

# Rho Sigma Associates, Inc.

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Mr. Joseph R. Bartolotta  
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Re: "Discharger" in CRWQCB Tentative Order (TO) No. R9-2011-0022, Draft 2/8/2011

Dear Joe,

Although the TO makes frequent reference to the term, Discharger(s), its definition is conspicuous by its absence in the TO's Attachment A-Definitions.

In Section II B, Discharger Eligibility Criteria, an "attempt" is made to define Discharger. It reads, "when a fireworks event(s) is sponsored by one person but is operated or conducted by another person, it is the sponsor's duty to submit an NOI and obtain coverage under this Order." This seems to imply, the Sponsor of a fireworks display is considered the Discharger, and by extension, the entity for which the 1000 lb. NEW monitoring-free limitation and the permitting requirement applies. But, following this "definition" of Discharger, the next sentence provided is, "The San Diego Water Board (SDWB) may require the joint submission of an NOI from both the sponsor and the person operating the fireworks event on a case-by-case basis." This second sentence surely muddies the water, so to speak. Does "joint submission" mean that the sponsor and the person operating the fireworks event, share, e.g., 50:50, the NEW for the specific event (display) to be charged against their respective 1000 lb. monitoring-free limitation, or is the NEW "charged" to just the sponsor, or does the SDWB have something else in mind? And, exactly what are the criteria for application of "case-by-case basis?"

Fortunately, the term, "person" is defined in the TO's Attachment A, so I can interpret the "person operating the fireworks event," as the display fireworks company, e.g., Fireworks & Stage FX America (FSFXA). If, on a case-by-case basis, the SDWB requires FSFXA to jointly submit an NOI with a display's sponsor, then there exist a serious threat to the viability of FSFXA.

Please consider the following scenarios, using the 350 lbs. NEW for your typical, medium-sized display.

- (1) Independent of the location(s) of the displays, if the SDWB recognizes the sponsor as the exclusive discharger, then that sponsor would be able to do annually only two medium sized displays, with a total NEW of 700 lbs., so as not to exceed the monitoring-free limit. This may be a satisfactory situation for some, but certainly not

all of your customers.

- (2) Independent of the location(s) of the displays, if the SDWB imposes a joint 50:50 allocation on you and the sponsor, then you would be able to conduct no more than five medium sized displays, with a total of 1,750 lbs, NEW, 875 lbs. charged to you, so as not to exceed the monitoring-free limit. As five display represents a very small percentage of the total number of displays FSFXA conducts annually, such a restriction would mean, of course, that most of the displays you conduct would require water monitoring. While this might be viewed positively as new business opportunities by the environmental monitoring firms, it would likely result in the elimination of many displays in the greater San Diego area, and the previously broached attendant threat to the viability of FSFXA.
- (3) The TO refers to the Sponsor of the display in the singular. What happens if a display is sponsored by more than one sponsor? As a simple scenario, let's say there are two sponsors who split 50:50 the cost of the display, and SDWB considers this a case where only the "Sponsor" is the "Discharger." In this scenario, Sponsor A has already sponsored three displays in the San Diego Bay area and has 900 lbs. NEW charged against its annual 1000 NEW limit. This is Sponsor B's first display of the year. Does the SDWB split the 350 lbs. NEW for the display between the two sponsors, 50:50? If it does, then Sponsor A has an additional charge of 175 lbs. for a total of 1075 lbs NEW for the year, and thus the display will need to be monitored. Sponsor B then claims that it should not have to bear the additional costs for monitoring, because it has not exceeded its annual 1000 lb. limit. Potentially problematic, yes?

There are many similar scenarios which come to mind, with potential conflicts which have no clear resolution within the existing TO draft. Putting aside your arguments, with which I agree, that there is no demonstrable basis in fact for the need of a NPDES permit, I think the current TO is rife with so many ambiguities and inaccuracies so as make it unreasonably burdensome to the persons subject to its provisions.

Very truly yours,



Roger L. Schneider, Ph.D.

RLS/dbm

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