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FROM: Eric Sapirstein
DATE: October 2 2023
SUBJECT: Washington Update

After weeks of brinksmanship over a stopgap spending bill between the House and the Senate, the House effectively agreed to the Senate's demands for a "clean" Continuing Resolution literally hours before a federal shutdown would have been triggered. The final agreement did include the White House request for \$16 billion in supplemental disaster assistance. The federal government now has a budget for the next six weeks (from the time of this writing). This means that Congress and the White House must fashion a compromise budget for the remaining eight months of the fiscal year before mid-November. Failing this, another threat of a government shutdown will rise again. The budgetary debate limited legislative activities. Nonetheless there was some work of note to OC San that is detailed below.

- ***PFAS Senate Legislation Remains Under Development***

The expectation that the Senate Committee on Environment and Public Works would move to a hearing on Per- and polyfluoroalkyl substances (PFAS) legislation in the early weeks of October seemed to have been dashed as the committee continued its work to define PFAS chemicals. The definition would be subject to the Office of Water regulation and how an exemption from liability might be fashioned for the wastewater sector and other exemptions from Superfund liability continues to challenge the committee. Central to the debate appears to be how broadly an exemption's eligibility should be such as applying it to both water and wastewater as well as biosolids. Republican committee members prefer to exempt all passive receivers while Democratic committee members appear to be less unified on the applicability of any exemption.

Why the Committee Debate is Important OC San

The ongoing committee debate surrounding how broad a Superfund liability exemption should be fashioned means that the wastewater remains potentially exposed to Superfund liability when the U.S. Environmental Protection Agency (U.S. EPA) finalizes its rule to designate PFAS chemicals as hazardous substances under Superfund. While the committee generally believes that source control is a preferred course of action to limit PFAS in the environment, the environmental community continues to call for no liability exemption. If this prevails in any final legislation, it could impose significant costs on OC San and specifically on biosolids management. Alternatively, if OC San's piloting of the PFAS destruction technology proves successful, it could help to reduce costs associated with PFAS management and limit future PFAS liability. However, past management practices would still pose potential liability if an exemption were not provided. At the time of this writing, it appears that Senate consideration of PFAS legislation will extend into 2024.

- ***Fiscal Year 2024 Appropriations Action and Government Shutdown***
Congress avoided a shutdown of the government hours before October 1. It agreed to a forty-five day Continuing Resolution (CR) that keeps federal agencies in business until November 15. The agreement is a "clean" CR. This means there were no budget cuts or policy riders that were being demanded by House Freedom Caucus members and other rank and file Republicans. Additionally, the agreement deferred further funding of Ukraine aid that was being sought by the Senate on a bipartisan basis. The agreement became the catalyst to oust Speaker Kevin McCarthy where the narrow four seat majority led to a 216-210 vote to vacate the Speaker's Chair. Eight Republicans along with a unified Democratic Caucus led to the vote. The vote means that Republicans must find a suitable replacement for McCarthy who stated he will not try to regain the Speakership. This effort is expected to begin next week when the House returns from its recess. As of this writing, it appears that there are four or five Members vying for the Speakership.

Because the appropriations agreement led to the ouster vote, the challenge to cobble together a final spending agreement with the Senate becomes increasingly difficult and could mean a shutdown in mid-November. This is the case because all twelve House spending bills will be passed over the next few weeks with significant reductions that would represent funding levels of fiscal year 2022. Such spending levels are non-starters for the Senate where bipartisan agreement prevails to comply with the Fiscal Responsibility Act's spending set at fiscal year 2023 levels.

Why the Funding Disagreement is Important to OC San

While the impact of a protracted spending debate would, for the most part, have only indirect impacts to OC San, it does carry some consequences. First, U.S. EPA's ability to process pending financial awards like OC San's PFAS destruction technology demonstration could be delayed. Second, on a regulatory front, pending efforts to require clean water agencies to monitor and test influent and biosolids for PFAS levels would likely be delayed since agency staff would be prohibited from conducting work during a lapse in federal spending.