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"A Greater Sense of Urgency": EPA's Emergency Authority Under the SDWA and Lessons From Flint, Michigan

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Section 1431 of the Safe Drinking Water Act (SDWA) grants the U.S. Environmental Protection Agency (EPA) expansive emergency authority to protect public drinking water sources from contamination. Specifically, §1431 authorizes the EPA Administrator to take any action necessary to protect public health where a contaminant posing an "imminent and substantial endangerment" to the public has entered—or is likely to enter—a public drinking water supply, and appropriate state and local authorities have not acted to abate the threat. In enacting §1431, Congress sought to vest EPA with broad enforcement authority to prevent public health crises. Surprisingly, EPA rarely invokes §1431, or—as in the recent water crisis in Flint, Michigan—invokes it too late to achieve Congress' purpose. In the future, EPA must invoke its emergency powers earlier and more frequently to effectuate the SDWA's preventative purpose and protect public health, which will allow EPA to realize its obligation to ensure the public is supplied with safe drinking water.

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