

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Bayberry Garden Club
Bayshore Regional Watershed Council
Bayshore Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coast Alliance
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1034
Concerned Businesses of COA
Concerned Citizens of Bensenville
Concerned Citizens of COA
Concerned Citizens of Montauk
Concerned Students and Educators of COA
Eastern Monmouth Chamber of Commerce
Fisher's Island Conservancy
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Rumson
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Holly Club of Sea Girt
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Running Club
Junior League of Monmouth County
Keyport Environmental Commission
Kiwanis Club of Manasquan
Kiwanis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Leonardo Tax Payers Association
Main Street Wildwood
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
Monmouth County Friends of Clearwater
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Commercial Fishermen's Association
NJ Environmental Federation
NJ Environmental Lobby
NJ Main Ship Owners Group
NJ Marine Education Association
NJ PIRG Citizen Lobby
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsy
NY State Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOut.org
Piscataway Saltwater Sportsmen Club
Raritan Riverkeeper
Religious on Water
Riverside Drive Association
Rotary Club of Long Branch
Rotary District #7510-Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Seaweeders Garden Club
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Shore Adventure Club
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
Sons of Ireland of Monmouth County
Soroptimist Club of Cape May County
South Jersey Dive Club
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
TACK I, MA
Terra Nova Garden Club
Three Harbors Garden Club
Unitarian Universalist Congregation/Monmouth County
United Boatmen of NY/NJ
Village Garden Club
Volunteer Friends of Boaters, NJ
WATERSPIRIT
Women's Club of Brick Township
Women's Club of Keyport
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Women Gardeners of Ridgewood
Zen Society



Ocean Advocacy
Since 1984

Clean Ocean Action

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Ruth Charbonneau, Director
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Office of the Commissioner
Department of Health and Senior Services
PO Box 360
Trenton, NJ 08625-0360

RE: Readoption of N.J.A.C. 8:26 Governing Public Recreational Bathing

Dear Ms. Charbonneau,

These comments on the readoption of Public Recreational Bathing Rules are submitted on behalf of Clean Ocean Action, BayKeeper, Surfer's Environmental Alliance, Bayshore Regional Watershed Council, Shark River Cleanup Coalition, Citizens Right to Access Beaches, Wreck Pond Watershed Association, Save Barnegat Bay, American Littoral Society, and the Surfrider Foundation.

Clean Ocean Action (COA) is a broad-based coalition of 125 conservation, environmental, fishing, boating, diving, student, surfing, women's, business, service, and community groups and also represents concerned citizens and businesses. Our goal is to improve the degraded water quality of the marine waters off the New Jersey/New York coast. COA has worked for over 25 years to improve water quality at our beaches by identifying and eliminating sources of pollution and improving coastal management.

The readoption of the Public Recreational Bathing regulations provides an important opportunity to improve public health protection of recreational water users. It is urgent that New Jersey Department of Health and Senior Services (NJDHSS) update the existing regulations and the beach monitoring program to be more consistent with U.S. Environmental Protection Agency (USEPA) guidelines for water quality criteria and to use the current state of knowledge and technology available to better inform the public of health risks. Critical revisions that can be implemented now include: closing beaches after one-day sample results, resampling at environmental beach stations, adopting the geometric mean as the chronic exposure criteria, recognizing public health risks at non-bathing primary contact recreational areas, and improving communication and providing more timely information to the public when bacteria levels are exceeded. Revisions that may take more time to implement but must be pursued include increasing precautionary closures due to rain events and adopting rapid methods.

Beaches suspected of fecal contamination must be closed or at the very least posted with health advisories after one sampling event. Many other states have chosen to close and/or post advisories on beaches after an initial exceedance of the Primary Contact Standard. This practice is more protective of public health than the State's, which currently waits for a second exceedance before closing the beach. In fact, the EPA recommends public advisories after the initial exceedance and only suggests resampling before issuing a closure, if "*there is reason to doubt the accuracy or certainty of the first sample.*"¹ The USEPA has also stated that "*it expected that the single sample maximum values would be used for making beach notification and closure decisions*" and "*Furthermore, beach management programs need to be able to respond rapidly to short-term changes in water quality.*"² Beachgoers have a right to know as soon as officials are aware that bacterial levels have been exceeded.

Geometric mean for chronic exposure must be included in NJDHSS's beach rules. NJ must adopt the geometric mean of 35 Enterococci colonies/100 ml as a standard for chronic exposure. The adoption of the geometric mean criteria is necessary to protect bathers from persistent bacterial exposure at levels that have been shown to cause the same frequency of human illness as the Primary Contact standard.

EPA considers a state's water quality standards to be as protective as its recommendations and consistent with the requirements in CWA §303(i)(1)(A) applying to coastal and Great Lakes states if, for marine waters, the state's criteria are:

- 1. based on an illness rate equal to or less than 19 illnesses per 1000; and*
- 2. uses a geometric mean **and** a single sample maximum value.*³

Nineteen Bay Beaches exceeded the geometric mean of 35/100ml in 2006-2007. In 2008, seven recreational beaches and four environmental stations were impaired due to geometric mean exceedances. The New Jersey Department of Environmental Protection (NJDEP) already recognizes geometric mean exceedances as water quality impairments. However, the beach regulations do not include this criteria and the public is not alerted to these water quality problems on state's beach webpage or at these beaches. The NJDEP makes their assessment at the end of the season and these results need to be publically accessible at that time and for the following beach season. Although the Beach Rules **N.J.A.C. 8:26-8.8 (4.)** includes the overall microbial water quality conditions, this provision needs to be strengthened and enforced. The NJDHSS needs to update their rules now for consistency with USEPA Guidelines and NJDEP regulations.

Also, for reopening closed beaches, test results must show the beach is safe for use. "If necessary" is not acceptable and must be deleted from **N.J.A.C. 8:26-8.8 (5.)**: "*A bathing beach shall not be opened until the sanitary survey and, if necessary, appropriate sampling, shows the microbiological water quality to be acceptable.*"

¹ USEPA Implementation Guidance for Ambient Water Quality Criteria for Bacteria, May 2002 Draft, EPA-823-B-02-003

² Using Single Sample Maximum Values in State Water Quality Standards EPA-823-F-06-013; August 2006

³ USEPA Implementation Guidance for Ambient Water Quality Criteria for Bacteria, May 2002 Draft, EPA-823-B-02-003 [emphasis added]

Advisories and resampling must also be required at bathing beaches that are not “officially opened” and/or are not “designated bathing beaches.” The NJDHSS and NJDEP must recognize that the public uses beaches when lifeguards are not on duty and at non-lifeguarded beaches. According to USEPA guidelines, monitored beaches are not required to have a lifeguard, but instead, recommends that testing guidelines be based on *the frequency of public usage*. All tested beaches, including environmental stations, must be closed or at least posted after an exceedance, regardless of whether the beach is “officially opened” or lifeguarded at the time of the exceedance. Again, it must be clear that the closure (or advisory) is due to fecal-contaminated waters. For example, the week of June 6, 2009, Beachwood Beach West, a recreational beach in Ocean County, had results of 160, 3850, and 580 enterococci/100 ml over consecutive days, and no notice of this severe problem was posted at the beach or on the website other than the results. The website did state that “All lifeguarded beaches are open.” While this may be technically true, it is not sufficient to notify the public of the potential health risks at NJ beaches that are unguarded and/or unopened.

The public must be made aware with signs and online notification of all recreational waters impacted by fecal pollution, notably in the case of sewage line breakage, malfunction of a wastewater treatment facility, or other pollution event. **It is unacceptable that beaches under current policy are not closed or posted with advisories and that public is exposed to known fecal contamination simply because these beaches are not officially opened, designated beaches.**

Similar to designated beach areas, beaches that are treated as environmental stations by the NJDEP must also be resampled following an exceedance, with advisories remaining until testing indicates the water is safe. Several beaches are regularly used as bathing beaches, even though they are not officially designated as such. For example, the popular northern bayshore beaches of Keyport, Union Beach, Keansberg, and Wilson/Monmouth in Middletown are only monitored as environmental stations. We recognize and strongly support NJDEP’s ongoing monitoring efforts at many of these beach sites on a weekly basis. However, re-sampling does not occur and beach advisories or closings do not happen based on fecal pollution. If beaches are used by the public for swimming or recreational uses that result in primary contact, adequate monitoring and advisories are required. Therefore, NJDHSS needs to update the regulations to be more consistent with USEPA guidelines and to include non-lifeguarded beaches that are frequently enjoyed by the public.

The NJDHSS rules must also pertain to other recreational areas that are designated as primary contact use. Activities beyond swimming, such as kayaking, surfing, surf-kiting, jetskiing, waterskiing, and small boat sailing, result in immersion in or ingestion of water. The NJDHSS must have public health regulations for these non-beach recreational areas. We urge biweekly testing from May to October with posting of the results on the same website as the beach data. Areas that exceed the geometric mean criteria should be closed when it is determined the region, which should happen at least annually, have exceeded the geometric mean until water quality conditions improve. The Monmouth County Health Department has posted such signs in Oceanport due to high indicator levels measured by the NJDEP and Oceanport

Watershed Watch Program. These actions should be required for all impaired waters under NJDHSS's rules. Provisional rain closures may also be needed for some of these regions.

Seasonal monitoring also ignores beaches that are used by the public year round for activities such as surfing. The NJDHSS should work with off-season recreational users and develop state-supported volunteer sampling efforts to monitor specific popular areas used during the off-season. The State should consider collaborating with the NJDEP Watershed Watch network and other interested non-profits and recreational users on these efforts. A similar type of collaboration between the RI Surfrider Foundation Chapter and the University of Rhode Island's Watershed Watch program has proved to be effective means for increasing monitoring at ocean beaches.

The rules must be amended with regulations and guidance for precautionary, or pre-emptive, closure procedures and more precautionary closures are needed. According to the NJ Cooperative Coastal Monitoring Program Summary Report for 2006-2007, *the large majority of the closings from 1997 – 2007 were related to the presence of contaminated stormwater, AND the increase in ocean and bay beach closings in the 2001, 2003, 2004 and 2006 summer seasons may be attributed to frequent periods of intense rainfall and the resulting stormwater discharges.*⁴

Despite this known threat to public health, there are currently only 4 ocean beaches and one bay beach that are subject to pre-emptive closures. Other bay and possibly ocean beaches may also be subject to these closures. *However, none of the pre-emptive closures are described on the state's beach website.* This is not protective of public health and is unacceptable.

In order to better understand the link between stormwater runoff and bacterial contamination of our waterways, the state must be more proactive by conducting additional bacterial testing after rain events. Last summer, Monmouth County did conduct tests after a rain event and observed single sample standard exceedances at 12 test sites. Preliminary beach testing during storms in Ocean County this year also indicates stormwater-related problems. Where storm water pollution is indicated and empirical data correlates high bacterial levels with rainfall, precautionary closures should be implemented and the public needs to be notified.

Areas which have been identified as having stormwater-related or chronic exposure problems must be required to have source tracking studies and sanitary surveys to identify sources. Both the NJDHSS and the NJDEP must provide guidance and oversight to ensure that remediation actions are taken in a timely manner. Advisories must be issued for identified sources such as storm drains. For problem storm drains the discharge on beach areas, the beach sands should also be tested and the public health risk elevated and communicated to the public. Results of source tracking studies and sanitary surveys must be made public. It is critical the remedial actions take place to eliminate sources of contamination and improve water quality.

⁴ NJ Department of Environmental Protection, Water Monitoring and Standards, COOPERATIVE COASTAL MONITORING PROGRAM, Summary Report for 2006 and 2007 [emphasis added]

The bathing rules must include more communication requirements. All data on the history of beach advisories and closures, as well as closures of non-beach recreational waters and reopening dates must be communicated to the public and be posted on the NJDEP's beach website (njbeaches.org). Currently, the data is incomplete and understates water quality problems. Information about provisional closures due to rainfall for beaches and environmental stations needs to be available, even if these beaches are not "officially" open. It is also important that the website convey when beaches are lifeguarded and officially open. Beachgoers should be encouraged to use these beaches. The website must explain the health risks that contaminated water poses to swimmer as well as natural hazards such as rip tides. Advisories warning recreational users to avoid waters near stormwater drains must be posted. In addition, the website must specify actions that recreational users can take to reduce risks and have an illness complaint form that can be submitted electronically for recreational users to alert the State of water-related health problems and help identify problem areas. Rhode Island's website provides an example of such a form.⁵ The NJDHSS's rules must require clear and timely public communication to recreational users both electronically and at beach or recreational access sites.

NJDHSS must also ensure that website postings are accurate and that information submitted to the USEPA by the State is valid. The latest data available at USEPA's website on state programs⁶ is questionable. First of all, it states that NJ has 100% monitoring coverage of beaches which is misleading at best. This exaggerates the testing coverage as only limited monitoring occurs at environmental stations and many beach areas are not tested. It also incorrectly states that "*In 2007, New Jersey reports that 100 percent of their monitored beaches have no known potential sources of pollution.*" Several beaches were known to be impacted by nearby stormwater drains, such as the Wreck Pond outfall and the Sea Ave outfall, and this statement is simply not true. We also recognize that the USEPA, in addition to the NJDEP and NJDHSS, has a responsibility to ensure the information on its website about New Jersey water quality is accurate.

NJ should proactively pursue the use of rapid tests for detecting indicator bacteria in beach water and prepare the bathing recreational rules to expedite the use of rapid methods. There are molecular techniques available that can provide results within 2 to 4 hours, offering a remarkable improvement in public health protection. These methods are in their final stages of development to improve their reliability and reproducibility. In fact, California is poised to adopt these new techniques as the primary method for determining compliance with bacterial standards by next summer. Southern California has taken a lead role in developing and improving these rapid testing methods, because they recognize the inherent shortcomings of relying on a 24 hour-plus test for an often transitory, but very serious public health risk.

We urge New Jersey to expand its current efforts to support rapid test development by conducting a pilot program that targets high density beaches and frequently closed beaches. The availability of same day results would significantly reduce the current risk to beachgoers, by allowing the state to issue closures that actually reflect an exposure risk the same day versus current methods that end up closing beaches two days after elevated bacterial levels were detected. By participating in the national effort to modernize bacterial testing methods, NJ will

⁵ <http://www.ribeaches.org/complaints.cfm>

⁶ <http://www.epa.gov/waterscience/beaches/seasons/2007/nj.html>

be able to continue to be a national leader in improving public health. Implementation of these rapid tests should take place at the earliest opportunity.

In conclusion, Clean Ocean Action and the additional organizations look forward to working with the NJ Department of Health during the regulatory revision process to ensure this significant effort results in a proactive and protective beach and recreational area monitoring program. Actions that should be implemented in the current rule adoption include: improved public notification with same day results and closures, adoption of the USEPA recommended chronic exposure criteria, increased sampling at environmental stations, stronger source identification and cleanup provisions, and pre-emptive closure guidelines. The rules must also include data handling and communication guidelines and requirements to alert of the public of health risks in a timely manner. We hope that these changes lead to more provisional rain closures where needed and overall reduction of fecal pollution in the future. For the next rule adoption process in two years, requirements for rapid methods testing should be planned for and proposed.

Sincerely,



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