



California Regional Water Quality Control Board San Diego Region



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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

July 20, 2009

Daniel P. Thompson
Vice President
Dynergy South Bay, LLC
990 Bay Boulevard Agency / Company
Chula Vista, CA 91911

In reply refer to:
257829: BKelley
WDID: 9 000000091

Dear Mr. Thompson:

Subject: ADMINISTRATIVE CONTINUANCE OF ORDER NO. R9-2004-0154, NPDES NO. CA0001368, DYNEGY SOUTH BAY, LLC, SOUTH BAY POWER PLANT DISCHARGE TO SAN DIEGO BAY

The San Diego Regional Water Quality Control Board (Regional Board) received and reviewed a Report of Waste Discharge from Dynergy in application for reissuance of the subject NPDES Permit for the South Bay Power Plant. The application has been determined to be complete. In view of both the new power plant cooling water policy under development by the State Water Resources Control Board (State Water Board), and resource constraints, the proper course for the Regional Board at this time is to postpone the reissuance of the current NPDES permit including development of a draft NPDES permit. Under this approach Dynergy's current NPDES permit (Order No. R9-2004-0154) will remain fully effective and enforceable after its five year term expires on November 10, 2009 until such time as it is superseded by a new reissued NPDES permit, or other Order, or the expiration of five additional years, whichever occurs first.

The State Water Board is in the process of developing a proposed statewide policy on the use of coastal and estuarine waters for power plant cooling (Policy). On July 9, 2009 the State Water Board issued its most recent version of the Policy and will conduct a public hearing to receive comments on September 16, 2009. The purpose of this Policy is to establish uniform requirements governing the exercise by the Water Boards of best professional judgment in the implementation of CWA section 316(b) for cooling water intake structures at existing coastal and estuarine power plants that must be incorporated in NPDES permits. The intent of this Policy is to ensure that State coastal and estuarine water beneficial uses are protected from harmful impingement and entrainment effects associated with once-through cooling (OTC) water intake structures without disrupting the critical needs of the State's electrical generation and transmission system.

California Environmental Protection Agency


If adopted, the State Water Board's Policy will significantly impact the NPDES requirements related to CWA section 316(b) for the South Bay Power Plant. Significant Regional Board technical resources are required to evaluate the complex technical and biological issues related to OTC water intake structures. Proceeding with the South Bay Power Plant NPDES permit reissuance in advance of the State Water Board's adoption of the Policy, and Dynergy's submittal of the required information needed to implement the Policy, would put a significant permitting burden on the Regional Board during a time of severe resource shortfalls and provide the potential for inconsistency in regulation of coastal power plants that contribute to the statewide power grid. The proposed Policy will provide clear standards and consistency in implementation of CWA section 316(b) in the State's NPDES permit program, and ultimately make better use of Dynergy, Regional Board, and other stakeholder resources. Accordingly I have determined the Regional Board should defer the NPDES reissuance at this time until the State Water Board finalizes the Policy and Dynergy submits the information required to implement the Policy in the South Bay Power plant's next NPDES permit.

As you know, Dynergy's NPDES permit for South Bay Power Plant (Order No. R9- 2004-0154) expires on November 10, 2009. Applicable state regulations (See 23 C.C.R. Sec. 2235.4.) provide that the terms and conditions of an expired NPDES permit are administratively continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits are complied with. The applicable federal regulations governing the continuation of expired NPDES permits are contained in 40 CFR 122.6. The key essential requirement is that Dynergy needs to have filed a timely NPDES application which is "complete" in advance of the permit expiration date in order to satisfy the requirements for continuance of the permit past November 10, 2009. Dynergy has satisfied the requirements by submitting a complete Report of Waste Discharge dated April 10, 2009 in application for the reissuance of the subject NPDES Permit for South Bay Power Plant.

Based on the foregoing, the term of Dynergy's NPDES Order No. R9-2004-0154 will be administratively extended as of November 10, 2009. The effect of administrative extension of Dynergy's permit is that the current permit (Order No. R9-2004-0154) will remain fully effective and enforceable during this period of administrative extension.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Vicente Rodriguez at (858) 627-3940 or VRodriguez@waterboards.ca.gov.

Respectfully,


John H. Robertus
Executive Officer

via email: Philip Isorena, State Water Board
John Kemmerer, US Environmental Protection Agency

Order No.	R9-2004-0154
File No.	13-0091
GeoTracker No.	
NPDES No.	CA0001368
CIWQS Place ID	257829
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Reg. Measure No.	133117
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