



# Comments to the EPA on National Pollutant Discharge Elimination

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## INTRODUCTION

We appreciate the opportunity to comment on the Environmental Protection Agency's (EPA) proposed regulation, titled "National Pollutant Discharge Elimination System-Cooling Water Intake Structures at Existing Facilities and Phase I Facilities." Our comment addresses three aspects of EPA's proposed rule.

First, President Barack Obama's Executive Order (EO) 13563 directs "each agency" to promote competitiveness and "job creation." EPA complied with the President's EO by drafting a retrospective review of regulation, and highlighting "technologies to solve environmental challenges and spur sustainable development and job growth...." However, in the proposed rule, EPA fails to quantify the impact of the rule on job creation. According to our estimates the rule could imperil between 17,000 and 30,000 jobs.

Second, EPA listed almost identical benefits for Options 1 and 4 (approximately \$17 million), yet the former is EPA's preferred policy. Option 4 would have resulted in more than \$56 million in cost savings over Option 1 and EPA estimated that quantifiable costs would exceed benefits for both options. Why, if Option 4 would have provided identical benefits, was it not chosen? Did EPA violate EO 13563 by failing to "tailor its regulations to impose the least burden on society....?"

Finally, acknowledging that some benefits might be difficult to quantify, EPA's cost-benefit analysis in the proposed rule appears to stretch credulity and provide little transparency. Why were qualitative benefits of recreational fishing ten times more "valuable" than the quantifiable benefits of commercial fishing?

## I. EMPLOYMENT AND EXECUTIVE ORDER 13563

In President Obama's EO 13563, he ordered, "Our regulatory system must protect public health, welfare, safety, and our environment, while promoting economic growth, innovation, competitiveness, and job creation." However, there is no mention of quantified employment impact calculations in EPA's proposed rule.

In EPA's "Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations" under EO 13563, the Agency wrote that steps would be taken "to solve environmental challenges and spur sustainable economic development and job growth...." Yet, EPA's proposed rule contained no estimates on "job growth" or economic development.

Furthermore, several RIAs published after the President's EO but before the proposed rule all contain detailed estimates on the employment impact of EPA actions. With ten-year costs of Option 1 totaling more than \$5.3

billion and ten-year costs of Option 3 eclipsing \$48 billion, a more comprehensive approach toward employment impacts is warranted.

Although EPA's "Economic Benefits Analysis" does include more detailed cost estimates, there is no quantifiable information for employment in the affected sectors. Based on previous reports, cited in the proposed rule, we believe even Option 1 could lead to job losses in the affected sector.

The economic consulting firm NERA analyzed the relationship between cumulative gigawatt (GW) retirements and employment. According to their estimates, which were calculated from the EIA National Modeling System and the REMI Economic Impacts Model, every 28.8 megawatts (MW) in cumulative retirement can reduce employment by one worker. Under one scenario they examined, 50 GW in retirement could reduce net employment by 1.44 million jobs.

Because the proposed rule does not envision retirements near that level, we used EPA's expected retirement figures and NERA's 28.8 to 1 job loss ratio. Using EPA's estimate in Option 1 of 601 MW to 1,056 MW of retirement ("At the national level, the analysis indicates a total reduction in capacity from closures of 601 MW."), we calculated that the proposed rule could eliminate 17,308 to 30,412 jobs ( $28.8 \times 601 \text{ MW} = 17,308.8$ ;  $28.8 \times 1,056 \text{ MW} = 30,412.8$ ).

Other options portend even higher potential job losses. EPA estimates Option 3 could lead to 14,576 MW closures and to a retired capacity of 17,144 MW. We calculate that this could result in job losses approaching 500,000 during the implementation period ( $28.8 \times 14,576 \text{ MW} = 419,788.8$ ;  $28.8 \times 17,144 \text{ MW} = 493,747.2$ ).

Although we applaud EPA for not selecting Options 2 and 3, these employment impacts demonstrate that if those options are implemented, the job losses and energy reliability impacts could prove disastrous for the economy.

In sum, a quantified employment impact scenario is preferable to discounting the effects of billions of dollars in new costs, and (based on our calculations) a potential loss of more than 30,000 jobs. We urge EPA to take into account our calculations and further examine the employment effects of the proposed regulation.

## II. COSTS AND BENEFITS OF OPTION 4

EPA's choice of Option 1, "use of state-of-the-art screens with fish buckets, a low pressure spray wash, a dedicated fish return line," was one of the most cost-effective measures. However, we believe EPA did not adequately demonstrate why Option 1 was preferable to Option 4.

Taking into account quantified costs and benefits, Option 4 and Option 1 have almost identical environmental benefits, yet EPA chose the option with higher costs. EPA's cost-benefit analysis projects the annualized social costs of Option 1 at \$384 million and Option 4 imposes costs of \$327 million.

However, the benefits of the two options are essentially identical. Option 1 has total benefits of more than \$17 million, while Option 4 also has \$17 million in benefits. If it is indeed EPA's goal to reduce impingement and entrainment and ameliorate burdensome compliance costs, why did EPA choose the more expensive of the two options?

Although the Riverkeepers opinion did not demand that EPA choose the most cost effective option, it did allow EPA to take costs and benefits into account. It did so but the option with the same benefits and \$57 million less in annualized costs was not selected.

In addition, in the “Economic Benefits Analysis” for the proposed rule EPA omitted a “Time Profile of Costs to Society” for Option 4. Why?

Based on this information, did EPA violate EO 13563 by failing to “tailor its regulations to impose the least burden on society....?”

### **III. EPA’S COST-BENEFIT ANALYSIS: DATA QUALITY ACT**

Under the Data Quality Act (76 FR 8452)(DQA) and EPA’s own guidelines, agencies must ensure the quality, objectivity, utility, and integrity of all information disseminated, especially “influential information” like cost estimates that “will have or does have a clear and substantial impact ... on important public policies or private sector decisions.” We urge EPA to address its analysis of “nonuse benefits” and “recreational fishing.”

#### **Nonuse Benefits**

Under EPA’s cost-benefit analysis for the proposed rule, it lists nonuse benefits as “human values associated with existence and bequest motives.” We understand this ethereal concept may be difficult to quantify but EPA’s figures are puzzling.

According to the cost estimate, at 3 percent discount rate, the annualized nonuse benefit of the proposed rule ranges from \$0.5 million to \$75.5 million. This broad range for a benefit that is understandably difficult to quantify seems unreasonably expansive. In addition, the proposed rule and the “Economic Benefits Analysis” fail to explain this range.

The DQA requires quality estimates for “influential information” like cost estimates, yet in more than 600 pages of analysis, not once did EPA explain the broad range of benefits. The same critique can be leveled against similar benefit calculations.

### **IV. RECREATIONAL BENEFITS**

In the proposed rule, EPA also addresses certain recreational benefits that flow from a healthier aquatic ecosystem based on “various factors that determine willingness to pay for catching an additional fish per trip.” Again, these estimated benefits varied wildly.

From \$15.3 million to \$44.9 million, the high estimate is more than ten times the estimated benefit to the commercial fishing industry. We believe these figures, in addition to the nonuse benefit figures, are likely too broad for benefits that are typically unquantifiable.

For example, in EPA’s “Economic Benefits Analysis,” there is a detailed methodology cataloguing estimated benefits of more than \$28 for a single fish. However, as with nonuse benefits, EPA provides no detailed calculations or explanation for this broad range. Did EPA violate the Data Quality Act by failing to include

“influential information” for nonuse and recreational benefits?

In sum, this is not the first instance of (what we believe to be) dubious cost-benefit calculations at administrative agencies. In our past comments to EPA, we have noted that previous cost-benefit analyses from agencies have counted costs imposed on businesses as benefits to the broader economy.

For example, earlier this year EPA wrote, “[A]n increase in labor demand due to regulation may have a stimulative effect that results in a net increase in overall employment.” During Congressional testimony, OIRA Administrator Cass Sunstein explicitly rejected reasoning that actual regulatory burdens should be counted as benefits to the economy. In response to Senator Susan Collins’s question about whether costs on businesses can provide indirect employment benefits, Administrator Sunstein replied candidly, “No. I don’t. ”

We trust that EPA’s final rule will provide further clarity on the excessively broad range of nonuse and recreational benefits.

## **V. CONCLUSION**

Thank you for the opportunity to express our views to EPA on this extremely important issue. If you have any questions about our comment, please do not hesitate to contact us via phone or email.

Sincerely,

Doug Holtz-Eakin

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