



TO: Rebecca Long
FROM: Eric Sapirstein
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SUBJECT: Washington Update

Congress returned from its August recess to address funding the government and conducting a number of hearings to advance natural resources legislation. This could become part of an omnibus public lands bill. Additionally, preliminary discussions between the House and Senate Water Resources Development Act of 2024 on a compromise bill continues. With less than three weeks before its next recess, the prospect for any legislation, other than a continuing resolution (CR), gaining momentum before the general election is remote. Instead, the Lame Duck Session that will begin in mid-November represents the singular opportunity to complete action on a number of measures. This in large measure will be determined by which party prevails in November.

The following summarizes the status of federal policy matters of interest to OC San

- ***PFAS Rulemakings and Liability Protection Legislation***
Federal Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) policymaking continues to command congressional and stakeholder attention. Within the policymaking arena, Congress is using the annual appropriations process to address concerns from the water sector. The House Committee on Appropriations approved the United States Environmental Protection Agency (USEPA) Fiscal Year 2025 spending bill (H.R. 8998) in which it included PFAS related policy riders. First, the committee reaffirmed its Fiscal Year 2024 spending bill directives to the Government Accountability Office (GAO). The GAO was mandated to conduct a study regarding the economics underlying USEPA's decision to establish a drinking water standard—Maximum Contaminant Level (MCL) of 4 parts per trillion (PPT). The committee expanded this mandate, requiring GAO and the USEPA to identify the number of drinking water agencies impacted by the rule and the costs of compliance.

The House spending bill also requires that, within 90 days of enactment, the USEPA provides a report to Congress on its progress in implementing the PFAS Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) municipal discretionary enforcement policy. The USEPA asserts this policy will avoid enforcing against wastewater agencies when CERCLA liability might be triggered at a clean-up site. Aside from these liability and compliance issues, the spending bill provides USEPA with directives to maintain research into PFAS environmental and health impacts. and to support water agencies with technical assistance to comply with the MCL.

The legislative effort to develop a water sector PFAS CERCLA liability exemption continues in the Senate Committee on Environment and Public Works. As reported previously, committee leadership is committed to develop a consensus approach before scheduling a hearing and mark-up of a PFAS liability bill. Additionally, the committee appears to agree that there must be an increased commitment to support health research and technology development to treat or destroy PFAS.

The challenge continues to define a passive receiver for CERCLA liability exemption and how to create “guardrails” to protect against abuses that may occur under any liability exemption if drafted. According to committee staff, action on a bill is unlikely before the Lame Duck Session. Even within this timeframe, doubt exists over the ability to fashion a bill that could make it through Congress and to the president before a December adjournment. In the House, H.R. 7944, Water Systems PFAS Liability Protection Act, would provide for an explicit water sector exemption from liability. It remains a marker to rely upon should the Senate pass a bill and send it to the House. H.R. 7944 is important because, if enacted, it would provide liability protections to the water and wastewater sectors. Importantly, it extends coverage to essential service providers like biosolids and residual management and treatment firms. A House congressional briefing on the need for liability protections is scheduled for September 16 where stakeholders will review the challenges created by the USEPA CERCLA designation.

From a legal perspective, the American Water Works Association and Association of Metropolitan Water Agencies have filed a challenge to USEPA’s MCL standard. The litigation questions the agency’s calculations of the costs of the mandate to justify its publication. The U.S. Chamber of Commerce filed a legal challenge to the agency’s PFAS hazardous substance designation that has created the potential CERCLA liability for the water sector. Both challenges could result in a judicial decision that would force USEPA to revise the rulemakings or toss the rules completely. The National Association of Clean Water Agencies is expected to file a brief on the designation mandate. The legal challenges are not expected to delay enforcement of the rules. In the case of the MCL, it does not become enforceable for five years from July 8, 2024, and therefore resolution of the challenge should occur before compliance with the MCL is triggered.

Importance of PFAS Legislative Directives and Liability Initiative

The decision to include directives to the USEPA that would provide Congress with data on the impact of the two rulemakings may provide important information. This could influence the ongoing legal challenges filed against the MCL and the designation of PFAS as a hazardous substance. The Senate Committee on Environment and Public Works leadership effort to address PFAS hazardous substance liability, while unlikely to be acted upon before late fall, continues to gain support from House and Senate members. OC San's priority to ensure that the water and wastewater agencies receive CERCLA liability protections remains an active issue.

- ***Fiscal Year 2025 Appropriations***

The House Committee on Appropriations approved the twelve spending measures for the fiscal year that begins October 1. The bills were approved on essentially party line votes, including the USEPA's spending bill (H.R. 8998). Disputes over funding levels contained in the Energy and Water Development Appropriations Bill (H.R. 8997) and policy riders related to clean energy mandates blocked House passage of the bill that funds the U.S. Bureau of Reclamation (USBR) and the United States Army Corps of Engineers (USACE) programs.

The Senate Committee on Appropriations similarly approved USEPA, USBR and USACE spending bills. However, the committee has not reported the funding bills to the Senate for floor for debate and votes. Instead, like the past few years spending debates, the committee held the bills at committee level to avoid protracted floor debates and floor amendments that can complicate final agreements on spending bills with the House later this fall.

The broad policy differences and spending levels between the two chambers and the limited time before the new fiscal year begins on October 1. This makes reconciliation of the two chambers spending bills impossible. Passage of a stopgap spending bill, extending into December, looks increasingly likely given the White House and Senate positions that the only acceptable course of action is a three-month extension and not a six-month CR as demanded by the House Speaker. The inability to schedule a House floor vote on a six-month extension (as of this writing) makes it increasingly likely that Congress will ultimately pass a short-term extension, and the president will sign it into law.

The House-passed USEPA spending bill is notable for agency budget cuts totaling \$2 billion compared with the current year spending level. Specifically, the House reduced the State Revolving Loan Fund (SRF) by almost \$1 billion. While this is a significant reduction, it is important to note that the next phase of the infrastructure law's supplemental SRF funding of \$9 billion will help to offset the cuts. The House bill also included PFAS directives noted previously in this update. The bill also claws back millions in the USEPA green infrastructure fund, eliminates funding for environmental justice programs, and denies funding of DEI environmental programs.

H.R. 8998 also included clarifying language that community projects assistance would not be subject to federal procurement rules related to sole source project selection.

Unlike the House bill, the Senate version, S. 4802, does not impose spending reductions. Instead, most programs remain funded at current levels. The SRF, for example, would be funded at almost \$3 billion. The Senate legislation highlights that \$9 billion was advanced appropriated as part of the infrastructure law.

Last, the U.S. Department of Agriculture spending measure directs the department to work with the USEPA to further research the potential PFAS environmental impacts on soils and crop uptake because of biosolids land application. This research directive is considered an important step to determining if additional treatment or restrictions should be developed.

USEPA is completing its PFAS Risk Assessment Model that will establish numerical standards that would be employed to establish treatment levels to address pathways of PFAS exposure from land application and other avenues. The model is likely to be released in October and would conform with the spending bills directives.

Importance of Spending Bills

The pending spending priorities for Fiscal Year 2025 are important to OC San for three reasons. First, the federal infrastructure partnership with agencies, including a priority to address PFAS treatment and cleanups, will remain robust. Second, the continuing education on the challenge of PFAS treatment and destruction has apparently put a pause on using the appropriations process to dictate treatment and clean-up mandates. Instead, it appears, based upon the House and Senate bills, that a focus on collecting data to better understand PFAS control and treatment challenges is the priority for resources allocation. The House bill mandate to report on PFAS drinking water MCL costs and the impact upon agencies' ability to comply indicated a continued interest in identifying how the agency arrived at the 4PPT standard. Last, the directed USEPA report on the implementation of the PFAS discretionary enforcement policy indicates a potential for increased oversight on the impacts, costs and benefits of USEPA's rules and policies upon the water sector.