



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Ensuring clean and safe water
Compliance with the law*

EPA's 2018 BEACH Act Report to Congress Does Not Fully Meet Statutory Requirements

Report No. 20-E-0246

August 13, 2020



Report Contributors:

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Abbreviations

BEACH Act Beaches Environmental Assessment and Coastal Health Act of 2000
BEACON Beach Advisory and Closing Online Notification
EPA U.S. Environmental Protection Agency
GPRA Government Performance and Results Act
OIG Office of Inspector General

Cover Photo: Luquillo Beach, Puerto Rico. (EPA OIG photo)

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At a Glance

Why We Did This Project

We conducted this follow-up evaluation to determine whether the U.S. Environmental Protection Agency adequately implemented corrective actions in response to a previous Office of Inspector General report, *EPA Has Not Reported to Congress on BEACH Act Progress as Statutorily Required or Fully Documented Budget Decisions*, Report No. [18-P-0071](#), issued January 18, 2018. Specifically, we evaluated whether the EPA submitted the mandated reports to Congress regarding the Agency's progress under the Beaches Environmental Assessment and Coastal Health Act of 2000.

The BEACH Act amended the Clean Water Act to improve the quality of coastal recreation waters and for other purposes, including to protect human health. Under the Act, the EPA is required to submit reports every four years to Congress.

This report addresses the following:

- *Ensuring clean and safe water.*
- *Compliance with the law.*

This project addresses a top EPA management challenge:

- *Fulfilling mandated reporting requirements.*

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List of [OIG reports](#).

EPA's 2018 BEACH Act Report to Congress Does Not Fully Meet Statutory Requirements

What We Found

In our January 2018 report, we found that the EPA had not reported to Congress on BEACH Act progress as statutorily required. We recommended that the EPA submit the mandated reports to Congress. As part of its corrective actions in response to our January 2018 report recommendations, the EPA issued a BEACH Act report to Congress in July 2018.

EPA issuance of informative BEACH Act reports would allow Congress to make informed program decisions, improve program oversight, and enhance transparency.

In the course of this follow-up evaluation, we found that the EPA's 2018 report to Congress does not fully meet the reporting requirements of the BEACH Act and the Plain Writing Act of 2010. The report also does not adhere to federal internal control principles. Specifically:

- The report does not evaluate federal and local efforts to implement the BEACH Act.
- Although the report lists recommendations for additional water quality criteria and improved monitoring methodologies, communication of these recommendations could be improved by using plain language principles, which would help readers to more easily understand the recommendations.
- The report recommendations do not specify who needs to take action or what the barriers to implementation are.

In addition, we concluded that the EPA's Office of Water staff did not reach out to congressional staff members to inquire about what information Congress needs from the Agency to make informed decisions regarding the BEACH Act program. By issuing a report that did not fully meet the requirements of the BEACH and Plain Writing acts, the EPA missed the opportunity to provide Congress with the information needed for effective decision-making.

Recommendations and Planned Agency Corrective Actions

We recommend that the assistant administrator for Water develop and adopt a written strategy to verify that future BEACH Act reports to Congress fully meet the reporting requirements of the BEACH Act, expectations that federal agencies comply with the Plain Writing Act, and federal internal control principles. We also recommend that the EPA submit a report in 2022 that evaluates efforts to implement the BEACH Act. The Agency disagreed with our recommendations and did not provide acceptable corrective actions and planned completion dates. The recommendations are unresolved with resolution efforts in progress.



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

THE INSPECTOR GENERAL

August 13, 2020

MEMORANDUM

SUBJECT: EPA's 2018 BEACH Act Report to Congress Does Not Fully Meet
Statutory Requirements
Report No. 20-E-0246

FROM: Sean W. O'Donnell 

TO: David P. Ross, Assistant Administrator
Office of Water

This is our report on the subject evaluation conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this evaluation was OA&E-FY20-0062. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Water is responsible for the issues discussed in this report.

Action Required

This report contains unresolved recommendations. In accordance with EPA Manual 2750, the resolution process begins immediately with the issuance of this report. We are requesting a meeting within 30 days between you and the OIG's assistant inspector general for Audit and Evaluation. We also request a written response to the final report within 60 days of this memorandum. Your response will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification. If resolution is still not reached, the Office of Water is required to complete and submit a dispute resolution request to the chief financial officer.

We will post this report to our website at www.epa.gov/oig.

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Purpose

The U.S. Environmental Protection Agency’s Office of Inspector General conducted this evaluation to determine whether the EPA’s implementation of a recommendation in OIG Report No. [18-P-0071](#), *EPA Has Not Reported to Congress on BEACH Act Progress as Statutorily Required or Fully Documented Budget Decisions*, issued January 18, 2018, met the requirements of the Beaches Environmental Assessment and Coastal Health Act of 2000. Specifically, we determined the extent to which the completed corrective action addressed the OIG’s recommendation to submit the mandated reports to Congress on progress under the BEACH Act.

Top Management Challenge

This evaluation addresses the following management challenge for the Agency, as identified in OIG Report No. [20-N-0231](#), *EPA’s FYs 2020–2021 Top Management Challenges*, issued July 21, 2020:

- Fulfilling mandated reporting requirements.

Background

In October 2000, Congress passed the BEACH Act, which amended the Clean Water Act to improve the quality of coastal recreation waters and for other purposes, including to protect human health. Under the Act, the EPA is required to establish recreational water quality criteria; set performance criteria for coastal recreation water monitoring and notification programs (see sidebar); submit reports to Congress; and maintain an electronic database of coastal water monitoring data collected by states, territories, tribes, and local governments. In addition, the BEACH Act authorizes the EPA to provide grants to eligible states, territories, tribes, and local governments to implement coastal water monitoring and notification programs. The EPA reported that it awarded nearly \$9.8 million in grants in fiscal year 2017 for the 2018 swimming season.

Water Monitoring and Notification Programs

States, territories, and tribes with coastal beach waters use water monitoring and notification programs to:

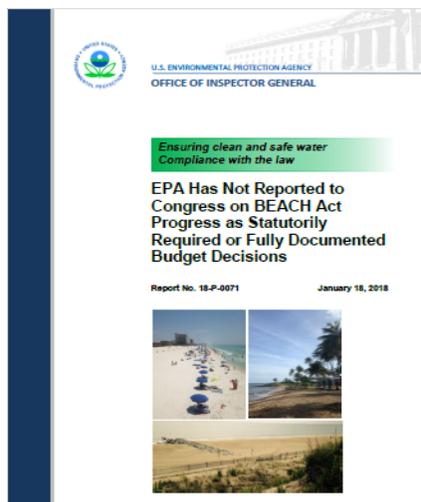
- Monitor for bacteria that indicate the possible presence of disease-causing pathogens.
- Notify the public when there is risk to public health.

Section 7 of the BEACH Act requires that the EPA administrator submit a report to Congress every four years that includes:

- Recommendations concerning the need for additional water quality criteria for pathogens and pathogen indicators and other actions that should be taken to improve the quality of coastal recreation waters.
- An evaluation of federal, state, and local efforts to implement the Act, including the amendments made by the Act.
- Recommendations on improvements to methodologies and techniques for monitoring coastal recreation waters.

Section 7 allows the EPA to coordinate this report with other reporting requirements under the Clean Water Act.

Beginning in fiscal year 2013, the EPA stopped requesting funding for the BEACH Act grant program. Despite the EPA's annual elimination proposals, Congress has continued to appropriate funding to the program at less than a third of the \$30 million authorized in the Act.



Cover of OIG Report No. 18-P-0071, dated January 18, 2018. (OIG image)

OIG's 2018 Report on EPA's BEACH Act Reporting

In our January 2018 report, OIG Report No. 18-P-0071, we found that the EPA had not, since 2006, submitted the quadrennial BEACH Act report to Congress, as required. According to the GPRA Modernization Act of 2010,¹ federal agencies were tasked with identifying required reports and plans that they consider outdated or no longer necessary. The EPA identified the BEACH Act report to Congress as one that was no longer needed. We determined, however, that the reporting requirement remains until Congress eliminates it. As a result, we recommended that the EPA submit the mandated BEACH Act reports to Congress. The EPA agreed to submit the reports to Congress as long as that reporting is required by law.

EPA's Actions Related to the BEACH Act

The EPA completed the following actions related to the BEACH Act that are relevant to this evaluation:

- In October 2006, submitted its first BEACH Act report, *Implementing the BEACH Act of 2000: Report to Congress*, [EPA-823-R-06-001](#).
- In May 2018, issued its first recreational water quality criteria review, *2017 Five-Year Review of the 2012 Recreational Water Quality Criteria*, [EPA-823-R-18001](#). These reviews—which the EPA must conduct every five years under Section 3 of the BEACH Act—are to include a detailed, technical assessment of whether revisions to coastal recreational water quality criteria are necessary. Based on its May 2018 review, the EPA decided not to revise the recreational water criteria.
- In July 2018, issued *Implementing the BEACH Act of 2000: 2018 Report to Congress*, [EPA-823-R-18-002](#), in response to our January 2018 report. This brief report provides a general description of the EPA's BEACH Act program and includes five electronic links to other reports and resources.

¹ "GPRA" stands for "Government Performance and Results Act."

The report notes that the Agency believes that further research and analysis, as identified in the *2017 Five-Year Review*, will contribute to the EPA's future review of the recreational water quality criteria.

- In July 2019, issued a swimming season report, [EPA-820-F-19-002](#), which covers the 2018 swimming season. Although not mandated by the BEACH Act and not regularly produced by the EPA, these swimming season reports summarize information about relevant beach activity that has been reported to the EPA. For example, states, territories, and tribes with coastal and Great Lakes beaches report any beach closings and advisories to the EPA, and the BEACH Act requires that recipients of grants under the BEACH Act report their coastal beach monitoring and notification data to the EPA.



Cover of the EPA's 2018 Report to Congress. (EPA image)

Responsible Office

The EPA's Office of Water is responsible for the issues discussed in this report. The Office of Water's Office of Science and Technology administers the BEACH Act program and prepares the required quadrennial report to Congress.

Scope and Methodology

We conducted this evaluation from December 2019 through May 2020 in accordance with the *Quality Standards for Inspection and Evaluation* issued in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. These standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective.

To answer our objective, we interviewed relevant management and staff within the Office of Water's Office of Science and Technology and the Office of the Administrator's Office of Congressional and Intergovernmental Relations. We interviewed OIG staff who worked on the OIG's 2018 report. We reviewed relevant documents and criteria. We interviewed majority and minority staff for the House Transportation and Infrastructure Committee, Water Resources and Environment Subcommittee. We interviewed staff at two nongovernmental organizations that work on beach-related issues. We compared the EPA's *2018 Report to Congress* with the requirements in Section 7 of the BEACH Act.

Results

The EPA’s *2018 Report to Congress* does not fully meet the statutory reporting requirements of the BEACH Act and the Plain Writing Act of 2010, nor does it comply with federal internal control principles set forth in Office of Management and Budget Circular No. [A-123](#), *Management’s Responsibility for Enterprise Risk Management and Internal Control*. This insufficient reporting partly occurred because staff discounted the report as a valued means for communicating and archiving beach safety and public health information. By not fully complying with federal requirements, the EPA did not provide Congress with the information it needs to make decisions regarding the BEACH Act program and may not be providing an accurate archival record of the program’s progress.

Table 1 outlines the three BEACH Act reporting requirements and our assessment of whether the EPA’s *2018 Report to Congress* adheres to those requirements, those of the Plain Writing Act, and federal internal control principles.

Table 1: Assessment of EPA’s 2018 Report to Congress compliance with reporting requirements

BEACH Act reporting requirement	2018 Report to Congress contents and OIG assessment
1. Recommendations concerning the need for additional water quality criteria for pathogens and pathogen indicators and other actions that should be taken to improve the quality of coastal recreation waters.	<p>2018 Report to Congress contents:</p> <p>The <i>2018 Report to Congress</i> lists four recommendations concerning the need for additional water quality criteria and other actions that should be taken. It provides a link to the <i>2017 Five-Year Review</i> for a discussion of the recommendations.</p> <p>OIG assessment: The report meets BEACH Act Reporting Requirement 1 but does not adhere to the Plain Writing Act nor federal internal control principles.</p> <p>The recommendations are not written in accordance with plain language principles and are inadequately organized.</p>
2. An evaluation of federal, state, and local efforts to implement the Act, including the amendments made by the Act.	<p>2018 Report to Congress contents:</p> <p>The <i>2018 Report to Congress</i> summarizes two federal efforts:</p> <ul style="list-style-type: none"> • Grant awards to coastal and Great Lakes states, territories, tribes, and local governments. • Creation of the Beach Advisory and Closing Online Notification, or BEACON, system, which is a national pollution occurrence database for coastal recreation water data. <p>In addition, the <i>2018 Report to Congress</i> provides electronic links to BEACON and the <i>2017 Five-Year Review</i>, which includes an evaluation of states’ adoption of recreational water quality criteria.</p> <p>OIG assessment: The report does not fully meet BEACH Act Reporting Requirement 2.</p> <p>The report does not evaluate federal or local efforts to implement the Act.</p>
3. Recommendations on improvements to methodologies and techniques for monitoring of coastal recreation waters.	<p>2018 Report to Congress contents:</p> <p>The <i>2018 Report to Congress</i> lists seven recommendations concerning the need for improvements to methodologies and techniques for monitoring. It provides a link to the <i>2017 Five-Year Review</i> for a discussion of the recommendations.</p> <p>OIG assessment: The report meets BEACH Act Reporting Requirement 3 but does not adhere to the Plain Writing Act nor federal internal control principles.</p> <p>The recommendations are not written in accordance with plain language principles and are inadequately organized.</p>

Source: OIG analysis of the BEACH Act, the Plain Writing Act, federal internal control principles, and EPA information.

Recommendations in EPA's 2018 Report to Congress Do Not Adhere to Plain Writing Act Requirements and Federal Internal Control Principles

BEACH Act Reporting Requirements 1 and 3 require the EPA to make recommendations, as outlined in Table 1. The EPA's *2018 Report to Congress* satisfies these two requirements by listing recommendations that were previously presented and discussed in the EPA's *2017 Five-Year Review*. However, these recommendations are not written in accordance with plain language principles, as set forth in the Plain Writing Act. In addition, the recommendations do not adhere to federal internal control principles. These shortcomings make the recommendations presented in the *2018 Report to Congress* difficult to understand and ineffective for communicating what actions are needed to further the BEACH Act's goal of protecting human health and the environment. Consequently, we determined that the *2018 Report to Congress* meets BEACH Act Reporting Requirements 1 and 3 but does not adhere to the Plain Writing Act and federal internal control principles.

Lack of Plain Language

Congress enacted the Plain Writing Act in 2010 to promote clear government communication that the public can understand and use, thereby improving the effectiveness and accountability of federal agencies. According to the Office of Management and Budget Memorandum [M-11-15](#), *Final Guidance on Implementing the Plain Writing Act*, dated April 13, 2011, the Act requires government agencies to write new documents in plain language—that is, “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.” The Guidance makes clear that, beginning on October 13, 2011, “agencies must write all new or substantially revised documents in plain writing.”

The EPA presents the recommendations in its *2018 Report to Congress* in the same technical language it uses in the much more technically oriented *2017 Five-Year Review*. As a result, the recommendations in the *2018 Report to Congress* do not use plain language, and readers who are not involved in the day-to-day protection of our nation's beaches, such as members of Congress, may find it difficult to understand the recommendations. For example, the EPA worded recommendations to Congress this way, without further context or explanation:

- Re-analysis of *Enterococcus* spp. quantitative polymerase chain reaction (qPCR) data for consideration in criteria development, especially to address effluent sources.
- Completion of method validation and publication for the *E. coli* qPCR method (Draft Method C).

- Completion and publication of standardized methods for the EPA’s human-associated microbial source tracking methods (HF183/BacR287 and HumM2) and completion of a DNA reference material development with the National Institute of Standards and Technology. Development and validation of virus-based human fecal source identification procedures.

Lack of Organized Recommendations

The report also does not comply with plain language principles because the recommendations are not organized according to the reporting requirements. Specifically, the recommendations would be more understandable if the EPA had separated the water quality (Reporting Requirement 1) and monitoring (Reporting Requirement 3) recommendations. The EPA clearly associates its recommendations with the reporting requirements in its *2006 Report to Congress*; however, the Agency does not do so in its *2018 Report to Congress*, instead interspersing the two classes of recommendations.

Lack of Identified Action Officials and Implementation Barriers

Internal controls are processes put in place to provide reasonable assurance that objectives are achieved. Based on our analysis of the federal internal control principles set forth by the Office of Management and Budget in Circular A-123, we conclude that for recommendations to be effective, they should identify action officials and barriers to implementation. We found that the recommendations in the *2018 Report to Congress* do not specify who needs to take action to implement the recommendations. The recommendations also do not identify barriers to implementation and whether corrective actions need to be completed in a certain order because the recommendations are dependent on each other. If Congress is to remove barriers to implementing the recommendations, then Congress needs to know who the action officials are and what specific barriers there are.

EPA’s 2018 Report to Congress Does Not Meet Requirement to Evaluate Federal and Local Efforts

Per Reporting Requirement 2, as outlined in Table 1, the EPA is to present an evaluation of federal, state, and local efforts to implement the BEACH Act. While it does link to the *2017 Five-Year Review*, which provides an evaluation of state efforts to implement the Act, the *2018 Report to Congress* does not evaluate federal and local efforts; it only provides summaries of some federal and local efforts. Thus, we determined that the report does not fully meet BEACH Act Reporting Requirement 2.

To report on federal efforts to implement the BEACH Act, the EPA includes a summary—but no evaluation—of two such efforts in its *2018 Report to Congress*:

- **Awarding grants.** The report summarizes the EPA’s grants to coastal and Great Lakes states, territories, tribes, and local governments to develop and implement programs for monitoring and issuing notifications about coastal waters.
- **Creating a national database.** The report summarizes the development of [BEACON](#), which was established to meet the BEACH Act requirement for a national pollution occurrence database for coastal recreation water.

To report on state efforts to implement the BEACH Act, the EPA’s *2018 Report to Congress* includes a weblink to the EPA’s *2017 Five-Year Review*, which briefly presents information on states’ adoption of recreational water quality criteria and barriers to implementation. Section 7 of the BEACH Act allows the EPA to coordinate the BEACH Act reporting requirements with other reporting requirements under the Clean Water Act. As such, referencing the *2017 Five-Year Review* within the report to Congress complies with the requirement to evaluate state efforts to implement the BEACH Act.

To report on local efforts, the EPA’s *2018 Report to Congress* includes a weblink to BEACON. From this system, users can retrieve customized reports down to the local beach level. The EPA does not, however, evaluate local efforts to implement the BEACH Act.

Twelve years prior, in its *2006 Report to Congress*, the EPA successfully met Reporting Requirement 2 by summarizing federal, state, and local efforts to implement the Act and describing additional work that needed to be conducted. During the course of our evaluation, we identified information sources that the EPA could have employed to meet this requirement in its *2018 Report to Congress*:

- Office of Water staff told us that the EPA Regions evaluate state and local efforts to implement the BEACH Act through their annual grant reviews. Although these grant reviews are not public documents, the EPA could use them as a foundation for the required evaluation of state and local efforts in its BEACH Act reports.
- BEACON contains information on pollution occurrence for coastal recreation water that could be used to evaluate state and local efforts.
- The EPA’s swimming season reports contain information directly applicable to the BEACH Act reporting requirements. For example, the EPA’s July 2019 swimming season report included information on state and local implementation of the BEACH Act. The EPA did not, however,

include swimming season report data from any swim season in its *2018 Report to Congress*.

Office of Water Staff Regard BEACH Act Reports as Unnecessary

In enacting the GPRA in 1993, Congress stated that executive and congressional decision-making was often hampered by the lack of good information on the results of federal program efforts. Despite these congressional sentiments, Office of Water staff told us that as far as they knew, there has not been congressional interest in the BEACH Act reports. They said that because of technological advances made since Congress enacted the BEACH Act in 2010, individuals interested in beach safety and public health information, including members of Congress and their staff, could obtain information from the EPA's online resources, such as BEACON.

In contrast to these EPA statements, congressional staff and stakeholders told us that evaluations of federal, state, and local efforts to implement the BEACH Act, as required by Section 7 of the Act, would be useful to help them determine how well the BEACH Act program is operating. The Office of Management and Budget's Plain Writing Act guidance states that government should be participatory and collaborative. The guidance suggests that federal authors "should, on an ongoing basis, obtain direct feedback from the public and your stakeholders."

Based on our interviews with staff and managers in the Office of Water and staff serving the House Transportation and Infrastructure Committee, Water Resources and Environment Subcommittee, we concluded that the EPA did not ask the Subcommittee what information might be valuable to include in the BEACH Act report to Congress or whether the Subcommittee still needed the report. In addition, Subcommittee staff told us that they did not find the EPA's *2018 Report to Congress* useful in determining what results have been received for the dollars spent on the BEACH Act program.

EPA's 2018 Report to Congress May Not Preserve Program Status

Reports to Congress also serve an archival function. Federal Records Management policy emphasizes the importance of records, especially permanent records, as they document and preserve the memory of an agency. Archival records capture the status of a federal program at a point in time. The EPA, by relying on electronic links in its *2018 Report to Congress* to online resources that can change over time, did not provide an archive of the BEACH Act program. Without an accurate archival record, transparency regarding the progress of the BEACH Act is at risk.

Conclusion

In contrast to Congress's desire for good information on the results of the program efforts and the reporting requirements of the BEACH Act, the EPA's *2018 Report to Congress* does not fully meet its congressional or statutory obligations. The report ineffectively communicated what actions are needed to further the BEACH Act's goal of protecting human health and the environment. In addition, the EPA has not engaged members of Congress, the intended audience, to determine what information they wanted or needed in the BEACH Act report. As a result, the EPA has not provided Congress with the information on the status of the BEACH Act program that it needs for effective decision-making. Future BEACH Act reports that meet the reporting requirements would allow Congress to make informed decisions about funding and continuing the program and would enhance public transparency regarding the progress of the BEACH Act.

Recommendations

We recommend that the assistant administrator for Water:

1. Develop and adopt a written strategy that lays out steps the EPA will take to verify that future reports to Congress fully meet (a) the reporting requirements in the Beaches Environmental Assessment and Coastal Health Act of 2000, (b) expectations that federal agencies comply with the Plain Writing Act of 2010, and (c) federal internal control principles.
2. Develop and submit a report to Congress in 2022 that includes an evaluation of federal, state, and local efforts to implement the Beaches Environmental Assessment and Coastal Health Act of 2000, based on the EPA's annual reviews of Beaches Environmental Assessment and Coastal Health Act grants, information reported in the swimming season reports, and additional relevant resources.

Agency Response and OIG Assessment

On June 5, 2020, the assistant administrator for Water provided us with written comments on our draft report. Within those comments, the Agency requested that the OIG withdraw the report. The OIG declined this request.

On June 18, 2020, the OIG met with the deputy assistant administrator for Water, as well as with Office of Water managers and staff, to discuss their concerns about our draft report. On June 30, 2020, the Office of Water provided additional information and proposed changing recommendation language. We met again with the deputy assistant administrator for Water and Office of Water managers and staff on July 8, 2020, to discuss this additional information. We continue to conclude that the *2018 Report to Congress* did not meet all BEACH Act

reporting requirements and that the report is subject to the Plain Writing Act. As such, we disagree with the Agency's assessment.

The Agency disagreed with our recommendations and did not provide acceptable corrective actions and planned completion dates. The two recommendations are therefore unresolved with resolution efforts in progress.

Where appropriate, we modified our report based on the Agency's comments. The Agency's written response and detailed OIG responses are in Appendix A.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	9	Develop and adopt a written strategy that lays out steps the EPA will take to verify that future reports to Congress fully meet (a) the reporting requirements in the Beaches Environmental Assessment and Coastal Health Act of 2000, (b) expectations that federal agencies comply with the Plain Writing Act of 2010, and (c) federal internal control principles.	U	Assistant Administrator for Water		
2	9	Develop and submit a report to Congress in 2022 that includes an evaluation of federal, state, and local efforts to implement the Beaches Environmental Assessment and Coastal Health Act of 2000, based on the EPA's annual reviews of Beaches Environmental Assessment and Coastal Health Act grants, information reported in the swimming season reports, and additional relevant resources.	U	Assistant Administrator for Water		

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Agency Response to Draft Report and OIG Responses



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

OFFICE OF WATER

June 5, 2020

MEMORANDUM

SUBJECT: Response to Office of Inspector General's Draft Report *EPA's 2018 BEACH Act Report to Congress Does Not Fully Meet Statutory Requirements*, Project No. OA&E-FY20-0062, dated May 15, 2020

FROM: David P. Ross /s/
Assistant Administrator
Office of Water

TO: Kathryn Hess, Acting Director
Water Directorate, Office of Audit and Evaluation
Office of Inspector General

Thank you for the opportunity to respond to the findings and recommendations in the subject evaluation report. Following is a summary of the U.S Environmental Protection Agency's (EPA) overall position, along with its position on each of the report findings and recommendations. For your consideration, we have included a Technical Comments Attachment to supplement this response.

EPA'S OVERALL POSITION

EPA disagrees with the findings and recommendations in this report and requests that the Office of Inspector General (OIG) withdraw its report.

OIG Response 1: The OIG chose to issue this report, as planned. We held two subsequent meetings with the Office of Water to further discuss its concerns and explain why we would not withdraw the report. Our reasons are also outlined in the OIG Response boxes that follow.

EPA disagrees with the finding that *Implementing the BEACH Act of 2000: 2018 Report to Congress* (hereafter the *2018 Report to Congress*) does not fully meet the reporting requirements of the BEACH Act. The EPA's position is that the *2018 Report to Congress* meets the

requirements in [33 USC 1375a](#), as explained below. Furthermore, it is the EPA’s position that the *2018 Report to Congress* is not subject to the requirements of the Plain Writing Act and, in any case, the EPA disagrees with the draft findings associated with not complying with that Act.

OIG Response 2: The OIG concludes that the *2018 Report to Congress* did not meet all BEACH Act reporting requirements and that the report is subject to the Plain Writing Act, as explained in the body of this report.

As a result, the EPA also disagrees with both recommendations in the draft the OIG report. Since it is the EPA’s position that the Agency has fully met the reporting requirement of the BEACH Act, to develop a written strategy to do so in the future is unnecessary. Additionally, the EPA has already committed to submit reports to Congress on coastal recreation waters in accordance with [33 USC 1375a](#) (as documented in the [May 2018 Supplemental Response memo](#) regarding the Office of Water’s response to Recommendation 1 in OIG Report No. 18-P-0071). Therefore, the recommendation that repeats this commitment is unnecessary and redundant.

OIG Response 3: In the May 2018 Supplemental Response memorandum, the acting principal deputy assistant administrator for Water committed to submitting the required BEACH Act report to Congress in the future, as long as the report is required by law. Our recommendations are made to ensure that future reports meet the requirements of the BEACH and Plain Writing acts.

If the OIG issues a final report, the EPA requests that it include the entirety of this response as an appendix to the OIG report to reflect the EPA’s request that it be withdrawn. If the report is not withdrawn, the EPA requests modifications to improve the report’s clarity and to avoid misrepresentations in the way the OIG has characterized aspects of its investigation. The critical flaws and corresponding clarifications are identified in this memorandum and in a Technical Comments Attachment to this memorandum.

OIG Response 4: The OIG included the entirety of the Agency’s formal response in this appendix. Where appropriate, we modified our report.

EPA’S RESPONSE TO THE DRAFT REPORT FINDINGS AND RECOMMENDATIONS

Disagreements

Recommendation 1: “Develop and adopt a written strategy that lays out steps the EPA will take to make sure and verify that future reports to Congress fully meet (a) the reporting requirements in the Beaches Environmental Assessment and Coastal Health Act of 2000 and (b) expectations that federal agencies comply with the Plain Writing Act of 2010.”

Response: EPA does not concur with the recommendation or the findings, as explained below.

EPA agrees with the draft findings that the *2018 Report to Congress* satisfies the first and third reporting requirements of the BEACH Act. EPA disagrees with the assessment in the draft OIG report that the second requirement was not met. The EPA's position is that the *2018 Report to Congress* meets all three of the following reporting requirements in Section 7 of the BEACH Act:

1. recommendations concerning the need for additional water quality criteria for pathogens and pathogen indicators and other actions that should be taken to improve the quality of coastal recreation waters;
2. an evaluation of Federal, State, and local efforts to implement this Act, including the amendments made by this Act; and
3. recommendations on improvements to methodologies and techniques for monitoring of coastal recreation waters.

As the draft OIG report observes, 33 USC 1375a(b) allows the EPA to “coordinate” the BEACH Act report with its other Clean Water Act reporting obligations. Consistent with this statutory authorization, EPA's *2018 Report to Congress* directs readers to other sources to obtain much of the information required under 33 USC 1375a(a). Two EPA resources are particularly pertinent: the *2017 Five-Year Review of the 2012 Recreational Water Quality Criteria* and EPA's BEACON database.

The *Five-Year Review* contains extensive discussion about the status and implementation of various BEACH Act programs. Contrary to the OIG's misleading contention on page 7 of the draft report, the *Five-Year Review* provides more than “a one-paragraph summary of states' adoption of recreational water quality criteria.” Section IV.F.5 of that Report (pages 43-45) discusses the “Adoption Status and Perceived Barriers” for the EPA's 2012 recreational water quality criteria that were developed pursuant to the BEACH Act. In this section, the EPA evaluated which states and tribes have adopted recreational water quality criteria as well as additional beach notification thresholds such as the EPA's recommended Beach Action Values or alternative beach action values. Furthermore, Section V.F of the *Five-Year Review* (pages 53-54) includes discussion on the status of the need for continued grants as expressed by the jurisdictions based on interviews performed by EPA.

OIG Response 5: We modified our report to acknowledge the extent of the evaluation of states' adoption of recreational water quality criteria provided in the *2017 Five-Year Review*.

We maintain that in the *2018 Report to Congress*, the EPA does not evaluate federal and local efforts. As such, the report does not meet the reporting requirements laid out in Section 7 of the BEACH Act.

Although the OIG's draft report gives a passing mention of BEACON (EPA's data system for each jurisdictions' beach monitoring and public notification of beach advisories and closures), BEACON contains extensive information on state and local efforts to implement the BEACH Act. EPA intentionally designed BEACON to include a report wizard function that would allow any interested person to generate user-friendly summaries of notifications or beach action advisories or closures. These reports are based on evaluations of water quality monitoring data,

potential pollution sources, monitoring time and frequency, among others. In addition, the summaries can be generated for all beaches covered by the BEACH Act, or by EPA Regions, or by state, or by county, or by individual beach. Such information is not only useful to the public when making individual decisions to visit local beaches, it also provides other readers, including members of Congress and congressional staff, detailed information on the water quality status of beaches in their state or nationwide for any year since states started implementing the BEACH Act.

For example, the “State Summary” report displays key statistics by county, such as number and percentage of beaches that were monitored, closed or had advisories issued; how long the closures and advisories lasted; and percentage of days beaches were open and safe for swimming (see Attachment 2 for a list of the BEACON reports generated by the report wizard function). In fact, the OIG’s draft report (page 7) points to the EPA’s national 2018 Beach Swimming Season report (released in July 2019) as an additional information source “that the EPA could have employed to meet this requirement.” Importantly, the [2018 Beach Swimming Season Report](#) was created using data taken directly from BEACON. Although the draft OIG report highlights the 2006 BEACH Act implementation report as an instance where “the EPA successfully met Reporting Requirement 2,” much of the equivalent information covered by the 2006 Report is now contained (and regularly updated) in BEACON and in the on-line link EPA provided in the 2018 report describing how much each jurisdiction received in BEACH Act grants. Therefore, the EPA believes that the draft the OIG report is incorrect in asserting that the *2018 Report to Congress* did “not provide any information regarding local efforts to implement the BEACH Act.”

OIG Response 6: We appreciate the value of the national database, BEACON, for providing information that others could use to conduct an evaluation. Section 7 of the BEACH Act requires the EPA to include “an evaluation of federal, state, and local efforts to implement the Act.” In the *2018 Report to Congress*, the EPA does not evaluate federal and local efforts. As such, the report does not fully meet the reporting requirements of the BEACH Act.

In addition, the EPA believes that the *2018 Report to Congress* is not covered by the Plain Writing Act of 2010. The Plain Writing Act prescribes use of plain writing only for “covered documents,” defined in Section 3 as follows:

- (2) COVERED DOCUMENT. – The term “covered document” –
- (A) means any document that –
- (i) is necessary for obtaining any Federal Government benefit or service or filing taxes;
 - (ii) provides information about any Federal Government benefit or service; or
 - (iii) explains to the public how to comply with a requirement the Federal Government administers or enforces....

The *2018 Report to Congress* does not satisfy the statutory definition of “covered document” and therefore is not subject to Plain Writing Act requirements.

OIG Response 7: The EPA response includes only part of the provision in the Plain Writing Act defining the term “covered document.” The Act’s definition continues with Parts (B) and (C):

- (B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and
- (C) does not include a regulation.

According to the Office of Management and Budget’s *Final Guidance on Implementing the Plain Writing Act*, in addition to the documents defined in Part (A), “[t]he Act also requires agencies to use plain writing in every paper or electronic letter, publication, form, notice, or instruction.” We maintain that the Office of Management and Budget’s interpretation, as reflected in its *Final Guidance*, is the better reading of the statute. Part (A) already covers “all documents” that fall within the three delineated conditions, so Part (B) should be read in a way that gives it separate meaning. The *2018 Report to Congress* is a “publication” and therefore falls within the description provided by Part (B), as reflected in the *Final Guidance*. We conclude that the *2018 Report to Congress* satisfies the statutory definition of “covered document” and therefore is subject to the Plain Writing Act.

Even if the Plain Writing Act applies, however, the EPA disagrees with the OIG’s draft findings related to the Plain Writing Act and the unspecified provisions of some Government Accountability Office “internal control principles,” which the Agency notes were not identified in the stated scope of OIG’s evaluation. EPA’s position is that the *2018 Report to Congress* is clear and usable to the intended audience. The EPA always strives to produce materials that the intended audiences can understand. The OIG finds fault with the fact that the EPA, a scientific organization, included a scientific recommendation in its report to Congress. The implication is that either Congress does not understand science or that the EPA cannot cite science to Congress. The EPA rejects that premise, and the subjectivity with which the principles of the Plain Writing Act have been applied in the draft the OIG report.

OIG Response 8: As discussed in our report, we concluded that the *2018 Report to Congress* did not always use plain language and may not be usable to Congress, the intended audience of the publication. The EPA, as a science and regulatory Agency that bases much of its decision-making on science, should cite science to Congress. It is our opinion, however, that the Agency should communicate scientific issues to Congress in a clear and concise manner that would be understood by those without formal education in that scientific area.

Finally, the OIG faults the EPA for failing to contact congressional staff before submitting the report to Congress without identifying any legal or other requirement directing the Agency to do so. The reference to the January 21, 2009, Presidential Memorandum on government transparency does not address this scenario. The OIG’s citation to it is misleading and lacks the transparency the cited memorandum endorses and the clarity the Plain Writing Act encourages.

OIG Response 9: Office of Water staff told us that as far as they knew, there has not been congressional interest in the BEACH Act reports. It is our opinion that the EPA cannot conclude that there is no congressional interest in the required report to Congress without consulting Congress. Continued congressional funding shows interest in the work being conducted under the BEACH Act program.

Recommendation 2: “Submit a report in 2022—which is when the next Beaches Environmental Assessment and Coastal Health Act report is due to Congress—that fully meets the statutory requirements of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the Plain Writing Act of 2010.”

Response: This recommendation to reiterate EPA’s commitment under the BEACH Act is unnecessary. EPA has committed to submit a report in accordance with the BEACH Act in 2022 (as documented in the [Supplemental Response memo](#) regarding the Office of Water’s response to Recommendation 1 in OIG Report No. 18-P-0071). The Plain Writing Act of 2010 does not apply to the BEACH Act Report to Congress (as described above), but as it has in the past, the EPA will continue to provide reports to Congress that are clearly written and convey the subject matter that Congress has requested in understandable terms.

OIG Response 10: In the May 2018 Supplemental Response memorandum, the acting principal deputy assistant administrator for Water committed to submitting the required BEACH report to Congress in the future, as long as the report is required by law. As detailed in the OIG Response boxes above, our recommendations are made to ensure that future reports meet the requirements of the BEACH and Plain Writing acts.

For these reasons, we reiterate our request that the OIG withdraw this report.

CONTACT INFORMATION

If you have any questions regarding this response, please contact Tiffany Crawford, Audit Follow-up Coordinator for the Office of Water, at 202-566-2375 or Crawford.Tiffany@epa.gov.

Attachments

1. Technical Comments
2. Reports Available in BEACON Report Wizard

CC: Anna Wildeman, Principal Deputy Assistant Administrator, OW
D. Lee Forsgren, Deputy Assistant Administrator, OW
Charlotte Bertrand, Deputy Assistant Administrator, OW
Benita Best-Wong, Deputy Assistant Administrator, OW
Deborah G. Nagle, Office Director, OW/OST
Sara Hisel-McCoy, Division Director, OW/OST
Tiffany Crawford, Audit Coordinator, OW

Attachment 1: Technical Comments

EPA comments on the draft report for OIG Project No. OA&E-FY20-0062: *EPA’s 2018 BEACH Act Report to Congress Does Not Fully Meet Statutory Requirements*, dated May 15, 2020.

In addition to the information provided in the accompanying memorandum, the following table compiles further areas needing clarification or correction identified during EPA’s review of the draft report.

Page	Area Needing Revision and EPA’s Rationale
4	<p data-bbox="261 495 1446 894">“Results” section, first paragraph - EPA disagrees that Congress does not have the information it needs to make decisions regarding the BEACH Act Program. EPA’s report directed readers to multiple sources that provide timely and detailed information. For example, EPA’s data system for each jurisdiction’s beach monitoring and public notification of beach advisories and closures, BEACON, enables anyone who visits the site to generate up-to-date notification and water quality monitoring information using the Report Wizard function (see Attachment 2 for available reports). Any member of Congress can get detailed information on beaches in their state or nationwide for any year since jurisdictions started complying with the BEACH Act. In addition, the Beach Program continues to be implemented successfully across the country, and Congress continues to provide funding for it in EPA appropriations.</p> <p data-bbox="261 932 1430 1100">OIG Response 1: Section 7 of the BEACH Act requires the EPA to include “an evaluation of federal, state, and local efforts to implement the Act” in its mandated report to Congress; while BEACON provides data, it does not evaluate those data for the reader.</p>
4	<p data-bbox="261 1136 1446 1461">“Results” section, first paragraph - EPA disagrees that the Agency is not maintaining an accurate archival record of the program’s progress. Each grant provided under the BEACH Act provides specific information on the grantee’s use of the funds and individual beach programs. These and other documents associated with the Beach Program are maintained in full compliance with EPA’s document tracking and records requirements. In addition, the BEACON stores information on progress in implementing the BEACH Act, such as if the water at a specific beach has been monitored, when it was monitored, which pollutants were monitored, possible sources of pollution recorded, and when advisories or closures have been issued.</p> <p data-bbox="261 1499 1430 1667">OIG Response 2: In the BEACH Act, Congress directs that the EPA submit a report every four years. This reporting creates an archive of the program at a specific point in time. By not meeting the full reporting requirements, the EPA is not maintaining the archival record specified by Congress.</p>

Page	Area Needing Revision and EPA’s Rationale
5	<p>Table 1 – The row for reporting requirement #2 does not clearly mention that the report includes an electronic link to BEACON,² where the public or members of Congress can run customized reports and download state and tribal data. It is unclear whether “Creation of a national pollution occurrence database for coastal recreation water” was meant to refer to BEACON and its ability to develop in-depth reports.</p> <p>OIG Response 3: In the final report, we clarified the explanation in the table.</p>
6	<p>Discussion on state efforts – The draft report does not mention that EPA’s 2018 report includes an electronic link to BEACON, which would allow members of Congress to run customized reports and download state and tribal data.</p> <p>OIG Response 4: In the final report, we added recognition that the <i>2018 Report to Congress</i> included an electronic link to BEACON. We also added an electronic link to BEACON to our report.</p>
6	<p>GAO Internal control principles – Request clarification of these principles; EPA is not aware of these internal control principles that would require EPA to include an action officer and identify barriers in a Report to Congress.</p> <p>OIG Response 5: Office of Management and Budget Circular A-123 provides specific requirements for assessing and reporting on controls in the federal government. Circular A-123 relies on the Government Accountability Office’s <i>Standards for Internal Control in the Federal Government</i>, known as the Green Book, for federal internal control principles. Based on our analysis of the federal internal control principles, we conclude that for recommendations to be effective, they should identify action officials and barriers.</p>
7	<p>Next-to-last bullet – EPA Office of Water staff in headquarters do not perform annual grant reviews; that function is performed by the grant project officers in the regional level.</p>

² From the 2018 Report to Congress: “BEACON provides data and other information that the grantees report. Anyone can visit BEACON to see all the data provided to the EPA and view reports containing both notification and water quality monitoring data. The public can determine if the water at a specific beach is monitored, who conducts the monitoring, which pollutants are monitored, possible sources of pollution, and whether advisories or closures have been issued in the past. To access BEACON, go to <https://watersgeo.epa.gov/BEACON2/about.html>. The public can view data from the beginning of the BEACH Act grants through 2017. Additionally, the BEACON 2.0 User’s Guide helps the public produce pre-formatted and customized reports.”

Page	Area Needing Revision and EPA’s Rationale
	<p>OIG Response 6: The BEACH Act states that “[n]ot later than 4 years after the date of the enactment of this Act, and every 4 years thereafter, the Administrator of the Environmental Protection Agency shall submit to Congress a report.” The administrator should have access to all records of the Agency, including regional grant review documentation.</p>
8	<p>“<i>Office of Water Staff Regard BEACH Act Reports as Unnecessary</i>” section – The statement that Office of Water staff said that “they consider the BEACH Act program to be mature at the local and state level and that federal grant support is no longer needed” is not appropriate. Although the Beach Act funding has been zeroed out of the President’s budget since 2013, the basis for those decisions has never been because of the maturity of the program but rather the desire to have other funding sources support the program. Congress has provided funding for the Beach Act Program in every appropriation since 2013. The Office of Water has continued to fully implement the Beach Program as authorized and funded by Congress.</p> <p>OIG Response 7: We revised the report, as appropriate.</p>
8	<p>“<i>Office of Water Staff Regard BEACH Act Reports as Unnecessary</i>” section – EPA asks OIG to clarify that EPA staff said that <i>because of technological advances since Congress signed the Beach Act in 2000</i>, interested people could obtain information from EPA’s online resources. As written, the draft report misses that important nuance.</p> <p>OIG Response 8: In the final report, we included this clarification.</p>
8	<p>In reference to the 2009 Presidential Memorandum, <i>Transparency and Open Government</i> – Drop the reference to the memorandum as it is no longer applicable.</p> <p>OIG Response 9: The concept of collaboration is also found in the Office of Management and Budget’s guidance on the Plain Writing Act. This guidance states that “[y]ou should, on an ongoing basis, obtain direct feedback from the public and your stakeholders on how to improve your implementation of the Act.” We changed our reference to this guidance.</p>

Attachment 2: Reports Available in BEACON Report Wizard

Report Name	Description
Action Duration	<u>For each BEACH Act beach with an action:</u> Each action for each beach is sorted into one of five action duration groups (1 day duration, 2 days duration, 3-7 days duration, 8-30 days duration, or greater than 30 days duration). The list is sorted by county and beach name. Note: An action can be based on a model or policy and not be a monitored beach.
Advisory and Monitoring	<u>For each BEACH Act beach:</u> Presents a condensed combination of the "Action" and "Water Quality" Reports for the most recent 2 week period of submitted data (most recent to older order) including: dates, duration of actions, basis for action, possible cause and source, monitoring results. The list is sorted by "state", county, and beach name. Note: This report will not return data if none has been submitted in the prior two weeks.
Beach Actions (Advisories and Closures)	<u>For each beach action at a BEACH Act beach:</u> Presents details of each beach action including: (1) type of action (e.g., closure, rain advisory, contamination advisory), (2) starting and ending date and time (in the case of partial day actions) of the action, (3a) duration of the action in days ("day" is defined as: an action lasting less than 24 hours will have a duration of 1 day. Any action lasting 24 hours or more will have a duration equal to the number of days on which the action occurred), (3b) for jurisdictions using partial day actions, the action will be in hours and percentage of time the beach was affected is calculated against the beach day length), (4) action reason, source, and the indicator used to trigger the action. The list is sorted by county, beach name and action start date. The default "1. Primary Report" combines into one line all action Reasons, Indicators, and Possible Sources as a "Main Report". To see a detailed listing, move your cursor to the right and click on "Detailed Report". Note: An action can be based on a model or policy and not be a monitored beach.
Beach Attributes	<u>For each BEACH Act beach:</u> Identifies attributes of each beach including: (1) beach tier ranking, (2) beach length, and (3) latitude/longitude. The list is sorted by county and beach name.
Beach Days	<u>For each BEACH Act beach:</u> The number of beach days in the swimming season (based on swimming season length) is presented for each beach. If the beach had an action (1) the total number of action days and (2) the percentage of beach days the beach was under an action are also presented. The list is sorted by county and beach name. Note: This report includes monitored and non-monitored beaches. An action can be based on a model or policy and not be a monitored beach.
Beach Monitoring Frequency	<u>For each BEACH Act beach:</u> Identifies swim season and monitoring attributes of each beach including: (1) swimming season length and (2) in- and off-season monitoring frequency. The list is sorted by county and beach name.
Beach Profile	<u>For each BEACH Act beach:</u> Presents beach administrative information including: beach name, beach ID, location, contact information, public access, Tier, swim season, monitoring and reporting frequency, possible pollution sources. The list is sorted by "state", county, and beach name.
Possible Pollution Sources	<u>For each BEACH Act beach:</u> Identifies if possible pollution sources have been investigated or associated with a Beach Action and, if so, what are the possible sources that might affect beach water quality. The list is sorted by county and beach name.
RSS Feed	<u>News feed for Beaches:</u> Brief news feed that links to the advisory and monitoring report for the selected beach. The RSS feed link can only display about 200 beaches at a time. If too many beaches are selected to display in the RSS feed, then any over the 200 limit will be excluded. In order to view an RSS feed, the user must have an RSS feed reader installed. Some browsers may come standard with feed readers but other browsers may require a separate download. More information about news feeds (also called "RSS") from USA.gov. 
State Summary	<u>For each county:</u> Displays key summary statistics concerning BEACH Act beaches including: (1) number and length of monitored beaches, (2) number of monitored Tier 1 beaches, (3) number and durations of monitored beach actions, and (4) the number of monitored beach days and/or hours under an action. The list is sorted by county name. Please note: this report can take several minutes to load if only a few filters have been applied.
Tier 1 Stats	<u>For each BEACH Act beach designated as Tier 1:</u> Presents beach attributes and action information including : (1) beach length, (2) swim season monitoring frequency, (3) number of beach days, and (4) number of days under an action. The list is sorted by county and beach name. Please note: this report can take several minutes to load if only a few filters have been applied.
Water Quality	<u>For each monitored BEACH Act beach:</u> Presents details of water quality monitoring results collected for the beach program (from WQX/WQP) including: beach ID, beach name, sampling station ID, date/time of sample, collection method, characteristic(s) (e.g., pathogen indicator) sampled, results, analytical method, statistic type (e.g. geometric mean). The list is sorted by "state", county, and beach ID, station ID. date of sample (recent to older).
WQS Criteria	<u>For each BEACH Act beach:</u> Presents details of the water quality standards that apply to the water accessible from the beach. Includes Indicator Name, Water Type, Measure Type, Measure Value, Measure Unit, Criteria Comment. The list is sorted by state, year, and beach by default. The "WQS Criteria" column can be used to sort records by unique criteria records. Note: This report includes monitored and non-monitored beaches because all waters have WQS.

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