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Environmental Groups Sue EPA on Deficient Cooling Water Intake Rule

New EPA regulation fails to set a standard for protecting aquatic species

NEW YORK (September 2, 2014) – A coalition of environmental groups today filed [three lawsuits](#) in federal courts around the country (New York, San Francisco and Boston) seeking to force the U.S. Environmental Protection Agency to establish a clear standard that better protects the hundreds of aquatic species near the nation's 1,065 power plants and other facilities.

More than five hundred of America's oldest and dirtiest power plants still use "[once-through cooling systems](#)". These plants withdraw trillions of gallons of water from our nation's rivers, lakes, estuaries and marine waters each year, destroying billions of fish, shellfish and other marine life. The death toll includes hundreds of endangered species of fish, mammals, and sea turtles. Some of these species are being pushed to the very brink of extinction by once-through cooling. "Closed-cycle" cooling, on the other hand, is a widely used and proven technology that has been available for decades and can reduce fish kills, habitat disruption, and water withdrawals by 95% or more.

Despite this fact, and decades of legal battles, EPA's [new rule](#), issued under Clean Water Act Section 316(b) and published on August 15th, once again fails to establish technology requirements that protect aquatic life in our rivers and oceans from destructive industrial cooling water intakes. EPA should have set a clear standard that requires closed-cycle cooling as the "best technology available" for minimizing these severe impacts. But EPA's rule leaves it to resource-strapped state agencies to determine what technology is required on a site-specific basis.

"EPA acknowledges that closed-cycle cooling is the most protective technology, and the agency's own regulations have long required new plants to use it," said Reed Super, lead attorney for Riverkeeper and many of the other organizations. "EPA's recent decision to allow existing plants to continue using antiquated technology that decimates aquatic life violates the Clean Water Act and will not stand up in court."

“EPA’s latest version of this critically important regulation is a complete fiasco, and a clear sign that the agency entrusted by law with protecting the environment is instead kowtowing to industry pressure and sending this problem back to state regulators to solve,” said Paul Gallay, President and Hudson Riverkeeper. “We are taking EPA back to court to compel the agency to follow the law, and establish a clear, enforceable standard that will protect our nation’s rivers, lakes and coastal waters from the severe impacts of outdated and destructive industrial water intakes.”

“EPA has failed to protect the public’s interest in healthy ecosystems and vibrant marine life with this failed rule,” said Tim Dillingham, Executive Director, American Littoral Society. “They have put the interests of the communities of people such as recreational and commercial fishermen which depend on healthy waters behind those of polluting industries. It has been left to our coalition to defend these important environmental, economic and community interests, and so, once again, we are going to court.”

Delaware Riverkeeper Maya van Rossum stated: “Facilities on the Delaware River and throughout the nation have been getting away with the needless slaughter of billions of fish — on the Delaware River there is one facility which alone kills over 3 billion fish a year, imagine the impacts nationwide of these operations. While these facilities are allowed to kill indiscriminately, commercial and recreational fisherfolk are limited in what size, how many and what species of fish they can take. Instead of addressing this horrible inequity, EPA, through its rules, is perpetuating it.”

“Coal plants and other facilities are killing fish in our rivers at an appalling scale every year,” said John Rumpler, Senior Attorney for Environment America, a federation of state-based, citizen supported organizations including Environment Massachusetts. “As EPA has decided to allow this destruction to continue, we have no choice but to enforce our nation’s clean water laws in court.”

Hackensack Riverkeeper Captain Bill Sheehan noted §316(b) requires that cooling water intake structures reflect the best technology available for minimizing environmental impact. “It says best, it doesn’t say one of the seven best. The best is closed-cycle cooling. Any option that kills more fish than closed-cycle cooling is not the best technology and breaks the law.”

“The time has come to stop putting industry and big business before community interests and healthy ecosystems,” said Debbie Mans, Baykeeper and Executive Director of NY/NJ Baykeeper. “EPA’s ruling has failed its purpose in reducing significant environmental risks. Instead, billions of fish and other marine life will be killed and the effects, nationwide, may be irreversible. The environmental community certainly isn’t going to stand by and let that happen.”

“EPA’s rule does almost nothing to protect our fisheries and waterways from the destructive impacts of power plants, despite the widespread availability of technology to address these impacts,” said Steve Fleischli, water program director at the Natural Resources Defense Council. “By kicking the can down the road, EPA has chosen to perpetuate an approach that not only is illegal but has led to 40 years of failure to address this national problem. EPA should

require the use of closed-cycle cooling at U.S. power plants to reduce water intake by 95% and save billions of fish from needless and wanton destruction.”

“Coal plants represent more than 200 of the facilities around the country to be impacted by EPA’s ruling,” noted Eva Schueller, an attorney with Sierra Club. “The industry should be held responsible for using old, antiquated technology responsible for harming countless endangered and threatened species.”

Background

On November 22, 2010, Riverkeeper and other environmental organizations signed a settlement agreement with the EPA that resolved two lawsuits they brought against the agency in 1993 and 2006 addressing its failure to issue regulations implementing Section 316(b) of the Clean Water Act for existing power plants and other industrial facilities. This section of the Clean Water Act requires industry to employ the “best technology available” for minimizing the adverse environmental impact of their cooling water intake structures. In 2001, EPA had issued regulations requiring all new facilities to use closed-cycle cooling, but EPA’s first attempt at existing facility regulations were sent back to the agency by the courts as legally insufficient. In the 2010 settlement, EPA agreed to draft new regulations for existing facilities by March 14, 2011, and to take final action regarding the new regulations by July 27, 2012. EPA issued its final rule in May, 2014.

In the 2014 rule, EPA failed to set a clear standard, leaving it completely to the discretion of state regulators to determine what cooling water intake technology is best on a case by case basis. This failure subverts the entire purpose of the 316(b) regulation, to have a national baseline standard that provides all waterways the highest level of protection.

Federal agencies responsible for protecting endangered species found that 266 threatened and endangered species are affected by power plants with once-through cooling, with the effects ranging from direct injury to habitat degradation and destruction of other aquatic species relied on as part of the aquatic food chain. Among the species impacted are iconic sea turtles, orcas, Hudson River sturgeon, and Pacific Northwest salmon and trout.

For decades, the power industry has campaigned against updating regulations to protect biologically and economically important aquatic ecosystems from further damage from industrial cooling water intakes. Industry argues that more environmentally protective regulations will force plants across the country to shut down and threaten the reliability of the nation’s electricity supply. But studies by EPA and by outside groups showed that the gradual move to closed-cycle cooling under this rule would have little or no impact on the power grid. In fact, EPA concluded that moving to closed-cycle cooling will actually reduce the vulnerability of the American power sector to droughts and climate change.

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