BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i, to Address the Imminent and Substantial Endangerment to Prichard, Alabama from Contamination in Drinking Water

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Submitted on Behalf of Petitioners We Matter Eight Mile Community Association, *et al.*

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Notice of Petition

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I. INTRODUCTION

We Matter Eight Mile Community Association ("Petitioners"), along with over twenty other community groups, nonprofits, and faith based organizations, submit this Petition to request that the Environmental Protection Agency ("EPA") exercise its emergency powers under the Safe Drinking Water Act and provide Prichard, Alabama residents with 1) EPA's assistance in funding upgrades to the drinking water system, 2) EPA's participation in the receivership proceedings involving the Prichard Water Works and Sewer Board ("PWWSB") and Synovus Bank to inform the judge that EPA is considering taking action, and 3) EPA's enforcement and development of a long-term consent decree with the Board that addresses the drinking water infrastructure and contamination issues discussed in this Petition.

Prichard, Alabama is located in Mobile County along Alabama's coast. A majority-Black and low-income community, Prichard is on the frontlines of climate change-induced disasters. The City has a "historical legacy of disinvestment and racial injustice" that "remains baked into the decisions made for the city's residents, including repairing and upgrading its water systems."[1] Access to clean, safe water is a human right, and unfortunately, water issues in Prichard have become a common occurrence that affect how people are able to work and provide for themselves and their families.

Petitioners request that EPA take action using its emergency powers under the Safe Drinking Water Act, 42 U.S.C. § 300i, to abate the "imminent and substantial endangerment" to human health present in Prichard's system. Additionally, Petitioners request that EPA provide technical assistance in alleviating this emergency, specifically by providing grants administered by EPA under 42 U.S.C. § 300j-1(b).[2] For decades, the system has been leaking water, risking contamination, and ultimately jeopardizing the health and safety of the citizens of Prichard. The Board in charge of the system has negligently failed to maintain the system, fraudulently used Board funds,[3] and shut the public out of the decision-making processes. Further, the Board is now threatening to shut down the water for approximately 200 residents where the greatest loss occurs.[4] These residents would be forced out of their homes.

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[1] Rachel Ramirez & Eric Levenson, *These Five Cities Could Be One Natural Disaster Away from a Catastrophic Water Crisis*, CNN (Sept. 2, 2023, 3:08 AM), https://www.cnn.com/2023/09/02/us/water-infrastructure-failure-us-cities-climate/index.html.

[2] This provision authorizes the Administrator to "provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation . . . affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health." 42 U.S.C. § 300j-1(b).

[3] Brendan Kirby, *Mobile County Grand Jury Indicts Former Prichard Water Board Manager, Husband and Current Employee*, FOX10 (Nov. 17, 2022 7:14 PM), https://www.fox10tv.com/2022/11/18/mobile-county-grand-jury-indicts-former-prichard-water-board-manager-husband/.

[4] Lee Hedgepeth, *First Floods, Now Fires: How Neglect and Fraud Hobbled Prichard*, INSIDE CLIMATE NEWS (Sept. 29, 2023), https://insideclimatenews.org/news/29092023/prichard-alabama-water-fire-crsis/.

A recent report by the Alabama Department of Environmental Management ("ADEM") found that the system is facing "excessive nominal water loss" of nearly 64%.[5] As ADEM points out, "[s]uch high water loss can be indicative of general reliability concerns, particularly as water loss continues to increase over a long-term period of years. This is the case for Prichard Water."[6]

Not only does this loss of water imply reliability concerns—it also means that there is a serious and severe risk of contamination to the system. As the ADEM report states, "[p]roblematically, Prichard Water has identified a number of instances where residual chlorine levels were found to be significantly lower than 0.2 mg/L. **Inadequate disinfection occurred at repeated and various locations in its distribution system.**"[7] In ADEM's own words: "The state of disrepair of Prichard's water lines **cannot be overstated.**"[8] ADEM further recognized the urgency of the matter:

> The state of disrepair of Prichard Water's infrastructure is evident and requires resolution. With such infrastructure conditions, providing reliable water service remains challenging. There is a significant potential for unacceptably low water system pressure, **a matter that warrants expedited attention for the protection of public health.**[9]

Despite this very serious conclusion and threat to public health, ADEM is stuck between not wanting to give aid to the corrupt Board, but also not able or willing to administer aid and technical assistance itself. ADEM's inaction has caused the Prichard community to lose access to one of the most basic human rights—access to safe drinking water.

It is clear that EPA assistance is needed to protect the Prichard community from disastrous consequences. Rumors of switching water sources, privatization, and bankruptcy swirl. The time for EPA to act is now—not when the consequences are irreversible. Thus, Petitioners respectfully request EPA exercise its emergency powers under the Safe Drinking Water Act and provide the community of Prichard much needed relief.

II. BACKGROUND

A. Prichard, Alabama

Prichard is a coastal community located in the outside of Mobile, Alabama. According to EJScreen, Prichard has a population of 19,848. Ninety-two percent of the population identifies as a person of color; 66% of the population is low-income.[10] The Board also serves neighboring

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[5] ADEM, Compliance Assistance Program Review of the Prichard Water System 12 (Feb. 6, 2023), attached as Exhibit 1 [hereinafter referred to as "ADEM CAP Review"].
[6] *Id.* at 12.
[7] *Id.* at 28 (emphasis added).
[8] *Id.* at 8 (emphasis added).
[9] *Id.* at 30.
[10] Prichard, Alabama, EJScreen Community Report (generated Sept. 26, 2023).

Chickasaw, where 54% of the population identifies as a person of color; 58% of the population is low income.[11] The City of Prichard itself has faced a number of tumultuous financial setbacks following decades of disinvestment. The City has filed for bankruptcy more than once,[12] and has failed to make pension payments to its employees.[13]

Systemic racism plays a large part in Prichard's financial struggles. Once a majority white city, closure of certain industries and white flight after the State's Jim Crow segregation policies were overturned led to a shrinking financial base in Prichard. More recently, growing bodies of research show that the municipal bond market perpetuates systemic racism because Black towns and cities pay higher interest rates than their white counterparts.[14]

B. The Prichard Water Works & Sewer Board

The PWWSB is a public drinking water supplier regulated by ADEM under Public Water System ("PWS") Number AL0001015. The Board's water system serves approximately 25,700 people.[15] Recently, the Board made headlines when a Board Member and certain Board employees were arrested and charged with fraudulently spending Board funds.[16]

The Board does not produce or treat its own water—rather, the Board purchases water from the Mobile Area Water and Sewer System ("MAWSS").[17] The Board functions as a water distribution system with no ability for providing disinfection or booster pump capability.[18] The PWS permit issued by ADEM indicates that the distribution system consists of about 246 miles of cast/ductile iron pipe, 10 miles of PVC pipe, and 10 miles of "other pipe material."[19]

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[11] Chickasaw, Alabama, EJScreen Community Report (generated Sept. 26, 2023).
[12] David Ferrara, *Prichard Files for Bankruptcy; City Faces Lawsuit Over Nearly Empty Pension Fund*, AL.COM (Oct. 28, 2009 11:02 AM), https://www.al.com/live/2009/10/prichard_files_for_bankruptcy_1.html.
[13] Michael Cooper & Mary Williams Walsh, *Alabama Town's Failed Pension Is a Warning*, NEW YORK TIMES (Dec. 22, 2010), https://www.nytimes.com/2010/12/23/business/23prichard.html.
[14] Jake Bittle & Siri Chilukuri, *How the "Black Tax" Reinforces Poverty*, MOTHER JONES (Aug. 26, 2023), https://www.motherjones.com/environment/2023/08/how-the-black-tax-keeps-many-black-communities-poor/.
[15] ADEM Cap Review at 4.
[16] Kirby, *supra* note 3.
[17] *See* Letter from Thomas Barrett (ADEM) to Russell Heidelburg (PWWSB) 4 (Aug. 2, 2023) (submitting EPA reported findings from Jan. 25, 2023 inspection) (attached as Exhibit 2) [hereinafter referred to as "EPA Report"]; *see also* Water Utility Asset Management Plan 4 (July 31, 2023), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105187850&dbid=0&cr=1.
[18] ADEM CAP Review at 2.
[19] *Id.* at 6.

i. Water Loss

PWWSB suffers from excessive water loss of over 60%.[20] According to the Board's Monthly Operational Data Reports, the Board has consistently been losing water at a rate of nearly 50% or greater since the beginning of 2021.[21] This means that a number of static hydrant pressure ratings are insufficient to supply adequate fire protection capacity, and it is unlikely that suitable fire suppression water can be provided at all in an area of Prichard known as Alabama Village.[22] These consequences extend to Prichard residents like Tyrone Pettway, who has reported receiving water bills as high as $2,384.51.[23] Additionally, Alabama Village residents may soon be forced to move as the Board explores whether to shut down service to that area of Prichard because the water loss is so large in that area.[24]

ii. Condition of System

The PWS consists of four elevated storage tanks and one standpipe.[25] In a recent inspection report, EPA (Region 4) noted numerous issues with these storage tanks. For example, EPA noted that "a leak was identified on the Chickasaw water storage tank, and this is believed to be the main cause for water loss. Due to a lack of accessible funds, the PWS has not been able to repair the leak."[26] EPA additionally noted that the Board "does not currently have a maintenance contract for tank inspections due to the existing lack of accessible funds and ongoing legal issues. The last inspection for all tanks was conducted in 2020."[27]

ADEM describes the condition of the buried water service lines and water mains as "very poor" and in "dire shape."[28] "Portions of the water distribution system have a service life exceeding 80 years."[29] This failing system is even more concerning considering its proximity to the Gulf coast. Infrastructure in coastal communities is already vulnerable to coastal hazards like tides,

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[20] *Id.* at 12.
[21] *See, e.g.*, PWWSB, Monthly Operational Data Report (Feb. 8, 2021) (showing 54% water loss), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104462891&dbid=0&cr=1; *see also* PWWSB, Monthly Operational Data Report (Sept. 8, 2023) (showing 64% water loss), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105188454&dbid=0.
[22] ADEM Cap Review at 9.
[23] Henry Carnell, *Are These $2,000 Water Bills Racist?*, MOTHER JONES (Sept. 21, 2023), https://www.motherjones.com/environment/2023/09/prichard-alabama-water-board-bill-crisis/.
[24] Andrea Ramey, *Prichard Water Eyes Eminent Domain to Address Leaks in Alabama Village*, NBC 15 NEWS (Aug. 14, 2023, 6:56 PM), https://mynbc15.com/news/local/prichard-water-eyes-eminent-domain-to-address-leaks-in-alabama-village.
[25] EPA Report at 4.
[26] *Id.* at 4-5.
[27] *Id.* at 5.
[28] ADEM CAP Review at 6, 10.
[29] *Id.* at 6.

storm surges, rainfall, and salt intrusion.[30] In the face of climate change and rising sea levels, coastal infrastructure experiences more extreme forms of these threats.[31] Especially in low-lying areas, threats to water infrastructure can include "loss of hydraulic head and pumping pressure, groundwater infiltration (and salinization), and reverse flows of 'tailwater' from outlet water bodies with increasingly saline waters."[32] Prichard is one hurricane away from an infrastructure disaster.

iii. Violations of State Law and the Safe Drinking Water Act

There have also been a number of reporting and other violations of state law and the federal Safe Drinking Water Act since 2021. In early 2021, the Board was out of compliance under the Disinfection Byproducts Rule for failing to collect Stage 2 DBP sampling during the monitoring period of January – March 2020.[33] In July 2021, ADEM notified the Board that it had not timely received the System's Stage 2 Disinfection Byproduct waiver certification or a Distribution System Evaluation Monitoring Plan.[34] In 2022, the Board failed to complete sampling under the Lead and Copper Rule.[35] (The Board waited a full year to notify residents of this noncompliance.) It was also in noncompliance again for failing to collect and analyze Stage 2 DBP Rule samples as prescribed by its DBP monitoring plan.[36] Most recently, in 2023, the Board was warned it violated state law by failing to maintain its water purchase contract[37] and that it had not responded to ADEM's sanitary survey and furnished a corrective action plan.[38] According to ADEM's publicly available eFile database, no response has been furnished as of the date of this Petition.

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[30] Thomas R. Allen et al., *Linking Water Infrastructure, Public Health, and Sea Level Rise: Integrated Assessment of Flood Resilience in Coastal Cities*, 24 PUB. WORKS MGMT. & POL. 110, 111 (2019), https://doi.org/10.1177/1087724X18798380.

[31] *Id.*

[32] *Id.*

[33] Letter from Thomas Barrett (ADEM) to Russell Heidelburg (PWWSB), Sanitary Survey – FY 2021 at 3 (June 3, 2021), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104534795&dbid=0&cr=1; Prichard Water, Consumer Confidence Report (CCR) (2020), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104555835&dbid=0.

[34] Letter from Alexander Chavers (ADEM) to Russell Heidelburg (PWWSB), Distribution System Evaluation (July 20, 2021), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104598393&dbid=0.

[35] Letter from Alexander Chavers (ADEM) to Russell Heidelburg (PWWSB), Lead and Copper Monitoring Non-Compliance 1 (Oct. 24, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104931225&dbid=0 (last visited Oct. 3, 2023).

[36] Letter from Alexander Chavers (ADEM) to Russell Heidelburg (PWWSB), DBP Monitoring Non-Compliance 1 (Dec. 19, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104965930&dbid=0&cr=1.

[37] Letter from Jeffery W. Kitchens (ADEM) to Russell Heidelburg (PWWSB), Notice of Violation, Failure to Maintain Water Purchase Contract 1 (Jan. 20, 2023), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105036708&dbid=0.

[38] Letter from Jeffery W. Kitchens (ADEM) to Russell Heidelburg (PWWSB), Notice of Violation 1 (May 8, 2023), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105095511&dbid=0.

iv. Inadequate Disinfection and Positive Bacteriological Sampling Events

The Board has a consistent problem with inadequate disinfection and positive bacteriological sampling events. Since 2021, the Board has had positive bacteriological sampling events on the following dates: August 3, 2021;[39] March 14, 2022;[40] April 12, 2022;[41] August 8, 2022;[42] September 6, 2022;[43] December 7, 2022;[44] January 11, 2023;[45] and August 10, 2023.[46]

Additionally, the Board has consistently reported inadequate disinfection, *i.e.*, less than 0.2 mg/L of Total Chlorine Residual.[47] The below chart illustrates the numerous times sampling has revealed inadequate disinfection, sometimes as low as **0.04 mg/L**:[48]

Date	Total Chlorine Residual
December 10, 2021	0.18 mg/L
August 9, 2022	0.18 mg/L
October 7, 2022	0.05 mg/L
December 9, 2022	0.04 mg/L
January 9, 2023	0.17 mg/L
January 9, 2023	0.18 mg/L
January 9, 2023	0.07 mg/L
March 9, 2023	0.10 mg/L

v. Reoccurring Sewer Overflows

These repeated positive bacteriological sampling events and instances of inadequate disinfection are all the more concerning given that the Board also has an extreme sanitary sewer

[39] Positive Bacteriological Sample (Aug. 4, 2021), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104598394&dbid=0.
[40] Positive Bacteriological Sample (Mar. 15, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104761114&dbid=0.
[41] Positive Bacteriological Sample (Apr. 13, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104798898&dbid=0.
[42] Positive Bacteriological Sample (Aug. 9, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104870994&dbid=0.
[43] Positive Bacteriological Sample (Sept. 8, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104888227&dbid=0.
[44] Positive Bacteriological Sample (Dec. 7, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104965929&dbid=0.
[45] Positive Bacteriological Sample (Jan. 12, 2023), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105036705&dbid=0.
[46] Positive Bacteriological Sample (Aug. 11, 2023), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105170469&dbid=0.
[47] Ala. Admin. Code 335-7-10.04; *see also* 40 C.F.R. § 141.72.
[48] This data was compiled from sampling results in ADEM's publicly available eFile database. *See, e.g.*, EDWRS Submission (Dec. 9, 2022), http://lf.adem.alabama.gov/WebLink/DocView.aspx?id=104950533&dbid=0&cr=1.

overflow ("SSO") problem. In June 2022, ADEM entered into a consent order with the Board assessing a total penalty of $234,675.00 for permit limit violations, reporting violations, and unpermitted discharges via SSOs—over 160 unpermitted discharge events.[49] However, ADEM gave the Board the option of performing a supplemental environmental project ("SEP"), which would lower the penalty amount to $78,225.00.[50] The SEP would involve repairing or replacing lateral sewer lines.[51] Rather than opting to make upgrades to the system and avoid the larger penalty, Prichard instead chose to pay the full penalty because the repair work would be too costly.[52]

Given the state of disrepair of the Board's drinking water pipes, the lack of adequate disinfection, and the SSO problem that plagues the Board's sewer system, there is a real danger that untreated sewage could find its way into Prichard's drinking water system. Health effects of consuming water with disease-causing microbes include rare diseases like cholera and typhoid fever, and common illnesses caused by viruses, bacteria, and parasites, which can result in stomach pain, vomiting, diarrhea, headache, fever, and kidney failure.[53] There is also a risk that infectious diseases, like hepatitis, can occur.[54]

vi. The Board's Financial Problems and Synovus

In 2019, Prichard Water Works Board attempted to fix its financial woes and upgrade its infrastructure by issuing a $55 million municipal bond to Synovus Bank. However, in 2023, Synovus sued PWWSB for missing payments, accusing the Board of financial mismanagement and seeking to have the Board placed in a receivership.[55] In an apparent reaction to this lawsuit, on September 12th, 2023, the Board voted to approve a devastating 22% rate increase for residents of Prichard and Chickasaw.[56] Some customers already report that they are sometimes billed thousands of dollars a month for their water bills.[57] This tumultuous financial history has present day consequences for access to safe and healthy drinking water in Prichard. These include residents having to use public benefits, like SNAP, to purchase things like bottled water—risking an even deeper cycle of poverty and exacerbating public health impacts associated with poverty.

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[49] In the Matter of: Water Works and Sewer Board of the City of Prichard, Consent Order No. XX-XXX-CWP, 9 (June 22, 2022), attached as Exhibit 3.
[50] *Id.*
[51] *Id.*
[52] Brendan Kirby, *Prichard Water System Agrees to Hefty ADEM Fine*, FOX10 (July 11, 2022, 1:13 PM), https://www.fox10tv.com/2022/07/11/prichard-water-system-agrees-hefty-adem-fine/.
[53] EPA, Drinking Water (July 14, 2023), https://www.epa.gov/report-environment/drinking-water
[54] *Id.*
[55] *Synovus Bank v. The Water Works and Sewer Board of the City of Prichard*, 02-CV-2023-901332.00 (2023), Complaint attached as Exhibit 4.
[56] Brendan Kirby, *Prichard Water Board Approves Steep Rate Hikes for Customers*, FOX10 (Sept. 12, 2023, 8:19 PM), https://www.fox10tv.com/2023/09/13/prichard-water-board-approves-steep-rate-hikes-customers/.
[57] Carnell, *supra* note 23.

On October 10th, 2023, a hearing is scheduled in the Circuit Court of Mobile County. This hearing is to determine whether the Board will be placed under a receivership chosen by Synovus. If a receiver is placed on the system, this receiver might determine that rates must be raised further in order to fulfill Synovus' bond requirements. EPA's funding and technical assistance could help to keep a receiver from making decisions against the best interests of the community.

C. Safe Drinking Water Act & 42 U.S.C. § 300i

Congress enacted the Safe Drinking Water Act to affirm and protect one of the most basic aspects of human health—access to clean, healthy drinking water. The Act provides uniform standards for drinking water across the county, requiring public drinking water suppliers to comply with federal (or at least as protective state) standards. EPA is responsible for identifying regulated contaminants and the levels which pose a threat to human health and welfare.

Additionally, EPA has certain emergency powers that enable it to take action if there is an imminent and substantial endangerment to health. Section 1431 of the Safe Drinking Water Act, 42 U.S.C. § 300i, specifies that the Administrator, "upon receipt of information that a contaminant which is present in or is likely to enter a public water system…which may present an imminent and substantial endangerment to the health of persons…may take such actions as he may deem necessary in order to protect the health of such persons."[58] These powers are not backward looking—this provision gives EPA the express power "to prevent an impending dangerous condition from materializing…one major function of Section 1431 is its use as a preventative enforcement measure."[59]

EPA has identified two conditions that must be present to apply the authority granted under Section 1431: 1) the Administrator must have received "information that a contaminant which is present in or likely to enter a public water system . . . which may present an imminent and substantial endangerment to the health of persons;"[60] and 2) the Administrator must have received information that "appropriate State and local authorities have not acted to protect the health of such persons."[61]

The SDWA defines contaminant broadly to include "any physical, chemical, biological or radiological substance or matter in water."[62] EPA's emergency provisions may be exercised when a contaminant is "likely to enter" drinking water—thus, such "orders should ideally be issued early enough to prevent the potential hazard from materializing."[63]

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[58] 42 U.S.C. § 300i(a).
[59] EPA, Updated Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act 4 (May 30, 2018), https://www.epa.gov/sites/default/files/2018-09/documents/updatedguidanceonemergencyauthorityundersection1431sdwa.pdf.
[60] 42 U.S.C. § 300i(a).
[61] *Id.*
[62] *Id.* § 300f(6).
[63] EPA Guidance, *supra* note 59, at 7 (emphasis in original).

A contaminant presents an "imminent and substantial endangerment" where "conditions which give rise to it are present, even though the actual harm may not be realized for years."[64] The public may be endangered imminently and substantially "both by a lesser risk of a greater harm and by a greater risk of a lesser harm."[65] EPA explicitly recognizes that "[a] reduction or loss of pressure in a distribution system (e.g., due to broken water mains or power outages) that increases risk of contaminants entering water" is one example of an endangerment that could be readily determined to be imminent.[66] House Report 93-1185 gives an example of what may be considered a "substantial" harm: "a substantial likelihood that contaminants capable of causing adverse health effects will be ingested by consumers if preventative action is not taken."[67]

Additionally, EPA has the power to administer technical assistance to communities facing a substantial danger to public health. Section 1442(b) of the Safe Drinking Water Act, 42 U.S.C. § 300j-1(b), authorizes the Administrator "to provide technical assistance and to make grants to . . . publicly owned water systems" to respond to an emergency situation that "present[s] substantial danger to the public health, including a threat to public health resulting from contaminants."[68] The Administrator is empowered to provide grants under this subsection to support actions that "are necessary for preventing . . . danger to the public health in such emergency situation" and "would not . . . be taken without such emergency assistance."[69]

For example, in November 2022, EPA made an emergency determination under Section 1442(b) to authorize grant funding and technical assistance to the City of Jackson Public Water System and the State of Mississippi to address drinking water emergencies in Jackson.[70] As of June 2023, EPA had made available $115 million in grants and technical assistance under this subsection to aid Jackson in addressing those emergencies, including a $2 million grant to the City of Jackson's Public Water System to address immediate needs.[71]

For the reasons detailed below, EPA has authority and should exercise its emergency powers under the Safe Drinking Water Act to address the serious and ongoing threats to public health resulting from the PWWSB's dilapidated system.

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[64] *Id.* at 8.
[65] *Id.* at 8 (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 18 (D.C. Cir. 1976)).
[66] *Id.* at 9.
[67] *Id.* at 11 (citing H.R. 93-1185, at 35).
[68] 42 U.S.C. § 300j-1(b).
[69] *Id.*
[70] EPA, Biden-Harris Administration Invests $115 Million in Funding to Respond to the Drinking Water Emergency in Jackson, Mississippi (June 6, 2023), https://www.epa.gov/newsreleases/biden-harris-administration-invests-115-million-funding-respond-drinking-water.
[71] *Id.*

D. Interests of Petitioners

The Petitioners are community groups, nonprofits, and faith-based organizations seeking to ensure that Prichard and Chickasaw residents have access to safe and clean drinking water. We Matter Eight Mile Community Association is a volunteer organization fighting to improve their public water system in Prichard, Alabama. Founded in 2011, We Matter is an environmental justice organization that forced the remediation of mercaptan in groundwater caused by a neglected pipeline leak in the Eight Mile and Prichard communities. We Matter stands in to demand our community receives affordable, clean, and safe drinking water. We Matter seeks to forge a meaningful relationship with all those who will support us in this effort.

III. ARGUMENT

Given the vulnerability of the Prichard community, the Board's incompetence and history of noncompliance, and the importance of access to safe, healthy drinking water, EPA must step in and address the problems identified in this Petition. The Safe Drinking Water Act explicitly gives EPA the authority to engage in the requested actions because there is an imminent and substantial endangerment to human health due to the lack of adequate disinfection in the Board's system, the presence of bacteria, and the fact that water service in Prichard is not reliable. Additionally, the State of Alabama has not acted to protect the Prichard community. Without EPA interference, Prichard could be the next Flint, Michigan, or Jackson, Mississippi. Unlike those situations, where EPA did not step in until certain consequences were irreversible, EPA can use the tools afforded to it in federal law to prevent a catastrophe. Petitioners urge EPA to take a proactive approach and step in <u>now</u> to help the Prichard community.

A. Inadequate Disinfection in the Prichard System Presents an Imminent and Substantial Endangerment to the Communities of Prichard.

The first ground for EPA exercising its emergency powers under 42 U.S.C. § 300i is due to the imminent and substantial endangerment caused by inadequate disinfection in Prichard's drinking water. As detailed above, the Board has on numerous occasions reported inadequate disinfection and positive bacteriological events.

During ADEM's compliance assistance program review, ADEM noted that "inadequate disinfection occurred at repeated and various locations in its distribution system. This includes locations in both Chickasaw and in east, south, and far west areas of Prichard."[72] ADEM states that "[p]erhaps due to excessive water leaks and deteriorating overall infrastructure, it appears that the residual free chlorine provided in the supply water from MAWSS may presently be insufficient to reliably provide suitable disinfection for Prichard Water customers."[73] Additionally, the Board

[72] ADEM CAP Review at 28.
[73] *Id.* at 31.

has reported nine positive bacteriological sampling events, which ADEM describes as occurring "rather frequently."[74]

The Board is also in a continuing state of noncompliance related to testing and reporting violations, implying that the disinfection problems could be occurring more frequently than what is being reported. The Board has been out of compliance twice in recent years for failing to collect Disinfection Byproducts samples.[75] It has also been recently cited for noncompliance with the Lead and Copper Rule for failing to collect samples.[76] Because the system is in such a state of disrepair, it is critical that these sampling protocols be followed and accurately reported. Inaccurate reporting in this case presents a substantial endangerment to the citizens.

As ADEM notes, the Board's failing infrastructure is a likely cause of inadequate disinfection. Pressure management is important to water quality maintenance in distribution systems and drops in pressure can lead to microbial and other contaminants entering the system through cracks and holes or via cross-connections and backflows.[77] EPA found in an inspection report on the Board's system that the Board "does not inspect backflow prevention devices annually, as required by the PWS's cross-connection control policy."[78]

Inadequate disinfection is a very serious problem. Chlorine is used as a disinfectant in drinking water to eliminate pathogens that are responsible for waterborne diseases. Transmission of diseases like typhoid, paratyphoid fevers, cholera, salmonellosis, and shigellosis can be controlled with disinfection.[79] Near universal adoption of chlorination as a method for disinfecting drinking water "has been so successful that freedom from epidemics of waterborne diseases is now virtually taken for granted."[80] This is unfortunately not the case for members of the Prichard community. Considering that the Board has no disinfection capabilities, relying completely on treatment by MAWSS, inadequate disinfection has very real public health consequences that are not easily solved. Coupled with the fact that the Board's sewage lines are also in a state of disrepair, this threat is immediate and severe.

The above-described conditions make EPA action clearly within its emergency powers enumerated in 42 U.S.C. § 300i and 300j-1(b). First, contaminants are "present or likely to enter" the Board's water system due to the severe leakage problem. Given this state of disrepair, and the lack of proper sampling, contaminants like sewage and stormwater runoff are likely to enter the Board's water system. Second, there is a clear, substantial endangerment to human health due to

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[74] *Id.* at 28.
[75] Letter from Alexander Chavers (ADEM) to Russell Heidelberg (PWWSB), *supra* note 34, at 3; Letter from Thomas Barrett (ADEM) to Russell Heidelburg (PWWSB), supra note 33.
[76] Letter from Alexander Chavers (ADEM) to Russell Heidelburg (PWWSB), *supra* note 34.
[77] EPA, Distribution System Water Quality (Oct. 2021), https://www.epa.gov/system/files/documents/2021-12/ds-toolbox-fact-sheets_pressure-management.pdf.
[78] EPA Report at 7.
[79] Safe Drinking Water Comm., Nat'l Research Council, Drinking Water and Health: Volume 2, at 5 (1980), https://www.ncbi.nlm.nih.gov/books/NBK234592/pdf/Bookshelf_NBK234592.pdf.
[80] *Id.*

inadequate disinfection and positive bacteriological sampling. Waterborne diseases can have serious health impacts, especially for immune-compromised individuals, seniors, and infants, and can even lead to death. Further, as EPA notes in guidance, an "endangerment" may include not only actual harm, but *also a threatened or potential harm*.[81] "[A]n endangerment is substantial if there is a reasonable cause for concern that someone may be exposed to a risk of harm."[82] The conditions in Prichard clearly rise to the level of a threatened harm, given the state of disrepair of the sewage and drinking water pipes, the history of mismanagement of the Board, and the City's location on the coast.

Last, the endangerment to the Prichard community is "imminent." As noted by EPA, an endangerment is imminent "if conditions which give rise to it are present, even though the actual harm may not be realized for years."[83] Here, the conditions giving rise to the harm, *i.e.*, inadequate disinfection, are imminent because they are currently being experienced in the Board's system, as evidenced by low Total Chlorine Residual sampling results and an ADEM report that notes that the state of disrepair of the system is "a matter that warrants expedited attention for the protection of public health."[84] Further, EPA guidance cites "[a] reduction or loss of pressure in a distribution system (e.g., due to broken water mains or power outages) that increases the risk of contaminants entering water" as an example of an imminent endangerment.[85] This is the exact situation in Prichard, which has consequences including inadequate disinfection and presence of bacteria in the drinking water system.

As EPA notes in guidance, "[c]ourts have stated than an 'imminent hazard' may be declared at any point in a chain of events that may ultimately result in harm to the public."[86] Petitioners implore EPA to step up and intervene before consequences to public health become irreversible.

B. Lack of Access to Safe, Reliable Drinking Water Presents and Imminent and Substantial Endangerment to the Communities of Prichard.

In addition to the threat of contamination entering the system, lack of access to safe, reliable drinking water presents an imminent and substantial endangerment that EPA has the authority to remedy through its emergency powers in 42 U.S.C. § 300i. Reliability is a major concern for Prichard residents. Even putting considerations of contamination aside, the system is losing more than half its water.[87] This results in revenue losses of ~$2.7 million a year.[88] As ADEM states,

[81] EPA Guidance, *supra* note 59, at 8.
[82] *Id.* at 11.
[83] *Id.* at 8.
[84] ADEM CAP Review at 30.
[85] EPA Guidance, *supra* note 59, at 9.
[86] *Id.* at 8 (citing *Trinity Am. Corp. v. EPA*, 250 F.3d 389, 399 (4th Cir. 1998) ("EPA need not demonstrate that individuals are drinking contaminated water to justify issuing an emergency order."); *Dague v. City of Burlington*, 935 F.3d 1343, 1356 (2d Cir. 1991); *United States v. Ottato & Goss*, 630 F.Supp. 1361, 1394 (D.N.H. 1985)).
[87] ADEM CAP Review at 30.
[88] *Id.*

"[t]he state of disrepair of Prichard Water's infrastructure is evident and requires resolution. With such infrastructure conditions, providing reliable water service remains challenging."[89] The Board agrees: "[t]he average total water loss over the last 12 months has exceeded 60%. This magnitude of water loss is not only an operational issue, but it is a significant financial burden and is not sustainable."[90]

Unfortunately, state revolving funds ("SRF") have not been available to the Board to complete much needed upgrades. In 2022, the Board applied for $333 million in SRF loans/ARPA grants—$108 million more than the total amount available to all applicants in the State of Alabama.[91] However, all ADEM issued was a $400,000 grant to perform a financial audit of the Board.[92]

Reliability and affordability of drinking water are serious issues for the community of Prichard. And the Board's remedies for these issues are draconian—they insist on raising rates to an astronomical price and completely shutting down service to certain parts of Prichard in an attempt to fix the issues they are responsible for creating.

In fact, for one area of Prichard known as Alabama Village, access to drinking water at all is a concern. In Summer 2023, the Board threatened to shut down service and use eminent domain in Alabama Village due to excessive water leaks.[93] According to news reports, the Board has already begun the process of acquiring appraisals in Alabama Village.[94] A report from the Board found that water loss from Alabama Village was approximately 32.4 million gallons per month.[95] The report found that extensive corrosion has occurred in cast iron mains in the Alabama Village area and that ultimately 18% of the Board's total water loss is attributed to Alabama Village.[96] Originally constructed as a troop camp during World War II, Alabama Village is one of the poorest areas in the City of Prichard. Instead of upgrading the water lines in Alabama Village, the Board has announced it will explore eminent domain as an option. This decision will more than likely leave people without housing. For example, in eminent domain proceedings, only homeowners are entitled to fair market value of their homes; renters are displaced with no financial assistance.

In addition to severe water loss, fire protection is a concern for Alabama Village and all of the Board's customers. ADEM's CAP Review included pressure measurements at several fire hydrant locations in Alabama Village. ADEM ultimately found that:

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[89] *Id.*
[90] Waggoner Engineering, Technical Memorandum Re: Alabama Village Water Loss Verification at 4 (Apr. 10, 2023), attached as Exhibit 5 [hereinafter referred to as "Waggoner Technical Memorandum"].
[91] Tom Ingram, *Prichard Water Board Applies for $333M in COVID Grants*, NEWS WKRG (Mar. 31, 2022 4:41 PM), https://www.wkrg.com/mobile-county/prichard-water-board-applies-for-333m-in-covid-grants/.
[92] CW ARPA/SRF Details as of 3/13/2023 at 14, https://adem.alabama.gov/programs/water/srfreports/CWProjectAnalysis.pdf.
[93] Ramey, *supra* note 24.
[94] *Id.*
[95] Waggoner Technical Memorandum at 2.
[96] *Id.* at 15.

> ALL the static hydrant pressure ratings . . . appear insufficient to supply adequate fire protection water capacity. The hydrant static pressure values of 33 and 38 psi are extremely low and likely indicate water main leakage . . . it is unlikely that suitable fire suppression water can presently be provided in this area of Prichard via these hydrants.[97]

ADEM additionally noted that there may be other low-pressure locations throughout Prichard.[98] Not having adequate water for fire suppression has real consequences. In one article, community members of Alabama Village explained that firefighters had to watch homes burn, unable to do anything about it because of the lack of water.[99]

Remnants of burned down homes are a common sight in Alabama Village. Credit: Lee Hedgepeth/Inside Climate News.

These dire conditions mean the Prichard community needs federal assistance. Left up to the Board and the state agency, rates will continue to rise, and even more people may be forced to leave their homes. It is imperative that federal oversight begin now, not after people are left without affordable drinking water and housing.

[97] ADEM CAP Review at 9.
[98] *Id.*
[99] Hedgepeth, *supra* note 4.

Additionally, due to the extreme revenue losses the Board is experiencing, alternative water sources are being explored. Petitioners strongly recommend that EPA be involved in any such decision, as consequences of switching water sources—especially in times of extreme financial crisis—can be deadly. In Flint, Michigan, state officials made the switch to a different water source in order to relieve financial strain. However, as EPA is well aware, that decision had fatal consequences. The Prichard Water Board is also presently exploring back-up water sources. As noted in the EPA Report,

> [T]he PWS is evaluating the possibility of becoming a ground water system. Preliminary site tests have been performed on wells, which will be submitted to ADEM for review and approval. Considering the current water loss and constant rate increases from Mobile PWS, the PWS staff is confident that becoming an independent PWS will resolve their issues.[100]

Petitioners implore EPA to learn from the past and exercise its emergency powers as a preventative measure. Prichard's story could easily turn into one of disaster—and without oversight, the Board will continue to protect its interests, Synovus will continue to protect its financial interests, and the community and ratepayers will be left with no defense.

C. The State of Alabama Has Not Acted to Protect Prichard.

In order to exercise its powers under 42 U.S.C. § 300i, EPA must find that state or local authorities have not acted to protect the health of the community. Here, although there has been some involvement by ADEM, that involvement has been minimal and has not protected the health of the community. Further, the State lacks resources and/or the ability to be able to address these complex and extensive problems. Thus, EPA should find that the State has not acted to protect the Prichard community from these serious threats to public health.

ADEM has issued two notices of violation against the Board: one for failing to maintain its purchase contract,[101] and one for failing to respond to issues noted in a sanitary survey.[102] Additionally, ADEM has notified the Board of noncompliance due to failure to sample.[103] ADEM also granted the Board $400,000 to perform a financial audit.[104] Last, ADEM has entered into a consent order fining the Board for SSOs and effluent limit violations in their wastewater treatment system.

However, these responses are not proportional to the public health crisis in Prichard. ADEM has not entered into a long-term consent order mandating upgrades to the drinking water system. It has not funded upgrades beyond issuing a grant for financial audits.

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[100] EPA Report at 5.
[101] Letter from Jeffery W. Kitchens (ADEM) to Russell Heidelburg, *supra* note 37.
[102] Letter from Jeffery W. Kitchens (ADEM) to Russell Heidelburg, supra note 38, at 1.
[103] *See, e.g.*, Letter from Alexander Chavers (ADEM) to Russell Heidelburg (PWWSB), *supra* note 36, at 1.
[104] CW ARPA/SRF Details as of 3/13/2023, *supra* note 92, at 14.

As EPA notes, this finding "does not require any finding that a State or local authority has 'failed' to act."[105] It is not a "black and white test. Instead, there is often a range of potential responses to a specific situation."[106] Thus, EPA does not have to find ADEM failed to act at all regarding Prichard—rather, it merely must find that ADEM's actions have not been proportional to the crisis unfolding. Petitioners assert that this is the case.

D. EPA Has Authority to Issue an Emergency Order.

For the reasons stated above, EPA has authority to issue an emergency order under 42 U.S.C. § 300i and to grant and administer technical assistance under 42 U.S.C. § 300j-1(b). Of particular importance is exercise of EPA's powers under 42 U.S.C. § 300j-1(b), which grants EPA the power to issue technical assistance in emergency situations like this. All parties involved agree that the Board is in dire need of financial assistance through grants, and because it cannot access state SRF funds, EPA is its only option. Thus, Petitioners believe that EPA is best suited to administer technical assistance.

First, inadequate disinfection and presence of bacteria in the Board's drinking water presents an imminent and substantial endangerment to the Prichard community. Second, lack of accessibility to safe, affordable drinking water presents an imminent and substantial endangerment. Last, the State of Alabama has not acted to protect the health of the Prichard community. For these foregoing reasons, Petitioners respectfully request that EPA step in and administer assistance under its emergency powers under the Safe Drinking Water Act.

E. EPA Must Engage in Meaningful Community Involvement in Resolving These Infrastructure Issues.

Petitioners highlight the importance of Prichard and Chickasaw residents having a voice in the management of their drinking water, including issues of rates and the safety of their water. Petitioners have been fighting for clean water in their community for decades; engagement with these communities will make emergency responses more efficient and effective. Specifically, Petitioners would like to see transparency and access to information about the process to upgrade the water system. One strategy to achieve this goal would be to provide monthly meetings between the community, EPA, and other stakeholders to ask and answer questions about water system upgrades and the Board's ability to fund these upgrades.

[105] EPA Guidance, *supra* note 59, at 12.
[106] *Id.*

IV. RELIEF REQUESTED

Petitioners request that EPA grant the following relief:

1) EPA's assistance in funding upgrades to the drinking water system,

2) EPA's participation in the receivership proceedings involving the PWWSB and Synovus Bank to inform the judge that EPA is considering taking action, and

3) EPA's enforcement and development of a long-term consent decree with the Board that addresses the drinking water infrastructure and contamination issues discussed in this Petition.

V. CONCLUSION

For the reasons stated above, the undersigned Petitioners respectfully request that EPA invoke its emergency authority under 42 U.S.C. § 300i of the Safe Drinking Water Act to ensure access to safe, healthy drinking water for the communities of Prichard and Chickasaw. Please contact the undersigned, Sarah Stokes, at sstokes@selcal.org or (205) 745-3060 for any responses to this Petition. We look forward to working with you.

Respectfully submitted,

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President and Executive Director
We Matter Community Association
Prichard, Alabama

s/Joe Womack
Executive Director
C.H.E.S.S. (CLEAN, Healthy, Educated, Safe and Sustainable)
Africatown / Mobile, Alabama

s/Julius Haston
Walls of Salvation Ministries
Prichard, Alabama

s/Andre Milsap, Sr.
Temple of Jerusalem Cathedral
Prichard, Alabama

s/Richard Nichols
Destiny Vision Christian Center

Mobile, Alabama

s/Pastor John
Light Of the Village
Prichard, Alabama

s/Rev. Robert L. Boykin
Pastor
True Light Missionary Baptist Church
Prichard, Alabama

s/Robert Emmanuel
Friendship Missionary Baptist Church
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s/Ernest Gwinn
Church of Glory
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s/Rayford Barnes
Philadelphia Baptist Church
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s/Nikeland Nichols
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Taylor Chapel CME Church
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s/Marvin Lue
Stewart Memorial AME Zion
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s/President Benard Simelton
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s/Teresa Bettis
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EXHIBITS

Please visit: https://southernenvironment.sharefile.com/d-s5f118ca5b4084fb48ad204485a963e53
to download referenced Exhibits 1-5.