

United States Senate

WASHINGTON, DC 20510

July 26, 2011

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dear Administrator Jackson:

We write to you out of concern regarding a proposed rule by the U.S. Environmental Protection Agency (EPA) to require power plants and other industrial and manufacturing facilities to minimize the impacts associated with the operation of cooling water intake structures (CWIS), as published in the *Federal Register* on April 20, 2011. Given the economic, environmental, and energy impacts this proposed rule could have, we urge the EPA to take a measured approach to this rulemaking in order to ensure sufficient flexibility and that any costs imposed by the requirements in the final rule are commensurate with the likely benefits.

Section 316(b) of the Clean Water Act (CWA) requires CWIS to reflect the best technology available for minimizing adverse environmental impact. For more than thirty years, the EPA and state governments have applied this requirement on a site-by-site basis, examining the impacts of CWIS on the surrounding aquatic environment.

As such, the proposed rule appropriately gives state governments the primary responsibility for making technology decisions regarding how best to minimize the entrainment of aquatic organisms at affected facilities, an approach which recognizes the importance of site-specific factors. A site-by-site examination of aquatic populations, source water characteristics, and facility configuration and location is vital in determining any environmental impacts, the range of available solutions, and the feasibility and cost-effectiveness of such solutions.

Unfortunately, the EPA has not adopted a similar approach to minimizing the impacts of impingement, but rather, is proposing uniform national impingement mortality standards. This approach to impingement sets performance and technology standards not demonstrated to be widely achievable and likely unattainable for many facilities. This method also takes away the technology determination from state governments and ignores the impingement reduction technologies already approved by these states as the best technology available.

And in so doing, the EPA has proposed a rule costing more than twenty times the estimated benefits – according to its very own estimate. This is notable considering the cost estimate does not include the cost of controls to address entrainment.

As an alternative, we believe the rule should give state environmental regulators the discretion to perform site-specific assessments to determine the best technology available for addressing both

impingement and entrainment together. This approach stands in stark contrast to a national one-size-fits-all approach and allows a consideration of factors on a site-by-site basis. We feel this would provide consistency and give permitting authorities the ability to select from a full range of compliance options to minimize adverse environmental impacts, as warranted, while accounting for site-specific variability, including cost and benefits. Furthermore, we believe the EPA should focus on identifying beneficial technology options, rather than setting rigid performance standards; and the EPA should not define closed-cycle cooling to exclude those recirculating systems relying on man-made ponds, basins, or channels to remove excess heat.

Given the proposed rule's potential to impact every power plant across our country, an inflexible standard could result in premature power plant retirements, energy capacity shortfalls, and higher energy costs for consumers. Therefore, we urge you to use the flexibility provided by the Supreme Court and the Presidential Executive Order on regulatory reform, E.O. 13563, *Improving Regulation and Regulatory Review*, and modify the proposed rule to ensure that any new requirements will produce benefits commensurate with the costs involved and maximize the net benefits of the options available.

Thank you for your consideration of our request. We look forward to your response.

Sincerely,

to Benjamin Nelson

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