would be brokered between Congress and the White House. Regardless of the approach pursued, we anticipate that a prolonged spending debate between the House and Senate will occur. If a compromise remains out of reach, then a year-long Continuing Resolution with an across-the-board 1 percent cut would be triggered on January 1, 2025 as required by the Fiscal Responsibility Act. This outcome would effectively cut spending to levels approaching Fiscal Year 2022 levels, limiting federal investments in infrastructure and climate resilience.

Why the Appropriations Process is Important OC San

While OC San does not currently rely upon the State Revolving Loan Fund (SRF) for infrastructure assistance, the inability to finalize the U.S. Environmental Protection Agency's budget would likely trigger significant reductions in spending programs beyond the SRF such as other core water quality programs that support OC San's service area's communities. The lack of adequate resources to implement policies such as biosolids standards related to PFAS could also be impacted, delaying final decisions important to OC San's operations.

- ***Senate PFAS Legislative Proposal Undergoing Final Staff Review***

Stakeholder comments on a Senate Committee on Environment and Public Works draft PFAS legislative proposal closed on July 14. According to the committee staff, more than 300 comments were received related to the importance of providing passive receivers like wastewater agencies, with an exemption from liability under CERCLA. The committee staff are reviewing the comments and providing recommendations to committee leaders on how to proceed with developing a formal bill for committee consideration in the fall. OC San provided its input on the importance of providing a legislative exemption from CERCLA liability. It also provided Senator Padilla, who sits on the committee, with a copy of the letter to the committee. As of this writing, committee staff have suggested that passage of PFAS legislation can only occur if the Passive Receivers policy debate is resolved.

Why the Effort is Important to OC San

As provided in past updates, the priority of securing a CERCLA exemption from liability is vital to avoid industrial manufacturers of PFAS or dischargers leveraging CERCLA to seek compensation from Passive Receivers. OC San's need for an exemption from liability is buttressed by the fact that several trade groups representing water, wastewater, solid waste, composters, cities, counties, biosolids, and Brownfields interests have weighed in on the priority to secure an exemption in any PFAS legislation that Congress may pass. For OC San, the overwhelming commitment to this need is important to advance legislation since environmental NGO's have stated that they would seek a veto of any bill that contained an exemption.

U.S. Environmental Protection Agency Continues Review of PFAS Standards and Designation

The agency continues to examine the science underlying the health threats from PFAS. This includes its work, in tandem with the Science Advisory Board's research, into the risks to public health and soils from PFAS in biosolids and whether new treatment standards should be developed. As of this writing, any final decisions on new final standards and risk assessment models are considered unlikely before 2025.

At the same time, the effort to formally designate PFAS as a hazardous substance under CERCLA and allow the agency to use its enforcement tools under CERCLA to compel cleanups has been delayed. This delay means that any effective date of a designation of PFAS chemicals is unlikely until mid-2024 at the earliest.

Why the PFAS Rulemakings and Modeling Could Impact OC San Interests

The agency must determine whether a new risk assessment model for biosolids is deemed appropriate to determine how significant an impact to human health or the environment biosolids may pose if they contain PFAS. It could manifest in more stringent standards for biosolids treatment and redefine appropriate management techniques. Additionally, if the agency officially defines PFAS as a hazardous substance under CERCLA, the decision could eliminate the availability of currently accepted management practices because such practices may be considered too risky to continue, if potential CERCLA liability were to attach to biosolids. At a minimum, the costs of land application, for example, could increase significantly to address the added risks of managing a CERCLA designated substance regardless of the level of PFAS present in biosolids.

On another note, OC San's effort to demonstrate and advance innovative PFAS destruction technology to commercialization may become increasingly important as these rulemakings could close down common management practices or make them more costly.