



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

OFFICE OF  
WATER

June 16, 2004

MEMORANDUM

SUBJECT: Remand of Restoration Provisions in Rule Governing Cooling  
Water Intakes at New Facilities under section 316(b) of the Clean  
Water Act

FROM: Geoff Grubbs /s/  
Director  
Office of Science and Technology

James Hanlon /s/  
Director  
Office of Wastewater Management

TO: Water Management Division Directors  
Regions 1-10

On February 10, 2004, the Office of General Counsel sent to you a memorandum via e-mail notifying you of the recent court decision regarding the rule governing cooling water intakes structures at new facilities under Section 316(b) of the Clean Water Act. Riverkeeper Inc. et al. v. U.S. EPA, 358 F.3d 174 (2<sup>nd</sup> Cir. 2004). Although the decision was largely favorable, the court held that EPA did not have authority to authorize the use of restoration provisions in the new facility rule and remanded that aspect of the rule to EPA. Therefore, when you or the state permitting authority establishes section 316(b) requirements for new facilities that are within the scope of that rule, you may not employ restoration measures in those permits as a means of compliance with the new facilities rule.

If you have any questions or concerns about this issue, please feel free to contact Deborah Nagle of OWM (202) 564-1185 or Tom Wall (202) 566-1060 of OST.

cc: Regional Permits Branch Chiefs  
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