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

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

MEMORANDUM

TO: Acting Assistant Administrator for Enforcement (EG-329)

FROM: Associate General Counsel, Water (EG-331)

SUBJECT: Section 316(b), FWPCA

You have asked whether the Agency has authority, under section 316(b) of the FWPCA, to require installation of closed cycle cooling systems at powerplants which would not be required to install such systems under sections 301, 306 or 316(a).

Section 316(b) provides that "any standard established pursuant to section 301 or section 306. . . shall require that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact."

The Agency cannot directly specify that any particular mode of cooling be adopted under section 316(b) anymore than it could under other sections of the Act which regulate discharges. However, the Agency is vested with authority to regulate the "capacity" of cooling water intake structures. Restrictions on intake capacity, required in order to minimize environmental harm associated with withdrawal of large volumes of water, could render a once-through cooling system infeasible. Hence, a consequence of the Agency's action under section 316(b) could, in certain instances, be utilization of recirculating evaporative cooling systems. This is, however, not essentially different from the result of Agency restrictions on the volume of pollutant discharge under sections 301 and 306. That is, while the Agency cannot specify abatement technologies to be employed under those sections, the use of a particular treatment system may be a predictable consequence of the limitations imposed on the discharge of specific pollutants.

In my view section 316(b) represents an independent mandate to the Agency. It is not dependent upon or overridden by determinations made under sections 301, 306 and 316(a). Thus, if limitations on intake structure capacity represent the best available technology for minimizing

adverse environmental effects they may be imposed, in a proper case, despite the fact that recirculating cooling systems would not be required to insure that discharges of cooling water met applicable thermal standards.

Ray McDevitt