



California Regional Water Quality Control Board

San Diego Region



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August 4, 2009

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7009 0820 0001 7183 7197

Laura Hunter
Director, Clean Bay Campaign
Environmental Health Coalition
401 Mile of Cars Way, Suite 310
National City, Ca. 91950

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

Dear Ms. ^{Laura}Hunter:

Subject: NPDES PERMIT APPLICATION FOR RENEWAL OF NPDES WASTE DISCHARGE REQUIREMENTS FOR 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 your May 20, 2009 letter regarding the subject NPDES permit reissuance application for South Bay Power Plant. I am appreciative of your concerns regarding reissuing NPDES requirements to Dynegy's South Bay Power Plant for another 5 year permit term in view of the various water quality and other environmental issues described in your letter. Some concerns in your letter, such as impingement and entrainment effects from the use of San Diego Bay water for once-through cooling (OTC) purposes, will be considered by the Regional Board in the NPDES permit reissuance process. Other concerns, such as power plant air emissions, facility site location, and the schedule for replacement, repowering, or retirement of South Bay Power Plant are issues that extend beyond the Regional Board's jurisdiction. These issues will likely receive only limited consideration by the Regional Board in the NPDES reissuance proceedings.

The Regional Board's primary statutory obligation in this matter is to ensure the protection of water quality and beneficial uses of San Diego Bay by establishing appropriate NPDES waste discharge requirements for both the intake and discharge of once-through cooling (OTC) water at the South Bay Power Plant in accordance with all applicable state and federal laws and regulations. The question of how to address these considerations is complex and will require significant resources to evaluate the intertwined technical and biological issues that comprise the analysis.

The State Water Resources Control Board is currently in the process of developing a proposed statewide policy on the use of coastal and estuarine waters for power plant cooling (Policy). 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. The proposed compliance dates contained in the draft Policy were developed considering a report produced by the energy agencies (California Energy Commission California Public Utilities Commission, and California Independent Systems Operator) titled "*Implementation of Once-through Cooling Mitigation Through Energy Infrastructure Planning and Procurement Changes*", and the accompanying table, titled "*Draft Infrastructure Replacement Milestones and Compliance Dates for Existing Power Plants in California Using Once-Through Cooling*". The energy agencies' approach seeks to address the replacement, repowering, or retirement of power plants currently using once-through cooling in a manner that (1) maintains reliability of the electric system; (2) meets California's environmental policy goals; and (3) achieves these goals through effective long term planning for transmission, generation and demand resources.

If adopted as drafted, the Policy will significantly impact the NPDES requirements related to Clean Water Act 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 Dynegy's submittal of additional information needed to implement the Policy, would put a significant permitting burden on the Regional Board during a time of increasingly severe resource constraints and provide the potential for inconsistency in regulation of coastal power plants that contribute to the statewide power grid.

Accordingly, 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. Dynegy'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 Dynegy 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.

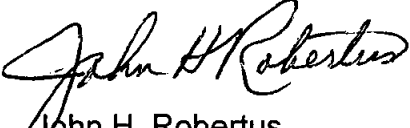
Dynegy has satisfied the requirements by submitting a complete NPDES permit reissuance application dated April 10, 2009 in application for the reissuance of the subject NPDES Permit for South Bay Power Plant. Under this approach Dynegy's current NPDES permit (Order No. R9-2004-0154) will remain fully 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. By letter dated July 20, 2009, I have informed Dynegy that the Regional Board is deferring the NPDES reissuance at this time,

including development of a draft NPDES permit, until the State Water Board adopts the Policy and Dynegy submits the information required to implement the Policy.

Your May 20, 2009 letter also expressed a desire to meet with Regional Board staff prior to issuance of a tentative NPDES permit. The most opportune time to meet with you would be at the time the NPDES permit reissuance proceedings are renewed following State Water Board's adoption of the Policy and Dynegy submittal of the information required to implement the Policy.

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 David Barker at (858) 467-2989 or DBarker@waterboards.ca.gov.

Respectfully,


John H. Robertus
Executive Officer

Order No.	R9-2004-0154
File No.	13-0091
GeoTracker No.	
NPDES No.	CA0001368
CIWQS Place ID	257829
WDID	9 000000091
Reg. Measure No.	133117
Party ID	
Person ID	

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LAURA HUNTER
 DIRECTOR, CLEAN BAY CAMPAIGN
 ENV. HEALTH COALITION
 401 MILE OF CARS WAY, SUITE 310
 NATIONAL CITY, CA 91950

2. Article Number

(Transfer from service label)

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PS Form 3811, February 2004

8-4

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D. Barker ✓

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