

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**SUPPLEMENTAL SHEET FOR REGULAR MEETING OF AUGUST 31, 2009**

Prepared on August 28, 2009

**ITEM NUMBER: 14**

**SUBJECT: DYNEGY MOSS LANDING POWER PLANT, MONTEREY COUNTY  
RENEW WASTE DISCHARGE REQUIREMENTS NO. R3-2009-0049**

**SUMMARY:**

The Monterey Coastkeeper submitted comments opposing Central Coast Regional Water Quality Control Board (Water Board) renewal of Waste Discharge Requirements Order (WDR) No. R3-2009-0049, which extends Dynegy's Toxic Pits Cleanup Act (TPCA) exemptions for the Moss Landing Power Plant (MLPP) surface impoundments for another five years. Citing issues with the public notice for this item and geochemical parameter inconsistencies in groundwater monitoring results, the Monterey Coastkeeper recommends the Water Board renew Dynegy's permit for one year to allow more thorough public consideration of the permit and allow Water Board staff to reconsider the groundwater monitoring results and methods used to establish concentration limits. This staff report responds to the Monterey Coastkeeper's comment letter dated August 26, 2009 (Attachment 1).

**DISCUSSION:**

Monterey Coastkeeper had two significant comments on the proposed WDR No. R3-2009-0049 that are addressed below.

**Comments Regarding Public Noticing Deficiencies:** Monterey Coastkeeper asserts that it is inappropriate for the Water Board to approve a five-year permit before the public has the opportunity to comment.

**Water Board Staff Response:** Water Board staff does not agree that the Water Board should postpone action on this item. Water Board staff respectfully disagrees that the public has not had the opportunity to comment on this pending action.

The applicable law and regulations require the Water Board to public notice in a newspaper, to provide notice to persons directly affected by the proceeding, and to provide notice to persons who request notice. The Water Board must also provide at least 30 days for public comment on the adoption of WDRs. The Water Board complied with these requirements. On June 17, 2009, the *Salinas Californian* newspaper (serving Moss Landing and vicinity) published notice (Attachment 2) of the planned September 11, 2009 Water Board hearing and consideration of this item. That notice solicited public comment and notified the public that relevant documents (including monitoring data) were available at the Water Board office in San Luis Obispo and on the State Water Resources Control Board's Geotracker internet website. The June 17th notice also provided that interested persons had until July 31, 2009 to submit comments on this matter. The Water Board staff did not send the notice to individuals because they had received no requests for notice and due to historic lack of interest in this particular aspect of MLPP's facility. Both the Department of Toxic Substances Control (DTSC) and the Water Board have renewed

Dynegy's TPCA exemptions since 1988, and DTSC had recently renewed Dynegy's permit until April 2016. Since neither the Water Board nor Dynegy staff received calls regarding the June 2009 newspaper notice, the Water Board staff even thought that the item may be appropriate for the consent calendar due to lack of interest.

Subsequently, the Governor mandated that state employees be furloughed on specified Fridays of each month and required the office to be closed on September 11, 2009, the noticed date of the meeting. The Executive Officer and Water Board Chair advanced the meeting date to August 31, 2009 and cancelled the September 11, 2009 meeting.

On July 31, 2009, Water Board staff posted a revised public notice (Attachment 3) on the Water Board's website notifying the public that the meeting date changed to August 31, 2009 and, although there had already been an opportunity for public comment for 45 days, this revised notice requested that public comments be submitted by August 14, 2009 but allowed comments to be submitted until noon on August 31, 2009. The Public Notice, Staff Report, WDR No. R3-2009-0049, and MRP R3-2009-0049, were also posted on both the Water Board and Geotracker websites.

On July 31, 2009 and August 3, 2009, Water Board staff mailed the revised public notices for all the items for the meeting to potentially interested persons, including Monterey Coastkeeper. Water Board staff also called many of the potentially interested persons for this item to alert them that 1) the September meeting had been rescheduled to August 31, 2) this item would be considered at the August 31 meeting, and 3) requested public comments be submitted as soon as possible.

Monterey Coastkeeper stated in Attachment 1 that the staff report posted on the website noted the August 31, 2009 deadline for public comments but did not specify that the public comment period closed at noon on that day. The Water Board staff intended the staff report to summarize the issue(s) the Water Board would be considering at the hearing, not to repeat the public notice. Water Board staff relies on the public notices (as described above) to solicit comments. Water Board staff commends the Monterey Coastkeeper's agreement to submit its comments prior to the day of the Board meeting to allow the rescheduled hearing to go forward, and to provide all parties with the opportunity to evaluate and respond to those comments. Given that the original public notice was published June 17, 2009, which is two and a half months before the August 31, 2009 meeting and additional opportunity for public notice was provided beginning July 31, and Water Board staff contacted many of the potentially interested parties to inquire if any comments were forthcoming from them, the Water Board staff believes that adequate notice had been provided.

This response to comments does not address Monterey Coastkeeper's comments on other matters not currently before the Board in this meeting, but staff intends to follow through with Monterey Coastkeeper on those concerns.

**Comments Regarding Groundwater Parameters:** Monterey Coastkeeper reviewed some groundwater monitoring data in the files of the Water Board. Its comments note the variability of groundwater constituent concentrations and revisions made to their statistical analyses, and suggests that such variability could be from impoundment release, and recommends Water Board staff more carefully consider such monitoring methodology prior to approval of the WDRs for a 5-year term.

**Water Board Staff Response:** The Water Board staff disagrees that the data indicate that there is a release of hazardous constituents from the impoundments or that more review is needed prior to adoption of the WDRs. TPCA sets forth the requirements that apply to the impoundments that are the subject of the WDRs. TPCA generally requires closure of certain surface impoundments (typically unlined or leaking) that may contain hazardous waste. TPCA allows the Regional Board to grant an exemption from the closure requirement for renewable five-year terms if, among other findings, the Water Board finds that no hazardous waste constituents have migrated from the surface impoundments into the vadose zone or the waters of the state in concentrations that cause pollution.

Both DTSC and the Water Board staff regularly review the groundwater data and Water Board staff has specifically reviewed this data and other information for purposes of renewal of the exemption proposed for today's board meeting. Both DTSC and Water Board staff attribute the groundwater variability noted by Monterey Coastkeeper to natural variation in groundwater chemistry, not to any releases from the impoundment. Other information also supports this conclusion. The impoundments comply with requirements for Class I surface impoundments, including the requirement for a leak detection, collection, and removal system (LDCRS) under the impoundment. The intermediate LDCRS would indicate if there is a release from the impoundment but there is a lack of leachate in the LDCRS. There is also often a lack of substantial wastewater in the impoundments themselves due to the way they are operated (e.g., batch discharges). Further, chemistry of the wastewater has not been found to closely match that of groundwater, suggesting that no release has occurred.

Based on Water Board staff's professional experience, monitoring changes in groundwater chemistry is only one of several methods for detecting potential release(s) from the impoundments. Other powerful indicators we consider in conjunction with groundwater data are: (a) visual presence or absence of liquids in impoundments; (b) chemistry of wastewater in impoundments (if present); (c) presence or absence of liquid in LDCRS underlying the impoundments; and others. As noted, in this case, both Water Board and DTSC staff have evaluated the impoundments using multiple methods for detecting releases (as identified above) and have found no evidence that there are any leaks from the impoundments.

The Monterey Coastkeeper is correct that groundwater parameters will vary with time and location. However, Water Board staff concludes that even though there is variation, constituent concentrations are never extremely high. The Monterey Coastkeeper also references innate difficulties in utilizing groundwater data for naturally occurring substances to determine whether a release has occurred. Statistical methodologies at subject impoundments are often refined to preclude false positives and false negatives. That is, methods are adjusted to increase the reliability of detecting an impoundment release rather than merely indicating natural variations. The monitoring methodologies at this facility have been developed to be reliable in detecting impoundment releases, and effectively distinguishing these from natural variations in groundwater chemistry.

It is important to note that this facility is highly regulated. DTSC is the lead regulatory agency overseeing all of Dynegy's (or PG&E's) waste clean up activities at MLPP. In addition, DTSC administers MLPP Resource Conservation and Recovery Act (RCRA) permit and reviews Dynegy's compliance with its' RCRA permit. WDR No. R3-2009-0049 and MRP No. R3-2009-0049 duplicate and defer by law to DTSC's more detailed and complete hazardous waste permit requirements. In fact, MRP No. R3-2009-0049 (page one, section A.3) states Dynegy must monitor groundwater as required by DTSC's most recent hazardous waste permit. DTSC expends considerable staff resources on reviewing, evaluating and establishing groundwater

monitoring requirements and on reviewing and evaluating ongoing groundwater monitoring data and reports, in addition to the staff resources we use to ensure no releases occur from this facility. In the interest of efficient resource allocation, Water Board staff generally do not duplicate DTSC's level of effort. Water Board and DTSC staff do discuss Dynegy's groundwater data and monitoring requirements, as needed. Both DTSC and Water Board staff conclude that no release has occurred from the impoundments at the MLPP facility.

**SUMMARY:**

Water Board staff agree the MLPP and the subject impoundments are in a very sensitive environmental setting. However, Water Board staff do not believe the comments justify a delay in adopting the five year renewal of TPCA exemptions and WDR R3-2009-0049. The available information supports the finding in the WDRs that there is no release from the impoundment to waters of the state and the WDRs do not allow any change in operation of the impoundments. The Monterey Coastkeeper's suggestion of extending the current TPCA exemptions and WDR R3-2009-0049 for one year achieves the same temporary effect as a five-year renewal, but requires a repeat of the entire five-year renewal process, likely with no change in eventual outcome.

**RECOMMENDATION**

Adopt Waste Discharge Requirements Order No. R3-2009-0049, which includes Monitoring and Reporting Program No. R3-2009-0049.

**ATTACHMENTS**

1. The Monterey Coastkeeper's letter dated August 26, 2009
2. *Salinas Californian* Newspaper Public Notice dated June 17, 2009
3. Water Board's Notice of Public Hearing dated July 31, 2009