

United States Court of Appeals
For the Eighth Circuit

STATES OF MISSOURI, ARKANSAS, AND IOWA,

Petitioners,

AMERICAN WATER WORKS ASSOCIATION AND NATIONAL RURAL WATER
ASSOCIATION,

Intervenors,

v.

MICHAEL REGAN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE
U.S. ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

Respondents.

On Petition for Review of Final Action by the
United States Environmental Protection Agency

**JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE
PURSUANT TO FEDERAL RULES OF APPELLATE
PROCEDURE 20 AND 42**

As provided for in Rules 20 and 42, the Parties agree to dismiss the
petition for review. In support, the Parties state the following:

Factual Background

On March 3, 2023, Respondents issued a Memorandum (the “March
3 Document”) titled “Addressing PWS Cybersecurity in Sanitary Surveys
or an Alternate Process.” That Document stated that “during a sanitary

survey of a [public water system], states must do the following” (1) “If the PWS uses an ICS or other operational technology as part of the equipment or operation of any required component of the sanitary survey, then the state must evaluate the adequacy of the cybersecurity of that operational technology for producing and distributing safe drinking water” and (2) “If the state determines that a cybersecurity deficiency identified during a sanitary survey is significant, then the state must use its authority to require the PWS to address the significant deficiency.”

The States of Missouri, Arkansas, and Iowa (Petitioners) timely filed a petition for review in this Court challenging the March 3 Document alleging that it was unlawfully promulgated and arbitrary and capricious. The American Water Works Association and National Rural Water Association timely intervened. At Intervenor’s request and supported by Petitioners, this Court stayed the March 3 Document on July 12, 2023.

On October 11, 2023, Respondents issued a Memorandum titled “Withdrawal of Cybersecurity Memorandum of March 3, 2023.” Exhibit A. In it, Defendants state that “[d]ue to litigation (*State of Missouri, et*

al. v. U.S. EPA), the U.S. Environmental Protection Agency (EPA) has chosen to rescind the interpretive memorandum issued on March 3, 2023” *Id.*

DISMISSAL STATEMENTS

Consistent with the foregoing, the Parties state:

1. Respondents have withdrawn the disputed March 3 Document and, consistent with that withdrawal, represent that they do not interpret existing regulations to require states to include an evaluation of the cybersecurity of operational technology during sanitary surveys of public water systems, or through an equivalent alternate process, and does not intend to issue or maintain guidance or memoranda to that effect.

2. The Parties agree that the petition for review and the Intervenor’s petition should be dismissed without prejudice.

3. The Parties represent that no court fees are due to the Court and that the Parties shall bear their own costs.

Dated: October 25, 2023

Respectfully submitted,

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Missouri Attorney General

/s/ Jeff P. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jeff P. Johnson
Jeff P. Johnson

Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

October 11, 2023

MEMORANDUM

SUBJECT: Withdrawal of Cybersecurity Memorandum of March 3, 2023

FROM: Radhika Fox
Assistant Administrator

A handwritten signature in black ink, appearing to be "R. Fox", written over a horizontal line.

TO: State Drinking Water Administrators
Water Division Directors in Regions I-X

Due to litigation (*State of Missouri, et al v. U.S. EPA*), the U.S. Environmental Protection Agency (EPA) has chosen to rescind the interpretive memorandum issued on March 3, 2023, *Addressing Public Water System Cybersecurity in Sanitary Surveys of an Alternate Process*.

This memorandum conveyed EPA's interpretation that existing regulations required states to include an evaluation of the cybersecurity of operational technology during their audits of public water systems, termed sanitary surveys, or through an equivalent alternate process. On July 12, 2023, the U.S. Court of Appeals for the 8th Circuit stayed the memorandum under the litigation. Today's action to rescind the memorandum means that this interpretation is now withdrawn from EPA's public water system supervision program.

EPA continues to believe that adopting cybersecurity best practices at public water systems is essential to providing safe and reliable drinking water. Cybersecurity attacks on water and wastewater systems occur frequently and are a significant threat to their operations. EPA encourages all states to voluntarily engage in reviewing public water system cybersecurity programs within the sanitary survey or an alternate process to ensure that deficiencies are corrected, and potential public health impacts are minimized. EPA will continue to support both states and water and wastewater systems by providing technical assistance in the form of cybersecurity risk assessments, subject matter expert consultations, training, and funding.

The Biden-Harris Administration has prioritized cybersecurity, releasing the National Cybersecurity Strategy in March 2023, with a focus on ensuring our Nation's critical infrastructure is resilient. The Strategy will guide the agency's work moving forward in partnership with the sector to lower cybersecurity risks to clean and safe water.