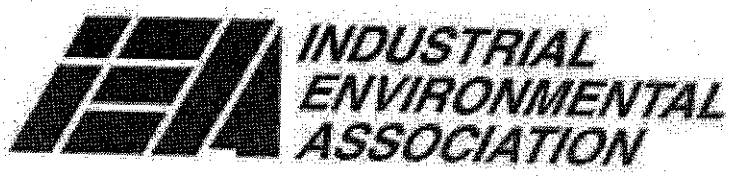
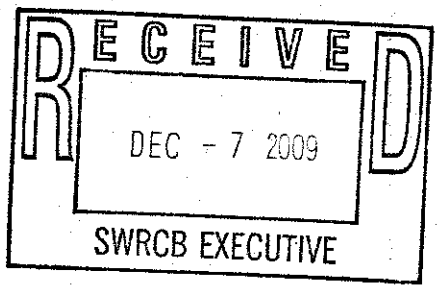


December 4, 2009



Charles Hoppin, Chair
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

Subject: 316(b) Once-Through Cooling Policy

Dear Mr. Hoppin:

Thank you for the opportunity to comment on the State Water Resources Control Board draft 316(b) policy scoping document for once through cooling for existing facilities. The Industrial Environmental Association (IEA) represents manufacturing, technology and research and development companies throughout Southern California and has been closely following this policy development for a number of years. We would like to submit the following comments on the draft policy.

In drafting this policy, the SWRCB has not considered the impact the policy will have on compliance with the AB32 greenhouse gas emissions law. In its current form, the policy would likely require both nuclear facilities in the state to retrofit with cooling towers. This would likely require each nuclear facility (a combined total of over 4,600 MW of greenhouse gas free generating output) to be offline for up to 18 months during the time that the state is required to have a substantial reduction in greenhouse gas emissions. Most of the generating capacity that would be required to make up for this lost generation would be from greenhouse gas emitting power plants. Therefore, this policy would make it difficult for the state to comply with AB32.

There are also several permitting difficulties with requiring the generating stations to comply with the draft state policy. Due to permitting issues, it is not likely that most of the generating stations could obtain the required permits or approvals at a minimum from the following agencies:

- California Coastal Commission (Coastal Development Permits)
- California Air Resources Board (PM-10 offset credits)
- Public Utilities Commission (Billions of dollars in rate increases not likely to be approved by the commission for SCE and PG&E)
- The U.S. Fish and Wildlife Service (adverse impacts to habitat and endangered species)

In addition, in the case of the San Onofre Nuclear Generating Station, that facility is located on land leased from the Department of the Navy on Camp Pendleton. The lease for the San Onofre Nuclear Generating Station does not allow significant development without the approval of the Camp Pendleton Marine Corps Base. Due to several issues associated with the construction and operation of cooling towers, it is not likely that Camp Pendleton would approve the construction of cooling towers at the San Onofre site.

Earlier this year, the draft policy contained a provision for a wholly disproportional cost benefit site specific test option. We strongly believe that this provision should be placed back into the policy. This is supported by the recent U.S. Supreme Court decision issued earlier this year on the 316(b) issue.

The draft state policy also requires that during the interim compliance period, that the coastal generating stations install marine mammal protection barriers around their intakes. The National Marine Fisheries Service (NMFS) is currently working on marine mammal take permits for the coastal generating stations that are expected to be issued next year. These marine mammal take permits should preclude any need for the coastal generating stations from installing marine mammal protection devices on their circulating water intakes. Some plants are also located near offshore kelp environments that could clog circulating water intakes if marine mammal protection barriers were to be installed. This is especially an issue with the nuclear generating stations, which have nuclear safety issues to consider. Even if the construction of marine mammal protection barriers were determined to be feasible at facilities like the San Onofre Nuclear Generating Station, it would not be possible for San Onofre to design, permit, perform a nuclear safety analysis, and construct and deploy such a device in less than a year as the draft policy currently requires. This timetable could force the San Onofre Nuclear Generating Station into a non-compliance condition. This interim compliance measure if required, should therefore allow at least the nuclear coastal facilities to determine the feasibility of such barriers. If feasibility can be demonstrated, then a more realistic and flexible compliance schedule such as three to five years for implementation should be specified.

The policy should also contain a variance provision that allows the generating stations to be exempted from the policy if they cannot comply with the policy due to environmental impacts, real estate issues, or permitting issues. In these cases, restoration could be used under a variance option to allow for these facilities to comply with the state 316(b) rule.

In closing, we request that the SWRCB policy contain a wholly disproportional cost provision as it did in the previous draft of the policy. The policy should also contain a variance provision that will allow each generating station to do a site specific assessment that due to environmental impacts, real estate issues, or permitting issues that could preclude those facilities from constructing cooling towers to be in compliance with the policy, and thus be exempted from the policy. The requirement for a marine mammal protection barrier should also be either removed or redone to allow for a feasibility determination for nuclear power plants and a more flexible compliance schedule to allow for stations to be more able to comply if such barriers were determined to be feasible. Thank you for this opportunity to comment on the draft 316(b) policy.

Sincerely,

Patti Krebs

Patti Krebs
Executive Director
Industrial Environmental Association