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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
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August 19, 2011

Water Docket
EPA Docket Center,
EPA West Building Room 3334,
US Environmental Protection Agency
1301 Constitution Avenue, NW
Washington, DC

Attention: Docket ID No. EPA-HQ-OW-2008-0667

Dear Administrator Jackson:

I am writing to you regarding yet another rule from the Environmental Protection Agency (EPA) that threatens our nation's reliable, affordable supply of electricity and economic competitiveness, this time through the proposed rule implementing Section 316(b) of the Clean Water Act. This proposed rule will have widespread impacts in Oklahoma: it will create another layer of bureaucratic red tape and increase electricity rates for every Oklahoman, while providing uncertain, if any, benefits to the state's aquatic resources.

I am providing the attached comments to impress upon you the potential impacts of the proposed rule on Oklahoma's electric utilities and their customers. I urge you to consider thoroughly the comments and be responsive to suggestions that would eliminate or significantly mitigate the unreasonable imposition of unnecessary capital expenditures required by the proposed rule.

The cost of electricity to employers, working people, and families in Oklahoma should not be inflated by federal mandates that may produce nothing of value. Where it can be demonstrated that the concern EPA has with potential threats to fishery resources is non-existent, there can be no serious justification for arbitrarily applying a rule such as the proposal. Furthermore, EPA has clearly not considered how the proposed rule will be implemented among the diverse range of utility facilities in Oklahoma: it is incumbent on EPA to inject into the final rule sufficient flexibility so that unnecessarily costly results can be avoided altogether by the state agencies administering the final rule. Oklahomans,

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and all Americans, deserve no less. Fair and thoughtful regulation should allow economic growth, job creation, and environmental progress to coexist.

Sincerely,



James M. Inhofe
Ranking Member
Committee on Environment & Public Works

Attachment

1. The Proposed Rule Excludes Cooling Ponds and Reservoirs from the Definition of Closed-Cycle Cooling.

In locations where significant sources of water were not available, many companies constructed cooling water ponds or reservoirs adjacent to their new plants. These should be considered to be a closed cycle cooling system since the water is reused. As written, the proposed rule would regulate intakes from man-made cooling water ponds and reservoirs if they are covered by the vague and variable definition of “waters of the United States” under the Clean Water Act. This means that the several man-made reservoirs which were designed and constructed by Oklahoma’s utilities specifically as part of their generating plants’ closed-cycle cooling systems could be regulated under the rule. Consequently, these reservoirs could be required to comply with the impingement standards and additional entrainment requirements as determined by the Oklahoma Department of Environmental Quality.

Given their size, many of these man-made reservoirs have been and continue to be well-recognized as premier sport fishing and recreation venues in the state and are monitored by Oklahoma’s Departments of Environmental Quality and Wildlife Conservation. Under the proposed rule, EPA appears to be regulating these reservoirs as though they were natural lakes and requiring controls to protect fish populations in them. The fish populations in those reservoirs would not even exist but for the utilities constructing those reservoirs. These fish populations have grown to support active sport fishing while the power plants have been in operation the entire time, and yet EPA would have companies spend millions to further protect these fish. Neither of our state agencies have determined the relevant existing cooling intake structures pose any threat to fishery resources. These reservoirs do not threaten endangered species, nor do they impact significant volumes of non-endangered species. It is excessive to require utilities to incur tens of millions of dollars of capital construction costs to comply with the proposed changes to Section 316(b) when the existing intake structures snare only an insignificant volume of baitfish annually.

I would also emphasize that the proposed regulation of intakes at cooling water ponds and reservoirs potentially means that a single stream of cooling water is potentially subject to the intake regulation twice – once when it is withdrawn from a river and placed in a cooling pond and again when it is withdrawn from the cooling water pond. This redundancy would significantly increase compliance costs in such circumstances, making the dubious nature of the proposed rule even more pronounced.

Facilities with cooling ponds or reservoirs constructed to specifically support the plant should be treated the same as plants with closed cycle cooling tower systems, regardless of the level of other uses of the reservoir or whether they may qualify as “waters of the United States”.

2. The Proposed Rule Does Not Provide Site-Specific, Cost-Benefit Flexibility for Impingement.

EPA has properly constructed a process to make site-specific determinations on the appropriate technologies to minimize entrainment mortality, and correctly placed that responsibility in the hands of the state permit authorities that are most knowledgeable about the affected water bodies. However, the proposed rule mandates a “one-size fits all” approach for controlling impingement mortality by setting national standards for intake velocity and national standards for levels of impingement mortality. The same concerns regarding unique site-specific differences and cost-benefit aspects in making a determination on entrainment also apply to questions of impingement. EPA should provide for the same type of site-specific determination for impingement controls as is proposed for entrainment, and delegate this decision-making authority to the States.

The proposed rule will require the state’s existing power plants to meet strict numeric impingement mortality (i.e. 12% annual and 31% monthly) or design velocity standards (i.e. less than 0.5 ft./sec.) without exception. This lack of flexibility inappropriately ignores the inherent site-specific variability of the impingement issue. The Oklahoma Department of Wildlife Conservation has determined that fish populations at the state’s utility cooling ponds are very healthy. Indeed, it is not clear that the cooling ponds could even support bigger fish populations than currently exist. In this case, the requirement to reduce impingement of individual organisms would have no affect on the health of the overall fish population compared to the continuation of current cooling water management practices.

It is plainly evident that the final rule should require that a cost-benefit analysis be performed to determine whether the cost of compliance outweighs the benefits of complying with the above standards.

3. The Proposed Rule Does Not Require Consideration of Cost and Benefits for Entrainment.

The proposed rule does not require that the benefits exceed the cost of compliance before mandating that a particular technology be implemented to protect fish, larvae and eggs against entrainment. Instead, the consideration of costs versus benefits is “optional” when selecting a technology to achieve maximum reductions in entrainment where warranted.

The final rule should require state permitting authorities to base their entrainment decisions on a cost-benefit analysis and further require that the demonstrated benefits must outweigh the costs before compelling a particular entrainment technology to be implemented.

4. The Proposed Rule Unnecessarily Requires that the Impingement and Entrainment Standards be Addressed Separately.

The proposed rule creates separate timelines for power plants to comply with the impingement and entrainment standards, yet both aspects affect the same intake structure. As it currently stands, a facility could find itself needing to implement technology changes for controlling impingement 1-2 years in advance of a determination on the appropriate technology for entrainment control. By doing so, initial efforts to comply with the impingement standards (e.g. the installation of dual flow screens to reduce the flow-through velocity, etc.) could potentially be inconsistent with subsequent efforts to comply with the entrainment standards via the implementation of another technology (e.g. the installation of fine mesh screens, etc.). This approach could result in a requirement to install a totally different technology thus wasting the resources expended as a result of the prior decision without any discernable benefit to the environment.

The final rule should provide for impingement and entrainment to be addressed at the same time, preferably via the implementation of a singular technology that complies with both standards rather the bifurcated approached prescribed in the proposed rules.

5. The Proposed Rule Contains Unrealistic Compliance Timeframes.

EPA has placed the entire country on the same schedule of compliance with this rule. Industry has raised concerns with the availability of qualified consultants that will be needed to conduct the many detailed studies required by the rule. Further, the rules will require "peer review" and industry has raised similar concerns about the availability of qualified reviewers. Since the states will be required to administer this program, their resources will be taxed to review and render decisions on all affected facilities within their jurisdiction on the same schedule. Furthermore, industry has raised concerns with the ability of manufacturers to produce the required components for technology installations for a national fleet of power plants and manufacturing facilities that are all placing orders at the same time. Given the high demand, utilities will be in a poor negotiating position with manufacturers and likely be subject to higher prices, ultimately driving electricity costs even higher for their consumers. EPA should align the timing of this program with the NPDES wastewater discharge permit cycle for each facility, since those permits are the vehicle for implementing these rules.

Also, the proposed rule contains several unrealistic timeframes for submittal of data. In several parts of the rule, facilities are only given 6 months from the effective date of the rule to submit detailed reports of what EPA considers to be existing information. However, only a portion of this information has been previously collected. EPA should allow at least one year for this requirement to be fulfilled.