

**Environmental Protection Agency**

**§ 125.85**

**§ 125.84 As an owner or operator of a new facility, what must I do to comply with this subpart?**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) It is determined by the Director, based on information submitted by any fishery management agency(ies) or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(1), (2), and (3) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) \* \* \*

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the Director and the Director determines that the proposed facility, after meeting the technology-based performance requirements in paragraphs (b)(1), (2), and (3) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or these species of concern;

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the Director that pass through the hydraulic zone of influence of the cooling water intake structure; or

(iii) It is determined by the Director, based on information submitted by any fishery management agency(ies) or other relevant information, that the proposed facility, after meeting the technology-based performance requirements in paragraphs (c)(1) and (2) of this section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

\* \* \* \* \*

(d) \* \* \*

(1) You must demonstrate to the Director that the technologies employed will reduce

the level of adverse environmental impact from your cooling water intake structures to a comparable level to that which you would achieve were you to implement the requirements of paragraphs (b)(1) and (2) of this section. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those which would result if you were to implement the requirements of paragraphs (b)(1) and (2) of this section.

This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the Director identifies as species of concern. In identifying such species, the Director may consider information provided by any fishery management agency(ies) along with data and information from other sources.

\* \* \* \* \*

**§ 125.85 May alternative requirements be authorized?**

(a) Any interested person may request that alternative requirements less stringent than those specified in § 125.84(a) through (e) be imposed in the permit. The Director may establish alternative requirements less stringent than the requirements of § 125.84(a) through (e) only if:

(1) There is an applicable requirement under § 125.84(a) through (e);

(2) The Director determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources not addressed under § 125.84(d)(1)(i), or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources not addressed under § 125.84(d)(1)(i), or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act

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and any applicable requirement of state law.

(b) The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

EFFECTIVE DATE NOTE: At 68 FR 36755, June 19, 2003, §125.85 was amended by revising paragraphs (a)(2) and (3), effective July 21, 2003. For the convenience of the user, the revised text is set forth as follows:

§ 125.85 May alternative requirements be authorized?

(a) \* \* \*

(2) The Director determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to the costs EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

\* \* \* \* \*

§ 125.86 As an owner or operator of a new facility, what must I collect and submit when I apply for my new or reissued NPDES permit?

(a)(1) As an owner or operator of a new facility, you must submit to the Director a statement that you intend to comply with either:

(i) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in §125.84(b);

(ii) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in §125.84(c);

(iii) The requirements for Track II in §125.84 (d).

(2) You must also submit the application information required by 40 CFR 122.21(r) and the information required in either paragraph (b) of this section for Track I or paragraph (c) of this section for Track II when you apply for a new or reissued NPDES permit in accordance with 40 CFR 122.21.

(b) *Track I application requirements.* To demonstrate compliance with Track I requirements in §125.84(b) or (c), you must collect and submit to the Director the information in paragraphs (b)(1) through (4) of this section.

(1) *Flow reduction information.* If you must comply with the flow reduction requirements in §125.84(b)(1), you must submit the following information to the Director to demonstrate that you have reduced your flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(i) A narrative description of your system that has been designed to reduce your intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that your make-up and blowdown flows have been minimized; and

(ii) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, you must provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

(2) *Velocity information.* You must submit the following information to the Director to demonstrate that you are complying with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure as required in §125.84(b)(2) and (c)(1):

(i) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(ii) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgement using available hydrological data) and maximum head loss across the screens or other device.

(3) *Source waterbody flow information.* You must submit to the Director the following information to demonstrate that your cooling water intake structure meets the flow requirements in §125.84(b)(3) and (c)(2):