Response to Public Comment:

Information Collection Request

National Pollutant Discharge Elimination System
Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities
(40 CFR Parts 122 and 125)
Docket # EPA-HQ-OW-2008-0667

United States Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460
August 14, 2014

Introduction

On May 28, 2014, the U.S. Environmental Protection Agency (EPA) published a notice in the Federal Register (see 79 FR 30605) regarding an information collection request (ICR) for EPA's "Cooling Water Intake Structures at Existing Facilities (Final Rule)" (OMB Control No. 2040-0257, EPA ICR No. 2060.07).

EPA sought comment in order to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA considered the comments it received and has amended the ICR where appropriate before submitting to OMB for approval.

The 60-day comment period closed on July 28th, 2014. EPA received 6 comment letters, as described in the table below.

FDMS Document ID	Author	Organization
EPA-HQ-OW-2008-0667-3158	Anonymous	n/a
EPA-HQ-OW-2008-0667-3159	G. Beauchesne	Ovivo USA
EPA-HQ-OW-2008-0667-3160	K. Kistler	AK Steel Corporation
EPA-HQ-OW-2008-0667-3161	P. Faggert	Dominion
EPA-HQ-OW-2008-0667-3162	J. Christman	Utility Water Act Group (UWAG)
EPA-HQ-OW-2008-0667-3163	K. Moser	New York Department of Environmental Conservation (NYDEC)

The comments are available at www.regulations.gov under Docket ID No. EPA-HQ-OW-2008-0667.

Response to Comments

EPA has reviewed and summarized each of the comments listed above, then prepared a response to the ICR-related issues raised in the comment letter. In some cases, an entire letter can be responded to in one response. In other cases, a more detailed response to individual issues is warranted.

Note that several commenters were seemingly confused as to the purpose of the notice; EPA sought comments on its ICR, not on the provisions of the final rule itself. As a result, some portions of each comment letter (or in some cases, the entire letter) are not pertinent the issues for which EPA requested comment.

Readers should also refer to Essay 23 in the *Response to Comments Document for the Final Section 316(b) Existing Facilities Rule* (see DCN 12-0004).

EPA-HQ-OW-2008-0667-3158

Summary: The commenter expressed opposition to the final rule.

Response: No response is required because the comment does not address the issues for which EPA sought comment. Thus, for example, the commenter has nott addressed the burden estimates in the ICR.

EPA-HQ-OW-2008-0667-3159

Summary: The commenter requested information on the universe of affected facilities.

Response: While no response is necessary because the comment does not address the issues for which EPA has requested comment, nevertheless, EPA responded to the commenter's request.

EPA-HQ-OW-2008-0667-3160

Summary 1: The commenter requested that EPA exclude facilities exhibiting certain characteristics from the final regulation.

Response 1: EPA has promulgated a final regulation establishing standards for cooling water intake structures. The notice requested comments on specific aspects of EPA's proposed information collection request. The submitted comments to the extent that they request changes to the now-promulgated regulations do not address issues for which EPA has requested comment, e.g., the burden estimates in the ICR, but instead requests revisions to the final rule or changes to language in the preamble. The final rule was signed on May 19, 2014, prior to the comment being submitted to EPA. Therefore, these comments are not responsive to EPA's request for comment. EPA's notice did not contemplate is not now considering request to revise the rule.

Summary 2: The commenter stated that the ICR is not clear. The commenter stated that costs were different in separate exhibits and that neither value was sufficient to cover the costs for these activities. The commenter proposed a different table to present the data. The commenter stated that most manufacturing facilities do not have staff capable of conducting many of the activities described in the ICR.

Response 2: EPA has verified the calculations in the spreadsheets and finds that they are correct. Commenter appears to misunderstand what the exhibits represent. EPA must present the burden and costs to OMB as annual averages for the upcoming 3 year period. Some facilities will not have incurred any reporting burdens during this 3 year period, and some will incur the full burden. The exhibit's presentation of burden is the average across all facilities. More specifically, the values listed in Table 4 and Exhibit A.1d represent the sum product of the total

facility respondents and the burden per facility divided by the total number of respondents. Also see Response 2 to commenter EPA-HQ-OW-2008-0667-3162 below.

EPA recognizes that many facilities have already collected some or all of the information required under this rule. EPA has attempted to be transparent about this distinction as reflected in Exhibits A.1b and A.1d. For example, the burden for a respondent to submit the source water physical data is 6 hours for a power plant over 50 mgd, versus 58 hours for manufacturers and smaller power plants. This is because under the Phase II rule, power plants over 50 mgd were already required to collect and submit this information, and EPA already accounted for such reporting burdens in prior ICRs. However, for other requirements, EPA cannot predict whether a respondent has previously collected data that may satisfy the requirements; in these cases, EPA conservatively assumes that all facilities will conduct the full data collection.

EPA appreciates the commenter's suggested format for ICR information. However, EPA developed the ICR and supporting statement as required by the Paperwork Reduction Act and developed according to OMB's traditional preferences for presenting this information. As indicated above, EPA also notes that the commenter may be confused by the fact that an ICR only represents a three-year window of the costs associated with the final rule. See Response 2 to commenter EPA-HQ-OW-2008-0667-3162 below.

EPA also recognizes that many facilities do not have staff with the appropriate background to conduct some of the studies required by the final rule. However, for the purposes of the ICR and in keeping with OMB's traditional preferences for presenting this information, the labor categories and associated rates are assumed to be "in-house" staff, as opposed to contractors. Thus, the burden for information collection is fully accounted for whether the information collection entails contractor support or not.

EPA-HQ-OW-2008-0667-3161

Summary: The commenter requested revisions to the final rule related to the optimization study and permit application timeline.

Response: None required; the comment does not address the burden estimates in the ICR, but instead requests revisions to the final rule. The final rule was signed on May 19, 2014, prior to the comment being submitted to EPA; The issues on which EPA requested comment concern the Information Collection Request associated with the promulgated rule for which EPA is requesting OMB approval. EPA is not here considering comments on the rule or preamble that were received after final action was taken.

EPA-HQ-OW-2008-0667-3162

Summary 1: The commenter requested a number of revisions to the final rule, generally in three categories:

- Whether the information collection requirements are unnecessary, unduly burdensome, or lack practical utility as applied to certain facilities;
- Whether the information collection requirements are unnecessary or unduly burdensome by virtue of the deadlines imposed;
- Whether the information required is unnecessary, will be unduly burdensome to collect, or will lack practical utility in general.

The requested revisions included, for example, waivers of application materials for certain facilities, reconsideration of application timelines, and clarification of certain rule provisions.

Response 1: These comments generally do not address the burden estimates in the ICR, but instead requests revisions to the final rule language or preamble or questions EPA's authority to take certain actions. The final rule was signed on May 19, 2014; EPA cannot consider any comments on the rule or preamble that were received after final action was taken. Some of these comments are similar to comments received on the proposed rule. EPA responded to such comments in the response-to-comment (RTC) document in the docket for the final rule (see EPA-HQ-OW-2008-0667-3679 at http://www.regulations.gov).

With respect to information collection requirements for some facilities, EPA notes that the preamble and final rule already address exemptions for certain facilities, application requirements, the timeline for various submittals or reviews, and other information. The rule provides flexibility for the permit authority to make such exemptions. To the extent such exemptions are granted, this ICR overstates the burden of information collection and submission. EPA also notes that the completeness of a permit application is unrelated to the burden of information collection.

With respect to the comment on entrapment requirements, EPA does require that, under certain circumstances, entrapment be counted. For 40 CFR 125.94(c)(5)-(7), a facility will either conduct an impingement technology performance optimization study or will conduct monthly impingement mortality sampling; both of these activities provide a mechanism for collecting and evaluating information on entrapped organisms, such as simply counting all entrapment as impingement mortality. As a result, EPA has included entrapment monitoring in its estimate of burden, though it is not itemized. EPA disagrees with the commenter's remedy to remove the requirement to count entrapment, and refers the reader to Essay 18 of the RTC document for the final rule.

With respect to submission of entrainment studies under 40 CFR 122.21(r)(7), EPA disagrees that this submission is unduly burdensome. First, contrary to the comment, EPA is not requiring that a facility conduct new studies. 40 CFR 122.21(r)(7) simply requires the facility to provide existing materials to the Director. EPA also disagrees that the facility would be the appropriate party to determine whether a study is relevant or should be relied upon; this decision is ultimately the Director's decision, not the facility's. EPA also notes that this provision allows a facility to utilize existing data from a different facility, so long as the facility and source waterbody characteristics are comparable; this provision should substantially reduce the overall burden to affected entities because in some cases the Director will have sufficient information to

make entrainment determinations, and the facility may not need to conduct new studies under the BTA for entrainment provisions.

The commenter also suggested that there were instances where one could interpret language in the preamble or the ICR supporting statement to suggest different requirements from the rule language. While EPA has made every effort to ensure the accuracy of these documents, the obligations of the regulated community are determined by the relevant statutes, regulations or other legally binding requirements.

With respect to peer review, EPA agrees that there was a typographical error in the May 28, 2014 notice for the ICR.

Summary 2: The commenter stated that the ICR is difficult to follow and contained errors. The commenter also questioned the three-year window for the ICR.

Response 2: EPA has verified the calculations in the spreadsheets and they are correct. EPA has developed the ICR and supporting spreadsheets according to OMB's traditional preferences for presenting this information, using a time-tested format for the ICR. EPA must present the burden and costs to OMB as annual averages; the $33,535 value listed as "Total" in Exhibit A.1c, along with other similar values in the exhibits, do not represent the total of items listed above but rather represent a variant of a weighted average calculated as the sum product of the total facility respondents and the burden per facility divided by the total number of respondents. Thus, the specific calculations referred to by the commenter are not a simple sum or average; the spreadsheets use the "SUMPRODUCT" function in Microsoft Excel as a mathematical method to account for the fact that only certain facilities have to do certain activities during this ICR reporting period. An illustrative example is as follows: in Exhibit A.1b, the site-specific impingement study line shows that this activity pertains to 153 facilities in the first 3 years, with a labor cost per facility of $122,632 and a capital cost of $0. The $122,632 amount is derived from the data in the nine columns for the various job categories performing tasks associated with the information collection, and is the sum of the levels of effort multiplied by the assumed hourly loaded rates, also shown in the tables.. The rightmost column of the table shows the total initial cost to be 153*($122,632+$0), or $18,762,696. When that amount is added to the other amounts in the rightmost column, the sum is $25,186,909, a cost that covers 1,326 facilities. Thus, on average, the cost per facility is $18,995, shown in the column labelled C+D+E+F. This amount is the same as the sum of the amounts shown in the last row in the columns labelled C through F. The derivation of these numbers is not fully shown in the table, although all the necessary information to compute these numbers is shown; for instance, the $16,596 amount can be found by multiplying the numbers in the total facilities column by the labor cost per facility in column C, summing these numbers, and dividing by the total number of facilities, 1,326. EPA has included a large amount of detail in its estimates, and yet the commenters have not disputed the underlying assumptions included in this compact format.

The commenter is correct in noting that only activities that will occur in the first three years of this ICR are accounted for here. This is by design; ICRs are not intended to analyze information collection for a longer period. EPA developed the ICR and supporting statement as required by the Paperwork Reduction Act and according to OMB's traditional preferences for presenting this

information. A three-year window is used for all ICRs. However, this does not suggest that EPA has excluded information collection costs that occur beyond the three-year window from the economic analysis for the final rule. On the contrary, as seen in the ICR and EA for the final rule, EPA considered the burden projected over the next 20 years. As this ICR reaches the end of its three-year period, EPA will submit a renewal ICR to OMB for approval. The renewal ICR will incorporate activities that occur in years four through six after promulgation. Activities conducted during years one to three will then drop out of the analysis (as appropriate). EPA notes that some tasks may have longer durations and extend into multiple ICRs. As a matter of convenience (and to conform to OMB's conventions on how ICRs should be configured), EPA typically assigns the bulk of the burden associated with one-time tasks to the year in which they are due. Long-term activities (such as an entrainment study) could be an exception, as there may be a significant level of effort spent in multiple years and this would be reflected in the ICR. But if a facility spends a nominal amount of hours in one ICR cycle in preparation for a task that will occur in a second ICR cycle, these differences are not considered significant and the effort will be recorded in the subsequent ICR.

EPA explained its method for assigning respondents to a given "ICR-year" in the Supporting Statement; see footnote 6. EPA used the results of its technology cost modeling (see the Technical Development Document, Chapter 8) as the source of information to define how many respondents are expected to comply via the various compliance alternatives. The burden for each of these alternatives is then calculated in the Exhibits. For example, in Exhibit A.1b, a facility that uses closed-cycle cooling is required to complete studies under 40 CFR 122.21(r)(2)-(5) and (8), as are all other facilities. The facility would also complete 40 CFR 122.21(r)(6) with the information specific only to closed-cycle systems.[1]

Summary 3: The commenter states that the ICR does not clearly describe the specific tasks and labor allocations, including the burden for peer review. In the commenters view, burden should be a site-specific and highly detailed line-by-line accounting statement. The commenter also states that the final technical support documents should be made available as part of the ICR.

Response 3: EPA agrees that burden is likely to be site-specific. However, EPA disagrees that a detailed itemization of burden estimates associated with a large number of subtasks would convey more accurate information on costs and burdens. Neither the Administrative Procedures Act nor the Paperwork Reduction Act require EPA to develop a site-specific accounting of information collection. Nor can EPA predict each facility's compliance response. In other words, EPA, following OMB's traditional preferences for presenting this information, does not project administrative costs to the level of detail described by the commenter. For example, if a biologist is estimated to spend 80 hours on a task, this is based on the general labor needs to complete this task and does not attempt to break down the day-to-day labor expenditures. Assumptions for labor hours are developing using existing ICRs, data submitted by facilities that have already collected such information, EPA site visits, and estimated projections from industry experts. See, for example, the calculation of hours for impingement monitoring at DCN 10-6654. EPA's total burden estimates for this activity match the impingement monitoring burden estimates provided

[1] EPA notes that the distribution of facilities in the Exhibits is roughly the same as the distribution of facilities seen in Exhibit VIII-1 of the final rule preamble. The distribution is not exactly the same, however, because EPA's model technology costs are based on intake-level costs, while the ICR is based on facility-level responses. As a result, EPA merged some data to derive the input values for the ICR.

by facilities that have already conducted such activities. As a last resort, burdens may be based on BPJ given the expected level of effort.

EPA notes that ICRs present national-scale estimates; EPA recognizes that some facilities may spend more time on a given task and some may spend less. EPA notes that the commenter may also misunderstand the overall approach to an ICR. As stated above, an ICR represents an average burden. As an example, if half of the regulated entities are subject to a burden of 100 hours, and the other half have a burden of zero hours, the ICR will report the burden as 50 hours. This is not to say that all facilities will have a burden of 50 hours, but that the average burden is 50 hours. Over the course of the three-year window, the burden for facilities may also change across the three years, and this is also captured in the annual average burden estimate for the ICR.

EPA finds that its estimates of the labor required for each task are accurate; many have been drawn from the ICR for the 2004 Phase II rule and have been reviewed by the public and OMB on numerous occasions.[2] While commenters disagreed with those burden estimates here, EPA notes that no data was submitted to support commenter's assertions that the burden estimates were incorrect or that the estimates do not conform to EPA's guidance document for developing an ICR. Other estimates in the ICR are supported by calculations provided in the proposed rule record and the proposed rule technical support documents. Commenters have not refuted these data and analyses here or in comments to the proposed rule. In each case, the burden estimate is designed to represent an average case for a facility nationwide, not a single facility's costs; EPA recognizes that some facilities will be above the average and that some will be below the average.

EPA has included an estimated burden for the activities that require peer review to reflect the effort involved. While not itemized on a separate line, EPA has estimated a significant burden for each of the studies (40 CFR 122.21(r)(10)-(12)), each in excess of 1100 hours. This reflects EPA's acknowledgement that these studies are a significant undertaking; it also indicates EPA's inclusion of sufficient time for peer reviewers. Even with a conservative assumption of three reviewers and 40 hours per reviewer, there is still ample effort to complete all aspects of the study. This approach is consistent with generally accepted principles of peer reviews, including EPA's own guidance. And as mentioned above, the ICR is intended to represent an average facility's burden.

With respect to the availability of the technical support documents, commenters did not submit a request an extension of the comment period for the ICR in advance of the close of the comment period.

Summary 4: The commenter questions the exclusion of certain costs from the ICR.

Response 4: The commenter appears to confuse the ICR costs with engineering costs. The costs listed in the ICR are actually ODCs for items such as sampling equipment or recordkeeping supplies, not for the installation or maintenance of technologies themselves. The engineering

[2] Some of the requirements in the final rule are similar in content to those found in the 2004 Phase II rule, therefore it is reasonable to assume that the level of effort will be similar for those requirements.

costs assume a given lifespan for each technology and replacement costs are included in the economic analysis. The values in the ICR are related to information collection requirements (e.g., monitoring, recordkeeping, etc.) only.

In response to the commenter's example, it would not be appropriate to include capital costs for flow meters in the ICR (or, for that matter, in the engineering costs), as there is no requirement in the final rule to install flow meters. While some compliance options do require flow monitoring, EPA notes that many facilities have conducted flow monitoring on a regular basis in the past without flow meters and may already report these flows to their permitting authority. Instead, these facilities use the common practice of estimating flow, typically using readily available information such as hours of operation, pump curves, and cooling system dimensions.

Summary 5: The commenter stated that EPA has omitted or understated some ICR costs, providing data points from sampling activities at specific sites. The commenter implies that EPA's costs are based on impingement, rather than impingement mortality. The commenter also noted that there may be a shortage of qualified biological contractors. The commenter stated that costs for some monitoring activities were omitted.

Response 5: The commenter misunderstands EPA's presentation of the costs for the two-year Impingement Technology Performance Optimization Study. Exhibit A.1b presents the annual burden and costs for the study, not the totals over two years. Following the commenters assumptions, EPA's average cost of a sampling event is $11,591, which is well within the ranges reported by UWAG members. EPA also notes that the use of a few select data points can also be misleading. An ICR represents an average cost for an average facility for purposes of estimating national burden; it is not an exercise to assess burden on individual entities. The details of monitoring can vary greatly among sites and have drastic effects on the cost. Unfortunately, the commenter did not provide any context or detail on how these alternative costs were developed, so it is not possible to compare them to EPA's estimates. Instead, EPA based the burden estimates in the ICR on the requirements of the rule, which offers a consistent cost basis for all facilities, versus a patchwork of possibly unrelated data. This approach is consistent with EPA's approach to developing estimated compliance costs; site-specific costs may vary due to local conditions, but EPA's estimates are designed to reflect a national-scale average with some higher cost facilities and some lower cost facilities. In addition to decades of experience in implementing the NPDES program, EPA remains confident that burden assumptions reflect current practice for data collection. EPA provided the initial framework for the monitoring burden in DCN 10-6654 and included the final basis for monitoring in Appendix C in the ICR.

EPA disagrees that its costs incorrectly use impingement (as opposed to impingement mortality) as the basis. As shown in Appendix C, EPA clearly included costs for "durable sampling equipment" which would be used during extended impingement mortality collection. EPA also adjusted (increased) its estimate of the burden for impingement mortality monitoring for the final rule due to changes in the final rule. For example, EPA now assumes a 48-hour holding time and conservatively assumed that biological staff would be present and be paid for all of those hours.

EPA disagrees that it should alter its costs to account for a possible shortage of contractors; the implementation schedule in the final rule plus the five-year cycle of permit renewals provides

ample flexibility for facilities to identify qualified contractor personnel. EPA has also restructured the final rule such that most facilities will not conduct weekly impingement mortality monitoring, but instead will select compliance options with a lower administrative burden. Finally, commenters have not provided any evidence of a shortage of skilled personnel, or barriers to entry in the consulting sector.

EPA disagrees that it has understated or excluded certain costs, as explained below.

- Visual inspections, as required by § 125.96(e), are not included as an explicit cost because facility operators routinely work in and around the intake structure, providing ample opportunity to fulfill such an inspection requirement. In fact, many facilities may already conduct an equivalent inspection as part of good housekeeping practices to ensure proper functioning and maintenance of their intake structure.
- Remote inspections are also required by § 125.96(e) and are also excluded as an explicit cost. As with visual inspections, facility operators already conduct monitoring of their intake structures as part of routine operations. In the case of offshore intakes (where remote inspections would be most appropriate), operators will monitor for indicators that the intake structure is not properly operating, such as the presence of debris or fish in a forebay or on-shore screenwell, notable changes in pressure, head, or intake flow, or other operational measurements. For example, with an offshore cylindrical wedgewire screen, the operator can monitor the changes in pressure and flow to determine when the screen may be clogged (and hence not adequately performing as an impingement technology) and trigger an airburst cleaning cycle. Additionally, many offshore intakes are periodically inspected or cleaned (generally by a diver) as part of regular maintenance.
- As to entrainment costs, consistent with established OMB practices, EPA does not calculate a burden estimate for any activities that would be based upon permit conditions derived from a Director's best professional judgment (BPJ). For example, EPA cannot predict what, if any, entrainment requirements (including monitoring) a permitting authority may require beyond the initial entrainment studies required for larger flow facilities.

Summary 6: The commenter questioned the ICR's approach for the source water baseline biological characterization study and how studies can be conducted for new units.

Response 6: EPA agrees that 40 CFR 122.21(r)(4) does not require new field studies, unless the facility does not have sufficient data to meet the rule requirements. Indeed, EPA assumed in the ICR that virtually all facilities would use a study-based approach as opposed to conducting new field studies, as this is the most likely scenario. The burden associated with these two activities ("source water baseline biological characterization" and "additional entrainment studies") is to account for the collection and compilation of existing data, as well as the new elements added by the final rule.

EPA recognizes that there may be some facilities that do not have sufficient data to develop a study. However, the number of such facilities is expected to be small, given that 1) many facilities have already collected similar data for previous 316(b) rules or for BPJ-based

permitting and 2) facilities are also able to submit existing data from other facilities, provided that the information is representative. Additionally, given the small number of facilities expected to need to conduct new field studies, EPA does not expect that the burden associated with new field studies at these facilities will significantly affect the burden estimates in the ICR. With a small number of facilities that would collect new field data, a large number of regulated facilities, and a 3-year window for the data collection activities, the net result is assumed to be nominal.

EPA also notes that the commenter appeared to agree that EPA's costs for this activity are reasonable.

Regarding new units, because of their construction at an existing facility, it is possible for the biological and entrainment studies to be conducted at the existing intake, if it is on the same waterbody. If it is to be on a different waterbody, then the study can be conducted at the point where the intake would occur, even if the intake is not yet constructed.

Summary 7: The commenter questions the ICR's assumptions for submittals over a 20-year period.

Response 7: EPA agrees that there is a 5-year "gap" in the 20-year schedule. EPA anticipates that there will be a significant amount of data collected during the first 5 years following the rule's promulgation. EPA expects that virtually every facility will request that the Director waive the permit application requirements in subsequent permits. It is also unlikely that a Director would require a facility to reconduct these studies so soon after just completing them. As a result, EPA assumed that no facilities would be required to resubmit the permit application studies in the second permit term after promulgation. Beginning in the third permit term (and continuing into perpetuity), EPA assumed that 10% of facilities would be required to reconduct the studies in subsequent permit applications.

Summary 8: The commenter questions the requirement for the full set of studies for facilities over 125 mgd and proposing to comply using closed cycle cooling, and whether the Director should be able to allow more than 45 months for such studies to be developed.

Response 8: EPA understands that facilities may not see the need to submit the 122.21(r)(9) information even if they intend to operate a closed cycle recirculating system, but notes that the variety of systems that meet the definition of closed cycle systems and the need for the Director to make a determination of BTA at the facility form the basis for requiring information about entrainment to be submitted to the Director. Note that the Director has the ability to waive certain requirements; see 122.21(r)(1)(ii)(B). Regarding the comment that facilities may need additional time beyond the 45 months to develop permit application studies, EPA notes that this is a comment on requirements of the rule, rather than the ICR and burden estimates themselves. EPA also notes that the Director is required to include entrainment requirements in any permit issued after July 14, 2018, and that in order to do so, the Director would need facilities to submit the requisite set of information for making a determination on the set of mandatory considerations enumerated in 125.98(f)(2). This rule does not alter the general NPDES permit

regulations, such that if a Director should determine that they need additional information, it is in their discretion to require a facility to submit the information.

EPA-HQ-OW-2008-0667-3163

Summary: The commenter provided input on a number of revisions to the final rule, including comments on the following topics:

- Scope and applicability of the final rule;
- A request to remove or constrain the use of information related to the performance of several technologies;
- Fragile species; and
- Cost-benefit analysis.

Response: None required; the comment does not address the burden estimates in the ICR, but instead requests revisions to the final rule language or preamble. The final rule was signed on May 19, 2014, prior to the comment being submitted to EPA; EPA cannot consider any comments on the rule or preamble that were received after final action was taken.

While EPA appreciates the new data provided (on alewife and offshore intakes), EPA cannot consider any comments on the rule or preamble that were received after final action was taken. EPA also notes that it specifically solicited data on the performance of velocity caps in the June 11, 2012 NODA and the commenter did not provide this information.

With respect to fragile species, EPA notes that 40 CFR 125.94(c)(9) provides the Director with the authority to require additional measures to protect fragile species.

With respect to cost-benefit analyses, EPA notes that it cannot consider late comments on the final rule. The information submitted in the permit application will be used by the Director to establish appropriate requirements for entrainment, and may include a consideration of costs and benefits by the Director.