



December 9, 2021

The Honorable Radhika Fox
Assistant Administrator for Water
U.S. Environmental Protection Agency
Washington, DC 20460

Dear Assistant Administrator Fox:

Representatives of the water and wastewater sector have repeatedly raised concerns about the agency's pursuit of issuing a direct final interpretive rule to add cybersecurity to the sanitary survey assessments, but our concerns have not been addressed. Therefore, we feel compelled to express our opposition to the proposed approach.

As you well know, water and wastewater systems are on the front lines of protecting public health and the environment and have exceptional track records doing so. Our members have many years of experience with both sanitary surveys and cybersecurity, and they believe the surveys will be ineffective at improving cybersecurity at water systems.

We believe a solution to securing cybersecurity for the water sector that is arrived at by consensus with and support from water utilities will be far more effective to protect against cyber compromises.

The most effective approach is one that is risk- and performance-based, rather than top-down, one-size-fits-all. This would allow for tailored solutions based each community's unique set of risks, threats, and vulnerabilities.

Among our concerns are:

- We do not believe an agency action to establish cybersecurity requirements through an interpretive rule is legally justifiable, as interpretive rules must not set new legal standards or impose new requirements.
- Nothing in federal or state law protects information collected through sanitary surveys by state agencies from being shared with the public. If, for instance, a state discloses that a utility has a particular vulnerability, the information would be very valuable to hackers looking for an easy target, opening the utility up to ransomware attacks or worse.
- State primacy agency staff are not qualified to assess the cyber readiness of a water system. We anticipate state staff could misunderstand either a best practice or a utility's implementation of said best practice and thus report an unmerited significant deficiency. This could lead to misinformation in the media, reputational harm, and fines. Worse, state primacy agency staff could unintentionally direct a utility toward a practice that is in fact inappropriate for securing the utility and perhaps open the door to a hacker.
- Should a state primacy agency give a utility a clean bill of health and the utility subsequently suffer a compromise, both the state and the utility could be put in legal jeopardy.

- Each state agency may develop their own procedures and recommendations for utilities, leading to a patchwork of regulations across the country. Not only is this burdensome to water utilities that have subdivisions in multiple states, but it will complicate the development of guidance and training by the sector organizations, CISA, and even EPA. Related, many states could go farther than EPA intends in the agency's guidance documents and turn the sanitary survey program into an entirely different regulatory regime.

We are examining various options to effectively protect water systems from cyber threats. We are eager and committed to a collaborative solution that is protective of public health and cyber infrastructure in water utilities, and we would like to work with your office to do so. However, we caution against measures that could fail to have a decisive impact on water sector cybersecurity and that lack input by water sector subject matter experts.

As stewards of public health and the environment, the water sector is ready to accept requirements and accountability that does not do more harm than good or divert resources from water utilities' most effective cybersecurity measures. We look forward to collaborating with you on a better solution that will result in greater cybersecurity in the water sector. We are willing to commit the resources necessary to arrive at one in a reasonable amount of time.

If you would like to discuss our concerns, we would be more than happy to have the conversation.

Sincerely,



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American Water Works Association



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