



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

Over the past month, Congress and the White House continued to work on developing a consensus to pass a final reconciliation agreement that would allow for final passage of the traditional “hard” infrastructure bill, H.R. 3684. This bill has remained stalled in the House as progressive and moderate Democrats debate how much spending should be committed to the reconciliation bill and the breadth of any final measure. Additionally, the Senate Committee on Appropriations continued its work to develop final fiscal year 2022 spending bills that could then be reconciled with the House-passed versions by December 3 when the stop gap spending bill expires. The U.S. Environmental Protection Agency (USEPA) took the formal step of releasing its PFAS Action Plan that sets the stage for regulatory actions to control the widespread use of these forever chemicals and to establish drinking water and industrial discharge standards to protect human health.

The following summarizes the outlook for congressional activities in the coming months.

Infrastructure Legislation Deadline Extended

As widely reported, the self-imposed September 27 deadline for a House vote on H.R. 3684 was extended to the end of October as Speaker Pelosi’s deadline ran into a wall of opposition from progressives in the House that threatened to vote against the bill, unless the reconciliation bill’s provisions and costs was agreed-upon with the Senate. With only a three-vote majority, and as many as 30 Progressives threatening to take down the bill, the Speaker agreed to delay a vote while efforts to deliver a reconciliation framework continued for another month.

At this time, it appears that the House will indeed vote on H.R. 3684 within the next few weeks given what appears to be an emerging consensus to reduce the reconciliation bill from \$3.5 trillion to somewhere around \$2 trillion. Such a consensus could potentially remove one of the key obstacles to securing Senators Manchin and Sinema's support and deliver the fifty Democratic Senate votes needed to allow for passage of the measure with the Vice President's tie breaking vote. However, a handful of demands related work requirements for childcare assistance, means testing for other assistance and the creation of a climate clean energy mandate that would reduce dependence on coal and natural gas remain to be resolved and could further delay an agreement until late December.

USEPA Releases PFAS Action Plan

USEPA issued the much anticipated [PFAS Strategic Roadmap](#), and it is an ambitious multi-year agenda to regulate per- and polyfluoroalkyl substances (PFAS) and create a roadmap to address other "forever" chemicals. For OC San, the plan identifies a number of priorities and actions that will impact directly or indirectly wastewater agencies. A copy of the roadmap can be accessed [here](#).

USEPA will engage with stakeholders to identify collaborative solutions and will hold two national webinars on [October 26](#) and [November 2](#) that are open to the public. OC San staff will attendg one of the webinars to gain an enhanced understanding of USEPA's effort and it impacts.

The roadmap is notable for its approach to regulating PFAS. There continues to be a commitment to rely upon science and data to make informed decisions. At the same time, it appears that while the agency endorses the polluter pays principle for PFAS contamination, the roadmap identifies a priority to consider listing PFAS as a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substance. This seems to throw into question whether public agencies could face unreasonable liability exposure under CERCLA simply because they are passive receivers of these chemicals. Of special note is biosolids. The agency is conducting a series of research studies to determine the nature and extent of PFAS chemicals in biosolids. These studies would presumably guide any new biosolids standards development.

Under the roadmap, the following wastewater related activities would be initiated by the agency:

Office of Water:

- Publish final recommended ambient water quality criteria for PFAS for aquatic life and human health to help Tribes and states develop standards, write permits, and assess cumulative impacts (*expected winter 2022 and fall 2024*)
- Finalize risk assessment for Perfluorooctanoic acid (PFOA) and Perfluorooctanesulfonic acid (PFOS) in biosolids that will serve as the basis for determining whether regulation of PFOA and PFOS in biosolids is appropriate (*expected winter 2024*)

- Leverage National Pollutant Discharge Elimination System (NPDES) permitting to reduce PFAS discharges to waterways to reduce discharges of PFAS at the source and obtain more comprehensive information through monitoring on the sources of PFAS and quantity of PFAS discharged by these sources (*expected winter 2022*)
- Restrict PFAS discharges from industrial sources through a multi-faceted Effluent Limitations Guidelines program to proactively establish national technology-based regulatory limits, including progress on the nine industrial categories in the proposed PFAS Action Act of 2021 (*expected 2022 and ongoing*)

Office of Land and Emergency Management (CERCLA):

- Propose to designate certain PFAS as CERCLA hazardous substances to require reporting of PFOA and PFAS releases, enhance the availability of data, and ensure agencies can recover cleanup costs (*proposed rule expected spring 2022, final rule expected summer 2023*)
- Issue advance notice of proposed rule-making on various PFAS under CERCLA to seek public input on whether to similarly seek CERCLA designation of other PFAS (*expected spring 2022*)
- Issue updated guidance on destroying and disposing PFAS to reflect public comments on interim guidance and to reflect newly published research results (*expected fall 2023*)

Office of Research and Development:

- Develop and validate methods to detect and measure PFAS in the environment, including additional targeted methods for detecting and measuring specific PFAS, non-targeted methods for identifying unknown PFAS in the environment, and exploring “total PFAS” methods (*ongoing*)
- Advance the science to assess human health and environmental risks from PFAS by developing human health toxicity assessments under EPA’s Integrated Risk Information System program; by compiling and summarizing available and relevant scientific information; by identifying PFAS sources, transport, and exposure pathways; and by characterizing how exposure to PFAS may contribute to cumulative impacts on communities (*ongoing*)
- Evaluate and develop technologies for reducing PFAS in the environment to inform decisions on drinking water and wastewater treatment, contaminated site cleanup and remediation, air emission controls, and end-of-life materials management (*ongoing*)

Cross-cutting programs:

- Use enforcement tools to better identify and address PFAS releases at facilities, as appropriate, to require actions by responsible parties, to limit future releases, and to address existing contamination (*ongoing*)
- Establish a PFAS Voluntary Stewardship Program to challenge industry to go above and beyond regulatory or compliance requirements to reduce overall releases of PFAS into the environment (*expected spring 2022*)

- Issue an annual public report on progress towards PFAS commitments included in this roadmap, as well as future actions the Agency may take (*winter 2022 and ongoing*)

Fiscal Year 2022 Appropriations

Pressure to meet the December 3 deadline to pass annual spending bills continues to increase to avoid the need for another stop gap spending bill and to decouple the spending bills from the ongoing infrastructure debates and the debt ceiling increase. As of this writing, the Senate is moving forward on its spending bills. It is possible that the bills as approved by the Senate Committee on Appropriations will not be passed by the Senate. Rather, in the limited time that remains before December 3, the committee will use the bills to negotiate with the House on its passed bills. While the specifics remain unknown at this writing, the Senate appears to mirror the House funding levels of many water programs, including the State Revolving Loan Fund (SRF). At the same time, the Senate may include increased funding for PFAS related program to ensure the agency has the resources to carry out cleanups and set drinking water standards.