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VIA U.P.S.

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Re: Violations of Clean Water Act and Safe Drinking Water Act at Mississippi State Penitentiary in Parchman, Mississippi

We write on behalf of the Southern Poverty Law Center (SPLC) and Natural Resources Defense Council (NRDC), organizations working to ensure safe and humane conditions for incarcerated individuals, to notify you of persistent and continuing violations of the federal Clean Water Act and Safe Drinking Water Act at Mississippi State Penitentiary in Parchman, Mississippi (Parchman).

People incarcerated at Parchman have for years reported a host of longstanding problems relating to drinking water and sewage. Parchman's drinking water is discolored, has a strong odor, and tastes of sewage or disinfectant. Sewage pipes frequently back up into living spaces and the facilities, including plumbing and sanitation systems, are in severe disrepair. Consistent with these reports, our investigation revealed that the Mississippi Department of Corrections (MDOC) has persistently failed to properly manage Parchman's wastewater and drinking water systems in compliance with federal law. We identified numerous violations of the Clean Water Act and Safe Drinking Water Act, detailed below. MDOC must promptly ensure that Parchman's drinking water is safe and that its wastewater no longer pollutes the waterways nearby. It is long past time to remedy these violations and improve conditions for those people living in and working at Parchman and for surrounding Delta communities.[1]

[1] Our investigation focused on violations of environmental laws relating to Parchman's drinking water and sewage systems. The violations described here are not intended to comprehensively identify illegal conditions at Parchman, nor to state all possible legal violations—including, for instance, under the U.S. Constitution or disability laws—that might arise from drinking water or sewage problems. Indeed, other problems plaguing the prison may violate other state or federal laws. *See, e.g.*, Exhibit 1: *Amos v. Taylor*, No. 4:20-cv-00007 (N.D. Miss. filed Jan. 14, 2020) (alleging

Parchman's History of Violence and Unlivable Conditions Persists Today

Located about 100 miles south of Memphis in rural Sunflower County, Parchman is the largest and oldest of Mississippi's adult prisons. It consists of some 18,000 acres, with eighteen housing units and a population of around 2,000.[2] Since its opening in 1904, Parchman has been infamous for brutal conditions of confinement and exploitation. Parchman was designed to mirror the plantation slavery system of prior centuries, profiting off the free labor of incarcerated people on Parchman farm and through convict leasing. The institution symbolizes the racist foundations of mass incarceration, including the disproportionate incarceration of Black men.[3]

Over one hundred years later, derelict conditions remain the reality for people confined at Parchman. The systemic and widespread deterioration of Parchman's units includes crumbling infrastructure; understaffing; a lack of light and power; frequent flooding and leaks; showers that are inoperable for weeks, if not months; inoperable toilets that are not cleaned, forcing people to resort to defecating in used food trays and plastic bags; exposed live electrical wires; black mold; and vermin infestations, among other inhumane conditions.[4] During record cold weather this past winter, at least one Parchman unit lost heat entirely.[5] Violence and deaths in recent years have laid bare these chronically unlivable conditions; since late 2019, at least 50 people have died while detained at Parchman, many

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unconstitutional conditions of confinement at Parchman); *Justice Dep't Announces Investigation into Conditions at Four Mississippi Prisons*, U.S. Dep't of Justice (Feb. 5, 2020), https://www.justice.gov/opa/pr/justice-department-announces-investigation-conditions-four-mississippi-prisons# (announcing investigation into Parchman, among other state prisons, concerning violence, suicide prevention, and mental health issues); Exhibit 2: *Wallace v. MDOC*, No. 3:21-cv-00516 (S.D. Miss. filed Aug. 9, 2021) (alleging MDOC-wide violations of the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act).

[2] *See* MDOC Monthly Fact Sheet, August 2021, https://www.mdoc.ms.gov/Admin-Finance/MonthlyFacts/2021-08%20Fact%20Sheet.pdf (last accessed Aug. 26, 2021).

[3] *See generally* David Oshinsky, Worse Than Slavery: Parchman Farm and The Ordeal of Jim Crow Justice (Simon & Schuster 1996).

[4] Mississippi Today, "Leaked Mississippi prison photos of skimpy meals, moldy showers and exposed wiring prompts call for investigation" (May 29, 2019), https://mississippitoday.org/2019/05/29/leaked-mississippi-prison-photos-of-skimpy-meals-moldy-showers-and-exposed-wiring-prompts-call-for-investigation/; Mississippi Today, "No water, no lights and broken toilets: Parchman health inspection uncovers hundreds of problems, many repeat violations," (Aug. 5, 2019), https://mississippitoday.org/2019/08/05/no-water-no-lights-and-broken-toilets-parchman-health-inspection-uncovers-hundreds-of-problems-many-repeat-violations; ProPublica, "Lawmakers Refused to Increase an Infamous Prison's Funding. Then, Chaos Erupted" (Jan. 8, 2020), https://www.propublica.org/article/lawmakers-refused-to-increase-an-infamous-prisons-funding-then-chaos-erupted; New York Times, "'A Blood Bath': 5 Dead as Gang Violence Rocks Mississippi Prisons," (Jan. 9, 2020), https://www.nytimes.com/2020/01/09/us/mississippi-prisons.html?action=click&module=Well&pgtype=Homepage&section=US%20News; CNN, "Mississippi inmates call infamous prison unit slated for closure 'a death trap,'" (Feb. 4, 2020), https://www.cnn.com/2020/02/04/us/mississippi-parchman-prison-close-death-trap/index.html.

[5] WJTV, "Freezing temperatures cause problems at prisons, says MDOC," (Feb. 17, 2021), https://www.wjtv.com/news/freezing-temperatures-cause-problems-at-prisons-says-mdoc/.

violently.[6] The COVID-19 pandemic has added immeasurably to the suffering of those at Parchman, as the health crisis and the recission of visitation and other privileges further exacerbate the effects of Parchman's inhumane conditions.[7]

Parchman's malfunctioning sewage treatment system and drinking water problems—a result of MDOC's neglect and mismanagement—make Parchman's horrid conditions all the more intolerable. People have reported many instances when raw sewage overflows from toilets and drains, covering cell and bathroom floors.[8] At times, sewage has been on the floor "nearly every day" for six weeks due to toilets that "were constantly overflowing."[9] The sewage usually overflows after heavy rain, which may overwhelm the failing sewer system. Prison staff do not address the overflows, nor do they clean up the sewage.[10]

Additionally, for years, people incarcerated at Parchman have reported that the tap water is discolored, contains floating particles, and has a foul smell and taste.[11] When people turn on the tap to drink, shower, or wash their hands, water flows out in nearly every imaginable color: brown, yellow, pink, orange, rust-colored, gray, and tan, often with dark particles floating it in that are big enough to be visible to the unassisted eye. People housed in many of Parchman's units have long reported that tap water alternates between smelling and tasting like raw sewage and smelling and tasting strongly of chemicals and chlorine.[12] Some have reported that the chemical smell of their drinking water is sometimes so strong that it burns their eyes. While Parchman's guards and other staff can avoid drinking the discolored, smelly water by bringing bottled water to work, incarcerated people only have that option at a high cost (buying bottled water from the canteen) that is unaffordable to many.

Incarcerated people have reported a variety of symptoms that they attribute to drinking and showering in this water, including rashes or sores where the water from the shower has hit their skin and stomach problems ranging from cramps to nausea. Some

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[6] *See* WXXV 25, "Inmate dies at Mississippi State Penitentiary at Parchman; 39th inmate death in a state prison since December," (May 12, 2020), https://www.wxxv25.com/inmate-dies-mississippis-parchman-prison-hospital/.

[7] Clarion Ledger, "Coronavirus in Mississippi: Death knocks louder at Parchman's prison door," (March 24, 2020), https://www.clarionledger.com/story/opinion/columnists/2020/04/25/mississippi-prisons-parchman-conditions-coronavirus-opinion/3018790001/.

[8] *Id.*; CNN, "Mississippi inmates call infamous prison unit slated for closure 'a death trap,'" (Feb. 4, 2020), https://www.cnn.com/2020/02/04/us/mississippi-parchman-prison-close-death-trap/index.html.

[9] Exhibit 3: Suppl. Mem. Supp. Pls.' Emergency Mot. for TRO & Prelim. Inj. 22, *Amos v. Taylor*, No. 4:20-cv-00007 (N.D. Miss. June 9, 2020), ECF No. 99 (citing declarations of incarcerated witnesses).

[10] *Id.*

[11] *E.g.*, Mississippi Today, "No water, no lights and broken toilets: Parchman health inspection uncovers hundreds of problems, many repeat violations," (Aug. 5, 2019) https://mississippitoday.org/2019/08/05/no-water-no-lights-and-broken-toilets-parchman-health-inspection-uncovers-hundreds-of-problems-many-repeat-violations.

[12] *Id.*; *see also, e.g.*, Exhibit 3: Suppl. Mem. Supp. Pls.' Emergency Mot. for TRO & Prelim. Inj. 20, *Amos*, ECF No. 99 (citing declarations of incarcerated witnesses).

experience chronic medical conditions and worry that long-term exposure to Parchman's water has worsened their health problems.

Despite these plainly apparent, widespread, and frequent water quality issues, and multiple complaints, incarcerated people report that MDOC has consistently failed to address the problem or provide answers to their concerns.

Our investigation into Parchman's wastewater and drinking water facilities revealed a pattern of mismanagement and multiple violations of the federal Clean Water Act and Safe Drinking Water Act. This letter describes these violations in detail.[13] We urge MDOC, the Mississippi State Department of Health (MSDH), and the Mississippi Department of Environmental Quality (MDEQ) to promptly fix these long-standing problems by (a) complying with and enforcing the terms of Parchman's wastewater permit; (b) developing and publishing a written compliance plan for the wastewater system, including an assessment of upgrades needed to meet all contaminant limits in Parchman's permit; (c) achieving compliance with federal safe drinking water regulations, including for required monitoring of chlorine and public notification; and (d) comprehensively investigating the aesthetic problems with Parchman's tap water, including concerning odors, particles, and discoloration of the water.

Clean Water Act Violations

The Clean Water Act regulates the discharge of wastewater into rivers and other waterbodies to protect and preserve the health of the nation's waters. Under the law, wastewater systems like Parchman's must obtain a National Pollutant Discharge Elimination System (NPDES) permit before releasing polluted wastewater into a waterway.[14] NPDES permits contain limits, known as "effluent limitations," restricting the quantities, rates, and concentrations of substances that may be discharged. Discharging wastewater containing contamination without a permit or above the levels specified in a permit violates the Clean Water Act.[15] The law also requires Parchman to monitor its wastewater discharges and submit monitoring and reports to MDEQ to show permit compliance.[16]

Parchman's wastewater system is in disrepair and has been mismanaged for years. Since at least 2016, Parchman has violated its NPDES permit limits for various pollutants, failed to operate and maintain its wastewater system in compliance with its permit, and violated permit conditions requiring monitoring and reporting.

[13] All documents cited in this letter are also available on request from NRDC and SPLC. Please email Sarah Tallman, stallman@nrdc.org, and Sara Imperiale, simperiale@nrdc.org.

[14] *See* 33 U.S.C. §§ 1311(a), 1342.

[15] *See id.* § 1365(f).

[16] *See id.* §§ 1318, 1342(a); 40 C.F.R. § 122.21(j)(4).

A. Parchman's wastewater system

Parchman treats and discharges wastewater generated by the prison through a sewage treatment system called a publicly owned treatment works (POTW). The system, known as POTW No. 1, has approximately fifteen miles of collection pipes, with five lift stations.[17] Lift stations are "designed to move wastewater from lower to higher elevation through pipes."[18] They generally include a wastewater receiving well "equipped with a screen or grinding to remove coarse materials," as well as pumps and piping, a power supply system, and an equipment control and alarm system.[19]

At Parchman, the wastewater system transports sewage from the prison through the pipe system and pumps it into two settling lagoons. The lagoons allow suspended solids to settle and other natural processes to remove nutrients and contaminants and digest sludge.[20] Water is then pumped from the lagoons onto a spray field, which helps further remove nutrients and control pathogens.[21] Runoff from the spray field collects in concrete swales that lead to the receiving ditch.[22] The system is permitted to release 0.8 million gallons of wastewater per day, but current wastewater flows are somewhat smaller.[23] Wastewater flows into a ditch leading to the surrounding Black Bayou, which then flows into the Big Sunflower River and, ultimately, the Yazoo River.

Wastewater discharged from Parchman's POTW No. 1 may be affecting the health of downstream waters, including the Black Bayou and the confluence of the Black Bayou and Sunflower River. Waters in the vicinity of the prison and several miles downstream are visibly cloudy, with algal blooms appearing at various points downstream. Fishing is common in this area, particularly on the Sunflower River, and pollution from Parchman's wastewater may be impacting the fish and wildlife in these waterways.

B. Parchman is violating the Clean Water Act

1. Parchman's permit-limit exceedances unlawfully pollute surrounding waterways and threaten the health of individuals who use downstream waters

Parchman's wastewater-monitoring records show a pattern of permit-limit exceedances since 2016, including exceedances of limits for 5-day biochemical oxygen

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[17] Exhibit 4: January 24, 2011 MDEQ Water Compliance Inspection Report at 6.

[18] U.S. EPA, "Collection Systems Technology Fact Sheet: Sewers, Lift Station" (Sept. 2000), https://www3.epa.gov/npdes/pubs/sewers-lift_station.pdf.

[19] *Id*.

[20] U.S. EPA, Principles of Design and Operations of Wastewater Treatment Pond Systems for Plant Operators, Engineers, and Managers § 1.2.2 (2011), https://www.epa.gov/sites/production/files/2014-09/documents/lagoon-pond-treatment-2011.pdf.

[21] Exhibit 5: Mid-South Consulting Presentation, slide 2 (Oct. 18, 2016).

[22] Exhibit 6: May 18, 2017 MDEQ Inspection Report.

[23] *See id.*; Exhibit 7: July 5, 2018 Email from Mid-South Consulting to MDEQ; Exhibit 8: 2017-2022 NPDES Permit for POTW No. 1, PDF p. 4.

demand (BOD_5), *E. coli*, and total suspended solids (TSS) concentration and percent removal.

a. 5-day biochemical oxygen demand (BOD_5) violations

Wastewater often contains organic matter that is decomposed by microorganisms, which use oxygen in the process. BOD is a measure of the rate microorganisms consume oxygen while breaking down organic material in water. When more oxygen is consumed than produced, other organisms that rely on oxygen in water (like fish or other aquatic animals) may move away from the area, weaken, or die.[24] Parchman's NPDES permit contains average weekly and monthly maximums for BOD_5. The limits were made more stringent in 2017, when MDEQ renewed Parchman's permit.

Parchman exceeded its BOD_5 permit limits in 2016, 2018, and 2019. Parchman's 2016 discharge monitoring report shows that it violated BOD_5 limits in the first quarter of the monitoring period, reporting levels of 33 mg/L for both the weekly and monthly average, well above the limits in Parchman's applicable permit (16 mg/L maximum monthly average and 24 mg/L maximum weekly average in the 2012 permit). Parchman did not report any values on its 2017 monitoring report (another violation, discussed below), but data from the second and fourth quarters of 2018 show BOD_5 monthly averages of 20 mg/L and 11 mg/L, respectively, which exceeded Parchman's monthly BOD_5 limit (10 mg/L maximum monthly average).[25] The BOD_5 violations continued in 2019, when Parchman reported BOD_5 maximum monthly and weekly averages at 10.25 mg/L and 23 mg/L, respectively, both above permit limits.[26]

These persistent violations are unsurprising: MDOC officials wrote to MDEQ conceding that the current system is not capable of meeting the BOD_5 limits (and other limits) in its 2017 permit.[27]

b. Total suspended solids (TSS) violations

TSS are undissolved particles suspended in water that should be removed through screening, filtration, or settling methods prior to discharge. Suspended solids may include "silt and clay particles, plankton, algae, fine organic debris, and other particulate matter."[28] Like BOD_5, TSS remaining in improperly treated wastewater can lower water quality in the

[24] U.S. EPA, Water: Monitoring & Assessment § 5.2, Dissolved Oxygen & Biochemical Oxygen demand, https://archive.epa.gov/water/archive/web/html/vms52.html.

[25] *See* Exhibit 8: 2017-2022 NPDES Permit, PDF p. 4. Parchman also exceeded its maximum weekly average limit (15 mg/L) in the second quarter of 2018, reporting a measurement of 20 mg/L.

[26] The U.S. EPA's Enforcement and Compliance History Online (ECHO) database shows that Parchman may have continued to violate its BOD_5 limits in 2020. *See* U.S EPA, ECHO, Detailed Facility Report, Parchman POTW No. 1, https://echo.epa.gov/detailed-facility-report?fid=110008515758.

[27] *See* Exhibit 9: June 1, 2017 letter from MDOC to MDEQ.

[28] U.S. EPA, Water: Monitoring & Assessment § 5.8 Total Solids, https://archive.epa.gov/water/archive/web/html/vms58.html.

receiving stream, ultimately resulting in an unfavorable environment for aquatic life. High TSS concentrations can also throw off the water balance in the cells of aquatic organisms and serve as carriers of other toxics in water, like pesticides, that cling to the TSS particles.[29]

Parchman's current TSS discharge limits are 30 mg/L (maximum monthly average) and 45 mg/L (maximum weekly average).[30]

Parchman exceeded its TSS permit limits in 2016, 2018, and 2019. Parchman's 2016 discharge monitoring report showed TSS limit exceedances of 49 mg/L in the first quarter and 81 mg/L in the third quarter for both weekly and monthly averages. Monitoring data from the second quarter of 2018 show a TSS value of 82 mg/L, over twice the permit limit. In 2019, Parchman reported a maximum weekly average of 67 mg/L for TSS, again well over the permit limit.

Parchman is also required to remove a minimum of 85% of the TSS in its wastewater prior to discharge.[31] The percent removal is measured by comparing the TSS levels in the influent (the raw wastewater being pumped into the lagoons) with the TSS levels in the effluent (the wastewater discharged after treatment).[32] In 2016, 2018, and 2019, Parchman's discharge monitoring reports show TSS removal of only 46%, 65%, and 63%, respectively.[33]

c. Fecal coliform/E. coli *count violations*

Finally, Parchman has violated the *E. coli* limits in its current permit and the fecal coliform limits in its previous permit. Fecal coliform bacteria (and coliform subgroup, *E. coli*) are present in human and animal feces and are generally harmless, but can indicate the presence of other disease-causing organisms. If ingested, these pathogens may pose a special health risk for infants, young children, and people with severely compromised immune systems.[34]

Parchman has a history of fecal coliform exceedances. In April 2010, MDEQ issued Parchman a notice of violation for fecal coliform for discharge levels 24% above permitted amounts. Parchman's 2016 monitoring showed fecal coliform counts of 1300 Colony

[29] *Id.*

[30] Exhibit 8: 2017-2022 NPDES Permit, PDF p.5; Exhibit 10: 2012 Permit, "Limits and Monitoring 2 of 3."

[31] *See* Exhibit 8: 2017-2022 NPDES Permit, PDF p.5; Exhibit 10: 2012 Permit, "Limits and Monitoring 2 of 3"; *see* also 40 C.F.R. § 133.101(j) (defining percent removal).

[32] *See* 40 C.F.R. § 133.101(j).

[33] EPA's enforcement database shows that both of these TSS violations (total TSS and percent removal) again occurred in 2020. *See* ECHO, Detailed Facility Report, Parchman POTW No. 1, https://echo.epa.gov/detailed-facility-report?fid=110008515758.

[34] *See* U.S. EPA, Fecal Bacteria, Water: Monitoring & Assessment § 5.11, https://archive.epa.gov/water/archive/web/html/vms511.html.

Forming Units (CFU)/100mL for both the weekly and monthly averages for the May-Oct season—over three times the weekly and six times the monthly permit limits.[35]

Parchman's 2017 permit substituted *E. coli* limits for coliform: 126 CFU/100mL maximum monthly average and 410 CFU/100mL maximum weekly average.[36] In a 2017 letter to MDEQ officials, MDOC specifically acknowledged that it could not meet the old fecal coliform limits or new *E. coli* limits.[37]

Indeed, Parchman's 2018 discharge monitoring report shows an exceedance for *E. coli*, at 866 CFU/100 mL for the monthly and weekly average, which is almost seven times the monthly-average limit and more than twice the weekly-average limit. 2019 was even worse: Parchman reports huge *E. coli* exceedances, at 957 CFU/100 mL (maximum monthly average) and 1730 CFU/100 mL (maximum weekly average), both many times the permit limits.

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In sum, Parchman is in violation of several discharge limits in its wastewater permit.[38] These exceedances partially arise from Parchman's lack of a wastewater disinfection process, but are also a consequence of Parchman's inability to properly treat its discharges through current facilities. These violations are exacerbated by the prison's general failure to maintain and repair the treatment system, as further discussed below. Even MDOC concedes that the system cannot meet several of its current permit limits, making these violations unsurprising and future violations likely.

2. Parchman is failing to properly operate and maintain the wastewater system in compliance with its permit

Parchman's 2017 permit requires Parchman to "at all times *properly* operate [and] maintain" its wastewater system, including by "promptly replacing" facilities when necessary.[39] Permit Condition T-18 requires Parchman to "take all reasonable steps to minimize *or prevent* any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment."[40] Parchman has failed and continues to fail to maintain and properly operate its wastewater system.

First, Parchman has failed and is failing to regularly inspect and clear trash screens in the wastewater system of debris. Parchman's operations manual directs the operator "to

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[35] *See* Exhibit 10: 2012 Permit, "Limits and Monitoring 2 of 3." MDEQ noticed a violation for this 2016 exceedance. *See* Exhibit 11: March 15, 2017 MDEQ Notice of Violation.

[36] *See* Exhibit 8: 2017-2022 NPDES Permit, PDF p. 4.

[37] *See* Exhibit 9: June 1, 2017 letter from MDOC to MDEQ.

[38] In addition, this past year, for the first time under its current permit, Parchman violated its ammonia nitrogen limits. Parchman's 2019 discharge monitoring report shows nitrogen levels at 4.87 mg/L (maximum weekly average), well over a weekly average limit of 3.0 mg/L. *See* Exhibit 12: 2019 Discharge Monitoring Report (DMR) for Parchman POTW No. 1.

[39] Exhibit 8: 2017-2022 NPDES Permit, condition T-28, PDF p. 17 (emphasis added).

[40] *Id.* at 15, 17 (emphasis added).

inspect the screen several times a day to determine whether or not it requires cleaning and to arrive at a regular cleaning schedule."[41] Photographs of the site compiled by MDEQ and Parchman's consultants indicate that these daily inspections have not occurred. Parchman's inability to maintain the screens clear of debris has contributed to malfunctions of Lift Station 4 (discussed below), which caused raw sewage to drain into downstream waterways.

Second, on information and belief, Parchman has no timers and flow meters on the system's overland flow pumps. Parchman's operations manual instructs the operator to record the "total volume of wastewater applied each day" to the spray fields based on run time meters on the pumps.[42] Available information indicates that several of Parchman's overland flow pumps are not functional and that none have working timers or flow meters, preventing Parchman from monitoring the volume of water sprayed onto the spray fields. A May 2017 inspection report by MDEQ notes an "apparent violation" of the permit condition requiring proper operation and maintenance, stating: "Of the 6 pumps originally in service at the lagoon to transmit flow to the spray field system, only 3 appeared to be operable."[43] Indeed, only about 25% of the overland flow fields receive wastewater, because the distribution pumps are broken and the distribution system works very poorly.[44]

Third, Parchman has failed and is failing to maintain the vegetation on the spray fields. Parchman's operations manual emphasizes the importance of maintaining and developing grass growth (and trimming the grass) on the spray fields to "increase treatment performance."[45] This is because "[t]he bacteria required for treatment of wastewater needs a base mat of vegetative matter in line with the wastewater flow." Reports from Parchman's former wastewater operations contractor indicate that the grass on spray fields may not have been cut for over two years prior to October 2016. Photos of the site in the May 2017 MDEQ inspection report illustrate that the grass was not properly maintained.

Fourth, Parchman is failing to regularly inspect and maintain controls for pump stations. The operations manual calls for a regular inspection schedule.[46] Parchman's failure to follow the operating manual's maintenance recommendations has contributed to the deterioration of controls for the pump stations. Indeed, MDOC recognized the need to rehabilitate these pump stations to enable it to "effectively manage the current . . . wastewater needs of the facility" and reduce operating costs. Photographs in the May 2017 MDEQ inspection report illustrate that Parchman has neglected to maintain pump stations and their controls for many years. In 2018, Parchman's former wastewater contractor reported that most of the wastewater lift stations do not have functioning controls and the

[41] Exhibit 13: Cook Coggin Engineers, Operation and Maintenance Manual Wastewater Facilities, Parchman, § 3.2 (1983) ("Operations Manual").

[42] *Id.* § 3.4.

[43] Exhibit 6: May 18, 2017 MDEQ Inspection Report pp. 2-3.

[44] Exhibit 5: Mid-South Consulting Presentation p. 5.

[45] Exhibit 13: Operations Manual § 3.4.

[46] *Id.* § 4.3.

pumps simply run manually 24 hours per day, which leads to costly and unnecessary repairs.[47]

MDOC's lack of maintenance and the system's operational issues reflect chronic neglect and show MDOC's indifference towards proper maintenance and operation at Parchman. MDOC and MDEQ have been on notice of basic operational and maintenance issues for years. In March 2015, an independent contractor for MDOC drafted a "Water Compliance Inspection report action description" cataloguing a host of maintenance problems. The contractor recommended repairs to pump stations, upgrades to lagoon pumps, and repair of spray field nozzles. The next year, Parchman's then-wastewater operator, Mid-South Consulting, noted multiple failures to maintain the system, including the issues described above and the lack of an effluent flow monitoring facility. MDOC conceded in June 2017 that Parchman's "wastewater facilities are old and considered by many to be beyond their useful lives and in very poor condition."

Parchman's failure to perform regular and proper maintenance in accordance with its engineer's operations manual violates the prison's NPDES permit and has contributed to extensive and continuing operational failures and deficient contaminant removal. Further, despite awareness of lift station malfunctions and the risk of future malfunctions, MDOC has failed and continues to fail to make necessary repairs and upgrades, and conduct maintenance that could prevent discharges and bypasses that have a reasonable likelihood of adversely affecting human health or the environment, in violation of Permit Condition T-18. MDOC must begin complying with specific operational guidelines in the Parchman wastewater system engineer's manual and other accepted industry standards for best operations and maintenance practices for the wastewater system.

3. Malfunctioning lift stations have caused "bypasses" that unlawfully discharge raw sewage into the surrounding water

A bypass occurs when raw wastewater is discharged into the receiving waters without treatment, instead of going through the lagoon and spray field treatment process that helps remove pollutants. Parchman's Permit Condition T-33 prohibits bypass, or the diversion of sewage away from the system's treatment facilities, subject to certain exceptions. Permit Conditions T-29 and T-18 require Parchman to mitigate, minimize, or prevent any unlawful discharge that has "a reasonable likelihood of adversely affecting human health or the environment."[48]

Lift Station 4 has malfunctioned repeatedly and there is a substantial likelihood that it will continue to do so. Parchman's former contractor, Mid-South Consulting, has described Lift Station 4 as "an accident and law suit waiting to happen."[49] Its level controls

[47] Exhibit 7: July 5, 2018 Email from Mid-South Consulting to MDEQ; Exhibit 5: Mid-South Consulting Presentation p. 14.

[48] Exhibit 8: 2017-2022 NPDES Permit, PDF p. 15, 17, 18.

[49] Exhibit 5: Mid-South Consulting Presentation p. 19.

do not work, one pump runs continuously, the standby emergency generator is missing, and there is no alarm system to notify operators of pump failure or high water levels.

Documents from public records requests show that Lift Station 4 malfunctioned on December 6, 2016, for an unknown period of time, again on December 26, 2016, and again on March 18, 2017. Thus, untreated, raw sewage was pumped into the Black Bayou for up to 71 days. MDEQ reported in its May 2017 inspection report that Parchman did not have chlorine tablets on hand to even minimally disinfect, and thereby mitigate, the impacts of the raw sewage discharge on the receiving stream.

MDOC has acknowledged that Lift Station 4 is likely to fail again and that recurrent malfunctions are "highly likely." Lift Station 4 will get fixed and "work for a short period of time until another failure occurs." MDEQ sampling during its 2017 inspection showed that the raw wastewater bypasses contained contamination exceeding Parchman's permit limits.[50]

Further, MDOC has previously failed to timely submit bypass reports, as required by its permit. Parchman appears to have violated and is likely continuing to violate its duty to report (Condition S-4) and mitigate (Condition T-29) these bypass events. As noted above, MDOC has admitted that its "wastewater facilities are old and considered by many to be beyond their useful lives and in very poor condition." Yet, MDOC has not taken simple and reasonable steps to mitigate past or future bypasses, such as maintaining an inventory of chlorine tablets for treating the raw wastewater discharging during a bypass event.[51]

MDOC has hired an outside firm to rebuild wastewater pump stations 32 and 23 (which encompasses Lift Station 4). Construction was scheduled to begin on January 1, 2019, but it is unclear if construction has begun on this project. The history of bypass and underreporting, combined with the acknowledged disrepair of the system and likelihood of further malfunctions, show that Parchman's wastewater system will continue to malfunction and bypass raw sewage, without mitigation or timely reporting, in violation of Parchman's permit.

4. Parchman's failure to conduct required monitoring disguises the extent of the problems with the wastewater system

Parchman's permit requires weekly effluent flow and chlorine monitoring, and quarterly monitoring for nitrogen, *E. coli*, BOD_5, dissolved oxygen, pH, and total suspended solids (effluent concentration and percent removal).[52]

Based on available information and documents received from public records requests, Parchman has failed to monitor weekly for flow and chlorine. Parchman's 2016 discharge monitoring report notes that Parchman had "no effluent flow monitoring facility"

[50] Exhibit 14: MDEQ Water Compliance Inspection Report 2 (May 18, 2017).

[51] *See, e.g.*, Exhibit 15: MDOC Letter to MDEQ re Lift Station No. 4 Bypass (May 1, 2017); Exhibit 16: Timeline Letter from J. Sprayberry, CGL to MDEQ re Lift Station #4 (Sept. 1, 2017).

[52] Exhibit 8: 2017-2022 NPDES Permit, "Limits and Monitoring."

at all prior to September 2016. In 2017, Parchman reported no monitoring data on its discharge monitoring report, including no weekly data for flow or chlorine. In 2018, documents show flow was not sampled in the second half of the year. As recently as May 2020, Parchman was planning to hire a company to build a new weir so that the prison could "get a handle on the exact flow" of wastewater discharging and implement a new disinfection treatment.[53]

Similarly, Parchman has only sporadically monitored each of its wastewater parameters for which the permit requires quarterly monitoring, including BOD_5, TSS, ammonia nitrogen, total phosphorus, total nitrogen, dissolved oxygen, *E. coli*, and pH. For 2018, records indicate that Parchman failed to conduct monitoring for these parameters in the third quarter. For 2017, Parchman reported no monitoring values at all. Parchman's 2016 discharge monitoring report acknowledges that no samples were taken for the second quarter. Most recently, it appears that Parchman may not have conducted its required monitoring for *E. coli*. EPA's enforcement database shows that Parchman has not submitted any sampling on this contaminant for the previous year.[54]

After several public records requests, MDOC has not produced any records reflecting weekly chlorine or flow monitoring, despite a permit requirement to maintain such records. Monitoring documents released for other parameters demonstrate a sporadic failure to monitor, or a complete lack of data. The failure to conduct consistent required monitoring in at least 2016, 2017, and 2018 demonstrates a pattern of inconsistent monitoring at Parchman, in violation of permit requirements. This failure deprives the public of information necessary to protect itself and ensure proper enforcement of the law.

5. Parchman's failure to submit required reports deprives the public of timely information on the prison's Clean Water Act compliance

Parchman's permit requires annual submission of Discharge Monitoring Reports (DMRs) to MDEQ by January 28.[55] Permit conditions S-4 and S-7 require 24-hour reporting of any unanticipated bypass-exceeding permit effluent limitations.[56] Condition S-5 requires reporting of any noncompliance not reported under Condition S-4 within 30 days of the end of the month when the noncompliance occurred.

Parchman has violated the reporting requirements in its permit several times in the past three years. For monitoring in 2017, Parchman submitted its DMR over a year late. In addition, Parchman failed to properly submit required reports concerning bypass events resulting from malfunctions at Lift Station 4. In March 2017, MDEQ told Parchman that it

[53] Exhibit 17: May 4, 2020 Letter from Parchman to Rucker, J., MDEQ, re Notice of Violation.

[54] *See* ECHO, Discharge Monitoring Report (DMR) Non-Receipt Violations, Parchman POTW No. 1, https://echo.epa.gov/detailed-facility-report?fid=110008515758.#pane3110008515758.

[55] *See* Exhibit 8: 2017-2022 NPDES Permit, Permit conditions S-1 and S-3, PDF pp. 8, 9; *see also* 40 C.F.R. § 122.41(*l*)(4).

[56] *See also* 40 C.F.R. § 122.41(*l*)(6).

had not received any bypass reports for Lift Station 4, despite bypass events occurring beginning on December 6, 2016, December 26, 2016, and March 23, 2017.[57]

EPA's ECHO database reflects additional permit reporting violations. Starting on January 1, 2018, and continuing through December 31, 2019, EPA listed Parchman's POTW No. 1 as in significant noncompliance for failure to file DMRs.[58] MDOC must comply with the reporting obligations in its permit, including the annual DMR reporting requirements and the requirement to submit reports of each bypass event within 24 hours, so that the public and regulators can be aware of issues with the wastewater system and timely seek remedies.

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In conclusion, Parchman has violated and continues to violate numerous provisions in its NPDES permit. Due to this long-running negligence and inaction, Parchman has been discharging polluted wastewater into surrounding waterways, such as the Black Bayou and the Sunflower River, for many years. Clean Water Act permit limitations are set to protect waterways and the public from potentially harmful contaminants. Parchman's discharges and lack of maintenance, all in violation of its permit, could cause harm to people who live along, fish in, boat on, walk/hike near, or otherwise use these waterways.

In light of these violations, we urge MDOC and MDEQ to take the following actions immediately to remedy current violations and forestall future violations:

1. *Timely enforcement.* MDEQ must enforce Parchman's NPDES Permit, including effluent limits and monitoring and reporting requirements, by timely issuing violation notices and conducting regular inspections.

2. *Compliance plan.* Within 90 days, develop a comprehensive written plan and proposed schedule for achieving compliance with Parchman's permit effluent limitations, the operation and maintenance requirement, and the monitoring and reporting requirements of the NPDES Permit. The plan should describe in detail the specific actions and schedule for work to be completed, including:

    a. An engineering study assessing Parchman's ability to meet current permit conditions and proposing any necessary upgrades;
    b. A detailed schedule for completing the proposed actions;
    c. A mitigation plan for discharges pending necessary upgrades; and
    d. Funding for all improvements and any mitigation necessary during the upgrades.

[57] *See* Exhibit 16: Timeline Letter from J. Sprayberry, CGL to MDEQ re Lift Station #4 (Sept. 1, 2017).

[58] For the first quarter of 2020, EPA lists POTW #1 violation as "resolved." *See* EPA, ECHO, Detailed Facility Report, Parchman POTW No. 1, https://echo.epa.gov/detailed-facility-report?fid=110008515758.

3. *Monitoring.* Within 30 days, develop, document, and publish a schedule for weekly effluent flow and chlorine monitoring, and quarterly monitoring for all other permit effluent limitations.

4. *Transparency.* Within 90 days, make available to the public all quarterly monitoring data, any notices of violation and correspondence about the violations, and any updates on compliance plan progress via a public website.

Safe Drinking Water Act violations at Parchman

Parchman sources its drinking water from groundwater through four active wells that draw from the Meridian Upper Wilcox Aquifer.[59] The drinking water system also has three elevated storage tanks at Unit 32, Well 2 Camp 4, and Unit 12 (although only two of the tanks may be in use), and four active treatment plants.[60] As a water system that regularly serves over 2,000 year-round residents, Parchman is subject to the requirements of the federal Safe Drinking Water Act (SDWA).[61] MDOC operates Parchman's water system and thus is responsible for complying with applicable regulations to ensure the safety of drinking water supplied to incarcerated people.[62]

Since at least 2016, on information and belief, MDOC has been and in some cases continues to be in violation of SDWA regulations, including (1) requirements to correct an inoperable control system for Parchman's water wells and tanks; (2) requirements to monitor Parchman's tap water to ensure proper disinfection; and (3) requirements to timely notify water consumers about MDOC's violations of drinking water rules. These SDWA violations may be contributing to contamination of Parchman's drinking water, threatening the health of those confined at Parchman.[63]

Adding to these concerns, as noted in detail above, incarcerated people have consistently reported for years that Parchman's water is discolored and foul smelling and tasting, indicating possible systemic contamination. However, documents received from public records requests do not adequately explain all of the problems that people have repeatedly experienced with drinking water quality at Parchman. Further investigation is

[59] MSDH Drinking Water System Details, MS0670014, MS State Penitentiary-MN LN, available at: https://apps.msdh.ms.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&wsnumber=MS0670014.

[60] *See* MSDH Water System Facilities, MS0670014, available at: https://apps.msdh.ms.gov/DWW/JSP/WaterSystemFacilities.jsp?tinwsys_is_number=946&tinwsys_st_code=MS.

[61] 42 U.S.C. § 300f(15); *see* 40 C.F.R. § 141.2; MS Dep't of Health, Drinking Water Watch, https://apps.msdh.ms.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&wsnumber=MS0670014.

[62] *See* 42 U.S.C. § 300f(4)(A), (5); 40 C.F.R. §§ 141.2, 141.3; *accord Concerned Pastors for Social Action v. Khouri*, 194 F. Supp. 3d 589, 604-06 (E.D. Mich. 2016).

[63] *See also* Exhibit 18: Decl. of Frank Edwards at 4-5, *Amos v. Taylor*, No. 4:20-cv-00007 (N.D. Miss. June 9, 2020), ECF No. 101-5 (describing additional historical violations of SDWA at Parchman).

needed to identify the cause of and remedy the odor, color, and taste problems with the water.

MSDH and MDOC must act immediately to correct the violations described below, implement systems to ensure ongoing compliance, and investigate complaints about the aesthetic qualities of the water to ensure the basic human rights of the men incarcerated at Parchman, including their right to clean drinking water.

1. Parchman has failed to fix an inoperable control system, threatening microbial contamination of drinking water for more than four years

Because Parchman sources its drinking water from groundwater, it is subject to the Ground Water Rule, a set of regulations promulgated under the Safe Drinking Water Act to safeguard public health by reducing the risk of waterborne illnesses.[64] The Rule protects drinking water sourced from groundwater against the contamination of microbial pathogens, such as *E. coli*. Under the Rule, MSDH conducts periodic inspections to determine whether a water system has any "significant deficiencies," including defects in the system's design, operation, or maintenance, as well as failures or malfunctions in treatment, storage, or distribution systems that threaten to cause contamination.[65]

In November 2016, MSDH identified a significant deficiency in Parchman's water system: Parchman manually operates its wells, and the wells lack automated controls, rendering the control system inadequate and inoperable.[66] Parchman's inoperable control system may be contributing to unsanitary drinking water for the incarcerated people forced to drink it. Automatic controls help ensure consistent flow and chlorination in the system, immediately detect problems with hydraulic pressure, and prevent tank overflows.[67] Without automated controls, water in storage tanks can become stagnant, contributing to musty odor and periodic over-chlorination.

The Ground Water Rule requires MDOC to take corrective action to resolve significant deficiencies, either within 120 days of receiving written notice of the deficiency, or by complying with a State-approved schedule.[68] MDOC failed to correct the problem within 120 days of receiving notice in December 2016, and on August 21, 2018, MSDH formally notified MDOC that Parchman was in violation of the Rule.[69]

Available documentation indicates that in 2018, MDOC initiated plans to correct the inoperable control system, including by hiring a consultant who developed a project to install automated system monitoring, new controls at all water well locations, and new

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[64] *See generally* National Primary Drinking Water Regulations: Ground Water Rule, 71 Fed. Reg. 65,574 (Nov. 8, 2006).

[65] 40 C.F.R. § 141.403(a)(4).

[66] *See* Exhibit 19: MDOH Significant Deficiency Report (Dec. 2016).

[67] *See, e.g.*, Nat'l Research Council, *Drinking Water Distribution Systems: Assessing and Reducing Risks* 203-05 (2006), https://doi.org/10.17226/11728.

[68] 40 C.F.R. §§ 141.403(a), 141.404(a).

[69] *See* Exhibit 20: Aug. 21, 2018 MDOH Notice of Violation.

electronic pressure-level controls at elevated tanks.[70] On November 20, 2018, MSDH approved MDOC's proposal, with the condition that MDOC initiate construction of the project within one year of MSDH's approval.[71] MDOC failed to meet the one-year deadline and instead entered into an agreement with MSDH to complete corrective action by March 31, 2020.[72] On January 6, 2020, MSDH issued another formal notice that MDOC was in violation of the Rule for failing to address the significant deficiency.[73]

Available information indicates that MDOC may have finally remedied this deficiency: MSDH appears to have conducted an inspection in October 2020 that found no significant deficiencies.[74] Even assuming MDOC has finally installed the required automatic controls, MDOC's extraordinary delay in addressing this issue is egregious: MSDH and MDOC let Parchman's inoperable control system linger unfixed for close to four years—twelve times the period generally permitted under SDWA.[75] The delay in fixing this deficiency threatened the condition of Parchman's drinking water and the health of Parchman's residents.

2. MDOC is chronically failing to comply with SDWA's requirements for monitoring drinking water at Parchman

The Ground Water Rule also requires MDOC to monitor Parchman's chlorine levels because the water system uses chlorine as a chemical disinfectant.[76] Chlorine is used to treat and remove viruses and bacterial pathogens in drinking water sourced from groundwater.[77] Monitoring ensures that the chemical disinfection is effective.[78]

Because Parchman's drinking water system serves fewer than 3,300 people, MDOC must monitor for chlorine residuals each day, during the hour of peak flow, or at another time specified by MSDH.[79] Chlorine residual measures how much chlorine remains present

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[70] *Id.* at 7.

[71] Exhibit 21: Nov. 20, 2018 letter re significant deficiency.

[72] Exhibit 22: 2018 Consumer Confidence Report at 3.

[73] Violation detail available at https://apps.msdh.ms.gov/DWW/JSP/Violation.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&tmnviol_is_number=206555&tmnviol_st_code=MS. MSDH's issuance of this notice of violation is in tension with statements by John Sprayberry, Deputy Administrator of Facility Planning, Construction, and Maintenance at MDOC, that Parchman installed a new water control system with automatic operation of wells and pumps in December 2019. *See* Exhibit 23: Decl. of John Sprayberry at 5, *Amos v. Taylor*, No. 4:20-cv-00007 (N.D. Miss. July 13, 2020), ECF No. 118-2 at 5.

[74] *See* https://apps.msdh.ms.gov/DWW/JSP/SiteVisits.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&begin_date=&end_date=&counter=0.

[75] *See* 40 C.F.R. § 141.403(a)(5) (120 days to take corrective action or comply with state-approved action plan and schedule).

[76] *See generally* 40 C.F.R. § 141.403(b). These monitoring requirements were additionally triggered when Parchman's water system had an unresolved significant deficiency, i.e., an inoperable control system. *See* 40 C.F.R. § 141.403(a)(1); *supra* pp. 15-16.

[77] 71 Fed. Reg. at 65,578.

[78] *Id.*

[79] 40 C.F.R. § 141.403(b)(3)(i)(B).

in the water as it flows through the distribution system. If any sample shows residual disinfectant below a minimum concentration determined by the State, the system must also "take follow-up samples every four hours until the residual disinfectant concentration is restored to the State-determined level."[80] Failure to take required routine samples in a compliance period is a monitoring violation.[81]

On information and belief, MDOC is persistently violating chlorine monitoring requirements at Parchman. For example, from July 2018 through March 2019, Parchman failed to conduct daily sampling for chlorine and failed to take samples during the hour of peak flow. Parchman's Operations Logbook shows several days when samples were not taken, sometimes for multiple days in a row.[82] In addition, the logbook shows that sampling occurred at a variety of times of day (e.g., 5:20 AM; 11:30 AM; 12:20 PM; 2:00 PM; 3:35 PM; 5:45 PM; 8 PM; 9:30 PM), showing a failure to take samples at the hour of peak flow.[83] Although SPLC requested the logbooks for a longer period of time through a public records act request, MDOC failed to produce any further records of its chlorine monitoring.

On information and belief, MDOC is also violating requirements to take follow-up samples when a routine sample shows a low chlorine residual. A 2016 Significant Deficiency Report indicates that the State-determined minimum residual disinfectant level for chlorine is 0.5 mg/L.[84] Assuming that 0.5 mg/L is the minimum residual level MSDH designated for Parchman, the logbook shows that MDOC failed several times to conduct required follow-up sampling within four hours after chlorine residual levels registered below this level.[85]

In addition to chlorine monitoring, SDWA also requires MDOC to monitor Parchman's water for disinfection byproducts, including total trihalomethanes (TTHM) and haloacetic acids (HAA5).[86] Disinfection byproducts occur when chemicals used to disinfect water, such as chlorine, react with other naturally occurring compounds in water. Studies have shown that exposure to high concentrations of disinfection byproducts can increase the risk of cancer, particularly bladder cancer, and may cause liver, kidney, and central nervous system problems.[87] MDOC must monitor for these disinfection byproducts once per year.[88]

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[80] *Id.*

[81] *See id.* § 141.403(d).

[82] Exhibit 24: OR part 1 (log showing no samples taken between August 1, 2018, and August 5, 2018).

[83] *Id.*

[84] Exhibit 25: Dec. 6, 2016 Significant Deficiency Report at p. 2, item 3 (MDOH recommending that Parchman's system maintain 0.5 mg/L free chlorine at the end of the distribution system).

[85] *E.g.,* Exhibit 24: OR part 1 (entries for 7/23/18, 1/6/19, 1/23/19, 1/31/19, 2/4/19, 2/6/19, and 2/8/19 show residual chlorine levels below 0.5 mg/L, with no follow-up sampling within 4 hours).

[86] 40 C.F.R. §§ 141.132(b)-141.133.

[87] *See, e.g.*, Water Systems, Disinfection Byproducts, and the Use of Monochloramine (Feb. 24, 2009), https://www.epa.gov/sites/production/files/2015-09/documents/why_are_disinfection_byproducts_a_public_health_concern.pdf.

[88] 40 C.F.R. § 141.132(b).

Information available indicates that MDOC is failing to meet its annual monitoring requirement for disinfection byproducts. In February 2019, MSDH found that MDOC violated routine monitoring requirements for disinfection byproducts (HAA5 and TTHMs) in Parchman's water, likely for failing to monitor in 2018.[89] In August 2018, MSDH notified MDOC of disinfection byproduct monitoring and reporting violations in July 2018, and of a failure to submit routine samples in August 2018.[90] Moreover, MSDH's website reports annual monitoring results for 2013 and 2017 only.[91] MDOC's annual consumer confidence reports for 2014, 2015, 2016, and 2018 confirm that no annual sampling for TTHM and HAA5 was reported for those years.

Parchman's monitoring violations for both chlorine and disinfection byproducts demonstrate at least sporadic and intermittent violations of SDWA's monitoring requirements. Compliance with routine monitoring requirements is critical in the drinking water context. Routine monitoring alerts a water system to the presence of contamination, so that appropriate steps may be taken to mitigate health risks. Monitoring chlorine residual, for example, indicates levels of disease-causing organisms and whether water is safe to drink.[92] Given the importance of compliance monitoring to safeguard drinking water and protect public health, MSDH must compel MDOC to comply with SDWA's monitoring requirements for chlorine and disinfection byproducts at Parchman. MDOC should adopt measures that ensure compliance, including but not limited to hiring staff as appropriate and implementing training procedures. MSDH should ensure that information regarding MDOC's monitoring and compliance is made publicly available by keeping MSDH's Drinking Water Branch website updated.

3. MDOC is failing to comply with SDWA public notification requirements, further risking the health of people incarcerated at Parchman

SDWA mandates that water systems provide timely public notice of all violations of the federal drinking water regulations.[93] Public notification alerts consumers to the potential risks from drinking water violations and informs them of steps they should take to avoid or minimize such risks.[94] Public water systems must provide such notice to all persons served

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[89] *See* Violation No. 2019-2210592, https://apps.msdh.ms.gov/DWW/JSP/Violation.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&tmnviol_is_number=204552&tmnviol_st_code=MS; Violation No. 2019-22010591, https://apps.msdh.ms.gov/DWW/JSP/Violation.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&tmnviol_is_number=204551&tmnviol_st_code=MS.

[90] Exhibit 26: Aug. 24, 2018 Letter from MDOH to Parchman re SDWA Violations.

[91] MDOH, Drinking Water Branch Chem/Rad Samples & annual schedule, https://apps.msdh.ms.gov/DWW/JSP/NonTcrSamples.jsp?tinwsys_is_number=946&tinwsys_st_code=MS&history=0&begin_date=&end_date=&counter=0.

[92] *See* CDC, Free Chlorine Testing, https://www.cdc.gov/safewater/chlorine-residual-testing.html.

[93] 40 C.F.R. §§ 141.201–141.205; *id.* § 141.404(d).

[94] National Primary Drinking Water Regulations: Ground Water Rule, 71 Fed. Reg. 65,574, 65,606 (Nov. 8, 2006).

by the water system.[95] Additionally, water systems must deliver to consumers annual drinking water quality reports, known as consumer confidence reports, regardless of whether any violations occurred during the applicable year.[96]

MDOC has repeatedly failed to timely distribute public notification as required at Parchman. MDOC neglected to provide public notice of its Ground Water Rule violation relating to its failure to fix its inadequate and inoperable control system until MSDH compelled it to do so well after the required deadline.[97] In addition, MDOC failed to timely distribute the annual consumer confidence report at Parchman in 2017,[98] as well as other public education materials required under SDWA.[99]

People incarcerated at Parchman report that they have not seen the required public notices regarding drinking water violations, suggesting that Parchman officials are not issuing those notices in a manner sufficient to alert those affected and are failing to meaningfully inform consumers of steps they should take to avoid or minimize health risks associated with drinking the water. Several people stated that they have never seen boil water notices on the bulletin boards where the notices should be posted. Incarcerated people have received mixed information from prison staff about whether the water is safe to drink; some were told that the water was not clean, while others were told the water was fine to drink.[100]

MSDH must ensure that MDOC complies with SDWA public notification requirements at Parchman moving forward, given MDOC's consistent failure to distribute timely notice of its violations and numerous reports indicating that Parchman's notices are not reaching all persons served by the drinking water system. MSDH should investigate why some people are not receiving notice and compel MDOC to change its procedures to achieve adequate distribution of all notices.

4. Problems with color, odor, and taste of Parchman's drinking water warrant investigation by MSDH and appropriate remedial measures

As described above, *supra* p. 3, people incarcerated at Parchman experience chronic color, odor, and taste issues with the drinking water, and have reported various health problems that they are concerned may be related to the drinking water. Some people have chosen to avoid drinking the water altogether.

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[95] 40 C.F.R. § 141.201.

[96] *Id.* §§ 141.151-141.155.

[97] *Id.* §§ 141.404(d), 141.203(b); Aug. 24, 2018 letter.

[98] *See* Exhibit 26: Aug. 24, 2018 Letter from MDOH to Parchman re SDWA Violations.

[99] *See* Exhibit 27: Dec. 20, 2017 Letter from MDOH to Parchman re PWS ID # 0670014.

[100] Exhibit 3: Suppl. Mem. Supp. Pls.' Emergency Mot. for TRO & Prelim. Inj. 20, *Amos v. Taylor*, No. 4:20-cv-00007 (N.D. Miss. June 9, 2021), ECF No. 99 (citing incarcerated witness's relaying that a guard advised him not to drink the water because it was contaminated).

The federal Secondary National Drinking Water Regulations protect the aesthetic quality of drinking water.[101] EPA has set standards for contaminant levels that represent reasonable goals for drinking water quality.[102] Color, odor, and taste are indicators of drinking water quality and effectiveness of treatment. The reported aesthetic concerns may relate to Parchman's neglect to fix its control system and failure to adequately monitor the effectiveness of treatment of the water, or to other mismanagement of the drinking water and/or wastewater system.

The aesthetic concerns regarding Parchman's drinking water and associated threats to health warrant a full investigation by MSDH into what is causing the poor color, odor, and taste irregularities, and an order compelling Parchman to fix the problems. Reports of these issues have been consistent for years and can no longer be ignored.

Conclusion

The wastewater and drinking water violations at Parchman detailed above are well-documented, have been ongoing for far too long, and have undeniably contributed to dilapidated conditions at the prison that preceded a massive outbreak of violence there in late 2019 and early 2020. MDOC, MDEQ, and MSDH must finally treat these chronic issues with the urgency they require and work diligently to resolve the many recurring environmental violations at Parchman.

To remedy the wastewater violations, MDOC and MDEQ must develop and implement a specific, detailed plan for Parchman to come into compliance with its wastewater permit limits for BOD_5, total suspended solids, nitrogen ammonia, and *E. coli*, including a plan to properly maintain and operate its wastewater system, mitigate any bypasses occurring before upgrades are completed, and timely and publicly report all monitoring data and violations on an easily accessible website. Given MDOC's acknowledgment that Parchman cannot meet its permit limits using its current system, a full evaluation of whether upgrades are needed, including installation of a system for wastewater disinfection, is warranted.

To remedy the drinking water violations, MSDH must confirm that Parchman's system for controlling drinking water wells is upgraded. MDOC must conduct routine monitoring of chlorine levels in the drinking water and ensure timely and consistent public reporting of drinking water violations. MSDH should also investigate the many reports of discoloration, bad odors, and sewage taste in the drinking water at Parchman to uncover and remedy the root cause of these aesthetic problems.

[101] *See* 42 U.S.C. §§ 300g-1(c), 300f(2).
[102] 40 C.F.R. § 143.3.

Until these actions are taken, Parchman will continue to violate federal environmental laws and put the health of incarcerated people and surrounding communities at risk.

Respectfully,

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Appendix of Exhibits and Other Documents

1. All exhibits to this letter are located here: https://drive.google.com/drive/folders/15_IzxsjBY4nISrSK2fBnTeKfC7FEgj0J?usp=sharing

2. A more expansive archive of documents concerning environmental issues at Parchman that SPLC and NRDC received through public records requests is here: https://drive.google.com/drive/folders/1J6pnagFIlEf13NF4_1U2a_7Paw1OLI8R?usp=sharing