

The Metropolitan Water District of Southern California November 14, 2023 – Federal Regulatory Matrix

Agency	Issue	Summary	Potential Impacts	Regulatory Status
EPA	<u>Asbestos and Chlorine</u>	On April 12, 2022, EPA proposed a rule under the Toxic Substances Control Act (TSCA) to ban the production, importation, and distribution of chrysotile asbestos, the only known form of asbestos that is currently imported into the United States. On March 16, 2023, EPA released additional data concerning chrysotile asbestos diaphragms used in the chlor-alkali industry, among other asbestos-containing products. EPA may use these data in developing its final rule.	While the chlor-alkali industry has committed to stop the importation of asbestos and phase out the use of asbestos-diaphragms, this action could potentially increase the costs of chlorine and caustic soda used for water and wastewater treatment.	EPA hopes to finalize the regulation by early 2024 with the ban going into effect 180 days thereafter.
EPA	<u>Consumer Confidence Reports (CCRs)</u>	On April 5, 2023, EPA published proposed revisions to the Consumer Confidence Reports (CCRs). When finalized, EPA’s proposal would require public water systems serving over 10,000 people to deliver CCRs twice a year, encourage modern electronic delivery options, clarify information regarding lead in drinking water, and provide translation for customers with limited English proficiency.	The biennial requirement is only for community water systems that exceed a maximum contaminant level (MCL), health advisory (HA), notification level (NL), or response level (RL). It is unclear how the second CCR requirement would be met given sampling schedules and compliance with running annual averages. As a wholesaler, Metropolitan is not required to do a CCR, but will be required to provide water quality data to our member agencies twice per year. Staff worked with AMWA, AWWA and CMUA on comments.	Final rule due by March 15, 2024.
EPA	<u>Maximum Contaminant Levels for PFAS</u>	On March 29, 2023, EPA published draft maximum contaminant levels (MCLs) for PFOA and PFAS at 4 parts per trillion (ppt) for each compound-- the detection limit of EPA's test method. The proposed rule also set maximum contaminant level goals (MCLGs) for both PFOA and PFOS to 0 ppt. Lastly, EPA proposed regulating PFNA, PFHxS, PFBS, and GenX as a mixture.	Metropolitan submitted comments on May 30, 2023 in support of regulating PFOA and PFOS in drinking water. However, staff commented that regulating the remaining PFAS is premature as these compounds did not follow the full regulatory process and may have unintended economic impacts.	EPA hopes to finalize the regulation by early 2024 with a three-year compliance timeline from the rule's effective date.

ACWA –Association of Clean Water Administrators
 AMWA –Association of Metropolitan water Agencies
 AWWA – American Water Works Association
 EPA – United States Environmental Protection Agency

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EPA	<u>National Cybersecurity Strategy</u>	On March 3, 2023, EPA issued a memorandum directing Safe Drinking Water Act state primacy agencies to assess cybersecurity resilience of public water systems as part of either the sanitary survey process or other state programs. When a primacy agency identifies a significant cybersecurity deficiency, the agency is instructed to use its authority to require the public water system to address the deficiency. This directive was not subject to the rulemaking process.	The water industry is concerned that the Sanitary Survey Program is not the right tool to address cybersecurity vulnerabilities or deficiencies. Many state primacy agencies lack both the resources and technical expertise to evaluate and address cybersecurity issues and additionally lack the ability to secure sensitive information. AWWA and NRWA joined several states in challenging the rule. Staff worked with AWWA on alternative compliance pathways.	On October 12, 2023, EPA withdrew its cybersecurity memorandum and now asks states to “voluntarily” review public water system cybersecurity programs.
EPA	<u>PFAS and CERCLA Part I</u>	On September 6, 2022, EPA proposed to list perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).	Metropolitan submitted comments on November 7, 2022 that the rulemaking will greatly increase the potential liability under CERCLA for water treatment residuals. Staff also worked with ACWA, AMWA, AWWA, and WUWC on comments seeking an exemption under CERCLA for the water industry.	EPA intends to finalize the rule by February 2024.
EPA	<u>PFAS and CERCLA Part II</u>	On April 13, 2023, EPA requested public “input and data” regarding whether to designate the precursors to PFOA and PFOS, as well as seven additional PFAS as hazardous substances under CERCLA. The seven additional PFAS are PFBS, PFHxS, PFNA, Gen X, PFBA, PFHxA, and PFDA. The notice also request input on regulating groups or categories of PFAS as hazardous substances.	Metropolitan submitted comments on August 3, 2023 that EPA should consider updated occurrence data and develop robust and reliable analytical methods before making any regulatory determination for the affected PFAS. In addition, staff requested that EPA explore other regulatory pathways for PFAS rather than CERCLA, as well as follow the "Polluter Pays" principle and make additional funding available for treatment and cleanup costs.	Awaiting EPA’s decision whether to propose regulating these PFAS as hazardous substances under CERCLA.

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EPA	<u>"Waters of the United States" (WOTUS)</u>	On September 8, 2023, the EPA and the Army Corps of Engineers published the final rule revising the January 2023 definition of WOTUS. The final rule incorporates the 2023 Supreme Court ruling in <i>Sackett v. EPA</i> which rejected the “significant nexus test” and concluded that WOTUS only encompasses “traditional” streams, oceans, rivers, and lakes. The ruling also limits Clean Water Act coverage for wetlands to only those wetlands that have a “continuous surface connection” to a “relatively permanent body of water connected to traditional interstate navigable waters.”	Metropolitan had previously commented in support of the January 2023 rule that put back into place the pre-2015 definition of WOTUS and codified the Supreme Court decisions from 2001 and 2006 (i.e., <i>Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps</i> and <i>Rapanos v. United States</i>). In addition to rejecting the significant nexus test found in <i>Rapanos v. United States</i> , the new rule no longer covers ephemeral streams—a common feature in the arid Southwest. Staff are reviewing the new WOTUS Rule to determine how it would impact source water protection and permitting activities.	Rule effective on September 8, 2023. No further comments will be taken.
FWS and NMFS	<u>Regulations for Interagency Cooperation</u>	On June 22, 2023, FWS and NMFS proposed to amend portions of Section 7 of the Endangered Species Act to clarify and improve the interagency consultation processes, while continuing to provide for the conservation of listed species. The proposed rule would revise and expand the scope of reasonable and prudent measures that could be included as part of an incidental take statement in a biological opinion.	Metropolitan submitted comments on August 21, 2023 requesting that FWS and NMFS reconsider their revised interpretation of the use of reasonable and prudent measures to offset remaining impacts of an incidental take. This rule changes the standard by which applicants must mitigate an incidental take from only implementing avoidance and minimization measures to also include full mitigation of the impact.	Awaiting final rule.

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