Heal the Bay

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August 21, 2015

Mr. Samuel Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Via email: Samuel.Unger@waterboards.ca.gov, Deborah.Smith@waterboards.ca.gov>, Renee.Purdy@waterboards.ca.gov, Thomas.siebels@waterboards.ca.gov

Re: Comments on Tentative Time Schedule Order Requiring AES Alamitos, LLC to Comply with Requirements Prescribed in Order Number R4-2015-XXXX (NPDES Permit No. CA0001139)

Dear Mr. Unger,

On behalf of Heal the Bay, a non-profit environmental organization dedicated to protecting and restoring our rivers, creeks and coastal waters, we appreciate the opportunity to submit the following comments on the Tentative Time Schedule Order (TSO) No. R4-2015-YYYY (hereinafter "Tentative AES TSO) requiring AES Alamitos, LLC (hereinafter "the Facility") to comply with requirements prescribed in Order Number R4-2015-XXXX, NPDES Permit No. CA0001139.

Heal the Bay was one of many stakeholders, including Coastal Commission, Energy Commission, Public Utilities Commission, as well as other NGOs, that worked together to craft the requirements of the State Water Resources Control Board Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, also referred to as the Once-Through Cooling (OTC) Policy. We also served on the Expert Review Panel for the State OTC policy. It is critical, for the health of California's coastal ecosystems, that the timeline in the Policy be followed. With the diversity and expertise of the stakeholders involved in the OTC Policy development, there should be no question that the timeline in the Policy is realistic. Given this, we are pleased to see that the Facility has elected to move to dry cooling through the preferred Track 1 of the Policy by October 31, 2020, which is consistent with the OTC Policy compliance schedule.

It is unfortunate however that the proposed TSO is allowing water quality violations to continue throughout the remaining duration of OTC operations. Just as Permittees should move to meeting the requirements of the OTC Policy as quickly as possible, they should also be required to meet receiving water limitations as quickly as possible, and certainly in cases where they have already had years to do so. These discharges threaten the health of the San Gabriel River Estuary, a critical and precious habitat type that has been nearly eradicated from Southern California. Therefore, Heal the Bay does not support the proposed TSO and asks that the Regional Board deny the TSO application or modify it as requested below.

At the heart of this TSO application is a change in designation of the receiving water that the Facility discharges into from ocean waters to estuarine waters. This change happened over 14 years ago however, in a memo from the State Water Board. This change was then further supported by a letter dated January 21, 2003 from the Regional Board to the Facility. The result of this change in designation was modifications to a number of effluent limitations to which the Facility is subject, specifically the limits for temperature, total residual chlorine, pH, copper, nickel, ammonia, and bis(2-ethylhexyl)phthalate.

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Despite being aware of the change in effluent limitations for over 14 years, it appears that the Facility did nothing to meet them, and instead applied for a TSO in May of this year to establish interim limits for the aforementioned seven constituents. Based on a review of historical monitoring data, Regional Board staff determined that the Facility was in compliance with the new limitations for pH, nickel, ammonia, and bis(2-ethylhexyl)phthalate, and proposed that the TSO only be granted for the remaining three constituents: copper, total residual chlorine, and temperature.

We agree with the staff's determination that a TSO is inappropriate for the constituents whose limitations the Facility is almost always in compliance with and we commend them for this decision, however, we believe that granting a TSO for total residual chlorine and temperature is inappropriate as well.[1] Although these new limits were only recently incorporated into a NPDES Permit, the Facility has known about them for over 14 years which should have been more than ample time to treat their effluent to meet the new limits.

Based on the time that has passed, we request that the Board reject the requests for TSOs for chlorine and temperature. At a minimum, the interim limits for temperature should be lowered to 92 degrees F and defined as a single year-round limit, consistent with both the new and old final limits, rather than a limit that varies seasonally. It should be noted that receiving water temperatures on average vary by less than 5 degrees in the summer versus the winter, whereas the tentative TSO would allow variations of over 10 degrees. The previous effluent limit for temperature provided for a single number year-round of 105 degrees F, and 92 degrees F represents an improvement towards meeting the thermal plan requirement of 86 degrees F, while providing the Facility some flexibility within the TSO to work towards that goal over the next five years.

In conclusion, for the reasons discussed above, the Tentative TSO is unjustified and we ask the Regional Board to reject it. At a minimum, the interim limits for temperature in the Tentative TSO should be changed to a year-round goal of 92 degrees F. We understand that TSOs can be a valuable tool for the shared goal of attainment of receiving water limitations; however, as a matter of policy, we believe that these should be used sparingly and in cases where it is clear that a good faith effort has been made by the Permittee to meet the limitations. This is not the case with the Tentative AES TSO.

Sincerely,

Rita Kampalath, Ph.D., P.E.
Science and Policy Director
Heal the Bay

Sarah Sikich, MESM
Vice President
Heal the Bay

[1] Though we would like to see copper limitations met as soon as possible, we acknowledge that the timeline in the tentative TSO is consistent with the schedule specified in the San Gabriel River metals TMDL, which applies to dry weather copper discharges. Since dischargers are typically allowed longer periods to comply with wet weather limits than dry weather limits, the proposed timeline seems appropriate for wet weather copper discharges as well.