

The Metropolitan Water District of Southern California January 14, 2025 – Federal Regulatory Matrix

Agency	Issue	Summary	Potential Impacts	Regulatory Status
DHS	<u>Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) Reporting Requirements</u>	On April 4, 2024, the Cybersecurity and Infrastructure Security Agency (CISA) established a draft rule proposing reporting requirements for critical infrastructure entities that experience cybersecurity incidents. The draft rule proposes limiting reporting requirements to medium, large, and very large Community Water Systems and Publicly Owned Treatment Works (POTWs) that serve populations greater than 3,300.	The CIRCIA Reporting Requirements affect all water and wastewater agencies serving more than 3,300 customers. This population metric dictates which water providers are required by EPA to conduct risk and resilience assessments and to prepare emergency response plans. On July 3, 2024, ACWA submitted comments asking CISA to 1) refine the definition of “substantial cyber incident” to focus on capturing truly disruptive incidents, 2) align CISA reporting and data retention requirements with other federal cybersecurity requirements, 3) consider using the 50,000-person threshold in place of 3,300 for regulating water and wastewater operators, and 4) provide financial assistance to aid in compliance; among other comments.	Awaiting further action by CISA.
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 provides water quality data to our member agencies twice per year to support the development of their CCRs.	The rule is effective June 2024, with the new content and delivery requirements starting in 2027.

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EPA	<u>Fluoride</u>	In a September 24, 2024, ruling, a federal judge found that EPA is required to provide a regulatory response under the Toxic Substances Control Act (TSCA) because fluoridation of water at 0.7 parts per million (ppm) -- the level presently considered “optimal” in the United States -- poses an unreasonable risk of reduced IQ in children. The judge’s order does not dictate precisely what EPA’s regulatory response must be.	California law requires water systems with 10,000 or more connections to fluoridate if funding is available. This court ruling does not require Metropolitan to change its current treatment operations. Per Metropolitan’s Board-adopted Drinking Water Fluoridation Policy, Metropolitan has adjusted the natural fluoride levels in its treated water supplies since 2007, in full compliance with federal and state drinking water regulations. It is important to note that drinking water is regulated under the Safe Drinking Water Act, and not TSCA.	Awaiting any further action by EPA and/or the California Division of Drinking Water with respect to fluoride. EPA has until January 21, 2025, to appeal the ruling.
EPA	<u>Maximum Contaminant Levels for Perchlorate</u>	In the December 4, 2024, Federal Register, EPA announced that the National Drinking Water Advisory Council (NDWAC) will meet on January 9, 2025, to discuss a proposed National Primary Drinking Water Regulation (NPDWR) for perchlorate. This action is in response to a January 5, 2024, Consent Decree in the <i>NRDC v. EPA</i> case that required EPA to propose a maximum contaminant level goal (MCLG) and 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.	The NDWAC will meet on January 9, 2025, to discuss a proposed NPDWR for perchlorate.

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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 MCLGs at 0 ppt for PFOA and PFOS 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 MCLGs 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 PFOA and 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. A group of passive receivers, including drinking water organizations, filed an <i>amici</i> brief explaining why EPA’s assessment of costs and benefits failed to take into account the effects on passive receivers. The court has set a briefing schedule, with final briefs due April 2, 2025.</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>

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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 requested 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.	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.”
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.	EPA anticipated finalizing the rule in December 2024.

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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. 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>	<p>On October 30, 2024, EPA published the final Lead and Copper Rule Improvements (LCRI). The LCRI builds on the 2021 Lead and Copper Rule Revisions (LCRR) and the original Lead and Copper Rule. The final 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.</p> <p>On December 13, 2024, AWWA filed a petition with the D.C. Court of Appeals challenging the LCRI. AWWA contends that the requirement that water systems must replace lead service lines on private property and owned by entities other than the systems if the systems can “access” such lines is neither feasible nor lawful. AWWA is also concerned about the impact of the final rule on water affordability.</p>	<p>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 were required to provide an initial inventory of their lead service lines by October 16, 2024. Under the final LCRI, all water systems must submit a baseline inventory by November 1, 2027, and 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.</p>	<p>The final rule went into effect on December 30, 2024.</p>

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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 or Delta operations.	Awaiting final guidance.
USFWS	<u>Proposed Listing of Santa Ana Speckled Dace as Threatened Species</u>	On August 13, 2024, the USFWS proposed listing the Santa Ana Speckled Dace as a threatened species under the Federal Endangered Species Act (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.	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 evaluated the listing for potential impacts on Metropolitan. Known populations of Dace occur in very few locations near, and downstream of, Metropolitan facilities.	Awaiting further action by USFWS.

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