

# Congress of the United States

Washington, DC 20515

August 10, 2011

U.S. Environmental Protection Agency  
Water Docket  
Mail Code: 4203M  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
Attn: Docket ID No. EPA-HQ-OW-2008-0667

Dear Administrator Jackson:

We are pleased to provide these comments on the proposed Environmental Protection Agency rulemaking published in the *Federal Register* on April 20, 2010.<sup>1</sup> The proposed rule would require power plants and other industrial or manufacturing facilities to minimize adverse environmental impacts associated with the operation of cooling water intake structures (CWIS). The proposal will affect virtually every power plant in the country and could have significant adverse economic, environmental, and energy consequences. Thus, we believe it is important for EPA to take a measured approach to the rulemaking, ensuring that any final rule includes sufficient flexibility and that the benefits of any requirements it imposes are commensurate with the costs. We believe that there is more EPA can do to achieve these objectives.

The proposed rule would require most electric generating facilities and many manufacturing facilities that use cooling water to meet an array of new requirements, even though these facilities have been minimizing adverse environmental impacts under state-issued Clean Water Act permits for years. Given the long history of state regulation in this area, the proposed rule appropriately gives the states primary responsibility for making technology decisions regarding how best to minimize entrainment of aquatic organisms at affected facilities. This approach recognizes the importance of site-specific factors, such as the composition of aquatic populations, source water characteristics, and facility configuration and location. Consideration of factors like these is vital in determining the extent of any environmental impacts, defining the range of available solutions, and evaluating the feasibility and cost-effectiveness of such solutions.

Unfortunately, EPA has not adopted a similar approach to minimizing the impacts of impingement. In contrast to the approach applied to entrainment, EPA is proposing to adopt uniform national impingement standards that have not been demonstrated to be widely achievable and that, in fact, many facilities may not be able to meet. This approach to impingement takes the technology determination out of the states' hands, and provides no credit for impingement reduction technologies that have already been approved by the states as best technology available.

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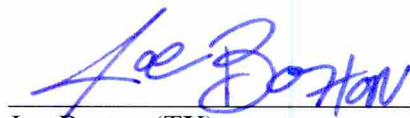
<sup>1</sup> "National Pollutant Discharge Elimination System – Cooling Water Intake Structures at Existing Facilities and Phase I Facilities; Proposed rule," 76 Fed. Reg. 22,174.

Instead, the rule should provide an approach to impingement and entrainment that allows for simultaneous consideration of unaddressed adverse impacts, if any, and gives state environmental regulators the discretion to perform site-specific assessments to determine the best technology available for both impingement and entrainment. This would allow consideration of a range of factors that vary on a site-by-site basis, such as the cost of a specific technology at a facility and the likely benefits of that technology, given the unique mix of species in the water body and other site-specific factors. This approach would also provide consistency, allowing permitting authorities to develop holistic solutions to the related issues of entrainment and impingement.

EPA has proposed a rule that, by its own estimate, would impose costs more than twenty times greater than estimated benefits. Notably, EPA's cost estimate does not include the cost of controls to address entrainment. Given the wide disparity between the costs and benefits associated with imposing a national impingement standard, we believe that permittees should be able to select from a full range of compliance options that would minimize adverse environmental impacts, as warranted, while accounting for site-specific variability including benefits and costs. Furthermore, given the inherent variability of how technology will perform at each site, EPA should focus on simply identifying beneficial technology options rather than setting rigid performance standards. In addition, any facility that already employs closed-cycle cooling, including the use of cooling ponds or other impoundments, should be considered compliant.

The proposed rule as presently crafted could result in premature power plant retirements, energy capacity shortfalls, and higher costs for consumers. These results would not be helpful to our efforts to restore the nation's economic health and a private sector capable of robust job creation. Therefore, we further urge you to modify the proposed rule to ensure that any new requirements will produce benefits that are at least commensurate with, if not greater than costs, and will maximize the net benefits of the options available, consistent with President Obama's Executive Order No. 13563.

Sincerely,



Joe Barton (TX)



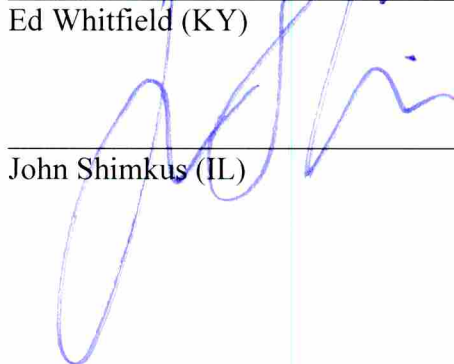
Mike Ross (AR)



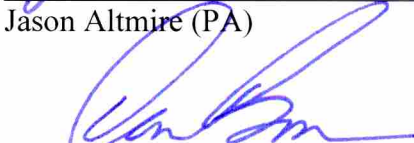
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Jason Altmire (PA)




John Shimkus (IL)

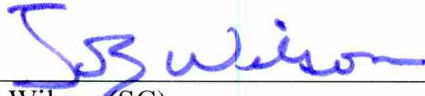



Dan Boren (OK)



  
Cliff Stearns (FL)

  
Heath Shuler (NC)


  
Joe Wilson (SC)

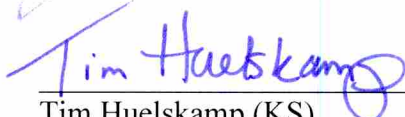
  
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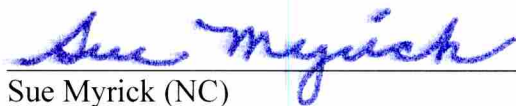
  
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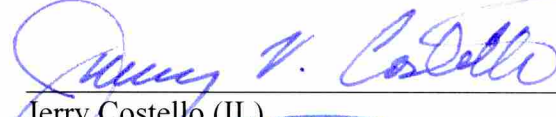
  
Tim Huelskamp (KS)

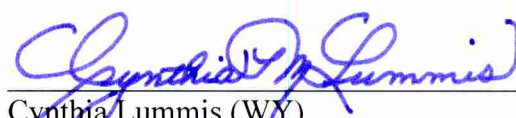
  
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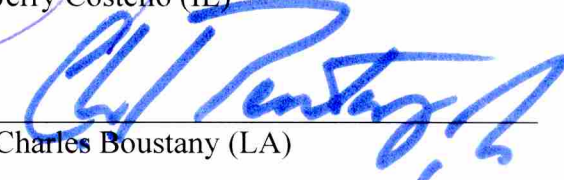
  
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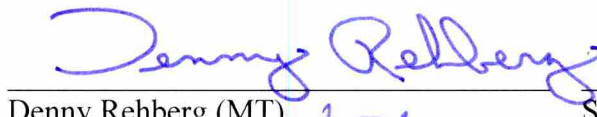
  
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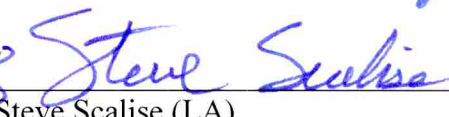
  
Sue Myrick (NC)

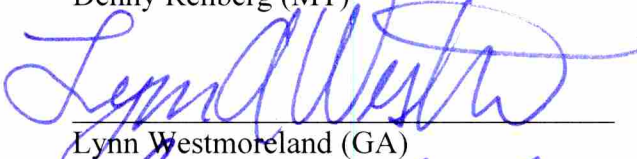
  
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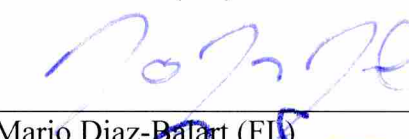
  
Cynthia Lummis (WY)

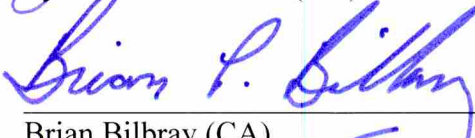
  
Charles Boustany (LA)

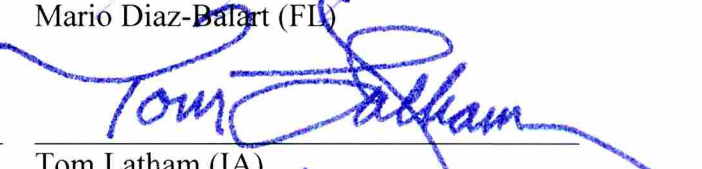
  
Denny Rehberg (MT)

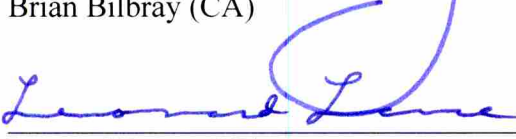
  
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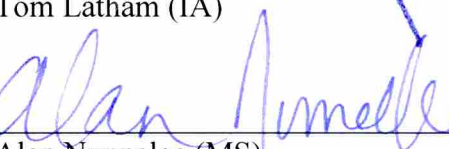
  
Lynn Westmoreland (GA)

  
Mario Diaz-Balart (FL)

  
Brian Bilbray (CA)

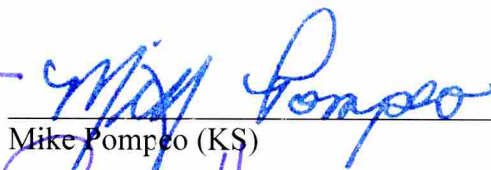
  
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Leonard Lance (NJ)

  
Alan Nunnelee (MS)



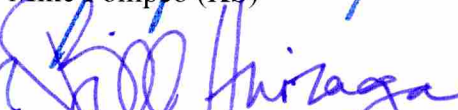
Adam Kinzinger (IL)



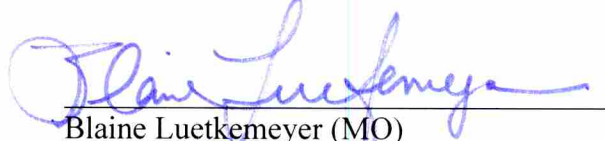
Mike Pompeo (KS)



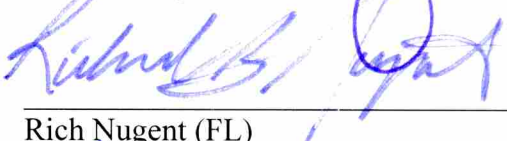
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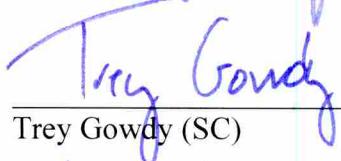
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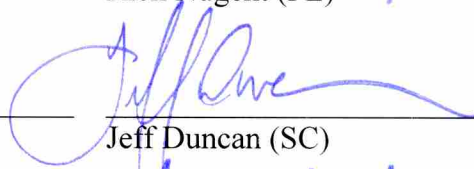
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Rich Nugent (FL)



Trey Gowdy (SC)



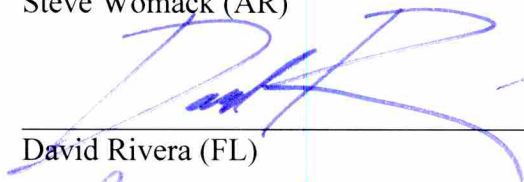
Jeff Duncan (SC)



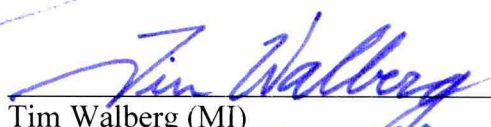
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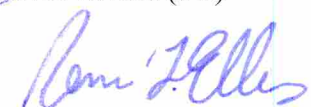
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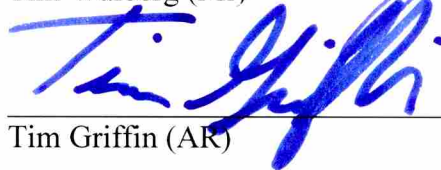
David Rivera (FL)



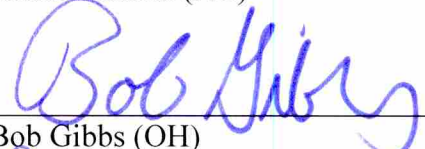
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Renee Ellmers (NC)



Tim Griffin (AR)



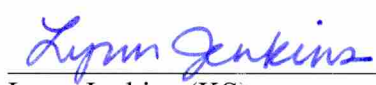
Bob Gibbs (OH)



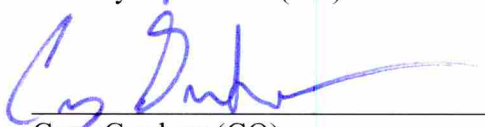
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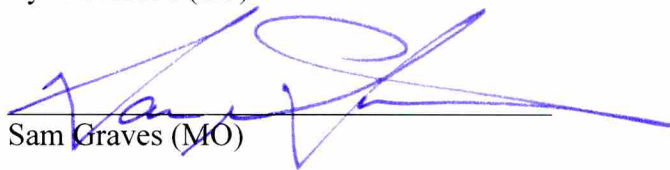
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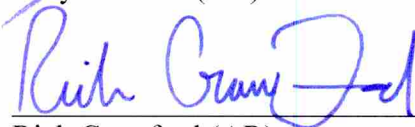
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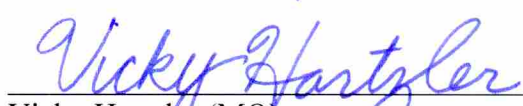
Cory Gardner (CO)



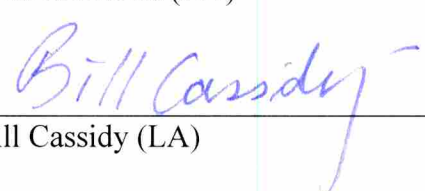
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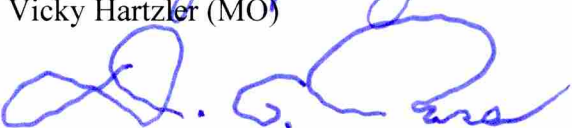
Rick Crawford (AR)




Vicky Hartzler (MO)




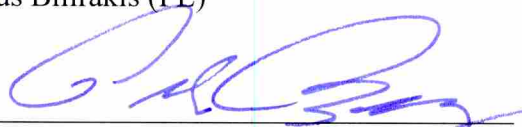
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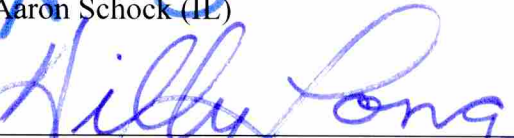


Dennis Ross (FL)

  
Gus Bilirakis (FL)

  
Aaron Schock (IL)

  
Rick Berg (ND)

  
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