

- b. In paragraph (a), last sentence, revise “SAF/MIQ” to read “SAF/IEE.”
- c. In paragraph (b), third sentence, revise “HQ USAF/ILEB” to read “HQ USAF/A7CI.”
- d. In paragraph (b), third sentence, revise “SAF/MIQ” to read “SAF/IEE.”

**§ 989.36 [Amended]**

- 17. In § 989.36, make the following technical corrections:
  - a. In first sentence, revise “NEPA” to read “EIAP” at its first occurrence.
  - b. In first sentence, revise “SAF/MIQ” to read “SAF/IEE”.

**§ 989.38 [Amended]**

- 18. In § 989.38, make the following technical corrections:
  - a. In paragraph (b), revise “HQ USAF/ILEB” to read “HQ USAF/A7CI”.
  - b. In paragraph (c), revise “HQ USAF/ILEB” to read “HQ USAF/A7CI”.
  - c. In paragraph (c), revise “AFCEE/EC” to read “AFCEE/TDB”.
  - d. In paragraph (d), revise “HQ USAF/ILEB” to read “HQ USAF/A7CI” in the four places it appears.

**Appendix A to Part 989 [Amended]**

- 19. In Appendix A, make the following technical corrections:
  - a. In U.S. Government Agency Publications, revise “(DoDD) 4715.1, Environmental Security” to read “DoDD 4715.1E, Environment, Safety, and Occupational Health”.
  - b. In U.S. Government Agency Publications, revise “DoDD 5000.1, Defense Acquisition” to read “Department of Defense Directive DoDD 5000.1, The Defense Acquisition System”.
  - c. In Abbreviations and Acronyms, Change acronym definition for “AFCEE” from “Air Force Center for Environmental Excellence” to read “Air Force Center for Engineering and the Environment”.
  - d. In Abbreviations and Acronyms, revise “AFCEE/EC” to read “AFCEE/TDB”. Change acronym definition from “AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC)” to read “AFCEE Technical Directorate, Built Infrastructure Division (AFCEE/TDB)”.
  - e. In Abbreviations and Acronyms, revise “AFLSA/JACE” to read “AFLOA/JACE”.
  - f. In Abbreviations and Acronyms, revise “AFLSA/JAJT” to read “AFLOA/JAJT”.
  - g. In Abbreviations and Acronyms, revise “HQ USAF/ILE” to read “HQ USAF/A7C”.
  - h. In Abbreviations and Acronyms, revise “SAF/MI” to read “SAF/IE.” Change acronym definition from

“Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment” to “Assistant Secretary of the Air Force for Installations, Environment & Logistics”.

- i. In Abbreviations and Acronyms, revise “SAF/MIQ” to read “SAF/IEE.” Change acronym definition from “Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment” to “Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (ESOH)”.

- j. In Terms, under “BMPs” revise “40 CFR 1508.22” to read “32 CFR 989.22”.

**Appendix B to Part 989 [Amended]**

- 20. In Appendix B, make the following technical corrections:
  - a. In paragraph A3.1.1, revise “AFLSA/JAJT” to read “AFLOA/JAJT”.
  - b. In paragraph A3.1.2, revise “AFLSA/JAJT” to read “AFLOA/JAJT”.

**Appendix C to Part 989 [Amended]**

- 21. In Appendix C, make the following technical corrections:
  - a. In paragraph A3.1.3, last sentence, revise “HQ USAF/ILEVP” to read “HQ USAF/A7CI.”
  - b. In paragraph A3.1.3, last sentence, revise “SAF/MIQ” to read “SAF/IEE”.
  - c. In paragraph A3.2.2.1, revise “HQ USAF/ILEB” to read “HQ USAF/A7CI”.
  - d. In paragraph A3.2.3.3, revise “The name and telephone number of a person to contact for more information” to read “The name, address, and telephone number of the Air Force point of contact”.
  - e. In paragraph A3.5.1., revise “AFLSA/JAJT” to read “AFLOA/JAJT”.
  - f. In paragraph A3.5.1., revise “military trial judge” to read “hearing officer”.
  - g. In paragraph A3.5.1., revise “military trial judge” to read “hearing officer”.
  - h. In paragraph A3.8, third to last sentence, revise “SAF/MIQ” to read “SAF/IEE”.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer, Department of the Air Force.*

[FR Doc. E7-13253 Filed 7-6-07; 8:45 am]

**BILLING CODE 5001-05-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 122 and 125**

[EPA-HQ-OW-2002-0049; FRL-8336-9]

RIN 2040-AD62

**National Pollutant Discharge Elimination System—Suspension of Regulations Establishing Requirements for Cooling Water Intake Structures at Phase II Existing Facilities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Suspension of final rule.

**SUMMARY:** This action suspends the requirements for cooling water intake structures at Phase II existing facilities, pending further rulemaking. The Phase II regulation addressed existing power utilities that use a cooling water intake structure to withdraw cooling water from waters of the United States at a rate of 50 million gallons per day (MGD) or greater.

**DATES:** Effective July 9, 2007, 40 CFR 122.21(r)(1)(ii) and (5), 125.90(a), (c) and (d) and 125.91 through 125.99 in Subpart J are suspended.

**FOR FURTHER INFORMATION CONTACT:** Janet Goodwin at (202) 566-1060, [goodwin.janet@epa.gov](mailto:goodwin.janet@epa.gov) or Deborah Nagle at (202) 564-1185, [nagle.deborah@epa.gov](mailto:nagle.deborah@epa.gov).

**SUPPLEMENTARY INFORMATION:** This action suspends the Phase II regulations with the exception of 40 CFR 125.90 (b), for cooling water intake structures.

**I. General Information**

*A. Does This Action Apply to Me?*

Entities potentially affected by this action are classified under NAIC 22111. Affected categories and entities include:

Category	Examples of regulated entities
Electric Utilities .....	Electric Power Generating Facilities.
State governments ..	Department of Environmental Protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition in § 125.91. If you have questions regarding the applicability of this action

to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## B. Table of Contents

- I. Legal Authority
- II. Background
- III. This Action
- IV. Statutory and Executive Order Reviews

### I. Legal Authority

EPA is issuing this suspension of the Phase II rule pursuant to 5 U.S.C. 553(b) and (d), which authorizes administrative agencies to issue administrative suspensions immediately, where good cause justifies the action. Public comment on this suspension is unnecessary, as a decision issued by the U.S. Court of Appeals for the Second Circuit (Second Circuit), *Riverkeeper, Inc. v. EPA*, 475 F.3d 83 (2d Cir. 2007), precludes EPA from applying the Phase II rule unless and until EPA takes further action and today's suspension action merely carries out the effect of that decision on the Phase II rule. Additionally, the decision has resulted in uncertainty among the regulated community and permitting agencies about how to proceed with ongoing permitting proceedings given the uncertainty as to the status of the Phase II rule. This suspension provides a clear statement by the Agency that the existing Phase II requirements (with the exception of one provision unaffected by the *Riverkeeper* decision that reaches beyond the Phase II rule, addressed below) are suspended and are not legally applicable.

### II. Background

On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power producing facilities under section 316(b) of the Clean Water Act (Phase II rule). 69 FR 41576 (July 9, 2004). The final Phase II rule applies to existing facilities that are point sources that, as their primary activity, both generate and transmit electric power or generate electric power for sale to another entity for transmission; use or propose to use cooling water intake structures with a total design intake flow of 50 MGD or more to withdraw cooling water from waters of the United States; and use at least 25 percent of the water withdrawn exclusively for cooling purposes (see 40 CFR 125.91).

Under the Phase II rule, EPA established performance standards for the reduction of impingement mortality and entrainment (see 40 CFR 125.94). The performance standards consist of ranges of reductions in impingement mortality and/or entrainment. These

performance standards were determined to reflect the Best Technology Available (BTA) for minimizing adverse environmental impacts at facilities covered by the Phase II rule.

These regulations were challenged by industry and environmental stakeholders. On judicial review, the Second Circuit decision (*Riverkeeper, Inc. v. EPA*, 475 F.3d 83, (2d Cir., 2007)) remanded several provisions of the Phase II rule on various grounds. The provisions remanded to EPA include:

- EPA's determination of the BTA under section 316(b);
- The rule's performance standard ranges;
- The cost-cost and cost-benefit compliance alternatives;
- The Technology Installation and Operation Plan provision;
- The restoration provision; and
- The "independent supplier" provision.

With several significant provisions of the Phase II rule affected by the decision, and with the need to provide timely direction to stakeholders about the continuing application of the Phase II rule, EPA's Assistant Administrator for Water issued a memorandum on March 20, 2007, which announced EPA's intention to suspend the Phase II rule. This memorandum also discussed the anticipated issuance of this **Federal Register** suspension document.

### III. This Action

EPA is suspending § 122.21(r)(1)(ii) and (5), and Part 125 Subpart J with the exception of § 125.90(b). This suspension is appropriate for several reasons.

First, the Second Circuit's decision remanded key provisions of the Phase II requirements, including the determination of BTA and the performance standard ranges. This suspension responds to the Second Circuit's decision, while the Agency considers how to address the remanded issues.<sup>1</sup>

In addition, the decision has a significant impact on the regulated community and permitting agencies. Both groups have sought Agency guidance on how to proceed to establish cooling water intake structure permit requirements for facilities subject to the Phase II rule in light of this decision. These stakeholders support suspending the Phase II requirements until the Agency has considered and resolved the issues raised by the Second Circuit's remand. Permit requirements for cooling

water intake structures at Phase II facilities should be established on a case-by-case best professional judgment (BPJ) basis.

Pursuant to 5 U.S.C. 553(b) and (d), EPA has determined for good cause that notice and public comment procedures are unnecessary. As noted, the Second Circuit's decision found key provisions of the Phase II rule to be inconsistent with the Clean Water Act and remanded most of the rule to the Agency. As a result, under the decision, EPA is precluded from applying the rule unless and until it takes further action to address the decision. Thus, today's action simply effectuates the legal status quo and public comment is therefore unnecessary.

Notably, EPA by this action is not suspending 40 CFR 125.90(b). This retains the requirement that permitting authorities develop BPJ controls for existing facility cooling water intake structures that reflect the best technology available for minimizing adverse environmental impact. This provision directs permitting authorities to establish section 316(b) requirements on a BPJ basis for existing facilities not subject to categorical section 316(b) regulations. Establishing requirements in this manner is consistent with the CWA, case law, and the March 20, 2007 memorandum's direction to do so. Phase II facilities are not subject to categorical requirements under Subpart J while this suspension is in effect, and therefore this provision applies in lieu of those requirements. In addition, this provision applies to other types of existing facilities subject to section 316(b) requirements (e.g., existing facilities addressed in EPA's section 316(b) Phase III rule). Moreover, this provision is an analogue to the provision in the 316(b) Phase I new facility rule providing for BPJ permitting where a facility is not subject to categorical requirements under Subpart I. See 40 CFR 125.80(c). Finally, this provision was not addressed, and is therefore not affected, by the Second Circuit's decision in *Riverkeeper*. Retaining it is therefore consistent with the approach EPA took in response to a judicial remand of its original section 316(b) regulations. See 44 FR 32854, 32956/1 (June 7, 1979) (withdrawing remanded regulations, but leaving intact a provision that had not been remanded).

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review under

<sup>1</sup> In the event that the court's decision is overturned after today's action, the Agency will take appropriate action in response.

the Executive Order. This action does not impose any new requirements and does not impose costs or impacts on the regulated industry and thus does not meet the requirements for Executive Order 12866 review. This action is not subject to the Regulatory Flexibility Act (RFA) since this rule is exempt from notice and comment rulemaking requirements for good cause which is explained in section I. Additionally, this rule will not significantly or uniquely affect small governments. EPA has determined that this rule would not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to sections 202, 203, or 205 of the Unfunded Mandates Reform Act of 1999 (Pub. L. 104-4). In addition, the EPA has determined that this action does not have Tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it does not establish any requirements on State or local governments. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The existing Information Collection requirements in this regulation were approved by the Office of Management and Budget under OMB control number 2040-0257.

#### List of Subjects

##### 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Water pollution control.

##### 40 CFR Part 125

Environmental protection, Cooling water intake structure, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 2, 2007.

**Stephen L. Johnson,**  
Administrator.

■ For the reasons set forth in the preamble, EPA is amending 40 CFR parts 122 and 125 as follows:

#### **PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

##### **§ 122.21 [Amended]**

■ 2. Section 122.21 (r)(1)(ii) is suspended.

■ 3. Section 122.21(r)(5) is suspended.

#### **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 4. The authority citation for part 125 continues to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.* unless otherwise noted.

##### **§ 125.90 [Amended]**

■ 5. Section 125.90(a), (c) and (d) are suspended.

■ 6. Sections 125.91 through 125.99 are suspended.

[FR Doc. E7-13202 Filed 7-6-07; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 131**

**[EPA-HQ-OW-2007-0467; FRL-8337-2]**

**RIN NA2040**

#### **Withdrawal of Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington State**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is proposing to amend the Federal regulations to withdraw its

1992 federally promulgated marine copper and cyanide chronic aquatic life water quality criteria for Washington State, thereby enabling Washington to implement its current EPA-approved chronic numeric criteria for copper and cyanide that cover all marine waters of the State.

In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States, including Washington, and two Territories that had not fully complied with the Clean Water Act (CWA). These regulations are known as the "National Toxics Rule" or "NTR." On November 18, 1997, Washington adopted revised chronic marine aquatic life criteria for copper and cyanide, the only two marine aquatic life priority toxic pollutants in the NTR applicable to Washington. These revisions included a chronic marine aquatic life water quality criterion for copper for all marine waters and a chronic site-specific cyanide criterion for the Puget Sound. EPA approved these criteria on February 6, 1998. On August 1, 2003, Washington adopted revisions to its water quality standards, including a chronic marine criterion for cyanide for all marine waters except the Puget Sound. EPA approved this criterion on May 23, 2007. Since Washington now has marine copper and cyanide chronic aquatic life criteria effective under the CWA that EPA has approved as protective of Washington's designated uses, EPA is proposing to amend the NTR to withdraw the federally promulgated criteria.

**DATES:** This rule is effective on September 7, 2007 without further notice, unless EPA receives adverse comment by August 8, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant provisions of this rule, will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2007-0467, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- E-mail: [ow-docket@epa.gov](mailto:ow-docket@epa.gov).

- Mail to either: Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Becky Lindgren, Washington Marine Aquatic Life NTR Removal, U.S. EPA, Region 10, OWW-131, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA-HQ-OW-2007-0467.