

California's Policy on Coastal Power Plants Summary

On May 4, 2010, the State Water Resources Control Board adopted a final Policy (Final Policy) governing the use of coastal and estuarine waters for cooling at 19 California coastal and Delta power plants. The Final Policy put California on track to phase out once-through cooling (OTC) impacts by requiring power plants to employ the Clean Water Act's mandated "best technology available" standard (or a comparable effort) to protect fish and other aquatic life from OTC.

Coastal power plants must construct closed-cycle cooling systems to phase-out OTC operations. Coastal power plants must implement the Clean Water Act's "Best Technology Available" standard unless they make a specific showing Best Technology Available is "not feasible" (ie. cost is not a factor in determining feasibility with Best Technology Available). The Final Policy offers two tracks for power plants to reduce OTC impacts. Track 1 requires the use of the best technology available (BTA), which is recognized to be closed-cycle cooling systems. Track 2 requires facilities to make specific showings of Track 1 infeasibility (e.g., space constraints, local regulations). If Track 1 is found to be infeasible, facilities comply with Track 2 by reducing marine life mortality to a comparable level as Track 1 using operational controls such as viable speed pumps and/or structural controls such as screens.

Alternative, "Track 2" compliance is determined unit-by-unit, based on actual, average monthly flow at the plants. The Final Policy requires compliance to be determined based on actual average monthly flow based on numbers from 2000-2005, not decades-old design flow, and on a unit-by-unit basis.

The Policy provides a path for possible alternative requirements for nuclear power plants. The owners of San Onofre Nuclear Generating Station (located in southern Orange County) and Diablo Canyon Power Plant (located in the San Luis Obispo region) are required to undertake special studies to investigate alternatives for their facilities to meet the Policy's requirements. A Review Committee, composed of technical representatives with experience with nuclear plant issues, met to oversee the special studies. The Final Policy limits consideration of the Nuclear Review Committee's ability to exempt nuclear OTC facilities, narrowing the exemption to only safety concerns. However, the Policy contains provisions for the consideration of whether compliance with the Policy would be "wholly unreasonable" for the nuclear facilities in light of certain factors, which was left undefined in the Final Policy.

Facilities cannot opt-out of compliance with the Policy BTA standards by conducting mitigation. The Policy upholds the Second Circuit Court of Appeals decision in *Riverkeeper II* and the U.S. Supreme Court in *Entergy* that mitigation cannot be used in-lieu of BTA. The Policy does allow for interim mitigation for coastal power plants that are not in compliance with the Policy by October 1, 2015. The collection of mitigation fees will be used for mitigation projects that restore marine life lost by ongoing OTC operations, with a preference that the mitigation projects enhance Marine Protected Areas.

The Policy provides a rolling compliance schedule to ensure grid reliability, with the final coastal power plant coming into compliance by 2029. To prevent disruption to the State's electrical power supply, the Policy creates a Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS), which consists of representation from the state's energy and natural resource agencies. The SACCWIS reviews coastal power plants' implementation schedules to determine whether extensions are necessary to ensure grid reliability. However, the State Water Board has the final determination regarding whether an extension will be granted.