



**Public Employees for Environmental Responsibility**

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February 13, 2013

Regional Administrator Karl Brooks  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

RE: Request for Enforcement Review

Dear Administrator Brooks:

We are writing to request that the U.S. Environmental Protection Agency (EPA) undertake an enforcement review of Safe Drinking Water Act (SDWA) violations within Missouri State Parks in order to address potentially serious public health threat posed by what appears to be a pattern of noncompliance.

This request is submitted on behalf of Public Employees for Environmental Responsibility (PEER) and Ms. Patricia Ritchie. PEER is a national non-partisan non-profit organization representing local, state, and federal government employees seeking greater environmental responsibility and effectiveness from their public agencies. Ms. Ritchie, a dedicated public servant of 19 years, served as the Missouri Department of Natural Resources (DNR) public notice coordinator for SDWA compliance. Ms. Ritchie was removed from her position in late 2012 for seeking to remedy the DNR's SDWA noncompliance and failure to adhere to its own enforcement policies.

As you know, the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*) authorizes the EPA to set national standards to protect drinking water from natural and man-made contaminants. The SDWA applies to every public drinking water system in the United States and EPA works with state agencies to ensure that the standards are being met.

The regulations implementing the SDWA (40 C.F.R. § 141 *et seq.*) invoke drinking water standards for all water systems by: 1) establishing enforceable Maximum Contaminant Levels (MCLs); 2) setting contaminant monitoring requirements; and 3) requiring subsequent remedial measures and public notification when violations occur. EPA authorizes states to implement the SDWA regulations so long as the state adopts standards at least as stringent as EPA's and ensures that all water systems within the state meet the standards. Nearly every state, including Missouri, has been granted such authority by the EPA.<sup>1</sup>

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<sup>1</sup> Missouri Revised Statutes, Chapter 640, Department of Natural Resources, Section 640.107, available at: <http://www.moga.mo.gov/statutes/C600-699/6400000107.HTM>. See also, 40 CFR 142(B).



While EPA has recognized Missouri's SDWA program, EPA retains concurrent jurisdiction and may directly enforce against violations – especially if the state agency has failed to appropriately act against violations.

## **HISTORY OF SYSTEMIC VIOLATIONS**

The SDWA violations highlighted in this complaint occur at transient non-community water systems (TWS).<sup>2</sup> These are public water systems that have least 15 service connections or regularly serve an average of at least 25 individuals daily, at least 60 days out of the year.<sup>3</sup> This means that, for the most part, the population consuming water from these systems changes daily.

TWS are required to perform water samples for bacteriological analysis on a monthly basis.<sup>4</sup> A TWS may monitor less frequently and for fewer contaminants than larger community water systems, but non-community water systems still must monitor for contaminants such as microbiologicals and nitrate that can cause immediate and acute public health problems.<sup>5</sup> Nevertheless, the Missouri DNR is a chronic violator of the lower TWS standards.<sup>6</sup>

With respect to state parks, the DNR plays dual roles: it is responsible for direct park management but also serves as Missouri's SDWA primacy enforcement agency. Thus, DNR acts as administrator for 83 state parks and historic sites visited by 18 million people per year, and regulator of the state's approximately 2,800 public water systems (44 of which are within state parks).<sup>7</sup>

In spite of these dual roles, the Missouri DNR is a chronic violator of these lower non-community thresholds. This request focuses on the violations at state parks, most notably violations at three separate public water systems within Cuivre River State Park in Lincoln County, Missouri. Each of the Park's three systems reports SDWA violations, but the Park's Camp Derricote System is the most problematic.

A report released by the Missouri State Auditor in 2004 stated: "We found [] numerous incidents where the state parks had not complied with federal and state drinking water regulations or division water testing policies, and therefore could not be assured that park visitors were provided water safe for consumption."<sup>8</sup> At that time, Lake of the Ozarks State Park's record was particularly troublesome, having attained Significant Non-Complier status in both 2002 and 2003. The report confirmed widespread bacteriological contamination. In response,

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<sup>2</sup> *Transient non-community water system* or *TWS* means a non-community water system that does not regularly serve at least 25 of the same persons over six months per year. 40 CFR 141.2.

<sup>3</sup> Missouri Safe Drinking Water Regulations 10 CSR 60-2.015.

<sup>4</sup> Federal and state regulations require non-community water systems serving more than 1,000 persons per day during any month to submit 2 or more water samples per month for MCL testing. 40 CFR 141(C).

<sup>5</sup> 40 CFR 141(C).

<sup>6</sup> See chart at page 5.

<sup>7</sup> Missouri State Auditor Report No. 2004-42, May 27, 2004. Available at: <http://auditor.mo.gov/press/2004-42.pdf>.

<sup>8</sup> *Id.*



DNR promised improvement and SDWA compliance, but chronic violations continue. *See* table, *infra* at page 5, highlighting post-audit violations.

We believe that the DNR's SDWA violations create a public health threat that the EPA cannot ignore.

## EPA INTERVENTION

Permanent disinfection systems are needed at several state parks. Cuivre River State Park is the park most in need of EPA's urgent attention. Of the Park's three water systems, the reoccurring violations at the Camp Derricotte system are most troubling. Camp Derricotte reported ***six MCL violations of the Total Coliform Rule (TCR) in just seven month*** of fiscal year 2012.<sup>9</sup> Yet, the park is open, and therefore its systems are tested, only seven months out of the year.

Camp Derricotte's TCR non-compliance during the twelve month period from July 2011 through July 2012 is not just bad in comparison to the 44 other state park water systems, it is among the worst TCR compliance records among all 2,800 public water systems in Missouri.<sup>10</sup>

Missouri escalation policy requires public water systems to install a permanent disinfection system after accruing four MCL violations of the TCR in a consecutive 12-month period.<sup>11</sup> Still, at least two of the three systems at Cuivre Park, the Camp Sherwood system and the Picnic Shelter system, do not have water treatment systems of any kind.<sup>12</sup>

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<sup>9</sup> Total Coliform Rule (TCR) requires all public water systems (PWSs) to monitor for the presence of total coliforms. Total coliforms are common inhabitants of ambient water and may be injured by environmental stresses (e.g., lack of nutrients) and water treatment (e.g., chlorine disinfection) in a manner similar to most bacterial pathogens and many viral enteric pathogens. Therefore, EPA considers total coliforms a useful indicator of these pathogens. Total coliforms are used to determine the adequacy of water treatment. Thus, total coliforms are used to determine the vulnerability of a system to fecal contamination. 54 Fed. Reg. 27544-27568 (June 29, 1989).

<sup>10</sup> *See* Censuses 2006 to 2012 (2010 omitted). Available at: <http://www.dnr.mo.gov/env/wpp/census.htm>. *See also* chart at page 5.

<sup>11</sup> *See, e.g.*, Missouri Department of Natural Resources, Water Protection Program - Public Drinking Water Branch, Public Drinking Water Escalation Policy. Available at: <http://www.dnr.mo.gov/env/wpp/index.html>. *See also* <http://www.dnr.mo.gov/compliancemanual/chapters/5dwescalationpolicy2010.doc>.

<sup>12</sup> The 2013 Census of Missouri Public Water Systems states that none of the three water systems at Cuivre River State Park have permanent disinfection. Ambiguously, earlier censuses, list Camp Derricotte as having "Hypochlorination, Post." Camp Sherwood and the Picnic Shelter have never been listed as having water treatment of any kind. Camp Derricotte's chronic bacteriological problems suggest the system never had a functioning disinfection system and that the 2013 census is accurate and that earlier censuses were incorrect. The DNR's contradictory claims are troubling because Derricotte's 2011 and 2012 health-based violations were apparently returned to compliance in June 2012 due to alleged installation of a permanent disinfection system.

DNR's Drinking Water Watch shows that chlorine residual was present for all but one sample collected since May 14, 2012. No chlorine residual is listed prior to that date. A system operating under a bilateral compliance agreement, however, would have a properly constructed disinfection system in place or in progress, take daily chlorine residual readings, and submit report of daily chlorine residuals on

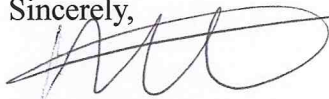
The DNR's escalation policy also requires that chronically troubled systems, like Cuivre's Camp Derricotte, enter into a bilateral compliance agreement with the DNR to ensure future compliance.<sup>13</sup> To this day, no compliance agreement exists. In fact, records show that DNR is taking no remedial measures at Cuivre's Camp Derricotte. There is no record of formal warning letters and the only hint of enforcement on record is a computer generated mailing.<sup>14</sup> The Camp Derricotte system has not been required to enter into a binding agreement as all other public water systems with similar records of non-compliance must do. Such an agreement requires a water system to record daily chlorine residual and to submit a report on a monthly basis. There is no explanation as to why the rules do not apply to Camp Derricotte.

## CONCLUSION

While the Missouri DNR has primacy to enforce the SDWA, the EPA remains responsible for guaranteeing Missouri's adequate enforcement. The DNR's habitual violations of federal and state drinking water regulations require EPA intervention to protect the health of the 18 million yearly visitors to Missouri States Parks. PEER requests that the EPA investigate DNR's lack of compliance with and enforcement of the SDWA at the state parks in Missouri.

Moreover, as a matter of basic public health, it is imperative that the situation at Cuivre River State Park is accurately reported before the public water system at the park opens on April 1, 2013.<sup>15</sup> Thank you for your attention to this matter.

Sincerely,



Kathryn Douglass  
Staff Counsel

CC: Thomas A. Schweich, Missouri State Auditor and Jeremiah W. Nixon, Missouri Governor

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a monthly basis to the DNR's Public Drinking Water Branch or regional office. Evidence of chlorine residual only at the time of sample collection is highly inadequate and not protective of the public health.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* See also 10 CSR 60-8.010(1)(C)3 (Missouri public notification requirements).

<sup>15</sup> Some drinking water is currently being dispensed at the park, as their website states, "During the off-season (Nov. 1 through April 14), potable water is available from the frost-free spigot at campsite 69". Though apparently not meeting the definition of a public system this time of year, about 100 camp sites are available year round.



Non-Acute Maximum Contaminant Level Violations for Total Coliform Bacteria at Missouri State Park Water Systems 2004 to 2011 <sup>16</sup>				
Water System Name	PWS ID #	Months of Violation <sup>17</sup>	Permanent Disinfection <sup>18</sup>	Chlorine Residual with Recent Results <sup>19</sup>
Big Oak Tree State Park	MO4121445	July 2004 September 2004 (Acute MCL violation for <i>E. coli</i> also in September 2004)	System inactive	Not applicable
Cuivre River State Park - Camp Derricotte	MO6120055	July 2011 August 2011 September 2011 (Acute MCL violation for <i>E. coli</i> also in September 2011) April 2012 May 2012	Not listed <sup>20</sup>	Yes, all but one sample collected since May 14, 2012 shows chlorine residual present.
Cuivre River State Park - Camp Sherwood	MO6122659	July 2011 September 2011 August 2012	No	No
Cuivre River State Park - Picnic Shelter	MO6122660	September 2005 October 2007	No	No
Graham Cave State Park - Campground	MO6120155	June 2004 August 2004	Yes	Some
Graham Cave State Park Office	MO6122671	October 2007 July 2009	Yes	Some
Harry S Truman State Park Marina	MO1122648	July 2005 August 2005 September 2005	Yes	Yes
Harry S Truman State Park Office	MO3120156	June 2007 August 2012	No	No
Hawn State Park	MO4120067	April 2011	Yes	Some
Knob Noster State Park - Campground	MO1120159	June 2004	Yes	Yes
Lake of the Ozarks State Park	MO3120160	February 2004	System inactive	Not applicable
Lake of the Ozarks State Park Outpost	MO5122670	September 2010	Yes	Yes
St. Francois State Park	MO4120167	June 2010	Yes	Yes

<sup>16</sup> DNR Annual Compliance Reports, available at:

<http://www.dnr.mo.gov/env/wpp/fyreports/index.html>.

<sup>17</sup> DNR Annual Compliance Report for that year, except for 2012 violations with source as DNR's Drinking Water Watch. MCL violations at state park water systems with first violation in 2012 not captured.

<sup>18</sup> Source: Census of Missouri Public Water Systems 2013, System Treatment Processes section.

<sup>19</sup> Source: DNR's Drinking Water Watch.

<sup>20</sup> No treatment listed in 2013 Census, but all prior censuses posted on line state "HYPOCHLORINATION-POST."

		(Acute MCL violation for <i>E. coli</i> also in June 2010)		
Washington State Park	MO6120173	October 2005 November 2007 November 2008 June 2010 November 2011	Yes	Some