



TO: Rebecca Long
FROM: Eric Sapirstein
DATE: July 5, 2023
SUBJECT: Washington Update

Recent Congressional activities have centered around the development of fiscal year 2024 spending bills following the enactment of the Fiscal Responsibility Act that established budget spending levels. Senate efforts to develop a legislative response to the Per- and polyfluoroalkyl substances (PFAS) contamination continued. The following summarizes issues of interest to OC San.

- ***Fiscal Year 2024 Appropriations Process Gets Underway***

The Senate and House Committees on Appropriations began the process of approving spending bills for the new fiscal year that begins October 1, 2023. Each chamber, contrary to expectations, is relying on different overall spending levels as the House decided to rely on Fiscal Year 2022 levels and the Senate is using Fiscal Year 2023 levels as contained in the Fiscal Responsibility Act that resolved the debt limit dispute in May. The spending is spread between the two chambers of at least \$120 billion that if adopted would force an effective 30 percent reduction domestic spending. The Senate appropriations leadership has indicated that such a reduction is unacceptable as it violates the Fiscal Responsibility Act's budget limits and would severely reduce funding of vital domestic programs. Given this budget stand-off, passage of a continuing resolution is all but certain to be debated to extend governmental operations through December. If passage does not occur, a governmental shut down would be triggered.

Why the Spending Debate is Important to OC San

OC San did not seek project funding assistance through the Community Project process this year. However, adverse impacts to OC San could still be realized. U.S. Environmental Protection Agency (USEPA) efforts to develop biosolids standards and industrial pretreatment standards related to PFAS could be slowed due to a lack of resources. This could hamper OC San's programs to safeguard the public and ensure that resources like biosolids could continue to be used to improve the environment.

- ***Senate Committee Releases PFAS Legislative Proposal***

The Senate Committee on Environment and Public Works' staff released a draft proposals to address PFAS contamination of the environment and public health. The committee provided the bill to OC San to allow for comments to the committee on recommendations on how to develop actual legislation. The proposal is notable for its focus upon providing federal assistance to support the development and demonstration of PFAS monitoring, treatment, and destruction technologies. It also seeks to better inform regulators and clean water agencies through the creation of a data base that would identify sources of industrial discharges.

The proposal intentionally does not address the demand by passive receivers, like the wastewater sector, that any PFAS legislation must include an exemption from liability under the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA or Superfund). Instead, the committee has decided that the issue will be considered as part of the formal committee consideration of PFAS legislation. Such action could occur before the August recess but is more likely to take place after the congressional August recess.

Why the Proposal is Important to OC San

The committee priority to secure stakeholder input on any PFAS legislation means that OC San can, along with other passive receivers, communicate the importance of a CERCLA liability exemption. Also, the proposal commitment of \$500 million to support technology demonstrations might offer future funding opportunities to defray the costs of developing, constructing, and implementing monitoring, treatment, and destruction projects. Lastly, the creation of a data base identifying sources of industrial discharges of PFAS could assist OC San in its effort to develop local limits or ensure compliance with pretreatment programs.

- ***U.S. Environmental Protection Agency (USEPA) Issues Revised Regulatory Agenda and Continues Biosolids Risk Assessment Model Development***

USEPA released its mid-year regulatory agenda. As part of this routine effort, the agency took an unexpected step and announced it would delay by six months any final decision to designate PFAS chemicals as hazardous substances under CERCLA. The agency also extended its review of adding an additional six PFAS chemicals and GenX (GenX is a member of a large group of man-made chemical compounds known as PFAS) as designated hazardous substances under CERCLA by nine months. USEPA is also continuing to develop its risk assessment

Why USEPA's Rule Revisions and Risk Assessment Are Important to OC San

USEPA's decision to delay final rulemakings of the designation of PFAS chemicals may be a recognition that Congress may act on which passive receivers should be subject to liability under CERCLA. Additionally, the agency is still in the process of developing enforcement guidance that would formalize the oft stated position that the agency will not pursue public agencies for CERCLA cleanups and damages. As a result, OC San will not face an imminent challenge related to potential CERCLA liability that might occur related to PFAS in influent or biosolids.

USEPA's ongoing work with its Science Advisory Board related to PFAS risks from biosolids conclude in July. At that point, OC San will have better understanding of the model that USEPA might rely upon to reduce risks from biosolids. Based upon how the model is designed, the impact upon OC San's treatment, management, and use of this important resource could be impacted including the *possibility* of limitations being imposed on current biosolid management practices.