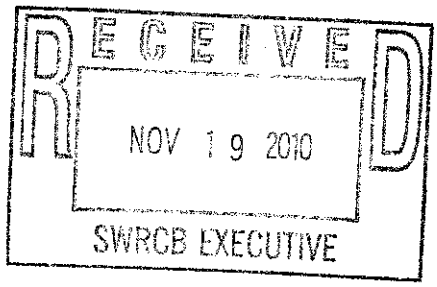
commentletters - Comments on Proposed Amendments to OTC Policy

From: Monique and David <moniqueanddavid@sbcglobal.net>
To: <commentletters@waterboards.ca.gov>
Date: Friday, November 19, 2010 8:04 AM
Subject: Comments on Proposed Amendments to OTC Policy

Enclosed below are CAPE's comments to the proposed OTC amendment. Kindly reply by email to confirm receipt. Thank you.

November 19, 2010



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Fax: (916) 341-5621
Email: commentletters@waterboards.ca.gov

Members of the Board,

The proposed Policy amendments allowing owners of previously-installed combined-cycle plants to continue using once-through cooling (OTC) until a unit reaches the end of its useful life under certain circumstances cannot be justified because (a) no evidence is provided to justify or require such continuance beyond compliance dates set forth in the existing Policy and (b) no evidence has been presented that any qualified, independent authority has determined what the "useful life" of any of the combined-cycle or other plants that come under the jurisdictions of the Policy is or may be.

By allowing, under the proposed amendments, plant owners to specify the expected useful life of the units abdicates the Board's and the state's statutory obligation and commitment to enforce the federal Clean Water Act section 316 (b) as interpreted by the United States Court of Appeals for the Second Circuit decisions in 2004 and 2007 Riverkeeper decisions, leaving it instead to private interests to decide when they will comply with the legal mandates, lacking any indication that those interests will be overseen or held to any standards established by the Board.

The amendments would require plants that continue to operate without control measures to submit mitigation funds and to use fine mesh screens or equivalent controls for these units. Those amendments also would require plants operating beyond December 31, 2020, to conduct feasibility studies of employing fine mesh screens or equivalent controls for these units. These are measures that have not been proven effective. Moreover, the authorization of mitigation as stated is deficient and highly objectionable, as was explained in CAPE's Sept. 29, 2009, comments:

The Second Circuit court stated in its Riverkeeper II decision, "As we noted in Riverkeeper I, restoration measures substitute after-the-fact compensation for adverse environmental impacts that have already occurred for the minimization of those impacts in the first instance....Restoration measures are not part of the location, design, construction, or capacity of cooling water intake structures, Riverkeeper I, 358 F.3d at 189...' Therefore, mitigation required under the board policy may not under the decision be used for "restoration measures." This should be made clear in the policy and to regional water boards that will administer the policy. In our comments on the board's previous draft OTC policy, we expressed strong reservations about use of mitigation because of concern that mitigation funds paid to the water board or regional boards could become habit-forming and might influence the agencies to not pursue aggressively the goal of ending OTC. However, if mitigation, under circumstances that may be permissible under the Riverkeeper decisions, is incorporated into the policy, we strongly believe that it should be used, not to compensate for and potentially prolong OTC, but to assist in development of new alternative energy sources, particularly urban photovoltaic, that would directly serve to replace coastal power plants, especially the oldest and least needed plants, and thereby contribute to earlier attainment of the state's global warming goals.

Overall, nothing in or associated with the amendments explains any rationale for significantly weakening a policy that already fails to require reasonable compliance dates to avert many years of continuing severe marine impacts and that also fails to provide a measure of certainty that those dates will be enforced without the potential of avoidance by plant owners stemming from the vague and imprecise language of the Policy. If the present policy contains loopholes and "escape clauses" that deny certainty that the compliance dates will be observed, as we believe it does and have

maintained in previous comments, the amendments would remove any remaining pretense of certainty that the Clean Water Act will be complied with by ending the use of OTC by the 19 operational plants along the California Coast.

Therefore, the Coastal Alliance on Plant Expansion strongly opposes the proposed OTC policy amendments for the reasons stated above and based on additional comments outlined below. These amendments will simply serve to move the state of California farther away from compliance with the judicial mandate in the Riverkeeper decisions to terminate OTC through compliance with the U.S. Clean Water Act for the first time in 35 years.

Following are comments on specific sections of the amendments:

1. Page 5, 2A (2) (d): The owner or operator of an existing power plant* with combined-cycle power-generating units* installed prior to [the effective date of the Policy] may, without demonstrating that compliance with Track 1 is not feasible*, achieve compliance in accordance with either subparagraph (i) or (ii) of this paragraph.

Comment: This amendment allows owners to pick and choose among compliance measures, for which there is no justification and simply serves to undermine the integrity of the Policy. The amendment allows plant owners to make decisions for the benefit of their businesses, rather than the environment, the protection of which the Board is responsible and the policy as adopted was meant to ensure. The Board by allowing power plant owners or operators to determine the useful life of the plant abdicates its independent, regulatory authority and obligation to regulate use of marine resources and to enforce the Clean Water Act. In addition, no evidence is cited and we are unaware of any evidence that combined-cycle plants use less water than other plants and thus have less impact on the marine environment. The facts show that, despite their increase in energy production, combined-cycle plants use proportionally the same amount of water and have the same impacts as other plants.

2. Page 6, 2A(2)(d)2(ii): The owner or operator may continue using OTC at a unit until the unit reaches the end of its useful life with two contingencies.

First contingency: The owner or operator shall specify the end of the useful life in plans submitted to the State Water Board pursuant to Section 3.A of this policy.

Comment: This text indicates that the owner or operator shall, i.e. is required to, submit plans specifying the end of the useful life of a plant without any definition of what a useful life is and how it can or should be determined and with no requirement that the Board may or will review those plans and exercise its statute-required judgment on the validity and effectiveness of those plans. The absence of this definition and a description of the Board's role in administering this proposed process leaves all power over establishment of the determination of the end of the useful life of a plant to the owners themselves--exclusively. Therefore, private interests effectively will have control over public resources in this matter. A case in point is the Morro Bay Power Plant, which, under the OTC policy, will be required to attain compliance and end the use of OTC in 2015, even though the California Independent System Operator has concluded that its minimal production of electricity is not needed as of this moment for grid reliability. The proposed amendments raise the valid question of whether this plant's owner could be allowed to claim that the life span of that plant would end in 2020 and obtain permission to extend its compliance date to that year.

Second contingency: The owner or operator will conduct feasibility studies of fine mesh screens or equivalent measures to minimize impingement or entrainment unless they are shown to be infeasible.

Comment: These studies are to be overseen by a qualified review panel, but, under the proposed amendment, neither the panel nor the Board is assigned or acknowledged to have authority to regulate, pass judgment on the feasibility of the mesh screens or equivalent measures or determine which, if any, of such measures may be used for the purposes intended. Of equivalent importance is the lack of any description or definition of equivalent measures, a flaw that could make the amendment unenforceable based on ambiguity.

3. Page 6, 2A(2)(d)2(ii)3: Owners of plants not employing mesh screens or equivalent measures shall pay $3 per million gallons extracted from bays, estuaries, tidelands or the ocean.

Comment: No evidence is provided as proof of what these payments will accomplish mitigation of impacts to the marine environment and, therefore, could not qualify under the Clean Water Act or any other statutory authority that conforms to the Act under the Riverkeeper decisions for use for this purpose. In fact, the $3 per million gallons fee is not close to being equivalent to the true cost of the damage to the environment from OTC or even the value of the water being used. If any such fee were imposed, which we strongly oppose, a more reasonable plan would be to base it on the gross energy production of the power plant in question on grounds that OTC does increase generational efficiency by two to five percent.

4. Page 3, L: Nuclear-fueled power plants as well as gas-emitting plants are both cited as important providers of

baseload electricity under "(t)he Global Warming Solutions Act of 2006 (that) requires California to reduce greenhouse gas emissions to 1990 levels by 2020 and then to maintain those reductions."

Comment: This analysis and presumption of ongoing dependency on these sources of electricity unjustifiably ignores the growing volume and significance of alternative energy sources in California, particularly solar, which the California Energy Commission has reported recently is making significant advances in availability as alternative sources of electricity compared to the conventional sources such as nuclear and gas-generated. The policy should include some sort of schedule or procedure to phase out OTC plants as alternative sources of energy come on line. The emerging significance of solar as a source of power to enable the retirement of coastal power plants and replace their energy production should be factored into the ongoing OTC policy development in substantive ways that have yet to be achieved. New and significant information on this issue can be accessed at http://www.energy.ca.gov/2010publications/CEC-500-2010-010/CEC-500-2010-010.PDF, http://www.energy.ca.gov/2010publications/CNRA-1000-2010-010/CNRA-1000-2010-010.PDF and http://www.ovcr.ucla.edu/uploads/file/CA%20Energy%20Commission_PIER%20Final%20Project%20Report_June%202010.pdf

Jack McCurdy
Co-President
Coastal Alliance on Plant Expansion
P.O. Box 526, Morro Bay, CA 93443
805-772-4832
jack.mcc@att.net