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Fed rule on plant cooling targeted

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Suit: EPA practice that lets power sites kill fish is illegal

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Six states and a coalition of environmental groups filed court challenges yesterday against a new federal rule that would allow hundreds of major power plants - including Indian Point in Westchester and two in Rockland County - to continue using river and lake water to cool their generators, a practice that kills billions of fish annually.

The rule adopted July 9 by the Environmental Protection Agency would allow 550 plants to continue using their "**once-through**" **cooling** systems as long as they used screens to block most fish from being sucked into the plants and agree to restock the affected waterways.

The EPA acknowledged in its regulation that the most environmentally effective system is "closed cycle" **cooling**, which uses **cooling** towers to recycle the water used in the power-generating process rather than continuously drawing in fresh water. The towers function as huge industrial radiators and are 90 percent to 95 percent effective in keeping fish out of the system.

But the EPA held that the cost of retrofitting closed-cycle **cooling** systems onto existing power plants would be unjustifiably high. Therefore, the agency offered the alternative-restoration program, even though the U.S. Clean Water Act requires plants to use the "best technology available."

"**Once** again, the EPA has put the demands of power-plant operators ahead of what is best for our environment," New York Attorney General Eliot Spitzer said yesterday. "These rules violate the Clean Water Act and, if left unchallenged, will do serious harm to the aquatic environment."

The attorneys general of New York, New Jersey, Connecticut, Delaware and Massachusetts joined a motion filed by Rhode Island in the U.S. Court of Appeals for the 1st Circuit in Boston challenging the EPA rule's legality. In addition to claiming the rule violates the Clean Water Act, they contend the EPA does not have the authority to allow power plants to continue using the **once-through cooling** system.

The states also filed a motion with the EPA in Washington, asking the agency to delay implementation of the regulation until the court case is decided. EPA officials did not return calls for comment. The new rule takes effect Sept. 7, unless it is blocked by the court.

Larry Gottlieb, a spokesman for Entergy Nuclear Northeast, which owns Indian

Point, said retrofitting closed cycle systems "would be prohibitively expensive."
"We feel we made a very strong case that the **cooling** towers are unnecessary and would have a significant impact on the environment," Gottlieb said.
Entergy has said that if it were forced to install a closed-cycle system, it would have to build two towers 168 feet high and 540 feet wide.
"You can't put two stadium-sized towers on the Hudson River and not impact the river," Gottlieb said.

Alex Matthiessen, director of the environmental group Riverkeeper, said if the EPA rule is allowed to stand, "the losers are the fish in our nation's waterways and the people who rely on an abundant fishery and enjoy our waterways for recreational and other purposes."

Riverkeeper, the Natural Resources Defense Council, Scenic Hudson and 12 other environmental groups from across the nation filed their petition in New York City with the U.S. Court of Appeals for the 2nd Circuit.

Five months ago, the 2nd Circuit threw out an EPA rule that would have allowed new power plants to avoid closed cycle **cooling** if they adopted remediation measures and used screens to minimize the amount of fish sucked into their systems. The court held that the Clean Water Act did not allow for remediation.

Riverkeeper attorney Reed Super said the appeals court "was very clear that the Clean Water Act requires the use of best technology, not after-the-fact attempts at mitigation."

The new regulations apply to existing plants that use more than 50 million gallons of water a day. Those plants include five in the Lower Hudson River Valley: Indian Point in Buchanan, the Bowline Point Steam Generating Station in West Haverstraw, the Lovett Generating Station in Tomkins Cove, and the Danskammer and Roseton Generating Stations in Newburgh. Those five use a total of about 5 billion gallons of water daily.

A study last year by the New York Department of Environmental Conservation on how Indian Point, Roseton and Bowline affected five of the more than 100 species of fish in the Hudson found that the plants sucked more than 2 billion of the studied fish into the plants and that more than 1.45 billion died.

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