



TO: Rebecca Long

FROM: Eric Sapirstein

DATE: June 16, 2022

SUBJECT: Washington Update

During the past month, federal legislative and regulatory activities focused upon fiscal year (FY) 2023 spending decisions and Community Project Assistance requests, development of per- and polyfluoroalkyl substances (PFAS) regulations/advisories and Buy America implementation. The following summarizes matters of interest to OC San.

- ***Fiscal Year 2023 Appropriations Decision making For U.S. Environmental Protect Agency Begins***
The House formally began marking up agency spending bills for the FY 2023 budget that begins October 1, 2022. As part of this process, the House and Senate will work to advance the twelve individual spending bills by early fall. The House Committee on Appropriations intends to approve the U.S. Environmental Protection Agency (USEPA) budget by June 28 and include earmarks (see below). The Senate has not officially announced a schedule to consider spending bills. However, the expectation of a final overall agreement by October 1 is unlikely to be attained. Instead, an omnibus spending bill after the November elections is the likely outcome with a stop gap spending bill maintaining governmental operations through the time that a final spending agreement is reached and enacted.
- ***OC San Community Project Assistance Request Endorsed by Senator Padilla***
Senator Alex Padilla officially submitted his Community Projects priorities for funding under USEPA's fiscal year 2023 appropriations bill. As part of the priority list is OC San's request of \$5.5 million to support the development of a PFAS treatment technology – Supercritical Water Oxidation. This request is important as it means that both the House and Senate Committees on Appropriations have received the OC San project request. The fact that the request has been submitted in both chambers helps to increase prospects that a final spending bill will include the requested project assistance.

- ***Buy America/Build America Application to new statewide emergency water conservation regulations and Program Clarified***

USEPA continues to develop policy on how it intends to implement the infrastructure law's (IIJA) mandates to require that federally assisted projects must use American manufactured products. The agency following other federal departments and agencies issued a proposed SRF program-wide waiver on June 15. The proposed waiver would, if adopted, provide that for any project where the sponsor has submitted plans and specs to the state SRF before May 14, 2022 that it would not be required to meet the new condition for federal assistance. The agency is accepting public comments for fifteen days after which we expect the waiver to be adopted. The agency still must issue guidance on how it intends to implement the mandate as it relates to ongoing projects and Community Project Assistance projects. For now, OC San must await further agency guidance as it might apply to its Community Project Assistance request. However, as discussed with OC San staff, it is appropriate to seek clarification from its partner in the project as to how it intends to comply with the new mandate or whether a need exists for a waiver request for the project. Actual guidance on such a request is expected in the fall.

The pending waiver also makes an additional consideration. Under the proposal, projects that do not require plans and specs like pipe replacements would be considered exempt from the mandate if the project was planned prior to the May 14 deadline, assuming the proposal is adopted without modification after the conclusion of the public comment period.

- ***USEPA Issues PFAS/Gen X Health Advisories***

USEPA continues to advance the implementation of its PFAS Roadmap with regulatory implications for the water sector. This month, the agency issued Health Advisories (HA) for PFAS and Gen X chemicals. Background information was provided to OC San staff on the HA's impacts. These HA's establish technical information on the health impacts associated with a chemical, pending a formal rulemaking to set a drinking water standard. The HA's have no direct impact upon wastewater facilities but could indirectly impact operations as stakeholders in communities may be interested in the impact of PFAS upon wastewater operations due to the agency's issuance of the HA's. Upon the publication of the HA's, Senate Committee on Environment and Public Works Ranking Member Shelley Moore Capito (R-WV) issued a scathing statement that the agency had issued HA's that have no ability to be complied with and could set the stage for the committee to seek from USEPA an explanation and justification on it expects the HA's to influence the standard setting process. USEPA also continues to assess the toxicity of PFAS as it relates to biosolids management and based upon the final results of studies and assessments, USEPA might impose additional biosolids management standards under the Clean Water Act authorities.

- ***PFAS Legislation to Address Cleanups and Liability***

Efforts to designate PFAS chemicals as hazardous substances under Superfund continued to be stalled as legislation has yet to be developed in the Committee on Environment and Public Works. Meanwhile, USEPA continues to assert that it will designate PFAS as hazardous under Superfund through the regulatory process. Stakeholders continue to work with Senate offices to urge a close examination of the agency's efforts and to seek an exemption from any regulatory mandate the agency might seek to issue.