

EPA Releases Final Cooling Water Intake Structure Rule

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On May 19, 2014, EPA released its long-awaited final standards for cooling water intake structures under § 316(b) of the Clean Water Act. The rule applies to power plants, refineries, pulp and paper mills, and other manufacturing facilities that withdraw at least two million gallons of water per day from waters of the United States and use at least 25 percent of the water for cooling purposes. Rather than selecting closed-cycle cooling as the best technology available for minimizing adverse environmental impact, the rule requires affected existing facilities to select and implement one of seven impingement reduction technology options.

The rule also requires existing facilities that withdraw over 125 million gallons of water per day to provide an entrainment study with its National Pollutant Discharge Elimination System permit application. New units that add electrical generation capacity at an existing facility must either reduce the design intake flow to a level commensurate with that of a closed-cycle system or demonstrate that the technologies and operational measures employed will reduce the level of adverse environmental impact to a level comparable to that of a closed-cycle system. In situations where there is a threat of adverse impacts to listed threatened or endangered species, the rule preserves the EPA's ability to impose stricter control measures and monitoring and reporting requirements.

Industry generally regards the final rule as an improvement over EPA's proposal, although the rule imposes significant costs and compliance challenges. Environmental groups have expressed disappointment with the final rule, which in their view does not provide adequate protection of listed species, despite the Fish and Wildlife Service's determination on its biological opinion that the rule "is not likely to jeopardize the continued existence of ESA-listed species" or their critical habitats. Environmental groups, including Sierra Club, the Waterkeeper Alliance, and the Natural Resources Defense Council, have already announced their intention to challenge the rule in court.

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