



TO: Rebecca Long

FROM: Eric Sapirstein

DATE: October 26, 2023

SUBJECT: Washington Update

Congressional work over the past month was derailed by the inability of House Republicans to coalesce around a candidate for Speaker of the House. As a result of this challenge, no business could be conducted outside of hearings. The Senate was in a different situation where business was conducted, but as usual Senate floor action remained a slow simmer as Senators offered numerous amendments to a package of three fiscal year 2024 spending bills. Senate passage is expected in the coming week, and this could serve as a starting point in the effort to reach a final spending deal with the House. As of this writing, it appears the House may have finally found a compromise Speaker candidate in Representative Mike Johnson (R-LA). If he secures 217 votes on the House floor, the House will be able to restart important legislative business like funding the government. The following provides summary of issues of interest to OC San.

- ***Fiscal Year 2024 Appropriations Outlook and Prospects for Government Shutdown***

Given the delay in the House involving the Speaker's race, progress on spending bills was effectively nonexistent. As noted earlier, Congress has until November 17 to resolve spending disagreements between the two chambers. Otherwise, a government shutdown is highly likely unless an agreement is reached to extend the current Continuing Resolution until sometime late in the year. Even if an extension is granted, there are huge obstacles to reach a comprehensive funding bill. First, if Johnson is elected, he will likely work with the House Freedom Caucus and other conservative Members to impose discipline on funding levels. Currently, this perspective translates into program funding levels set at fiscal year 2022 levels that would impose an additional \$180 billion spending cut. Additionally, efforts to claw back funding under the infrastructure law and the Inflation Reduction Act's clean energy funding (including biomass assistance) are expected. The Senate would summarily reject these efforts. Consequently, the odds of a year-long Continuing Resolution seem to grow each day that Congress is unable to find common ground on spending for fiscal year 2024.

Why a Funding Stand-Off is Important to OC San

The direct impact on OC San of a Continuing Resolution is almost non-existent. The only impact that might be felt is a constraint on the U.S. Environmental Protection Agency's resources to initiate new activities. This might include imposing new rules on Per- and Polyfluorinated Substances (PFAS) monitoring of influent and working on pending PFAS standards for biosolids. One item that OC San should be aware of is this that might impact the agency's ongoing effort to use the Clean Water Act's monitoring and reporting authorities to mandate actions on PFAS. It is possible that the agency would address resource constraints by simply directing clean water agencies to expand reporting of PFAS in influent/effluent.

- ***Senate PFAS Legislation***

As we have reported during the past month, Senate Committee on Environment and Public Works staff continue work to design a path forward on PFAS control, treatment, and clean-up legislation. Two matters remain key obstacles to reaching a bipartisan agreement that the committee could approve and send to the Senate for a vote. These are: 1) what PFAS chemicals should be a priority for standards setting and 2) how to provide passive receivers with liability protection should the U.S. Environmental Protection Agency finalize designation of PFAS as a hazardous substance under Superfund. The environmental stakeholder community continues to hold an inflexible position that there should not be any exemptions from liability. This position is grounded in an erroneous belief that clean water agencies have had decades to address PFAS and done nothing.

Because the committee would not have the votes to approve a PFAS bill absent liability protections, the committee staff have arranged for "off the record" discussions with key stakeholders on how to determine if a compromise might be developed. We will participate in these discussions to ensure that concerns surrounding the potential liability exposure for public agencies, like OC San, that could eliminate science-based approved management of biosolids and impose new and unwarranted clean-up costs on ratepayers. On the matter of shifting the clean-up burden, such an outcome would violate the Superfund foundational principle that the polluter should pay any costs associated with public health threats.

Why the Senate Meeting is Important to OC San

The Senate committee meeting is important because it is the first time that the clean water sector (and other passive receivers) will be in position to discuss concerns with environmental stakeholders before the key Senate policymakers tasked with developing PFAS legislation. For OC San this meeting will shine a light on the adverse impacts to critical public health services and costs to ratepayers if Superfund liability concerns are not adequately addressed to protect the interests of passive receivers. Based upon the meeting, OC San should have a better understanding on whether the Senate will proceed on legislation that would ensure that biosolids management could continue based upon sound science.