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Clean Water Act: EPA's Final Rule for Cooling Water Intake Structures Effective October 14, 2014

With publication of final regulations by the United States Environmental Protection Agency ("EPA") in the Federal Register, the rules under Section 316(b) of the Clean Water Act governing the use of cooling water at existing power plants and industrial facilities are effective on October 14, 2014 (the "Final Rule").

Section 316(b) requires that the location, design, construction and capacity of Cooling Water Intake Structures ("CWISs") reflect the best technology available ("BTA") for minimizing adverse environmental impacts. EPA states that the Final Rule will affect approximately 1,065 existing facilities, including 544 electric generators and 509 manufacturers.

The Final Rule applies to existing facilities that withdraw more than 2 million gallons per day of water from the waters of the United States and that use at least 25 percent of this water exclusively for equipment cooling purposes. The Final Rule's requirements address the potential adverse environmental impacts-- impingement and entrainment-- associated with the use of CWISs at existing facilities.

The Final Rule requires a permittee to select one of seven options to meet BTA for reducing impingement mortality. Impingement mortality occurs as aquatic organisms in cooling water meet a facility's intake screens.

The Final Rule sets forth a national BTA standard for reducing entrainment. Entrainment occurs when aquatic organisms are drawn through a facility's cooling water system. The national standard is a process for conducting a site-specific determination of entrainment mitigation requirements at existing CWISs. The EPA's assessment is that there is no single technology that is the BTA for entrainment at existing facilities. Instead, the site-specific determination process considers a number of factors. Site-specific decision-making could lead to a determination by the EPA or by a state permitting authority that entrainment reduction requirements should be based on the incorporation of variable-speed pumps, water reuse, fine-mesh screens, a closed-cycle recirculating system or some combination of technologies that constitutes the BTA for the individual site. Alternatively, the site-specific process could lead to a determination that no additional technologies are required at an existing facility.

The EPA announced the Final Rule in May 2014. (A Day Pitney Alert on May 21, 2014, summarized the key provisions of the Final Rule.) The Final Rule was published in the Federal Register on August 14, 2014, and is effective 60 days following this publication. It is available here.