

Environmental Health Coalition

COALICION de SALUD AMBIENTAL

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August 31, 2009

Chairman Richard Wright and Boardmembers
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD
2009 SEP - 1 A 9:40

RE: Agenda items #7 and #12 on September 9 Board meeting related to NPDES Permit Application for Renewal of NPDES Waste Discharge Requirements for permit No. CA0001368, Order No. R9-2004-0154 for Dynegey South Bay, LLC- South Bay Power Plant

Dear Chairman Wright and Boardmembers:

Thank you for scheduling the issue of the South Bay Power Plant discharge permit for initial discussion and consideration as a priority at your September 9 meeting. We appreciate that you are taking another look at this important issue.

As this discussion proceeds, we ask that you keep foremost in your mind your responsibility to water quality and to preserving and protecting the beneficial uses of the Bay. There is prodigious evidence in the record that the use of the Bay water for cooling the power plant causes significant, negative, and unmitigable damage to water quality and to the marine life beneficial uses you are compelled to protect. That is the bottom-line and should be what drives your decisions and action. For this reason we are requesting that you direct your staff to initiate the hearing process for consideration of the subject application.

The evidence is clear—the discharge has major, negative impacts on water quality.

There is a significant amount of information that we are prepared to present at a hearing, but here are just a few, documented examples of the damage to the Bay that the Regional and State Boards have already established. The 2004 power plant permit Fact Sheet is a good record of the evidence and analysis of what is known about the power plant discharge. Some summary statements are below.

Findings have been included in the Order...that acknowledge that the SBPP's discharge of once-through cooling water to south San Diego Bay has adversely impacted Beneficial Uses...

--Fact Sheet at 3.

...Duke Energy should be required to take measures to abate the detrimental impacts of the SBPP discharge to the discharge channel....

--Fact Sheet at 3.

The NPDES permit language itself is also clear and detailed. Excerpted below are some of the exact findings of the adopted permit that detail the damage and degradation caused by the discharge.

Waste Discharge Impacts

14. The biotic communities in the immediate vicinity of the discharge point and in the discharge channel have been degraded by exposure to the once-through-cooling water discharge from the SBPP. The degradation to the biotic communities is due to several factors, including elevated temperature, flow volume, and flow velocity.

The degradation to biotic communities includes a lower diversity of benthic invertebrates residing in the near field stations of the discharge channel compared to those in reference stations outside the discharge channel. Furthermore, certain invertebrate species (including polychaete worms and amphipods) are largely absent in near field stations of the discharge channel. These species were found in abundant quantities in reference stations outside the discharge channel. The absence of these species from the discharge channel demonstrates that these species cannot survive under the warm thermal regimes of the discharge channel and were being adversely impacted.

In addition to a degradation of benthic invertebrates, up to 104 acres of critical eelgrass habitat has been precluded from the discharge channel and other areas of south San Diego Bay due to the redistribution of turbidity in the Bay from the SBPP discharge.

15. The Beneficial Uses (as defined by the *Basin Plan*) that may be impaired due to the effect of the SBPP discharge on water quality include: Estuarine Habitat; Marine Habitat; Wildlife Habitat; Preservation of Rare and Endangered Species; Preservation of Biological Habitats of Special Significance; and Shellfish Harvesting. It is evident that the impacts on Beneficial Uses due to the discharge of once-through-cooling water cannot be completely eliminated except through termination of the discharge. The adverse impacts are due to the individual and combined effects of the elevated temperature and the volume and velocity of the discharge.
20. The location, design, construction and capacity of the existing cooling water intake structures at SBPP fail to reflect the Best Technology Available (BTA) for minimizing adverse environmental impact as required by new regulations promulgated by U.S. EPA to implement Section 316(b) of the Clean Water Act at large existing electric generating plants (*Phase II rule*).

As indicated in the technical study report titled "*SBPP Cooling Water System Effects on San Diego Bay, Volume II: Compliance with Section 316(b) of the Clean Water Act for the South Bay Power Plant, August 2004*" submitted by Duke Energy, approximately 27 percent of the goby complex and 50 percent of the longjaw mudsucker larval source water populations are lost annually due to entrainment in the SBPP. Furthermore, approximately 13 percent of equivalent adult anchovy and 15 percent equivalent adult silverside fish populations are also lost annually due to larval entrainment losses. These losses of larval and adult fish populations due to entrainment in the SBPP constitute a significant adverse environmental impact.

Since 2004, the considerable analysis done by the State Board confirms these findings. The State Board's July 2009 Draft Substitute Environmental Document (DSED), in support of their Proposed *Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*, calls out South Bay specifically regarding damage from impingement and entrainment. It states:

*"As an example of a conventional power plant, the South Bay Power Plant in San Diego, assuming full operation, has an estimated **annual impingement of 390,000 fish**, 93 percent of which were anchovies. Impingement of certain invertebrates was also assessed at this plant; an estimated **9,019 crustaceans** (shrimps, lobsters, crabs) and cephalopods (octopus and squid) were impinged annually. Annual estimated entrainment for 2003 was **2.4 billion fish larvae**. Fish species most represented in the entrainment studies were gobies (arrow, cheekspot, and shadow) anchovy, combtooth blennies, longjaw mudsuckers, and silversides."* (emphasis added)

--DSED at 30.

Also in the DSED, *Table 2: Estimated Annual Entrainment* shows South Bay as having the third worst entrainment numbers in the state due to the high concentration of larval fish per cubic meter in the water.

Low capacity does not mean low impacts to marine life.

The operators may bring up the idea that they are current operating at low capacity and, therefore, are not damaging the bay. However, operating capacity utilization rate (CUR) is often not an indicator of damage to a marine environment. The DSED states,

"A facility's CUR is not necessarily indicative of the impact it may have on the aquatic environment since the potential for harm is not equally distributed throughout the year, particularly for entrainment; spawning typically peaks in spring and early summer throughout the state....Data show, however, that is it possible to operate less than 15 percent of the time and cause a greater impact than would be assumed if entrainment was uniform at all times."

-- DSED at 51

This is key for San Diego Bay given the extreme 'back bay' shallow water nature of where the water is taken from and discharged. Again the DSED shows the significant differences in the larval fish abundance between bay harbor environments and open ocean.

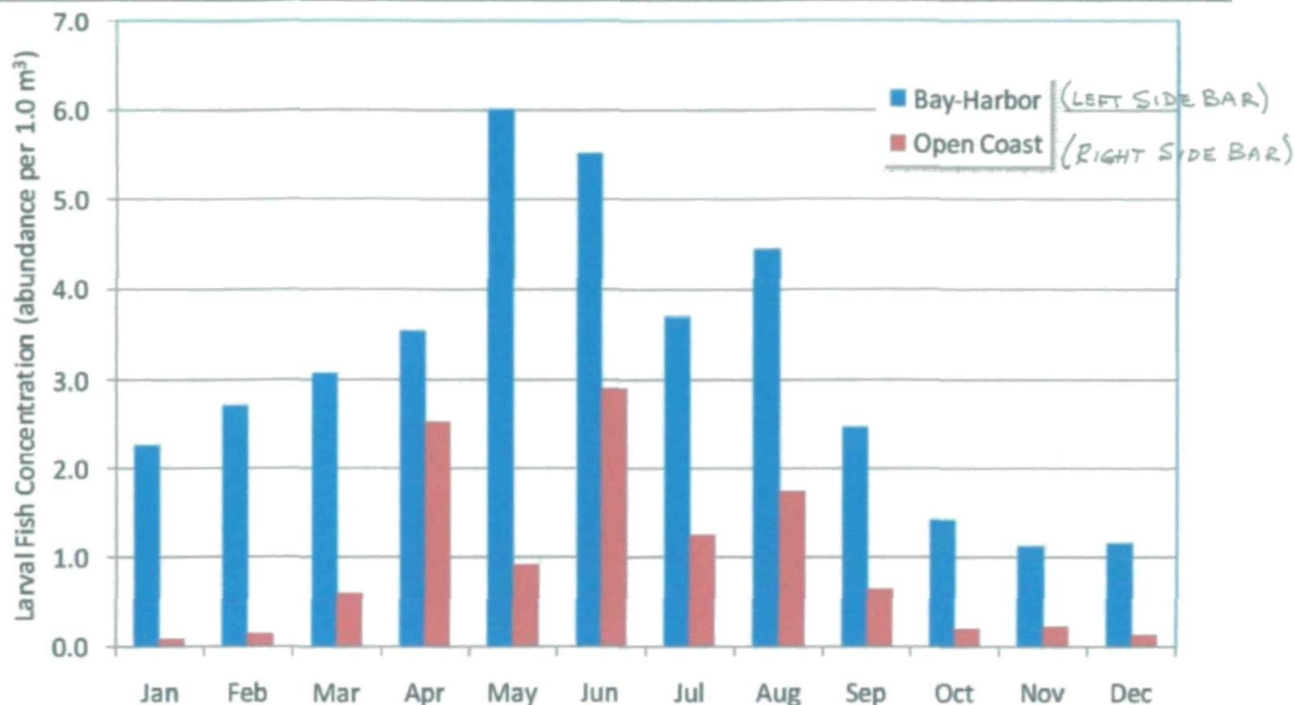


Figure 13: Larval Fish Concentrations at Southern OTC Facilities

--DSED at 52.

Once-through Cooling is not Best Available Technology.

The Riverkeeper II decision has clearly established that Once-through cooling (OTC) is **not** Best Available Technology (BAT). If the operators of the SBPP wish to continue to operate, they should be directed to bring you a plan and timeline for retrofit of their cooling system. One can expect, however, that they will not want to do that and will instead ask you not to force them to invest in the plant because it will not operate much longer. This was their strategy in 2004 and, unfortunately, we believed them. They were not required to invest in new cooling technology that would have protected the bay because they reported that the lifespan of the plant was five years.

We think this point must be underscored. Perhaps the most important statements in the record appear in the Fact Sheet where the feasibility of implementing alternative cooling systems that would protect the Bay was rejected:

...Furthermore, the report claimed that the cost/benefit analysis conducted for the wet/dry hybrid cooling towers indicated that the costs (amortized over the 5-year, expected, remaining life of the plant) were wholly disproportionate to the environmental benefits gained based on the entrainment/impingement data collected in 2003. (emphasis added)

--Fact Sheet at 32.

Fish protection improvements were avoided using the same argument.

Once again, a cost/benefit analysis conducted for these systems indication that the costs (amortized over the 5-year, expected, remaining life of the plant) were wholly disproportionate to the environmental benefits gained..... (emphasis added)

--Fact sheet at 33.

OTC is on the way Out.

A wide range of state agencies including the California Energy Commission, the Ocean Protection Council, and the State Water Resources Control Board have set a priority for the timely phase-out of once-through cooling systems at antiquated power plants. Ours is a power plant that no longer needs to discharge into the Bay. Several state agencies have weighed in on the problems with, and the need to end, OTC. A few examples,

California Energy Commission

- *"Once-through cooling contributes to the degradation of California's coastal waters."*

Ocean Protection Council

- *".... There are multiple types of undesirable and unacceptable environmental impacts associated with once-through cooling...."*

State Lands Commission

- *"..urges CEC and SWRCB to expeditiously develop and implement policies that eliminate the impacts of once-through cooling on the environment, from all new and existing power plants in California..."*

Yet, there is nothing in the application indicating that the operators plan to replace the cooling operations so that bay water is no longer used. We do not believe that a renewal based on conditions required in the current permit is, in any way, defensible today.

The 'need' for SBPP for energy is irrelevant and debatable.

We understand that a representative of the Independent Systems Operators (ISO) may be present at the meeting. The SBPP is currently operating under a reliability contract and a resource adequacy contract which expires on December 31, 2009. The issue of whether or not reliability contracts might be renewed with the California Independent Systems Operators (ISO) is irrelevant to your deliberations. There is no vested 'right' to an ISO contract, no provision for override of environmental standards, nor is continued damage to the Bay required to operate the power plant. It is merely an expensive proposition for Dynegy to retrofit the plant with an air-cooling or closed-cycle system.

While we do not believe that the potential of any reliability contract or designation is a relevant fact for your consideration, we have information regarding the 'need' for the plant in 2010. If you intend to consider this issue, it is another issue that would need discussion during a hearing process and is another reason to prioritize this issue for action. There are many options that the Regional Board can consider regarding the 'reliability' related issues. Once the Otay Mesa Energy Center is officially on-line (it is in testing phase now), any gaps or increases in demand in out years should be filled with new technology, not old.

Issues related to Staff Resources

The staff position is apparently to delay work on the renewal application until the State Board completes their Proposed *Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*. Under different circumstances, there could be legitimate concern about using staff resources to work on cooling water intake requirements if the State Board Policy providing statewide direction will be issued shortly thereafter. However, in spite of their best intentions, significant State Board policy decisions have encountered exceedingly long delays. The status of the statewide sediment quality objectives is the most recent example of the length of these delays. We believe that the water quality and environmental concerns regarding this discharge over-ride any concerns about any duplication of effort, particularly given what we see as a pending State Board Policy with a somewhat tenuous completion date.

More importantly, the Board has authority under Water Code Section 13243 to prohibit a discharge. The magnitude of the impacts from this discharge over-rule consideration of available resources. The evidence supporting termination of this discharge is abundant and the authority is clear. There is no need to expend staff time determining best intake technology available for a discharge that is to be terminated. It does not take significant staff resources to write a letter to a discharger informing them of the impending termination of a discharge.

Best Professional Judgment is an acceptable standard for decision-making and your staff can draw on work that has already been done and what we already know. Your staff has already found, using Best Professional Judgment, that the only way to end the impacts to beneficial uses is to terminate the discharge. The basis for Regional Board Best Professional Judgment standard is well provided in the past permitting record and the supporting documents for the State Board's OTC-policy. We request you initiate the hearing process by scheduling a workshop to discuss the process and schedule leading to consideration of an order requiring that the discharge be terminated.

The Community considers this issue a high priority.

As you will hear on the 9th, this is a high priority for the community. You have received letters already from many in the South Bay elected delegation and the Chula Vista City Council. Letters and statements are already being issued and we have attached some of the early input we have received. We would like to reiterate our request that all future workshops and hearings on the power plant issue should be held in Chula Vista where the impacted community can participate in this important decision.

In 2004, the Regional Board and the community were promised that the lifespan of this plant was five years. Time is up. The Regional Board has the evidence, the discretion, the legal basis, and the responsibility to end this discharge. Only then, can San Diego Bay begin to heal. Only you can end this era of bay destruction once and for all. It's time to begin the hearing process.

Sincerely,



Laura Hunter, Director
Clean Bay Campaign

cc.

Mr. John Robertus, Executive Officer

Mr. Vincente Rodriguez

Mayor and City Council, Chula Vista

STOP THE DESTRUCTION OF SAN DIEGO BAY

It is Time to End the Use of Bay Water by the South Bay Power Plant.

Dear Regional Water Quality Control Board Members,

For almost 50 years, the South Bay Power Plant has devastated the sensitive ecosystem of South San Diego Bay. The Plant's use of bay water for cooling kills billions of fish larvae and hundreds of thousands of fish when operating at permitted capacity. It has destroyed over 100 acres of eelgrass—an important habitat for fish nurseries. There are many cleaner ways to generate energy and there are alternatives to cooling the power plant that do not impact bay water quality. **You have the authority and the obligation to eliminate discharges that degrade water quality and damage marine life in San Diego Bay.**

PLEASE, direct your staff to send a letter to power plant operators notifying them that you intend to terminate use of bay water for South Bay power plant cooling when the permit expires in November, 2009.

FACTS:

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- SBPP's cooling system devastates a wide range of marine life. At full operation an estimated 2.4 billion fish larvae and 400,000 fish and crustaceans are damaged or killed annually. Discharges prevent the growth of more than 100 acres of eel grass.
- SBPP is an economic blight on the bayfront, frustrating efforts to site desirable development there.
- There are alternatives for cooling the power plant that do not use bay water.
- The Regional Water Board has the discretion and authority to terminate this discharge after the expiration date of the current water discharge permit.

WHY THIS MATTERS TO ME

I think the power plant should be removed from the bay area because not only it pollutes the environment but it is also so close to the bay that it makes it difficult to enjoy nature and the landscape.

Walter Gonzalez 743 Belvia Ln. (619) 6256351
NAME ADDRESS PHONE
EMAIL wally69@attmail.com

A CLEAN BAY DEFERRED IS A CLEAN BAY DENIED

For more information, visit www.environmentalhealth.org or contact: Laura Hunter, Campaign Director, Environmental Health Coalition, 401 Mile of Cars Way, Suite 310, National City, California, 91950, TEL: (619) 474-0220 x 102, LauraH@environmentalhealth.org

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WHY THIS MATTERS TO ME

IS A POLLUTER OF OUR COMMUNITY AND OUR
COASTLINES NOT TO EXCLUDE OUR OCEAN,
THERE IS BETTER WAY WITH GREEN TECHNOLOGY

GUILLERMO LOPEZ 241 EAST PALOMAR ST CU. 619 476980
NAME ADDRESS PHONE

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WHY THIS MATTERS TO ME

THE power plant looks very ugly so close to homes and it is also very harmful to our animal life. This plant is too close to the park & houses.

Gabriela Jara 819 Oaklawn ave. 619-426-4888
NAME ADDRESS PHONE
EMAIL gabriela.oajm@hotmail.com

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WHY THIS MATTERS TO ME

• Pollutes our water—ocean bay front. The natural marine life

Ruth Yaconelli

NAME

ADDRESS

619 422-6729

PHONE

EMAIL

256 Tremont St, Chula Vista CA 91901

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WHY THIS MATTERS TO ME

The placement of the plant is a historical injustice that needs to be corrected. We cannot afford (for our own survival) to continue degrading the environment & health for cheap and ineffective energy generation

Jorge Glackman

NAME

ADDRESS

619 952 5569

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jorge.g@environmentalhealth.org

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LauraH@environmentalhealth.org

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WHY THIS MATTERS TO ME

The plant's time has finally expired.
Time to act as such and end your operations.
For the good of our citizens living in Cula Vista and
our wildlife.

91950
Jose Medina 321 Civic Center Dr. Natl City, CA
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EMAIL ~~mrlatin@7@hotmail.com~~ @hotmail.com

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WHY THIS MATTERS TO ME

Our irresponsible energy practices are endangering the environment today and ruining our posterity's future chances of enjoying the rich environmental resources here in the San Diego region. I want my children to enjoy a bay with thriving marine life, and this is a great way to ensure that possibility.

JANE R. LILLY

NAME

4466 48th St #2 92115

ADDRESS

PHONE

EMAIL

janel

@environmentalhealth.org

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WHY THIS MATTERS TO ME

The power is on your hands to start the healing of South Bay water! I urge you to terminate use of bay water for South Bay power plant operations.

Georgette Gomez
NAME

4125 Pepper Dr
ADDRESS

PHONE

EMAIL levante

@lycos.com

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WHY THIS MATTERS TO ME

Water is life. Please take
action now to defend the
health of a precious resource.
Thank you.

Anelia Simpson 1173 Grove Ave, Imperial Beach, CA 91932
NAME ADDRESS PHONE 619.474.
0220
EMAIL asimpson@igc.org @ _____ x.116

A CLEAN BAY DEFERRED IS A CLEAN BAY DENIED

For more information, visit www.environmentalhealth.org or contact: Laura Hunter, Campaign Director, Environmental Health Coalition, 401 Mile of Cars Way, Suite 310, National City, California, 91950, TEL: (619) 474-0220 x 102, LauraH@environmentalhealth.org

STOP THE DESTRUCTION OF SAN DIEGO BAY

It is Time to End the Use of Bay Water by the South Bay Power Plant.

Dear Regional Water Quality Control Board Members,

For almost 50 years, the South Bay Power Plant has devastated the sensitive ecosystem of South San Diego Bay. The Plant's use of bay water for cooling kills billions of fish larvae and hundreds of thousands of fish when operating at permitted capacity. It has destroyed over 100 acres of eelgrass—an important habitat for fish nurseries. There are many cleaner ways to generate energy and there are alternatives to cooling the power plant that do not impact bay water quality. **You have the authority and the obligation to eliminate discharges that degrade water quality and damage marine life in San Diego Bay.**

PLEASE, direct your staff to send a letter to power plant operators notifying them that you intend to terminate use of bay water for South Bay power plant cooling when the permit expires in November, 2009.

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- The Regional Water Board has the discretion and authority to terminate this discharge after the expiration date of the current water discharge permit.

WHY THIS MATTERS TO ME

Porque es fuente de contaminación para la comunidad.

Senobia Jurisd *202 San Miguel Dr.* *619-427 900*
NAME ADDRESS PHONE

EMAIL _____@_____

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WHY THIS MATTERS TO ME

I want to have a clean & environmentally healthy bay.

CV. CA 91916
Georgie Stillman 580 Twin Oaks Ave 619-429-0610
NAME ADDRESS PHONE
EMAIL georgie5@cox.net

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WHY THIS MATTERS TO ME

The view, water contamination near homes,

Blanca Jara 1082 Vista Way 210-3346
NAME ADDRESS PHONE
EMAIL Blanca197445@yahoo

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WHY THIS MATTERS TO ME

Polluting Source near families & schools
Eye Sore

NAME Leticia Ayala ADDRESS 1194 La Vida Ct Chula Vista CA PHONE 619.216.720
EMAIL Leticiasisepuede@yahoo.com

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WHY THIS MATTERS TO ME

Quiero que se quite la planta de Luz por obsoleta, contaminante, y dar paso a la nueva energia, ecologica disponible y de nueva generacion

NAME Leonor Garcia ADDRESS 2011 7402 PHONE _____
EMAIL Leo_garcia@yahoo.com @hotmail.com

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WHY THIS MATTERS TO ME

I Hate it!! its an eyesore, pollutes, affects the wildlife, pollutes the ocean, emissions increase asthma rates etc.

NAME Mariana Lopez ADDRESS 436 O'Keefe St PHONE 619-476-4457
EMAIL mariana @ luna-law.com

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LauraH@environmentalhealth.org

WENH

STOP THE DESTRUCTION OF SAN DIEGO BAY

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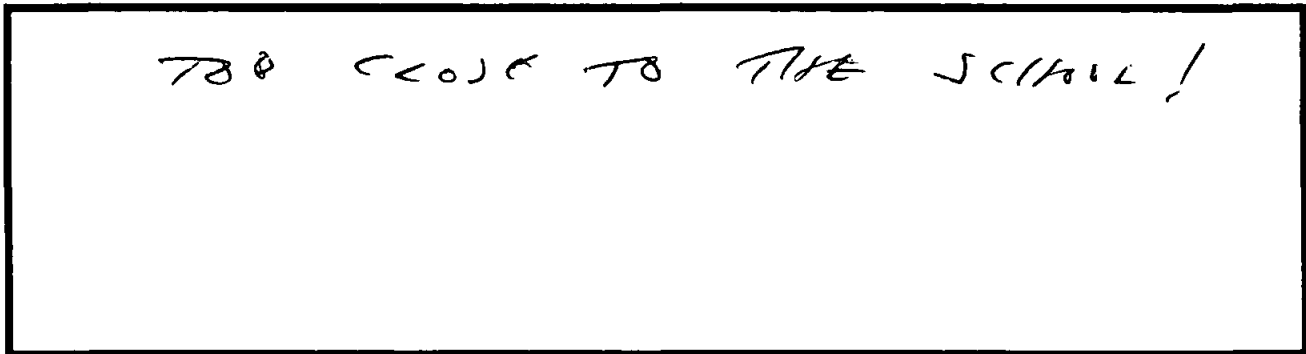
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WHY THIS MATTERS TO ME



744 QUIET HILLS
780 740 9405

<i>RON FORSTER</i>	<i>FARM RD. ESCONDIDO CA</i>	<i>780 740 9405</i>
NAME	ADDRESS	PHONE
EMAIL	<i>RON.FORSTER@IH.COM</i>	

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WHY THIS MATTERS TO ME

LA RASON DE MI PROTESTA EN CONTRA DE QUE PONGAN LA PLANTA ES POR LA SALUD, DE LAS FAMILIAS QUE VIVIMOS EN ESTA AREA ES PERO TOMEN EN CUENTA MI OPINION.

JESUS MAEIAS, 3978 MAIN ST. C.V. 585 8723
NAME ADDRESS PHONE

EMAIL _____ @ _____

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LauraH@environmentalhealth.org

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WHY THIS MATTERS TO ME

I WANT A CLEAN AND SAFE COMMUNITY.

SANDY DUNCAN, 262-2ND AVE., CV 91910
NAME ADDRESS PHONE
EMAIL RAMONA262@COX.NET@

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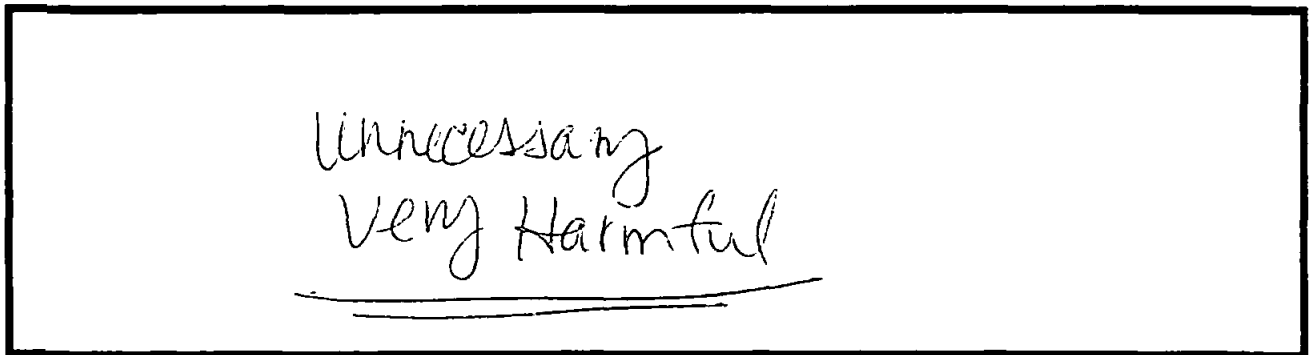
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WHY THIS MATTERS TO ME



NAME Yeni Lingua ADDRESS 2467 K St SD, CA 92102 PHONE 619-204-3897
EMAIL ylingua@gmail.com

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WHY THIS MATTERS TO ME

I want a clean + healthy bay for the future of Chula Vista

NAME Evan McLaughlin ADDRESS 3717 Camino del Rio S PHONE 619 228-8101
EMAIL emcloughlin @ unionsyes.org

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WHY THIS MATTERS TO ME

MARTHA SERRANO
772 Cedar AVE
CHULA VISTA, CA. 91910
Porque Contaminacion -

NAME

ADDRESS

PHONE

EMAIL

@

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WHY THIS MATTERS TO ME

BECAUSE it is not right, unhealthy!

NAME Alfonso Esquer ADDRESS 1336 Melrose Ave PHONE (619) 746 5198
EMAIL alfonsoe@aol.com @ _____

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WHY THIS MATTERS TO ME

Clean water & air for my daughter. Beautification of bayfront. Cleaner alternative.

Sarah Vega 395 Brown Ave SD, CA 92114
NAME ~~Sarah Vega~~ ADDRESS PHONE
EMAIL ~~Sarah Vega~~ Sarah_fere @ yahoo.com

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WHY THIS MATTERS TO ME

We need renewable energy source & a beautiful bayfront!

NAME Alan Ridley ADDRESS _____ PHONE _____
EMAIL _____ @ _____

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It is Time to End the Use of Bay Water by the South Bay Power Plant.

Dear Regional Water Quality Control Board Members,

For almost 50 years, the South Bay Power Plant has devastated the sensitive ecosystem of South San Diego Bay. The Plant's use of bay water for cooling kills billions of fish larvae and hundreds of thousands of fish when operating at permitted capacity. It has destroyed over 100 acres of eelgrass—an important habitat for fish nurseries. There are many cleaner ways to generate energy and there are alternatives to cooling the power plant that do not impact bay water quality. **You have the authority and the obligation to eliminate discharges that degrade water quality and damage marine life in San Diego Bay.**

PLEASE, direct your staff to send a letter to power plant operators notifying them that you intend to terminate use of bay water for South Bay power plant cooling when the permit expires in November, 2009.

FACTS:

- Both Dynegy Energy's lease to operate the South Bay Power Plant (SBPP) and the water discharge permit expire in November 2009.
- SBPP's cooling system devastates a wide range of marine life. At full operation an estimated 2.4 billion fish larvae and 400,000 fish and crustaceans are damaged or killed annually. Discharges prevent the growth of more than 100 acres of eel grass.
- SBPP is an economic blight on the bayfront, frustrating efforts to site desirable development there.
- There are alternatives for cooling the power plant that do not use bay water.
- The Regional Water Board has the discretion and authority to terminate this discharge after the expiration date of the current water discharge permit.

WHY THIS MATTERS TO ME

NEAR SCHOOLS & KIDS FIND A BETTER LOCATION

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A CLEAN BAY DEFERRED IS A CLEAN BAY DENIED

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