

The Metropolitan Water District of Southern California

April 9, 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 Office of Management and Budget (OMB) approved the rule on March 11, 2024, allowing EPA to finalize the rule at any time. The ban goes 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 Spring 2024.
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 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 at 0 ppt. Lastly, EPA proposed regulating PFNA, PFHxS, PFBS, and GenX as a mixture using a unitless Hazard Index of 1.0.	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 in Spring 2024 with a three-year compliance timeline from the rule's effective date.
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 in Spring 2024.

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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.
EPA	<u>Analytical Methods for CCL 5 and UCMR 6</u>	On February 8, 2024, EPA requested public input on drinking water analytical methods for emerging contaminants in drinking water, particularly those listed on the agency’s Fifth Contaminant Candidate List (CCL 5) which includes PFAS, that might support monitoring under the sixth Unregulated Contaminant Monitoring Rule (UCMR 6) and/or other future cycles of the UCMR program Monitoring Rule.	EPA’s notice invites comments on drinking water analytical methods and is directed to those interested in or involved with developing analytical methods for unregulated contaminants in drinking water. It may also be of particular interest to laboratories that conduct chemical or microbiological testing for drinking water contaminants, including testing in support of the UCMR program. AMWA intends to submit comments.	Comments are due April 8, 2024.
EPA	<u>PFAS and RCRA</u>	On February 8, 2024, EPA released two new proposed rules related to regulating PFAS under the Resource Conservation and Recovery Act (RCRA). The first rule proposes to list nine PFAS (PFOA, PFOS, PFBS, HFPO-DA, PFNA, PFHxS, PFDA, PFHxA, and PFBA) and their salts and isomers as “hazardous constituents” under RCRA. The second rule revises the definition of “hazardous waste” applicable to corrective actions for treatment, storage, and disposal facilities.	A hazardous constituent listing is the first step toward 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. This could potentially trigger CERCLA liability for water agencies. Staff are preparing comments on both rules.	Comments on first rule are due April 8, 2024 and comments on the second rule were due March 26, 2024.

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EPA	Risk Management Plan (RMP) Rule	On March 11, 2024, EPA released its final revisions to the Risk Management Plan (RMP) rule. Changes to the RMP include adding natural hazards (including climate change) and loss of power to the hazards that must be addressed; requiring a formal root cause analysis incident investigation when facilities have had an RMP-reportable accident; and other administrative changes.	The RMP applies to approximately 2,000 drinking water and wastewater utilities using chlorine gas or anhydrous ammonia above certain amounts. Utilities will have approximately three years to make changes to their existing RMP plan to address new requirements. Staff worked with AWWA on comments to the proposed rule in 2022 and have taken steps to comply with the rule's new requirements.	The rule goes into effect May 10, 2024.
EPA	"Waters of the United States" (WOTUS)	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.

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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. 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.	Staff are reviewing the proposal to determine potential impacts on Metropolitan and its member agencies, and partnered with trade associations to provide comments.	Comments were due February 5, 2024. 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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FWS	<u>Endangered Species Act</u> <u>Final Rule</u>	On March 28, 2024, FWS and NMFS issued three final rules revising Endangered Species Act (ESA) regulations implementing ESA sections 7 and 4 titled Regulations for Interagency Cooperation, Listing and Designating Critical Habitat, and FWS’s Regulations Pertaining to Endangered and Threatened Wildlife and Plants. The rules reverse some of the changes made during the Trump administration while adding some new provisions regarding minimization of impacts in incidental take permits and statements. The new regulations include (1) refinements of the ESA section 7 consultation process; (2) changes to the ESA section 4 procedures and criteria for listing, reclassifying or delisting species and the criteria for designating critical habitat; and (3) reinstatement of FWS’s “blanket” ESA section 4(d) rule (repealed in 2019) that extends the ESA section 9 prohibition of unpermitted take to all species FWS lists as threatened absent a species-specific rule. FWS and NMFS also announced they will provide further guidance in an updated ESA Section 7 Consultation Handbook that will be subject to public comment.	Notably, the new rule authorizing FWS and NMFS to require ESA permittees to implement reasonable and prudent measures (RPMs), including offsite measures, to fully “offset”—not minimize—the impacts of any authorized incidental take could increase mitigation and associated costs on CRA and SWP operations, as well as any other Metropolitan actions requiring ESA section 7 consultation. Metropolitan, along with numerous others, commented on that aspect of the regulation in 2023 as it exceeds the ESA authorization to impose RPMs that “minimize” the impacts of incidental take and supersedes section 7 guidance in place since 1997. In addition, FWS and NFMS will consider the future effects of an ongoing discretionary action to be outside the environmental baseline, even if operations are not changed in any way. Reinstatement of the FWS’s “blanket” 4(d) rule likely will have no impact because it reinstates a rule in effect until 2019, and since 2019, FWS usually issued species-specific 4(d) rules prohibiting unpermitted take of newly-listed threatened species. These rules are highly controversial and will likely be challenged in court..	Final rule issued in pre-print on March 28, 2024; anticipated for publication in the Federal Register on April 5, 2024; becomes effective 30 days after publication

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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.	Awaiting final rule.

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