

THIRSTY FOR JUSTICE: HOW THE FLINT WATER CRISIS HIGHLIGHTS THE INSUFFICIENCY OF THE CITIZEN SUIT PROVISION OF THE SAFE DRINKING WATER ACT

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ABSTRACT

In 1974, the Safe Drinking Water Act was enacted in order to protect the quality of drinking water in the United States. Like many pieces of environmental legislation at the time, it included a citizen suit provision, an avenue by which ordinary citizens could seek to ensure compliance with the Act and safeguard their ability to access safe drinking water. Yet despite the Act and its citizen suit provision, the Flint Michigan Water Crisis happened. This note explores how the crisis transpired, considers notions of environmental justice, and identifies opportunities within the Act to create more significant and effective citizen suits.

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I. INTRODUCTION

“Thousands have lived without love, not one without water.”

-W.H. Auden

In Flint, Michigan, more than 100,000 people experienced a water crisis.¹ A health crisis.² A humanitarian crisis.³ “In modern society, when we turn on a faucet, we expect safe drinking water to flow out. As the

¹ Susan J. Masten, Simon H. Davies & Shawn P. McElmurry, *Flint Water Crisis: What Happened and Why?*, 108 J. AM. WATER WORKS ASSOC. 22 (2016).

² U.S. DEP'T OF HEALTH AND HUMAN SERVS., PUB. HEALTH SERV., AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, TOXICOLOGICAL PROFILE FOR LEAD, 21-31 (2019), <http://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

³ See *Flint Michigan Crisis “Not Just About Water” UN Rights Experts Say Ahead of President Obama's Visit*, UNITED NATIONS NEWS (May 3, 2016), <https://news.un.org/en/story/2016/05/528272-flint-michigan-crisis-not-just-about-water-un-rights-experts-say-ahead>.

evidence shows, that is no longer the case in Flint.”⁴ The residents of Flint lived without safe drinking water for years.⁵ The infamous Flint Michigan Water Crisis began in April of 2014, when the city of Flint switched its water supply in an effort to save money.⁶ Residents began complaining of the smell and color of their water as soon as May of that year.⁷ Businesses were impacted, including General Motors, which stopped using Flint’s water supply in order to protect its metal products from the water’s corrosive nature.⁸ Families suffered, including that of Leann Walters, whose four children experienced severe abdominal cramping and rashes, and were eventually diagnosed with full-blown lead poisoning.⁹ Residents of Flint, Michigan continue to use bottled water today, fearful of the town’s water supply brought to their homes through corroded pipes and wary of their government’s safety assurance.¹⁰

Section II of this note will examine the development of citizen suit provisions in environmental legislation, specifically the Safe Drinking Water Act (SDWA). It begins with a history of citizen suits being introduced into environmental legislation and the common difficulties and successes of citizen suits throughout their history, generally. Then, it will provide a brief overview of the SDWA. Finally, an outline of the Flint Michigan Water Crisis is provided, both its creation and its effects. Section III analyzes the issue in Flint, Michigan through a lens of environmental justice, exploring the way that Flint’s population interacted with environmental decisions and the effect this intersection created. A proposal of remedies is made to the SDWA’s citizen suit provision, making it more robust and enabling citizens to secure safe drinking water for themselves and their communities.

II. BACKGROUND

A. History of Citizen Suits in Environmental Legislation

Citizen suits were inspired by the work of environmental activists in the late 1960s, who demanded avenues to protect the environment and enforce

⁴ *Concerned Pastors for Social Action v. Khouri*, 217 F. Supp. 3d 960, 972 (E.D. Mich. 2016).

⁵ Masten, Davies & Mcelmurry, *supra* note 1, at 23.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Sofia Lotto Persio, *Who Is Leanne Walters? Activist Who Helped Expose Flint Water Crisis Wins Top Prize*, NEWSWEEK (Apr. 23, 2018, 12:27 PM), https://www.newsweek.com/who-leanne-walters-activist-who-helped-expose-flint-water-crisis-wins-top-897326_

¹⁰ Ari Shapiro, *What’s Changed and What Hasn’t When it Comes to the Flint Water Crisis*, NPR (Oct. 26, 2018, 4:30 PM), <https://www.npr.org/2018/10/26/661136990/whats-changed-and-what-hasnt-when-it-comes-to-the-flint-water-crisis>.

legislation.¹¹ The first citizen suit provision was included in the Clean Air Act in 1970.¹² Since their initial introduction to environmental legislation, citizen suit provisions have become a popular method of enforcement: most of today's federal environmental legislation includes a citizen suit provision.¹³ Popular legislation that contain these provisions include the Clean Air Act,¹⁴ the Clean Water Act,¹⁵ the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),¹⁶ the Emergency Planning and Community Right to Know Act,¹⁷ and the Resource Conservation and Recovery Act.¹⁸

"The archetypal federal citizen suit provision allows 'any person' to 'commence a civil action on his own behalf' against 'any person' who violates a legal prohibition or requirement of the U.S. Environmental Protection Agency."¹⁹ This trend of drafting flexible citizen suit provisions demonstrates a "deliberate choice by Congress to widen citizen access to the courts, as a supplemental and effective assurance that [the environmental law sued under] would be implemented and enforced."²⁰ While the creation of citizen suits certainly increased the public's ability to meaningfully engage in the enforcement of environmental legislation, this avenue is not without statutory, procedural, and resource-based barriers.

Most citizen suits mandate a sixty-day notice period which requires the petitioner to give notice to the federal Environmental Protection Agency (EPA), the state, and the person or entity who is allegedly in violation of a requirement or prohibition.²¹ During this sixty-day notice period, the alleged violator may be able to demonstrate that it is taking steps to remedy the violation or that it is diligently prosecuting the matter.²² Failure to comply with the sixty-day notice period requirement will lead to dismissal of the case.²³ Most citizen suit provisions provide for injunctive relief, cost of litigation (attorney's and expert witness fees), as well as civil penalties to be

¹¹ Jonathan H. Adler, *Stand or Deliver: Citizen Suits, Standing, and Environmental Protection*, 12 DUKE ENVTL. L. & POL'Y F. 39, 41-42 (2001).

¹² See Clean Air Act § 304, 42 U.S.C. § 7604 (2012); Pub. L. 91-604 § 12(a) (1970).

¹³ George Van Cleave, *Congressional Power to Confer Broad Citizen Standing in Environmental Cases*, 29 ELR 10028 (1999), <https://elr.info/articles/archive/29/1>.

¹⁴ 42 U.S.C. § 7604(a) (2012).

¹⁵ 33 U.S.C. §§ 1251-1387 (2012).

¹⁶ 42 U.S.C. § 9659(a) (2012).

¹⁷ 42 U.S.C. § 11046(a)(1) (2012).

¹⁸ 42 U.S.C. § 6972 (2012).

¹⁹ James R. May, *The Availability of State Environmental Citizen Suits*, 18 NAT. RES. & ENV'T 53, 53 (2004), www.jstor.org/stable/40924521.

²⁰ Nat. Res. Def. Council v. Train, 510 F.2d 692, 700 (D.C. Cir. 1974).

²¹ See Hallstrom v. Tillamook Cty., 493 U.S. 20, 22-23, 26 (1989) (upholding the sixty-day notice provisions and recognizing them as legitimate restrictions of access to citizen suit provisions).

²² Gwaltney of Smithfield v. Chesapeake Bay Found., 484 U.S. 49, 59-60 (1987).

²³ Hallstrom v. Tillamook Cty., 493 U.S. 20, 25-26 (1989).

paid to the Treasury.²⁴ The SDWA, however, does not allow for plaintiffs to seek civil penalties.²⁵ The goal of a citizen suit is simply to remedy the violation occurring, not necessarily to reward the citizen plaintiff. Citizen plaintiffs cannot seek civil damages for themselves under these actions.²⁶

Despite these obstacles, citizen suits have been widely and successfully utilized by environmental groups.²⁷ This utilization has driven enforcement action, creating a necessary aspect of accountability for government agencies and private companies.²⁸ It has provided private citizens a legitimate avenue to impact environmental policy.²⁹

B. Background on the Safe Drinking Water Act

1. *The Act's Purpose*

Prior to the enactment of the SDWA in 1974, only fourteen states had officially adopted standards to ensure healthy drinking water.³⁰ This less-than methodical commitment to safe drinking water among the states created a patchwork of coverage and largely failed to protect public health.

The SDWA was established to universally protect the quality of drinking water in the United States.³¹ The Act applies to actual and potential public sources of water for human consumption, both above and underground sources.³² With authority created by the SDWA, the EPA regulates by establishing minimum standards for drinking water.³³ These standards are designed to protect the health of persons consuming the water and includes acceptable levels of contaminants (like lead) that may be present in public sources of drinking water.³⁴

²⁴ Jonathan H. Adler, *Stand or Deliver: Citizen Suits, Standing, And Environmental Protection*, 12 DUKE ENVTL. L. & POL'Y F. 39, 47 (2001); Schwartz & Hackett, *Citizen Suits Against Private Industry Under the Clean Water Act*, 17 NAT. RES. LAW. 327, 337 (1984).

²⁵ 42 U.S.C. §§ 300f—300j-27 (2012).

²⁶ Adler, *supra* note 11, at 51-52.

²⁷ See Karl S. Coplan, *Citizen Litigants Citizen Regulators: Four Cases Where Citizen Suits Drove Development of Clean Water Law*, 25 COLO. NAT. RES., ENERGY & ENVTL. L. REV. 61, 67 (2014).

²⁸ *Id.*

²⁹ *Id.* at 85.

³⁰ Chris Wiant, *The Safe Drinking Water Act: A Blueprint for Protecting the Nation's Drinking Water*, WATER QUALITY AND HEALTH COUNCIL (Feb. 28, 2014), <https://waterandhealth.org/safe-drinking-water/drinking-water/safe-drinking-water-act-blueprint-protecting-nations-drinking-water/>.

³¹ 42 U.S.C. §§ 300f - 300j-27 (2012).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

2. *The 1996 Amendment*

The 1996 amendment is the most notable amendment to this act. Among the congressional findings which influenced the 1996 amendments to the SDWA are that “safe drinking water is essential to the protection of public health”³⁵ and that “because the requirements of the Safe Drinking Water Act . . . now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements.”³⁶ These findings demonstrate a national commitment to providing safe drinking water as well as a recognition that many states were unable to do so without federal assistance.³⁷ Congress even goes so far as to recognize the impact drinking water has on health, calling it an issue of public health. While this legislative history provides us with the idea that safe drinking water was to become an important, funds-receiving public health concern, we will see how it failed to ensure safe drinking water to Flint.

Congress found that “procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation.”³⁸ This discussion may suggest an indication that Congress wanted citizens to play a more active role in the enforcement of SDWA standards. This note will explore, later, the ways that greater public education may improve the SDWA.

The legislators continue to say, “[I]n considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit-cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect human health.”³⁹ This determination shows that although Congress sought to standardize water regulation based on scientific methods of protecting human health, that was not the only consideration. This finding has allowed for the consideration of cost analysis when determining standards.⁴⁰

Essentially, this amendment expanded the ways which the EPA could regulate drinking water, recognizing the role of “source water protection, operator training, funding for water system improvements and public

³⁵ Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182, 110 Stat. 1613, 1614 (1996).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 1615.

³⁹ *Id.*

⁴⁰ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, SUMMARY OF THE SAFE DRINKING WATER ACT, <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act>.

information.”⁴¹ This amendment allowed for a more comprehensive approach to ensuring safe drinking water, beginning with source water protection, in comparison to the original act which only recognized water treatment methods.⁴²

3. *The Lead and Copper Rule*

The Lead and Copper Rule was adopted by the EPA under the SDWA in 1991.⁴³ It recognized that the presence of lead and copper in water negatively affected health, and set maximum levels that may be present in sources of public drinking water.⁴⁴ The current maximum level for lead is 15 parts per billion (ppb).⁴⁵ If the level exceeds that standard in more than 10% of water sources sampled, then activity is required.⁴⁶ First, the non-compliant system is required to take action to solve the breach. In addition, they must inform the affected public of the breach and inform them of any actions they should be taking to protect their health.⁴⁷

4. *Citizen Suits in the SDWA*

The SDWA allows for citizens to enforce actions required by the Act.⁴⁸ The following is the excerpt of the SDWA that enables citizen suit provisions:

(a) Persons subject to civil actions; jurisdiction of enforcement proceedings. Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this [subchapter];

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this [subchapter] which is not discretionary with the Administrator; or

⁴¹ Wiatt, *supra* note 30.

⁴² *Id.*

⁴³ 40 C.F.R. § 141.80 (2019).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 42 U.S.C. § 300j-8 (2019).

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section [300h-8 (b) of this title], to pay the penalty.⁴⁹

This section is the enabling language of the SDWA that gives citizens the ability to bring suit that was discussed earlier as the archetypal citizen suit provision. Here, it allows any person to bring suit against the United States government, any governmental instrumentality or agency, the Administrator, or against any person⁵⁰ when there is a violation of the SDWA.⁵¹ It continues:

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this [subchapter] or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice
No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this [subchapter]—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or (2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or (3) under subsection (a)(3) of this section prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.⁵²

⁴⁹ *Id.*

⁵⁰ 42 U.S.C. § 7602(e) (“The term ‘person’ includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.”).

⁵¹ 42 U.S.C. § 300j-8 (2019).

⁵² *Id.*

The language of this section creates the sixty-day notice period that was discussed as a barrier to citizen suits above. It requires that the plaintiff give sixty days of notice to the administrator, alleged violator, and the state before an action can be commenced.⁵³ As discussed below, this delay of action can act as a barrier to effective citizen suits.⁵⁴

Another barrier to citizen suits is standing. Article III, Section 2 of the Constitution of the United States limits the jurisdiction of federal courts to "cases" and "controversies."⁵⁵ The Supreme Court has interpreted this to mean "those disputes which are appropriately resolved through the judicial process."⁵⁶ To seek injunctive relief, the plaintiff must show: (1) that he is under threat of suffering a concrete and particularized "injury in fact"; (2) that the threat is "actual or imminent, not conjectural or hypothetical"; (3) that the injury is "fairly traceable to the challenged action of the defendant"; and (4) a favorable judicial decision will likely prevent or redress the injury.⁵⁷ The Supreme Court has applied these principles to citizen suit provisions and interpreted it to require a plaintiff be "reasonably concerned."⁵⁸ While this decision shows a movement to relax standing requirements in citizen suits⁵⁹ it does not eradicate the barrier. The burden to prove these elements of standing falls on the potential citizen-plaintiff.⁶⁰ In the case of the residents of Flint, that burden fell on a community who already shouldered the heavy burdens of unsafe water, disproportionately high poverty, and low education levels.⁶¹ Thankfully, these SDWA suits have been found to have standing. The statute continues:

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a

⁵³ *Id.*

⁵⁴ *See* Hallstrom v. Tillamook Cty., 493 U.S. 20, 33 (1989) (upholding the sixty-day notice provisions and recognizing them as legitimate restrictions of access to citizen suit provisions).

⁵⁵ U.S. CONST. art. III, § 2, cl. 1.

⁵⁶ Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

⁵⁷ *Id.* at 560-61.

⁵⁸ Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 167 (2000).

⁵⁹ *Id.*

⁶⁰ Lujan, 504 U.S. 555, 561 (1995).

⁶¹ UNITED STATES CENSUS BUREAU, QUICK FACTS: CITY OF FLINT, MICHIGAN (2018), <https://www.census.gov/quickfacts/fact/table/flintcitymichigan/PST045217>

bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this [subchapter] or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction, against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this [subchapter], except as provided in section [300j-7 of this title]. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, [see section 300j-6 of this title].⁶²

Section (d) creates the available remedies to a successful SDWA citizen suit. It allows for enforcement action as a remedy to a successful citizen suit.⁶³ While it does allow for injunctive relief and cost of litigation, it does not provide an opportunity to seek civil penalties to be paid to the treasury like many other citizen suit provisions.⁶⁴ It does not provide for civil damages. Section (e) does not prohibit other types of relief that may be available outside of actions created by the SDWA. These separate actions may be a more enticing legal remedy, since they may provide for civil damages or penalties unlike the SDWA. This note will later propose, among other things, suggestions for section (d) which may make citizen suits a more attractive option for enforcing the SDWA.

⁶² 42 U.S.C. § 300j-8 (2019).

⁶³ *Id.*

⁶⁴ *Id.*

C. The Water Crisis in Flint Michigan

1. *Creation of Crisis*

In 1967, Flint, Michigan began purchasing treated water from the Detroit Water and Sewage Department (DSWD) in order to satisfy an increasing demand of potable water for its growing population.⁶⁵ Flint continued to treat water from the Flint River as a back-up source, maintaining the Flint Water Service Center (FWSC).⁶⁶ That water was not used as drinking water, but, rather, was released back into the Flint River once treated.⁶⁷ The Board of Water Commissioners for the City of Detroit approved a plan to mix the treated water from Flint River as well as the water purchased from DWSW as a cost saving measure for Flint in 2012.⁶⁸ The cost of water continued to be a problem for the city of Flint, and so it continued to search for less expensive alternatives. In 2013, Flint joined the Karegnondi Water Authority (KWA).⁶⁹ The KWA was building its own pipeline to access water from Lake Huron at the time Flint decided to join the authority.⁷⁰ While waiting for the KWA to complete the pipeline, Flint utilized its prior back-up source: water from the Flint River.⁷¹ Flint's water supply abruptly switched from DSWD to water from the Flint River treated by the FWSC despite vocalized concern.⁷²

Brian Larkin, the associate director of the (Michigan) Governor's Office of Urban and Metropolitan Initiatives at the time of the water supply switch, warned officials of the dangers of moving forward.⁷³ On March 14, 2014, he sent this email to others in the governor's office: "The expedited time-frame is less than ideal and could lead to some big potential disasters down the road."⁷⁴ Mike Glasgow, laboratory and water quality supervisor at the plant, was another against the switch of water supply.⁷⁵ Mr. Glasgow voiced concern in an April 25, 2014 email to the State of Michigan Department of Environmental Quality (MDEQ), "I do not anticipate giving the OK to begin sending water out anytime soon. If water is distributed from

⁶⁵ Masten, Davies & Mcelmurry, *supra* note 1, at 23.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ryan Felton, *How Flint Traded Safe Drinking Water for a Cost-Cutting Plan That Didn't Work*, THE GUARDIAN, (Jan. 23, 2016), <https://www.theguardian.com/us-news/2016/jan/23/flint-water-crisis-cost-cutting-switch-water-supply>.

⁶⁹ Masten, Davies & Mcelmurry, *supra* note 1, at 23.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

this plant in the next couple weeks, it will be against my direction.”⁷⁶ Notwithstanding the caution heeded by these officials, the city of Flint moved forward with its plan.

Complaints of the water’s safety came shortly after the switch, initially related to the water’s odor and color.⁷⁷ There were also reports that the water was causing rashes on children.⁷⁸ In October of 2014, General Motors stopped using the water, and instead relied on a different source.⁷⁹ General Motors complained that the water supplied by FWSC was corroding metal engine parts.⁸⁰

Known violations of the SDWA occurred in the Summer of 2014.⁸¹ “*Escherichia coli* (*E. coli*) and total coliform violations resulted in the issuance of three boil-water alerts within a 22-day period during summer 2014.”⁸² Trihalomethane, a contaminant regulated by the SDWA, levels exceeded their limits at several locations.⁸³ In February of 2015, the City of Flint sampled a resident’s home and found high lead concentrations in her water.⁸⁴ Concerned citizens did independent research: in September of 2015, data was published by a team led by pediatrician Mona Hanna-Attisha revealing increased blood lead levels of children after the switch of water supply.⁸⁵ In compliance with the SDWA Lead and Copper Rule, the city of Flint sampled for lead. The lead level was nearly three times greater than levels in the previous fifteen years.⁸⁶ The FWSC was unprepared for and incapable of treating water from the Flint River in order to produce safe drinking water.⁸⁷ The treated water corroded lead pipes.⁸⁸ Finally, after much public pressure, the city of Flint began purchasing its water from DWSD again on October 16, 2015.⁸⁹

⁷⁶ *Id.*

⁷⁷ Merrit Kennedy, *Lead Laced Water In Flint: A Step-By-Step Look at the Makings of a Crisis*, NPR: THE TWO WAY, (Apr. 20, 2016), <https://www.npr.org/sections/thetwo-way/2016/04/20/465545378/lead-laced-water-in-flint-a-step-by-step-look-at-the-makings-of-a-crisis>.

⁷⁸ Masten, Davies & Mcelmurry, *supra* note 1, at 24.

⁷⁹ Kennedy, *supra* note 77.

⁸⁰ Kennedy, *supra* note 77.

⁸¹ MATTHEW M. DAVIS ET AL., FLINT WATER ADVISORY TASK FORCE- FINAL REPORT 1, 7 (2016).

⁸² *Id.* at 17.

⁸³ *Id.* at 18.

⁸⁴ Kennedy, *supra* note 77.

⁸⁵ Masten, Davies & Mcelmurry, *supra* note 1, at 22.

⁸⁶ *Id.*

⁸⁷ *Id.* at 25-27.

⁸⁸ *Id.* at 31.

⁸⁹ *Id.* at 24.

2. *A Lack of Remedial Action*

a. *The EPA's Delayed Response*

The EPA did not respond until January of 2016 when it issued an emergency response order.⁹⁰ The EPA's government website stated, "Flint's system currently meets regulatory criteria for lead and copper. EPA will continue to oversee the city's efforts to transition to a long-term drinking water source and also monitor its replacement of lead (and galvanized) service lines throughout Flint."⁹¹ The EPA's website also indicated that the quality of water in Flint was improving, and 100 million federal dollars had been allocated by it in order to improve the infrastructure of Flint's water supply.⁹² Despite their online presence, the EPA was virtually idle in Flint, Michigan for almost two years while residents complained, boil orders were issued, and violations of the SDWA occurred.⁹³

b. *Where are the Citizen Suits?*

Litigation surrounded the water crisis in Flint, including class actions and criminal charges, but citizen suits under the SDWA were sparse.⁹⁴ The first SDWA lawsuit was filed in January of 2016 "by the Concerned Pastors for Social Action, the ACLU of Michigan, the Natural Resources Defense Council, Inc., and Melissa Mays, a Flint resident."⁹⁵ This case was filed in the U.S. District Court for the Eastern District of Michigan.⁹⁶ The complaint alleged that the city of Flint failed to: properly treat water to control for corrosion; properly monitor drinking water; comply with public notification requirements; and meet reporting requirements.⁹⁷ Like most citizen suits, it sought injunctive relief—the only remedy afforded to successful plaintiffs

⁹⁰ U.S. ENVTL. PROTECTION AGENCY, FLINT DRINKING WATER RESPONSE, <https://www.epa.gov/flint> (last updated June 3, 2019).

⁹¹ *Id.*

⁹² *Id.*

⁹³ There is much literature explaining this delay of action. This note will expand on the notion of environmental racism as an explanation of this delay, but there is opportunity to explore other barriers the EPA faces in executing timely responses to environmental crises.

⁹⁴ *Flint Water Crisis Facts*, CNN, <https://www.cnn.com/2016/03/04/us/flint-water-crisis-fast-facts/index.html> (last updated July 2, 2019).

⁹⁵ Jennifer Calfas, *New Federal Lawsuit Alleges State Violated Safe Drinking Water Act in Flint*, MICHIGAN RADIO NPR (Jan. 27, 2016), <http://www.michiganradio.org/post/new-federal-lawsuit-alleges-state-violated-safe-drinking-water-act-flint#stream/0>. (discussing *Concerned Pastors for Social Action v. Khouri*, 194 F. Supp. 3d 589 (E.D. Mich. 2016)).

⁹⁶ *Concerned Pastors for Soc. Action v. Khouri*, 194 F. Supp. 3d 589, 589 (E.D. Mich. 2016).

⁹⁷ Calfas, *supra* note 95.

under the citizen suit provision of the SDWA.⁹⁸ In November of 2016, the federal court ruled in favor of the claimants of the citizen suit, ordering state officials and the City of Flint to ensure homes had safe drinking water by method of supplying bottled water, or installing water filters.⁹⁹ Despite this, access to safe drinking water continued to be a problem. Flint refused compliance, citing to practical and financial difficulties.¹⁰⁰ I will later discuss, in my proposed solutions section, how the inclusion of civil penalties may solve this difficulty by creating accountability. Flint later agreed to replace the lines supplying drinking water and instituting a lead monitoring system in March of 2017.¹⁰¹

Another SDWA suit was filed in 2017 by the Michigan Department of Environmental Quality (MDEQ).¹⁰² MDEQ is Michigan's regulating body responsible for "reduc[ing] public health and environmental risks, assist[ing] Michigan communities with addressing infrastructure needs, and build[ing] external partnerships to address Michigan's environmental issues through the authorities granted to us by the Michigan Legislature and Constitution."¹⁰³ This suit also sought injunctive relief.¹⁰⁴ MDEQ asked the court to order the city of Flint to sign a negotiated agreement which would provide safe drinking water to the citizens of Flint.¹⁰⁵ The City of Flint combatted the suit, contending that it needed more time to "review alternatives before approving a long-term deal."¹⁰⁶ The City also raised issues of standing and ripeness.¹⁰⁷ Ultimately, the court found for MDEQ¹⁰⁸:

The Court has subject matter jurisdiction over this case. The controversy is ripe for adjudication. The plaintiff has established the requisites for a permanent injunction compelling the City of Flint to enter a long-term water supply contract, consistent with the EPA's Emergency Administrative Order. Neither the defendant nor the intervening defendant has offered evidence to establish a material fact dispute. The plaintiff is entitled to a judgment as a matter of law.

⁹⁸ *Flint Water Crisis*, NRDC, https://www.nrdc.org/flint?gclid=EAIaIQobChMIrpTO1_ug4AIVCrjACh3KwAQ6EAAAYASAAEgKlh_D_BwE; *Concerned Pastors for Soc. Action v. Khouri*, 217 F. Supp. 3d 960 (E.D. Mich. 2016).

⁹⁹ NRDC, *Flint Water Crisis*, https://www.nrdc.org/flint?gclid=EAIaIQobChMIrpTO1_ug4AIVCrjACh3KwAQ6EAAAYASAAEgKlh_D_BwE (last visited Aug. 16, 2019).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *See Mich. Dep't of Env'tl. Quality v. City of Flint*, 158 F. Supp. 3d 1002 (E.D. Mich. 2017).

¹⁰³ MICH. DEPT. OF ENVTL. QUALITY, *Michigan State University*, https://greeningmichigan.com/_michigan/member/michigan-department-of-environmental-quality/.

¹⁰⁴ *Mich. Dep't of Env'tl. Quality*, 158 F. Supp. 3d at 1002.

¹⁰⁵ *Id.* at 1005.

¹⁰⁶ *Id.* at 1010.

¹⁰⁷ *Id.* at 1002.

¹⁰⁸ *Id.*

.....

It is further **ORDERED** that the City of Flint, including all the appropriate branches of its government, must choose a long term source of drinking water that satisfies EPA's Emergency Administrative Order, as amended, and sign all the requisite agreements to implement that choice **on or before October 23, 2017**.¹⁰⁹

This suit resulted in an order that the City of Flint implement a safe, long term source of drinking water for the city.¹¹⁰ This was an enormous accomplishment, given that the first complaints of water quality began three years earlier in 2014. The State's slow response further demonstrates the need for the accessible, effective citizen suit provisions of the SDWA.

3. *The Damage Done*

In the years between Flint's switch to water treated by FWSC in 2013, and the eventual emergency order issued by the EPA in 2016,¹¹¹ the people of Flint suffered while citizens and environmental groups worked towards a response. By the time the EPA issued its emergency order, nearly 100,000 residents of Flint had already been exposed to dangerous levels of lead in their water.¹¹² The effects of lead exposure to the human body is extremely detrimental.¹¹³ It effects nearly every system of the human body, potentially causing respiratory effects, neurological deficits, reproductive concerns, birth defects, and an increased risk of cancer.¹¹⁴

Blood lead levels from 25 and 60 µg/dL give rise to neuropsychiatric effects such as delayed reaction times, irritability, and difficulty in concentrating, as well as slowed down motor nerve conduction and headache (Merill et al., 2007). Anaemia may appear at blood lead levels higher than 50 µg/dL (Merill et al., 2007). In adults, abdominal colic, involving paroxysms of pain, may appear at blood lead levels higher than 80 µg/dL (Kosnett, 2005). High blood lead levels which exceed 100 µg/dL cause very severe manifestations, like signs of encephalopathy (condition characterized by brain swelling) accompanied by increased pressure within the skull,

¹⁰⁹ *Id.* at 1019 (emphasis in original).

¹¹⁰ *Id.* at 1002.

¹¹¹ A great deal of activism, discussion, and related work occurred in Flint before the formal litigation discussed in this note was initiated. Although beyond the scope of this note, the importance of this non-legal work cannot be overstated.

¹¹² Eric Moorman, *A Greater Sense of Urgency: EPA's Emergency Authority Under the SDWA and Lessons from Flint, Michigan*, 47 ENVTL. L. REP. NEWS & ANALYSIS 10786, 10796 (2017).

¹¹³ Ab Latif Wani, Anjum Ara, & Jawed Ahmad Usmani, *Lead Toxicity: A Review*, 8 INTERDISCIP. TOXICOLOGY 55 (2015) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4961898/pdf/ITX-8-055.pdf>.

¹¹⁴ *Id.* at 56.

delirium, coma, seizures, and headache (Henritig, 2006). However such manifestations appear in children at lead levels of 70 µg/dL and more. Central nervous system and neuromuscular manifestations usually result from intense exposure, while gastrointestinal features usually result from exposure over longer periods (Brunton et al., 2007). Signs and symptoms of chronic exposure include loss of short-term memory or concentration, depression, nausea, abdominal pain, loss of coordination, and numbness and tingling in the extremities (Patrick, 2006). Fatigue, problems with sleep, headaches, stupor, slurred speech, and anaemia are also found in chronic lead poisoning (Pearce, 2007).¹¹⁵

Exposure to lead has a serious effect on the renal system, contributing to chronic renal disease, namely, a loss of function of the kidneys.¹¹⁶ In men, exposure to lead may cause a decreased sperm count and decreased number of motile sperm.¹¹⁷ In women, exposure can cause miscarriage, low-weight and premature births, and developmental delays in their children.¹¹⁸ Lead is stored in the bones, and will continue to affect men and women's reproductive health years after exposure.¹¹⁹ The brain is most affected by exposure to lead, and children are especially susceptible.¹²⁰ It interferes with synapses, and may reduce density of the brain.¹²¹ It is associated with decreased academic performance among all ages.¹²² In children, it leads to developmental disabilities such as attention deficit disorder and anti-social behavior.¹²³ The effect of lead exposure to humans is undeniably profound.

Reports vary on the number of deaths that have resulted from the crisis, but it is believed that more than 119 deaths may have resulted from the consumption of water in Flint.¹²⁴ Officially, ninety people were sickened and twelve died from exposure to water while Flint used the contaminated water.¹²⁵

¹¹⁵ *Id.* at 58.

¹¹⁶ *Id.* at 60.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 61.

¹²¹ *Id.*

¹²² *Id.* at 60.

¹²³ *Id.* at 61.

¹²⁴ Kayla Ruble, *Flint Water Crisis Deaths Likely Surpass Official Toll*, FRONTLINE (Aug. 28, 2018), <https://www.pbs.org/wgbh/frontline/article/flint-water-crisis-deaths-likely-surpass-official-toll/>.

¹²⁵ *Id.*

III. ANALYSIS

A. The Water Crisis as an Issue of Environmental Justice

The EPA defines Environmental Justice on their website as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹²⁶ The notion of environmental justice is not new.¹²⁷ In 1994, President William Clinton required the EPA, by executive order, to consider and define environmental justice. However, its roots run to the 1970s where the environmental movement and civil rights era collided, creating early concepts of environmental justice.¹²⁸ Minority leaders of the time often criticized environmentalism as an attempt to avoid the consequences of the very innovations (technology, transportation, energy, etc.) the wealthy and white benefitted from.¹²⁹ Examples of this concern include toxic waste disposal sites and garbage disposal sites historically being placed and continuing to operate in low-income and black communities.¹³⁰ Mainstream environmental groups and the EPA largely ignored these criticisms for a long time; in fact, the EPA did not define environmental justice until 1995, after prompted by President Clinton’s aforementioned executive order, E.O. 12898.¹³¹

A prevalent theory addressing these examples of environmental injustice is particularly interesting when considering the manner in which it intersects with citizen suit provisions. The theory suggests that minority communities are targeted for hazardous waste facilities and other environmental hazards by waste-management firms because their residents are more likely to be poor and politically powerless.¹³² Waste-management firms, therefore, find it politically expedient to site hazardous waste facilities in minority communities.¹³³

The City of Flint is a predominantly non-white community.¹³⁴ According to the United States Census Bureau, Flint is comprised of 53.9% black or African persons, 39.9% white persons, and 3.9% Hispanic or

¹²⁶ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Environmental Justice* (2017) <https://www.epa.gov/environmentaljustice>.

¹²⁷ 4 FRANK P. GRAD, TREATISE ON ENVIRONMENTAL LAW § 9.10 (2018).

¹²⁸ Richard J Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787 (1992).

¹²⁹ *Id.* at 788.

¹³⁰ *See generally, id.*

¹³¹ Grad, *supra* note 127.

¹³² Lazarus, *supra* note 128, at 802.

¹³³ *Id.*

¹³⁴ UNITED STATES CENSUS BUREAU, *supra* note 61.

Latinx.¹³⁵ Only 11.9% of persons twenty-five years or older have a bachelor's degree or higher level of education,¹³⁶ and 10.2% of those under the age of sixty-five do not have health insurance.¹³⁷ The median household income is \$26,330.¹³⁸ A disproportionately high percentage (41.2%) of persons living in Flint are living in poverty.¹³⁹ For comparison, the federal poverty rate was 12.3% in 2017, according to the US Census Bureau.¹⁴⁰

The City of Flint, Michigan is largely inhabited by historically marginalized persons—black and African American people, and the poor. This fact, coupled with the wide discretion granted by law to city officials, created a recipe for abuse:

[T]he statistics in Michigan imply that there is a disproportionate impact of these powers on minority communities—with over half of Michigan's African American communities [sic] population living under emergency management as compared to about two percent of the white population. In 2014, a United States district court judge agreed, stating that the Michigan law gives "enormous discretion to state decision makers and creates a significant potential for discriminatory decisions." While the motivation... is to provide financial stability, the scope of power allowed for this role should be carefully considered because short-term cost cutting measures by an emergency manager can not only fail under its own framework of cost savings, but also cause a devastating result for minority and low-income populations.¹⁴¹

The poor decision to switch Flint's water supply from the DSWD to the water of the Flint River treated by the FWSC had a disproportionate impact on low income and African American communities, increasing their consumption of lead.¹⁴² As previously discussed, exposure and consumption of lead can cause serious detriments to an individual's health. This increased consumption by an entire population can "shift the well-being of an entire community—creating a higher proportion of children in need of additional social and educational services; reducing the community's earning potential; and ... [leading to] higher rates of delinquency, teen pregnancy, and

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Brie D. Sherwin, *Pride and Prejudice and Administrative Zombies: How Economic Woes, Outdated Environmental Regulations, and State Exceptionalism Failed Flint, Michigan*, 88 U. COLO. L. REV. 653, 683 (2017).

¹⁴² *Id.*

violence.”¹⁴³ Here, this is exactly what happened. The failure to provide safe drinking water free of lead created serious public health and vitality concerns as demonstrated by these impacts of lead consumption.¹⁴⁴ The people who remained in Flint had nowhere to go to escape these consequences.¹⁴⁵ They were living below the poverty level, and even those who were above the poverty line had below average incomes.¹⁴⁶ Moving to Detroit where the cost of living was higher was a non-option, so residents remained in the crumbling city of Flint.¹⁴⁷ Residents of Flint, Michigan were trapped with toxic water and nowhere to go. While the citizens of Flint continued to drink unsafe water for years, the EPA failed to take measures towards enforcement of the SDWA; one can see an indication that environmental justice was failing to be achieved.

Although it is obvious that the citizens of Flint were aware of the failures of the city to provide safe drinking water and were unhappy with its efforts, they were unable to effect timely change. As Dr. Robert Bullard has observed, “Environmental racism is real. It’s so real that even having the facts, having the documentation and having the information has never been enough to provide equal protection for people of color and poor people.”¹⁴⁸

B. Barriers to Successful Citizen Suits

Despite the EPA’s and local government’s failures to remedy the violations of the SDWA in a timely manner, the citizens of Flint might have succeeded where those regulatory bodies had failed by bringing their own citizen suit. That, however, was not to be the case of Flint, Michigan.¹⁴⁹ A successful citizen suit might have prevented the deaths that resulted from consumption of unsafe water. The citizen suit might have done so by providing injunctive relief, as well as civil penalties and even civil damages to the dedicated complainants for their work at ensuring the health of their neighbors. Unfortunately, several barriers exist to these types of successful citizen suits.

¹⁴³ Erik Olson, *What's in Your Water? Flint and Beyond: Analysis of EPA Data Reveals Widespread Lead Crisis Potentially Affecting Millions of Americans*, NATURAL RESOURCES DEFENSE COUNCIL (June 2016), <https://www.nrdc.org/sites/default/files/whats-in-your-water-flint-beyond-report.pdf>.

¹⁴⁴ *Id.*

¹⁴⁵ Sherwin, *supra* note 141, at 683.

¹⁴⁶ UNITED STATES CENSUS BUREAU, *supra* note 61.

¹⁴⁷ Sherwin, *supra* note 141, at 684.

¹⁴⁸ Adam Wernick, *This Professor Says Flint's Water Crisis Amounts to Environmental Racism*, PRI (Feb. 11, 2016, 8:30 AM), <https://www.pri.org/stories/2016-02-11/professor-says-flints-water-crisis-amounts-environmental-racism>.

¹⁴⁹ *See supra* Part II.C.

One statutory barrier to citizen suits under the SDWA is the sixty-day notice period requirement.¹⁵⁰ This sixty-day notice stalls progress for two months. The Flint water crisis presents a good example of how this sixty-day delay can be harmful. When citizens are drinking unsafe water, as determined by the EPA, they need to be able to take immediate action to remedy their drinking water. Additionally, this sixty-day period allows for even further delay of progress by allowing either the EPA, the Attorney General, or the state to demonstrate that they are “diligently” working to solve the violation, which is a low standard to meet.¹⁵¹ If this insufficient standard is met, then the citizen suit may no longer be brought.¹⁵²

The design of citizen suits in the SDWA is a barrier to their success in itself. Citizen suits are designed to provide only injunctive relief.¹⁵³ This remedy creates no real incentive for private citizens or environmental groups to take action. It assumes these people to be humanitarians who will selflessly organize and litigate for no reward.¹⁵⁴ Plaintiffs who could utilize the SDWA’s citizen suit provision may opt to create class action or toxic torts suits because they feel they will be better “made whole” by the remedies available in these suits,¹⁵⁵ as opposed to the mere injunctive relief available under the SWDA’s citizen suit provision. This strategy leaves a gap in the enforcement of the EPA’s standards. While litigation is occurring surrounding the water quality of Flint, and courts are finding for plaintiffs, verdicts are including monetary awards but no injunctive relief. This creates a scenario wherein local and state governments are failing to comply with SDWA standards, but are not mandated to implement solutions.

Perhaps the most obvious, but often overlooked barrier to citizen suits is the lack of awareness that surrounds them.¹⁵⁶ Many citizens are completely unaware of the SDWA and the role it plays in keeping their drinking water safe.¹⁵⁷ Without awareness that a remedy exists, the citizens of Flint cannot utilize it. The Clean Water Act (CWA) has had sizeable numbers of citizen suits brought under it and has been effectively enforced due to these actions.¹⁵⁸ This is likely due to the enormous publicity the Act had and the public awareness of its existence.¹⁵⁹ Potential citizen-plaintiffs lack a similar

¹⁵⁰ See *Hallstrom v. Tillamook Cty.*, 493 U.S. 20, 22-23 (1989) (upholding the sixty-day notice provisions and recognizing them as legitimate restrictions of access to citizen suit provisions).

¹⁵¹ Christine L. Rideout, *Where are All the Citizens Suits?: The Failure of Safe Drinking Water Enforcement in the United States*, 21 HEALTH MATRIX 655, 678 (2011).

¹⁵² *Id.*

¹⁵³ Adler, *supra* note 11, at 6.

¹⁵⁴ Michael S. Greve, *The Private Enforcement of Environmental Law*, 65 TUL. L. REV. 339, 341 (1990).

¹⁵⁵ See *supra* Part II.B.4.

¹⁵⁶ Rideout, *supra* note 151, at 684.

¹⁵⁷ *Id.* at 686.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 687.

awareness of the SDWA, rendering the SDWA's citizen suit provision almost inaccessible.¹⁶⁰

C. Proposed Solutions

The process of preparing for and filing a citizen suit, litigating it, and then implementing the injunctive relief is a lengthy and time-consuming process. The sixty-day notice period is often a roadblock to successful citizen suits¹⁶¹ and should be changed. This could be accomplished in by adopting a two-part emergency provision plan. The SDWA should include an emergency citizen suit provision which is enabled when violations of the SDWA are found to impose a severe risk to public health. Similar emergency provisions exist in other environmental legislation such as the CWA, which waives the notice period when certain water quality violations occur.¹⁶² This, like maximum contaminant levels, could be determined according to scientific findings. This emergency provision could (1) waive the sixty-day delay period traditionally required to bring a SDWA suit, and (2) allow for the issuance of temporary injunctive relief measurements. In Flint's tragic example, this emergency provision could have produced a timely order, before the sixty-day notice period, requiring the City of Flint to supply bottled water to its citizens as a temporary safety measure while further investigation and litigation occurs.

Additionally, courts need to also address the "diligent" prosecution bar and create a more rigorous standard. This standard should include clear indications of diligent enforcement that consider the probability, timeframe, and magnitude of the impact of the litigation. The questions the courts should be asking are: How likely is it this line of litigation will benefit the citizens? How soon will the litigation solve the public health concern? How efficiently will the enforcement mechanisms being pursued solve the public health concern? If the answers to these questions do not weigh on the side of citizen's public health concerns, then the current enforcement cannot be diligent. The current interpretation of diligent prosecution is insufficient, blocking citizen suits while the EPA or state and local governments are engaging in minimal efforts to remedy the problem.¹⁶³ A more rigorous interpretation would ensure that the most appropriate method of enforcement is occurring, either through a citizen suit or a suit brought by a government agency.

Citizen-plaintiffs need the opportunity to receive meaningful rewards for their efforts. The EPA should amend its citizen suit provision within the

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 678.

¹⁶² 33 U.S.C. § 1365(b).

¹⁶³ Rideout, *supra* note 151, at 677.

SDWA to allow for the payment of civil penalties to the treasury. The CWA and the Clean Air Act are examples of citizen suit provisions that allow for civil penalties to be paid to the treasury.¹⁶⁴ The SDWA should adopt similar provisions, creating a sense of urgency and accountability in defendants of SDWA suits to comply with existing standards and court orders. Moreover, the EPA should adopt a rule under the SDWA providing civil damages to the plaintiffs of SDWA suits. The availability of these penalties and damages will act as an incentive to pursue this avenue of enforcement, rather than toxic torts suits discussed above, as well as provide a more complete remedy to citizens and communities who have suffered harm due to violations of the SDWA.¹⁶⁵

Finally, public awareness efforts are needed. The Natural Resources Defense Council initiated a national effort to encourage citizen suits, focusing its efforts on the CWA specifically.¹⁶⁶ It partnered with local environmental groups to bring awareness to the citizen suit opportunities in the CWA.¹⁶⁷ This education campaign was very effective. It increased the number of citizen suits filed under the CWA by over sixty in two years.¹⁶⁸ Likewise, the EPA should make knowledge of SDWA citizen suit provisions more publicly accessible. Simply mentioning the citizen suit provision in the “enforcement” section of the EPA’s SDWA website would be an improvement. The EPA and environmental groups should seek meaningful ways to educate the public on the importance of safe drinking water and the policies in place to ensure access to safe drinking water, including the citizen suit provision of the SDWA. Public awareness efforts have been proven effective in the case of the CWA and will be a crucial aspect of maximizing the effectiveness of citizen suits in enforcing the SDWA.

IV. CONCLUSION

The enforcement of EPA standards is a crucial effort to uphold notions of environmental justice. The water crisis in Flint, Michigan demonstrates this. The SDWA has existed since 1974, yet despite its clear mandates, in 2014, Flint suffered serious and long-lasting harm from unsafe drinking water. The EPA failed to react and remedy the violation before tragedy occurred. This injustice is a glaringly obvious failure to provide “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development” that the EPA asserts to strive for. Local and state governments were nearly unresponsive

¹⁶⁴ *Id.* at 678.

¹⁶⁵ *Id.* at 680.

¹⁶⁶ *Id.* at 687.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

to the crisis. As a last resort, some explored the avenue of citizen suits, but their efforts were frustrated by procedural barriers and ultimately ineffective at remedying the harmful effects of the unsafe water. The EPA has consistently failed at its own commitment to environmental justice.¹⁶⁹ While we should not be complacent with the government's failure to ensure environmental justice, we should take advantage of the built-in opportunity to ensure it ourselves through citizen suits. A more robust citizen suit provision in the SDWA might have allowed the citizens of Flint to protect themselves more effectively. By enacting a strong emergency provision with waiver of the sixty-day notice requirement, demanding more of government diligent prosecution, providing for meaningful civil penalties and damages, and increasing public awareness efforts, the citizen suit provision of the SDWA will be a more useful tool in the efforts to enforce EPA regulation. By empowering citizens to hold entities accountable to their obligation of maintaining safe drinking water, a community can protect itself while simultaneously upholding the principles of environmental justice.

¹⁶⁹ Eric Moorman, *A Greater Sense of Urgency: EPA's Emergency Authority Under the SDWA and Lessons from Flint, Michigan*, 47 ENVTL. L. REP. NEWS & ANALYSIS 10786, 10798 (2017).

