



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

EPA Oversight Addresses Thermal Variance and Cooling Water Permit Deficiencies But Needs to Address Compliance With Public Notice Requirements

Report No. 13-P-0264

May 23, 2013



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Abbreviations

CFR	Code of Federal Regulations
CWA	Clean Water Act
CWIS	Cooling Water Intake Structure
EPA	U.S. Environmental Protection Agency
NPDES	National Pollutant Discharge Elimination System
OIG	Office of Inspector General
OW	Office of Water
PQR	Permit Quality Review

Cover photo: Brayton Point Power Facility, Somerset, Massachusetts. (EPA photo)

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At a Glance

Why We Did This Review

We evaluated the U.S. Environmental Protection Agency's (EPA's) oversight of regional and state compliance with Clean Water Act (CWA) §316(a) and (b) requirements. These requirements are in place to help protect aquatic organisms from the impacts of thermal discharges and cooling water intake structures. CWA §316(b) requires that 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 permitting authority may issue a variance under CWA §316(a) to allow facilities to discharge cooling waters at an alternative, less stringent thermal effluent limit that is still protective of aquatic life.

This report addresses the following EPA Goal or Cross-Cutting Strategy:

- *Protecting America's waters.*

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130523-13-P-0264.pdf

EPA Oversight Addresses Thermal Variance and Cooling Water Permit Deficiencies But Needs to Address Compliance With Public Notice Requirements

What We Found

Since the 1980s, EPA has had an oversight process, known as Permit Quality Reviews (PQRs), to promote permit quality and ensure a reasonable degree of national consistency with regard to core program requirements. The PQRs EPA conducted from 2007 to 2010 identified a number of deficiencies in NPDES permits, which EPA made recommendations to improve. Our review of EPA's PQR oversight process found it has generally been effective in determining the quality of permits. Like EPA, we found deficiencies in permits or supporting documents. For example, 55 percent of the fact sheets in our sample did not contain an explanation of the state's or EPA's decision in the permit that facilities use the best technology available to minimize the environmental impact of the cooling water intake structures regulated under CWA §316(b). Conversely, 75 percent of the fact sheets we reviewed contained an explanation of the state's or EPA's decision to approve the facilities' requests for CWA §316(a) thermal variances. A fact sheet briefly presents the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.

None of the public notices we reviewed contained all of the required statements describing the proposed §316(a) thermal variance. We found that EPA's quality assurance reviews are not designed to address whether public notices for permits with a §316(a) thermal variance contain required information under the Code of Federal Regulations (CFR) per 40 CFR §124.57. As a result, EPA's quality assurance reviews did not identify deficiencies in public notices. EPA established this regulation so that permitting authorities would use public notices to inform the public about proposed thermal variances.

Recommendation and Planned Agency Corrective Action

We recommend that the Assistant Administrator for Water develop and implement oversight mechanisms that will help states and regions consistently comply with CWA §316(a) public notice requirements. The Agency agreed with our recommendation and committed to implementing corrective actions by June 30, 2013.

Noteworthy Achievements

The Office of Water is working to improve the quality of permits through its PQR process. Quality assurance evaluations assess whether NPDES permits written by states and regions comply with regulations. Through this review process, the Office of Water works to promote national consistency in permits, identify best practices in state NPDES programs, and recommend opportunities for improvement in state and regional permit programs.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

May 23, 2013

MEMORANDUM

SUBJECT: EPA Oversight Addresses Thermal Variance and Cooling Water Permit Deficiencies
But Needs to Address Compliance With Public Notice Requirements
Report No. 13-P-0264

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Nancy K. Stoner, Acting Assistant Administrator
Office of Water

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

Your response to the draft report included a proposed corrective action and completion date. The recommendation is open with corrective actions underway. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff members have any questions regarding this report, please contact Carolyn Copper, Assistant Inspector General for Program Evaluation, at (202) 566-0829 or copper.carolyn@epa.gov; or Dan Engelberg, Product Line Director, at (202) 566-0830 or engelberg.dan@epa.gov.

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Purpose

We evaluated National Pollutant Discharge Elimination System (NPDES) program permits from U.S. Environmental Protection Agency (EPA) Regions 1, 5, and 6, to review the oversight of regions' and states' compliance with Clean Water Act (CWA) §316(a) and (b) requirements. These requirements are in place to help protect aquatic organisms from the impacts of thermal discharges and cooling water intake structures.

Background

Power plants and manufacturing facilities account for approximately half of all water withdrawals in the United States. Most of the withdrawn water cools the steam used to produce electricity. According to the U.S. Geologic Survey's report *Estimated Use of Water in the United States in 2005*, power and self-supplied industrial facilities withdraw an estimated 219 billion gallons of water per day.

Withdrawing surface waters through cooling water intake structures (CWISs) at power plants causes adverse environmental impacts by pulling large numbers of fish, larvae, eggs, and other small aquatic organisms into a facility's cooling system. Once pulled in, they may be killed by heat, stress, or chemical exposure (entrainment). Larger fish, crustaceans, and even marine mammals may be killed or injured when they are trapped against screens at the front of an intake structure by the force of water being drawn into the system (impingement). EPA estimates that 2.1 billion fish, crabs, and shrimp are killed by impingement and entrainment annually.

The environment may also be impacted when the cooling water is discharged. Because the temperature of the effluent is higher than that of the receiving water, it may negatively affect plant growth, ecosystem composition, and fish reproduction and migration.

Regulations Governing CWA §316(a) Thermal Variances

Thermal effluents are regulated because heat is identified as a pollutant under CWA 502(6). A facility may be authorized to discharge pollutants into U.S. waters by obtaining an NPDES permit. Section 316(a) authorizes the permitting authority (either the authorized state or EPA) to impose alternative, less stringent effluent limits for the control of the thermal component of a discharge in lieu of the effluent limits that would otherwise be required under CWA §301 or §306. A variance allows facilities to discharge cooling water at an alternative, less stringent thermal effluent limit that is still protective of aquatic life. To obtain a CWA §316(a) thermal variance, the operator of a facility must demonstrate to the permitting authority that an alternative thermal discharge limit will be protective of the balanced, indigenous population of shellfish, fish, and wildlife. This

alternative effluent limit, or variance, is only in effect for the duration of the permit.

Regulations Pursuant to CWA §316(b) Cooling Water Intake Structures

Under CWA §316(b), facilities with NPDES permits and CWISs must ensure that the location, design, construction, and capacity of the CWIS reflects the best technology available to minimize adverse environmental impacts. EPA completed three phases of rulemaking to address cooling water intakes. The Phase I rule, promulgated in 2001, covers new facilities; Phase II, promulgated in 2004, covers large existing electric generating plants; and Phase III, promulgated in 2006, covers certain existing facilities and new offshore and coastal oil and gas extraction facilities.

EPA suspended the Phase II existing facilities rule in 2007 as a result of a ruling by the U.S. Court of Appeals for the Second Circuit.¹ Until a new regulation is developed, Phase II existing facilities are subject to the only portion of that regulation still in effect under the Code of Federal Regulations (CFR) in 40 CFR 125.90(b). Under current regulations, including 40 CFR 401.14, permit writers must use “best professional judgment” on a case-by-case basis to identify the best technology available to minimize adverse environmental impacts. According to a recent modification of the settlement agreement between EPA and an environmental organization, a new set of regulations will be promulgated in 2013.² The new rule will cover approximately 1,260 existing facilities that withdraw at least 2 million gallons per day of cooling water.

EPA and States Share Responsibility for Regulating Facilities Under CWA §316(a) and §316(b)

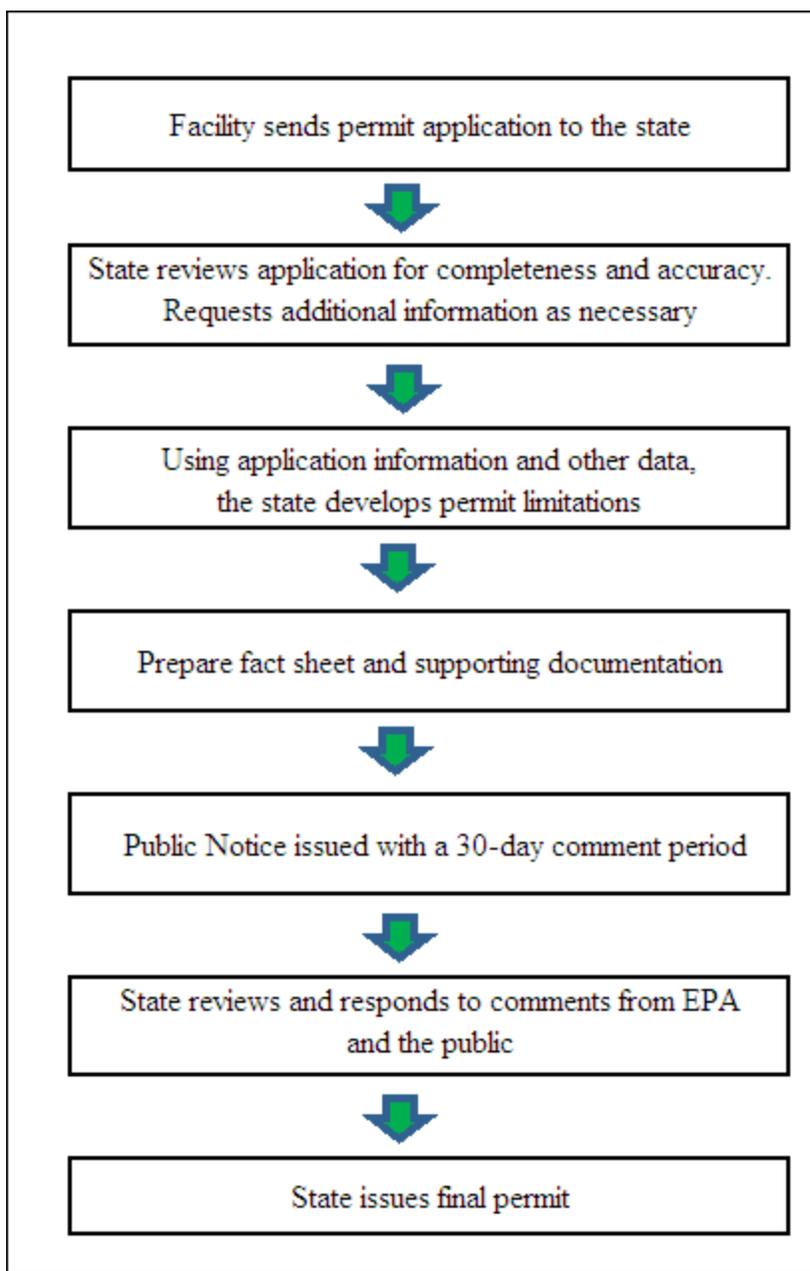
Both EPA and states have responsibilities for protecting surface waters from harm under the CWA. EPA has granted authority to 46 states to issue NPDES permits and EPA has not granted this authority in 4 states and the District of Columbia, as well as with Indian tribes and in U.S. territories.³ While authorized states issue NPDES permits, EPA retains the authority to review permits for compliance with regulations. The following chart is a general summary of the permitting process.

¹ Riverkeeper, Inc. v. EPA, 475 F.3d 83 (2d Cir. 2007), rev'd in part sub. nom. Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208 (2009).

² Second Amendment to Settlement Agreement among the EPA, Plaintiffs in Cronin et. al. v. Reilly, 93 CIV. 314 (LTS) (SDNY), and Plaintiffs in Riverkeeper. et. al. v. EPA, 06 CIV. 12987 (PKC) (SDNY) (available through the EPA website at: <http://water.epa.gov/lawsregs/lawguidance/cwa/316b/upload/modified-settlement-agreement-with-Riverkeeper.pdf>).

³ The Virgin Islands and Maine are only partially authorized. Maine's NPDES authority does not include CWA§316(b) determinations.

Figure 1: State NPDES Permitting Process — Key Steps



Source: Office of Inspector General (OIG) analysis of EPA NPDES Permit Writers Manual.

The permitting authority reviews the facility’s permit application and prepares the draft permit, the fact sheet, and the public notice. A fact sheet briefly presents the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. Under 40 CFR §124.8(b)(4), the fact sheet shall include a summary of the basis for the draft permit conditions, and if a CWA§316(a) is requested, reasons why these variances are or are not justified must be included under and 40 CFR §124.8(b)(5). For example, any

permit that contains a thermal variance issued under §316(a) needs to describe and justify that variance in its fact sheet. For a permit issued pursuant to §316(b), the fact sheet must describe and the permit must require that the location, design, construction, and capacity of the structures reflect the best technology available to minimize harmful impacts on the environment.

Public Notices Alert the Public to Proposed Permits

Public notices inform citizens about proposed NPDES permits issued by permitting authority (states or EPA). Compliance with public notice requirements is important because incomplete or inadequate public notices hinder the public's awareness and its opportunity for input and involvement in permitting authorities' decisions pertaining to waterbody protections. The permitting authority publishes public notices of draft permits so that the public has an opportunity to review and comment on a draft permit and permit conditions. According to 40 CFR §124.10(d), the public notice must contain basic information about the permitted facility, contact information, and public hearing notification (if applicable). If a facility's draft permit contains a §316(a) thermal variance, the public notice must contain specific requirements as identified in 40 CFR §124.57. Because of the 2007 suspension of the Phase II existing facilities rule as described above, we are not reporting on public notice compliance related to §316 (b) decisions in this report. EPA plans to release new Phase II existing facility rules in June 2013.

EPA's Office of Water Conducts Permit Quality Reviews

EPA's Office of Water (OW) evaluates the quality of permits through its NPDES Permit Quality Review (PQR) process.⁴ According to OW staff, the PQRs began in the mid 1980s. This is a process EPA uses to assess whether NPDES permits are developed consistent with applicable requirements in the CWA and environmental regulations. Between 2007 and 2010, OW conducted PQRs in eight regions. One goal of the PQR was to identify how permitting authorities have incorporated §316 provisions into permit requirements. The universe of potential NPDES permits for review was determined using EPA's Permit Compliance System database and the lists of facilities developed during the rulemaking for §316(b). In consultation with the 8 regions, EPA selected 112 permits to review.⁵ OW found that decisions regarding thermal discharge variances under §316(a) and permit conditions implementing §316(b) were not well documented in state or EPA permits. According to staff in OW, the PQR process provides a list of findings and recommendations that are tracked biannually.

⁴ NPDES PQR findings for Regions 2, 3, 5, 7, 9, and 10 are available at <http://cfpub.epa.gov/npdes/pqr.cfm>.

⁵ In total, for the §316 core review, 112 permits were reviewed – Region 1 (17), Region 2 (12), Region 3 (16), Region 4 (23), Region 5 (19), Region 7 (7), Region 9 (7), and Region 10 (11).

Noteworthy Achievements

OW is working to improve the quality of permits through its PQR process. These quality assurance evaluations assess whether NPDES permits written by states and regions comply with regulations. Through this review process, OW works to promote national consistency in permits, identify successes in implementation of state NPDES programs, and recommend opportunities for improvement in state and regional permit programs.

Scope and Methodology

Based on lists containing 262 permits provided by Regions 1, 5, and 6, we selected a total of 29 permits to review (appendix A provides a detailed list). We selected these permits because they represent permits issued by states and regions, permits from locations with high thermoelectric power water withdrawal, and/or permits where there had been no prior EPA OIG audit coverage. Eight permits in our sample contained a thermal variance regulated under §316(a). All 29 permits contained a CWIS that is regulated under §316(b). We collected permit documents through requests to regions and states. With one exception, we obtained all of the documents requested. We did not receive a copy of the public notice for one of the NPDES permits issued by the State of Vermont. This did not affect our conclusions reached or our ability to address our evaluation objectives. To determine states' compliance with §316(a) and §316(b) regulations, we evaluated state permits and documents that EPA regional staff reviewed, as well as a sample of state permits and documents that were not reviewed by EPA regional staff. Because the §316(b) Phase II regulations were suspended in 2007, we only reviewed public notices for compliance with §316(a) regulations.

We reviewed §316(a) and §316(b), as well as applicable regulations, to gain an understanding of how these sections of the law are implemented. We interviewed staff from OW and Regions 1, 5, and 6 about EPA's oversight of states' compliance with §316 requirements. During our field work we learned about OW's regional PQRs and we incorporated the review of those documents into our evaluation. In addition to reviewing PQR reports for Regions 2, 3, 5, 7, 9, and 10, we reviewed a draft PQR report for Region 1 and a summary of draft findings for Region 4.⁶ We also contacted the regions for information about oversight of NPDES permits and progress implementing changes based on OW's PQR recommendations.

We conducted our review from January to June 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We

⁶ We did not review PQRs for Regions 6 and 8 since the reports had not been released at the time of our evaluation.

believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective.

Prior Reports

We reviewed the following reports related to NPDES permits containing §316(a) thermal variances and cooling water intake structures regulated under §316(b):

EPA OIG

- Report No. 2007-P-00038, *Decision Needed on Regulating the Cooling Lagoons at the North Anna Power Station*, September 20, 2007.
- Report No. 11-P-0221, *Oversight of North Carolina's Renewals of Thermal Variances*, May 9, 2011.

U.S. Government Accountability Office

- Report No. GAO-04-589R, *Environmental Protection Agency: National Pollutant Discharge Elimination System--Final Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities*, July 22, 2004.
- Report No. GAO-10-23, *Energy-Water Nexus: Improvements to Federal Water Use Data Would Increase Understanding of Trends in Power Plant Water Use*, October 16, 2009.

Congressional Research Service

- Report No. R41786, *Cooling Water Intake Structures: Summary of EPA's Proposed Rule*, July 19, 2011.

Results of Review

Since the 1980s, EPA has had an oversight process, known as PQRs, to promote permit quality and ensure a reasonable degree of national consistency with regard to core program requirements. The PQRs EPA conducted from 2007 to 2010 identified a number of deficiencies in NPDES permits, which EPA made recommendations to improve. Our review of EPA's PQR oversight process found it has generally been effective in determining the quality of permits. Like EPA, we found deficiencies in permits or supporting documents. For example, 55 percent of the fact sheets in our sample did not contain an explanation of the state's or EPA's decision in the permit that facilities use the best technology available to minimize the environmental impact of the cooling water intake structures regulated under CWA §316(b). Conversely, 75 percent of the fact sheets we reviewed contained an explanation of the state's or EPA's decision to approve the facilities' requests for CWA §316(a) thermal variances. A fact sheet briefly presents the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.

None of the public notices we reviewed contained all of the required statements describing the proposed §316(a) thermal variance. We found that EPA's quality assurance reviews are not designed to address whether public notices for permits with a §316(a) thermal variance contain required information under 40 CFR §124.57. As a result, EPA's quality assurance reviews did not identify deficiencies in public notices. EPA established this regulation so that permitting authorities would use public notices to inform the public about proposed thermal variances. Incomplete or inadequate public notices hinder the public's awareness and its opportunity for input and involvement in permitting authorities' decisions pertaining to waterbody protections under §316(a).

Administration of CWA §316(a) and §316(b) Needs Improvement

We reviewed eight permits and associated fact sheets containing CWA §316(a) thermal variances. Most of the permits in our sample complied with §316(a) regulations and we did not identify any oversight deficiencies. This is notable since the OIG has reported oversight of state programs as an EPA management challenge for the past several years. Region 5 provided oversight of state-issued permits by reviewing the draft permit and OW conducted permit quality reviews that included permit analyses of §316(a) in Regions 1 and 5. Region 1 issued four of these permits. The thermal variance requirements and justification in these four permits were well documented in the permit and fact sheet. The other four permits were issued by Illinois, Ohio, Michigan, and Vermont. In Ohio and Illinois, Region 5 raised concerns during its review of the draft permit about the lack of support for the state's decision to approve the thermal variance. The states modified the final permits to address these concerns. Although the Vermont permit was not reviewed by Region 1, the permit and fact sheets contained sufficient explanation of the thermal variance.

Alternatively, 17 out of 29 (59 percent) of the state and EPA permits and 16 out of 29 (55 percent) of the fact sheets we reviewed did not comply with 40 CFR §125.90(b). This regulation states that a facility must meet requirements under §316(b) to minimize adverse environmental impacts as determined by the director on a case-by-case, best professional judgment basis. The permitting authority's justification must be documented in the fact sheet, while the permit must lay out the final decision. However, the fact sheets for 55 percent of the permits we reviewed did not contain this justification. Instead of requiring facilities to install the best technology available, about a quarter of the state permits in our sample required facilities to collect information about the impacts of existing structures.

The public notices we reviewed also did not comply with regulations. We reviewed public notices for the permits containing a §316(a) thermal variance (see appendix A). None of the public notices contained all of the required statements describing the proposed §316(a) thermal variance. We found similar deficiencies during our 2011 review of North Carolina permits containing §316(a) thermal variances. While the OW's PQRs examined whether other types of

permits complied with state and local public notice requirements, the checklist for permits containing a §316(a) thermal variance did not contain specific questions to verify that the public notice complied with the applicable regulation (40 CFR §124.57). As a result, OW did not identify this deficiency in state and regional permit packages. Because of the 2007 suspension of the Phase II existing facilities rule as described above, we are not reporting on public notice compliance related to §316(b) decisions in this report.

OW Identified Deficiencies and Regions Are Addressing CWA §316(a) and §316(b) Permit Issues

OW found that decisions regarding thermal discharge variances under §316(a) and permit conditions implementing §316(b) were not well documented in state or EPA permits. The PQR reports did not identify the cause of these deficiencies but presented the regions with recommendations to improve compliance with regulatory requirements. The general recommendation was for regions and states to re-evaluate §316(a) thermal variances and §316(b) requirements at each permit renewal and document the basis in the permit and fact sheet. Prior determinations are also to be documented in the fact sheet and reflected in the current permit, as appropriate. We contacted the eight regions which have final or draft PQR reports to determine their progress in implementing OW's recommendations. All eight regions indicated that they are implementing the PQR recommendations, which are tracked by OW on a semiannual basis. We believe OW's recommendations pertaining to §316(a) and (b) and regional follow-up are sufficient and that no further action is necessary at this point.

Conclusion

OW has made strides in addressing CWA §316(a) and (b) permit deficiencies through its permit quality reviews and through recommendations for improved regional oversight. However, we found that none of the state and regional public notices in our sample contain all of the required statements describing the proposed §316(a) thermal variance. We also found that OW did not identify these deficiencies during the PQR process. We concluded that this is a weakness in OW's PQR process and oversight. Providing the public with the proper notice, as regulations require, is a central part of better protecting the environment and public health through public engagement and by obtaining information and input from the public. The information gaps about thermal variances in public notices indicate a need for greater transparency and EPA oversight of states' public notices. Improving that aspect of oversight of state NPDES permits can be achieved through an improved PQR review process. Further, by increasing oversight of public notices, regions can help states comply with public notice requirements once the §316(b) existing facilities regulation is final and state directors begin implementing the new rule.

Recommendation

We recommend that the Assistant Administrator for Water:

1. Develop and implement oversight mechanisms that will help states and regions consistently comply with CWA §316(a) public notice requirements.

Agency Response and OIG Comment

The Agency agreed with our recommendation and provided a timeline for implementing corrective actions. We revised the final report based on technical comments received to the draft report.

EPA's comments noted that reviewing and granting CWA §316(a) thermal variances is a comprehensive and technical process based on biology, which proves to be a difficult endeavor for NPDES permit writers who are often engineers by training. EPA's comments pointed out that CWA §316(b) determinations of best technology available are complicated by a reluctance of permit writers to require the installation of new technologies, which may require expensive capital investments, prior to finalization of standards for existing cooling water intake structures under CWA §316(b). The comment concluded with a statement that EPA is working to finalize these standards by June 27, 2013, under a modified settlement agreement.

We acknowledge the technical challenges associated with permit determinations for thermal variances under CWA §316(a), and the difficulties in implementing an NPDES permit program when parts of the CWA §316(b) regulations are under development. We also recognize that the permit quality review process is designed to identify and correct deficiencies, which in time should aid in the implementation of the new CWA §316(b) regulations.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	9	Develop and implement oversight mechanisms that will help states and regions consistently comply with CWA §316(a) public notice requirements.	O	Assistant Administrator for Water	6/30/13		

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Permits Reviewed by OIG

Permit number and facility	Region	State	§316(a) and (b) regulated status	Draft permit reviewed by region *	Part of OW's PQR **
NH0020338 – FPL Energy Seabrook, LLC	1	NH	(a) and (b)	N/A	Yes
VT0000264 – Entergy Nuclear Vermont Yankee	1	VT	(a) and (b)	No	Yes
MA0003654 – Brayton Point	1	MA	(a) and (b)	N/A	No
MA0004928 – Mirant Canal	1	MA	(a) and (b)	N/A	Yes
MA0004898 – Mirant Kendall Station	1	MA	(a) and (b)	N/A	Yes
CT0000957 – Pfizer	1	CT	(b) only	No	Yes
CT0026476 – Algonquin Power	1	CT	(b) only	No	No
ME0002160 – VERSO Bucksport	1	ME	(b) only	No	Yes
ME0021521 – S.D. Warren Company	1	ME	(b) only	No	No
NH0000655 – Pulp and Paper of America (aka Fraser Papers)	1	NH	(b) only	N/A	Yes
CT0020389 – Anocoil Corp.	1	CT	(b) only	No	No
ME0000272 – Wyman Station	1	ME	(b) only	No	Yes
VT0020893 – Ryegate Associates	1	VT	(b) only	No	Yes
CT0003263 – Millstone	1	CT	(b) only	Yes	Yes
IL0002224 – Excelon Dresden	5	IL	(a) and (b)	Yes	No
OH0009261 – DP&L OH Hutchings	5	OH	(a) and (b)	Yes	No
WI0002381 – Alliant Nelson Dewy	5	WI	(b) only	No	No
MI0001457 – Entergy- Palisades Power Plant	5	MI	(b) only	Yes	No
MI0005827 – AEP Cook	5	MI	(a) and (b)	Yes	Yes
MI0038105 – Wyandotte Electric Power	5	MI	(b) only	No	No
IN0000337 – US Steel	5	IN	(b) only	No	No
OH0002461 – BP-Husky Toledo	5	OH	(b) only	Yes	No
OK0000451 – OG&E Seminole	6	OK	(b) only	Yes	X
LA0002887 – CLECO	6	LA	(b) only	Yes	X
TX0119288 – Lamar Power Partners	6	TX	(b) only	No	X
LA0002925 – SWEPCO	6	LA	(b) only	Yes	X
TX0001066 – Luminant	6	TX	(b) only	No	X
LA0007439 – Entergy Waterford	6	LA	(b) only	Yes	X
TX0070068 – Coleto Creek	6	TX	(b) only	No	X

Source: OIG analysis.

* “N/A” - Not Applicable, denotes permits that were prepared by Region 1 for non-authorized states.

** “X” - A list of facilities evaluated as part of the PQR review will not be available until the Region 6 PQR report is finalized.

Agency Response to Draft Report

MAR - 5 2013

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Audit Report, *EPA Is Addressing Thermal Variance and Cooling Water Permit Deficiencies But Needs to Evaluate Public Notices* (Project No. OPE-FY12-003)

FROM: Nancy K. Stoner
Acting Assistant Administrator

TO: Carolyn Copper
Assistant Inspector General for Program Evaluation

Thank you for the opportunity to review and respond to the Office of Inspector General (OIG) draft audit report, *EPA Is Addressing Thermal Variance and Cooling Water Permit Deficiencies But Needs to Evaluate Public Notices*. The purpose of this memorandum is to transmit the Office of Water's (OW) response to the OIG draft report and its recommendations. This memorandum addresses the report's recommendations; Attachment 1 provides detailed comments on the report. Below is the recommendation in the draft report with our response:

OW Response to Report Recommendations:

Agreements

No	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by FY
1	Develop and implement oversight mechanisms that will help states and regions consistently comply with CWA § 316 (a) public notice requirements.	OW will include an item on the National Pollutant Discharge Elimination System (NPDES) Permit Review Checklist so that future NPDES Permit Quality Reviews will serve as an oversight mechanism to assess consistency of applicable NPDES permits with CWA § 316(a) public notice requirements.	Third Quarter FY 2013

OW welcomes the opportunity to continue working with OIG to implement these recommendations. If you have any questions, please contact Randy Hill, Acting Director of the Office of Wastewater Management, at (202) 564-0748.

Attachment

cc. Randy Hill
Dan Engelberg
Deborah Nagle

Distribution

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