



TO: Rebecca Long
FROM: Eric Sapirstein
DATE: October 21, 2022
SUBJECT: Washington Update

The House and Senate recessed for the month of October and will return to work November 14 following the mid-term elections. Prior to recessing, Congress approved a stopgap spending bill that would continue government operations until December 16. The following provides an update on pending issues of interest to OC San.

- ***USEPA Publishes PFAS CERCLA Designation Rule***
On September 6, the United States Environmental Protection Agency (USEPA) published the rule to designate PFAS under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In a local government briefing, the agency detailed its priority to review public comments, due November 7, and then issue a final proposed rule that would be subject to a limited public comment period followed by a final rule effective date presumed to be late 2023 or early 2024. During the briefing, local agency stakeholders including CASA expressed forceful concerns about the liability impacts to local governments. USEPA staff rejected concerns, suggesting that the agency would use its discretionary enforcement authority.

Why the rulemaking is important: The publication of the rule is important because it triggered requests from the public and private sectors to extend the comment period. Final publication will also start the clock for what we expect will be substantial litigation challenging the science and economics of the rulemaking. All in all, any final, effective date could be delayed from the projected timetable of the agency's PFAS Roadmap of 2023.

- ***USEPA Continues to Review Health Risks from PFAS in Biosolids***
The agency's Office of Water continues to examine the presence of PFAS chemicals in biosolids and risks to public health and the environment. In conversations with Office staff, the development of a new risk assessment model will be submitted to the agency's Science Advisory Board for review and approval of the evaluation and impacts on biosolids management practices.

Why the risk assessment is important: Any final decisions on the risks associated with PFAS and biosolids could translate into new treatment and management standards to protect against the uptake of PFAS into crops and plants or percolation into groundwater supplies. It could also increase management costs or in a worst case scenario cause some management options to be eliminated. However, USEPA maintains that it intends to work to ensure existing management options are not foreclosed.

- ***Fiscal Year 2023 Funding Decisions in December***
The House and Senate will work during the Lame Duck Session to finalize agency spending bills. As of this writing, finalizing a year-long spending agreement by December 16 is the priority for the House and Senate leadership. This deadline could change should control of the House and Senate switch. A wholesale change could allow the incoming Republican majority to make the case that any final spending decisions should reflect the change in majority control and delay any final decision making on spending bills until January/February.

What It Means If Funding Decisions Made This Year: If Congress moves final spending bills in December to the president for enactment, Community Project Requests, like OC San's Supercritical Water Oxidation Project, would most likely be approved and funded.

- ***Senate Committee Staff Developing PFAS Legislation***
Senate Committee on Environment and Public Works Democrat staff have developed an approach to legislate PFAS controls. The legislative language is expected to become available to stakeholders for review and comment in the coming months. Prospects for passage remain slim in the currently equally divided Senate.

Why Draft Language is Important: The decision of Democrat committee staff to develop a draft approach means a last ditch effort is underway to find a path forward during the Lame Duck Session. Reportedly the draft includes "cut and paste" liability and management provisions from other legislative initiatives. This means opportunities to work with the committee membership to ensure that the water sector is protected from liability under any legislative **or** regulatory mandates could exist.

- **Inflation Reduction Act Summary: Biogas Project**

The Inflation Reduction Act (IRA) provides for a significant federal commitment to jump start clean electricity projects. As enacted, the bulk of assistance is delivered as tax credits for project construction, which the Internal Revenue Service will implement.

The incentives are important to local governments because the IRA expands current tax credit policy by allowing all local governments to secure a cash subsidy (or transfer the credit to an entity with higher tax liability). The base credit can be up to 40 percent of the project cost with an additional 10 percent if the project complies with federal mandates. Since local governments are tax-exempt and do not benefit from tax credits, the policy will be a critical driver in deciding whether to construct biogas facilities. A summary sheet of the IRA is included in the LaPA report.