



POB 148
Houston, TX 77001

September 15, 2006

Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Subject: Proposed Statewide Policy on Once-through Cooling

Dear Ms. Her:

Reliant Energy (Reliant) appreciates the opportunity to provide comments on the document entitled; "Scoping Document: Proposed Statewide Policy on Clean Water Act Section 316(b) Regulations". Reliant owns and operates two facilities subject to this rule in Ventura County and thereby has a substantial interest in this matter. Our comments today are consistent with those submitted by the California Council for Environmental and Economic Balance and the joint comments provided by the research scientists at EPRI Solutions and Tenera. We incorporate those comments herein by reference.

The Scoping Document outlines an extensive departure from the carefully crafted framework and compliance requirements of the federal Phase II rule. Implementation of that rule, promulgated July 9, 2004, is already well underway by the Board and by the owners of the 22 power generating facilities that are subject to the rule in California. The introduction of this conflicting proposal in June 2006 raises substantial concerns about achieving efficient 316(b) program implementation in California and equitable implementation across states.

The federal rule was developed under an unprecedentedly thorough and highly deliberative process from 1993 to 2004. In reviewing the State Board's March 29, 2004 comments on the draft federal rule, we find no evidence expressed of the substantial concerns with that rulemaking that are so evident within the Scoping Document. To the contrary, there is at least one critical area where we find agreement on a concern that is seemingly absent from consideration in the current proposal. That comment, repeated below, addressed the potential impact of the regulation on power generation at the implementing facilities:

"California brought new power plants on line last year, and, at this time, it has enough power generation capacity to meet its energy needs. (These new plants do not have water intakes.) It does not, however, have a surplus of power generation capacity, and some power plants recently approved for construction are not initiating construction because of uncertainty in California's energy markets.

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Hence, any rule that requires an extended down time for plant modifications in the near future could create energy supply problems in California.

EPA Response

Today's rule provides facilities with several options for complying with the requirements such that EPA does not expect that extended downtime will be needed by facilities".

[EPA Phase II Response to Public Comment Document, p.3103 of 5174]

EPA's response notes the flexibility provided within the federal rule for compliance through multiple options, including site specific standards and restoration where appropriate, and thus ameliorates the Board's expressed concern. This flexibility is largely stripped from the proposed policy in the Scoping Document, however, which mandates minimum technology standards regardless of cost and without consideration of site-specific conditions that determine feasibility and performance. These specific concerns have been thoroughly catalogued in the referenced comments of others and so are only briefly addressed here.

The Scoping Document should identify the Board's intended scope of review in assessing the net benefits and broad impacts of this proposed policy. References to EPA cost studies, relating to implementation of the federal regulation, are clearly completely out of place in considering the potential cost implications here. Similarly, references to the Porter-Cologne Act as the underlying state law authorizing this regulation are misplaced. Porter-Cologne is only applicable in this regard to "new or expanded power plant" installations. This restriction appropriately recognizes the numerous critical distinctions in practicability between existing and new/expanded facilities.

We request that the Supplemental Environmental Document required under CEQA, should the Board continue to pursue this proposal, thoroughly assess the feasibility of the technologies and standards that this proposal assumes to be viable statewide. The Board must also assess the reasonably foreseeable economic, energy and environmental consequences of its proposed actions.

As cited by CCEEB and EPRI/Tenera, uncertainty regarding the performance of most of the available filtering-type technologies relative to the proposed minimum standards drives a mandate toward flow reduction technologies such as closed-cycle cooling or operating restrictions. Reliant and others will be evaluating all available technologies in detail as part of the Comprehensive Demonstration Study under the federal regulation. Those studies must be submitted to the Board for approval by January 7, 2008. Our preliminary assessment, however, is that the retrofit of closed-cycle cooling to existing facilities such as ours is generally infeasible due to land availability and/or environmental constraints. Even where it may be feasible, we believe it well documented that retrofit costs are extraordinary, that the energy penalties are substantial in an already tight energy market, and that a complete accounting of the associated environmental impacts would dwarf any corresponding actual fisheries

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benefits. Again, we urge the Board to more comprehensively consider the implications of this proposed policy and, with the benefit of the detailed comments provided, to completely reassess the presumptions imbued within.

In doing so, we believe that the Board will find that an alternate course to this proposed policy is appropriate. There is still opportunity to engage EPA and offer assistance in addressing the remaining implementation issues in the federal rulemaking. All parties would benefit from national or statewide guidance on issues such as the scope of the required two year verification monitoring study and how terms like "significantly greater than" should be applied. Should, however, the Board continue to pursue this policy, we believe it essential that further scoping meetings be scheduled, by topic, so that all issues may be identified and comprehensively considered.

Thank-you again for the opportunity to provide comments. If you have any questions, please do not hesitate to contact me at 713.488.8080.

Sincerely,

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Kerry Whelan
Principal, Water and Wastewater
Reliant Energy