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July 22, 2004

The Honorable James M. Inhofe
Chairman
The Honorable James M. Jeffords
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Don Young
Chairman
The Honorable James L. Oberstar
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Environmental Protection Agency: National Pollutant Discharge Elimination System—Final Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled “National Pollutant Discharge Elimination System—Final Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities” (RIN: 2040-AD62). We received the rule on February 25, 2004. It was published in the Federal Register as a final rule on July 9, 2004. 69 Fed. Reg. 41576.

The final rule implements section 316(b) of the Clean Water Act for certain existing power-producing facilities that employ a cooling water intake structure and are designed to withdraw 50 million gallons per day or more from waters of the United States for cooling purposes. The final rule established national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities. The rule’s performance standards are projected to reduce impingement mortality by 80 to 95 percent and, if applicable, entrainment by 60 to 90 percent, thereby reducing the number of aquatic organisms lost as a result of water withdrawal.

Enclosed is our assessment of the EPA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Stephanie Daigle
Deputy Associate Administrator
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM-
FINAL REGULATIONS TO ESTABLISH REQUIREMENTS FOR
COOLING WATER INTAKE STRUCTURES
AT PHASE II EXISTING FACILITIES"
(RIN: 2040-AD62)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis of the final rule and estimates the total annualized social (pre-tax) costs will be \$389 million. Of this total, \$385 million are direct costs incurred by facilities and \$4 million are implementation costs incurred by state and federal governments. On a post-tax basis, direct costs incurred by facilities are expected to be \$249 million.

While EPA was unable to estimate the monetary value of non-use benefits, the total use benefits of the rule are estimated to be \$82.9 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Administrator of EPA has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule imposes a private sector mandate, as defined in title II, of more than \$100 million in any one year. EPA has prepared the written statement required under section 202 of the Act. The statement is summarized in the preamble to the final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On April 9, 2002, EPA published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 17122. On March 19, 2003, EPA published a Notice of Data Availability in the Federal Register (68 Fed. Reg. 13522) and subsequently

sponsored a Symposium on Cooling Water Intake Technologies. The comments generated by these events are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the collection, which EPA estimates to have an annual burden of 1,700,392 hours.

Statutory authorization for the rule

The final rule is issued under the authority found in sections 101, 301, 304, 306, 308, 316, 401, 402, 501, and 510 of the Clean Water Act (33 U.S.C. 1251, 1311, 1314, 1316, 1318, 1326, 1341, 1342, 1361, and 1370).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

EPA has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism impact summary.