

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i,
to Abate the Imminent and Substantial Endangerment
to People Incarcerated in Illinois State Prisons

**Submitted on Behalf of Petitioners Coalition to Decarcerate Illinois, Equity Legal Services,
Illinois Chapter of the Sierra Club, Illinois Environmental Council, John Howard
Association, Little Village Environmental Justice Organization, Loevy & Loevy, Southeast
Environmental Task Force, Uptown People's Law Center, Southsiders Organized for Unity
and Liberation, Chicago Torture Justice Center, Unitarian Universalist Prison Ministry of
Illinois, Illinois Prison Project, Restore Justice, and the Environmental Advocacy Center at
Northwestern Pritzker School of Law**

April 15, 2024

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INTRODUCTION

1. Petitioners and others have worked together in a coalition to raise awareness and advance reform around conditions related to water and sanitation systems in Illinois prisons. Petitioners the Coalition to Decarcerate Illinois, Equity Legal Services, Illinois Chapter of the Sierra Club, Illinois Environmental Council, John Howard Association, Little Village Environmental Justice Organization, Loevy & Loevy, Southeast Environmental Task Force, Uptown People’s Law Center, Southsiders Organized for Unity and Liberation, Chicago Torture Justice Center, Unitarian Universalist Prison Ministry of Illinois, and the Environmental Advocacy Center at Northwestern Pritzker School of Law seek emergency action by the U.S. Environmental Protection Agency (“USEPA”) under the Safe Drinking Water Act’s (“SDWA”) “imminent and substantial endangerment” authority to protect the thousands of Black, brown and other individuals incarcerated in prisons owned and operated by the Illinois Department of Corrections (“IDOC”) from threats to their health and well-being arising from grossly neglected water and sanitation systems.
2. Petitioners seek intervention by USEPA due to the chronic and systemic shortcomings of IDOC and the Illinois Environmental Protection Agency (“IEPA”), as well as the Illinois Department of Public Health (“IDPH”), in ensuring the legal compliance and safety of prison water and sanitation systems at prisons within IDOC’s control. The egregious condition of water and sanitation systems within IDOC prisons is not limited to a few cells in a single prison. Instead, the issues highlighted in this Petition are systemic and have persisted for many years or in some cases decades. Moreover, these water and sanitation issues are only one aspect of the State’s long history of neglecting the maintenance and repair of its prisons and the disregard for the health and safety of the people imprisoned in Illinois’ prisons. In other words, the neglect of water and sanitation by prison officials is part of a pattern and practice that the State has allowed to continue for decades.
3. Since the new year alone, incarcerated individuals report enduring a variety of unacceptable drinking water threats and conditions. In January 2024, *Legionella* bacteria was detected in water at Joliet Treatment Center; family members of people incarcerated

there convey that water is visibly dirty and that they are experiencing health conditions like diarrhea and throat irritation they believe are related to contaminated water. Individuals incarcerated at the Danville facility faced an extended period without access to running water and a prohibition on outside visitors due to the water issues. Meanwhile, Petitioners received reports that when loved ones of people incarcerated at Stateville attempted to bring them bottled water, the facility struggled to efficiently distribute that donated bottled water. Health threats from broader water infrastructure problems persist as well: on March 6, 2024, Petitioners received multiple urgent messages from incarcerated individuals at the Centralia facility indicating that water service had been shut off and that sewage was flowing out of drains, flooding the floors of entire units. These incidents underscore the immediate, constant, and interconnected challenges that demand a swift and collaborative response from IDOC, IEPA, and IDPH, under USEPA’s direct supervision. On March 15, 2024, Governor Pritzker publicly recognized the fundamentally irreparable nature of the infrastructure problems at two IDOC facilities, announcing a proposed plan to rebuild Logan Correctional Center and Stateville Correctional Center.¹ As the current acting director of IDOC put it, the plan to demolish these facilities and move incarcerated individuals out of them is “pivotal” to “ensure the safety and well-being of [IDOC] staff and the individuals in [IDOC’s] care,” underscoring the dire state of infrastructure and safety concerns within IDOC’s aging facilities.²

4. In May 2023, the State released an assessment of IDOC facilities conducted by an independent consultant, CGL Companies, entitled the “Facility Master Plan.”³ The Executive Summary contains the following findings which demonstrate the crumbling state of Illinois’ prison infrastructure:

¹ *Governor Pritzker Announces Plan For Transformative Capital Investments in Illinois Department of Corrections Facilities*, March 15, 2024, <https://www.illinois.gov/news/press-release.29750.html>.

² *Id.*

³ Illinois Department of Corrections, *Facility Master Plan Final Report May 2023* (2023), <https://idoc.illinois.gov/content/dam/soi/en/web/idoc/reportsandstatistics/documents/IDOC-Master-Plan-Report-FINAL-MAY-2023-07-12-23-67.pdf>.

Finding: Deferred Maintenance Crisis. *The level of deferred maintenance in the system is at a critical level. IDOC has \$2.5 billion in facility deferred maintenance, the highest of any Illinois state agency.*⁴

Finding: Facility Conditions. *Only three out of 27 facilities reviewed had average facility condition assessments rated in the “Fully Operational” range. The remainder were rated in the “Impaired Operation” range. Stateville, Pontiac, and Logan were classified as approaching an “Inoperable” rating.*⁵

Despite requests by Petitioners,⁶ Illinois failed to include comprehensive water testing as a part of this “Master Plan” project. Instead, there are only *ad hoc* references to obvious infrastructure issues at certain facilities that are already known to be suffering from poor water quality, such as the observation that Pontiac “suffers from poor water quality and antiquated plumbing fixtures.”⁷ There are no analyses of drinking water quality or recommendations for facilities to test water quality. As a result, the \$2.5 billion in repairs identified in the plan does not include the cost to make IDOC’s prison drinking water and sewage treatment systems safe for those who are imprisoned in, and those who work in, Illinois prisons.⁸

5. While the State has periodically announced plans to remedy its decades of neglect, including statements as recently as March, 2024, that it intends to close one or another of the prisons which have suffered the most neglect, it has failed to follow through. The

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ John Howard Association Letter to Jim Underwood, July 8, 2022, <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/62cc3b2819a174092af2dc6b/1657551656882/IDOC+Water+letter+2022.+FNL.pdf>.

⁷ *Facility Master Plan*, *supra* note 3 at 82.

⁸ In focused reviews of work necessary at individual facilities, the Master Plan does make specific recommendations to install water softeners at Lawrence and Robinson and replace plumbing fixtures and faucets at Pontiac.

State has not closed the worst prisons; it has not set a date by which the serious water and sanitation issues will be comprehensively remedied; it has not detailed which prisons it intends to focus on and in what order of priority; it has not even detailed what it intends to repair or replace. Vague statements of intent do not protect the approximately 30,000 people who IDOC confines inside Illinois prisons today, who have no choice but to drink contaminated water and be exposed to raw, untreated sewage. Thus, Petitioners have resorted to this request for emergency action.

6. For years running on decades, individuals incarcerated in IDOC prisons have voiced complaints about drinking water and sanitary systems that negatively impact their health and well-being. The complaints evidence a range of drinking water threats as well as systemic negligence in running the prisons' water systems—some of which were constructed in the late 19th or early 20th centuries, with woefully inadequate maintenance and little-to-no meaningful updates since. For example, incarcerated individuals report visible particles and substances in their water, discoloration, foul smells, and troubling tastes. They also report harmful effects from water ingestion and contact, ranging from rashes and aggravated eczema to gastrointestinal issues such as vomiting, cramping, diarrhea and bloody stool, to fevers, coughs and sore throats, and even neurological symptoms. At one prison built in the 1870s, incarcerated individuals report a black oily substance in their water so significant that they use mattress stuffing, sheets and t-shirts to filter the water; recorded complaints about this substance date back at least six years.⁹ One man incarcerated by IDOC for thirteen years reported blood-lead levels in excess of 80 ug/dL at his first health check-up upon release, requiring treatment; the final five years of his incarceration took place at Stateville, an IDOC prison with documented lead exceedances in its drinking water.¹⁰
7. Along with these chronic drinking water issues, incarcerated people report issues with water used for cooking and water used for washing. In addition, toilets in many prisons

⁹ See *infra* at 190.

¹⁰ Hollins, Broderick, *Stateville prison's tap water gave me severe lead poisoning. My friends are still drinking it.* CHICAGO TRIBUNE (May 18, 2023), available at <https://www.chicagotribune.com/opinion/commentary/ct-opinion-lead-poisoning-water-stateville-prison-20230518-ib777sig2rhxlixa6x2fzv5zjy-story.html>.

regularly back up, especially when it rains, sometimes overflowing and dumping raw sewage on the floor of people's cells. Beyond these regular overflows, in most cells the toilet and sink are combined into a single unit, with no cover for the toilet, usually placed inches away from incarcerated individuals' beds. This inevitably means that, when cell toilets backup as they very often do, fecal matter is often sprayed on the drinking water faucet and onto people's sheets, blankets, and pillows. Similarly, some shower drains statewide are teeming with drain fly larvae and regularly back up, forcing people to shower while standing in sewage. In sum, there is a chronic lack of access to functioning toilets, showers and hot water, further compounding concerns about threats to health and well-being from the drinking water and sanitation systems in IDOC prisons.

8. Furthermore, the water and sanitation impacts described below interact dangerously with conditions in IDOC prisons that subject incarcerated individuals to a long list of environmental health threats, including mold, pests that act as infectious disease vectors, asbestos tile, inadequate HVAC systems that result in extreme heat stress especially during summer months, and so on. People incarcerated in IDOC prisons also face huge health burdens, both in terms of the negative health impacts they experience and the extreme lack of access to adequate care once incarcerated, that make them exceptionally vulnerable to environmental threats.¹¹ For instance, over 40% of IDOC's population has some sort of mental health caseload; in the case of the Pontiac Correctional Center, discussed in more detail below, over a quarter of the people have a serious mental health diagnosis.¹² One advocate for people in prison recently provided this description of specific cases of neglect: "A cancer patient lying in his own feces in the days leading up to his death. Another with ALS, slowly dying of starvation because no one has the time

¹¹ A full accounting of the health conditions facing people in prisons and inadequate health care is beyond the scope of this petition; more details can be found in a March 2023 monitor report, Health Care Monitor 6th Report, *Lippert v. Jeffreys*, No. 1:10-cv-04603 (filed Mar. 13, 2023), https://web.archive.org/web/20230508110414/https://uploads-ssl.webflow.com/63073904cc1ee2a0dbc5ede3/644974abc1f5573a9dd8cbb4_6th%20Lippert%20Report.pdf.

¹² Brandis Friedman, *Former IDOC Director on Plans for Pontiac Prison, Home to State's Highest Concentration of 'Seriously Mentally Ill' Incarcerated People*, WTTW NEWS (Apr. 29, 2023), <https://news.wttw.com/2023/04/29/former-idoc-director-plans-pontiac-prison-home-state-s-highest-concentration-seriously>.

or inclination to feed him. Patients with dementia who are not fed, not changed, not supervised. An elderly person who died after suffering nearly two dozen falls.”¹³ As discussed in more detail below, since 2010 at least two men incarcerated at Menard Correctional Center appear to have died of extreme heat impacts after having no or inadequate access to cold water, ice and/or showers for cooling; it further appears that both men were on medication that made them especially susceptible to extreme heat.¹⁴ Taken together, the cumulative impacts people in prison face cannot be overstated.

9. These issues become even more alarming when viewed through the lens of environmental justice, highlighting an additional layer of concern that demands attention and remedial action. The people imprisoned in IDOC’s facilities are members of an environmental justice community. As of the September 30, 2023, IDOC held over 30,000 individuals across the state.¹⁵ Over half of that population is Black, compared with the overall population of Illinois, where only 15% of the population is Black.¹⁶ Many of these individuals undoubtedly come from and, if and when released, will return to homes in identified environmental justice communities throughout Illinois and neighboring states. For example, Cook County, which has a more diverse population than the state as a whole,¹⁷ is home to specific neighborhoods that disproportionately bear the brunt of environmental hazards, with Southeastern Cook County being one of the most polluted

¹³ Jennifer Soble, *Illinois has a law to release seriously ill and disabled prisoners. It’s time to use it*, CHICAGO SUN-TIMES (May 8, 2023), <https://chicago.suntimes.com/2023/5/8/23712753/prison-medical-release-law-health-care-attorneys-jennifer-soble-illinois-prison-project-op-ed>.

¹⁴ *Charles v. Unknown Correctional Officers and Officials*, Docket No. 3:18-cv-00463 (S.D. Ill. Feb 21, 2018).

¹⁵ See Illinois Dep’t of Corrections, “Prison Population on 09-30-2023,” ILLINOIS.GOV (last accessed January 21, 2024), <https://idoc.illinois.gov/reportsandstatistics/prison-population-data-sets.html> [hereinafter IDOC Prison Population Data Set]. In prisons where “unknown” is a racial option, this is included in the statistics for “race other than white.”

¹⁶ See U.S. Census Bureau, “Illinois: 2020 Census,” CENSUS.GOV (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/illinois-population-change-between-census-decade.html>.

¹⁷ Overview of the State - Illinois – 2021, U.S. Department of Health and Human Services, <https://mchb.tvisdata.hrsa.gov/Narratives/Overview/6825d913-f077-44c3-96c7-8f022c2aff62>.

areas in the nation.^{18 19} These incarcerated individuals are subject to an environment that mirrors the environmental injustices of their home communities, and, if and when released, will return to similar conditions, perpetuating a cycle where people of color continue to be disproportionately affected by systemic environmental injustice and racism.

10. The mere fact that these conditions largely continue in IDOC prisons' water systems today is evidence of IDOC neglect and IEPA shortfalls. Petitioners' review herein of specific actions and inactions of these two agencies over the years leads to the same conclusion.
11. In addressing the urgency of protecting incarcerated individuals from these dangerous conditions, it is essential to recognize that structural and institutional barriers to information prevent Petitioners from being able to meticulously document every detail in real-time. While Petitioners may not be able to capture the precise status of these issues at every moment, the history and continuous stream of incidents raises serious concerns about IDOC's willingness and ability to provide reliable, safe drinking water to incarcerated individuals and justifies immediate intervention by USEPA under the SDWA.
12. The reasons for USEPA emergency action are many, as summarized here and set forth in more detail below:
 - a. People in prison are captive, subject to IDOC's control with respect to drinking water and sanitation, as well as other conditions of their confinement. IDOC also keeps tight control of public access to its facilities, with very limited opportunities for

¹⁸ Frank J. Pagone, *Environmental Justice in Cook County, IL: Air and Land Pollution*, University of Illinois at Chicago, xiv, 2017, https://indigo.uic.edu/articles/thesis/Environmental_Justice_in_Cook_County_IL_Air_and_Land_Pollution/10933979.

¹⁹ IDOC Prison Population Profile (as of December 31, 2020), John Howard Association, [https://www.thejha.org/prison-pop-profile/#%3Cstrong%3ESection%20Seven:%20Detailed%20Profile%20of%20Incarcerated%20People%20by%20County%20Where%20a%20Person%20was%20Sentenced%20for%20Holding%20Offense%20\(Regional\)%3C/strong%3E](https://www.thejha.org/prison-pop-profile/#%3Cstrong%3ESection%20Seven:%20Detailed%20Profile%20of%20Incarcerated%20People%20by%20County%20Where%20a%20Person%20was%20Sentenced%20for%20Holding%20Offense%20(Regional)%3C/strong%3E).

- people in prison to seek assistance in conducting investigations of the drinking water and/or sanitation systems or for members of the non-incarcerated public to conduct their own investigations or implement any protections or mitigation measures.
- b. The systemic shortfalls and long history of neglect, inaction and/or ineffective action with respect to drinking water and sanitation systems on both IDOC's and IEPA's parts raise heightened concerns about one state agency's ability and willingness to ensure compliance by its fellow state agency. IDPH also has failed to ensure the safety of IDOC drinking water and sanitation systems. In addition, IEPA has a broader history of not doing enough to protect environmental justice communities.²⁰
 - c. The State, through IDOC, is the owner and operator of its prison facilities, controlling both the water and sanitation systems from the site boundary all the way to the tap and toilet. Thus, USEPA can and should under its SDWA emergency authority require the State to take comprehensive and meaningful measures to address water threats looking at these systems in their entirety.
 - d. The State has the legal obligation to provide safe drinking water and sanitation systems for the people it imprisons. If it cannot do so, or chooses not to spend the funds to do so, then the State must ensure people are not exposed to these unsafe conditions. The State has the power to release people from prison and/or to relocate them. The State has the authority to shut down all or part of an IDOC prison or prisons, and so to shut down water and sanitation systems that are non-compliant with the law, otherwise threaten health and safety, and/or are either beyond repair or beyond the State's willingness to adequately fix.²¹ As the Master Plan states: "the

²⁰ For example, in the case of the former Centreville, Illinois, USEPA issued administrative orders regarding the failing sanitation and drinking water systems in August 2021. Petitioners involved in that matter had found little to no enforcement activity by IEPA in the community prior to USEPA's action, despite the grave issues identified in USEPA's orders that had been going on for years. *Infra* note 37.

²¹ "HDR conducted detailed facility conditions assessments at each prison and found significant facility degradation. Only three out of 27 facilities reviewed had average facility condition assessments in the 'Fully Operational' range. The remainder were in the 'Impaired Operation' range with Stateville, Pontiac, and Logan approaching an 'Inoperable' rating." Illinois

deterioration of IDOC physical plant will cascade, impacting its ability to safely manage its facilities and meet its goals. At nearly every correctional facility, IDOC’s operational mission as well as safety and security are negatively impacted by its worsening conditions.”²²

- e. It appears that at least several prisons are experiencing issues with multiple, interacting water contaminants, the characterization of and solutions for which likely go beyond the individual-contaminant-focused regulatory regime that IEPA is charged to enforce.²³
- f. Certain water contaminants endangering the health of individuals in Illinois prisons fall outside the direct regulation of other provisions within the SDWA. Contaminants—whether subject to SDWA primary drinking water standards or not—also may pose potential threats at prisons that IEPA has deemed “exempt” from demonstrating compliance with primary drinking water standards.²⁴ Contaminants threatening prison water quality but not directly regulated under the SDWA’s primary drinking water regulations include *Legionella*, cyanotoxins, manganese/manganese bacteria, and iron/iron bacteria.
- g. Some of the threats to drinking water in Illinois prisons appear to arise from sanitation system failures in proximity to failing drinking water infrastructure. IEPA has passed off responsibility to address the vast majority of sanitation system issues at IDOC prisons, reasoning that the sanitation system issues fall outside of IEPA’s

Department of Corrections, *Facility Master Plan Final Report May 2023* (2023) at p. 4 <https://idoc.illinois.gov/content/dam/soi/en/web/idoc/reportsandstatistics/documents/IDOC-Master-Plan-Report-FINAL-MAY-2023-07-12-23-67.pdf>.

²² *Facility Master Plan*, supra note 1.

²³ U.S. Env’tl Prot. Agency, *EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum*, Pub. No. 360R22002, at 20 (2023), <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>.

²⁴ There are contaminants, like certain bacteria, for which IEPA has disclaimed responsibility, and for which IDPH lacks meaningful enforcement authority to remedy, with no apparent efforts being made to address incarcerated individuals’ chronic exposure to them through drinking water and sanitation system problems.

Clean Water Act (“CWA”) enforcement.²⁵ USEPA could and should require IDOC to address these sanitation issues, under the federal agency’s SDWA emergency authority, whenever such sanitation system issues threaten prison drinking water and regardless of whether they also implicate CWA compliance.

- h. IEPA has committed to the barest minimum in public transparency for its actions over IDOC’s prisons, in contrast to President Biden’s Executive Order committing to increased accountability and transparency in federal environmental policy.²⁶ Such lack of transparency hinders Petitioners’ and other lay members of the public’s ability to advocate for protection of people in prison.

13. The Vienna Correctional Center (“Vienna”) illustrates the pattern of neglect that is common at IDOC facilities. Incarcerated individuals at Vienna are subjected to several health risks, such as cyanotoxins caused by mold and algal blooms, and dangerously high levels of disinfection byproducts, such as chlorine, in their drinking water, some of which are carcinogenic. Incarcerated individuals at Vienna are also subjected to poor maintenance of plumbing infrastructure, which leads to frequent back-ups in showers, toilets, and cells.²⁷

14. Even where IEPA purports to exercise oversight of “non-exempt” water systems at IDOC facilities, like Vienna, that oversight has failed to correct the issues. In 2019, IEPA issued a Notice of Violation (“NOV”) to Vienna that listed three violations and nineteen recommendations for updates to water infrastructure. When IEPA returned for an inspection three years later, the facility had *not addressed any* of the violations, and IDOC had implemented only one of the nineteen recommendations. When inspecting the Vienna water facilities in 2022, USEPA concluded that much of the necessary water infrastructure at

²⁵ Letter from Sanjay Sofat, Ill. Env’tl Prot. Agency, to Petitioners, Re: Follow-up Questions on IEPA Letter dated 2/9/23 (Apr. 27, 2023) [hereinafter April IEPA Letter to Petitioners].

²⁶ The White House, *FACT SHEET: President Biden Signs Executive Order to Revitalize Our Nation’s Commitment to Environmental Justice for All*, WHITEHOUSE.GOV (Apr. 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/>.

²⁷ See Appendix C for more information about the conditions at Vienna Correctional Center.

Vienna had “deteriorated beyond a maintenance level,” with some critical equipment being totally inoperable.²⁸

15. Moreover, the many issues at prisons that IEPA has considered “exempt” from more intensive regulatory requirements demonstrates that the agency is not acting to safeguard people in prison from failing water systems. The Menard Correctional Center (“Menard”) is one example of systemic failure from such lack of IEPA oversight. Individuals incarcerated at Menard have raised issues with the water since at least 1996.²⁹ As discussed in more detail in Appendix D, these issues include high lead results at the prison before it switched to City of Chester water; recurring H. pylori infections that a health provider linked to drinking water from corroding lead pipes; and at least two alleged heat deaths where water, ice and showers were not available to cool the people who died.³⁰ When IEPA finally inspected Menard, it found numerous operational and equipment deficiencies. The content and focus of this inspection report suggest that IEPA continues to categorize Menard as an “exempt” public water supply. Consequently, the facility appears to remain exempt from compliance sampling for lead, copper, coliform, and disinfection-related parameters, leaving significant concerns about safety given the record of issues and complaints.
16. Another example of a facility IEPA has viewed as “exempt” from more intensive regulatory requirements is Pontiac Correctional Center (“Pontiac”). Like at Menard and as discussed in more detail in Appendix B, people incarcerated at Pontiac have complained about the prison’s drinking water for years, including complaints of high blood pressure, headaches, and pain attributed to drinking the prison water, as well as describing drinking water that contains a black, oily substance dating back to at least December 2016. IEPA treated Pontiac as an “exempt” community water supply at least until February 6, 2023, when IEPA issued a NOV to the facility. While Petitioners understand that IEPA anticipated Pontiac would conduct lead sampling in the summer or fall of 2023, Petitioners have been unable to locate any publicly available evidence of such activities; for example, there is no onsite lead sampling information for Pontiac posted on Drinking Water Watch as of February 2024.

²⁸ USEPA Inspection of Vienna (October 20, 2022).

²⁹ See Appendix D.

³⁰ *Id.*

Petitioners are thus concerned that IEPA might still be treating Pontiac as exempt from direct SDWA regulation, despite its February 2023 NOV and the long history of complaints at Pontiac.

17. A prison sentence is not a license for the state to deprive people of basic necessities. As the United States Supreme Court has made clear: “[People in prison] retain the essence of human dignity inherent in all persons.”³¹ “[People in prison] are dependent on the State for food, clothing, and necessary medical care. A prison’s failure to provide sustenance for [incarcerated individuals] may actually produce physical ‘torture or a lingering death.’”³² Petitioners thus ask USEPA to move swiftly to address the decades of IDOC’s neglect of water and sanitation systems. The impacts and harms described herein are not merely impending or imminent, but are actively occurring at State prisons, have been occurring for years, and may be causing permanent damage to the health of individuals whose well-being is entirely in the hands of the State incarcerating them.
18. Petitioners strongly encourage USEPA to take whatever actions and to issue whatever orders the federal agency deems necessary to protect people incarcerated in IDOC prisons from unsafe drinking water and other environmental threats.
19. **First and foremost, it is critical that USEPA act swiftly to get incarcerated people out of harms’ way, such as through ordering the State to develop an emergency mitigation plan for protecting public health at facilities with water and sanitation systems that pose an imminent and substantial endangerment. This plan could include such immediate actions as provision of free, bottled water, and the full utilization of all the legislatively approved mechanisms for release, including executive clemency, full implementation of retroactive awards of good time credit, medical release pursuant to the Joe Coleman Act, use of home confinement for those statutorily eligible, along with immediate transfers for those not eligible for release to prisons where people can be housed without facing an imminent and substantial danger to their health from faulty water and sewage disposal systems, as methods for ensuring that people are not harmed**

³¹ *Brown v. Plata*, 563 U.S. 493, 510 (2011).

³² *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976), in turn quoting *In re Kemmler*, 136 U.S. 436, 447 (1890)).

by drinking or otherwise coming in contact with contaminated water. Consideration of the legally authorized release option is critical given IDOC’s poor track record in providing alternative, safe bottled water in sufficient quantities. Bottled water on its own is an insufficient solution, because the threats to incarcerated individuals extend beyond the potential hazards associated with drinking contaminated water, including threats posed by skin contact, inhalation, and unavailability of drinkable cold water, ice and showers during extreme heat events. In response to the health emergency posed by COVID, Illinois demonstrated that it could release incarcerated individuals with no danger to the public. We submit that the current danger posed by IDOC’s failing water and sewer systems pose a similar danger, and require a similar response.

20. Second, through such an emergency mitigation plan and longer-term requirements memorialized in a binding, enforceable order, USEPA should also:

- a. Order that IDOC provide free, safe and sufficient alternative sources of water to people incarcerated at facilities posing lesser risks to health and safety and during any interim while infrastructural problems or solutions are being identified and implemented at all prisons.³³ Reliable and adequate alternative water is particularly important during the summer months: most IDOC prisons lack air conditioning or other methods of cooling the facilities, resulting in temperatures that can pose serious risk of injury or death. Availability of extra drinking water during the upcoming summer is critical to avoid people becoming dangerously dehydrated and/or experiencing life-threatening heat.³⁴ Specifically:

³³ Illinois law requires that, when records are not available to show otherwise, average daily usage for all uses be presumed to be 75 gallons per person per day. Ill. Admin. Code tit. 35 § 604.115 (2017). Note that under State law, community water supplies are expected to produce 20% more water than the “maximum average daily demand,” which is 1.5 times higher than the “average daily usage.” *Id.* § 604.105. Ultimately this means that to comply with state law, each system should be able to produce 135 gallons of clean water, per person, per day. In extreme heat events in prisons, even this amount may not be sufficient to maintain health. In at least one IDOC prison, staff reported “unknown” to IEPA for every standard usage parameter, indicating that IDOC is not in fact tracking usage sufficiently at every prison to ensure it is providing adequate supply. Pontiac Correctional Center – IL 105-5500 FY2023 Public Water Supply Data Sheet (August 9, 2022).

³⁴ See Appendix D; *See also*, supra note 14.

- b. Order that IDOC develop an Alternative Water Source Plan, in which IDOC shall detail how and where it will provide a minimum of 75 gallons of safe water per day, per person, to every individual incarcerated by IDOC.³⁵ The amount of water actually required for each individual will vary depending on a variety of health factors among incarcerated individuals, such as people who are susceptible to dehydration and extreme heat, or those on medications that require increased water intake. This allotment of alternative water should be made available at no cost to each incarcerated individual, as needed for drinking and maintaining hygiene.³⁶ This should continue until IDOC shows the agency is able to provide a safe, permanent water supply long-term that meets the requirements of the SDWA and otherwise protects the health and safety of people in prison.³⁷
- c. Inspect and monitor the prison drinking water and sanitation systems at every IDOC facility, including but not limited to performing systematic and in-depth, sequential, frequent and/or continuous sampling of water quality and other water parameters in cells, kitchens and showers where water is most frequently consumed in order to accurately measure people's potential exposure to a full range of contaminants of concern.
- d. Require that IDOC repair, replace or improve and enhance devices and practices used in the treatment and monitoring of water quality and/or other critical water parameters based on facility-specific assessments.

³⁵ Illinois law requires that, when records are not available to show otherwise, community water systems must make design and operational choices based on a presumed average daily usage for all uses of 75 gallons per person per day. Ill. Admin. Code tit. 35 § 604.115 (2017).

³⁶ While IDOC has mentioned they would pass out 24 bottles of water per week, this has not been happening, even where communities have donated water to be distributed.

³⁷ This is in line with the action required by USEPA in its 2021 administrative order regarding the drinking water systems serving Cahokia Heights, Illinois, which required the water systems to develop an Alternative Water Source Plan due to coliform concerns in Cahokia Heights. United States Environmental Protection Agency, Unilateral Administrative Order (2021). https://www.epa.gov/system/files/documents/2021-08/1431-coverltr-cahokia-heightsv2_0.pdf.

- e. Require that IDOC replace piping, solder and/or fixtures that may present a risk of contamination based on facility-specific assessments.
- f. Require that IDOC repair and/or replace any and all sanitation system shortfalls that threaten drinking water systems based on facility-specific assessments.
- g. Require IDOC to perform a feasibility assessment to consider replacing the single-fixture toilet and sink units in cells, where incarcerated individuals can be forced to use sink water threatened by contamination from their own excrement.
- h. Require that IDOC identify prisons where required tap water sampling—whether under preexisting requirements or under an order arising from this Petition—exhibits elevated levels of waterborne contaminants and/or where incarcerated individuals present symptoms of water-related illness. Additionally, require IDOC to offer medical monitoring that incarcerated individuals may voluntarily participate in, including timely and adequate health screenings and health care services, to all incarcerated individuals who request screening or care for water-related health issues. IDOC should be required to inform incarcerated individuals of the availability of these services, using modes of communication developed in consultation with incarcerated individuals and their advocates.³⁸ Further, IDOC should provide public reporting of health diagnoses related to these water contaminants, with appropriate privacy safeguards³⁹
- i. Ensure that IDOC hires or contracts with qualified personnel for operating and managing its water and sanitation systems.

³⁸ This is in line with the remedy granted by the 2016 EPA Emergency Administrative Order for the City of Flint, Michigan, which required the city to identify neighborhoods or zip codes throughout the city with elevated blood lead levels. United States Environmental Protection Agency, Emergency Administrative Order (2016).

³⁹ This is in line with the COVID-19 NWSS publication response. <https://www.cdc.gov/nwss/index.html>; This is in line with the remedy granted by the 2016 EPA Emergency Administrative Order for the City of Flint, Michigan, which required the State to create and maintain a publicly available website with all reports, sampling results, plans, weekly status reports on the progress of all requirements and all other documentation required under the Order. United States Environmental Protection Agency, Emergency Administrative Order (2016).

- j. Ensure that IDOC and IEPA create a complaint plan or program that encourages reporting of water and sanitation complaints by people in prison, ensures timely notification of appropriate agencies when such water and/or sanitation complaints arise and the resolution of complaints with robust notification to and engagement of incarcerated individuals and their representatives, and provides notice of water-related issues to recently-released individuals still in the parole system whose health may have been threatened by exposure to water contaminants while incarcerated at an IDOC facility. Complaints lodged through this system should be publicly available and posted along with other information required to be collected.
 - k. Require that IDOC convene a panel of state and federal agency representatives, non-governmental experts, and representatives of incarcerated individuals, to review, comment, upon, and approve its proposals to address these issues and implement other specific requirements discussed above.⁴⁰
 - l. Otherwise ensure that IEPA, IDPH and IDOC create coordinated processes that provide robust transparency and meaningful participation of incarcerated individuals and concerned members of the public in matters related to drinking water and sanitation in prisons, including through new IEPA websites where the State makes critical information affirmatively available on a timely basis.
21. The facts outlined in this petition are specific to IDOC prisons, but the drinking water and sanitation issues generally described here are not limited to State prisons. Instead, it is highly likely that such issues arise in federal prisons as well as jails across the State, and in prison and other detention facilities in other states across the country. Petitioners thus request that

⁴⁰ This is in line with the remedy granted by the 2016 EPA Emergency Administrative Order for the City of Flint, Michigan, which required the MDEQ and State to engage a panel of independent, nationally-recognized experts on drinking water treatment, sampling, distribution system operation, and members of the affected community to advise and make public recommendations to the City on steps needed to mitigate the imminent and substantial endangerment to health. United States Environmental Protection Agency, Emergency Administrative Order (2016).

USEPA initiate a process for ensuring the safety and adequacy of drinking water and sanitation systems in prisons and other detention facilities more broadly.

INTEREST OF PETITIONERS

22. The Coalition to Decarcerate Illinois is a group comprised of loved ones of the incarcerated, currently and formerly incarcerated individuals, activists, and creatives working towards abolition and fighting for the rights and dignity of currently incarcerated individuals and their loved ones. The Coalition to Decarcerate Illinois works to achieve their mission through campaign organizing, political education, and the direct support of people with loved ones behind bars. In addition, The Coalition to Decarcerate Illinois has an inside advisory board of currently incarcerated people at IDOC prisons who provide direct updates about the water issues and other issues of abuse and neglect perpetrated by the state.
23. Equity Legal Services is a non-profit organization that works alongside communities of color and other historically underserved communities who are regularly impacted by environmental and structural poverty issues, with an emphasis on legal assistance, advocacy, and community empowerment.
24. The Illinois Alliance for Reentry & Justice is a network facilitator for a statewide ecosystem comprised of currently and formerly incarcerated people, directly and indirectly impacted persons, service providers, advocates, and other stakeholders and allies. The Illinois Alliance for Reentry & Justice works collectively to reimagine and remake justice by redefining reentry, transforming policies, and mobilizing the public.
25. The Illinois Environmental Council works to safeguard Illinois—its people, its plants and animals, and the natural systems on which all life depends. Since its founding in 1975 by a group of dedicated grassroots environmentalists, IEC has led issue advocacy campaigns by allowing environmental organizations to pool their resources and create a higher profile for environmental issues. IEC believes that everyone has a right to clean water, a right that does not stop at the prison wall.
26. The John Howard Association is the only independent, not-for-profit, non-partisan, system-wide prison oversight organization in Illinois. At the heart of The John Howard Association's mission is the belief that what people in prisons experience is important and should matter to

everyone. For this reason, The John Howard Association documents and shares information about and from Illinois prisons acquired through monitoring visits and communication efforts. The John Howard Association goes into adult and juvenile prisons to monitor confinement conditions and treatment, as well as to survey and speak with incarcerated people and correctional staff in order to learn and share the realities of prisons.

27. The Little Village Environmental Justice Organization (“LVEJO”) is a community-based frontline group based in the Little Village neighborhood in Chicago that organizes to accomplish environmental justice and self-determination of immigrant, low-income, and working-class families. Little Village is a predominantly Latine community with brown and Black residents, most of whom come from Mexico, and a number of whom are undocumented. In Little Village, residents live with intensive industrial operations in their backyards and the resultant health impact of lifetime exposure to these pollution burdens. Residents are also deeply impacted by policing and incarceration alongside environmental racism—from criminalization beginning in youth through adulthood to detention and deportation. Little Village is the home of Cook County Jail, the largest single-site municipal jail in the United States. Much more land and resources are dedicated to policing and incarceration than to green space in Little Village, a demonstration of how environmental injustice and violence intersect. LVEJO considers incarcerated individuals in the jail members of the Little Village community and maintains relationships with system-impacted individuals and families throughout the neighborhood through our organizing, policy advocacy, and programs.

28. Loevy & Loevy is a national civil rights law firm working in the public interest. The firm’s Prisoners’ Rights Project advocates for people in jails and prisons throughout the United States to defend human and civil rights at both the individual and institutional level. Loevy & Loevy has filed over 100 cases concerning prisoners’ rights, representing individual clients and classes of prisoners in the thousands. The Prisoners’ Rights Project currently represents a class of incarcerated people at Stateville Correctional Center in the case *Dobbey v. Welding, et al.*, a lawsuit that has been ongoing for over 10 years over the inhumane and unlawful conditions, including unsafe water conditions, suffered by people currently imprisoned by IDOC.

29. The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 3.8 million members and supporters. In addition to protecting every person's right to get outdoors and access the healing power of nature, the Sierra Club works to promote clean energy, safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and legal action. Sierra Club's Clean Water Campaign works to protect and improve water quality for communities and natural areas across the state. Our team of staff, volunteers, and allies work tirelessly to advocate for high quality clean water resources for all people. For more information about Sierra Club's work in Illinois, visit www.sierraclub.org/Illinois.
30. The Southeast Environmental Task Force is an environmental nonprofit organization dedicated to serving the southeast side and south suburbs of Chicago by promoting environmental education, pollution prevention, and sustainable development. The Southeast Environmental Task Force sees the struggle of incarcerated individuals for humane treatment and clean water as part of the broader struggle for environmental justices in its community.
31. Uptown People's Law Center is a not-for-profit legal clinic which for over 40 years has provided legal representation, advocacy, and education to people housed in Illinois prisons in cases related to their confinement. Uptown People's Law Center has provided direct representation to over 100 persons confined in Illinois prisons pertaining to their civil rights and is currently lead counsel in six class-action or putative class-action cases on behalf of incarcerated people in Illinois. Uptown People's Law Center visits people in prisons at least monthly and receives approximately 100 letters from incarcerated people each week.
32. Southsiders Organized for Unity and Liberation (SOUL) believes that our faith calls us to the fight for justice for all, especially those who have historically been marginalized and oppressed. Our mission is to assist low-income people of color in the Chicago Southland to build power, then subsequently leverage that power to fight for their own interest and liberation. SOUL has been fighting for water access that is clean and affordable for all Illinois residents for years and as abolitionists we recognize the harm caused by carceral systems. We believe that folks are deserving of clean water both inside and outside the prison system.

33. The Chicago Torture Justice Center seeks to address the traumas of police violence and institutionalized racism through access to healing and wellness services, trauma-informed resources, and community connection. The Center is a part of and supports a movement to end all forms of police and state violence. The Center sees the current water crisis in the IDOC as a form of state violence, and supports the demands of this petition.
34. The Unitarian Universalist Prison Ministry of Illinois believes that no one is outside the circle of Love and that every person has inherent worth and dignity. Our mission is to equip Unitarian Universalists in Illinois to transform institutions, partnering with and supporting people harmed by the prison industrial complex. With over 120 members participating in the pen pal program who are locked up in Illinois prisons, the Unitarian Universalist Prison Ministry cares about the water crisis in Stateville prison as well as all Illinois prisons. Clean water is a basic human right, and all are deserving.
35. The Illinois Prison Project (IPP) is a nonprofit organization dedicated to fighting mass incarceration in Illinois through direct representation, education, and policy advocacy. By representing incarcerated clients in clemency and medical release petitions, and educating the community about the impacts of mass incarceration, IPP aims to foster systemic change within the criminal legal system. IPP supports this critical issue of safe drinking water in Illinois prisons because it aligns with IPP's commitment to advocate for humane conditions and the health of incarcerated individuals. This support underscores IPP's dedication to addressing systemic injustices and ensuring the dignity and rights of those within the prison system.
36. Restore Justice, which comprises Restore Justice Foundation and Restore Justice Illinois, addresses issues faced by those serving life or de-facto life sentences, their families, and their communities. Founded in 2015 by a dedicated group of advocates that included the late former Congressman, Federal Judge, and White House Counsel Abner Mikva, Restore Justice trains and supports advocates, conducts research, nurtures partnerships, and develops policy solutions that will roll back ineffective "tough on crime" policies of the past and inhumane prison conditions, replacing them with compassionate, smart, and safe policies for the future. Restore Justice engages people who are currently and formerly incarcerated and

their loved ones. Restore Justice believes access to clean water is a basic human right, and every human being should have access to safe drinking water.

37. The Northwestern Pritzker School of Law Bluhm Legal Clinic's Environmental Advocacy Center (EAC) is a dynamic force tackling pressing environmental justice issues throughout the state of Illinois. Partnering with local communities and advocates, the EAC offers law students unique opportunities to engage in diverse strategies such as litigation, legislative efforts, and public advocacy.

LEGAL STANDARD FOR SDWA EMERGENCY INTERVENTION

The Safe Drinking Water Act's Emergency Power

38. Under the SDWA, USEPA has the authority to intervene whenever a contaminant is present in or likely to enter a public water system if that contaminant may present an imminent and substantial endangerment to the health of persons and if State and local authorities have not acted to protect the health of such persons.⁴¹
39. This emergency power is meant to be broad in scope; the authority is “[n]otwithstanding any other provision” of SDWA and empowers USEPA to issue “such orders as may be necessary to protect the health of persons.”⁴²
40. The urgency in passing a comprehensive SDWA was based on factual findings demonstrating that “public confidence in the safety of drinking water supplies may, in many instances, be misplaced.”⁴³ Research cited by Congress identified over 46,000 cases of waterborne illness across the country from 1961-1970. Research also showed that over one

⁴¹ 42 U.S.C. 300i(a) begins: “Notwithstanding any other provision of this subchapter, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons.”

⁴² *Id.*

⁴³ H.R. Rep. No. 93-1185, at 6454, 6457-60 (1974).

third of tap water samples contained contaminants exceeding public health law standards; the “vast majority” of systems lacked cross-connection programs and other protective programs; half of water treatment plant officials “did not remember when, if ever, a State or local health department had last surveyed the supply;” and only 60% of small supplies serving populations of 5,000 or less were in compliance with federal bacteriological and sampling requirements.⁴⁴

41. Congress has made its intended breadth of SDWA’s emergency power clear:

“The authority conferred by this section is intended to override any limitations upon the Administrator’s authority found elsewhere in the bill. Thus, the section authorizes the Administrator to issue such orders as may be necessary (including reporting, monitoring, entry and inspection orders) to protect the health of persons, as well as to commence civil actions for injunctive relief for the same purpose. The authority to take emergency action is intended to be applicable not only to potential hazards presented by contaminants which are subject to primary drinking water regulations, but also to those presented by unregulated contaminants. The authority conferred hereby is intended to be broad enough to permit the Administrator to issue orders to owners or operators of public water systems, to State or local governmental units, to State or local officials, owners or operators of underground injection wells, to area or point source polluters, and to any other person whose action or inaction requires prompt regulation to protect the public health. Such orders may be issued and enforced notwithstanding the existence of any exemption, variance, permit, license, regulation, order or other requirement.”⁴⁵

42. As this legislative record shows, Congress responded to the safe drinking water crisis in part by endowing USEPA with a broad emergency power limited neither to regulated contaminants nor to specified, narrow abatement measures.

43. More recently, USEPA has emphasized the importance of SDWA’s emergency authority in addressing matters of environmental justice, including the potential of SDWA as a tool for recognizing and addressing cumulative impacts.⁴⁶

44. The conditions triggering emergency authority can be understood to require three key elements: (1) a contaminant is present in or likely to enter a public water system; (2) the

⁴⁴ *Id.*

⁴⁵ *Id.* at 6487.

⁴⁶ U.S. Env’tl Prot. Agency, *supra* note 23, at 20-21.

contaminant may present an imminent and substantial endangerment to human health; and
(3) State and local authorities have not acted to protect health.⁴⁷

Prong 1: Contaminant is present in or likely to enter a public water system

45. To satisfy the first prong, a contaminant must be present in or likely to enter a “public water system.”

46. A “public water system” is any system “for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.”⁴⁸ This includes any collection or pretreatment storage facilities used primarily in connection with the system, regardless of who controls it; and any treatment, storage, and distribution facilities used primarily in connection to the system if under the control of the system’s operator.⁴⁹

47. “Human consumption” here goes beyond ingestion by drinking; other “residential uses” such as “drinking, bathing, and cooking, or other similar uses” are forms of human consumption that are of concern under SDWA.⁵⁰

48. In the context of a state-owned prison and its public water system, the prison owns and controls all pipes and other constructed conveyances provisioning water up through the tap that serves the end-consumer.

49. USEPA has emergency authority over any public water system “notwithstanding” any other provision of the laws concerning public water systems.⁵¹

⁴⁷ 42 U.S.C. § 300i.

⁴⁸ 42 U.S.C. § 300f(4)(A).

⁴⁹ *Id.*

⁵⁰ *See, e.g.*, 42 U.S.C. § 300f(4)(B)(i).

⁵¹ 42 U.S.C. §300i. Note that SDWA’s emergency power provision applies to *all* public water systems and thus takes priority over 42 U.S.C. § 300g, which narrows coverage of the primary drinking water regulations, outlining maximum contaminant levels and/ofr treatment techniques for specific contaminants, to certain types of public water systems.

50. A “contaminant” means any physical, chemical, biological, or radiological substance or matter in water.⁵²
51. In determining whether a contaminant is “*present in or likely to enter*” a public water system, the inclusion of the phrase “likely to enter” is critical: USEPA intervention must occur early enough to *prevent* a likely hazard from materializing rather than occurring only *after* confirmation that a harm has finally occurred. Thus USEPA intervention can be based on evidence of improper construction, operation, maintenance or functioning that individually or collectively renders a system vulnerable to contamination.⁵³
52. USEPA recognizes that the agency is under no obligation to wait for confirmation of contamination before asserting its emergency authority. In a 2021 emergency order targeting public water systems serving residents in the city of Cahokia Heights, Illinois, USEPA asserted its authority even though, on the date of the order, USEPA and IEPA had “no information showing bacteria is currently present” in the public water system. Instead, USEPA relied largely on evidence of infrastructural and maintenance deficiencies, including evidence derived from consumer complaints, to infer “an increased likelihood that acute contaminants can potentially enter” the public water systems.⁵⁴ Similarly, in a 2020 emergency order targeting the public water system serving Jackson, Mississippi, USEPA correctly asserted its authority following turbidity exceedances and evidence of operational and infrastructural deficiencies, finding that high levels of turbidity “increase the likelihood”

⁵² 42 U.S.C. 300f(6).

⁵³ “Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing. This means that ‘imminence ‘must be considered in light of the time it may take to prepare administrative orders or moving papers, to commence and complete litigation, and to permit issuance, notification, implementation, and enforcement of administrative or court orders to protect the public health.” H.R. Rep. No. 93-1185, at 6488.

⁵⁴ Commonfields of Cahokia Public Water District: “As of the Effective Date of this Order, EPA and IEPA have no information showing bacteria is currently present in Respondents’ drinking water distribution systems; however, the combined issues identified in this Section, Findings of Fact and Conclusions of Law, and specifically in Paragraphs 40, 42, 44, 45, 46, 47, 48, 49, 51, 52, 55, 57, 59, and 61 indicate an increased likelihood that acute contaminants can potentially enter the Respondents’ Public Water Systems.” U.S. Env’t Prot. Agency Unilateral Admin. Order, at ¶ 67 (Aug. 2, 2021), https://www.epa.gov/system/files/documents/2021-08/1431-coverltr-cahokia-heightsv2_0.pdf [hereinafter Cahokia Heights EPA Order].

that drinking water “may contain” disease-causing organisms in the public water system.⁵⁵

On the Nez Perce Reservation in North Idaho, USEPA issued an emergency order following a finding that severe deterioration in the public water system’s piping “could result” in additional leaks or catastrophic rupture which “could then expose” consumers to *E. coli*.⁵⁶

53. USEPA recently affirmed the importance of early intervention when drinking water is at risk, and it has acknowledged missteps resulting from excessive caution in the exercise of its statutory emergency authority. In Flint, Michigan’s devastating lead poisoning crisis, USEPA’s Office of the Inspector General concluded that the agency had had more than sufficient information to issue an emergency order in June 2015—and yet waited precious months until January 2016 to actually do so.⁵⁷ In fact, the elements for invoking the emergency authority were in place by April 2015, following a year of documented complaints by consumers, when Region 5 learned that Flint was not employing optimized corrosion control despite receiving an actionable lead sampling result in February 2015.⁵⁸

⁵⁵ City of Jackson, U.S. Env’t Prot. Agency Emergency Admin. Order, SDWA-04-2020-2300, at ¶ 24 (Mar. 27, 2020), https://www.epa.gov/system/files/documents/2021-07/march-27-2020-emergency-order_jackson-final-signed.pdf (emphasis added) [hereinafter *City of Jackson EPA Emergency Order*]. High levels of turbidity increase the likelihood that drinking water may contain disease-causing organisms, such as *Cryptosporidium*, *Giardia*, *Legionella*, and *E. coli* because particles of turbidity provide shelter for microbes and reduce the microbes’ exposure to disinfectants. If particulate material is not removed, a high turbidity event can provide shelter for and promote regrowth of pathogens in the water, leading to an outbreak of waterborne diseases.”

⁵⁶ Bureau of Indian Aff. North Idaho Pub. Water Sys.: “Notwithstanding the temporary repair for a small section of the piping, the severe deterioration of the System and corrosion of the System’s piping could result in the development of additional leaks or a catastrophic rupture at any time. The resultant loss of pressure could then expose persons consuming or otherwise using the System’s water to *E. coli* and other contaminants.” U.S. Env’t Prot. Agency Emergency Admin. Order, SDWA-10-2019-0016, at ¶ 2.14 (Oct. 9, 2018), https://www.epa.gov/sites/default/files/2020-01/documents/bia_north_idaho_signed_1092018_w-enc.pdf.

⁵⁷ U.S. Env’t Prot. Agency, Office of the Inspector General, Management Alert: Drinking Water Contamination in Flint, Michigan, Demonstrates a Need to Clarify EPA Authority to Issue Emergency Orders to Protect the Public, Project No. 17-P-0004, at 4-8 (Oct. 20, 2016), https://www.epa.gov/sites/default/files/2016-10/documents/epa_oig_20161020-17-p-0004.pdf. [hereinafter *EPA Management Alert on Emergency Orders*].

⁵⁸ *Id.*

54. Therefore, USEPA can and should consider evidence such as consumer complaints, infrastructure deterioration, and failures by the system owner and system regulator in the oversight, record-keeping, maintenance, monitoring and operation of the system when making the broadly-interpreted determination of whether a contaminant is likely to enter a public water system.

Prong 2: Contaminant may present an imminent and substantial endangerment

55. The second prong is whether the contaminant may present an imminent and substantial endangerment to human health.

56. The words “imminent and substantial endangerment” are construed broadly to capture the wide range of potential threats to human health and the environment. In drafting SDWA, Congress stated that it “intends this language [to] be construed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health.”⁵⁹ Congress further stated that “administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing.”⁶⁰ Both USEPA and the courts have consistently reinforced an expansive interpretation of what constitutes an “imminent and substantial endangerment,” in line with Congress’ stated intent.

57. Consistent with the expansive definition of “contaminant” in the statute, the conditions constituting an “endangerment” stretch beyond violations of the regulatory standards promulgated pursuant to SDWA and are applicable to dangers presented by unregulated contaminants.⁶¹ In other words, an endangerment may be present even if the contaminant at issue is not regulated by a National Primary Drinking Water Regulation, not listed in a National Secondary Drinking Water Regulation, or otherwise not listed under SDWA.⁶² This

⁵⁹ H.R. Rep. No. 93-1185, at 6488.

⁶⁰ *Id.*

⁶¹ *Id.* at 6487.

⁶² See U.S. Env’t Prot. Agency, Memorandum from Rosemarie Kelley, Director of Office of Civil Enforcement, and Karin Leff, Acting Director of Federal Facilities Enforcement, to Enforcement Directors and Regional Counsels for Regions 1-10, Re: Updated Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act (Oct. 30, 2018), <https://www.epa.gov/sites/default/files/2018->

broad scope reflects the purpose of SDWA's emergency power provision: to empower USEPA to take preemptive action to address potential harms to human health beyond simply responding to existing statutory violations via mechanisms that are already provided for in other SDWA provisions.

58. An endangerment is considered "imminent" if the conditions that give rise to this harm are present, even if the actual harm may not be realized for years.⁶³ A petitioner must simply demonstrate that a "reasonable prospect that a serious, near-term threat to human health or the environment exists."⁶⁴ For instance, in *United States v. Midway Heights County Water District*, the presence in water of organisms that were accepted indicators of the potential for the spread of serious disease qualified as "imminent" harm worthy of emergency action; petitioners were not required to demonstrate that the actual disease was present when they filed the petition.⁶⁵

59. Similarly, courts have readily acknowledged that the severity, or "substantial" nature, of an endangerment may manifest in a variety of ways. In other words, a "substantial" endangerment could arise equally as "a lesser risk of greater harm and . . . a greater risk of lesser harm."⁶⁶ There is no bright-line test for how probable a harm must be, as the Court of Appeals for the D.C. Circuit recognized: "Danger depends on the relationship between the risk and harm presented in each case, and cannot legitimately be pegged to 'probable' harm, regardless of whether the harm be great or small."⁶⁷ Several factors may inform the calculus

[09/documents/updatedguidanceonemergencyauthorityundersection1431sdwa.pdf](#) [hereinafter EPA Updated Guidance on Emergency Authority]. Similarly, the contaminant need not be listed on EPA's Contaminant Candidate List, under the Unregulated Contaminant Monitoring Rule, or in a health advisory.; *Id.*

⁶³ *Id.*

⁶⁴ See *Maine People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277, 279 (1st Cir. 2006) (finding that ongoing mercury pollution may be an imminent and substantial danger in the lower Penobscot River).

⁶⁵ *United States v. Midway Heights County Water District*, 695 F. Supp. 1072, 1075-76 (E.D. Cal. 1988) (finding "imminent and substantial endangerment" despite the absence of any reported illnesses at time of adjudication).

⁶⁶ *Ethyl Corp. v. EPA*, 541 F.2d 1, 18 (D.C. Cir. 1975).

⁶⁷ *Id.*

of whether an endangerment is substantial, including “the quantities of hazardous substances involved, the nature and degree of their hazards, [and] the potential for human or environmental exposure.”⁶⁸

Prong 3: State and local authorities have not acted to protect human health

60. The third and final prong triggering SDWA’s emergency authority is that State and local authorities have not acted to protect human health.

61. Here again, the purposes of Congress in passing the SDWA are instructive. Congress stated that this portion of the emergency power provision should be interpreted to discourage USEPA from preempting “effective” State or local emergency abatement efforts, while encouraging USEPA action “if State or local efforts are not forthcoming in timely fashion or are not effective to prevent or treat the hazardous condition.”⁶⁹ Therefore, State and local action obviating the need for USEPA action must be both *effective* and *timely*.

62. A landmark federal appellate court decision, *Trinity Am. Corp. v. USEPA*, further clarified that USEPA is the body that determines the adequacy of State and local efforts, via a *reasonable conclusion* test.⁷⁰ In *Trinity*, the plaintiff corporation argued that USEPA lacked statutory authority to issue its emergency order because the State of North Carolina had taken certain responsive actions: “DEHNR has conducted extensive sampling of water supply wells at and in the vicinity of the Trinity site since 1994.”⁷¹ The State had sampled 79 wells, had conducted quarterly sampling, and had performed health risk assessments in connection with the sampling; the State had also been actively supervising ongoing remediation efforts prior to USEPA investigation.⁷² Nonetheless, the plaintiff company’s argument proved “meritless.”⁷³

⁶⁸ See *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 194 (W.D. Mo. 1985).

⁶⁹ H.R. Rep. No. 93-1185, at 6487.

⁷⁰ *Trinity Am. Corp. v. U.S. Env’tl Prot. Agency*, 150 F.3d 389, 398 (4th Cir. 1998).

⁷¹ Pet. Brief at 14-15, *Trinity Am. Corp.*, 150 F.3d 389 (filed Dec. 11, 1997).

⁷² *Id.*

⁷³ *Trinity Am. Corp.*, 150 F.3d at 397.

63. The Fourth Circuit found that the State sampling had not been comprehensive enough of all potentially contaminated wells, and the sampling had not met USEPA standards. “State health authorities, therefore, must not only have acted, but acted in a way adequate to protect the public health; and EPA, the agency with expertise in this area, determines if the state efforts were adequate . . . the question before us is whether EPA could reasonably conclude that state’s efforts, while certainly genuine, were not sufficiently effective to protect the public health.”⁷⁴
64. Even when State and local authorities make a good-faith attempt to act but are stymied from timeliness and effectiveness by a difficult-to-regulate public water system owner, the emergency power can be invoked.⁷⁵
65. In other examples of emergency orders already cited above, USEPA did not consider action by State and local regulators to preclude federal intervention when such State actions were ineffective or untimely. For instance, in Cahokia Heights, Illinois, USEPA acknowledged that “IEPA has acted to identify deficiencies” in the systems, but nonetheless USEPA determined that “additional EPA actions are needed to support State actions in order to ensure public health is protected.”⁷⁶ In Jackson, Mississippi, even while acknowledging that the local health authority had engaged in informal enforcement action, USEPA still reached the conclusion that “these actions have not been effective in adequately protecting the health of the System’s users” and therefore justified an emergency order.⁷⁷ On the subject of timeliness, the slow response to Flint, Michigan’s water crisis holds an important lesson. By hesitating to assert federal authority in Michigan *as soon as* the agency had sufficient information to reasonably conclude that State and local action would not be timely or effective to protect human health from a dangerous contaminant, USEPA lost precious time in protecting the people of Flint. Had the agency intervened by June 2015, it could have

⁷⁴ *Id.*

⁷⁵ *Midway Heights Cnty. Water Dist.*, 695 F. Supp. at 1075 (finding that “have not acted” prong of SDWA emergency power provision was satisfied when State had spent nearly four years in court attempting to require a public water system owner to obtain a permit).

⁷⁶ Cahokia Heights EPA Order, *supra* note 54, at ¶ 68.

⁷⁷ City of Jackson EPA Emergency Order, *supra* note 55, at ¶ 27.

moved to protect the public when Flint’s mayor held a press conference “assuring Flint residents that the water was safe to drink” in July 2015, a time when the water was patently unsafe.⁷⁸

66. Pursuant to the stated legislative intent and to precedential judicial interpretation, the final prong of the emergency authority should be understood as such: USEPA must act when it can *reasonably conclude* that state and local action have either *not been timely* or *not been effective* in protecting the health of consumers of drinking water.

IDOC’S WATER SYSTEMS POSE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO INCARCERATED INDIVIDUALS ACROSS THE STATE’S PRISON SYSTEM

Contaminants Present in Drinking Water at IDOC Facilities Pose Imminent and Substantial Endangerments Incarcerated People Throughout Illinois

67. As stated above, IDOC held over 30,000 individuals in prison facilities across the state as of September 30, 2023.⁷⁹ Those individuals were and are disproportionately people of color, in comparison to the population of the state as a whole.⁸⁰ The population incarcerated at IDOC facilities is majority-Black, while about 15% of Illinois’ population is Black.⁸¹

68. More than for any other population under a state environmental agency’s or USEPA’s jurisdiction, the source of water consumed by the state prison population can be known with near-total certainty. Water must come either from a prison’s public water system (which is

⁷⁸ EPA Management Alert on Emergency Orders, *supra* note 57, at 4-8.

⁷⁹ See IDOC Prison Population Data Set, *supra* note **Error! Bookmark not defined.5**.

⁸⁰ The issues described in this document appear to raise potential civil rights concerns as well. With just a single exception (the women’s prison of Decatur), each and every one of IDOC’s public water systems serves a population that is significantly more non-white than the population served by public water systems in Illinois as a whole. The lack of meaningful IEPA oversight of IDOC’s public water systems in the face of grossly deteriorated systems, as compared to oversight of public water systems serving whiter populations, paints a clear picture of disparate impact. That IEPA was aware of the dire conditions in some prisons and yet let IDOC off the hook for years with informal slaps on the wrist suggests discriminatory intent. For these reasons, Petitioners believe that USEPA would be well-justified in conducting a Title VI compliance review of IEPA’s Water Division alongside acting on this SDWA Petition.

⁸¹ See U.S. Census Bureau, *supra* note 16.

owned and operated by IDOC) or from bottled water (also controlled and provided by IDOC). There are no plausible outside sources of waterborne illness within this population.

69. The complaints received about prisons state-wide reveal three categories of dangerous water infrastructure problems throughout the IDOC system: unhealthy water quality; lack of access to cold water, ice and showers in combination with inadequate ambient cooling; and failing drinking and sewer water infrastructure. Each of these types of interrelated problems can lead to poor health outcomes for incarcerated individuals.
70. Water quality conditions: The water quality to which individuals in IDOC custody are subjected would offend any reasonable water consumer. The appendices detail water quality threats such as insufficient *or* dangerously excessive disinfection measures⁸² and failures to comply with boil orders.⁸³ Water quality sampling—which is often either not being conducted regularly or not being reported properly⁸⁴— and/or other observable water conditions have revealed or indicate excessive levels of lead,⁸⁵ copper,⁸⁶ manganese,⁸⁷ and other heavy metal contamination,⁸⁸ and bacterial contamination such as cyanotoxins,⁸⁹ coliform bacteria,⁹⁰ and *Legionella*.⁹¹ People in prison have reported and/or been diagnosed with a wide range of health issues associated with water contaminant exposure ranging from neurological⁹² and cardiovascular⁹³ conditions to chronic gastrointestinal illnesses.⁹⁴ In one

⁸² See Appendix C.

⁸³ See Appendix B.

⁸⁴ IDOC Email Attachment – Correctional Water Quality Spreadsheet.

⁸⁵ See Appendices B and D.

⁸⁶ See Appendix A.

⁸⁷ See Appendix B.

⁸⁸ See Appendix B.

⁸⁹ See Appendix C.

⁹⁰ See Appendices A, B, and D.

⁹¹ See Appendices A, B, and D.

⁹² See Appendix B and C.

⁹³ See Appendix B.

⁹⁴ See Appendix C.

instance, an individual was sent into multiple organ failure after contracting Legionnaire's Disease.⁹⁵ IDOC staff seems to be well-aware of these sorts of problems, as petitioners have received numerous reports from incarcerated individuals that IDOC staff do not drink the prisons' water, and representatives of Petitioners have themselves been warned by staff not to drink the water during prison visits. Indeed, even when individual IDOC staff try to respond to contamination found in drinking water samples, they appear to do so by seeking ways to obtain different results without addressing the cause of contamination. Facts suggest that such measures can be not only ineffective, but also exacerbate other contamination problems.⁹⁶

71. Lack of cold water, ice, showers and inadequate ambient cooling: Petitioners have received several reports of IDOC facilities where the water that is available is not available with any temperature control, including recurring lack of cold water and showers. The vast majority of Illinois prisons are not air conditioned.⁹⁷ Many cells where people are confined have no windows, or windows that do not open. Thus, even circulation of hot air is severely restricted. Temperatures in some cells can reach dangerously high levels, i.e., in excess of 100 degrees, posing severe risks to the health and even life of people in those cells.⁹⁸ Without external means to cool off, the evaporative cooling effect from sweating is the only source of protection from heat-related illness that is potentially lethal.⁹⁹ In fact, a combination of these

⁹⁵ See Appendix B.

⁹⁶ See *infra* Appendix B, paragraphs 122-124; 128.

⁹⁷ Jeanine Santucci, Javier Zarracina, and Jennifer Borresen, Map shows at least 44 states lack universal air conditioning in their prisons, USA Today, September 12, 2022. <https://www.usatoday.com/in-depth/graphics/2022/09/12/american-prisons-air-conditioning-heat-climate/8017395001/#:~:text=Eight%20out%20of%20the%20state's,and%20fans%20in%20extreme%20temperatures> (stating that only eight out of thirty-three IDOC facilities have air conditioning in inmate housing areas, according to IDOC spokesperson Naomi Puzzello).

⁹⁸ See Appendix A.

⁹⁹ See, e.g., Jolie McCullough, *As the death toll in stifling Texas prisons climbs...*, The Texas Tribune (Aug. 21, 2023). <https://www.texastribune.org/2023/08/21/texas-prison-heat-deaths/>. At least 41 people died from heat-related deaths in Texas prisons in the summer of 2023.

issues appears to have led to at least two deaths at Menard.¹⁰⁰ Individuals in prison thus may require even more water than the average non-incarcerated individual to protect human health, and conversely the harm is even greater if they are deprived of safe and adequate clean, cold water.

72. Failing water infrastructure: IDOC facilities have nearly \$2.7 billion in already acknowledged deferred maintenance needs at the present time.¹⁰¹ Among the needs acknowledged are water treatment upgrades, restroom renovations, boiler and chiller replacements, sprinkler system updates, and demolition of structures in disrepair.¹⁰² Stateville has the lowest Building Conditions Index (BCI) score of the twenty-seven IDOC facilities, with a mere 57/100.¹⁰³ Additionally, Pontiac is highlighted as “suffer[ing] from poor water quality and antiquated plumbing fixtures.”¹⁰⁴ Some facilities have no approved cross-connection controls, putting entire populations at risk of cross-contamination of drinking water with sewage.¹⁰⁵ As of May 2023, all twenty-seven IDOC facilities in operation have received NOV’s from the IEPA regarding their infrastructure failures. IDOC’s consultant found only three of those facilities to be “fully operational.”¹⁰⁶
73. It is important to note that these problems known to Petitioners are based on constrained information and, therefore, likely understate the extent of these dangerous problems. Access to IDOC facilities is, of course, under tight control. The areas most representative of water

¹⁰⁰ Menard is one of the prisons with failing water and sanitation systems and is addressed in detail in Appendix D.

¹⁰¹ Gov. J.B. Pritzker, *Illinois State Capital Budget Fiscal Year 2024*, at 36 (Feb. 25, 2023), <https://budget.illinois.gov/content/dam/soi/en/web/budget/documents/budget-book/fy2024-budget-book/Fiscal-Year-2024-Capital-Budget.pdf>.

¹⁰² *Id.* at 38.

¹⁰³ Illinois Department of Corrections, *Facility Master Plan Final Report May 2023* at 40. (“Overall, Stateville had the worse average BCI rating with (57), with 24 percent of its buildings in the red category. Eleven of Stateville’s buildings scored 10 or below, identifying complete degradation, inoperability, and need for replacement. An independent structural study of the Quarterhouse housing units found significant structural concerns including structural deteriorating from water penetration that results in serious safety concerns.”)

¹⁰⁴ *Id.* at 82.

¹⁰⁵ See Appendix C.

¹⁰⁶ *Facility Master Plan* at 4.

consumption (i.e., cells, kitchens, showers) are completely inaccessible to the general public; even the facilities' own public water system operators face obstacles in sample collection due to IDOC's security policies.¹⁰⁷ Furthermore, bringing any third-party testing equipment *in* or bringing water samples *out* is essentially impossible short of discovery in litigation, and in Petitioners' experience even then access is highly limited. Individuals under IDOC custody are completely under the control of IDOC and its regulating agencies for access to clean water and even to *information* about the cleanliness of their water.

74. Despite obstacles and discouragements, many incarcerated individuals do persevere and bring claims of contaminated water to court *pro se*. A number of these cases are discussed in this Petition. That the water and sanitation issues plaintiffs have raised continue today illustrates a stark reality of our "justice" system: the Prison Litigation Reform Act requirement that prisoners exhaust their administrative remedies, combined with the slow pace of prisoner litigation, means that individuals bringing cases are often transferred to a new facility before they get a ruling. Because of the challenges of proving physical harm on an individual basis, most of the *pro se* cases seek only injunctive relief. Therefore, cases become moot once an incarcerated person is transferred and before there can be a ruling on the merits. Combined with the lax environmental regulatory treatment described in this petition, the result is that systemic issues like chronic water system dysfunction carry on virtually unabated.

IEPA's Failure to Take Action Sufficient to Protect Public Health and Prevent Endangerment to People Incarcerated at IDOC Prisons

75. IEPA is the agency with primacy for ensuring that any and all public water systems in the State of Illinois comply with the SDWA and implementing regulations. Each prison in IDOC contains a regulable public water system: no IDOC facility houses fewer than twenty-five individuals at any time, and each IDOC facility provides water to the members of the public

¹⁰⁷ E-mail from Frank Dunmire, Executive Director, Illinois Rural Water Ass'n, to Mary F. Reed, Compliance Officer, Ill. Env't'l Prot. Agency, Re: Stateville (September 28, 2021) (requesting to collect smaller batches of samples over multiple visits: "As you can imagine, collecting samples from within a max security correctional facility is not the easiest of tasks. Many moving parts have to come into play while collecting twenty lead/copper samples.").

in IDOC custody through a system of pipes or other constructed conveyances.¹⁰⁸ Therefore, each prison water system is a public water system subject to USEPA’s emergency authority.

76. Under Illinois law, each IDOC prison water system is also a “community water supply,” defined as “a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.”¹⁰⁹

77. All community water supplies in Illinois must meet certain operational requirements under State law, such as adopting a cross-connection control program,¹¹⁰ maintaining a broad range of monitoring equipment,¹¹¹ keeping daily operating reports of chlorine dosage and residual test results,¹¹² having an emergency operation plan in place,¹¹³ ensuring turnover of stored water to avoid stagnation,¹¹⁴ and generally meeting the requirement that any water delivered to the user shall “contain no impurity that could reasonably be expected to cause offense to the sense of sight, taste, or smell.”¹¹⁵

78. In addition, community water supplies other than those deemed “exempt” must demonstrate compliance with primary drinking water standards, including implementation of sampling and monitoring programs for chlorine, coliform bacteria, lead and copper, and disinfection byproducts.¹¹⁶

79. As under the SDWA, Illinois state law “exempts” certain systems from these primary drinking water standards, so long as: they have no collection or treatment facilities; they obtain all water from (but are not owned or operated by) a non-exempt public water system;

¹⁰⁸ See 42 U.S.C. § 300f(4)(A).

¹⁰⁹ Ill. Admin. Code tit. 35 § 601.105 (2017).

¹¹⁰ *Id.* §§ 604.1505, 653.801.

¹¹¹ *Id.* §§ 604.130.

¹¹² *Id.* §§ 653.605(a), 604.165.

¹¹³ *Id.* § 604.135(d).

¹¹⁴ *Id.* § 604.1300(f).

¹¹⁵ *Id.* § 601.101(b)(1).

¹¹⁶ 42 U.S.C. § 300g; Ill. Admin. Code tit. 35 § 611.100 (2017).

they do not sell water; and they are not a carrier in interstate commerce.¹¹⁷ This coverage limitation is specific to the primary drinking water standards and does not extend to other rules ensuring safe drinking water; nor, as set forth above, does a system's exempt status interfere with USEPA's emergency authority where human health is in potential danger.

80. As set forth in more detail below, for many years IEPA treated most of IDOC's prisons as "exempt" from primary drinking water standards. The handful of prisons that IEPA considered non-exempt prior to December 2022 are the Stateville Correctional Center (including the Northern Reception and Classification Center) ("Stateville"), Vienna Correctional Center ("Vienna"), Sheridan Correctional Center ("Sheridan"), Vandalia Correctional Center ("Vandalia"), and Dixon Correctional Center ("Dixon").

81. In addition to the long history of individuals and other advocates for incarcerated people trying to bring water justice to IDOC facilities, Petitioners have collectively raised their voices to call for an end to these water injustices since the fall of 2021. Despite numerous attempts at communication between Petitioners and agencies responsible for IDOC prison facilities, progress has been elusive. Multiple exchanges have taken place, each seemingly unable to break the impasse or achieve a satisfactory resolution. The appendices detail communications between Petitioners and Governor Pritzker, the Illinois Capital Development Board, IEPA and IDPH, and these government representatives' lack of actions or inadequate actions to produce necessary improvements.¹¹⁸

82. Petitioners are not aware of any IEPA effort to connect directly with individuals incarcerated at IDOC prisons to hear from these people about their concerns with the systems whose proper functioning IEPA is supposed to ensure.

83. Of the thirty IDOC facilities inspected by IEPA in 2022, all 30 have received notices of violation since December 2022.¹¹⁹ While this long-overdue action is one step in the right

¹¹⁷ *Id.*

¹¹⁸ *See* Appendix E.

¹¹⁹ It is plausible that all thirty inspected IDOC facilities will ultimately be found to have been in violation. All twenty-two facilities that were inspected prior to November 1, 2022, have received NOV's, meaning that it is likely that the notices are being processed roughly chronologically with inspections.

direction, the content of these violations illustrates not just past patterns of regulatory neglect, but an ongoing inadequate approach by IEPA when it comes to addressing actual water quality issues.

84. With the exception of the three facilities that were inspected by USEPA (that is, Stateville, Vienna, and Sheridan), the violations issued by IEPA are largely focused on documentation deficiencies rather than physical ones. In some cases, this may be because IEPA's inspections are not consistently as thorough in identifying physical deficiencies as are USEPA's. A comparison of USEPA's inspection report on Stateville with IEPA's inspection report of the same facility, which occurred just six weeks prior, demonstrates this state agency shortcoming. IEPA's description of problems amounts to a note that there is no approved cross-connection control ordinance and various other documentation issues.¹²⁰ IEPA also noted documentation of the low free chlorine residual at the facility. USEPA, on the other hand, inspected and detailed the physical deterioration of the drinking water infrastructure.¹²¹ USEPA's more searching inspection uncovered that a valve inside the water tower was "broken and leaking for several years." The overflow pipe and water lines "were severely rusted and peeling." The base of the tower was "covered in mildew" and USEPA confirmed that no devices or equipment were present inside to turn over the water. In contrast, under the box labeled "General Condition of Plant," IEPA simply entered "Satisfactory" and made a "recommendation" for the operator to note that standing water around the outside of the elevated tank "may damage" the tank. Troublingly, USEPA "asked when the last time the water tower had an interior inspection." Stateville staff "stated they were not aware of the interior or exterior of the water tower being inspected since it was installed and have no records of inspections or maintenance work done."
85. The twenty-seven facilities that were *not* inspected by USEPA and that have received NOV's to date were issued violations following a highly similar checklist of documentation issues. IEPA generally has checked whether a facility submits monthly operating reports; maintains a systematic flushing program; has established an emergency operations plan; maintains records of annual tests of backflow preventers; has a nitrification action plan; carries proper

¹²⁰ IEPA Inspection Report of Stateville (October 25, 2022).

¹²¹ USEPA Inspection Report of Stateville Correctional Center (November 29, 2022).

test equipment for chlorine residuals; and has received construction permits for installed equipment. In addition, “non-exempt” facilities receive violations for failure to maintain a sample siting plan and failure to sample for lead, copper, coliform, disinfectant residuals, and disinfection byproducts; in addition, these facilities are instructed to recruit a Responsible Operator in Charge of the water systems. A scant few have received one or two additional violations that relate to issues identified during a physical inspection. For example, rust on the storage tank was noted at Graham, and an inadequate seal for an injection port was noted at Pontiac. All in all, these NOV’s reveal that: (a) IEPA oversight continues to be far more limited than what USEPA could provide, especially in terms of identifying physical deficiencies needing correction, rather than focusing exclusively on minimum standards of documentation; and (b) under IEPA’s watch, IDOC’s facilities have largely not even achieved those bare minimum standards, nor faced any significant pressure to do so, until Petitioners began demanding action and USEPA expressed interest in the issue in late 2022 and 2023.

86. The lack of regulatory data from these facilities further complicates efforts by people in prison and members of the non-incarcerated public to ensure that the population of those prisons can actually get clean water. In the face of this compliance chasm, complaints made by the consumers of each prison public water system’s water are the main source of information available to Petitioners regarding the true water quality. For instance, according to IDOC, the prison agency has received complaints of discolored water at Lawrence; at Logan, individuals in one housing unit in particular reported to IDOC that water was making them sick; and at Shawnee, individuals have complained to IDOC about a fishy odor and offensive taste.¹²² At Pontiac, incarcerated individuals consistently have raised complaints about the presence of black substances, both oily and particulate, throughout their water system. Petitioners’ coalition’s efforts to uncover and illustrate the water quality and health issues at Pontiac are described in more detail in Appendix B.

87. It appears that IEPA became aware of IDOC’s version of the conditions described in these complaints, including IDOC’s dismissive characterization of the “black specks” in Pontiac’s

¹²² “IDOC Email Attachment - Correctional Facility Water Quality Spreadsheet.xlsx” at cell C31.

water as “degradation of rubber in facet [sic] diaphragms,” no later than May 6, 2022.¹²³

IEPA also directly received complaints, such as from a man formerly incarcerated at Shawnee who, in January 2022, flagged a range of water complaints and noted that he was aware of other individuals with similar complaints who were willing to come forward.¹²⁴

88. After so many years with no compliance records or approved operational plans, the reason why these facilities began to receive formal Notices of Violation only in late 2022, is unclear. IEPA’s actions do coincide, however, with USEPA’s involvement in water issues within the prisons, which upon information and belief began around early 2022, after Petitioners’ coalition approached the federal agency in December 2021 with concerns about water quality in Illinois prisons.¹²⁵

89. Further emphasizing the value of federal intervention to date, the three facilities that USEPA inspected in addition to IEPA’s inspections—Vienna,¹²⁶ Stateville,¹²⁷ and Sheridan¹²⁸ — received more substantive NOV’s from IEPA during the same time frame than the facilities that USEPA did not inspect. For example, following USEPA’s November 29, 2022, Inspection Report of Vienna Prison,¹²⁹ IEPA released a NOV for the facility on February 6,

¹²³ *Id.*

¹²⁴ “IEPA Email (January 10, 2022) Citizen complaint - Shawnee (Marion RO) and Stateville Northern Reception and Classification Center.pdf”

¹²⁵ *See, e.g.*, March 2022 email thread among Charles Gunnarson, IEPA, Sanjay Sofat, IEPA, and Robert Fanning, IDOC, discussing the lack of IDOC follow-up to a USEPA information collection request regarding IDOC water systems. “IEPA Email (March 25, 2022) FW Discussion.pdf”

¹²⁶ Letter from Joey Logan-Pugh, Ill. Env’t Prot. Agency, to Vienna Correctional Center, Re: Violation Notice: Vienna Correctional Center, Facility No. IL0875510, Violation Notice No. W-2022-00070 (Dec. 13, 2022).

¹²⁷ Letter from Joey Logan-Pugh, Ill. Env’t Prot. Agency, to Stateville Correctional Center, Re: Violation Notice: Stateville Correctional Center, Facility No. IL1977910, Violation Notice No. W-2023-00073 (Jan. 9, 2023) [hereinafter IEPA Stateville Violation Notice].

¹²⁸ Letter from Joey Logan-Pugh, Ill. Env’t Prot. Agency, to Sheridan Correctional Center, Re: Violation Notice: Sheridan Correctional Center, Facility No. IL0995840, Violation Notice No. W-2022-00072 (Dec. 27, 2022).

¹²⁹ USEPA Inspection Report of Vienna Correctional Center (October 20, 2022).

2023.¹³⁰ IEPA’s inspection of Vienna concerned both the maintenance of the water infrastructure *and* the quality of the water at sampling sites “representative of the water throughout the distribution system,” including samples of drinking water distributed to the incarcerated population.¹³¹ The USEPA report for its Stateville inspection concerned the operational viability of *only* the water infrastructure system as a whole, such as by testing and monitoring of the water source by system operators.¹³² Based on this report, USEPA did not assess the state of the water infrastructure at the point of consumption within the cells or living quarters.

90. A more detailed history of issues at Stateville and at Vienna, as well as at Pontiac, can be found in Appendices A through C. These issues involve the confirmed or likely presence of contaminants in the public water systems, as well as operator and regulator inaction or ineffective action that grounds the need for USEPA emergency intervention to protect human health.

91. At the same time, while these prisons present some of the most egregious issues that Petitioners have received complaints about from incarcerated individuals and for which some information was available from state entities, Petitioners emphasize that the water and sanitation issues within IDOC prison water systems extend well beyond this set. Rather than being exceptional, these highlighted facilities illustrate patterns. Petitioners therefore also include information on a number of other prisons supporting statewide USEPA intervention in Appendix D, and additional information on Petitioners’ attempts to engage state government entities in Appendix E.

CONCLUSION

92. In summary, multiple water contaminants are in or are likely to enter drinking water systems at various IDOC prisons. Such contaminants pose an imminent and substantial endangerment to the people forced to drink IDOC-supplied water based on the nature of the contaminants

¹³⁰ Letter from Joey Logan-Pugh, Ill. Env’t Prot. Agency, to Vienna Correctional Center, Re: Violation Notice: Vienna Correctional Center, Facility No. IL1055500, Violation Notice No. W-2023-00008 (Feb. 6, 2023).

¹³¹ *Supra* note 122, at p. 4-5.

¹³² *Supra* note 121, at p. 14.

themselves and the fact that harms from water contaminants appear to be occurring already—and appear to have been occurring for years. The pattern and practice of IDOC in neglecting its physical plant, including its water and sanitation systems, and its current attempts to avoid being held accountable to SDWA requirements are evidence that IDOC as a water utility is not acting to protect human health. Similarly, the pattern and practice of IEPA in failing to exercise proper oversight of IDOC prison water systems, of allowing deteriorated systems to continue on without penalty or binding orders to reform, and of taking even these steps only when subjected to public scrutiny and only so slowly as to barely nudge IDOC in the direction of compliance, are evidence that IEPA, as the state SDWA regulator, is also not acting to protect human health sufficiently. Because these state agencies have failed to address these human health threats so persistently and pervasively, Petitioners seek USEPA intervention now.

93. Specifically, Petitioners request USEPA take the steps and issue an order as described above in Paragraphs 19 and 20 to end the dangers posed by the ineffective actions of IDOC in maintaining its water systems.
94. USEPA has the authority and the responsibility to intervene when states fail to protect the public from unsafe and unhealthy drinking water. The state's duties under the SDWA must be applied—and USEPA's oversight responsibilities must be exercised—with particular rigor when those harmed by unsafe drinking water are vulnerable communities, including vulnerable populations in state custody. Petitioners urge USEPA to exercise that authority now on behalf of Illinois incarcerated individuals who have no choice but to drink and bathe in contaminated water that threatens their health every day or go without water entirely.

**APPENDIX A:
STATEVILLE CORRECTIONAL CENTER**

95. Stateville Correctional Center (“Stateville”) opened nearly a century ago, in 1925. Stateville is located about an hour Southwest of Chicago near Joliet, Illinois, and is a parent institution for the Northern Reception and Classification Center (“NRC”), which opened in 2004 and approximately doubled Stateville’s population capacity.¹³³
96. As of September 30, 2023, IDOC reported that Stateville (including NRC) housed 2,230 incarcerated individuals, 64% of whom are black and 79% of whom are a race other than white.¹³⁴
97. Stateville purchases water from the nearby city of Crest Hill. Until August 2021, Crest Hill also provided Stateville with a Responsible Operator in Charge (“ROINC”) for the system. In 2021, the City declined to continue serving in that role as issues with the Stateville system mounted, as discussed in more detail below.¹³⁵ NRC is treated as part of Stateville for purposes of Stateville’s public water system (system number: IL1977910), and sampling for the Stateville system occurs both at NRC and at the older, non-NRC portions of Stateville.
98. According to regulatory documents, Stateville’s plumbing is composed of copper with lead solder.¹³⁶
99. Over the years, Stateville’s water has been affected by problems that are ongoing and multiple in nature. Attempts to remediate these problems have been ineffective or very temporary such that the water problems have continued over many years. IEPA and IDOC have neglected Stateville’s public water system for long enough that a violation notice issued

¹³³ Ill. Dep’t of Corr., “Stateville Correctional Center,” ILLINOIS.GOV (last visited March 8, 2024), <https://idoc.illinois.gov/facilities/allfacilities/facility.stateville-correctional-center.html>. Herein, references to “Stateville” include NRC.

¹³⁴ IDOC Prison Population Data Set, *supra* note 15.

¹³⁵ Crest Hill City Council, Resolution 1111 Canceling Stateville Intergovernmental Agreement (June 21, 2021).

¹³⁶ Letter from Jay Timm, Ill. Env’tl Prot. Agency, to Frank Dunmire, Stateville Correctional Center, Re: IL1977910, Stateville Correctional Center – Additions to Lead/Copper Site Plan, at 4 (Jan. 12, 2022) [hereinafter Stateville Lead/Copper Site Plan] (listing premise plumbing as “CLS”).

subsequent to USEPA’s November 2022 inspection found that “[d]elayed and deferred maintenance on critical components . . . have deteriorated beyond maintenance level and now require immediate repair.”¹³⁷

100. Petitioners have received drinking water-related complaints from individuals incarcerated at Stateville about discoloration, visible black particles, unpleasant sewage-like taste and smell, and irritation of the skin. One person released from the NRC portion of the Stateville public water system in early 2022 reported that he received notice of high copper levels in the water from IDOC. He also reported that he immediately got sick upon drinking the water, with blood in his stool. He filed grievances and sought medical attention, but reported the issues were not addressed. The same person described receiving 10 bottles of water from IDOC every 2 weeks. Petitioners have also received reports that incarcerated individuals at Stateville have used cotton sheets to craft makeshift filters which are visibly stained after use. One individual who was recently released from Stateville after five years at the facility (and after thirteen years in IDOC custody overall) reported to Petitioners that he had his blood tested for lead at his first medical appointment after release and received results above 80 µg/dL of lead, and subsequently required chelation treatment via painful stomach injections.¹³⁸

101. The water at Stateville tested positive for *Legionella* bacteria “multiple times” in 2022.¹³⁹ In addition, in mid-April 2023 and well after IDOC represented that it was implementing new plans to address *Legionella* at the prisons, Petitioners received reports from individuals

¹³⁷ IEPA Stateville Violation Notice, *supra* note 127.

¹³⁸ Broderick Hollins, *Broderick Hollins: Stateville prison’s tap water gave me severe lead poisoning. My friends are still drinking it.* May 18, 2023. <https://www.chicagotribune.com/2023/05/18/broderick-hollins-stateville-prisons-tap-water-gave-me-severe-lead-poisoning-my-friends-are-still-drinking-it/>.

¹³⁹ Email from Camile Lindsay, Ill. Dep’t of Corr., to Brian Cox, Ill. Dep’t of Pub. Health, Re: IDOC Legionella Updates (May 9, 2022). *See also*, Weill-Greenberg, E., “Illinois Prison Water Contamination Keeps Getting Worse,” *The Appeal* (Jul. 28, 2022), <https://theappeal.org/illinois-prisons-legionnaires-disease-water-new-testing/#:~:text=Legionella%20bacteria%20have%20been%20found,incarcerated%20across%20the%20impacted%20facilities> (*Legionella* testing data for the first half of 2022 obtained by The Appeal from the University of Illinois, showing fourteen positive samples between March and June 2022).

incarcerated at Stateville that there had been a positive *Legionella* sample or samples in the honors dormitory.¹⁴⁰ Petitioners have received reports from incarcerated individuals reporting difficulty in getting medical tests for issues such as suspected Legionnaire's or elevated blood lead. It is important to acknowledge that the data highlighted by Petitioners reflects a specific period, and Petitioners refrain from making any assertions about the adequacy of current *Legionella* testing protocols within any IDOC facilities.

102. Informal complaints in the past have escalated to *pro se* litigation over water conditions at Stateville, with plaintiffs alleging, *e.g.*, that the water in cell sinks was brown and smelled like feces, with grit and sandiness as well as visible particles, and that it caused vomiting, diarrhea, constipation, bad cramps, general malaise, headaches, and inflamed skin and redness leading to itchiness and flaking.¹⁴¹

¹⁴⁰ On April 24, 2023, Petitioners asked IEPA and IDPH for an update on whether *Legionella* had been detected recently at Stateville and related questions. IEPA responded the same morning that it would look into the matter “immediately” and IDPH responded that it would confer internally before providing a response. Having received no information, Petitioners reached back out to IEPA and IDPH on May 1 asking for an update; IEPA then responded on May 4 that “IEPA is still gathering information, but we have increased chlorine residual testing and coliform sampling at the facility. You may submit a FOIA request to obtain the Special Exception Permits issued by IEPA last week for this increased sampling, as well as the sample results showing no legionella detections in the April sample results submitted to us by IDOC.” Then, a member of Petitioners’ coalition submitted a records request for this information on May 5. On May 12, IEPA responded that it would need another five business days to respond, due to the records being at another location. IEPA then responded on May 16th that the agency had identified over 1,000 potentially responsive documents despite the request being targeted to only special exception permits and testing results from a single month. IEPA asked for an additional 10 business days to respond. Petitioners’ coalition member then responded asking for clarification on IEPA’s search given the narrow focus of the request. In May 2023, Petitioners received results that showed positive hits in January, and negative results later. However, in January of 2024, Petitioners submitted a separate Freedom of Information Act request to IDOC to confirm reports they had received regarding conditions at Stateville. In response to that request, IDOC provided *different Legionella* sampling results for the same facility over from the same time period. That IDOC and IEPA had different sampling reports with substantively different results for the same month raises serious questions and, minimally, suggests grossly inadequate recordkeeping regarding crucial drinking water quality and public health information.

¹⁴¹ *Hardy v. Godinez*, No. 12 C 6033, 2017 WL 2569605, at *3 (N.D. Ill. June 12, 2017); *Boyce v. Wexford Health Sources, Inc.*, No. 15 C 7580, 2017 WL 1436963, at *6–7 (N.D. Ill. Apr. 24, 2017).

103. The 2021 John Howard Association (“JHA”) monitoring report for Stateville describes drinking water conditions as follows: “Several people at Stateville Max reported concerns about drinking water. Some people reported that the water was ‘brown’ and that they had to purchase bottled water but were limited to an insufficient amount that can be purchased. Some people reported that staff will not drink the water. A JHA visitor observed that a staff area bathroom sink had a sign posted saying not to drink the water, which further feeds such concern. Someone wrote, ‘Also here at Stateville the tap water is making us very sick here, it’s brown like 2-3 times a week. Stateville is charging us for water just to survive (live). Is there something I can do or file about this issue?’”¹⁴² The 2013 John Howard Association monitoring report for Stateville notes similar issues.¹⁴³
104. Adding to these complaints, chlorine levels at Stateville have consistently been at dangerously low levels even during periods when IEPA appears to have deemed Stateville as meeting disinfection requirements, a fact identified during the scrutiny of outside inspection by USEPA.¹⁴⁴
105. Chlorine is a disinfectant meant to prevent microbial contaminants like harmful coliform bacteria and *Legionella* from proliferating through a water system.
106. At the IEPA inspection on September 26, 2014, free chlorine levels measured at both the maintenance garage and water tower were below the required minimum free chlorine residual level of 0.2 mg/L (and well below the recommended minimum of 0.5mg/L).¹⁴⁵

¹⁴² *Facility Report: Visits to Stateville & IDOC’s Northern Reception Center April 2021*, John Howard Association, 31-32, April 2021.
<https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/610991467729c958f0ff1f7c/1628016967293/JHA+Stateville+2021+final.pdf>

¹⁴³ *Monitoring Visit to Stateville Correctional Center 2013*, John Howard Association of Illinois, April 2013, at 12.
<https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d03e28f1e07180001daf79f/1560535695351/Stateville+Correctional+Center+Report+2013.pdf>.

¹⁴⁴ IEPA Stateville Violation Notice, *supra* note 127.

¹⁴⁵ Letter from Segundo Nallatan, Ill. Env’t Prot. Agency, to Stateville Correctional Center Public Water Supply, Re: Stateville Correctional Center – IL1977910 2014 Public Water Supply Inspection Report (Oct. 26, 2014) (describing inspection conducted September 26, 2014) [hereinafter 2014 IEPA Stateville Inspection Report].

107. Five years later, at the next IEPA inspection on July 30, 2019, the inspector noted that free and total chlorine were both under the required minimum level and that “there were discrepancies” between the inspector’s results and those recorded by the facility a short time earlier.¹⁴⁶
108. At an August 17, 2022, meeting among Petitioners, IEPA, IDPH and USEPA Region 5, Michael Brown, IEPA’s Division Manager for the Division of Drinking Water Supplies, acknowledged that Stateville has a water age problem.
109. On November 29, 2022, USEPA made its own inspection and found that on numerous occasions, Stateville had not met the required minimum chlorine levels. In contrast to an August 19, 2022, IEPA statement to a member of the press that Stateville “has reported chlorine residuals in compliance with state and federal requirements in all but three months dating back to January of 2018,”¹⁴⁷ USEPA identified over forty instances of dangerously low chlorine levels in the first ten months of 2022 alone (notably overlapping with months when Stateville had positive *Legionella* samples).¹⁴⁸ In other words, chlorine fell below the required minimum safe limit on an average of once per week for the entire period. USEPA noted that Stateville “does not have chlorine treatment in place” and that Stateville has never issued a boil water notice following a chlorine violation.¹⁴⁹ (Additional concerns with IDOC’s lack of compliance with boil order requirements are further addressed in the discussion of other prison facilities below.)
110. Low chlorine is far from the only contamination-related issue that IEPA and IDOC have allowed to fester at Stateville. As early as 2011, IEPA noted in inspections that Stateville has

¹⁴⁶ Letter from Segundo Nallatan, Ill. Env’t Prot. Agency, to Stateville Correctional Center Public Water Supply, Re: Stateville Correctional – IL197-7910 2019 Public Water Supply Inspection Report (Oct. 22, 2019) (describing inspection conducted July 30, 2019) [hereinafter 2019 IEPA Stateville Inspection Report].

¹⁴⁷ Email from Kim Biggs, to Meleah Geertsma, Re: Prison water problems (Aug. 19, 2022).

¹⁴⁸ U.S. Env’t Prot. Agency, Inspection Report: Stateville Correctional Center (November 29, 2022) [hereinafter USEPA Stateville Inspection Report], at 8. Notably, the identified instances of low chlorine occurred on dates that would not have aligned with IEPA’s “all but three months” characterization at the time it was made, in August 2022.

¹⁴⁹ *Id.* at 4.

no approved cross-connection control program.¹⁵⁰ At the time, IEPA also noted that the sump pump discharge pipe and finished water storage overflow both used a common pipeline that risked contamination of finished water, and that the potable water and wastewater systems shared a cross-connection that “must be removed to provide safe drinking water.”¹⁵¹

111. By the next inspection in 2014, IEPA noted once again that Stateville had no approved cross-connection control program, and that the system lacked backflow devices to prevent contamination.¹⁵²

112. In 2019, IEPA noted that the deficiencies in the cross-connection program that had been raised in the 2014 inspection had still not been corrected.¹⁵³

113. Finally, during USEPA’s 2022 inspection, Stateville represented to USEPA that the facility “do[es] not have a formal cross connection program” and that Stateville has not tested its backflow devices “in the last few years.”¹⁵⁴

114. For over a decade, IEPA and IDOC were well-aware of the lack of approved cross-connection program, the insufficient backflow device maintenance, and the consequent risk of contaminants entering the drinking water system. Both agencies were also aware for years that these cross-connection prevention shortfalls were accompanied by IDOC failures to test for chlorine residuals and coliform at times, as well as to maintain adequate chlorine residuals. Yet it took until after USEPA intervention, on January 9, 2023, for IEPA to issue a Violation Notice on these issues.¹⁵⁵

115. A similar confluence of IDOC and IEPA neglect has occurred over the years with respect to compliance with the Lead and Copper Rule (“LCR”).

¹⁵⁰ Letter from Segundo Nallatan, Ill. Env’tl Prot. Agency, to Stateville Correctional Center Public Water Supply, Re: Stateville Correctional Center – IL1977910 2011 Public Water Supply Inspection Report (June 30, 2011) (describing inspection conducted June 28, 2011) [hereinafter 2011 IEPA Stateville Inspection Report].

¹⁵¹ *Id.*

¹⁵² 2014 IEPA Stateville Inspection Report, *supra* note 145.

¹⁵³ 2019 IEPA Stateville Inspection Report, *supra* note 146.

¹⁵⁴ USEPA Stateville Inspection Report, *supra* note 148, at 4.

¹⁵⁵ IEPA Stateville Violation Notice, *supra* note 127.

116. Stateville has exceeded the action level for copper on tests dating back over a decade.¹⁵⁶

During the period from July 2018 through December 2021, Stateville exceeded the action level for copper in every round of sampling that IDOC conducted for compliance demonstration purposes.¹⁵⁷

117. Conversations between State and local authorities indicate that the problem was known, but reveal that neither State nor local authorities took or were prepared to take swift, corrective action.

118. On March 29, 2021, IEPA was contacted by the Crest Hill- employed ROINC who oversaw both Crest Hill and Stateville’s water systems.¹⁵⁸ The ROINC acknowledged that the system was failing copper samples but stated that “[a]t this point Stateville CC indicated that they will not be looking to build a phosphorus addition station and the City of Crest Hill will not be turning up the dosing of Phosphorus since our wells feed not only Stateville but also Crest Hill residents.” In other words, neither the parent water system, nor Stateville, had any intention of taking treatment measures for purposes of protecting incarcerated individuals that would be considered appropriate for non-incarcerated communities.

119. In the same March 29, 2021, letter, Stateville’s ROINC stated that “due to the size of the place and the workings of the internal plumbing we are failing copper samples.” Stateville’s LCR site plan indicates that the plumbing on the premises is composed of copper with lead solder.¹⁵⁹ An April 12, 2021, IEPA memo states that: “The system is not optimized for copper.”¹⁶⁰ In other words, both State and local authorities were aware that there was a likely systemic problem resulting in high copper levels at Stateville. Despite this, the next step taken by IEPA was to allow Stateville 1.5 years to conduct a corrosion control study.

¹⁵⁶ 2011 IEPA Stateville Inspection Report, *supra* note 150.

¹⁵⁷ USEPA Stateville Inspection Report, *supra* note 148, at 7.

¹⁵⁸ Letter from Mark Siefert, Stateville Corr. Center ROINC, to Ill. Env’t Prot. Agency (Mar. 29, 2021).

¹⁵⁹ Stateville Lead/Copper Site Plan, *supra* note 136, at 4 (listing premise plumbing as “CLS”).

¹⁶⁰ Memorandum from Jenny Larsen, Ill. Env’t Prot. Agency, to David Cook, Ill. Env’t Prot. Agency, Re: IL1977910 – (Will County) Stateville Correctional Center – OWQP and OCCT Review Project Plan Log No. 2021-0565 (Apr. 12, 2021).

120. In June of 2021, the city of Crest Hill’s City Council unanimously voted to cancel its agreement providing a ROINC to Stateville. This decision was based in part on the words of Stateville’s then-ROINC, who claimed that due to contaminants in the water, “[m]ore and more lawsuits are coming yearly and the ROINC income will never be able to outweigh the costs to defend staff.”¹⁶¹
121. For approximately two months beginning in August 2021, Stateville had no ROINC.
122. In October 2021, after hiring a new ROINC, Stateville once again exceeded the action level on its copper samples. The new ROINC directed that the sample sites be flushed for two hours prior to sampling, apparently in an attempt to lower the copper level in the samples. “Prior to sampling in October,” he wrote to IEPA, “I had them flush each of the sample sites for at least two hours before shutting them down so that the water could remain motionless for the required amount of time. *Obviously, that did not work!*”¹⁶² In other words, while pre-flushing would normally reduce copper levels, such flushing did not result in lowering the copper levels at Stateville.
123. IDOC then fitted with filters all seven sites that had copper exceedances in the October 2021 samples with filters during the following month, invalidating those sites for future compliance sampling.¹⁶³
124. A separate firm retained by IDOC, Andrews Engineering, conducted sampling in November 2021 as well.¹⁶⁴ The firm’s narrative report of the testing also states that samples were taken immediately after system flushing: “The samples were collected after each faucet was opened and run for approximately five (5) minutes. After the five minutes, [name

¹⁶¹ Crest Hill City Council, Resolution Authorizing Cancellation of Intergovernmental Agreement and Addendum Between Stateville Correctional Facility and the City of Crest Hill (“IGA”), Res. No. 1111 (June 21, 2021).

¹⁶² Email from Frank Dunmire, Ill. Rural Water Ass’n, to Mary F. Reed & Steve Vance, Ill. Env’t Prot. Agency, Re: SCC (Nov. 10, 2021).

¹⁶³ Email from Frank Dunmire, Ill. Rural Water Ass’n to Mary F. Reed, Michael L. Brown, David Cook & Steve Vance, Ill. Env’t Prot. Agency, Re: STATEVILLE (Nov. 23, 2021).

¹⁶⁴ Letter from Kenneth W. Liss, Andrews Engineering, to Rodney Thacker, Ill. Dep’t of Corr., Re: IDOC-EPA Water Testing Preliminary Report Stateville Correctional Center (Nov. 29, 2021).

withheld] opened the lab provided bottle and filled the sample container.” Notably, even with this flushing, Stateville exceeded the action level for copper in this sampling event. Upon seeing the Andrews Engineering report, Stateville’s ROINC stated in an email to IEPA: “I guess [Stateville] feels I do not need to know what is going on – be glad to get out this one [sic].”¹⁶⁵

125. Ultimately, with IEPA’s approval, it appears that IDOC does not now use any of its prior compliance sampling sites at Stateville that had levels above 15 ug/L lead and/or 1300 ug/L copper in the October 2021 or November 2021 sampling events for compliance sampling. When IDOC submitted sampling results using many new sites and indicating that the 90th percentile of sites were below LCR action levels for the July 2022 through December 2022 sampling period, IEPA concluded that the current phosphate treatment originating in Crest Hill is effective in treating the system at Stateville.¹⁶⁶

126. In Stateville’s October 2022 lead and copper sampling, while the 90th percentile (i.e., the 18th highest sample of 20 samples) was below the action level for lead, the 19th and 20th samples were above 15 ug/L.¹⁶⁷ Troublingly, the sites above 15 ug/L were potentially the most likely of the revised sampling sites to represent the water actually used for human consumption by individuals incarcerated at Stateville: the residential “C block” (34 ug/L) and the Dietary Kitchen (17 ug/L). The “D Block” residential area sample also had relatively high lead, at nearly 10 ug/L. In combination with the experiences of those incarcerated in Stateville of visible particles in the water and high blood lead levels, these high lead sampling results raise concerns that the LCR testing being done is not representative of the

¹⁶⁵ Email from Frank Dunmire, Ill. Rural Water Ass’n, to Mary F. Reed, Ill. Env’t Prot. Agency, Re: Stateville’s updated water test results (Dec. 2, 2021).

¹⁶⁶ Letter from Ill. Env’t Prot. Agency to Petitioners Re: Follow-up Questions from Correctional Facility Water Meeting, August 2022, at 14 (February 9, 2023) [hereinafter IEPA February Letter to Petitioners].

¹⁶⁷ Ill. Env’t Prot. Agency, Drinking Water Branch, “Chem/Rad Samples,” ILLINOIS.GOV (last visited May 16, 2023), https://water.epa.state.il.us/dww/JSP/NonTcrSamples.jsp?tinwsys_is_number=718142&tinwsys_st_code=IL&tsaanlyt_is_number=25&tsaanlyt_st_code=HQ&history=1&counter=0 (showing lead sampling results for Stateville Correctional Center).

actual water incarcerated individuals consume from the Stateville public water system and may substantially underestimate lead and copper ingestion by incarcerated individuals.

127. Petitioners understand that IDOC replaced porcelain fixtures at Stateville in or around the late 1990's or early 2000's with stainless steel toilet-sink combination units.¹⁶⁸ Petitioners understand that IDOC replaced the final section of piping back into the wall when it installed the new fixtures. Thus, as LCR compliance sampling currently only requires a first-draw sample, lead and copper compliance results from Stateville and other IDOC prisons likely represent water that stagnates in these newer segments of piping and not water that sits in older piping further back into the plumbing. Reports by incarcerated people at Stateville of significant particles in their tap water, in contrast, suggest that the older piping is significantly deteriorated and releasing significant amounts of lead and copper into the water that individuals consume.

128. Given that the ROINC at Stateville has stated that prolonged flushing “did not work” to lower copper levels in the facility, and given that flushing is or was used at Stateville to address low chlorination and appears to be undertaken by Stateville to address *Legionella* risk at the facility, which IDOC attributes to the combination of stagnant water and low disinfectant levels¹⁶⁹, Petitioners are concerned that flushing is mobilizing metals from the copper piping with lead solder that serves Stateville's consumers.

129. Petitioners are also concerned that there is evidence of high copper levels at the NRC portion of Stateville that may be related to how the water interacts with newer copper piping in this portion of the Stateville campus. Source water that leans acidic can result in high levels of copper in drinking water, including from newer pipes that do not have significant coating from years of corrosion control treatment. As noted above, the NRC portion of the Stateville campus opened in 2004.

¹⁶⁸ Petitioners note concern that the proximity of the faucet to the toilet in such fixtures may also introduce a cross-contamination risk, if adequate shielding is not provided and given complaints of back-up issues with toilets at IDOC prisons. This concern is in addition to the risk of exposure to raw sewage from proximity of toilets to beds where incarcerated individuals sleep.

¹⁶⁹ See Ill. Dep't of Corr., Follow Up Questions to IDOC 1445 Response (July 26, 2022) (IDOC response to follow-up question 2.c).

130. Past copper sampling for the NRC portion of Stateville resulted in high levels of copper.¹⁷⁰ Such results include a high of 3,520 ug/L for copper at the “NRC Officers Dinning” sample location in October 2021, along with numerous other results between the action level of 1,300 ug/L and 3,170 ug/L at sampling locations tested between June 2020 and May 2022. Even after IDOC eliminated the worst of these staff-accessible sampling locations from testing by installing filters, copper sampling included results of 1,400 ug/L and 1,600 ug/L at two new cell sampling locations in April 2022 sampling (X House and E House), along with a 1,400 ug/L result at one other NRC location in May 2022 sampling (“NRC Refrigeration Shop”). It is unclear to Petitioners what measures IDOC and/or its consultants took to obtain October 2022 copper sampling results that are far below these other recent results, and so it is unclear whether the most recent results indicate a real reduction in overall copper levels at Stateville under actual drinking conditions over time.

131. In addition, the City of Crest Hill has had even higher levels of copper in recent compliance sampling, including at newer homes, providing further evidence of copper issues in the system that may be related to acidic water are being masked by compliance sampling. For instance, homes in Crest Hill have tested between 1480 ug/L and 4620 ug/L in recent compliance sampling; of these homes, roughly half were built after 2000 according to real estate listings. During 2014 sampling, Crest Hill’s water from Well 12 registered a pH of 6.68.¹⁷¹ When Petitioners asked IEPA for a general status update on Crest Hill’s lead and copper compliance sampling given these high results mirroring NRC sampling, IEPA simply referred Petitioners to the Crest Hill data on the agency’s website.¹⁷²

132. Given these copper sampling results and the complaint from a man formerly incarcerated at the NRC portion of Stateville reporting health symptoms consistent with high copper

¹⁷⁰ Petitioners obtained all sampling data discussed in the next two paragraphs via IEPA’s Drinking Water Watch website, <https://water.epa.state.il.us/dww/index.jsp>.

¹⁷¹ Drinking Water Branch Chem/Rad Sample Results: Crest Hill, March 12, 2014. https://water.epa.state.il.us/dww/JSP/NonTcrSampleResults.jsp?sample_number=14C0219-01_IOC&collection_date=03-12-2014&tinwsys_is_number=718064&tinwsys_st_code=IL&tsasampl_is_number=3393791&tsasampl_st_code=IL&history=1&counter=0

¹⁷² IEPA April Letter to Petitioners, *supra* note 25.

exposure, Petitioners are also concerned that people imprisoned at NRC are being exposed to levels of copper well above levels in the most recent compliance sampling.

133. IEPA appears to have accepted Stateville’s assertions that it is below the LCR action levels based on the sampling site results and IEPA appears to not be requiring any additional measures to characterize or address lead and/or copper issues at the campus.¹⁷³ Adhering solely to the letter of the Lead and Copper Rule—despite evidence as set forth in this petition that actual consumed levels of lead and copper in Stateville may be exceptionally high and negatively impacting the health of incarcerated people—is further reason why USEPA emergency action is needed.

134. Across these issues—insufficient chlorination, lack of a proper cross-connection control program, and lead and copper exceedances—the consumers of Stateville’s water have been let down year after year by State and local authorities who have acted without urgency to ensure that a population which is completely dependent on the State for clean water is actually receiving it. The actions of IEPA, of IDOC, of Stateville, and of Crest Hill have been neither effective nor timely to provide confidence that contaminants posing a danger to human health are removed from this public water system.

135. It was only after USEPA’s intervention that IEPA finally saw fit to formally issue a Violation Notice to Stateville pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act on January 8, 2023.¹⁷⁴

136. While drinking water has been the focus of Stateville more recent complaints received by Petitioners, Petitioner JHA has in the past observed and recorded sanitation failures at Stateville, thus documenting IDOC’s pattern and practice of allowing water and sanitation systems to fall apart while still housing people in the buildings “served” by those systems. For instance, in its 2011 monitoring report, JHA described the following: “The *effects of overcrowding, underfunding, and understaffing were evident throughout the facility, but most dramatically on display in housing unit F, the panoptic ‘roundhouse,’ which holds 400 incarcerated individuals in double-bunk cells designed to house one person. The nearly 90-*

¹⁷³ IEPA February Letter to Petitioners, *supra* note 166.

¹⁷⁴ IEPA Stateville Violation Notice, *supra* note 127.

year old building, described in detail in the body of this report, has no place in a modern, civilized correctional system. Its grim conditions include persistent, noxious noise-levels; substandard heating, cooling and air ventilation; infestations of cockroaches and other pests; *poor sanitation due to malfunctioning toilets, plumbing, and showers that are peeling and decaying*; broken and non-functioning windows; and a physical plant that is overall dilapidated and falling apart.”¹⁷⁵ IDOC finally closed F House in 2017.

137. In sum, information available to Petitioners indicates that contaminants such as lead, copper and harmful bacteria are present in or likely to enter Stateville’s public water system. Those contaminants enter and/or remain in the Stateville system as a result of insufficient chlorination, contamination via cross-connections, and/or by corroded pipes leaching lead and copper into the water consumed by Stateville’s incarcerated population. In addition, it appears that standard LCR testing may be especially inadequate here to capture high levels of lead and copper to which incarcerated individuals are actually exposed. Individuals incarcerated at Stateville report a range of health symptoms from ingesting and/or coming in contact with the water, consistent with exposure to harmful bacteria, lead, and/or copper. The chronology and substance of Stateville’s inspection reports and violation notices indicate that State and local responsible entities have been wholly unable or unwilling to meet the mandate of ensuring safe drinking water at Stateville for years.

¹⁷⁵ John Howard Ass’n of Ill., *Monitoring Visit to Stateville Correctional Center 7/13/2011* (Jul. 13, 2011), https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d03e3341abad300017622d0/1560535860759/JHA_Stateville_Monitoring_Report+2011.pdf

**APPENDIX B:
PONTIAC CORRECTIONAL CENTER**

138. Pontiac Correctional Center (“Pontiac”) is a mixed security prison in Pontiac, Illinois, about an hour and a half drive Southwest of Chicago. Pontiac opened over 150 years ago in 1871 as a Boys Reformatory School and transitioned to prison use in 1892; construction of the “North/South” cellhouse was completed in the same year.¹⁷⁶ In 1930, the State expanded the facilities with the addition of the “East/West” cellhouse.
139. As of the September 30, 2023, Pontiac housed 594 individuals in IDOC custody, 60% of whom are Black and 77% of whom are a race other than white.¹⁷⁷
140. Since at least 2008, IDOC has considered closing Pontiac for cost-saving reasons.¹⁷⁸ IDOC has noted “[t]he deteriorating condition of Pontiac Correctional Center is such that an independent survey of the facilities conducted by the Illinois Capital Development Board (ICDB) during February 2008 listed more than \$108 million of deferred maintenance needs over the next five years.”¹⁷⁹ The IDOC noted that the ICDB’s evaluation included only “targeted structural properties” and as such omitted other needs like sewage system fixes.¹⁸⁰
141. The pipes that comprise Pontiac’s water system are predominantly composed of iron.¹⁸¹ IEPA treated Pontiac as an “exempt” community water supply until February 6, 2023.¹⁸² For this reason, very limited drinking water sampling data is available to the public for Pontiac in IEPA’s drinking water online database. It appears that IEPA did consider Pontiac a non-exempt community water supply prior to 1992; historic data for the Pontiac system shows a

¹⁷⁶ Roger E. Walker, Jr. & Deanne E. Benos, Ill. Dep’t of Corr., *Proposed Pontiac Correctional Center Closure: Response to the Commission on Government Forecasting and Accountability* (July 15, 2008), <https://cgfa.ilga.gov/upload/DOC%20Response%20Pontiac.pdf>

¹⁷⁷ IDOC Prison Population Data Set, *supra* note 15.

¹⁷⁸ Walker & Benos, *supra* note 176.

¹⁷⁹ *Id.* at 2.

¹⁸⁰ *Id.* Petitioners attempted to locate additional documents related to this prior ICDB evaluation of Pontiac to see whether the ICDB review looked at within-building water system components, but were not successful.

¹⁸¹ IEPA Inspection Report of Pontiac (August 9, 2022), at 9.

¹⁸² IEPA Letter to Petitioners, *supra* note 25, at 4.

series of coliform monitoring violations from 1980 to 1992, most of them “major” violations.¹⁸³ Pontiac currently purchases water from the Illinois American Water Company (“IAWC”) system serving the City of Pontiac;¹⁸⁴ data in the IEPA online database for the IAWC-Pontiac water system IL1055030 does not include sampling sites at the prison.

142. People incarcerated at Pontiac have raised complaints about the prison’s drinking water for years. A review of *pro se* lawsuits brought against Pontiac identifies drinking water complaints going back at least to 2010. For example, the plaintiff in *Thompson v. Reed* alleged high blood pressure, headaches and pain that he attributed to drinking the foul water.¹⁸⁵ Similar *pro se* lawsuits alleged the following drinking water issues: water in the West House Gallery 1-9 was contaminated with black ink;¹⁸⁶ the faucet was rusted and had mold growing on it, and plaintiff experienced severe stomach pains, cramps, joint pain, migraine headaches and constipation from drinking the water;¹⁸⁷ and water from the faucet was cold, black and oily.¹⁸⁸
143. In 2020, Pontiac had two officially identified cases of Legionnaires’ disease.¹⁸⁹ One individual who contracted Legionnaires’ disease was airlifted to a hospital due to multiple organ failure; that individual is now on dialysis due to kidney failure.
144. Petitioners have received reports from incarcerated individuals that they are not provided health screenings when they complain of respiratory issues like coughs and headaches, which are symptoms of Legionnaire’s Disease, or symptoms of the ironically and aptly named

¹⁸³ Drinking Water Branch Violations: Pontiac Correctional Center, February 6, 2023. https://water.epa.state.il.us/dww/JSP/Violations.jsp?tinwsys_is_number=717144&tinwsys_st_co de=IL.

¹⁸⁴ IEPA Letter to Petitioners, *supra* note 25, at 4.

¹⁸⁵ *Thompson v. Reed*, No. 10-1182, 2010 WL 2653386, at *1 (C.D. Ill. July 1, 2010).

¹⁸⁶ *Campbell v. Melvin*, No. 17-CV-1227-JBM, 2017 WL 4682287, at *1 (C.D. Ill. Oct. 18, 2017).

¹⁸⁷ *Allen v. Prentice*, No. 18-CV-1345-JBM, 2019 WL 4863480, at *1 (C.D. Ill. Oct. 2, 2019).

¹⁸⁸ *Thomas v. Blackard*, 2 F.4th 716, 718 (7th Cir. 2021).

¹⁸⁹ Ill. Dep’t of Corr. & Ill. Dep’t of Pub. Health, Press Release, *IDOC and IDPH Investigating Legionnaires Disease Cases at Pontiac Correctional Center* (Sept. 10, 2020), <https://idoc.illinois.gov/news/press-release.22069.html>.

Pontiac Fever, a flu-like condition caused by exposure to *Legionella* bacteria characterized by fever, muscle aches, chills, headaches, and at times diarrhea.

145. Within the last two years, people incarcerated at Pontiac have conveyed to Petitioners similar complaints about the water and impacts from drinking and coming in contact with it to Petitioners. For example, Petitioners have received numerous complaints of a black, oily and/or ink-like substance in the water. One individual writing in August 2022 described this substance in the East cellhouse and conveyed that he started getting headaches after several weeks of drinking the water, along with vomiting and “daily” diarrhea. The individual started buying water from commissary and began to feel better. However, after running through the allowed 24 bottles of commissary water, he started drinking the tap water again, and again became sick. Another incarcerated individual reported a “black sludge” in the water nearly every day. Petitioners have received reports of incarcerated individuals using bedsheets, mattress material, and t-shirts to filter out the black substance.
146. Reports of the black inky substance date back to at least December 2016, as it was raised by the *pro se* plaintiff in *Campbell v. Melvin*, who was held at Pontiac’s West House from December 2016 to April 2017.¹⁹⁰
147. Petitioners have also received reports that drinking the water gave incarcerated people headaches and/or a sore throat and cough, including individuals who rarely got sick prior to their incarceration.
148. In addition, people report skin rashes and worsening of eczema, or flare-ups, from contact with the water. An individual who experiences such eczema flare-ups reported difficulty in obtaining medicine for his eczema as well, even though he had eczema and medication prior to his incarceration. Research indicates that some ethnic groups, particularly Black individuals, are at greater risk of eczema than other groups; similarly, Black individuals with eczema have more inflammation than white individuals with eczema.¹⁹¹ As a result, such

¹⁹⁰ *Campbell v. Melvin*, 2017 WL 4682287 at *1, *supra* note 186.

¹⁹¹ Patrick M. Brunner & Emma Guttman-Yassky, *Racial differences in atopic dermatitis*, 122 ANNALS OF ALLERGY, ASTHMA & IMMUNOLOGY, 449 (2018), <https://doi.org/10.1016/j.anai.2018.11.015>; Bridget P. Kaufman, Emma Guttman-Yassky, & Andrew F. Alexis, *Atopic dermatitis in diverse racial and ethnic groups—variations in*

water-contact health issues are of heightened concern with respect to Pontiac and the IDOC system as a whole that disproportionately incarcerates Black individuals and other people of color.

149. Monitoring reports issued by the John Howard Association for Pontiac document a range of water and sanitation issues consistent with these complaints dating back over a decade. In 2020, John Howard Association’s monitoring report noted that “[w]e continued to hear and observe concerns regarding cell conditions, particularly relating to plumbing issues being unaddressed. We observed leaks and constantly running water and were told that multiple requests had been made for repairs without results ... People expressed concerns regarding water quality and use improvised water filters that become discolored to try to clean their drinking water.”¹⁹² Additional past reports regarding plumbing and sanitation issues are described below.

150. Due to the number and type of complaints from individuals incarcerated at Pontiac, and the dearth of publicly available regulatory or other water-related information for this water system, members of Petitioners’ coalition administered a water-health survey similar to that used in Vienna to people held at Pontiac on February 1, 2023. This survey identified a high number of respondents reporting migraines, abdominal pains, diarrhea, sore throats, and bloody stool since arriving at Pontiac, which they attribute to the tap water. Respondents, in turn, consistently describe the tap water as discolored and containing a black substance, especially in East and West Houses. Only 5% of individuals surveyed reported using bottled water, with 77% of respondents using tap water, either from the sinks in their cells or from sinks in shared bathroom, kitchen, and work facilities. This lack of bottled water use is not due to incarcerated individuals believing they can drink the tap water, as 94% of respondents said they are consistently concerned by water quality. Rather, respondents note an inability to afford bottled water from the commissary; a refusal of medical staff to take their concerns

epidemiology, genetics, clinical presentation and treatment, 27 EXPERIMENTAL DERMATOLOGY 340 (2018), <https://doi.org/10.1111/exd.13514>.

¹⁹² *Facility Visit Briefing: Pontiac February 2020*, John Howard Association, 13-14, February 2020.

<https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5f74a75665982979f94c6dfb/1601480535749/JHA+Pontiac+Facility+Report+February+2020.pdf>.

seriously; and a grievance process that is completely unresponsive to formally filed complaints. In fact, respondents reported that the water at Pontiac tastes “swampy”, “musty”, or like “sewage”. Reports of a black oily and/or inky substance are consistent with the presence of iron bacteria and/or manganese bacteria in the Pontiac system. While neither form of bacteria is recognized as harmful to human health on its own, both forms of bacteria in drinking water can increase the risk of harm from other substances like harmful forms of bacteria—a significant concern at Pontiac given its history of *Legionella* and Legionnaire’s, as well as cross-connection shortfalls and sanitary sewer issues. These forms of bacteria can also indicate increased risk from heavy metals, which are also a concern at Pontiac given its age and parallels to Stateville, see above, and Menard, see below. Several respondents also reported knowing someone diagnosed with Pontiac fever or legionnaire’s disease associated with exposure to iron and manganese bacteria or *Legionella* through drinking water.

151. The presence of iron bacteria is noticeable by sight and smell. Water containing iron bacteria will create yellow, orange, red or brown stains and a rainbow-colored, oil-like sheen. Iron bacteria can also form a rusty, yellow, brown, or grey slime. Water containing iron bacteria can carry an odor that is swampy, oily, musty, or like sewage or rotten vegetation.¹⁹³
152. Iron bacteria can create harmful conditions in drinking water in three main ways. First, iron bacteria encourage the corrosion of iron pipes.¹⁹⁴ Corrosion of iron pipes leaches iron into water, which in turn can increase the leaching of lead into tap water.¹⁹⁵ For example, corroded iron distribution mains release iron into the water which corrodes lead in service lines, sealants, and premise plumbing.¹⁹⁶ Second, iron bacteria that form slime provide a

¹⁹³ Minn. Dep’t of Health, “Iron Bacteria in Well Water,” HEALTH.STATE.MN.US (Oct. 5, 2022), <https://www.health.state.mn.us/communities/environment/water/wells/waterquality/ironbacteria.html>.

¹⁹⁴ Maruf Mortula et al., *Review of Iron Bacteria in Water Distribution and their Identification in a Simulated Cast Iron Water Distribution System*, 2 UAP J. CIVIL & ENV’T ENG’G 13, 15 (2006), <https://www.uap-bd.edu/ce/journal/Journal%202/Iron.pdf>.

¹⁹⁵ Sara Jerome, *Are the Dangers of Iron in Water Being Ignored?*, WATER ONLINE (May 11, 2016), <https://www.wateronline.com/doc/are-the-dangers-of-iron-in-water-being-ignored-0001>.

¹⁹⁶ Benjamin F. Trueman et al., *Galvanic Corrosion of Lead by Iron (Oxyhydr)Oxides: Potential Impacts on Drinking Water Quality*, 51 ENV’T SCI. & TECH. 6812, 6814–6818 (2017), <https://pubs.acs.org/doi/pdf/10.1021/acs.est.7b01671>.

shelter for disease-causing bacteria to grow.¹⁹⁷ In addition, iron bacteria bind to chlorine, which reduces the effectiveness of chlorine in killing the harmful bacteria that grow in the iron bacteria's slime.¹⁹⁸ Therefore, iron bacteria in drinking water may pose a risk to health because they encourage harmful bacterial growth while degrading bacterial disinfectants.

153. With cellhouses built in the 1890s and 1930s, as noted above Pontiac has iron pipes that are prone to corrosion and failure, particularly in the East and West Houses constructed in the latter period.¹⁹⁹ While pipes in both eras likely lack both exterior and interior corrosion protection, two technology changes in the 1920s made iron pipes particularly vulnerable to failure until further technology advances in the 1950s and 1960s. First, a decrease in pipe thickness causes post-1920s centrifugally-cast pipes to fail more often than older pit-cast pipes. Second, the switch from lead to a sulfur cement compound to seal pipe joints also causes post-1920s pipes to fail more often than older, lead-sealed pipes.²⁰⁰ Thus, pipes from the 1920s to the 1950s are the most vulnerable to corrosion-induced failure.

154. Manganese bacteria is characterized by a black-brown slime.²⁰¹ Visible manganese bacteria is indicative of high manganese levels in the water as well. Manganese and manganese bacteria can have several negative impacts related to water quality, beyond the aesthetic impacts of visibly contaminated and unpleasant-tasting water. First, exposure to

¹⁹⁷ Mortula et al., *supra* note 194, at 15.

¹⁹⁸ R. Waskom & T. Bauder, *Bacteria in Water Wells*, Fact Sheet No. 6.703, COLO. STATE UNIV. EXTENSION (2013), <https://extension.colostate.edu/docs/pubs/natres/06703.pdf>.

¹⁹⁹ See IEPA Pontiac Inspection Report, August 9, 2022; see also U.S. Env't Prot. Agency, Office of Water, Deteriorating Buried Infrastructure Management Challenges and Strategies (May 2022), https://www.epa.gov/sites/default/files/2015-09/documents/2007_09_04_disinfection_tcr_whitepaper_tcr_infrastructure.pdf.

(“The majority of distribution piping installed in the United States, beginning in the late 1800’s up until the late 1960’s, was manufactured from cast iron.”)

²⁰⁰ *Id.*

²⁰¹ “Drinking Water Contaminant – Iron and manganese bacteria,” U.S. DEP’T OF AGRICULTURE NAT’L INST. OF FOOD & AGRICULTURE COOPERATIVE EXTENSION (Aug. 23, 2019), <https://drinking-water.extension.org/drinking-water-contaminant-iron-and-manganese-bacteria/>.

certain forms of manganese carries recognized neurological effects.²⁰² Second, manganese can interfere with detection methods for chlorine residual, producing falsely high reads that can mask failures to adequately disinfect.²⁰³ Manganese bacteria can transform dissolved manganese into insoluble manganese.²⁰⁴ Insoluble manganese adsorbs onto other elements from the surrounding environment, including lead, arsenic, and chromium.²⁰⁵ Because adsorption immobilizes the metals in water through the formation of particles or globs containing the metals, the metals can in theory be more readily removed from wastewater, aquifers, and soil; at the same time, if not removed, such particles/globs can be ingested by consumers of the water.

155. As iron and manganese often occur together and interact in the above ways, it is also critical that the two metals and related water quality contaminants and parameters be managed together as part of a comprehensive water system plan. The fact that incarcerated individuals have consistently been reporting substantial quantities of a black oily substance for upwards of six years indicates that IDOC has failed to manage risks related to iron, manganese, iron bacteria and/or manganese bacteria, and the increased risk of harm from other substances connected to these substances such as lead and harmful forms of bacteria.

156. It thus appears that IEPA has no intention of requiring IDOC prisons to examine iron or iron-bacteria related issues, and so that IEPA will not examine and require IDOC to address threats to health arising from iron or iron-bacteria (and by extension manganese or manganese bacteria). In response to Petitioners' questions regarding testing of iron and iron bacteria at Stateville, IEPA responded that Stateville was not required to test for iron because

²⁰² "Toxicological Profile for Manganese," U.S. DEP'T OF HEALTH AND HUMAN SERVICES, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (Sep. 2012) <https://www.atsdr.cdc.gov/toxprofiles/tp151.pdf>.

²⁰³ "EPA Small Drinking Water Systems Webinar: Manganese," U.S. ENVT'L PROT. AGENCY (Apr. 25, 2023), <https://www.youtube.com/watch?v=IYPZKakVIBo>.

²⁰⁴ Kati Geszvain et al., *The Molecular Biogeochemistry of Manganese(II) Oxidation*, 40 BIOCHEMICAL SOC'Y TRANSACTIONS 1244, 1244 (2012), <https://pubmed.ncbi.nlm.nih.gov/23176462/>.

²⁰⁵ Naoyuki Miyata et al., *Microbial manganese oxide formation and interaction with toxic metal ions*, 104 JOURNAL OF BIOSCIENCE AND BIOENGINEERING 1 (2007), <https://doi.org/10.1263/jbb.104.1>.

it purchases finished water from Crest Hill PWS.²⁰⁶ IEPA further responded that public water supplies are not required to test for iron bacteria.

157. According to incarcerated people who have contacted Petitioners, staff and administration are aware of the complaints, but are not responding to grievances about the water.
158. For example, IDOC is aware of the black oily substance. A document obtained by Petitioners from IEPA describes IDOC's reaction to the substance as follows: "Black specks in water. This is only at the East and West Cell House. It is only certain cells. It is degradation of rubber in facet [sic] diaphragm assemblies."²⁰⁷ IEPA received documentation of this complaint no later than May 6, 2022.²⁰⁸
159. IEPA inspected Pontiac on August 9, 2022. The IEPA report for this inspection, which IEPA failed to initially disclose in response to Petitioners' records request, is exceedingly thin, focusing on determining whether Pontiac "treats" its water, which would render the prison "non-exempt" and so subject to onsite sampling requirements for various contaminants and other water quality-related parameters.²⁰⁹ No mention is made of the black oily substance, despite the fact that IEPA was aware of complaints about the black oily substance at the time of the inspection.
160. IEPA issued Pontiac an NOV nearly 6 months later, on February 6, 2023.²¹⁰ The NOV consists of the following alleged violations: (a) failure to remove chemical storage for a retired sodium silicate/sodium hypochlorite system and seal the remaining injection port; (b) failure to develop and maintain a systemic flushing program; (c) inadequate booster pump

²⁰⁶ See Letter from Sanjay Sofat, Chief, Bureau of Water, Ill. Env't Prot. Agency to Petitioners, Re: Follow-up Questions from Correctional Facility Water Meeting, August 2022 (February 9, 2023).

²⁰⁷ Ill. Dep't of Corr., "Correctional Facility Water Quality Spreadsheet" at cell C31.

²⁰⁸ Email from Rodney Thacker, Ill. Dep't of Corr., to Mary F. Reed & Sanjay Sofat, Ill. Env't Prot. Agency, Re: IDOC Water Systems (May 6, 2022).

²⁰⁹ IEPA Pontiac Inspection Report, August 9, 2022.

²¹⁰ Letter from Joey Logan-Pugh, Ill. Env't Prot. Agency, to Pontiac Correctional Center, Re: Violation Notice: Pontiac Correctional Center, Facility No. IL1055500, Violation Notice No. W-2023-00008 (Feb. 6, 2023) [hereinafter IEPA Pontiac Violation Notice].

capacity; (d) failure to submit monthly operating reports; (d) lack of a nitrification action plan; (e) several failures related to cross-connection and backflow prevention to ensure that the sanitary system does not contaminate the drinking water system; (f) lack of an emergency operation plan; (g) failures to submit written sample siting plans for, and collect and submit sampling results for, coliform, disinfectant residuals, lead and copper, and disinfectants and disinfectant by-products; and (h) lack of notification of responsible operational personnel and operation of a Class B Water system without a properly certified drinking water operator.

161. Beyond this relatively boiler-plate NOV, IEPA does not appear to have conducted any follow-up inspections of Pontiac since August 2022 to sample the black oily substance, determine what is causing it, and require IDOC to address any other water system shortcomings connected to, and/or threats to the health of incarcerated individuals arising from, the substance or other potential water contaminants at Pontiac. One of Petitioners' coalition, on March 30, 2023, requested from IEPA all inspection reports for IDOC facilities since October of 2022 and (belatedly) received only the one Pontiac report for the August 2022 inspection. In other words, despite being aware of the black oily substance from both IDOC and Petitioners, and receiving complaint information from Petitioners' coalition tracing the black substance back over six years and describing significant health impacts that incarcerated individuals attribute to the water, IEPA appears to have done virtually nothing to address it, and instead pulled out of the meeting in which Petitioners were ready to discuss the iron and manganese issues with the state agencies.²¹¹

162. Further evidence exists that the water system at Pontiac is in dire condition. In January 2022, consultants onsite to evaluate a power outage impacting multiple buildings at Pontiac discovered that water was infiltrating the basement of an abandoned building housing the electrical vault.²¹² A report notes that the water inflow resulted in the level of water in the basement increasing from 6 inches to 5 feet over a 72-hour period. Due to the presence of

²¹¹ See Appendix E.

²¹² Ill. Auditor General, *List of Emergency Purchase Statements Filed With The Office of the Auditor General: April 1, 2022 through June 30, 2022*, at 105-06 (2022), <https://www.auditor.illinois.gov/Other-Public-Documents/EmergencyPurch/FY22-4th-Qtr-Emerg-Purch.pdf>.

chlorine in the water, officials concluded that the water was due to a main break somewhere in the water distribution system.

163. Petitioners have no information indicating that Pontiac officials took measures to assess potential drops in pressure within the water system from this January 2022 main break and/or took measures to boil water or provide alternative water.

164. Moreover, Petitioners have concerns that IDOC does not follow boil order measures as a general matter, despite agency claims to the contrary. For example, as set forth below with respect to Menard Correctional Center, in 2023 during an active boil order, IDOC claimed to be boiling and cooling enough water to serve about 2,000 incarcerated individuals daily, a feat which seems virtually impossible given the prison's age and plant.²¹³ Petitioners' concern is again heightened by the fact that in response to questions from USEPA, IDOC indicated generally that in the event of a boil order, *bottled* water is provided to incarcerated individuals, in contrast to IDOC's claim that it boiled and cooled water for all people incarcerated at Menard.²¹⁴ And as discussed with regard to Stateville above, USEPA inspectors found that the prison has never issued a boil water notice following a chlorine violation. Of note with respect to Pontiac and the likelihood of IDOC practicing proper boil water procedures and/or providing adequate alternative water during events posing bacteria

²¹³ Email from Joey L. Logan-Pugh & Chris Johnston, Ill. Env't'l Prot. Agency, to Meleah Geertsma, Re: Illinois prison meeting – oily substance, Vienna survey (March 19, 2023).

²¹⁴ Follow Up Questions to IDOC 1445 Response, *supra* note 169, at 1(b). Petitioners note that while IDOC has told USEPA that it can simply buy any needed bottled water at the local Sam's Club (*see* USEPA Vienna Inspection Report, *supra* note 28, at 5), this assertion is not reassuring to Petitioners. IDOC prisons have a history of not paying their water bills, both with respect to the water they buy from municipal systems and with respect to paying their bottled water vendors, raising serious concerns about IDOC's ability to simply run out to buy enough bottled water for hundreds to thousands of incarcerated individuals if an emergency arises; *Data: IDOC's unpaid bills*, THE SOUTHERN ILLINOISAN (July 3, 2016), https://thesouthern.com/data-idocs-unpaid-bills/table_0c3285cd-1a0e-502a-b6a8-f547b52fda93.html; "Illinois DOC to Pay Millions in Arrearages," PRISON LEGAL NEWS (Aug. 2, 2016), <https://www.prisonlegalnews.org/news/2016/aug/2/illinois-doc-pay-millions-utility-arrearages/>; Stateville ROINC Email to IEPA (November 19, 2021); Email from Segundo Nallatan, Ill. Env't'l Prot. Agency, to Steve Vance & Michael Brown, Ill. Env't'l Prot. Agency, Re: Stateville (Nov. 22, 2021). The fact that incarcerated individuals have reported to Petitioners at best sporadic and limited availability of bottled water in prisons further casts doubt on IDOC's claims.

threats, the IEPA inspection report for Pontiac reports “unknown” for all adequacy-of-supply measures, including average annual usage, daily usage, and average daily per capita consumption.²¹⁵

165. In addition to these extensive drinking water system issues, Pontiac has a history of sanitary system problems. For example, in mid-March 2023, Petitioners received a report that tunnels under Pontiac had flooded with sewage. Petitioners shared this information with IEPA, IDPH and USEPA on March 13, 2023. As of May 16, 2023, Petitioners had received no response from either agency with regards to this inquiry.

166. In addition to plumbing and sanitation issues noted in the 2020 John Howard Association monitoring report, the 2015 monitoring report described that “some [incarcerated individuals] complained about cell conditions, like toilets not being promptly repaired” and that “administrators reported that Pontiac’s South cellhouse needed ... other improvements to piping.”²¹⁶ The 2013 monitoring report expressed that “Pontiac’s physical plant issues remain serious concerns ... Conditions such as extreme temperatures, poor ventilation, and significant plumbing issues at Pontiac remain largely the same for the nearly 150-year-old maximum-security facility. During the visit ... JHA observed plumbing problems, including standing pools or water in cells, water spraying from the wall when a toilet was flushed, and debris that staff indicated was dissolved insulation displaced by cell flooding.”²¹⁷ The 2012 report similarly reported that “JHA also received multiple reports of the sinks and toilets flooding and malfunctioning. On the date of our visit, we ourselves observed a Pontiac [incarcerated individual] call out for help when the toilet in his cell began gushing water onto the floor. The [incarcerated individual] was quickly moved to another cell, but staff and [individuals incarcerated by IDOC] informed JHA that the incident was not unusual, as

²¹⁵ IEPA Pontiac Inspection Report, August 9, 2022 at 1.

²¹⁶ *2015 Monitoring Report Pontiac Correctional Center*, John Howard Association of Illinois, 2015, at 20 and 5 (FN 8).
<https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d1a75589df6d2000192d527/1562015064844/Pontiac+Correctional+Center+Report+2015.pdf>.

²¹⁷ *Monitoring Visit to Pontiac Correctional Center 2013*, John Howard Association of Illinois, 2013, at 2.
<https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d1a75f9e8872500017298be/1562015225356/Pontiac+Correctional+Center+Report+2013.pdf>.

plumbing issues are a recurrent problem. In another unoccupied cell, JHA also observed water pooling on the floor.”²¹⁸

167. In sum, information available to Petitioners indicates that contaminants such as iron, iron bacteria, manganese, manganese bacteria, Legionella, coliform bacteria and/or other heavy metals are present in or likely to enter Pontiac’s public water system. Those contaminants enter and/or remain in the Pontiac system as a result of deteriorating pipes and other equipment deficiencies, insufficient chlorination and other disinfection measures, contamination, and/or via cross-connections. Individuals incarcerated at Pontiac report a range of health symptoms from ingesting and/or coming in contact with the water, consistent with exposure to these water contaminants. The chronology and substance of Pontiac’s regulatory history (or lack thereof) and violation notices indicate that State and local responsible entities have been wholly unable or unwilling to meet the mandate of ensuring safe drinking water at Pontiac for years.

²¹⁸ *Monitoring Visit to Pontiac Correctional Center*, John Howard Association of Illinois, 2012, at 3.
<https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d1a7642bedf01000111cef8/1562015299668/Pontiac+Report+2012.pdf>.

**APPENDIX C:
VIENNA CORRECTIONAL CENTER**

168. Vienna Correctional Center is located in Southern Illinois, approximately two hours southeast of East St. Louis. The prison was constructed in 1965.²¹⁹
169. As of September 30, 2023, Vienna housed 730 individuals in IDOC custody, 49% of whom are Black and 60% of whom are a race other than white.²²⁰
170. IEPA has recognized Vienna’s water supply (system number: IL0875510) as a non-exempt public water supply for years. The Vienna Correctional Center Lake is the source of drinking water for Vienna and ultimately, after treatment at Vienna, for the neighboring Shawnee Correctional Center.²²¹
171. As set forth in more detail below, Vienna has a long history of water system issues, deficiencies and violations, including with respect to grossly deteriorated or otherwise patently inadequate equipment and/or treatment, disinfection shortfalls and high disinfection byproduct levels, and cyanotoxins.
172. Unsurprisingly given this history, Vienna’s water system has been the source of many complaints by incarcerated individuals dating back years. Prior to the late 2022 water-health survey described below, Petitioners received complaints from a number of individuals incarcerated at Vienna about unpleasant tastes and smells in the water. One individual reported to Petitioners a persistent scalp rash that the individual attributed to contact with the water. In addition, as with Pontiac, individuals incarcerated at Vienna noted the lack of bottled water distributed at no-cost at Vienna or available for purchase in commissary.
173. In a prior lawsuit over conditions at Vienna, individuals and advocates raised their voices against IDOC’s allowing Vienna, including its water and sanitation systems, to deteriorate to

²¹⁹ Ill. Dep’t of Corr., “[Vienna Correctional Center](https://idoc.illinois.gov/facilities/allfacilities/facility.vienna-correctional-center.html),” ILLINOIS.GOV (last visited March 8, 2024), <https://idoc.illinois.gov/facilities/allfacilities/facility.vienna-correctional-center.html>.

²²⁰ IDOC Prison Population Data Set, *supra* note 15.

²²¹ While Petitioners here focus on issues at the Vienna prison, incarcerated people at Shawnee have shared complaints with Petitioners, including that Shawnee’s water tastes bad, looks grayish out of the tap, and tastes like powder. In addition, given the close relationship between Vienna and Shawnee, references herein to problems at Vienna should be read as applying to Shawnee as well. IEPA issued Shawnee an NOV on February 14, 2023.

inhumane levels. Petitioner UPLC brought a class action conditions lawsuit against Vienna in June 2012 on behalf of individuals incarcerated at the prison.²²² Among the many issues raised in the lawsuit were the lack of properly functioning toilets, sinks and showers, based in part on a monitoring visit report by Petitioner the John Howard Association. The majority of the water complaints and deficiencies confirmed by JHA's monitoring visit centered around chronic and extensive toilet and shower back-ups, along with an overall lack of these critical facilities. The complaint and monitoring visit report also note several issues potentially directly related to drinking water, such as that “[d]irty water falls from exposed, rusting pipes in the ceiling” that are in “serious disrepair” and that incarcerated individuals regularly encounter lack of pressure in the showers, such that the showers “merely dribbled out a small stream of water,” which may indicate pressure issues more broadly. As a result of this lawsuit, IDOC closed Building 19 and has kept it closed since.

174. A number of pro se litigants brought lawsuits over conditions at Vienna's Building 19 following filing of the June 2012 UPLC complaint, setting forth with respect to water and sanitation systems that:

The second floor has three toilets and two urinals for 100 [incarcerated people], and the third floor has only three toilets and two urinals for 104 [individuals incarcerated by IDOC]. . . . The toilets splash water out of the bowl onto Plaintiff when flushed, and overflow onto the floor where he must walk. . . . Water drips onto Plaintiff's head from the restroom ceiling. . . . The restroom lacks ventilation, and smells of feces. . . . The shower water backs up and flows onto the dayroom floor.²²³

175. Given significant and multiple deficiencies in the regulatory record as set forth below and to better understand the water issues incarcerated individuals are observing at Vienna and the health issues potentially connected to water issues that these individuals are experiencing, members of Petitioners coalition circulated a water and health survey to approximately 400

²²² *Boyd v. Godinez*, Case No. 12-cv-704-MJR-RJD (S.D. Ill. Sep. 7, 2017).

²²³ *Bellman v. Vienna*, 2013 WL 4538899, at 1 (S.D.Ill. 2013).

individuals incarcerated at Vienna via legal mail in late 2022.²²⁴ In total, 133 individuals responded to the survey.

176. Of the 133 respondents, 125 indicated a problem with water quality. 91% of respondents noted a bad taste; 88% noted discoloration; over 75% of respondents noted an unusual odor, with descriptions ranging from a sewage smell to a fishy smell; and about 70% of respondents noted that there were particles in the water.

177. The responses did not meaningfully vary when separated by residential house, indicating that these water quality issues exist across Vienna as a whole.

178. The survey asked respondents to provide their own narrative description of the tap water at Vienna. Several descriptors recurred through multiple respondents' answers. For instance, 21 respondents described the water as "brown", while at least 15 mentioned "rust" or "mold." In addition, 21 respondents identified a sewage smell, slow drainage or clogged drains, and toilet backups.

179. The survey also asked about a wide variety of health symptoms that could be connected to water contamination, including contamination by cyanotoxins.

180. Cyanotoxins are associated with a multitude of health symptoms. Certain types of cyanotoxins, like *cylindrospermopsin* and *microcystin*, have been connected to gastrointestinal symptoms like diarrhea and vomiting as well as headaches and pneumonia.²²⁵ Other cyanotoxins, like *anatoxin-a* and *saxitoxin*, have been associated with neurological symptoms, like sudden involuntary muscle twitches, numbness, and tingling or burning sensation.²²⁶ In addition, some health effects are associated with cyanotoxins in general, but

²²⁴ Petitioners' coalition members did not design the survey to provide statistical or causal evidence of water contamination connected to health impacts, but as an investigatory tool to help bring forth additional information that might help characterize the water issues at Vienna for further action. In addition, because this information was provided by incarcerated individuals via legal mail and so under attorney-client and common interest protection, Petitioners are providing USEPA with a summary of the survey responses here.

²²⁵ U.S. Env't Prot. Agency, *Health Effects from Cyanotoxins* (last updated March 4, 2024), <https://www.epa.gov/cyano-habs/health-effects-cyanotoxins>.

²²⁶ *Id.*

have not been traced to specific types of cyanotoxins; these include skin rashes, conjunctivitis, and light sensitivity.²²⁷

181. The survey asked respondents to report whether they personally experienced a variety of health symptoms. Of the symptoms listed in the survey, the ones that the most respondents reported personally experiencing were headache (64 respondents), dry cough (57 respondents), drowsiness (55 respondents), sore throat (54 respondents), involuntary muscle twitches (51 respondents), and skin rashes (49 respondents). These symptoms are associated with multiple types of cyanotoxins, as described above. At least 10 respondents reported experiencing every health symptom listed in the survey, and no symptom was universally considered a non-issue at Vienna.
182. Similar to the reports of observed water quality, the reported health symptoms did not materially differ when responses were compared by residential house. This indicates that the issues potentially causing these health symptoms are not localized to a particular residential house.
183. In addition to health symptoms, respondents were asked to report certain health diagnoses that could be connected to exposure to cyanotoxins. Fewer respondents provided information about health diagnoses, which could be connected to difficulties in obtaining healthcare within the prison system. However, 31 people reported being diagnosed with gastroenteritis—ten respondents more than the next highest-reported diagnoses of liver and kidney damage. Gastroenteritis is a condition associated with exposure to microcystins, as well as other harmful bacteria.
184. IDOC is aware of complaints about Vienna’s water. IDOC reported the following complaints in response to IEPA and USEPA information requests in 2022: “The complaints are: the water smelled & tasted bad; impossible to drink; caused stomach aches & scratchy

²²⁷ Center for Disease Control, *Harmful Algal Bloom (HAB)-Associated Illness*, CS292944-A (last visited March 8, 2024), https://www.cdc.gov/habs/pdf/292944-A_CyanoHAB_Facts-508.pdf.

throats. We had 15 grievances on the water in the month of November - no grievances/issues in December.”²²⁸

185. As noted above, Vienna’s public water system has a long history of system deficiencies reflecting aging infrastructure that has either been patched up piecemeal over the years or not patched up at all, along with other threats to water quality and compliance shortfalls. And for at least six years, IEPA has done little to ensure that Vienna actually address these infrastructure failures of comply with requirements.

186. In 2016, IEPA inspected Vienna and identified a violation and long list of recommendations to resolve other deficiencies. The issues included, but were not limited to, the delayed and deferred maintenance of critical components requiring immediate repair, the failure to do routine inspections and cleaning, and the failure to maintain backup equipment.²²⁹ Rather than issue Vienna a Notice of Violation at that time, IEPA sent the prison a “noncompliance advisory letter,” which USEPA has described as “an informal pre-enforcement document intended for quick compliance for violations that do not warrant more formal enforcement.”²³⁰

187. IEPA again inspected Vienna in October 2019 and again noted a long list of shortcomings, including violations beyond those in the 2016 advisory letter and again

²²⁸ “IDOC Email Attachment - Correctional Facility Water Quality Spreadsheet.xlsx” at cell C38.

²²⁹ Letter from Chris Johnston, Ill. Env’t Prot. Agency, to John Baldwin, Ill. Dep’t of Corr., Re: Noncompliance Advisory (Mar. 14, 2016) (advising of noncompliance identified at Vienna Correctional Center).

²³⁰ Letter from Mary A. Gade, U.S. Env’t Prot. Agency, to Douglas P. Scott, Ill. Env’t Prot. Agency, Re: U.S. EPA Review of IEPA’s NPDES, RCRA, and Air Enforcement Programs – Final Report (Aug. 22, 2007), <https://www.epa.gov/sites/default/files/2013-08/documents/srf-rd1-rev-il.pdf> at pdf 3. Of note here with respect to IEPA’s failure to ensure timely compliance by Vienna, in this August 2007 review of IEPA’s 2005 fiscal year performance, USEPA noted that “[e]ach program identified issues with IEPA’s identification of significant or high priority violators or their inconsistent application of national guidance related to timely and appropriate enforcement.” *Id.* at 3.

including a long list of recommendations to address other deficiencies.²³¹ The 2019 violations included the need to repair or replace the reaction storage tank due to leaks in the sidewalls, an inadequate number of chemical feeders, and the failure to provide dosages of chemicals in all monthly operating reports. In addition, IEPA provided nineteen “recommendations” regarding repair of deteriorated structures, ensuring backup parts were available for various equipment, fixing leaks in the ground storage tank, conducting routine inspections, and other items largely demonstrating no improvements since the 2016 inspection.

188. Three years later when it reinspected Vienna in June 2022, IEPA noted that none of the violation fixes and only one of the nineteen recommendations were done as laid out in 2019.²³² Many of these issues had been carried over essentially unchanged from the deficiencies noted in the 2016 inspection, six years earlier.

189. One individual incarcerated at Vienna reported to Petitioners being assigned by correctional staff to work on repairs to a storage tank, and that these “repairs” involved simply plugging holes in the tank with sticks found on the ground—a “fix” that was confirmed by USEPA in the agency’s 2022 inspection of Vienna.²³³

190. Vienna has a history with high levels of disinfection byproducts (“DBPs”) in its water system. DBPs are produced when the disinfectants used to kill bacteria, like chlorine, react with organic material in the water. DBPs comprise a category of hundreds of chemicals with varying human health impacts, including cancer. High levels of DBPs can result from failure to monitor water parameters such as pH, turbidity, alkalinity, and disinfectant dosages. Significant quantities of DBPs can also result from a failure to avoid water stagnation in a drinking water system. DBPs are also more likely to arise in older systems, reflecting the

²³¹ Letter from John Kinder, Ill. Env’t Prot. Agency, to Rob Jeffreys, Ill. Dep’t of Corr., Re: Noncompliance Advisory (Oct. 31, 2019) (advising of noncompliance identified at Vienna Correctional Center) [hereinafter 2019 Vienna Noncompliance Advisory].

²³² Ill. Env’t Prot. Agency, *Bureau of Water – Division of Public Water Supplies, Marion Regional Office Evaluation Report: Vienna Correctional Center* (June 16, 2022) [hereinafter IEPA Vienna Inspection Report].

²³³ USEPA Vienna Inspection Report, *supra* note 28.

tendency to increase disinfectants to address potential bacterial contamination in lieu of more extensive treatment upgrades to the system.

191. IEPA raised concerns regarding DBPs at Vienna in the agency's 2016 and 2019 inspection reports. IDOC has measured and reported HAA5 sampling results of 69.2 ug/L and 76.7 ug/L in August 2015, as well as 59.2 ug/L as recently as the April to June 2022 monitoring period and 64.7 ug/L and 68 ug/L for the same months in 2021.²³⁴ In addition, it appears from IEPA's online database that IEPA issued NOVs to Vienna for several disinfectant and disinfection byproduct issues between December 2020 and September 2022. According to these entries, IEPA considered Vienna as having achieved compliance for all of these violations as-of September 2022.²³⁵
192. Vienna has also faced potential drinking water contamination by cyanotoxins from algal blooms in the Vienna Correctional Center Lake, the facility's drinking water source since at least 2019.
193. Cyanotoxins are toxic metabolites created by cyanobacteria, otherwise known as blue-green algae. The specific algae identified in the Vienna Correctional Center Lake is *Aphanizomenon flos-aquae*, a type of blue-green algae. *Aphanizomenon flos-aquae* is associated with four primary types of cyanotoxins: *cylindrospermopsin*, *microcystin*, *anatoxin-a*, and *saxitoxin*.
194. In its 2019 notice of non-compliance, IEPA recommended that Vienna install a powder-activated carbon ("PAC") treatment system, as well as new filters and aerators, in Vienna Correctional Center Lake to prevent the proliferation of cyanotoxins.²³⁶ It appears that Vienna may have once had PAC treatment, but removed the system many years ago.

²³⁴ See 2019 Vienna Noncompliance Advisory, *supra* note 231, at 53; Ill. Env't Prot. Agency, "Drinking Water Branch: Water Systems," EPA.STATE.IL.US (last visited May 17, 2023) (showing results obtained from search for Water System No. IL0875510).

²³⁵ Ill. Env't Prot. Agency, "Drinking Water Branch: Violations," EPA.STATE.IL.US (last visited May 17, 2023), https://water.epa.state.il.us/dww/JSP/Violations.jsp?tinwsys_is_number=716787&tinwsys_st_co de=IL (showing results obtained from search for Water System No. IL0875510).

²³⁶ 2019 Vienna Noncompliance Advisory, *supra* note 231, at 7.

195. Due to the large algal blooms observed in the Vienna Correctional Center Lake, IEPA and Vienna staff began conducting near-monthly sampling of both raw and treated water for cyanotoxins in 2020 and 2021. IEPA initially only tested only for *cylindrospermopsin* and *microcystin* because it did not have the capacity to test for the other two types of cyanotoxin (*anatoxin-a* and *saxitoxin*). IEPA began testing for the latter two types of cyanotoxin in May 2021.
196. IEPA and Vienna staff tested water quality at multiple points in the drinking water system: the “reservoir water” at the supply (i.e., the lake), “raw water” tested at the Raw Water Storage Tank immediately following chlorine treatment, and “finished water” tested after additional treatment and immediately before entering the final ground storage tank that sends water into the facility.
197. At multiple points during this testing, IEPA and Vienna detected the presence of cyanotoxins in the raw and/or finished water, as well as the reservoir water. IEPA testing identified *cylindrospermopsin* and *microcystin* in September, October, and November 2020. Throughout this three-month period there were positive hits for at least one or both cyanotoxins in at least the surface water and raw water. IEPA testing further identified microcystin in the raw water in December 2020 and May 2021.²³⁷ Individuals incarcerated by IDOC at Vienna have faced significant challenges related to cyanotoxins, and there is uncertainty about whether, how, and when these issues were addressed. Given the historical problems at Vienna and the ambiguity surrounding their resolution, there is a legitimate basis for ongoing vigilance and thorough assessment to ensure the safety and quality of the water supply and address any potential remaining concerns that may exist.
198. As noted above, IEPA’s October 2019 inspection report based on two inspections of the Vienna drinking water system described many of these long-standing issues. By the time IEPA returned for an inspection three years later on June 16, 2022, none of the three violations highlighted in the 2019 evaluation had been addressed. Furthermore, only one of the nineteen “recommendations” made by IEPA had been implemented.²³⁸ IEPA observed

²³⁷ To Petitioners’ knowledge, IEPA testing has not identified anatoxin-a or saxitoxin in the water system since testing for these cyanotoxins began in May 2021.

²³⁸ IEPA Vienna Inspection Report, *supra* note 232.

that “funding issues continue to delay needed maintenance and repairs,” noting also that “due to age many parts are no longer made and thus not available.” In light of the state of the physical infrastructure, IEPA praised the operators of the facility, stating that “[i]t is a tribute to [the system operators] for their ability to maintain plant operation and produce potable water.”

199. USEPA conducted its own inspection of Vienna on October 20, 2022. In its inspection report, USEPA noted the lack of standard operating procedures, emergency plans, or redundancies to ensure continual safe operations. USEPA determined that critical components of the treatment plant have “deteriorated beyond a maintenance level” and now require immediate repair.²³⁹ Monitoring equipment such as pressure gauges and flow meters were inoperative at the time of inspection, if they were present at all. Vienna has reportedly installed new gauges and meters following USEPA’s inspection, further highlighting the value of federal intervention.²⁴⁰

200. Reflecting a broader issue with bacterial contaminants in Vienna’s system, during USEPA’s October 20, 2022, inspection, Vienna representatives reported to USEPA that *Legionella* had also been detected in multiple sampling locations within Vienna in 2022.²⁴¹

201. After USEPA’s inspection, on December 13, 2022, IEPA finally issued an NOV to Vienna.²⁴² The IEPA NOV cited, among other issues, that critical components of the treatment plant “have deteriorated beyond a maintenance level” and now require immediate

²³⁹ USEPA Vienna Inspection Report, *supra* note 28.

²⁴⁰ Vienna Corr. Ctr., Response to Ill. Env’t Prot. Agency Notice of Violation (Feb. 28, 2023).

²⁴¹ USEPA Vienna Inspection Report of Vienna, *supra* note 28, at 6 (IN-005). The positive *Legionella* tests at Vienna are not included in results for sampling conducted by the Illinois State Water Survey for the first half of 2022, as made available by the Appeal, *see* Weill-Greenberg, *infra* note 279. Petitioners note general concern that IDOC may be having or have had several different entities testing for *Legionella* within its prisons, including the Illinois State Water Survey and private firms like Phigenics, complicating efforts to get a full and complete picture of the *Legionella* risks at various prisons. Petitioners are also concerned that IDOC may not be reporting initial positive *Legionella* samples to IDPH and/or IEPA unless follow-up retesting also comes back positive.

²⁴² Letter from Joey Logan-Pugh, Ill. Env’t Prot. Agency, to Vienna Correctional Center, Re: Violation Notice: Vienna Correctional Center, Facility No. IL0875510, Violation Notice No. W-2022-00070 (Dec. 13, 2022).

repair. Other issues raised in the NOV include, but were not limited to: failure to maintain painted surfaces, making facilities vulnerable to contamination; numerous unrepaired leaks in the reaction tank, lack of turnover in storage tanks to ensure against stale water and related bacterial risks, inoperative loss of head gauges and flow meters, as well as inoperative raw and finished water meters, insufficient number of chemical feed pumps, ponding of water above storage tanks; deteriorated chemical safety equipment for staff, failure to submit monthly operating reports on time, lack of level controls for water storage structures as well as inferior monitoring capacity, and low fluoride.²⁴³ IEPA thus in late December 2022 once again found Vienna in violation of a long list of issues, including many deficiencies that are largely the same compliance failures for which it had previously cited Vienna.

202. Further evidence of Vienna's negligent approach to its infrastructure and threats to water quality is seen with its similarly long-failing sanitation system. Though the water-health survey distributed by members of Petitioners' coalition specifically sought incarcerated individuals' observations regarding drinking water, many respondents volunteered information regarding the poor performance of Vienna's sanitation system. At least 20 individuals noted frequent toilet backups, and a number of these respondents also described a sewage odor associated with the tap water.

203. In its 2014 monitoring report for Vienna, Petitioner JHA noted reports from incarcerated individuals as follows: "the plumbing backs up; broken pipes, sinks, showers, and toilets; mold; the ceiling leaks; brown water; and insufficient fixtures."²⁴⁴

204. In addition, April 2019, attorneys from the University of Chicago Law School's Abrams Environmental Law Clinic sent a letter to IEPA on behalf of the Sierra Club, detailing significant and ongoing violations of Vienna's National Pollutant Discharge Elimination

²⁴³ *Id.*

²⁴⁴ John Howard Ass'n, *2014 Monitoring Report Vienna Correctional Center* (2014) <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d162f3e6ee10d00015d7916/1561734974462/Vienna+Correctional+Center+Report+2014.pdf>.

System (“NPDES”) permit.²⁴⁵ The letter and supporting materials note that Vienna “repeatedly and egregiously” violated its NPDES permit dating back to 2014.

205. The University of Chicago-Sierra Club materials state the following, once again demonstrating the extreme delay in achieving compliance that is a hallmark of IDOC and IEPA’s enforcement: “Additionally, we note that, in 2014, [Vienna Correctional Center (“VCC”)] entered into a Compliance Commitment Agreement with the IEPA to address illegal discharges and inadequate facilities. From publicly available records, it appears that VCC was slow to comply with this agreement and has continued to violate its NPDES permits even after it reported making the technical changes required by the Compliance Commitment Agreement. This history of intransigence and the inadequacy of IEPA’s past responses to VCC’s violations demonstrate the acute need for a prompt and robust response.”²⁴⁶

206. On April 27, 2023, IEPA responded to Petitioners’ questions about Vienna’s wastewater system acknowledging that IEPA had inspected Vienna’s sewage treatment plant and water treatment plant on May 1, 2019. IEPA also shared that IEPA and USEPA had done a Clean Water Act inspection of Vienna on February 22, 2023, and that IEPA was evaluating the findings of this February inspection “to determine any further appropriate action.”²⁴⁷

207. IDOC is well-aware and has publicly recognized that the sewer facilities of Vienna are not equipped to serve the prison’s population and are likely violating environmental regulations. The most recently proposed Capital Budget for the State of Illinois states that, as a result of Vienna’s and Shawnee’s increased incarcerated populations, there is now “an enormous strain on the proper treatment of waste.” The document further states that “[T]he

²⁴⁵ Letter from Mark N. Templeton & Robert A. Weinstock, Abrams Env’tl Law Clinic, Univ. of Chicago Law Sch., to John R. Baldwin, Ill. Dep’t of Corr.; John J. Kim, Ill. Env’tl Prot. Agency; Matthew Swalls, Vienna Corr. Ctr.; & Jeff Dennison, Shawnee Corr. Ctr., Re: Clean Water Act Violations at Vienna Correctional Center (Apr. 24, 2019).

²⁴⁶ *Id.*

²⁴⁷ IEPA Letter to Petitioners, *supra* note 25.

last upgrade to the treatment facility was completed in the early 1990s, causing a need for renovations to comply with current environmental regulations.”²⁴⁸

208. In sum, the information available to Petitioners indicates that contaminants are present in or likely to enter Vienna’s public water system: bacterial contaminants such as cyanotoxins and *Legionella* have already been detected in Vienna’s raw and surface water, including as recently as 2022. Furthermore, the abject deterioration of Vienna’s water treatment and distribution infrastructure, as well as its failing sanitary system, indicates that such contamination is likely to continue and/or that further contaminants are likely to enter the water system. And the complaints of incarcerated individuals, compiled by Petitioners, are consistent with health issues arising from contamination of Vienna’s water. The years over which IDOC and IEPA allowed Vienna to deteriorate to this deeply neglected state, with little action by IDOC or IEPA to make systemic fixes, indicate that State and local responsible entities have been wholly unable or unwilling to meet the mandate of ensuring safe drinking water at Vienna.

²⁴⁸ Pritzker, *supra* note 101, at 41.

**APPENDIX D:
SELECT INFORMATION REGARDING OTHER IDOC FACILITIES**

209. As noted above, significant regulatory and compliance failures and highly restricted access have resulted in limited publicly available information on drinking water and sanitation systems at IDOC prisons. These fundamental barriers to information, coupled with resource constraints, have prevented Petitioners from providing the same level of review for all the prisons as provided above for Stateville, Pontiac, and Vienna. However, the absence of publicly available information presented in this Petition as to other prisons does not mean there are no significant water and sanitation failures that constitute an imminent and substantial endangerment throughout the IDOC system. Based on reports from incarcerated individuals and information that Petitioners have been able to assemble for other prisons, there are serious concerns that water and sanitation issues are endemic across IDOC facilities. Furthermore, some of the facilities with among the worst conditions appear to be subject to the least amount of oversight, and it appears that IDOC may be taking steps to avoid application of more protective water regulations rather than comply with them.
210. Menard Correctional Center (“Menard”) is a maximum security prison²⁴⁹ in Menard, Illinois, located about an hour and 15 minutes south of East St. Louis. Menard, previously known as Southern Illinois Penitentiary, opened in 1878 and is the second oldest (to Pontiac) and by far largest of the State’s prisons. The administration building at Menard was so old and unstable that it was abandoned in or about the 2000s, and has since been demolished. However, the North and South cellhouses, which were physically attached to the administration building, remain fully occupied and are themselves extremely decrepit and in urgent need of either major repairs or abandonment.
211. As of September 30, 2023, Menard housed 1,917 individuals in IDOC custody, 64% of whom were Black and 74% of whom were a race other than white.

²⁴⁹ There is also a medium security unit located on the same property. The maximum security unit is at the bottom of a steep hill; the medium security prison is located at the top of that hill. The medium security unit is relatively new, having opened in 1996—over 100 years after the maximum security unit first opened.

212. Menard currently purchases water from the City of Chester. It switched from providing its own water sourced from the Mississippi River on or around April 1998.²⁵⁰ This switch is reflected by the entry for the Menard Correctional Center water system (no. IL1575550) in IEPA’s online database.²⁵¹

213. Individuals incarcerated at Menard have raised issues with the water since at least 1996. For example, one *pro se* plaintiff noted that the water from the sink in his cell smelled and tasted funny and had a brownish tint. The same plaintiff alleged that he received a memo in 1995 saying that the water may contain lead and to boil it before consumption.²⁵² Plaintiff’s expert introduced into the record a 1996 letter from IEPA noting that “[f]inished water at some taps within the Menard Correctional Center currently exceeds the federal action level (AL) of 0.015 mg/l of lead” and representing that Menard had plans to redo the facility’s plumbing.²⁵³ Other evidence of these high lead levels includes a 1997 letter from IEPA to an incarcerated individual similarly describing the lead levels at some taps, while representing that the “most current” sampling results meet the action level.²⁵⁴ Data contained in IEPA’s database, shows summary lead levels as high as 56 ug/L in 1995 down to 10 ug/L in December 1998.²⁵⁵ Twenty years later, a *pro se* plaintiff alleged that he had a recurring H. pylori bacterial infection, and that his doctor told him the infection was due to corroding lead pipes and he should stop drinking the water.²⁵⁶

²⁵⁰ See Pet. Brief at 12, *Stanley v. Page*, No. 00-3234, 2000 WL 34015763 (7th Cir. 2000).

²⁵¹ Drinking Water Branch: Water System Details, Menard Correctional Center, 2000 (last visited March 8, 2024), https://water.epa.state.il.us/dww/JSP/WaterSystemDetail.jsp?tinwsys_is_number=717649&tinwsys_st_code=IL&wsnumber=IL1575550.

²⁵² *Stanley v. Page, et. al*, 2000 WL 34015763, *supra* note 250.

²⁵³ *Id.*

²⁵⁴ Letter from Charles R. Bell, Ill. Env’t Prot. Agency, to Clayton Rockman, Ill. Dep’t of Corr., Re: Menard Correctional Center, Facility Number 1575550 (Oct. 6, 1997).

²⁵⁵ Ill. Env’t Prot. Agency, “Drinking Water Branch: Lead and Copper Sampling Summary Results,” EPA.STATE.IL.US (last visited March 8, 2024), https://water.epa.state.il.us/dww/JSP/LeadAndCopperSampleSummaryResults.jsp?tinwsys_is_number=717649&tinwsys_st_code=IL&begin_date=&end_date=&counter=0 (showing results for Menard Correctional Center).

²⁵⁶ *Huff v. Lashbrook*, No. 18-cv-1160-MJR, 2018 WL 3546765, at *1 (S.D. Ill. July 24, 2018).

214. During the period when Menard was responsible for sourcing its own water, the facility had a significant number of coliform violations.²⁵⁷
215. The City of Chester does not appear to include any Menard sites in its lead and copper sampling plan and has not sampled at Menard for lead and copper since Menard changed to the City's water in 1998.²⁵⁸ Thus, lead and copper sampling of the prison in the past 25 years appears extremely limited, with no sampling results that Petitioners have been able to identify made available to the general public.
216. In addition, it is not clear to Petitioners that Menard has undertaken the pipe replacement it told a federal court it would do in the late 1990s.²⁵⁹
217. Egregiously, it appears that at least two men have died at Menard during extreme heat days, when IDOC allegedly failed to provide them with adequate cold water, ice and/or showers for cooling purposes, compounding the lack of ambient cooling at Menard. Petitioner UPLC filed a complaint in one of these deaths, that of James Ingram on June 26, 2010.²⁶⁰ The mother of the deceased in the second instance filed a wrongful death lawsuit in

²⁵⁷ Drinking Water Watch. <https://water.epa.state.il.us/dww/index.jsp>.

²⁵⁸ Ill. Env't Prot. Agency, "Drinking Water Branch: Chem/Rad Samples," EPA.STATE.IL.US (last visited May 17, 2023), https://water.epa.state.il.us/dww/JSP/NonTcrSamples.jsp?tinwsys_is_number=717638&tinwsys_st_code=IL&tsaanlyt_is_number=25&tsaanlyt_st_code=HQ&history=1&counter=0 (showing results for Water System No. IL1570100, Chester).

²⁵⁹ In *Talley v. Butler*, No. 3:14-cv-976-RJD, 2018 WL 1729351 (S.D. Ill. Apr. 10, 2018), the *pro se* plaintiff alleged that while Menard had represented it would replace the pipes, it had not done so. The court denied the plaintiff's lead claim, which it interpreted as a request for a permanent injunction and permanent restraining order, on the basis that the plaintiff had been transferred to another prison (the Western Illinois Correctional Center, "Western") without likelihood of retransfer back to Menard. This plaintiff also requested that the court appoint a USEPA expert on lead, a request that the court also denied. A later decision in the *Talley* litigation suggests at least some IDOC officials believed at least some pipes at Menard were made of PVC and cast-iron, but there is no other detail or confirmation beyond that passing reference to an IDOC witness statement. See *Talley v. Butler*, Case No. 3:14-cv-976-RJD, (S.D. Ill. Mar. 27, 2019).

²⁶⁰ *Ingram v. Illinois Department of Corrections*, CIVIL NO. 10-933-GPM (S.D. Ill. Apr. 20, 2011).

2018 over the death of her son, Michael Jefferson.²⁶¹ The complaints allege that the men were both on medication that made them especially susceptible to overheating, a fact that was or should have been known to IDOC. They further allege that leading up to the deaths, IDOC did not follow or haphazardly followed its own policy to provide cold water, ice, and/or additional access to showers for cooling purposes. The 2018 complaint alleges that Michael Jefferson complained to the guard about the heat in his cell and that the cold water in his cell was not working. In July 2017, the month when Michael Jefferson died, temperatures recorded at the St. Louis airport to the Northwest of Menard registered a high of 107 degrees, with multiple days over 100 degrees.

218. Supporting these allegations of lack of cold water, ice and/or showers in Menard cells, Petitioner John Howard Association has received complaints about the lack of cold water at Menard dating back to at least 2011, including during hot summer months. One individual who wrote JHA from Menard in July 2021 reported that “[s]ometimes for days/weeks (while it’s as hot as it’s been) only the hot water works. From July 4-11, there was no cold running water.”²⁶² A JHA report for Menard from a decade earlier, based on a visit that happened a year after James Ingram died in June 2010, also noted that multiple incarcerated individuals reported that cells sometimes lacked either hot or cold water, and that the administration indicated there sometimes were problems with the delivery of cold water.²⁶³

219. IEPA conducted an inspection of Menard in November 2022.²⁶⁴ The IEPA report for this inspection contains little detail beyond a general description of the water system components.

²⁶¹ Kara Berg, *Lawsuit alleges cruel and unusual punishment in death of Menard inmate who overheated*, February 23, 2018. <https://www.bnd.com/news/local/article201702089.html>; See also *Charles v. Unknown Correctional Officers and Officials*, Docket No. 3:18-cv-00463 (S.D. Ill. Feb 21, 2018).

²⁶² See John Howard Ass’n, *Monitoring Visit to Menard Correctional Center 2021*, at 38 (2021), <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/627c020a1d630f549d123b8e/1652294155395/JHA+Report+Menard+2021+FINAL.pdf>.

²⁶³ See John Howard Ass’n, *Monitoring Visit to Menard Correctional Center 6/21/2011*, at 9 (2011), https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d1a70f66d0d9e00012e43b6/1562013943047/Menard+Report_2011.pdf.

²⁶⁴ IEPA Inspection Report on Menard (November 16, 2022).

The IEPA report includes a few brief “comments” about coordinating with the municipal water system regarding chlorine burns for flushing purposes, a statement about how the prison handles boil orders, the need for different mesh for the ground storage tank screen, and improper mounting of the overflow screen on a ground storage tank. The “Summary of Deficiencies” includes: the lack of monthly operating reports, the lack of a cross-connection control program and ordinance, and the lack of an emergency operations plan, boil water order failures, and failures to address issues with the screens at the ground storage tanks. IEPA issued an NOV to Menard in May 2023 for failure to submit Monthly Operating Reports within 30 days of the last day of each month, failure to develop and implement a Nitrification Action Plan, failure to have a comprehensive cross-connection control program, failure to maintain records of all backflow preventers that require annual testing, failure to perform annual testing of all backflow prevention devices in the system, failure to have an Emergency Operations Plan for the provision of water under emergency circumstances, insufficient screening on the overflow of the .5 MG ground storage tank, insufficient screening on the overflow of the 1 MG ground storage tank, and failure to develop and maintain a systematic flushing program.²⁶⁵

220. In mid-March 2023, Petitioners received a report from an attorney representing a person imprisoned at Menard during an active boil order that IDOC was only providing individuals with “plain tap water.” Petitioners raised this information with IEPA by email. In response, IEPA provided information on the grounds for the boil order and that the City of Chester had provided notice to Menard. IEPA further reported that “Menard Correctional Center states it is complying with the requirements of this boil order, as the water is being boiled and cooled before distribution to [individuals incarcerated by IDOC].”²⁶⁶ Petitioners then asked IEPA for additional information on the practicalities and logistics around such boiling and cooling of water for incarcerated individuals, given that Menard incarcerates about 2,000 people. IEPA’s only response was that the boil order had been lifted.

²⁶⁵ Letter from Joey Logan-Pugh, Ill. Env’t Prot. Agency, to Vienna Correctional Center, Re: Violation Notice: Menard Correctional Center, Facility No. IL1575550, Violation Notice No. W-2023-00039 (May 15, 2023).

²⁶⁶ Email from Joey L. Logan-Pugh & Chris Johnston, Ill. Env’t Prot. Agency, to Meleah Geertsma, Re: Illinois prison meeting – oily substance, Vienna survey (March 19, 2023).

221. Lawrence Correctional Center (“Lawrence”) is a medium security adult male prison that opened in 2001. Lawrence is located in Sumner, Illinois, about 2.5 hours east of St. Louis. As of September 30, 2023, Lawrence had a population of 732, 63% of whom were Black and 82% of whom were a race other than white.²⁶⁷
222. Lawrence obtains drinking water from the City of Bridgeport via the City of Sumner (water system no. IL 1010300), which owns and operates an elevated storage tank for the facility’s exclusive use.
223. The John Howard Association’s 2014 monitoring report for Lawrence notes that “JHA has received complaints [from staff and individuals incarcerated by IDOC] regarding plumbing issues, including lack of hot water and standing water, which JHA also observed on our visit.”²⁶⁸
224. IDOC has received complaints of discolored water at Lawrence, which the agency communicated to IEPA in 2022.²⁶⁹
225. With respect to the wastewater system at Lawrence, the 2014 JHA monitoring report describes as follows: “Staff stated that serious safety and sanitation concerns in dietary included flooding and clogged drains, resulting in six inches of standing water in some locations. JHA observed standing water and [incarcerated] workers sweeping the water into a drain during our visit ... and some [kitchen] plumbing was coming apart or did not work.”²⁷⁰
226. In August 2022, IEPA conducted an inspection at Lawrence.²⁷¹ A November 2022 letter from IEPA to Lawrence’s Warden provided “Notice of Significant Deficiencies” with respect to water treatment; monitoring, reporting, and data verification, management and operations, and operator compliance. The actions IEPA required to address these deficiencies include

²⁶⁷ Prison Population Data Sets, *supra* note 15.

²⁶⁸ John Howard Ass’n, *2014 Monitoring Visit to Lawrence Correctional Center*, at 12 (2014), <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5d1415130f071b0001aa9a0d/1561597204716/Lawrence+Correctional+Center+Report+2014.pdf>.

²⁶⁹ “IDOC Email Attachment - Correctional Facility Water Quality Spreadsheet.xlsx” at cell C17.

²⁷⁰ John Howard Ass’n, *supra* note 262, at 12–13.

²⁷¹ IEPA Inspection of Lawrence (August 11, 2022).

submitting as-built plans for the installation of a softener for drinking water, monitoring for contaminants including coliform bacteria, lead, and copper, implementing a cross-connection control program to maintain separation of drinking water and wastewater, and identifying a “Responsible Operator” pursuant to state regulations.

227. Logan Correctional Center (“Logan”) is a multi-level security female prison in Lincoln, Illinois, about 2.5 hours southwest of Chicago. The facility, which opened in 1978, has an operational capacity of 1,667 people and, as of September 30, 2023, has a population of 1,205 people, 34% of whom are Black and 42% of whom are a race other than white. Logan is also the parent institution for the Logan Reception Classification Center. The Illinois American Water Company-Lincoln supplies drinking water to Logan (water system no. IL 1075030).

228. Monitoring reports by JHA document water and sanitation issues at Logan. For instance, from the 2020-2021 report: “[w]omen throughout Logan reported issues with things broken in rooms and cells, water leaks, and standing water in bathrooms. Some women opined that maintenance does not do their jobs or stated that it takes several weeks for maintenance issues to get fixed. One stated that the plumber used to keep up, and that lately there were ‘shenanigans.’”²⁷²

229. In August and September 2022, multiple people incarcerated at Logan complained of a range of health issues, including pneumonia-like symptoms, diarrhea, headaches, migraines, confusion, stomach cramps, fever, and muscle aches. Incarcerated individuals in one of the housing units at Logan also reported to IEPA that the water was making them sick. Petitioners received reports from some individuals experiencing such symptoms that they were not provided health screenings when they requested care.

230. Also in August 2022, IEPA conducted an inspection at Logan.²⁷³ The results of this inspection were communicated by letter to Logan’s Warden in October 2022; this letter

²⁷² John Howard Ass’n, *JHA’s 2020-2021 Monitoring Report on IDOC Women’s Prisons: Decatur and Logan*, at 58 (2021), <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/618abd1c179e101e4a7e4073/1636482332716/JHA+Women%27s+Prisons+2020-2021+FINAL+11.2021.pdf>.

²⁷³ IEPA Inspection at Logan (August 16, 2022).

served as a “Notice of Significant Deficiencies” like the one described for Lawrence above. IEPA identified actions Logan was required to take with respect to: water treatment, its distribution system; monitoring, reporting, and data verification, and management and operations. In particular, IEPA identified that Logan needed to eliminate a cross-connection between its softener backwash lines and its wastewater drain line; inspect all of the facility’s reduced pressure principle backflow preventer devices at least once a year; develop site plans for sampling coliform, lead, copper, and DBPs; and identify a Responsible Operator per Illinois regulations.

231. IEPA also recommended that Logan make certain improvements to its water system beyond simply addressing the identified deficiencies. These improvements included maintaining its water supply facilities at least two feet above the 100-year flood elevation (six softener units are currently located below ground), repainting one of the ground storage tanks, which showed bare metal rust on its exterior at the time of inspection, and undertake a comprehensive inspection of both of its ground storage water tanks.
232. In addition, as discussed below in paragraph 237, it appears that as-of April 2023, Logan has taken steps to once again be treated by IEPA as an “exempt” water system as to avoid regulatory requirements that apply to non-exempt water systems, most notably on-site sampling for chlorine residuals, coliform, disinfection byproducts, and lead and copper.
233. There is significant evidence that the sanitation system at Logan is failing. In May 2021, several women imprisoned at Logan went on a hunger strike after sewage flooded their housing unit.²⁷⁴ A member of one Petitioner organization visited Logan twice in the five months between January and May 2023. Each time, the member heard concerns about the water quality and sanitary system from the women incarcerated there, including specifically about a housing unit which is currently closed and where sewage was backing up into the showers. The member also heard that the concerns about Logan’s sanitary system were shared by people who work for IDOC.

²⁷⁴ Sarah Conway, *First came the sewage, then the hunger strike*, Chicago Reader (July 7, 2021), <https://chicagoreader.com/news-politics/first-came-the-sewage-then-the-hunger-strike/>.

234. Graham Correctional Center (“Graham”) opened in 1980 in Hillsboro, Illinois, about an hour northeast of St. Louis. It is a medium security adult male facility with an operational capacity of 1,596 people. As of September 30, 2023, Graham has a population of 1,759, 38% of whom are Black and 42% of whom are a race other than white.
235. As detailed in the following paragraph, Graham is one of the twelve facilities where water samples taken by the University of Illinois in 2022 tested positive for *Legionella* (see below). One individual incarcerated at Graham reported to Petitioners that several individuals exhibited symptoms of Legionnaire’s disease and were tested, but no results were provided. The same individual noted that whenever it rains, the water turns brown and smells like sewage. Another person imprisoned at Graham also complained that the tap water is brown or tea-colored, and both of these individuals observed that correctional officers all use bottled water instead of the tap water at the facility.
236. IDOC also has a history with *Legionella* problems at many of its prisons. According to data obtained by The Appeal, as of July 2022, a dozen IDOC facilities had tested positive for *Legionella* bacteria during testing conducted by the University of Illinois at 33 of IDOC’s 45 facilities. These include several prisons not otherwise mentioned by name in this Petition.²⁷⁵ In addition, as noted elsewhere in this Petition, it appears that recent, additional *Legionella* sampling beyond that discussed in The Appeal report has been conducted at IDOC facilities, with positive results at additional facilities and on additional occasions beyond those reflected in The Appeal article.
237. It appears that prisons treated by IEPA as “exempt” prior to December 2022 may choose to downgrade their water services rather than develop regulatory programs to ensure the safety of the water provided to incarcerated individuals. Several IDOC prisons that IEPA recently determined should be treated as non-exempt due to their use of softeners on potable water instead have modified their systems to eliminate this form of water treatment.²⁷⁶ By disconnecting softeners, these facilities are considered to no longer “treat” water and thereby avoid classification as a “non-exempt” system. Prisons that IEPA apparently will not require

²⁷⁵ Weill-Greenberg, *infra* note 279.

²⁷⁶ Email from Rodney Thacker, Ill. Dep’t of Corr., to Joey L. Logan-Pugh & Chris Johnston, Ill. Env’tl Prot. Agency, Re: IDOC Non-Exempt Facilities (January 20, 2023).

to demonstrate compliance with drinking water standards through prison-based sampling after all are Logan (described above), Murphysboro, and Pittsfield.

**APPENDIX E:
HIGHLIGHTED ATTEMPTS OF
PETITIONERS TO ENGAGE STATE GOVERNMENT**

238. In early December 2021, due to concerns that the state agencies were not performing their duties, representatives from Petitioners' coalition reached out and met with representatives of USEPA Region 5 to convey concerns about water and sanitation in IDOC prisons.
239. On April 11, 2022, Petitioner Coalition to Decarcerate Illinois sent a letter to Governor Pritzker, raising concerns with the deteriorated prison water systems, including *Legionella* and cyanobacteria threats, and reports from people in prison of rashes, burning skin, and discolored water.²⁷⁷ This letter called on the Governor to ensure that IDPH had full access to IDOC facilities for water and infrastructure investigations; that the State take immediate action to address the water and *Legionella* crisis in the prisons and protect the people in them; that the State uphold SDWA in its prisons; and that the State release individuals in direct danger and create humane conditions for those who remain incarcerated. To date, the Coalition to Decarcerate Illinois has received no response to this letter.
240. On July 8, 2022, Petitioners sent a letter to the Illinois Capital Development Board, the agency responsible for overseeing the construction of new state facilities and the renovation and rehabilitation of existing state-owned buildings, regarding IDOC prisons.²⁷⁸ The letter requested that “the capital development process currently underway for facilities run by the [IDOC] include an in-depth, system-wide analysis of the drinking water and sanitary sewer systems in Illinois prisons and include needed, comprehensive, and lasting fixes.” Petitioners

²⁷⁷ Letter from The Coal. to Decarcerate Ill. to Governor Pritzker, Re: Crisis Due to Violations of Safe Drinking Water Act (Apr. 11, 2022).

²⁷⁸ Letter from John Howard Ass'n to Ill. Cap. Dev. Bd., Re: IDOC water and sewage analysis (July 8, 2022), <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/62cc3b2819a174092af2dc6b/1657551656882/IDOC+Water+letter+2022.+FNL.pdf>.

copied Governor Pritzker, then-IDOC Director Rob Jeffreys, IEPA Director John Kim, and USEPA Administrator Regan. Petitioners received no response to this letter.²⁷⁹

241. After Petitioners began collectively raising concerns about IDOC prison water conditions, IEPA inspected thirty IDOC facilities between June and November 2022.²⁸⁰ As described throughout this Petition as relevant to particular points, there is wide variability in the depth of inspection reports by the IEPA regional office conducting the inspection, with many reports containing no substantive notes on the physical inspection of sites beyond observations needed to establish a facility as exempt from primary standards requirements.

242. Also, after Petitioners began raising their concerns, USEPA, in 2022, conducted its own inspections of three IDOC prisons, all deemed “non-exempt” by IEPA previously: Sheridan (USEPA inspection in May 2022); Vienna (USEPA inspection in October 2022); and Stateville (USEPA inspection in November 2022).²⁸¹

243. On August 17, 2022, Petitioners met with representatives of IEPA, USEPA and IDPH to discuss concerns about water and sanitation systems in IDOC facilities. On October 4, 2022, Petitioners sent IEPA a set of follow-up questions to the meeting, requesting a response by October 14, 2022.²⁸² IEPA Water Bureau Chief Sanjay Sofat replied on October 12 that IEPA could not make that deadline but would reply “as soon as possible.” In response, on October 19, 2022, Petitioners requested an expected IEPA response date and a follow-up meeting with IEPA’s expected response. On October 31, 2022, Chief Sofat replied stating

²⁷⁹ Weill-Greenberg, E., “Illinois Prison Water Contamination Keeps Getting Worse,” *The Appeal* (Jul. 28, 2022), <https://theappeal.org/illinois-prisons-legionnaires-disease-water-new-testing/#:~:text=Legionella%20bacteria%20have%20been%20found,incarcerated%20across%20the%20impacted%20facilities.>

²⁸⁰ IEPA February Letter to Petitioners, *supra* note 166 at 4-5.

²⁸¹ *See* Letter from Elizabeth Murphy, U.S. Env’t Prot. Agency, to Dennis Morsch, Sheridan Correctional Center, Re: EPA Inspection of Sheridan Correctional Center Public Water System (PWS ID IL0995840) in LaSalle County, Illinois (May 23, 2022) [hereinafter USEPA Sheridan Inspection Report]; USEPA Vienna Inspection Report, *supra* note 28; and U.S. Env’t Prot. Agency, Inspection Report: Stateville Correctional Center (November 29, 2022) [hereinafter USEPA Stateville Inspection Report].

²⁸² *See* Letter from Petitioners to Sanjay Sofat, Chief, Bureau of Water, Ill. Env’t Prot. Agency, Re: Follow-up Questions from Correctional Facility Water Meeting, August 2022 (October 4, 2022).

that IEPA was unable to provide an exact response date, that IEPA would provide an update as the agency had more clarity on an expected response date, and that “we will be happy to arrange a follow-up call to discuss any questions you may have.”²⁸³

244. Petitioners received no outreach or response from IEPA until February 9, 2023,²⁸⁴ when IEPA finally responded to Petitioners’ October questions in writing.²⁸⁵ The IEPA letter described IEPA’s inspections of thirty prisons since Petitioners started collectively raising concerns, as well as Notices of Violation (“NOVs”) issued by IEPA to IDOC for eight of the prisons.

245. Petitioners requested copies of the notices of violation described in IEPA’s written response on February 10, 2023; IEPA provided those the same day. Petitioners then requested copies of IEPA inspection reports for the prisons mentioned in IEPA’s February 9, 2023 letter. After initially agreeing to similarly send those by email within a few days, IEPA failed to provide the inspection reports in response to repeated email inquiries. This forced Petitioners to file an Illinois Freedom of Information Act request for the reports on March 30, 2023. IEPA did not meet its initial statutory deadlines to provide the records, but ultimately provided documents for 30 prisons as of April 25, 2023.

246. Petitioners also requested a follow-up meeting to discuss IEPA’s February 9, 2023, letter on March 1, 2023, and sent written follow-up questions to IEPA’s February 9, 2023, letter on March 10, 2023.

247. In early March 2023, IEPA and IDPH agreed to meet with Petitioners and USEPA on Monday, March 20, 2023, to discuss specific concerns around the chronic black oily

²⁸³ Email from Sanjay Sofat, Chief, Bureau of Water, Ill. Env’tl Prot. Agency, to Meleah Geertsma, Re: Prison-Water meeting follow-up (October 31, 2022).

²⁸⁴ Petitioners and IEPA did have an exchange over an emergency hot water outage at Stateville in late October to early November 2022 and IEPA did ask USEPA Region 5 staff to deliver a report to Petitioners at a January 12, 2023, meeting between Petitioners and USEPA that IEPA did not attend.

²⁸⁵ See Letter from Sanjay Sofat, Chief, Bureau of Water, Ill. Env’tl Prot. Agency to Petitioners, Re: Follow-up Questions from Correctional Facility Water Meeting, August 2022 (Feb. 9, 2023).

substance at Pontiac and the results of a water-health survey at Vienna prison.²⁸⁶ While the two state agencies initially agreed to participate in this meeting, both pulled out of the meeting without explanation on Friday, March 17, 2023.²⁸⁷

248. On April 24, 2023, after one member of Petitioners' coalition contacted IEPA asking for an update on responses to Petitioners' March 10, 2023 questions, IEPA represented that "[r]egarding the February 9 email, we are still in the process of preparing responses to your questions but are making progress with those."²⁸⁸ On April 27, 2023, IEPA sent Petitioners a letter responding to the March 10, 2023 questions. In addition to confirming that IEPA had now issued twenty-three NOV's to IDOC prisons since December 2022, IEPA noted in response to Petitioners' requests for documents that IEPA would provide documents such as the NOV's in response to Illinois Freedom of Information Act requests. IEPA at that time did not offer to hold a meeting to discuss the latest update or to otherwise hear concerns from Petitioners and the people in prison with whom Petitioners are in contact.

249. On April 28, 2023, Petitioners submitted a Freedom of Information Act request for the thirteen additional NOV's issued by IEPA since February. In not meeting its initial statutory deadline for responding, IEPA conveyed that "the requested records have not been located in the course of a routine search and additional efforts are being made to locate them."²⁸⁹ IEPA provided the requested NOV's to Petitioners on May 15, 2023.

250. Since May of 2023, IEPA has responded to specific email questions from members of Petitioners' coalition regarding acute water threats ongoing at particular IDOC facilities and provided certain documents in response. IDOC responded to a January 2024 Freedom of Information Request regarding conditions at Stateville. Troublingly, in that response IDOC provided different sampling results for *Legionella* bacteria at Stateville than what IEPA had previously provided for the same date range. IEPA released sampling reports for early 2023

²⁸⁶ Email from Joey L. Logan-Pugh & Chris Johnston, Ill. Env't'l Prot. Agency, to Meleah Geertsma, Re: Illinois prison meeting – oily substance, Vienna survey (March 19, 2023).

²⁸⁷ Email from Joey L. Logan-Pugh, Ill. Env't'l Prot. Agency & Allison Nickrent, Ill. Dept. of Health, to Meleah Geertsma, Re: IL prison-water meeting with coalition and agencies (March 17, 2023).

²⁸⁸

²⁸⁹ IEPA Email to NRDC (May 8, 2023).

that included positive *Legionella* results at Stateville; for reasons unknown to Petitioners, the reports released by IDOC did not show positive results did not include those IDOC had apparently previously provided to IEPA and that did show the presence of *Legionella* bacteria within the Stateville water system.