NATIONAL ASSOCIATION OF Manufacturers

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Vice President
Energy and Natural Resources

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Nancy K. Stoner
Acting Assistant Administrator for Water
Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

Dear Ms. Stoner:

The National Association of Manufacturers (NAM) welcomes the opportunity to provide comments on the Environmental Protection Agency's (EPA or Agency) proposed Clean Water Act Section 316(b) cooling water intake structure rule, "National Pollutant Discharge Elimination System – Cooling Water Intake Structures at Existing Facilities and Phase I Facilities," published in the Federal Register on April 20, 2011.

By way of background, the NAM is the largest manufacturing association in the U.S., representing nearly 13,000 small, medium, and large manufacturers in all 50 states. We are the leading voice in Washington, D.C. for the manufacturing economy, which provides millions of high-wage jobs in the U.S. and generates more than $1.6 trillion in GDP. In addition, two-thirds of our members are small businesses, which serve as the engine for job growth.

Our mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. While the NAM supports environmental regulations designed to protect the environment and public health, we consistently oppose regulations that create adverse economic impacts on manufacturing without providing any real environmental or public protection.

Manufacturers are attempting to fully recover from the steepest economic downturn in decades and bring back the 2.2 million high-wage jobs lost during the previous recession. At the same time, our member companies are confronting an avalanche of overly burdensome rules, regulations, and guidance from the EPA, including the recent proposed Clean Water Act "waters of the U.S." guidance and proposed Resource Conservation and Recovery Act (RCRA) regulation for the definition of solid waste.

I. Introduction

The EPA's proposed Section 316(b) regulation governing cooling water intake structures (CWIS) at power plants, and other facilities, will have direct economic, energy, and environmental impacts on many of our member companies while providing minimal benefits. Not only will it impact the power plants and manufacturing facilities that rely on cooling water and

thus will have to comply with the new requirements, but it will also directly impact manufacturers across the board as electricity rates will increase. Manufacturers use one-third of the nation's energy and rely on affordable, reliable, and secure sources of energy in order to remain competitive in a global economy.

We urge the EPA to revise the rule to reflect a more site-specific approach to managing the impact of CWIS on the environment, a true cost-benefit analysis, as well as less onerous study, monitoring, reporting, and permitting obligations. We support certain features of the rule, in particular, the EPA's determinations that closed cycle cooling is not "best technology available" (BTA) for widespread use at existing facilities, that entrainment issues should be examined site-to-site, and that plant replacements and upgrades will be treated as existing facilities. However, we believe that, overall, the proposed rule for existing cooling water intake structures will have to be revised substantially before it is finalized. The proposed rule, in its current form, will impose considerable costs on power plants and manufacturers without corresponding environmental benefits.

II. EPA Should Allow For a More Site-Specific Analysis.

The proposed rule requires power plants and other manufacturing facilities to reduce the negative environmental impacts of CWIS by focusing on impingement and entrainment. While we applaud the EPA for not proposing that all facilities retrofit their CWIS to closed-cycle cooling such as cooling towers and cooling ponds, and for proposing to have entrainment evaluated at individual sites, we are nevertheless concerned with EPA's inflexible approach for reducing the effects of impingement of aquatic organisms by cooling water systems. This will create additional costs for power plants and manufacturers with minimal environmental benefits. As a result, we ask that the EPA abandon this rigid, one-size-fits-all portion of the proposed rule. Rather, we urge the EPA to work with state authorities and industry to continue to use a site-specific approach to managing the impacts of existing CWIS on aquatic environments.

The EPA's proposal for reducing the impact of entrainment recognizes the importance of leaving the decision-making to state authorities and allowing them to consider the array of site-specific factors that affect potential impacts and solutions. By contrast, the EPA's proposed impingement rule would set unattainable and unrealistic one-size-fits-all numeric national standards for mortality and intake velocity. This approach undermines the flexibility provided in the entrainment provisions by prescribing best technology available on a national scale and basing performance limits on that determination. Furthermore, the technology EPA is prescribing is not universally necessary, feasible, or cost-effective, and the numeric standards are widely unachievable. We urge the EPA to revise the rule to allow state authorities to determine the best technology available for both impingement and entrainment at individual sites taking into account economic, environmental, and energy impacts.

Power plants and manufacturing facilities have successfully worked with states in applying Section 316(b) requirements on a site-by-site basis for more than 30 years. This approach is the most scientifically valid and cost-effective method of regulating the impacts of cooling water intake structures. We encourage the EPA to develop a CWIS regulation that continues to ensure strong environmental protection, while maintaining electric reliability and minimizing costs to electricity consumers, at each individual site.

III. EPA Should Revise the Rule to Ensure a True Cost-Benefit Analysis.

We encourage the EPA to revise the rule to ensure that maximum benefits are achieved with minimal cost, in keeping with President Obama's Executive Order 13563. As currently written, the proposed rule together with other rules EPA is developing under the Clean Air Act and Resource Conservation and Recovery Act is likely to force a significant number of power plants into early retirement, which will reduce the supply of electricity and increase the cost of energy for manufacturers at a time when they cannot afford it. By EPA's own estimate, using a 3 percent discount rate, the annual cost of compliance with the proposed impingement control requirements, as well as the myriad of permit application, monitoring, and reporting requirements, is just under $384 million per year (or more at a higher discount rate) – and this does not include the costs of complying with BTA determinations for entrainment under the proposed rule. Yet at a 3 percent rate, the Agency estimates that the rule will produce less than $18 million in annualized benefits (or even less at a higher discount rate). This 21-to-1 disparity of costs-to-benefits is not rational and, as noted, does not even take into consideration the cost for entrainment measures that will be required under the proposed rule.

IV. Reporting Requirement

Finally, the proposed rule, if finalized as written, will impose a number of onerous study, monitoring, reporting, and permitting application requirements on power plants and manufacturers. Currently, the proposed rule requires power plants and manufacturers to perform and submit extensive, detailed studies and other information along with their permit applications. In many cases, the studies are subject to unnecessary, triplicate peer review requirements, and the deadlines for submitting the studies are unrealistic. These required studies and information will involve a great deal of time and company resources. Such requirements are overly burdensome and unnecessary. Further, the EPA proposed application process and the standard of review by which permit writers have to evaluate the application is overly time-consuming. This will not only unnecessarily consume limited EPA and state permit writer resources, it will also slow down the permitting process for power plants and manufacturers. Furthermore, the added necessity of having to submit all of the mandatory studies every time a permit is up for renewal, subject to permit writer discretion, is excessive and onerous. Additionally, the proposed option for obtaining a waiver for submitting all the information is lacking as the Director can refuse such a request without an explanation.

V. Conclusion

In conclusion, the NAM applauds the EPA for not proposing a uniform rule that would require all power plants and manufacturers to retrofit their CWIS with closed-cycle cooling or universal entrainment technology. However, we are still very concerned with the onerous and at times excessive requirements the proposed regulation contemplates. The NAM urges the EPA to revise the rule to adopt a more effective and flexible approach based more fully on site-specific analysis of the need for changes to existing CWIS and the economic, environmental, and energy impacts of alternatives that might be available. State permit writers should not require changes in existing CWIS unless the benefits of the changes will clearly equal or exceed the costs, and such changes should maximize net benefits when multiple options are available.

As American manufacturers strive to remain competitive in the global economy, it is important for our members to have reasonable assurance that the regulatory process regards the ongoing need to build products in America for Americans.

Sincerely,

Paul A. Yost
Vice President
Energy and Resources Policy