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11
12 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 NATURAL RESOURCES DEFENSE COUNCIL)
14 1314 Second Street)
15 Santa Monica, CA 90401,)
16 Plaintiff,)

17 v.)

Civ. Action No. _____

18 STEPHEN L. JOHNSON, ADMINISTRATOR,)
19 UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, and UNITED)
20 STATES ENVIRONMENTAL PROTECTION)
AGENCY)
21 Ariel Rios Building)
1200 Pennsylvania Avenue, N.W.)
22 Washington, DC 20460,)
23 Defendants.)

**Complaint for
Declaratory and
Injunctive Relief**

24
25 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

26 **INTRODUCTION**

27 1. Plaintiff the Natural Resources Defense Council
28 ("NRDC") seeks declaratory and injunctive relief against

1 defendants, the U.S. Environmental Protection Agency and Stephen
2 L. Johnson, Administrator of the U.S. Environmental Protection
3 Agency (collectively "EPA"), for failing to comply with
4 statutory obligations under the Beaches Environmental Assessment
5 and Coastal Health Act of 2000 ("BEACH Act"), Pub. L. 106-284,
6 Oct. 10, 2000 (amending the Federal Water Pollution Control Act
7 ("Clean Water Act"), 33 U.S.C. §§ 1251 et seq.), to protect the
8 public from the substantial adverse health effects caused by
9 contact with contaminated beachwater.
10

11 2. Every year, more than 180 million people visit coastal
12 and Great Lakes beaches, and swimming is the second most popular
13 recreational activity in the United States. Recreational water
14 can be a breeding ground for a variety of human pathogens and
15 pose a significant threat to public health. Swimming in unsafe
16 water can cause a wide range of diseases - including
17 gastroenteritis, conjunctivitis, dysentery, hepatitis, and
18 respiratory illness - through exposure to a wide range of
19 pathogens. According to the Centers for Disease Control and
20 Prevention, there is an upward trend in the number of waterborne
21 diseases associated with pathogens in recreational waters.
22 Children, pregnant women, and people with compromised immune
23 systems are at greatest risk from exposure to these pathogens.
24

25 3. In addition, the number of beach closures reported
26 every year is on the rise. In 2005, there were more than 20,000
27 beach closing and health advisory days across the country,
28

1 seventy-five percent of which were prompted by dangerously high
2 bacteria levels, which are often associated with human and
3 animal waste. The largest known sources of beachwater
4 contamination are inadequately treated sewage and contaminated
5 stormwater runoff. Today, beachwater monitoring is not
6 sufficient to protect Americans from the risks of illness from
7 swimming or participating in other water contact activities in
8 coastal areas, including the Great Lakes.

10 4. In October 2000, Congress enacted the BEACH Act to
11 address the significant health concerns posed by contaminated
12 water and to improve water quality protections for the Great
13 Lakes and other coastal recreational waters. Congress,
14 recognizing that the tourism generated by the nation's coastal
15 waters supports over 28 million jobs and leads to investments of
16 over \$50 billion in goods and services annually, also enacted
17 the BEACH Act "to give the public confidence in the quality of
18 the nation's coastal water" and to protect "the tourism and
19 recreation industries that rely on safe and swimmable coastal
20 waters." H.R. Rep. No. 106-98, at 5 (2000). Congress further
21 explained that "EPA's 1986 criteria need to be updated to
22 improve the scientific basis for identifying pathogens in
23 coastal recreation waters." Id. at 6.

26 5. The BEACH Act requires EPA, by fixed statutory
27 deadlines, to conduct studies on the health effects of pathogens
28 in coastal recreational waters and to protect beachgoers against

1 the full range of illnesses caused by these pathogens.

2 6. EPA has failed to (i) initiate and complete appropriate
3 studies to assess the full human health risk from exposure to
4 pathogens in coastal recreational waters and (ii) publish
5 revised water quality criteria for pathogens and pathogen
6 indicators (including a revised list of testing methods) based
7 on those studies. These failures violate express statutory
8 deadlines contained in the BEACH Act, jeopardize human health,
9 and threaten the economy of beach communities.

11 **JURISDICTION AND VENUE**

12 7. Subject matter jurisdiction is proper in this Court
13 pursuant to federal question jurisdiction, 28 U.S.C. § 1331, and
14 the citizen suit provision of the Clean Water Act, 33 U.S.C. §
15 1365(a), because plaintiff NRDC asserts claims against
16 defendants under the BEACH Act and the Administrative Procedure
17 Act ("APA"), 5 U.S.C. §§ 551 et seq.

19 8. Venue is proper in this Court pursuant to 28 U.S.C. §
20 1391(e)(3), because plaintiff NRDC resides in this judicial
21 district.

22 **THE PARTIES**

23 9. Plaintiff NRDC is a national, non-profit environmental
24 organization with more than 530,000 members nationwide,
25 including more than 98,000 members in California, and a staff of
26 scientists, lawyers, and other specialists committed to
27 protecting public health and the environment. By letter dated
28

1 May 24, 2006, NRDC provided EPA with written notice, pursuant to
2 33 U.S.C. § 1365(b), of the statutory violations challenged in
3 this complaint.

4 10. Plaintiff NRDC brings this action on its own behalf and
5 on behalf of its members. NRDC's membership includes individuals
6 and families who visit Great Lakes and other coastal beaches
7 every year to swim, surf, and otherwise recreate in Great Lakes
8 and other coastal waters.

10 11. NRDC and its members are harmed by EPA's failure to
11 comply with its nondiscretionary duties under the BEACH Act to
12 study and protect against pathogens in coastal recreation
13 waters. EPA's failure to comply with the BEACH Act creates a
14 substantial risk of harm to the health of NRDC's members and
15 their children. Many NRDC members have gotten sick after
16 entering Great Lakes and other coastal waters for which EPA is
17 required to develop beachwater quality standards under the BEACH
18 Act.

20 12. Because of EPA's failure to act, NRDC's members are
21 deprived of information they need to make decisions about
22 whether it is safe to swim at the beach in Great Lakes and other
23 coastal waters.

25 13. EPA's failure to comply with the BEACH Act also harms
26 the recreational and aesthetic interests of NRDC's members. The
27 risk of becoming sick from contaminated beachwater has caused
28 NRDC's members to reduce the frequency of their trips to the

1 beach and the amount of time they spend in the water, and has
2 even prevented some NRDC members from entering the water
3 altogether. NRDC's members believe that their safety and the
4 safety of their children, neighbors, and community is at risk.
5 NRDC's members are also harmed by the adverse economic impact
6 that insufficient water quality standards have on their
7 communities.
8

9 14. The requested declaratory and injunctive relief
10 mandating that EPA comply with its statutory obligations will
11 redress these harms.

12 15. Defendant EPA, a federal agency of the United States,
13 is charged with responsibility for the implementation and
14 administration of the relevant provisions of the BEACH Act.
15

16 16. Defendant Stephen L. Johnson is the Administrator of
17 EPA. He is sued in his official capacity.

18 **RELEVANT STATUTORY PROVISIONS**

19 A. REQUIRED HEALTH PROTECTION STUDIES

20 17. The BEACH Act requires EPA to conduct comprehensive
21 studies on the health effects of pathogens in coastal
22 recreational waters to form the basis for updating public health
23 standards and methods for detecting pathogens.
24

25 18. The BEACH Act requires EPA to assess "potential human
26 health risks resulting from exposure to pathogens in coastal
27 recreation waters, including nongastrointestinal effects." 33
28 U.S.C. § 1254(v)(1). This assessment includes: (a) all types of

1 illnesses, expressly including gastrointestinal and non-
2 gastrointestinal effects, such as ear, nose, eye, and
3 respiratory infections, skin rashes, fever, and all other
4 illnesses that can be transmitted through swimming in
5 contaminated water; (b) all types of pathogens that pollute
6 coastal waters, including cryptosporidium and giardia, and other
7 parasites, viruses, fungi, and protozoa; and (c) all sources of
8 beachwater pollution, including stormwater, sewage, and animal
9 wastes. This assessment must account for the vulnerabilities of
10 sensitive subpopulations, including infants and young children,
11 the elderly, and people with weakened immune systems. Finally,
12 EPA must protect against potential acute health risks from one-
13 time and repeated exposures so that people are safe every time
14 they swim. Id. § 1254(v)(1)-(4).

17 19. In passing the BEACH Act, Congress recognized the
18 shortcomings of the current recreational water quality
19 guidelines, which are insufficient to make informed beach
20 managerial decisions because they use antiquated test methods
21 that generally require 24 to 48 hours to return results and
22 because they do not measure all risks of waterborne illness.
23 Therefore, Congress mandated that EPA develop "appropriate and
24 effective indicators for improving detection in a timely manner
25 in coastal recreation waters of the presence of pathogens that
26 are harmful to human health." Id. § 1254(v)(2). These new
27 microbial indicators and rapid methods must be effective in
28

1 testing methods, as appropriate), based on the results of the
2 studies . . . for the purpose of protecting human health in
3 coastal recreation waters." Id. § 1314(a)(9)(A).

4 24. The BEACH Act requires each state having coastal
5 recreational waters to adopt new or revised water quality
6 standards for all pathogens and pathogen indicators to which the
7 new or revised water quality criteria are applicable. Id. §
8 1313(c)(2)(A).
9

10 **THE CHALLENGED AGENCY FAILURE TO ACT**

11 25. The BEACH Act requires EPA to conduct comprehensive
12 studies evaluating the full range of pathogens in coastal
13 recreational waters and all potential human health risks
14 resulting from exposure to those pathogens. The BEACH Act
15 requires that EPA "shall initiate" appropriate studies by April
16 2002, and "shall complete" these studies by October 2003. The
17 BEACH Act further requires EPA to publish new or revised water
18 quality criteria based on the studies by October 10, 2005.
19

20 26. EPA has not initiated studies that satisfy the criteria
21 of the BEACH Act.

22 27. By failing to initiate the required water quality
23 studies, EPA is in violation of its statutory mandate.
24

25 28. By failing to complete the required studies, EPA is in
26 violation of its statutory mandate.

27 29. Furthermore, EPA failed to meet the October 10, 2005
28 deadline to publish new or revised water quality criteria. EPA

1 has not yet proposed, much less finalized, new or revised water
2 quality criteria. Nor has EPA published a revised list of
3 testing methods. EPA has stated that it does not expect to
4 publish revised water quality criteria until 2011.

5 **CLAIMS FOR RELIEF**

6 FIRST CLAIM FOR RELIEF

7
8 30. Plaintiff incorporates by reference all preceding
9 paragraphs as if fully set forth herein.

10 31. The BEACH Act requires EPA to initiate water quality
11 studies by April 2002 and complete these studies by October
12 2003. 33 U.S.C. § 1254(v).

13 32. In failing to initiate studies that satisfy the
14 criteria of the BEACH Act by April 2002 and complete these
15 studies by October 2003, EPA violated 33 U.S.C. § 1254(v) and
16 failed to perform a nondiscretionary duty, id. § 1365(a)(2).

17 33. This violation has harmed and continues to harm
18 plaintiff and plaintiff's members in the manner described in
19 paragraphs 11-13 above. EPA should be compelled to comply with
20 33 U.S.C. § 1254(v) without further delay.

21 SECOND CLAIM FOR RELIEF

22 34. Plaintiff incorporates by reference all preceding
23 paragraphs as if fully set forth herein.

24 35. EPA's failure to initiate water quality studies by
25 April 2002 and complete these studies by October constitutes
26 agency action unlawfully withheld in violation of the APA, 5
27
28

1 U.S.C. § 706(1), and is arbitrary, capricious, an abuse of
2 discretion, and otherwise not in accordance with law. Id. §
3 706(2)(A).

4 36. This violation has harmed and continues to harm
5 plaintiff and plaintiff's members in the manner described in
6 paragraphs 11-13 above.
7

8 THIRD CLAIM FOR RELIEF

9 37. Plaintiff incorporates by reference all preceding
10 paragraphs as if fully set forth herein.

11 38. 33 U.S.C. § 1314(a)(9) requires that EPA "shall
12 publish," by October 10, 2005, "new or revised water quality
13 criteria for pathogens and pathogen indicators (including a
14 revised list of testing methods, as appropriate), based on the
15 results of the studies conducted under section 1254(v), for the
16 purpose of protecting human health in coastal recreation
17 waters."
18

19 39. EPA failed to meet the October 10, 2005 deadline in
20 violation of 33 U.S.C. § 1314(a)(9), and failed to perform a
21 nondiscretionary duty, id. § 1365(a)(2).
22

23 40. This violation has harmed and continues to harm
24 plaintiff and plaintiff's members in the manner described in
25 paragraphs 11-13 above. EPA should be compelled to comply with
26 33 U.S.C. § 1314(a)(9) without further delay.

27 FOURTH CLAIM FOR RELIEF

28 41. Plaintiff incorporates by reference all preceding

