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

DEC 16 2010

THE ADMINISTRATOR

The Honorable Fred Upton
Rayburn House Office Building
Washington, DC 20515

Dear Congressman Upton:

Thank you for your December 3 letter about the Environmental Protection Agency's (EPA's) upcoming proposed rule for cooling water intake structures at existing electric power plants.

In 1995, a federal district court entered a consent decree in a case that had been brought against EPA two years earlier. The decree ordered EPA to establish rules for cooling water intake structures under Section 316(b) of the Clean Water Act. Nine years later – in 2004 – EPA issued a final rule that covered cooling water intake structures at existing electric power plants. Organizations challenged that rule in federal appeals court. The case went to the Supreme Court, which issued its decision in 2009. In order to settle the original lawsuit, EPA then agreed to re-propose a rule covering existing electric power plants in November 2010 and to take final action in July 2012.

I do not want EPA to spend another five years litigating over cooling water intake structures. Accordingly, I want to make doubly certain that EPA re-starts this rulemaking on a strong footing. In part for that reason, EPA last month sought and received consent to delay the deadline for a proposed rule by four months, to March 14, 2011. By the time the agency takes final action in July 2012, industry will have been waiting nearly twenty years for the regulatory certainty that facilitates sound investment decisions. The public will have been waiting just as long for reassurance that the aquatic environment is being protected. I do not want to delay any longer.

Section 316(b) provides that EPA's rule must "require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." The main environmental impact of cooling water intake structures is that they kill aquatic organisms by crushing them against screens or sucking them into equipment.

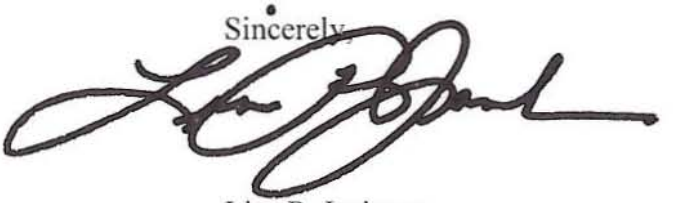
Various technologies – from special screens to variable pumps to "closed-cycle" cooling – can minimize the killing of aquatic organisms at power plants. Closed-cycle cooling is one of the best at protecting aquatic life. But that technology may not be available at every plant. For

example, as you note in your letter, some power plant sites may not even have space for the necessary equipment.

Consequently, I do not favor a one-size-fits-all federal mandate. The proposal that EPA issues next March will reflect a common-sense approach that reasonably accommodates site-specific circumstances while keeping faith with the need to minimize adverse environmental impact. Then EPA will invite all members of the public to offer suggestions for improving the proposal. The agency will consider those suggestions carefully before taking final action.

Thank you again for your letter. If you have further questions, please feel free to contact me or to have your staff call Cheryl Mackay in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,



Lisa P. Jackson