



TO: Rebecca Long

FROM: Eric Sapirstein

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SUBJECT: Washington Update

Congressional activities remained focused upon fiscal year 2025 appropriations hearings, consideration of the Farm Bill and the Water Resources Development Act (WRDA) of 2024. On the regulatory front, the U.S. Environmental Protection Agency (USEPA) continued its effort to address Per- and polyfluoroalkyl substances (PFAS) as a hazardous substance under the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA). The Department of Homeland Security proposed a new reporting standard for cyberattacks. The following summarizes activities of interest to OC San and its legislative agenda.

- ***PFAS and Biosolids Legislation***

The House Committee on Agriculture completed formal action on H.R. 8467, the Farm, Food, and National Security Act of 2024. This action is intended to renew the Farm Bill, which would include reauthorization of the nation's primary agriculture policy law every five years. Under the approved legislation, the U.S. Department of Agriculture is directed to initiate studies on PFAS and biosolids and review impacts on soils and crops. There was no effort to impose liability or restrict the land application of biosolids. In the Senate, it is highly likely that a version of the Farm Bill will be marked up before the Independence Day recess.

Assuming this schedule, the House and Senate would proceed to a conference committee to reconcile differences between the bills. Passage of a final measure must occur before September 30 to avoid a lapse in program funding since the existing stopgap authorization expires on this date. At this writing it is highly likely that another extension of the stopgap will be necessary given the congressional schedule.

Senate efforts to develop a PFAS CERCLA liability exemption for passive receivers, including wastewater treatment, continue. The Committee on Environment and Public Works staff are reportedly working on an approach to deliver a statutory exemption from liability under CERCLA. While actual language remains to be released, it appears that any agreement will include strong guardrails to ensure that any exemption would not apply in instances of gross negligence or violations of the Clean Water Act. As of this writing, the prospect of Congress releasing any final agreement until the following Congress's regular session is highly unlikely given the political environment.

Importance to OC San

The decision to direct the Department of Agriculture to study the impact of biosolids and land application is positive. The directives would target PFAS activities on research instead of prohibiting land application. It would presumably enhance the use of a scientifically sound risk assessment model. This would govern any new biosolids treatment standards that the USEPA is developing. The standards are expected to be published by early 2025. In short, OC San should not anticipate any change in federal biosolids mandates in the coming months.

With regard to liability concerns, OC San's advocacy for an exemption from CERCLA impacts continues to enjoy strong support. The Committee on Environment and Public Works Republican leadership staff continue to assert that any PFAS legislation which would support clean-up, treatment and destruction technology must also include a passive receiver liability exemption. While committee leadership Democrats remain publicly silent, Chairman Tom Carper's staff (D-DE) has acknowledged the passive receivers concerns are merited and may signal that a compromise to protect the water sector is possible following the congressional elections in November.

- ***Cybersecurity Mandates***

The continuing cyber-attacks on the nation's critical infrastructure continues to draw the attention of the Department of Homeland Security and specifically the Cybersecurity Infrastructure Security Agency (CISA). CISA issued a proposed rule that when finalized impose strict standards for critical infrastructure, including the wastewater sector, reporting attacks and ransomware incidences. Failure to comply with the mandate to report within 72 hours of an attack and 24 hours of a ransomware would expose operators to penalties. In addition to the reporting mandate, the rule suggests that CISA would hold primacy over the management of such incidents, but in coordination with USEPA. The rule is currently open for public comment.

Importance of Rule to OC San

On the surface, the proposed rule appears to add a new layer of federal mandates on the wastewater sector since it is defined as critical infrastructure. However, in a bureaucratic misstep, the proposed rule failed to acknowledge that Congress explicitly exempted public agencies from enforcement for failure to report under the Cyber Incident Reporting for Critical Infrastructure Act. Because this is a statutory exemption, CISA is unable to enforce against an agency absent a congressional amendment to the Act. For OC San, this means that if it fails to meet the deadlines for reporting to CISA, there would not be exposure to penalties. However, given the growing threats from such threats, OC San voluntary compliance with the rule when finalized would be appropriate.