

## The Metropolitan Water District of Southern California

### January 8, 2024 – Federal Regulatory Matrix

Agency	Issue	Summary	Potential Impacts	Regulatory Status
EPA	<a href="#"><u>Asbestos and Chlorine</u></a>	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	<a href="#"><u>Consumer Confidence Reports (CCRs)</u></a>	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	<a href="#"><u>Maximum Contaminant Levels for PFAS</u></a>	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 at 0 ppt. Lastly, EPA proposed regulating PFNA, PFHxS, PFBS, and GenX as a	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  
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		mixture with a proposed MCL and proposed MCLG both set at a unitless Hazard Index of 1.0.		
EPA	<a href="#"><u>National Cybersecurity Strategy</u></a>	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	<a href="#"><u>PFAS and CERCLA Part I</u></a>	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	<a href="#"><u>PFAS and CERCLA Part II</u></a>	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	<a href="#"><u>"Waters of the United States" (WOTUS)</u></a>	On September 8, 2023, the EPA and the Army Corps of Engineers published the final rule revising the January 2023 definition of WOTUS to conform to the 2023 Supreme Court ruling in <i>Sackett v. EPA</i> . The revised rule eliminates the significant nexus standard from the definitions of all navigable water types and clarifies that the CWA only applies to wetlands that have a “continuous surface connection” to another WOTUS. Furthermore, the CWA no longer applies to ephemeral streams—a common feature in the arid Southwest.	As California law covers all water types previously covered by WOTUS, Metropolitan will likely need to obtain state permits for activities that were previously covered by the CWA. The narrow scope of waters covered could also negatively impact source water quality in the Colorado River Basin.	Rule effective on September 8, 2023. No further comments will be taken.
EPA	<b>Lead and Copper Rule</b>	On December 6, 2023, EPA published its proposed Lead and Copper Rule Improvements <b>Rule</b> . The proposed rule focuses on identifying and replacing lead service lines <b>within 10 years—including full lead line replacement</b> ; lowering the lead action level from 0.015 to 0.010 milligrams per liter (mg/L); <b>removing the lead trigger level; improving tap sampling procedures</b> ; and improving public education and outreach materials to include renters and individuals with limited English proficiency.	Staff are reviewing the proposal to determine potential impacts on Metropolitan and its member agencies	EPA is hosting and virtual public hearing. Comments are Due February 5, 2024

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EPA	<a href="#"><u>County of Maui v. Hawaii Wildlife Fund Decision on Clean Water Act (CWA) Section 402 of the NPDES Permit Program:</u></a>  <a href="#"><u>County of Maui Guidance</u></a>	<p>In <i>County of Maui v. Hawaii Wildlife Fund</i>, the Supreme Court held that a discharge from a point source to groundwater will be subject to NPDES permitting requirements if it is determined to be the functional equivalent of a discharge to a Water of the United States/navigable water. On November 20, 2023, EPA released its second version of draft guidance on how to apply the “functional equivalency” test found in the <i>Maui</i> decision. On December 21, 2023 Metropolitan submitted comments expressing support for the draft guidance.</p>	<p>This guidance is meant to provide clarity regarding existing CWA NPDES point source permit requirements. Metropolitan operations are not expected to be impacted by the ruling or the new guidance. Discharges by Metropolitan to groundwater that reach WOTUS are already covered by state permitting requirements, and the new rules are not expected to trigger any additional permitting requirements for PWSC and Delta operations. The <i>Maui</i> decision and EPA guidance are expected to help protect source water quality, both in California and throughout the Colorado River Basin.</p>	<p>The comment period for the Draft Guidance has closed. EPA has stated that it will not extend the comment period. Awaiting final Rule.</p>
FWS and NMFS	<a href="#"><u>Regulations for Interagency Cooperation</u></a>	<p>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.</p>	<p>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.</p>	<p>Awaiting final rule.</p>

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