



TO: Rebecca Long

FROM: Eric Sapirstein

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SUBJECT: Washington Update

With enactment of the Fiscal Responsibility Act, Congress is now turning attention to Fiscal Year 2024 spending bills with added urgency now that a budget agreement is in place. Additionally, the Senate Committee on Environment and Public Works' staff continued to work on a Per- and polyfluoroalkyl substances (PFAS) bill that might be released for stakeholder review in the next few weeks. Lastly, the U.S. Environmental Protection Agency (USEPA) held a meeting with national water sector organizations to discuss the development of agency guidance that would set out how agency officials would pursue PFAS cleanup enforcement actions against potentially responsible parties. The following discusses these issues as they relate to OC San.

- ***Debt Ceiling Agreement Sets Stage for Appropriations***

After several weeks of discussions and negotiations, Speaker McCarthy and the White House reached an overall budget and debt ceiling agreement known as The Fiscal Responsibility Act (H.R. 3764). It suspends the debt limit until January 2025. It scales back future federal spending growth. While not as ambitious as the House-passed budget bill, the agreement will, after six years, reduce the rate of federal spending by an estimated \$1 trillion dollars. The key provision for OC San involves an incentive for Congress to pass all spending bills by October 1. For Fiscal Year 2024, Congress has until January 1, 2025 in recognition that the appropriations process was delayed due to the debt limit negotiations. Failure to meet the deadline would trigger a continuing resolution that would reduce federal spending by 1 percent across-the-board and eliminate the ability to fund congressionally directed project spending. Assuming that the deadline is met each year, funding of key wastewater infrastructure programs should remain robust.

The agreement maintains a budgetary baseline for funding of domestic programs. Most domestic programs would not suffer any real spending reductions as a result. Additionally, the agreement calls for limiting any federal funding growth to not more than one percent annually in the years beyond Fiscal Year 2024. However, the budget caps are only mandatory for the next two fiscal years. The following four years are discretionary.

The agreement imposes a “pay go” provision related to rulemakings. Under the agreement, if an agency proposes to issue rules that would increase costs, it will need to offset such increases with program spending cuts. Any administrative action that would increase mandatory spending would require the agency to submit a proposal to the Office of Management and Budget for review and provide an explanation on how it plans to reduce spending by an equal or greater amount in another program. If the cuts did not occur, then the proposed actions would be prohibited. Consistent with other regulatory development guidelines, the pay go feature would not impact rulemakings that cost less than \$1 billion over 10 years or \$100 million in any given year during the 10-year period. Statutory mandates would be exempted from the new requirement. This new mandate expires on December 31, 2024.

Importance to OC San

The debt ceiling agreement and the budget provisions means that OC San will be able to continue to seek community project assistance over the next two budget cycles at a minimum. Additionally, the agreement not to reduce funding under the Infrastructure Investment and Jobs Act means that, irrespective of annual spending decisions on clean water infrastructure, federal support for wastewater infrastructure assistance will remain robust. This could lead to project assistance related to upgrades and PFAS treatment needs.

- ***PFAS Legislation Continues to Take Shape***

The effort to address PFAS issues of concern continues in the Senate, the Committee on Environment and Public Works staff have spent the past several weeks working to develop a proposal. They plan to address PFAS Research & Development and technology demonstration program needs that might benefit OC San through future legislation. In discussions with committee staff, they indicated that the priority continues to be the development of a bipartisan agreement that the committee could consider. Staff have informed us that OC San (and other stakeholders) will be asked to submit comments on the proposal prior to the finalization of any draft bill that the committee would consider as early as mid-June.

As the Senate staff consider PFAS legislation, committee member Senator Cynthia Lummis (R-WY) and seven cosponsors introduced legislation, S. 1430. The proposed legislation provides an explicit Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) PFAS liability exemption for the water/wastewater sector. The committee is unlikely to consider S. 1430 as a standalone measure. Instead, it expects that if and when the committee considers its PFAS legislative package that CERCLA liability issues will be debated. Nonetheless, S. 1430 is considered to a starting point that will focus on the need to address potential wastewater agency liability as part of any legislation the committee could consider.

Why the Effort is Important to OC San

The committee's priority to secure stakeholder input on any PFAS legislation means that OC San will be able to communicate, along with other passive receivers, the importance of a CERCLA liability exemption. This ensures that OC San can convey its priority that it will not be burdened with potential third-party litigation to recover cleanup costs associated with PFAS in effluent discharges or biosolids that cannot be controlled given the ubiquitous nature of the chemical and for which OC San did not create the threat. This input will provide the committee staff with the demonstrated demand for such a policy as the committee membership develops and acts on PFAS legislation.

U.S. Environmental Protection Agency CERCLA Staff Finalizing Guidance on CERCLA PFAS Enforcement

As Congress considers legislative options to address the PFAS passive receivers' issue, USEPA's CERCLA office staff convened a listening session with national wastewater, water reuse and drinking water organizations to address PFAS liability concerns as they relate to the water/wastewater sector. According to agency staff, a proposed guidance to govern how USEPA will enforce cleanup mandates related to PFAS contamination should be available in the coming months. Under the nonbinding guidance document, the agency will direct its regional offices as well as headquarters staff to pursue PFAS enforcement actions against potentially responsible parties but avoid capturing public and private water sector agencies. USEPA is developing this guidance to formalize its public statements that it will use its discretionary authority not to enforce against passive receivers such as the water sector. However, the agency acknowledged that the policy would not affect private parties initiating litigation to secure cleanup assistance from public agencies. Additionally, because the agency is only issuing guidance, a regional office could decide to pursue a public agency if it decided that such actions are justified.

Why the Enforcement Guidance is Important to OC San

Once the guidance is issued, it will establish a federal policy that public agencies, like OC San, should not be subject to enforcement actions related to PFAS cleanups. This guidance only addresses federal enforcement, but it does point to a decision by the agency to rely upon effluent discharge standards and source control mandates for purposes of clean water agencies' responsibilities.