

**RESPONSE TO COMMENTS
AES REDONDO BEACH, LLC
REDONDO BEACH GENERATING STATION
TENTATIVE TIME SCHEDULE ORDER NO. R4-2021-YYYY
NPDES PERMIT NO. CA0001201**

Comment Letter dated November 19, 2021, from Heal the Bay

No.	Comment	Response	Action Taken
1.	<p>The Regional Board should remove the interim water quality limits from this TSO and, instead, hold the Permittee accountable to the applicable final water quality limits.</p> <p>Heal the Bay opposed the two-year extension that was approved by the State Water Resources Control Board (State Board) in October of 2021, which allows for continued operation of OTC power generation at the Redondo Beach Generating Station (Facility) though 12/31/2023, a total of 3 years beyond the original OTC Policy deadline of 12/31/2020. We urged the State Board to reject the proposed additional two-year extension for the Facility, or, at a minimum, require the Permittee to assess potential negative impacts of the additional two years of OTC operation. We also urged the State Board to require additional mitigation fees for OTC operations continued beyond the original OTC Policy deadline. These recommendations are discussed in further detail in the Heal the Bay comment letter to the State Board dated 7/15/2021, included with this letter in Attachment 1.</p>	<p>The Los Angeles Water Board has determined the interim limitations in the tentative TSO to be appropriate. The interim effluent limitations may not be removed from the Tentative TSO because they are required by the California Water Code (CWC). Pursuant to CWC § 13385, subd. (j)(3)(C)(iii) "If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both (I) Effluent limitations for the pollutant or pollutants of concern. (II) Actions and milestones leading to compliance with the effluent limitation." Thus, the tentative TSO includes interim effluent limitations for temperature, pH, copper, nickel and DDT. Additionally, the State Water Resources Control Board (State Water Board) is responsible for considering arguments against extending deadlines for operation of power plants covered under the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (OTC Policy), not the Los Angeles Water Board. Comments concerning the recommendations on the</p>	None necessary

Response to Comments
 Redondo Beach Generating Station

No.	Comment	Response	Action Taken
	<p>We understand that the extension approved by the State Board in October 2021 was in response to concerns about grid reliability, and it allows for continued OTC operation at the Facility through 12/31/2023, in spite of the negative impacts this continued operation has on the health of the receiving waters and the local community. However, this operational extension does not automatically allow for the continued discharge of contaminated effluent through a TSO with interim limits that are performance based, and not risk based.</p> <p>The Permittee has been aware of the reclassification of the receiving water (and therefore, the associated new final water quality limits) since 2001. Since that time, the Permittee has requested multiple time extensions, continued to discharge effluent with contaminants in exceedance of those limits, and taken no action to reduce the level of contamination in that effluent except to state that compliance would be met once operation ceased by 12/31/2020. However, the Permittee did not meet that deadline, and has now requested two additional time extensions, pushing that promise of compliance further and further away.</p> <p>We urge the Regional Board to remove the interim water quality limits from this TSO and, instead, hold the Permittee accountable to the applicable final limits, which are risk based and therefore more protective.</p>	<p>OTC Policy are best addressed to the State Water Board.</p>	

Response to Comments
Redondo Beach Generating Station

No.	Comment	Response	Action Taken
2.	<p>At a minimum, the Regional Board should consider using a Section 13308 TSO rather than a Section 13300 TSO.</p> <p>If the Regional Board decides to maintain the existing performance-based interim effluent limits for the remainder of the two-year operational extension period, the Board should consider using a 13308 TSO “that prescribes, in advance, a civil penalty if compliance is not achieved in accordance with the time schedule...” to hold the Permittee accountable for being out of compliance with water quality limits, and to provide regulatory pressure on the Permittee to meet their new deadline to cease OTC operation by 12/31/2023.</p>	<p>The Los Angeles Water Board has considered this comment and declines to make any changes. There are several reasons for this. First, CWC section 13308 allows a TSO with a penalty if compliance is not achieved in accordance with the time schedule if a “regional board determines there is a threatened or continuing violation of any cleanup or abatement order, cease and desist order, or any order issued under Section 13267 or 13383 [of the CWC].” None of these circumstances are present here. Rather, the TSO is issued because the Discharger cannot meet the effluent limitations in its NPDES Permit and, as explained in the TSO itself, the discharger has met the requirements in CWC 13385(j)(C)(II) and diligently complied with past TSOs. Accordingly, a TSO issued pursuant to CWC 13385(j) is warranted.</p> <p>Second, penalties are not warranted in this case, at this time. The Discharger chose to comply with the State Water Board’s OTC Policy by complying with Track 1, and it is ceasing operations completely by the deadlines set forth in the OTC Policy and the various amendments thereto. In accordance with this compliance track, and with prior TSOs, the Discharger has already shut down certain of its steam powered electric generating units. The remainder of the units are still functioning to meet the energy needs of the State. On October 19, 2021, the State Board adopted an amendment to the OTC Policy that allows continued operation of</p>	None necessary

Response to Comments
 Redondo Beach Generating Station

No.	Comment	Response	Action Taken
		<p>the remaining units (Units 5, 6, and 8) for two additional years, until December 31, 2023, in order to prevent disruption in the State’s electrical power supply. Together with the fact that the Discharger has made diligent progress in complying with the prior TSOs and the OTC Policy, and the plain language of CWC section 13308, these facts indicate that an automatic penalty such as that proscribed by CWC section 13308 is not appropriate in these particular circumstances.</p>	
<p>3.</p>	<p>The Permittee must assess potential negative impacts of the additional two years of OTC operation and discharge of contaminated effluent through an updated environmental impact assessment, and be responsible for the mitigation of any additional impacts identified.</p> <p>TSOs that are longer than one year must include annual interim requirements. However, this Tentative TSO includes only one deadline: to permanently retire all OTC operation at the Facility by 12/31/2023. OTC operation has already been allowed to continue at the Facility for an additional year beyond the original OTC Policy deadline of 12/31/2020, allowing for continued local community health impacts and degradation of California’s coastal waters with absolutely no additional penalties, or even updated impact assessment requirements. We therefore request that an additional interim requirement be added to the TSO requiring the Permittee to assess the environmental impacts of continued Facility</p>	<p>With regard to an environmental impact assessment, the staff report for the OTC Policy sets forth the appropriate CEQA/Supplemental Environmental Document (SED) analysis for the OTC operations of all power plants considered in the OTC Policy Amendment. Specifically, and pursuant to Water Code section 13389, the proposed action by the Los Angeles Water Board to adopt a TSO is exempt from the provisions of Chapter 3 CEQA (commencing with section 21100) of Division 13 of the Public Resources Code.</p> <p>With regard to annual interim requirements, the tentative TSO requires the Discharger to submit semiannual progress reports summarizing activities conducted and planned.</p>	<p>None necessary</p>

Response to Comments
 Redondo Beach Generating Station

No.	Comment	Response	Action Taken
	<p>operations during the two-year extension period, due by 12/31/2022. Further, the Permittee must be responsible for any necessary mitigation identified through this assessment process.</p>		
<p>4.</p>	<p>The Regional Board should use inclusive language wherever possible in official documents.</p> <p>Inclusive language avoids the use of certain words that may exclude particular groups of people and uses language that is inclusive of all groups. We urge the Regional Board to use inclusive language wherever possible, particularly in official documents. For example, we recommend the following non-gendered language addition to Page 8, Section 8, of the Tentative TSO.</p> <p>“The Executive Officer, or his/her/their delegee, is authorized to take appropriate enforcement action pursuant, but not limited to, Water Code sections 13350 and 13385.”</p>	<p>The Los Angeles Water Boards agrees and supports the use of inclusive language wherever possible. Therefore, the use of gender pronoun designations has been removed all together and the statement has been updated to state: “The Executive Officer, or the appointed delegee thereof, is authorized...”</p>	<p>Changes made in the revised tentative TSO.</p>

Comment Letter dated November 19, 2021, from Michael W. Webb, City Attorney of the City of Redondo Beach

No.	Comment	Response	Action Taken
1.	Background discussion	The comment letter provided a comprehensive background discussion prior to posing specific questions and recommendations. Los Angeles Water Board Staff considered the background discussion and determined that no formal response is required for that portion of the letter. Therefore, the background discussion is not included in this Response to Comments.	None necessary
2.	<p>As a preliminary matter, the City questions why issuance of the proposed TSO is necessary in order for the RBGS to address grid reliability, let alone why it must be approved on an expedited basis following the State Board’s extension of the OTC Policy. As noted in the draft TSO findings, AES’s waste discharge requirements/NPDES permit for the RBGS remains in effect indefinitely by operation of law.¹ Thus, the RBGS has the necessary permit authority to continue discharging contaminated OTC water. Even if this TSO is not approved, the RBGS can continue to operate.</p> <p>A TSO issued pursuant to Water Code Section 13300 is a <i>discretionary enforcement</i> measure reserved for circumstances when a discharger is violating or threatening to violate waste discharge requirements. The TSO must contain a time</p>	<p>On April 1, 2021, the Los Angeles Water Board received the application and the accompanying Report of Waste Discharge (ROWD) that is required under CCR Title 23, section 3843, for the Redondo Beach Generating Station. The Los Angeles Water Board subsequently determined that the application was complete and issued a letter dated April 29, 2021 that administratively extended Order R4-2016-0222-A01 pursuant to 40 CFR section 122.6 and 23 California Code of Regulations section 2235.4.</p> <p>In 2016 the Los Angeles Water Board considered monitoring data submitted by the Discharger and determined that a TSO was appropriate for this facility. As explained in Finding 15 of the tentative TSO, the justification for this determination came from Water Code section 13300, which states:</p> <p>“Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the</p>	None necessary

¹ Draft Tentative Order R4-2021-XXXX, finding 6, pg. 3 (citing 23 CCR § 2235.6).

Response to Comments
Redondo Beach Generating Station

	<p>schedule of specific actions to be taken by the discharger in order to regain compliance.</p>	<p>regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.”</p> <p>Following a public notice, comment period and hearing, the Los Angeles Water Board may extend the TSO for an additional period in accordance with the limits set forth in Water Code section 13385, subdivision (j)(3)(C)(ii)(II). Therefore, the compliance requirements contained in TSO R4-2020-0139 may be extended for another two years under this new TSO.</p> <p>The revised tentative TSO requires semiannual progress reports. The TSO also requires the permanent shutdown of Units 5, 6 and 8 by December 31, 2023. The permanent shutdown of these units will result in compliance with the requirements of Order R4-2016-0222-A01.</p>	
<p>3.</p>	<p>There is no evidence to justify the issuance of a TSO that further extends non-compliance with the RBGS NPDES permit’s final effluent limits. The proposed TSO for DDT, temperature, pH, copper, and nickel is merely a convenient extension to align the effluent limits with the OTC Policy’s final compliance deadline to December 31, 2023. This TSO is intended to assist the RBGS to continue operating with as few regulatory hurdles as possible. It is apparent that issuance of a TSO to the RBGS has become a</p>	<p>As stated in response to Comment 2 above, and in response to Comments 1 and 2 to Heal the Bay’s comments, the Los Angeles Water Board has determined a TSO to be appropriate for this facility. Under these conditions, the Los Angeles Water Board may extend the TSO for another two years.</p>	<p>None necessary</p>

Response to Comments
Redondo Beach Generating Station

	<p>routine annual exercise with no resulting improvement to water quality.</p>		
<p>4.</p>	<p>The only two justifications offered in the draft order for this TSO are to address grid reliability and new regulatory requirements. These are the same two flawed justifications relied upon to explain last year's TSO.</p> <p>Grid reliability is not a justification for a TSO. As noted above, a TSO should be issued to address violations of waste discharge requirements such that compliance measures are necessary to address those violations. There is no nexus between water quality and grid reliability. Even without this TSO, the RBGS can lawfully continue to operate in order to address grid reliability.</p> <p>Section 5 of the TSO states that the two-year OTC Policy extension is a "new regulatory requirement" with which the Discharger must comply. The City is left to ponder what new regulation has been imposed upon the RBGS? To the contrary, the OTC Policy amendment contains no new regulatory requirements. Instead, the OTC Policy extension <i>eliminates</i> an important compliance deadline, while maintaining the same interim control measures, so that the RBGS may continue operating through 2023. Conveniently aligning the TSO's time schedule with the new OTC Policy final compliance deadline (when the RBGS will shut down) is not a means of promoting permit compliance. It is an excuse for noncompliance.</p>	<p>Grid reliability issues were the justification for new OTC Policy compliance dates, but they are not the justification for the TSO. As stated in response to Comment 2 above, in 2016 the Los Angeles Water Board considered the Discharger's decision to comply with the OTC Policy through Track 1, which entails ceasing operations completely by the deadlines in the OTC Policy. The Board also considered monitoring data submitted by the Discharger and determined that a TSO was appropriate for this facility. The Los Angeles Water Board may extend the TSO in accordance with Water Code section 13385.</p> <p>The new compliance dates established in the October 19, 2021 OTC Policy amendment are new regulatory requirements with which the Discharger must comply. Therefore, the compliance dates are incorporated into the tentative TSO.</p>	<p>None necessary</p>

Response to Comments
Redondo Beach Generating Station

<p>5.</p>	<p>As a matter of law, the Regional Board must impose upon the discharger “a detailed time schedule of specific actions” to correct permit violations.² Contrary to the TSO’s draft findings, AES will not implement control measures to bring the RBGS into compliance with final effluent limits for DDT, temperature, pH, copper, and nickel. Instead, AES will wait out the clock until the OTC Policy effectively requires the RBGS to shut down. As a result, the proposed TSO will excuse permit violations while allowing the RBGS to operate without the risk of mandatory minimum penalties or other Regional Board enforcement actions.</p>	<p>The tentative TSO contains a detailed time schedule of specific actions that state that the Discharger will achieve compliance with the effluent limitations contained in Order R4-2016-0222-A01 by permanently shutting down Units 5, 6 and 8 by December 31, 2023.</p> <p>The TSO does provide exemptions from mandatory minimum penalties (MMPs) for violations of permit limitations for pollutants that have interim limitations established in the TSO. However, the Discharger is still subject to MMPs for violations of permit limitations for pollutants not covered under the TSO. The Discharger is also subject to MMPs for violations of the interim limitations established in the TSO. In fact, the Discharger was assessed MMPs in the amount of \$36,000 on July 25, 2018 and \$30,000 on October 17, 2019 for violations of these limitations. Finally, the TSO does not prevent third party citizen suits for permit enforcement, nor does it bar the Los Angeles Water Board from taking any appropriate actions to enforce applicable receiving water limits.</p>	<p>None necessary</p>
<p>6.</p>	<p>Finally, the Regional Board should only issue a TSO under the provisions of Water Code Section 13300 if “the discharger has made a good faith effort but because of circumstances beyond its control, compliance will not be met by the statutory date.”³ The draft findings provide no evidence of any efforts by AES to achieve the permit’s final effluent limits, other than Unit 7 has</p>	<p>To date, the only specific task required for the Discharger was the permanent shutdown of Unit 7, which was completed according to schedule on September 30, 2019. The shutting down of Unit 7 was a significant achievement in that it decreased the discharge volume for Discharge Point 002 from 615 million gallons per day (MGD) to 337 MGD. As a result, the discharges to King Harbor are now in compliance</p>	<p>None necessary</p>

² Water Code § 13300.

³ *In the Matter of the Review of Actions of the California Regional Water Quality Control Boards*, Cal. St.Wat. Res. Bd. Order No. WQ 78-5 (1978).

Response to Comments
 Redondo Beach Generating Station

	<p>been permanently shut down. Instead, Units 5, 6, and 8 will continue to operate in the same manner that has repeatedly caused effluent limit exceedances.</p> <p>The attached enforcement report from the CIWQS system demonstrates that violations continue to occur at the RBGS, despite the closure of Unit 7.</p> <p>For these reasons, the City believes that the proposed TSO should be denied and a more rigorous enforcement protocol should be imposed upon the RBGS if it is allowed to remain in operation through December 31, 2023. There is no reason to rush through a TSO that will permit continued water quality impairments.</p>	<p>with the mass limitations contained in Order R4-2016-0222-A01.</p> <p>With regard to the effluent violations, as discussed in the response to Comment 5 above, the Discharger was assessed MMPs for violations of permit limitations not covered by the TSO as well as some interim limitations in the TSO.</p>	
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Comment Letter dated November 19, 2021, from AES Redondo Beach LLC (Discharger)

No.	Comment	Response	Action Taken
1.	<p>Finding 5 has the following language:</p> <p>In response to the CPUC decisions, on March 26, 2021, the SACCWIS adopted the Final 2021 Report of the SACCWIS, recommending the State Water Board consider extending the final OTC compliance date of Redondo Beach Units 5, 6, and 8 for an additional two years through December 31, 2023. The SACCWIS recommendation was based projected systemwide shortfalls identified in D.21-02-028 and D.21-03-056.</p> <p>The SACCWIS report (SACCWIS Report, p.30) did not equivocate and instead recommended the following:</p> <p>At this time, the SACCWIS recommends an OTC Policy compliance date extension for Redondo Beach for two years, through December 31, 2023, to address system-wide grid reliability needs as described below.</p> <p>Therefore, a more accurate finding would be the following:</p> <p>In response to the CPUC decisions, on March 26, 2021, the SACCWIS adopted the Final 2021 Report of the SACCWIS, recommending the State Water Board consider extending extend the final OTC compliance date of Redondo Beach Units 5, 6, and 8 for an additional two years</p>	<p>The suggested edits are incorporated into the revised tentative TSO as requested.</p>	<p>Changes made in the revised tentative permit.</p>

Response to Comments
Redondo Beach Generating Station

	through December 31, 2023. The SACCWIS recommendation was based on projected system-wide shortfalls identified in D.21-02-028 and D.21-03-056.		
--	------------------------------------------------------------------------------------------------------------------------------------------------	--	--