

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
APRIL 7, 2015**

ITEM 7

SUBJECT

CONSIDERATION OF A PROPOSED AMENDMENT TO THE STATEWIDE WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING, ALSO REFERRED TO AS THE ONCE-THROUGH COOLING POLICY

DISCUSSION

This is a proposed amendment to the statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Policy). The Policy establishes uniform, technology-based standards to implement federal Clean Water Act section 316(b) with the goal of reducing harmful effects associated with cooling water intake structures on marine and estuarine life. State Water Board staff is proposing a compliance deadline change in the Policy for the Moss Landing Power Plant.

POLICY ISSUE

Following adoption of the Policy in 2010, Dynegy and four other owners and operators of power plants affected by the Policy filed a petition for writ of mandate and complaint for declaratory and injunctive relief. After detailed discussions, a settlement agreement was signed in October of 2014. Dynegy submitted an Implementation Plan for the Moss Landing Power Plant on April 2011, determining that Track 1 of the Policy is not feasible. Dynegy elected to pursue Track 2 and achieve compliance under the Policy. On November 2014, Dynegy submitted an updated Implementation Plan for the Moss Landing Power Plant, which reflects the settlement agreement and release.

Pursuant to the agreement between the State Water Board and Dynegy, State Water Board staff have prepared a draft amendment to the Policy proposing a compliance date extension for the Moss Landing Power Plant from December 31, 2017 to December 31, 2020. In order to provide time for Dynegy to comply fully with all aspects of the policy, accounting for the newly installed variable frequency pumps, the extension of the final compliance deadline will allow (1) implementation of operational controls; (2) assessment of the facility with the newly configured pumps; and (3) time for the installation of additional technology controls. This alternative will extend the deadline by 3 years, but also fully resolves litigation challenging the existing policy provisions.

FISCAL IMPACT

No fiscal impact.

REGIONAL BOARD IMPACT

No Impact.

STAFF RECOMMENDATION

Staff recommends the State Water Board adopt the proposed amendment to the Policy to provide Dynegy with sufficient time for the Moss Landing Power Plant to comply.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will assist in fulfilling Objective 6.2 by targeting consistency improvements in program delivery identified through past input, and solicit input to identify consistency issues as they arise.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2015-

ADOPTION OF AN AMENDMENT TO THE WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING

WHEREAS

1. The State Water Resources Control Board (State Water Board) is designated as the state water pollution control agency for all purposes stated in the Clean Water Act, including water quality control planning and waste discharge regulation.
2. The State Water Board is responsible for adopting state policy for water quality control, which may consist of water quality principles, guidelines, and objectives deemed essential for water quality control.
3. On May 4, 2010, the State Water Board adopted the statewide "*Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*" (Policy) under Resolution No. 2010-0020. The Policy was approved by the Office of Administrative Law on September 27, 2010 and became fully effective on October 1, 2010.
4. The Policy establishes uniform, technology-based standards to implement federal Clean Water Act section 316(b), which requires that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.
5. The Policy applies to thirteen existing power plants located along the California coast, and is implemented through National Pollutant Discharge Elimination System (NPDES) permits, issued pursuant to Clean Water Act Section 402, which authorize the point source discharge of pollutants to navigable waters. The Policy originally affected nineteen Once-Through Cooling (OTC) power plants, but six of these plants have ceased all once-through cooling operations since adoption of the Policy.
6. The Policy was amended on July 19, 2011, making changes to existing Policy compliance dates for the Los Angeles Department of Water and Power (LADWP) on a unit by unit basis rather than facility-wide basis. The Policy was amended again on June 18, 2013, making changes to the existing Policy by authorizing the Regional Water Quality Control Boards (Regional Water Boards) to issue NPDES permits to point source dischargers in California, including power plants subject to the Policy.
7. Section 3.A of the Policy requires the owner or operator of an affected fossil-fuel power plant to submit an Implementation Plan to the State Water Board by April 1, 2011, identifying which of two Policy compliance alternatives are selected and describing the general design, construction or operational measures to implement the alternative. The State Water Board received Implementation Plans from all owners and/or operators as requested, including the Implementation Plan for the Moss Landing Power Plant. The Implementation Plan of the Moss Landing Power Plant documented that compliance with Track 1 (a minimum ninety-three percent reduction in intake flow rate) was not feasible.

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8. Following the adoption of the Policy, Dynegy and four other owners and operators of power plants affected by the Policy filed a petition for writ of mandate and complaint for declaratory and injunctive relief. A settlement agreement was signed in October of 2014, which includes a provision whereby State Water Board staff will propose a compliance deadline extension for the Moss Landing Power Plant from December 31, 2017 to December 31, 2020.
9. Pursuant to the settlement agreement between the State Water Board and Dynegy, the Moss Landing Power Plant will come into compliance with the Policy no later than December 31, 2020. Dynegy will pursue the Track 2 compliance option for the facility, using prior flow reduction credit, installing operational controls to further reduce flow, and achieving reductions in impingement mortality and entrainment through installation of technology controls. Track 2 requires reductions in impingement mortality and entrainment to a comparable level to that which would be achieved under Track 1, using operational or structural controls, or both.
10. The Resources Agency has approved the State Water Board's water quality control planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) requirements for preparing environmental documents. A Substitute Environmental Document (SED) is used in place of an Environmental Impact Report (EIR) as CEQA environmental documentation.
11. State Water Board staff has prepared a Draft Staff Report for the amendment that contains the required environmental documentation under the State Water Board's CEQA regulations. (California Code of Regulations, title 23, section 3777) The changes to the Policy do not lead to new significant environmental effects or a substantial increase in the severity of previously identified environmental effects. Therefore, an addendum to the Final SED adopted with the Policy on May 4, 2010 has been prepared for this Policy amendment, explaining why no new environmental effects will result.
12. Consistent with CEQA, the State Water Board considers that the Draft Staff Report does not engage in speculation, but rather analyzes the project and the alternatives to the project, and concludes that the project will not result in any additional environmental impacts.
13. An amendment to a policy for water quality control does not become effective until adopted by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the [Draft Staff Report](#) and addendum to the 2010 Final SED of the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling.
2. Adopts the amendment ([Appendix A](#) of the Final draft Staff Report) to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling.

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3. Authorizes the Executive Director or designee to submit the amendment to OAL for review and approval.
4. Directs the Executive Director or designee to make minor, non-substantive modifications to the language of the amendment, if OAL determines during its approval process that such changes are needed, and inform the State Water Board of any such changes.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 7, 2015.

Jeanine Townsend
Clerk to the Board