



May 28, 2014

By email (beach_guidance@epa.gov)

Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Office of Water (4305T)
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Docket ID No. EPA-820-D-13-001

Dear Administrator McCarthy:

Thank you for accepting these comments on the Draft National Beach Guidance and Required Performance Criteria for Grants (Draft Criteria), submitted on behalf of Clean Ocean Action, Hackensack Riverkeeper, Heal the Bay, Natural Resources Defense Council, NY/NJ Baykeeper, Riverkeeper, and Waterkeeper Alliance. Each of our organizations is keenly interested in protecting coastal waters and recreational users of those waters. EPA has a statutory duty to protect public health in recreational waters, a duty that is essential to the 180 million people that visit coastal and Great Lakes beaches every year.

Exposure to pathogens in coastal recreational waters continues to be a significant threat to public health. Dangerously high human pathogen levels, associated with the presence of human or animal waste, are present in coastal waters too often, particularly after heavy rainfall. The underlying culprits are generally raw and improperly treated sewage, raw animal manure, and contaminated stormwater runoff, which are highly deleterious to water quality. Pathogens

in contaminated waters can cause a wide range of diseases including gastroenteritis, dysentery, hepatitis, and respiratory illnesses and are a major threat to all whom they contact.

Public health is best protected through a two-track process: states must give the public timely notice when recreational waters contain unsafe levels of human pathogens, and they must constantly improve water quality so that such occurrences are rare. We recognize that the Draft Criteria seek to make progress on the first track.

After carefully reviewing the Draft Criteria, we suggest the following to better protect public health:

1. EPA must require grantees to notify the public when a conservative pathogen threshold is exceeded;
2. EPA must encourage or require more frequent and better testing that ensures accurate data to inform timely beach closure decisions;
3. Where feasible, EPA must encourage or require modeling or other forecasting techniques that alert the public to water quality threats *before* the public enters the water;
4. EPA must maximize the number of beaches where these rules apply;
5. EPA must require notification protocols that are calculated to reach the maximum number of recreators; and
6. EPA must require grantees to preserve data and make all data, current and historic, easily available to the public.

EPA has made important advancements toward meeting these six principles in the Draft Criteria. In particular, we support EPA's decision to require grantees to adopt the Beach Action Values (BAVs) from EPA's 2012 Recreational Water Quality Criteria (RWQC) as the threshold for beach notification decisions. We also support the Draft Criteria's effort towards requiring grantees to share historical pathogen data. However, EPA can still take easily identifiable steps to better protect public health.

EPA APPROPRIATELY REQUIRES STATES RECEIVING GRANT MONEY TO USE THE BEACH ACTION VALUE AS A BEACH NOTIFICATION THRESHOLD.

We strongly support the requirement states and tribes must use a BAV to prompt public notification actions in order to be eligible for federal BEACH Act funding. Draft Criteria at 12-13, Section 4.7.2. We support this requirement because the BAVs are more protective of human health than EPA's current water quality criteria for recreational waters. Among other

factors, those water quality criteria are based upon a gastrointestinal illness rate of either 32 or 36 illnesses per 1,000 swimmers, both of which are unacceptably high. The BAVs provide a more conservative level of protection, and linking notification to the BAVs will help offset the health risks associated with EPA's current water quality criteria.

However, some language in the Draft Criteria is unclear and could be interpreted as establishing this requirement only as an *interim measure* while states and tribes are developing new or revised Recreational Water Quality Standards. For example, on page 12 of the draft, it indicates that it is important to have a nationally consistent trigger for BEACH Act beach notification actions *until* a state or tribe adopts EPA's new or revised water quality criteria, and *then* funding requirements will be based on the approved standards (lines 30-37, page 12).

This language is concerning, as it could suggest that the BAV notification thresholds are a prerequisite for federal funding *only until* states adopt the new/revised EPA criteria. Meanwhile, Section 4.7.2 provides appropriate clarity that a BAV still must be used in order to receive federal funding even after a state standard is developed. But the language on page 12 should be clarified to reflect that it is only the health risk level for the BAV that may vary based on the state-adopted standard, and that use of one of the BAVs is still required for federal funding.

EPA MUST CONTINUE TO MAKE STRIDES TOWARD TIMELY NOTIFICATION OF PATHOGENIC RISKS.

It does no good to inform the public of existing water quality problems after they've already been to the beach. Even with the welcome requirement that BAV violations trigger beach notifications, EPA must guard against using the BAV as a "you shouldn't have swam yesterday" tool.

EPA should require grantees to include at least one beach risk appropriate predictive model – even if this is as simple as a preemptive closure based on rainfall – for every site. For example, at beaches affected by combined sewer overflows, storm/overflow models would inform monitoring plans; for beaches where other uses are the main risk drivers, different models may be applicable.

Where possible, accurate models should be developed that allow grantees to issue beach notifications and closures prospectively, so that swimmers are notified in time to avoid water contact. If EPA cannot mandate a model for every site, it should require grantees to explain why a model is inappropriate. If a model is inappropriate because of insufficient data, the state should prioritize acquiring additional data. EPA should require models where they do work, not merely encourage them. If they can't be required, they should be incentivized.

We support the suggestion on page 77 that “To the extent possible, states and tribes should be moving toward same-day notification of exceedances and prompt reporting by using tools that provide rapid results (i.e., rapid analytical methods and predictive models) and tools that facilitate rapid communication of those results (e.g., electronic notification and real-time reporting).” But we believe that this should be a requirement rather than an encouragement.

Culture-based testing methods have an inherent time lag that greatly reduces its effectiveness as a tool for protecting the public health. The Draft Criteria state that 70% of exceedances of water quality standards have already ended within 24 hours. Consequently, a culture that returns data a day or two after the sample has been gathered not only is too late to warn a swimmer of real time risks, it also could lead to a beach notification when the water quality is no longer dangerous.

EPA is continuing to rely on culture methods with known and serious timing problems, but is only tentatively endorsing qPCR and modeling protocols because of hypothetical drawbacks. Even if a qPCR test is less accurate than a culture test, if it has *some* accuracy it is more helpful than a culture test that tells swimmers what the water quality was yesterday. Even if qPCR and models are less accurate in certain settings, they are at least timely. If beach managers have a good idea of what the water quality is now, through modeling or experience, then they should notify the public based on that modeling or expertise.

We believe that EPA should require grantees to move toward rapid testing and further require predictive modeling and/or preemptive advisories (as on page 80) that warn the public before potential exposure.

EPA MUST INCLUDE ALL BEACHES WITHIN THE PROGRAM

In our experience, the welcome changes in the Draft Criteria will apply to too few beaches. In developing ranking and monitoring plans, many if not all states list beaches that are commonly used by the public as outside of the program because of funding deficiencies. And many states also list beaches as closed that ought not be closed, or list beaches as seasonably closed that are nevertheless used by the public for recreation outside of the recreational season.

The Draft Criteria should be amended to prohibit grantees, in developing rankings and monitoring plans, from asserting that certain coastal waters are “closed” to bathers, either by area or season, because they allegedly have no or zero use by the public. This is often a faulty and dangerous assumption.

In most instances, there are no physical barriers to a person using a “closed” beach. Except in rare instances (e.g., ongoing construction, the presence of migratory or breeding birds, etc.), beaches are not and cannot be so secured, and therefore it is irrational to assume zero use during periods of “closure”.

All too frequently, beachgoers are not warned about pathogen contamination because the local government does not consider the coastal water open for recreational use. Especially worrisome are non-program beaches, which are neither closed nor monitored. These beaches are not marked as being outside the program and the public is not necessarily informed that the beach is not tested or when pathogen levels at the beach are typically dangerous. At a very minimum, EPA should require states to post signs that a beach is not monitored for water quality safety if it is a non-program beach.

In our experience, bathers commonly use coastal recreational waters regardless of whether a lifeguard is on duty or a beach is administratively/nominally “closed.” Swimmers are often present after hours or outside of the season. These swimmers rarely know that they are recreating on “closed” beaches, and EPA must nevertheless protect their health under the BEACH Act.

All of these uses of “closed” beaches potentially expose bathers to pathogens, and

therefore, cannot be ignored in terms of developing rankings and monitoring plans. The assumption that a “closed” beach has no users, and therefore the grantee has no BEACH Act obligations with respect to such persons, leaves the very members of the public Congress intended to protect vulnerable to illness from waterborne pathogens. For all of the above reasons, EPA must amend the Draft Criteria to prohibit grantees from asserting the faulty and dangerous assumption that a “closed” beach has zero use.

Thank you for this opportunity to provide comments on this critical draft document. If you have questions about our comments please feel free to contact Christopher Len at 201-968-0808.

Sincerely,



Christopher Len
Staff Attorney
Hackensack Riverkeeper &
NY/NJ Baykeeper



Steve Fleischli
Director & Senior Attorney, Water Program
Natural Resources Defense Council



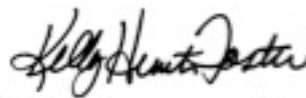
Kirsten James
Science and Policy Director, Water Quality
Heal the Bay



Phillip Musegaas, Esq.
Hudson River Program Director
Riverkeeper, Inc.



Cindy Zipf
Executive Director
Clean Ocean Action (COA)



Kelly Hunter Foster
Senior Attorney
Waterkeeper Alliance