

## Responses to Timely Comments on the Proposed Amendments to the Use of Coastal and Estuarine Waters for Power Plant Cooling (Policy)

Written comments received by 12:00 noon on June 4, 2013

Letter No.	Association	Representative/s
1	California Coastkeeper Alliance, Heal the Bay, Natural Resources Defense Council, Friends of the Earth, Surfrider Founder	Sean Bothwell Sarah Abramson Sikich Noah Long Damon Moglen Joe Geever
2	Coastal Alliance on Plant Expansion	Jack McCurdy

### Letter 1- Dated June 3, 2013

#### Comment 1.1:

We support the proposed amendment as currently drafted, as it will make implementation of this policy and the related permitting process more efficient. We agree with the staff report that it is appropriate for the Regional Water Boards to issue the NPDES Permits. Returning authority back to the Regional Water Boards will prevent delays in the adoption of permits, as multiple Regional Water Boards can work on local permits simultaneously.

#### Response 1.1:

Comment appreciated and noted.

### Letter 2- Dated June 4, 2013

#### Comment 2.1:

To ensure consistency on the once-through cooling (OTC) issues and implementation, consultation will be provided to Regional Water Boards by the State Water Board staff. However, the amendment does not specify the type of involvement or support or the degree of involvement or support.

This delegation of responsibility between the State Water Board and Regional Water Boards and their staffs should be expressly defined in the amendment to the OTC policy.

#### Response 2.1:

Per the amendment, section N of the OTC Policy states, "In order to ensure a high level of statewide consistency in implementing Section 316(b), the State Water Board Division of Water Quality (DWQ) staff will provide technical support in all issues related

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to implementation of the OTC Policy.“ This clearly means that State Water Board staff will provide consultation to the Regional Water Board staff on all issues related to implementation of the OTC Policy. Therefore, there is no need to be more specific since all issues related to the OTC Policy will be developed in consultation with State Water Board staff.

### **Comment 2.2:**

We also emphasize the importance, regardless of whether it is the State or Regional Board issuing the NPDES permit, that all meetings and hearings be held where the corresponding power plant is located. Such local accessibility is vital for meaningful public comment and input.

### **Response 2.2:**

All meetings and hearings regarding the issuance of OTC NPDES permits will continue to be held within the region of the designated Regional Water Board in order to provide local participation.

### **Comments 2.3:**

Concerns may develop with regard to the way that all the Regional Water Boards interpret the amendment. Therefore, the plan for the State Water Board staff to provide consultation to the Regional Water Boards should ensure the desired consistency for the Regional Water Boards related to implementation of the policy.

### **Response 2.3:**

The proposed amendment would return the responsibility for adoption of NPDES permits to the Regional Water Boards for power plants subject to the OTC Policy. NPDES permits for these facilities were previously adopted by Regional Water Boards, in accordance with standard procedures for individual NPDES permits. The State Water Board retains its authority for formulating and adopting statewide policies and, as stated in the proposed amendment, remains committed to ensuring a high level of statewide consistency in implementation of the OTC Policy.

The Porter-Cologne Water Quality Control Act (Water Code) section 13000 et. seq. provides for adoption of NPDES permits by Regional Water Boards or the State Water Board, but includes provisions for review by the State Water Board of a permit adopted by a Regional Water Board, pursuant to Water Code section 13320. Moreover, the State Water Board may, on its own motion, at any time, review a Regional Water Board's action or inaction.

The proposed amendment provides that State Water Board Division of Water Quality staff will provide technical support on all issues related to the OTC Policy. Local water

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quality issues will be left to the specific Regional Water Board to deal with in drafting the OTC permits.

### **Comment 2.4:**

We are very pleased that the State Water Board staff recognizes that consultation is needed to bring about consistency. But it does not remove other concerns we have regarding possible appeals of Regional Water Board decisions to the State Water Board. Existing state regulations may provide that such appeals would be carried out under the amendment. But we believe that NPDES permits are so important to the operations of coastal power plants and critical to the protection of coastal sea life that appeal procedures should be stated clearly within the amendment, thereby, removing any doubts that appeals would be guaranteed.

### **Response 2.4:**

Water Code section 13320 provides for review by the State Water Board of specified Regional Water Board actions, including issuance of NPDES permits. The State Water Board has adopted regulations governing petitions for review of such Regional Water Board actions at California Code of Regulations, title 23, section 2050 et. seq.

Without the amendment, all permitting decisions would be made by the State Water Board, with no intervening opportunity for review prior to a petition for writ of mandate. Under the proposed amendment, however, Regional Water Boards would adopt the NPDES permit and any aggrieved person could seek review by filing a petition with the State Water Board. Because the statute already sets forth clear requirements for review of Regional Water Board actions, and relevant procedures are already clearly defined in State Water Board regulations, it is unnecessary to include petition procedures in the Policy amendment.