

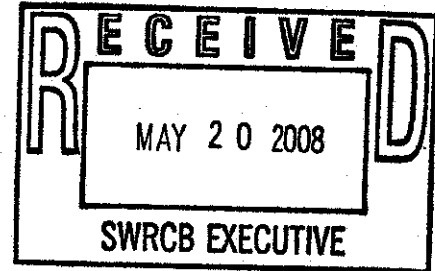


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May 20, 2008

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Draft State Once-Through Cooling Policy



Dear Ms. Townsend and Members of the Board:

Orange County Coastkeeper is a grass roots environmental organization with the mission to preserve, protect and restore the watersheds and coastal environment of Orange County. We have reviewed the scoping document entitled "Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" and are submitting the following comments for consideration.

1. We strongly encourage the inclusion of proposed desalination facilities into an analysis of the impacts of either agency action/inaction concerning state policy on the use of coastal and estuarine waters for power plant cooling. Section 316(b) of the Clean Water Act (CWA) was intended to apply a specific technological standard to cooling water intake structures. Nearly forty years after the adoption of the CWA cooling water intake structures are only recently, after *Riverkeeper II*, beginning to be truly met with standards requiring that their "location, design, construction, and capacity...reflect the BTA for minimizing adverse environmental impact."

Despite the additional clarity provided by the federal court's interpretation of 316(b) in *Riverkeeper II*, the Board should not rely on anticipated federal proposals in lieu of state action. Current regulatory uncertainty surrounding the interpretation of 316(b) presents an atmosphere conducive to the encroachment of desalination plants co-locating with electric generation facilities. A regulatory void poses a threat where facilities utilizing OTC are encouraged to phase out the process while desalination plants are permitted to utilize the same infrastructure thereby negating any potential environmental benefits derived from the initial facility's phase out. The adoption of desalination facilities near coastal waters is an issue contemporary with the Board's interpretation of 316(b) and must be considered in a comprehensive analysis of the use of coastal and estuarine waters for power plant cooling.

2. We agree with the staff recommendation that the state should proceed with developing a statewide policy. California has long been the national leader in developing environmental policy and our regulations generally serve as a model for the rest of the nation. There is no need to wait for guidance from the USEPA or Federal Supreme Court, the state has the legal right and responsibility to regulate OTC facilities to protect marine resources and should do so expeditiously.
3. We agree with the staff recommendation that the Best Professional Judgment (BPJ) standard for OTC should be flow and intake velocity commensurate with closed cycle cooling systems. However the issue of feasibility needs to be clarified. Installation of a closed cycle system should only be considered infeasible if there is not enough space to install the system. Other issues such as cost or the or air pollution can be addressed through other means and should not be a excuse for not installing what is considered the best BPJ, a wet or dry closed loop system.
4. We agree with the staff recommendation that the development of a schedule for completion of retrofits be done in collaboration with other agencies. This schedule should have deadlines similar to those already adopted by the CEC and other agencies for coastal power plants.
5. We agree with the staff recommendation that consistent Track II monitoring language be used statewide. That language should specifically include the requirement that the permitted flows for each plant be used as the baseline for determining compliance with Track II goals.
6. We agree with the staff recommendation that restoration can be useful as an interim measure during the retrofit process. However we believe there should be a set time limit during which restoration can be used and substantial financial penalties afterwards to insure that it is not used as a strategy to delay retrofits. Also any restoration related to OTC should be in addition to restoration required by other agencies and should be designed to mitigate for the actual species taken rather than general wetlands restoration projects.
7. We applaud the Board in their recognition and adoption of the holding in *Riverkeeper II* and their dedication to a successful resolution to the interpretation of 316(b).

Sincerely,

Ray Hiemstra
Associate Director-Programs
Orange County Coastkeeper