



TO: Rebecca Long
FROM: Eric Sapirstein
DATE: March 7, 2024
SUBJECT: Washington Update

Congress continued to finalize spending bills for the Fiscal Year 2024 with passage of the twelve spending bills by the final deadline of March 22. The following summarizes legislative and regulatory activities that directly or indirectly impact OC San.

- ***Fiscal Year 2024 Appropriations***

The House overwhelming approved the first six spending bills by a vote of 339-83, sending the package to the Senate for final passage by Thursday evening, March 7 to allow the president to sign the measure into law by the March 8 deadline. The House vote included approval of the U.S. Environmental Protection Agency's (EPA) budget absent any policy riders. This means that the agency will have year-long funding for all of its programs. But while the threat of a one percent across-the-board spending reduction as mandated under the Fiscal Responsibility Act on April 30 if a final spending bill will not occur, the budget was cut by \$1 billion. The cut was imposed on the Superfund program. Additionally, because of the significant five-year funding of water infrastructure funding in the infrastructure law, water project assistance continues with significant federal spending. Following final votes in the Senate, Congress will then turn its attention to the last six spending bills that must be passed by March 22. These spending bills cover national security funding and are expected to be approved also.

Final Spending Agreements Impact OC San

The approval of spending legislation will not have an immediate direct impact upon OC San. However, the approval of an agency funding bill means that regulatory development efforts on PFAS and other matters will be adequately funded. Additionally, while the agency budget was reduced by \$1 billion, most of the cuts fell on the Superfund program which means that OC San programs of interest including biosolids rulemakings will not be impacted.

- ***Senate PFAS Liability Hearing Scheduled***

The Senate Committee on Environment and Public Works has scheduled a hearing March 20 that will examine the impacts of per- and polyfluoroalkyl substances (PFAS) designation under the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA). Central to the hearing will be the consequences of liability on passive receivers. The hearing appears to have been scheduled because committee staff believe the committee membership needs to hear the diverse views of stakeholders. Staff indicate that the hearing will format will be one panel. There will be five witnesses representing the water, solid waste, environmental non-governmental organization (E-NGO), and State stakeholders. A fifth witness will be a Congressional Research Service CERCLA liability expert. This witness will serve as a neutral witness to clarify any questions raised by other witnesses.

Impact of Hearing on OC San Interests

OC San has advocated for liability protections from any PFAS hazardous substance designation under CERCLA. The hearing is expected to highlight the concerns that OC San has communicated to the Orange County congressional delegation related to liability should USEPA finalize the designation of PFAS as hazardous substances under CERCLA. The hearing will likely include a focus on biosolids and the need for funding assistance to develop technologies to better treat and destroy PFAS such as the OC San pilot project. The hearing will illustrate the worst kept secret; the committee is frozen in its effort to find consensus on how to develop legislation to protect passive receivers, like OC San from CERCLA liability. Because of the vocal opposition to any liability exemptions from the E-NGO community, development of any legislation and committee action is dubious before the November elections.

- ***USEPA Preparing to Issue Final PFAS Rules***

USEPA's finalization of rules establishing drinking water standards and designating PFAS chemicals as hazardous substances under CERCLA continue. The agency is under growing pressure from E-NGO's to issue both rules without further delays. The drinking water standard maximum contaminant level (MCL) of 4 parts per thousand (PPT) is expected in April. Office of Management and Budget review of CERCLA designation of PFAS rules continues with the expectation that USEPA will also issue a final rule in April. Should this schedule be met, it is all but certain that litigation challenging both rulemakings will be pursued. Any challenge to the MCL will be based upon questionable science. Any litigation against PFAS designation will likely target failure of the agency to follow applicable standards and review of identifying a substance as a hazardous substance.

- ***Low Income Household Water Assistance Program***

Senator Alex Padilla (D-CA) introduced the Low-Income Household Water Assistance Establishment Act (S.3830). The legislation would create a permanent program of ratepayer assistance to help ratepayers that have economic hardships pay for water services. The bill does not provide for a specified funding authorization. Instead, the bill provides for “such sums as may be appropriated”, avoiding a challenge of scoring the bill for budget impacts that could preclude legislative debate without funding offsets.

Value to OC San Indirect

The legislation would not directly impact OC San. However, it would support the needs of OC San’s cities.