U.S. Environmental Protection Agency Interpretive Memorandum Addressing Cybersecurity: Eight Circuit Court of Appeals Grants Stay of Rule Challenged by Arkansas Attorney General

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07/19/2023

The United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") granted a stay of a United States Environmental Protection Agency interpretive rule associated with a March 3rd memorandum titled:

Addressing PWS Cybersecurity and Sanitary Surveys or an Alternate Process ("Memorandum")

The EPA *Memorandum* expressed concern that some public water systems ("PWS") had failed to adopt basic security best practices. It purported to clarify that states must:

. . . evaluate the cybersecurity of operational technology used by a PWS when conducting PWS sanitary surveys or through other state programs.

The *Memorandum* provided what EPA characterized as "various approaches" to include cybersecurity in PWS sanitary surveys or other state programs.

The Arkansas, Missouri, and Iowa Attorney Generals had filed on April 17th a Petition for Review in the Eighth Circuit challenging the *Memorandum*. Their Petition argued that the *Memorandum* was in fact a rule that was promulgated without the required public notice procedures.

Trade associations such as the American Water Works Association and National Rural Water Association also filed petitions challenging the *Memorandum*.

A copy of the American Water Works Association news release describing the Eighth Circuit's granting of the stay can be found here and a copy of the EPA *Memorandum* here.