



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

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)

November 9, 2009

CERTIFIED MAIL
7008 1140 0002 4285 4107

Daniel P. Thompson
Vice President
Dynegy South Bay, LLC
990 Bay Boulevard
Chula Vista, CA 91911

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

Dear Mr. Thompson:

Subject: NPDES PERMIT MINOR MODIFICATIONS - 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 Water Board) received Dynegy's letters dated October 16, 2009 and October 19, 2009 regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant. The Regional Water Board understands that these letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant.

Dynegy is requesting to continue operation of electrical generating Units 1 and 2 under the current NPDES permit at a reduced maximum flow-rate of 225 million gallons per day (MGD) until December 31, 2010 based on the following considerations:

1. California Independent System Operator (CAISO) has terminated the the Reliability-Must-Run ("RMR") contract for South Bay Power Plant electrical generating Units 3 and 4 such that operation of these units, and use of the associated discharge outfalls, will not be required after December 31, 2009; and
2. CAISO extended the RMR contract for Units 1 and 2 for the 2010 contract year until December 31, 2010. The conditions that would allow for termination of RMR service for Units 1 and 2, including the addition of new generation and reactive power in the San Diego area, are expected to be achieved in 2010. Consequently, operation of these units, and the use of the associated discharge outfalls, at this time are not expected to be required after December 31, 2010.

California Environmental Protection Agency



Recycled Paper

As a separate matter the Regional Water Board also understands that Dynege is working closely on evaluating the potential environmental impacts associated with the shutdown, demolition and remediation of the South Bay Power Plant with the Unified Port of San Diego (Port), which is the lead agency for purposes of compliance with the California Environmental Quality Act (CEQA). Other responsible agencies that may be commenting during this CEQA process include California Department of Fish and Game, National Marine Fisheries Service, the Army Corps of Engineers, U.S. Fish and Wildlife Service and the Regional Water Board. The CEQA process will be initiated with submittal of the Tenant Project Application and Environmental Document on or about December 1, 2009, and it is anticipated that a draft Environmental Impact Report will be prepared for the Project for review by the Port and all responsible commenting agencies. The Regional Water Board anticipates that consideration of any potential environmental effects associated with shutdown of the South Bay Power Plant discharge will be addressed in the CEQA process.

Based on the foregoing, the proper course for the Regional Water Board at this time is to make modifications to the current NPDES permit, Order No. R9-2004-0154, to incorporate the schedule for both interim flow reduction and eventual plant shutdown as enforceable conditions of the permit. Under this approach Dynege's current NPDES permit (Order No. R9-2004-0154), including the attached minor modifications, will remain fully effective and enforceable under an administrative extension until December 31, 2010 absent further action by the Regional Water Board.¹

The attached permit modifications reflect a previous change in operational control of the South Bay Power Plant on April 2, 2007, the interim flow reduction resulting from the shutdown of Units 3 and 4, and the eventual shutdown of Units 1 and 2 based on the schedule described in Dynege's October 16, 2009 letter. The Regional Water Board understands that Dynege has consented to all of these modifications.

The attached modifications are considered "minor modifications" under the applicable federal regulations for NPDES permits contained in Title 40, Section 122.63. Included in the list of allowable minor modifications are:

¹ Applicable state regulations in 23 California Code of Regulations (CCR) Section 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 Dynege 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. Dynege has satisfied the requirements by submitting a complete Report of Waste Discharge dated April 10, 2009, as updated by Dynege's October 16, 2009 and October 19, 2009 letters to the Regional Water Board, in application for the reissuance of the NPDES Permit for South Bay Power Plant. The Regional Water Board notified Dynege on July 20, 2009 that Order No. R9-2004-0154 will be administratively extended upon its expiration on November 10, 2009.

1. Allowing for a change in ownership or operational control of a facility where it is determined that no other change in the permit is necessary ² ; and
2. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits. ³

Minor modifications such as those described above may be made without a draft permit or public review.⁴ Accordingly, the attached minor modifications to Order No. R9 2004-0154 for South Bay Power Plant are immediately effective. A redline version of the entire Order No. R9 2004-0154 showing the minor modifications is also attached. The redline version showing the changes to the permit on the affected pages and a final clean copy will be available on-line and available for viewing at the Regional Water Board office.

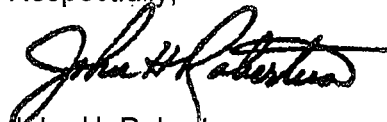
The Regional Water Board is providing a 30-day comment period for public review of these minor modifications due to the heightened public interest in this matter. A public hearing will be conducted at the Regional Water Board's regularly scheduled meeting on December 16, 2009 for the Board to consider ratification of the minor modifications of Order No. R9-2004-0154. The Board meeting begins at 9:00 am and will be held at the following location:

San Diego Regional Water Quality Control Board
Regional Water Board Meeting Room
9174 Sky Park Court
San Diego, California 92123

The public comment period will remain open until 5:00 p.m. on Tuesday, December 8, 2009. Written comments received after 5:00 p.m. on Tuesday, December 8, 2009 will not be provided to the Regional Water Board members prior to the hearing.

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 by e-mail at dbarker@waterboards.ca.gov.

Respectfully,



John H. Robertus
Executive Officer

² See 40 CFR 122.63 (d)

³ See 40 CFR 122.63 (e)(2)

⁴ See 40 CFR 122.62

cc: (email only)

Laura Hunter
Environmental Health Coalition
401 Mile of Cars Way Suite 310
National City, CA 91950
laura@environmentalhealth.org

David Smith, Chief
Permits Office [via email only]
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
smith.davidw@epa.gov

Dominic Gregorio
Environmental Scientist
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
dgregorio@waterboards.ca.gov

Joanna Jensen
Environmental Scientist
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jjensen@waterboards.ca.gov

Mitchell Thompson
760 Arroyo Court
Chula Vista, CA 91910
mitchthompsonmitch@yahoo.com

Robin Smutny-Jones
Director, Regulatory Affairs
California Independent System Operator
Corporation
151 Blue Ravine Road
Folsom, CA 95630
rsmutny-jones@caiso.com

John Kemmerer
Associate Water Division Director
U.S. EPA Southern California Field Office
600 Wilshire Blvd., Suite 1460
Los Angeles, CA 90017
kemmerer.john@epa.gov

Darrin Polhemus
Chief, Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
dpolhemus@waterboards.ca.gov

Barb Irwin
Director Environmental
West Region Operations
Dynergy, Inc.
4140 Dublin Blvd, Suite 100
Dublin, CA 94568
Barb.J.Irwin@dynergy.com

Philip Isorena
Senior Water Resource Control Engineer
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
pisorena@waterboards.ca.gov

David Merk
Director, Environmental Services
Port of San Diego
3165 Pacific Highway
San Diego, CA 92101
dmerk@portofsandiego.org

Jim Detmers
Vice President, Operations
California Independent System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
jdetmers @caiso.com

cc: (US Mail Only)

Cheryl Cox
Mayor, City of Chula Vista
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

Rudy Ramirez
Deputy Mayor, City of Chula Vista
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

Marty Block
State Assemblymember, 78th District
Lemon Grove Plaza
7144 Broadway, 2nd Floor
Lemon Grove, CA 91945

Denise Moreno Ducheny
Senator, 40th District
California State Senate
637 3rd Avenue, Suite A-1
Chula Vista, Ca 91910

Mary Salas
Assemblymember, 79th District
Assembly California Legislature
678 Third Avenue, Suite 105
Chula Vista, CA 91910

Ben Hueso
San Diego City Councilmember, District 8
City Administration Building
202 C Street, 10th Floor
San Diego, CA 92101

Greg Cox
San Diego County Supervisor, District 1
County Administration Center
1600 Pacific Highway, Room 335
San Diego, CA 92101
greg.cox@sdcounty.ca.gov

Ms. Pamela Bensoussan
Councilmember
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

Mr. Steve Castaneda
Councilmember
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, Ca 92108-4402

Mr. Bob Filner
51st District, California
Congress of the United States
House of Representatives
333 F Street, Suite A
Chula Vista, CA 91910

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	

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**MINOR MODIFICATIONS
TO
ORDER NO. R9-2004-0154
NPDES PERMIT NO. CA0001368**

**WASTE DISCHARGE REQUIREMENTS
FOR
DUKE ENERGY SOUTH BAY LLC
SOUTH BAY POWER PLANT**

SAN DIEGO COUNTY

Except as modified or superseded by the permit modifications set forth below, all of the findings, prohibitions, provisions and other requirements of Order No. R9-2004-0154 remain in full force and effect. The following minor modifications of Order No. R9-2004-0154 are hereby incorporated and immediately effective:

Findings added to Order No. R9-2004-0154

32. Dynegy South Bay, LLC (Dynegy) assumed responsibility for compliance with Order No. R9-2004-0154 on April 2, 2007.
33. By letter dated October 9, 2009 the California Independent Systems Operator Corporation (CAISO) informed the Regional Board that the "Reliability Must Run" agreement for Units 3 and 4 will terminate at midnight on December 31, 2009. CAISO also reported that the RMR agreement for Units 1 and 2 was extended through the 2010 contract year. CAISO will require RMR services for Units 1 and 2 until such time as replacement capacity within the San Diego Gas and Electric service area is available. CAISO reports that it will continue to work with all stakeholders in finding a way to allow the South Bay Power Plant to close while maintaining the electrical system reliability needed in the San Diego local area.
34. By letters dated October 16, 2009 and October 19, 2009, Dynegy provided information regarding the schedule for shutdown and closure of the South Bay Power Plant. These letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant. Dynegy reported that electrical generating Units 3 and 4 at South Bay Power Plant will not be operated after December 31, 2009. Based on available information and on a CAISO request to provide a provision in the 2010 RMR contract that would allow the CAISO to terminate the contract for Units 1 and 2 prior to December 31, 2010, Dynegy believes that a NPDES discharge permit that would expire on December 31, 2010 would be sufficient to meet the CAISO's stated reliability requirements.

Dynegy requested to continue operation of Units 1 and 2 under the current NPDES permit at a reduced maximum flow-rate of 225 million gallons per day (MGD) until December 31, 2010 absent further action by the Regional Board.


Prohibition added to Order No. R9-2004-0154

14. After December 31, 2009, the combined discharge to San Diego Bay from the South Bay Power Plant in excess of 225 MGD is prohibited.

Provisions added to Order No. R9-2004-0154

23. All references to Duke Energy South Bay, LLC in Order No. R9-2004-0154 shall henceforth refer to Dynegy South Bay, LLC as the entity subject to regulation under Order No. R9-2004-0154. Dynegy South Bay, LLC is liable for any violation on and after the transfer date of April 2, 2007.
24. The discharges from electrical generating Units 3 and 4 at the South Bay Power Plant shall be terminated on or before December 31, 2009 absent further action by the Regional Board. The termination of these discharges shall not result in the discharge of pollutants from other outfalls except in accordance with this Order. References to flows from Units 3 and 4 point source outfalls in Order No. R9-2004-0154 are deleted upon termination of these discharges.
25. After December 31, 2009, Order No. R9-2004-0154 shall apply only to the discharges from electrical generating Units 1 and 2 at a maximum reduced flow rate of 225 MGD.
26. The discharges from Units 1 and 2 shall terminate on the date CAISO determines that Reliability Must Run (RMR) services from Units 1 and 2 are no longer needed or December 31, 2010, whichever occurs first, absent further action by the Regional Board.
27. The Regional Board will conduct a public hearing to consider rescinding Order No. R9-2004-0154 upon termination of all discharges from the South Bay Power Plant.

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of minor modifications to Order No. R9-2004-0154 executed on November 9, 2009.



JOHN H. ROBERTUS
Executive Officer