

# Client Alert

Environmental Practice Group

April 7, 2011

## EPA Proposes New Rules for Cooling Water Intake Structures at Existing Facilities

EPA has proposed new standards for cooling water intake structures at existing power plants and factories. The proposal covers existing facilities with a design intake flow of at least 2 million gallons per day — a class that includes approximately 1,260 facilities nationwide. EPA anticipates that the proposed rule will cover over half of all water withdrawals in the entire nation. Implementation costs could be substantial.

The proposed rule implements § 316(b) of the Clean Water Act, 33 U.S.C. § 1326, which requires cooling water intake structures to utilize the best technology available to minimize impingement (which occurs when fish and other organisms get trapped against intake screens) and entrainment (which occurs when fish and other organisms get sucked through the intake screen and into the equipment). This rule and its predecessors have generated substantial opposition and multiple lawsuits from environmental groups. Therefore we anticipate that this rulemaking will again be hotly contested.

The proposed rule includes the following components:

- New units at existing facilities: All new units that add electrical generating capacity at existing facilities will be required to install technology equivalent to closed-cycle cooling.
- Uniform impingement mortality controls at all existing facilities: Existing facilities that withdraw at least 25% of their cooling water from an adjacent waterbody will have the option to meet a design standard requiring installation of specific state-of-the-art technology or a performance standard requiring intake velocity to be less than 0.5 ft./sec. Compliance would be required within 8 years.
- Site specific determination of entrainment controls: Entrainment controls would be established by the permitting authority on a case-by-case basis with public input, taking costs and other factors into account. All facilities would be required to provide certain information to the permitting authority; larger facilities would be required to prepare an extensive Entrainment Characterization Study. A schedule would be established for the required submissions; proposed due dates range from 6 months to 7.5 years depending on the type of facility and the type of submission.

For more information, contact:

**Lewis B. Jones**  
+1 404 572 2742  
lbjones@kslaw.com

**Les A. Oakes**  
+1 404 572 3314  
loakes@kslaw.com

**Cynthia A.M. Stroman**  
+1 713 276 7364  
+1 202 626 2381  
cstroman@kslaw.com

**King & Spalding**  
*Atlanta*  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309-3521  
Tel: +1 404 572 4600  
Fax: +1 404 572 5100

*Houston*  
1100 Louisiana, Suite 4000  
Houston, TX 77002  
Tel: +1 713 751 3200  
Fax: +1 713 751 3290

*Washington, D.C.*  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737

[www.kslaw.com](http://www.kslaw.com)

# Client Alert

Environmental Practice Group

## What are the potential costs?

Although EPA estimates capital costs of just \$40,000 per facility over ten years to implement the proposed rule, industry estimates range as high as \$1,000,000 per facility. Actual costs will vary depending on a large number of factors, including environmental context as well as the disposition of individual permitting authorities.

Environmental groups have pressed EPA to require all facilities to employ technology equivalent to closed-cycle cooling and can be expected to continue to advocate this technology during the regulatory process and the site-specific selection process at individual facilities. (EPA has already selected closed cycle cooling as Best Technology Available for all new facilities. Its decision not to require closed-cycle cooling at existing facilities is based on the additional cost required to retrofit existing facilities.)

## What should I be doing?

If you operate a cooling water intake structure, consider the following:

- Conduct a review of existing facilities to evaluate potential costs associated with the technologies discussed in the proposed rule. If EPA has understated these costs, consider providing that information to EPA.
- Similarly, assess the time needed to achieve compliance. If EPA has underestimated the timetable, consider providing that information to the Agency.
- Begin building a case for the selection of reasonable site-specific entrainment controls. Factor a range of costs into your capital planning budget.
- Consider submitting comments on the proposed rule to EPA. One area of particular controversy will be EPA's proposal to require site-specific selection of entrainment technology rather than adopting a uniform national standard. Many will welcome the flexibility this allows; others would prefer a higher level of certainty.

## How do I submit comments and when?

Comments on this proposal will be due 90 days after it is published in the Federal Register. The pre-publication copy was signed by the Administrator and sent to the Federal Register for publication on March 28, 2011.

King & Spalding's environmental lawyers have extensive subject matter experience in the area of water supply and water quality regulations. They are available to assist clients in evaluating the proposed rule and preparing an effective response to EPA's request for comments, including identifying appropriate regulatory issues to address and formulating proposed approaches to resolving those issues.

*Celebrating 125 years of service, King & Spalding is an international law firm with more than 800 lawyers in Abu Dhabi, Atlanta, Austin, Charlotte, Dubai, Frankfurt, Geneva, Houston, London, New York, Paris, Riyadh (affiliated office), San Francisco, Silicon Valley, Singapore and Washington, D.C. The firm represents half of the Fortune 100 and, according to a Corporate Counsel survey in August 2009, ranks fifth in its total number of representations of those companies. For additional information, visit [www.kslaw.com](http://www.kslaw.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.*