

**SANTA MONICA  
BAYKEEPER**



October 18, 2005

Mr. Jonathan Bishop  
Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

**Re: Violations of NPDES No. CA0001147 (El Segundo Power, LLC)**

Dear Mr. Bishop:

As representatives of our organizations discussed with your staff on separate occasions earlier this year, Heal the Bay and Santa Monica Baykeeper believe that El Segundo Power, LLC (ESP) is in violation of the NPDES permit referenced above. The permit authorizes the power plant to withdraw and discharge specified volumes of ocean water via two intake/outfall structures for the purposes of cooling its generating units. The permit also regulates the temperature of cooling water discharges and authorizes a very limited amount of other discharges.

The current NPDES permit for ESP came into force in 2000 and expired earlier this year; the plant continues to operate under the old permit until a new one is in place. Late last year and earlier this year, while processing ESP's application for a renewed NPDES permit, your staff closely examined the plant's historical use of cooling water through its two cooling water intake structures. The two structures service the four generating units currently onsite. The claims in this letter are based on data solicited by your staff and are attached to this letter, along with related correspondence and pertinent parts of the NPDES permit.

***Violations at Intake 001***

Intake 001 services generating Units 1 and 2. From the date when the current permit began in 2000 until the end of 2002, these generating units appear to have operated typically. However, data provided by the project owner to the Regional Board indicate that the generating units routinely withdrew 400,000 more gallons per day than permitted. We urge you to fine the project owner for each day the plant withdrew more water than permitted.

In December 2002, the air permits for Units 1 and 2 lapsed and ESP did not seek renewal. Since that time, ESP has not been able to legally generate electricity from those units. While one might have expected water usage at Units 1 and 2 to be extremely modest since the air permits

lapsed,<sup>1</sup> the plant has nevertheless made significant withdrawals through Intake 001 for nearly three years now. Mysteriously, the plant's data indicate that the generating units appear to be using even *more* water since the air permits lapsed than when the units were fully operational. We urge Regional Board staff to fully investigate this discrepancy. On November 22, 2004, your staff inquired about the water usage. ESP replied on January 13, 2005. Viewing this reply as insufficient, your staff inquired again in February 2005. The second reply was also inadequate, nor was it a legally viable justification for ESP's use of billions of gallons of California ocean water at the defunct generating units.

As your agency is well aware, NPDES permits give a permittee the right to use water or discharge to water *for certain specified purposes*. NPDES permits do not afford a permittee the right to use water, or discharge to water, in such a manner that is outside the terms of the permit. In other words, the permit does not license the permittee to use a given amount of water however he or she would like. ESP's NPDES permit (No. CA0001147) allows for the use of 207.00 million gallons of ocean water per day for "once-through cooling" through Intake 001 serving Units 1 and 2 (see p. 3 of permit). Outside of the procedures outlined in the NPDES regulations, the Regional Board does not have power to unilaterally change these terms.

The plant's second attempt at justifying these withdrawals, in their letter dated May 12, 2005, deserves close examination. ESP attributes the use of billions of gallons of water beginning in January 2003 to the "primary function" of discharging sanitary sewer streams. The current permit allows the discharge of only 1000 gallons for this purpose. ESP then advances other similarly questionable uses for the billions of gallons of seawater, including for use cooling service air compressors and heat exchangers (although it is far from clear that those devices even operate when the generating units are no longer operational, nor it is evident that the devices would need such vast quantities of water.) Moreover, the plant attributes its water usage to these same needs (air compressors, heat exchangers) at Units 3 & 4, even though the permit specifically allocates water usage separately for Units 3 & 4. ESP further claims that the water is needed to properly discharge storm water.

ESP's letter also discloses a "cross over" between the two sets of generating units that we have not found in our review of historic documents submitted to the Regional Board nor in documents submitted to the California Energy Commission in conjunction with a recent licensing proceeding. The letter states: "The cooling water utilized during these peak periods is drawn through the cross over between Units 1 & 2 and Units 3 & 4. This cross over is considered a backup and supplement to the Units 3& 4 cooling system...." Perhaps because this "cross over" has never been disclosed to your agency, or maybe in spite of it, the current NPDES permit considers the two cooling systems to be totally separate and therefore specifies separate allocations of cooling water for each intake system. Use of cooling water from Intake 001 to service Units 3 & 4 is clearly proscribed. This "cross over" also could cast a different light on data reported regarding Intake 002 (discussed below).

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<sup>1</sup> Our understanding is that 50 million gallons of water per month for maintenance purposes would be more than adequate. The plant has been using roughly *30 times* this amount. Regardless, the terms of the current NPDES permit do not allow 50 million gallons per month.

ESP's final justification for the use of billions of gallons of ocean water eclipses even the previous questionable justifications. ESP suggests that the recent licensing proceeding that ended in February 2005 relating to the future construction of generating units (still several years off) has some bearing on the use of water at ESP from 2000 to the present. The terms of the CEC license only apply to the new generating units upon commercial operation (again, several years off at best). The terms of the CEC license do not, and cannot, interfere with ESP's current NPDES permit, nor can the CEC license of 2005 possibly justify use of water in 2000 to the present. Something is clearly wrong here, and the case merits a full investigation.

### ***Violations at Intake 002***

Intake 002 services generating Units 3 and 4. Perhaps not surprisingly, according to data from the plant, ESP has routinely withdrawn 600,000 more gallons per day than permitted for days on end in the 2000 to 2004 period.<sup>2</sup> However, according to ESP's explanation of water use in its May 12, 2005 letter, the plant has been using additional water in servicing Units 3 and 4 from Intake 001. Therefore, data reported for Intake 002 may not accurately reflect usage of water for Units 3 and 4. Thus, there may be further water usage violations that are not apparent. Additionally, if this is the case, then ESP would have committed significant reporting violations. As with Intake 001, we urge Regional Board staff to undertake a full investigation here.

We believe that the unpermitted use of California's ocean water merits a strong response from your agency. We urge you and the Board to act accordingly. Please contact us if you have any questions regarding our comments.

Sincerely,

Tracy J. Egoscue, Esq.  
Executive Director  
Santa Monica Baykeeper

Heather Hoecherl, Esq.  
Director of Science and Policy  
Heal the Bay

cc: Deb Smith, Regional Board (via email)  
Paula Rasmussen, Regional Board (via email)  
Blythe Ponak-Bacharowski, Regional Board (via email)  
David Hung, Regional Board (via email)  
Tony Rizk, Regional Board (via email)  
Tom Luster, California Coastal Commission (via email)

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<sup>2</sup> Because data from this year were not available at the time of this writing, we urge you to review these more recent data as well.