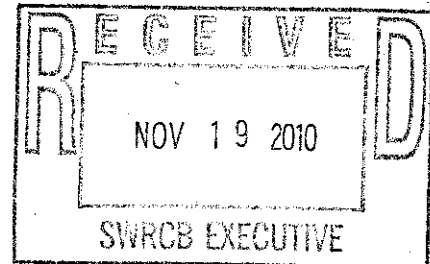




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

November 19, 2010

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



re: Comment Letter – OTC Policy Amendment

Dear Ms. Townsend:

Thank you for the opportunity to review and comment on the proposed amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling.

The United States Environmental Protection Agency Region 9 (EPA) supports the existing Policy, as adopted by the State Water Resources Control Board (SWRCB) on May 4, 2010 and approved by the Office of Administrative Law on September 27, 2010. The existing Policy provides compliance alternatives for existing power plants that are based on either the use of closed-cycle wet cooling systems or achieving a comparable level of reduction of impingement mortality and entrainment of marine life as would be achieved by use of closed-cycle wet cooling systems. During the May 4, 2010 adoption hearing, EPA praised the SWRCB's direction on this Policy as consistent with section 316(b) of the Clean Water Act (CWA), which requires that standards for cooling water intake structures "reflect the best technology available (BTA) for minimizing adverse environmental impact."

The materials provided with the proposed amendment to the existing Policy, dated September 29, 2010, do not clearly explain why the amendments are needed at this time and would not unnecessarily weaken water quality protection. We recommend that the State Board reconsider whether amendments to the policy are needed and, if so, take the time to produce a revised amendment, staff report and supporting materials that better demonstrate the basis and need for the policy amendments. As currently proposed, the amendment would allow combined-cycle facilities to comply with the Policy by either installing fine mesh screens or paying mitigation fees. Neither of these options is sufficiently supported by the information provided with the proposed amendment. First, the amendment package provides insufficient evidence that fine mesh screens reduce entrainment and impingement to a level commensurate with closed-cooling wet cooling systems. Second, achieving compliance by paying mitigation fees appears to be inconsistent with the findings of the *Riverkeeper II* case, in which the 2nd Circuit Court of Appeals concluded that the CWA does not allow for BTA to be achieved through mitigation.

In section 2(C)(3), the current Policy requires compensating for interim impingement and entrainment commencing five years after the effective date of the Policy until the date of final compliance. We support this provision, which applies to more than just combined-cycle facilities and utilizes mitigation to address interim impacts, not as a substitute for implementing the BTA. The proposed amendment replaces clearly defined compensation with the unsupported options of installing fine mesh screens or paying mitigation fees of \$3 per million gallons of intake water for facilities with compliance schedules that extend beyond 2020. These proposed alternative procedures may weaken water quality protection.

Lastly, the current Policy provides procedures to consider different control approaches for individual OTC facilities if necessary to maintain reliable power generation. The amendment package does not clearly explain why the additional alternatives provided by the proposed Policy amendments are necessary to address the operating constraints of combined cycle facilities.

In conclusion, at this time we do not support the proposed amendments and recommend that the SWRCB should instead reevaluate whether the proposed revisions are necessary. As proposed, the amendments are not supported by clear and convincing analysis and we believe will be less protective than the existing Policy requirements. If you have questions concerning these comments, please call me at (415) 972-3464.

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith". The signature is written in a cursive style with a large initial "D" and "S".

David Smith, Manager
NPDES Permits Office