UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 11-3412

Iowa League of Cities

Petitioner

v.

Environmental Protection Agency

Respondent

Petition for Review of an Order of the Environmental Protection Administration

---

ORDER

We grant in part and deny in part the petitioner's Motion for an Order Enforcing this Court's Judgment.

In 2013, we held that the Environmental Protection Agency's (the "EPA") "blending rule" was substantively defective because it "applies effluent limitations to a facility's internal secondary treatment processes, rather than at the end of the pipe." *Iowa League of Cities v. EPA*, 711 F.3d 844, 877 (8th Cir. 2013). The rule "clearly exceed[ed] the EPA's statutory authority." *Id.* In reaching that holding, we did not differentiate between combined and separate sewer systems. Now, the EPA continues to regulate blending as a prohibited bypass in the Eighth Circuit, albeit for combined sewer systems only.

The EPA's direct violation of our prior mandate warrants mandamus relief. *See Iowa Utilities Bd. v. FCC*, 135 F.3d 535, 542 (8th Cir. 1998), *cert.*

granted, judgment vacated on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 1133 (1999) ("A federal court of appeals can use mandamus to preclude an agency from taking steps to evade the effect of its mandate, even if these steps were not expressly contemplated by the prior decision."). Mandamus is appropriate here because there is "no other adequate means to attain the relief desired," the right to issue the writ is "clear and indisputable," and the court is "satisfied that the writ is appropriate under the circumstances." *In re Brazile*, 993 F.3d 593, 594 (8th Cir. 2021) (per curiam). The EPA's *sub rosa* enforcement of its blending rule and its efforts to resist making its position public appear "calculated so as to evade ordinary appellate review." *Iowa Utils. Bd.*, 135 F.3d at 542.

Accordingly, we grant the petitioner's request for mandamus relief with respect to its challenge to the EPA's ongoing regulation of blending within the Eighth Circuit's jurisdiction. Our March 25, 2013, decision applied to regulations of blending in separate as well as combined sewer systems. The EPA is ordered to obey the court's mandate of August 7, 2013 and to cease and desist treating blending as a prohibited bypass within the Eighth Circuit "insofar as the blending rule imposes secondary treatment regulations on flows within facilities." *Iowa League of Cities*, 711 F.3d at 878.

We deny the petitioner's request for a nationwide mandate relating to its challenge of the EPA's non-acquiescence, however. All of the petitioner's

members are located within the Eighth Circuit and are not injured by the EPA's non-acquiescence outside the Eighth Circuit. The petitioner therefore lacks standing to pursue nationwide relief. *See Owner-Operator Indep. Drivers Ass'n, Inc. v. New Prime, Inc.*, 339 F.3d 1001, 1008 (8th Cir. 2003).

December 22, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans