UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

Mr. Terry Tamminen
Secretary
California Environmental Protection Agency
1001 I Street
25th Floor
Sacramento, CA 95814

Dear Secretary Tamminen:

The purpose of this letter is to remind you of a current deadline and advise you of the U.S. Environmental Protection Agency's (EPA) plans to comply with requirements of Section 303(i) of the Clean Water Act, also known as the BEACH Act. I have enclosed an outline of the requirements of the BEACH Act.

We are encouraged by the efforts all the States and Territories have made in attempting to comply with the statute. However, several States and Territories have not yet adopted water quality criteria for coastal recreation waters for pathogens and pathogen indicators as required by Section 303(i) that are as protective of human health as those bacteria criteria and indicators published by the Administrator in 1986. In close cooperation with each of our Regional Offices we have reviewed each State's progress toward completing this process with respect to compliance with Section 303(i).

The information available to EPA indicates that as of February 27, 2004, California has adopted criteria in compliance with Section 303(i) for some but not all of your coastal recreation waters. Section 303(i) requires the adoption of criteria as protective of human health as EPA's criteria for all coastal recreation waters as defined by Section 502(21), not only for a subset of those waters. EPA recognizes that California's coastal recreation waters are protected by water quality criteria contained in the State Water Resources Control Board's Ocean Plan, Basin Plans adopted by the State's Regional Water Quality Control Boards, and the California Department of Health Services' Health and Safety Code. Please provide us with the State's position on the applicability of these various state regulations to coastal recreation waters subject to the BEACH Act. This is necessary to clarify whether or not all coastal waters of the state are covered in a way that satisfies the BEACH Act. In making our final determination on this matter, we will compare your EPA-approved water quality standards for coastal recreational waters with the criteria values in *Ambient Water Quality Criteria for Bacteria*-1986.

The BEACH Act requires that coastal States and Territories adopt criteria and standards that comply with Section 303(i) by April 10, 2004. For those coastal States and Territories that have not yet done so, EPA plans to initiate rulemaking to establish numeric, surface water quality criteria for pathogens and pathogen indicators designed to bring coastal States and Territories

into full compliance with Section 303(i) of the BEACH Act. If your State adopts water quality standards as required by Section 303(i) during EPA's regulation development process we will exclude your State from the scope of the proposed or final rule. Even if the Agency promulgates final criteria for your State, we would withdraw the Federal rule applicable to your State if you adopt criteria satisfying the requirements of Section 303(i).

We have talked with many States about the difficulties they are experiencing in attempting to comply with the Act and the demands placed upon your Agency in guiding standards actions through the legal and administrative processes of the State. I encourage you to continue working closely with Wayne Nastri and his staff in the EPA Regional Office to adopt State standards. Once you do this, we will not need to promulgate standards for your State. We will continue to provide as much assistance to you as possible. While we plan to initiate a proposed rulemaking action as part of our responsibility under the BEACH Act, we would prefer to be in a position to approve State-adopted standards that fully meet the requirements of the Act. We will advise you as to the progress of our proposed rulemaking action from time to time.

I look forward to continuing to work together to complete this effort to meet an important statutory goal and shape a strong water quality standards program for the coming years.

Sincerely,

Benjamin H. Grumbles
Assistant Administrator for Water

Enclosure

General Background on the BEACH Act

The Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 amended the Clean Water Act by adding Section 303(i). Section 303(i)(1)(A) requires that:

> Not later than [April 10, 2004], each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under §304(a).

Section 303(i)(2)(A) requires that:

> If a State fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

Furthermore, the BEACH Act added Section 502(21) to the CWA, which defines "coastal recreation waters" to include the Great Lakes and marine coastal waters including coastal estuaries that are designated by States under CWA Section 303(c) for swimming, bathing, surfing, or similar water contact activities.

In 1986, EPA published *Ambient Water Quality Criteria for Bacteria – 1986*. This document contains EPA's recommended water quality criteria for bacteria to protect bathers in recreational waters. The 1986 bacteria criteria document identifies the maximum concentrations of *E. coli* and enterococci allowable in fresh and marine recreational waters. These indicator bacteria generally do not cause illness directly, but have demonstrated characteristics that make them good indicators of harmful pathogens in waterbodies. Prior to its 1986 recommendations, EPA recommended the use of fecal coliform bacteria as an indicator organism to protect bathers in recreational waters. However, epidemiological studies conducted by EPA demonstrated a poor correlation between the concentration of fecal coliform bacteria and swimmer-associated illnesses.