



Notice of Data Availability Related to the EPA Stated Preference Survey for Proposed Regulations to Establish Requirements for Cooling Water Intake Structures

Summary

On April 20, 2011, EPA published a rule proposing standards for cooling water intake structures at all existing power generating facilities and existing manufacturing and industrial facilities as part of implementing section 316(b) of the Clean Water Act. EPA has signed for publication in the *Federal Register* this Notice of Data Availability (NODA) to present a summary of significant data EPA has received or collected since proposal, a discussion of how EPA is considering incorporating these data in revised analyses supporting the final rule, and a discussion of possible revisions to the final rule that EPA is considering that were suggested by the comments. EPA solicits public comment on the information presented in this notice and the record supporting this notice for 30 days upon publication in the *Federal Register*.

Purpose of This Notice

This NODA makes available for public review new data and information obtained since rule proposal.

As part of the proposal, EPA indicated it was in the process of developing a stated preference survey to estimate total willingness to pay (WTP) for improvements to fishery resources affected by in-scope 316(b) facilities. The EPA indicated its intent to issue a NODA pending survey implementation and data analysis. This notice presents the new data and preliminary analysis currently available from the stated preference survey. Upon completion of the non-response studies, and scope and validity testing, a summary of the comments from this notice as well as EPA's draft benefits analysis will be independently peer reviewed. Only then would

EPA be able to determine whether the results would be used in finalizing the rule.

Background

Section 316(b) of the Clean Water Act requires that National Pollutant Discharge Elimination System (NPDES) permits for facilities with cooling water intake structures ensure that the location, design, construction, and capacity of the structures reflect the best technology available to minimize harmful impacts on the environment. The withdrawal of cooling water by facilities removes billions of aquatic organisms from waters of the United States each year, including fish, fish larvae and eggs, crustaceans, shellfish, sea turtles, marine mammals, and other aquatic life. Most impacts are to early life stages of fish and shellfish through impingement and entrainment.

Under a consent decree with environmental organizations, EPA divided the section 316(b) rulemaking into three phases. All new facilities except offshore oil and gas exploration facilities were addressed in Phase I in December 2001; all new offshore oil and gas exploration facilities were later addressed in June 2006 as part of Phase III. Existing large electric-generating facilities were addressed in Phase II in February 2004 and existing small electric-generating and all manufacturing facilities were addressed in Phase III in June 2006. However, Phase II and the existing facility portion of Phase III were remanded to EPA for reconsideration as a result of legal proceedings. The April 2011 proposal combines Phases II and III into one rule, and provides a holistic approach to protecting aquatic life impacted by cooling water intakes at existing electric generating and manufacturing facilities.

Any facility not covered by these national rules will continue to be subject to section 316(b) requirements set by the EPA, state, or territorial NPDES Permitting Director on a case-by-case, best professional judgment basis.

The proposed rule published in April 2011 covers roughly 1,260 existing facilities that each withdraws at least 2 million gallons per day of cooling water. EPA estimates that approximately 590 of these facilities are manufacturers, and the other 670 are power plants.

For More Information

Please contact Erik Helm (helm.erik@epa.gov or 202-566-1049). You can also learn more about this rule by visiting EPA's website at: <http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/>.
