May 20, 2003

Ms. Linda McCarty
Public Drinking Water Program
P.O. Box 176
Jefferson City, MO 65102

RE: COMMENTS TO THE *MISSOURI REGISTER*, APRIL 15, 2003, VOL.28, NO. 8, PAGES 757 TO 776, CHANGES TO 10 CSR 60-8.010 PUBLIC NOTIFICATION, 10 CSR 60-8.030 and 10 CSR 60-9 CONSUMER CONFIDENCE REPORT.

Dear Ms. McCarty:

On behalf of our 10,000 members nationwide, Public Employees for Environmental Responsibility (PEER) would like to thank you for the opportunity to comment on this proposed rule change. PEER represents natural resource professionals within municipal, state and federal agencies, and our comments today are based on input from employees who understand the link between an informed citizenry and a healthy population.

Nationally, drinking water rules are among the weakest environmental statutes listed in the Code of Federal Regulations. For the vast majority of violations, public notification is the only consequence of violating the Safe Drinking Water Act. For this reason, it is absolutely imperative that water systems have strong, clear guidelines for notifying the affected public.

This proposed rule change seeks to replace the federal public notice law with a new state law However, PEER has found several instances in which the proposed rules are inferior to the federal law.

Background

Currently, several Missouri state parks have a significant number of violations of the Safe Drinking Water Act and a poor record of performing public notice. According to EPA's website: http://www.epa.gov/safewater/dwinfo/mo.htm
15 of the 25 Missouri State Parks that are listed as active public water systems have at least one health-based violation, or Maximum Contaminant Level (MCL) of the Safe Drinking Water Act.

Lake of the Ozarks State Park has already been cited with at least one acute violation for fecal coliform/*E. coli*. In one recent 12-month period, this one

system was found to have 5 non-acute MCL violations (August 2002, July 2002, June 2002, October 2001 and September 2001). According to EPA guidelines, 4 such violations within a 12-month period requires that a system be designated a Significant Non-complier.

Worse, the Park failed to inform the public of any of it's 2002 violations. Without access to this information, visitors unknowingly subjected themselves to contamination. This can cause significant health risks, especially for the very young, the very old, and for those with compromised immune systems. Lake of the Ozarks State Park was issued yet another notice of violation as recently as February 2003. Clearly this problem is ongoing.

This example underscores the need for the state to adopt and enforce strong standards for public notification, so that future health problems are avoided. Unfortunately, Missouri's proposed rule change further weakens the federal standards currently in use.

Appendix A and Tier Designations

One major problem with the proposed rule is that it includes no table or appendix that specifies which violations fall into what Tier (Appendix A of the Federal Rule). This appendix is crucial to determine precisely what actions a system needs to take to notify the affected public.

Under the federal rules, Tier 1 designates a violation or situation that poses an immediate threat to the public health, Tier 2 represents those that may significantly impact public health, and Tier 3 represents those that do not have a direct health effect, typically monitoring violations.

Missouri's proposed rule requires the reader to sift through the entire text of the rule for the acute Tier 1 violations. Worse, the proposed rule fails to list any Tier 2 or Tier 3 violations, leaving Tier assignment to default. Indeed DNR's own web page for chronic monitoring violators (Tier 3) demonstrates that a significant number of Tier 3 violations occur at public water systems with a history of acute MCL violations for fecal coliform/*E. coli* (Tier 1) and nonacute MCL violations for total coliform bacteria (Tier 2). Therefore a lot Tier 2 violations are Tier 1 violations waiting to happen and Tier 3 can be both.

This has significant negative impact on protecting the public health. Even with short term exposure, Tier 2 violations can cause illness in sensitive subpopulations. By not specifying Tier 2 from Tier 3, as the federal rule does, the proposed rule creates an unacceptable risk. In fact, in the above example of Lake of the Ozarks State Park, the recent violations were nonacute. Because the contamination may still cause infants, certain elderly, people living with HIV/AIDS or those undergoing chemotherapy to become sick, the federal rule requires public notice. This would not be the case in the proposed rule. In effect,

the most sensitive populations would no longer be notified when their health may jeopardized.

This lack of clarity is unfair to a water system as well. Without criteria defining the difference between Tiers, an agency has free-reign to reclassify any violation or situation at will. If a system had a non-acute turbidity violation, for example, Missouri DNR could upgrade the Tier 2 situation to a Tier 1 virtually at will. With the specifics provided in Appendix A of the federal rule, a system has recourse: it can directly point to the violation's routine Tier 2 status if it feels the agency is behaving in a heavy-handed manner. While we support the primacy agency having the authority to upgrade a situation from one Tier to the next, an appendix is necessary to ensure it will not be done in a capricious manner.

Apparently intended to be a substitute for an appendix to the rule itself, the Missouri DNR website describes Tier levels in a so-called "implementation tool." While this may be useful, it in no way carries the weight of a codified rule, because a "tool" may be altered, or simply ignored, without public input or accountability. In addition, water systems are unlikely to even know about the existence of such a tool. The state's implementation tool in no way makes up for the lack of a codified appendix.

The federal rule also utilizes a number of useful tables throughout the text. Missouri DNR has chosen to delete these from the state rule. Such omissions would be less objectionable if the federal rule's Appendix A were in place, as the tables mainly highlight the details of that Appendix. Due to the sheer volume of contaminants, violations and situations, an appendix format after the text of the rule is crucial.

Appendix B and Health Effects

Similarly, the health effects language of the proposed rule is available only in text form [10 CSR 60-8.010(11)] as opposed to the federal rule, which uses a tabular format in its Appendix B. Again, the appendix is far superior in terms of the overall usability to regulators and the public. Text is better used for the general workings of the rule, and appendices are useful for voluminous lists. As written, the proposed rule makes it difficult for regulators or the public to find a particular contaminant.

The federal Appendix B also states the maximum contaminant level goal and maximum contaminant level for each contaminant. Missouri's rule lists neither. By not listing a contaminant's maximum level alongside its health affects, the reader is forced to jump from chapter to chapter to find crucial information.

Appendix C of the State Rule

Chapter 8 of the state rule lists health effects language again in Appendix C to 10 CSR 60-8.030. Why Missouri DNR has chosen to duplicate most of the content of its Appendix B is puzzling.

Appendix C fails to list the contaminants MCLG and MCL. This is another area where Missouri DNR's version is significantly lacking compared to the federal rule.

Conclusion and Recommendations

As proposed, the Missouri DNR's public notification rule seriously weakens the standards currently in use under the federal rule. In order to be acceptable, the following changes must be made to the state rule:

1. Appendix A of the federal rule must be incorporated into the state rule. Without the appendix, the Tier designations are left undefined, and the rule itself is prohibitively difficult to enforce.

2. Health Effects must be put into a reader-friendly appendix with maximum contaminant level goals clearly referenced.

3. All contaminants listed in the federal notice rule must be similarly listed in the state rule. Leaving out specific contaminants severely weakens the state rule.

If these changes are not made, the proposed state rule will be significantly weaker than the federal rule currently in use, and may have particularly negative impacts on the most sensitive subpopulations. As the first line of defense to protect the public's health, these notification requirements are too important to invest in a new rule that, whether through sloppiness or bad intentions, significantly lowers the bar. We strongly urge the Safe Drinking Water Commission to not approve it unless the above changes are made.

Sincerely,

Eric Wingerter
National Field Director