

The Metropolitan Water District of Southern California October 7, 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.	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. 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 (“NPDWR”) for perchlorate by November 21, 2025, and publish the final MCLG and NPDWR by May 21, 2027.	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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EPA	<u>Maximum Contaminant Levels for Six PFAS</u>	<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>On June 7, 2024, AWWA and AMWA filed a Petition for Review asking a federal court to decide whether EPA acted appropriately in setting MCLs and MCGLs for six PFAS. Subsequently, the National Association of Manufacturers, American Chemistry Council, and The Chemours Company FC, LLC filed Petitions for Review, and NRDC and several community groups filed motions to intervene in support of EPA’s final rule. The court has set a briefing schedule, with final briefs due March 25, 2025.</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.	Rule became effective on June 25, 2024 with a three-year compliance timeline from the rule's effective date.

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EPA	<u>PFAS and CERCLA Part I</u>	<p>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).</p> <p>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 decide whether EPA acted appropriately in designating PFOA and PFOS as CERCLA Hazardous Substances. The American Chemistry Council and others have also filed Petitions for Review. NRDC and other groups have moved to intervene in defense of EPA’s rule.</p>	<p>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 effect and worked with ACWA, AMWA, AWWA, and WUWC on comments seeking an exemption under CERCLA for the water industry.</p>	<p>Rule is final and went into effect on July 8, 2024.</p>
EPA	<u>PFAS and CERCLA Part II</u>	<p>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 requested input on regulating groups or categories of PFAS as hazardous substances.</p>	<p>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.</p>	<p>EPA had previously planned to propose a rule listing other PFAS as CERCLA hazardous substances in April 2025, but it now lists the date of the proposed rule as “To Be Determined.”</p>

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EPA	PFAS and RCRA Part I	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.	EPA anticipates finalizing the rule in December 2024.
EPA	PFAS and RCRA Part II	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. Like our comments on the PFAS-CERCLA regulatory effort, Metropolitan emphasized that while we support 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 anticipates finalizing the rule in July 2025.

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EPA	<u>Lead and Copper Rule Improvements</u>	On December 6, 2023, EPA published its proposed Lead and Copper Rule Improvements (LCRI). The LCRI proposal builds on the 2021 Lead and Copper Rule Revisions (LCRR) and the original Lead and Copper Rule. 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 parts per million (ppm); 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. Under the 2021 LCRR, water systems are currently required to provide an initial inventory of their lead service lines by October 16, 2024. Under the proposed LCRI, all water systems will be required to regularly update their inventories, create a publicly available service line replacement plan, and identify the materials of all service lines of unknown material. Staff partnered with trade associations to provide comments.	EPA anticipates finalizing the rule by October 16, 2024.
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	<u>Water System Restructuring Assessment Rule</u>	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 to determine how it will impact California’s water system consolidations rules that are already in place.	Awaiting final rule.

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USFWS	<u>Proposed Listing of Santa Ana Speckled Dace as Threatened Species</u>	<p>On August 13, 2024, the USFWS proposed listing the Santa Ana Speckled Dace as a threatened species under the FESA with protective regulations under Section 4(d) of the Act (“4(d) rule”). The 4d rule would include exceptions from take prohibition for Forest and Wildland management activities, habitat restoration and enhancement activities (including dam operations where they benefit the species), and removal of non-native species. If the USFWS finalizes this rule as proposed, FESA protections would apply. Due to the lack of sufficient data, Critical Habitat is not being designated at this time .</p>	<p>This fish currently occurs in isolated populations in Southern California in the headwaters of the Los Angeles, San Gabriel, Santa Ana and San Jacinto River watersheds. Metropolitan has facilities that cross lower reaches of these streams. Listing could add additional constraints on maintenance and construction activities if the species were to migrate and/or get flushed downstream into areas with Metropolitan facilities. Presence of this listed species could also potentially affect operations of water supply facilities for local agencies. Staff are evaluating the listing for potential impacts on Metropolitan.</p>	<p>Comments on the proposed rule are due October 15, 2024.</p>

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