

The Metropolitan Water District of Southern California

July 8, 2024 – Federal Regulatory Matrix

Agency	Issue	Summary	Potential Impacts	Regulatory Status
EPA	<u>Asbestos and Chlorine</u>	On March 18, 2024, EPA published its final rule under the Toxic Substances Control Act (TSCA) that bans the production, importation, and distribution of chrysotile asbestos, the only known form of asbestos that is currently imported into the United States. To date, there are still eight chlor-alkali plants (about one-third of the production capacity) in the United States that still use asbestos diaphragms for the manufacture of chlorine and caustic soda.	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.	The asbestos ban for the chlor-alkali industry is effective immediately.
EPA	<u>Consumer Confidence Reports (CCRs)</u>	On May 24, 2024, EPA published the final revisions to the Consumer Confidence Report (CCR) regulation. The regulation requires public water systems serving 10,000 or more 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 serve 10,000 or more persons. Such systems that have a violation or action level exceedance between January 1 and June 30 of the current year, or have new Unregulated Contaminant Monitoring Rule (UCMR) results must include a 6-month update with the second report explaining any violations. 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.	The rule is effective June 2024, with the new content and delivery requirements starting in 2027.
EPA	<u>Maximum Contaminant Levels for Perchlorate</u>	On January 5, 2024, per a Consent Decree in the <i>NRDC v. EPA</i> case, the court announced that EPA will be required to propose a maximum contaminant level goal (“MCLG”) and a national primary drinking water regulation	Previously, staff have commented in support of EPA promulgating a federal perchlorate standard to protect public health and help with long-term remediation of perchlorate contamination in the Colorado River Basin.	Rulemaking expected to start in 2025.

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		<p>(“NPDWR”) for perchlorate by November 21, 2025, and publish the final MCLG and NPDWR by May 21, 2027.</p>		
<p style="text-align: center;">EPA</p>	<p><u>Maximum Contaminant Levels for Six PFAS</u></p>	<p>On April 26, 2024, EPA published final drinking water standards for six (6) PFAS. EPA set individual maximum contaminant levels (MCLs) for PFOA and PFOS at 4.0 parts per trillion (ppt), and 10 ppt for PFNA, PFHxS, and GenX Chemicals. EPA will also regulate PFAS mixtures containing at least two or more PFHxS, PFNA, GenX Chemicals, and PFBS using a unitless Hazard Index of one (1). Lastly, EPA finalized health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for PFOA and PFOS at 0 ppt and 10 ppt for PFNA, PFHxS, and GenX Chemicals..</p>	<p>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.</p>	<p>Rule will be effective on June 25, 2024 with a three-year compliance timeline from the rule's effective date.</p> <p>On June 7, 2024, AWWA and AMWA filed a Petition for Review asking a federal court to review EPA’s final National Primary Drinking Water Regulation and decide whether EPA acted appropriately in setting MCLs and MCLGs for six PFAS. This petition is pending.</p>

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EPA	PFAS and CERCLA Part I	On May 8, 2024, EPA published its final rule designating perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).	Despite EPA’s April 19, 2024, “PFAS Enforcement Discretion and Settlement Policy Under CERCLA” that emphasized that EPA will not target water utilities, staff are still concerned that the final rule may encumber water utilities with potential liability under CERCLA for the disposal of water treatment residuals that may contain PFAS. Metropolitan submitted comments on November 7, 2022 to this affect and worked with ACWA, AMWA, AWWA, and WUWC on comments seeking an exemption under CERCLA for the water industry.	Rule is final and will go into effect on July 8, 2024. On June 10, 2024, the Chamber of Commerce of the United States of America, Associated General Contractors of America, Inc., and National Waste & Recycling Association, filed a Petition for Review asking a federal court to review EPA’s final CERCLA rule and decide whether EPA acted appropriately in designating PFOA and PFOS as CERCLA Hazardous Substances. This petition is pending.
EPA	PFAS and CERCLA	On April 13, 2023, EPA requested public “input and data” regarding whether to designate the	Metropolitan submitted comments on August 3, 2023 that EPA should consider updated occurrence	Awaiting EPA’s decision whether to

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	<u>Part II</u>	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 requested input on regulating groups or categories of PFAS as hazardous substances.	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.	propose regulating these PFAS as hazardous substances under CERCLA.
EPA	<u>PFAS and RCRA Part I</u>	On February 8, 2024, EPA released a proposed rule to revise the definition of “hazardous waste” under the Resource Conservation and Recovery Act (RCRA) such that PFAS can be included in corrective actions for treatment, storage, and disposal facilities (TSDFs).	On March 26, 2024, staff submitted a comment letter expressing concern that while the rule is focused on TSDFs, the rule could raise the disposal costs of PFAS-laden materials sent to TSDFs and that this was not included in the cost analysis. Staff also asked that EPA adopt formal RCRA enforcement guidance for TSDFs, such that water utilities are protected against future liability; and that EPA follow the “polluter pays” principle and/or make additional funding available for treatment and cleanup.	Awaiting final rule.
EPA	<u>PFAS and RCRA Part II</u>	On February 8, 2024, EPA released a proposed rule to list nine PFAS (PFOA, PFOS, PFBS, HFPO-DA or GenX Chemicals, PFNA, PFHxS, PFDA, PFHxA, and PFBA) and their salts and isomers as “hazardous constituents” under RCRA.	On April 8, 2024, staff submitted a comment letter addressing EPA’s proposal to list nine PFAS and their salts and isomers as “hazardous constituents” under RCRA. A hazardous constituent listing is the first step towards a potential “hazardous waste” listing. If these nine PFAS were to be classified as hazardous wastes under RCRA, then they would automatically be classified as “hazardous substances” under CERCLA. Similar to our comments on the PFAS-CERCLA regulatory effort, Metropolitan emphasized that while we support	Awaiting final rule.

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			regulating PFAS, the regulatory community needs guardrails in place (e.g., analytical methods, regulatory limits, and cleanup standards) prior to regulating these compounds. Staff also reiterated that EPA should follow the polluters pay principle.	
EPA	<u>Lead and Copper Rule Improvements</u>	On December 6, 2023, EPA published its proposed Lead and Copper Rule Improvements. The proposed rule focuses on identifying and replacing lead service lines within 10 years; lowering the lead action level from 0.015 to 0.010 milligrams per liter (mg/L); removing the lead trigger level; improving tap sampling procedures; and improving public education and outreach materials to include renters and individuals with limited English proficiency.	As drafted, the rule will result in additional sampling at Metropolitan’s desert housing, but is not applicable to the main water treatment system. Staff partnered with trade associations to provide comments.	Awaiting final rule.
EPA	<u>County of Maui v. Hawaii Wildlife Fund Guidance</u>	On November 20, 2023, EPA released its second version of draft guidance on how to apply the “functional equivalency” test found in the <i>County of Maui v. Hawaii Wildlife Fund</i> decision. In the <i>Maui</i> decision, the Supreme Court set forth seven factors to help determine if a NPDES permit is required when a point source pollutant discharged to groundwater has the same “functional equivalency” as a direct discharge to a navigable water.	On December 21, 2023, Metropolitan submitted comments expressing support for the draft guidance. Metropolitan operations are not expected to be impacted by the new guidance, but the guidance is expected to help protect source water quality throughout the Colorado River Basin. Discharges by Metropolitan to groundwater in California are already covered by state permitting requirements, and the new guidance is not expected to trigger any additional permitting requirements for Pure Water Southern California and Delta operations.	Awaiting final guidance.

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EPA	Water System Restructuring Assessment Rule	On May 30, 2024, EPA released a draft Water System Restructuring Assessment Rule. The proposed rule provides a regulatory framework for a new mandated authority requiring states to identify and assess restructuring options for public water system (PWS). A state may mandate a restructuring assessment of a PWS if it finds that: (1) the PWS has repeatedly violated one or more National Primary Drinking Water Regulations (NPDWRs) and such violations are likely to adversely affect human health; (2) the PWS is unable or unwilling to implement restructuring activities, or already has attempted to implement such activities but has not achieved compliance; (3) restructuring of the PWS, including a form of consolidation or a transfer of ownership, is feasible; and (4) restructuring of the PWS could result in greater compliance with drinking water standards. The rule does not authorize a state to mandate any form of restructuring. Individual states may decide to mandate restructuring, but only under state laws and regulations, not under the proposed rule.	EPA was directed to develop the rule under Title I of the 2018 America’s Water Infrastructure Act. Staff are evaluating to rule for potential impactsto determine how it will impact California’s water system consolidations rules that are already in place. ; however the State of California already has rules in regards to water system consolidations .	Comments due July 29, 2024.

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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.	FWS and NMFS published the final rule in April 2024 and it went into effect on May 6, 2024.

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