



December 7, 2010

Michelle Mata
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RE: PROPOSED GENERAL WASTE DISCHARGE REQUIREMENTS FOR THE PUBLIC DISPLAY OF FIREWORKS – TENTATIVE ORDER NO. R9-2010-0124, NPDES NO. CAG999002

Dear Ms. Mata:

Thank you for the opportunity to comment on Tentative Order No. R9-2010-014, which would establish Waste Discharge Requirements for the Public Display of Fireworks. The City of Laguna Niguel sponsors one annual public fireworks display on each 4th of July. Pyro Spectaculars, Inc. is our currently contracted fireworks display operator. From our reading of the Draft Tentative Order, it appears that our once-per-year public fireworks display would be regulated under the Order and that the City of Laguna Niguel would be required to provide an annual Notice of Intent and Public Display of Fireworks Event Notification Form, pay applicable filing fees, implement specific Best Management Practices, maintain event-related activity logs, conduct pre-event and post-event water quality and sediment monitoring and submit monitoring reports to the Regional Board.

It is our understanding that the Draft Tentative Order is based on the premise that public fireworks displays contain constituents, particulates and debris that may adversely affect water and sediment quality in receiving waters. The Draft Tentative Order relies exclusively on the results of water quality and sediment monitoring by Sea World San Diego to support this premise.

The City of Laguna Niguel offers the following comments on Draft Tentative Order No. R9-2010-014:

1. The Draft Tentative Order is a “One Size Fits All” Approach that Fails to Differentiate between Events of Different Magnitude

There is clearly a difference between a sponsor like Sea World San Diego which discharges public fireworks on a nightly basis up to 150 times per year and a sponsor like the City of Laguna Niguel that discharges public fireworks once-per-year to commemorate the 4th of July (Independence Day). Any Final Order should recognize such differences and scale or tier new permitting and monitoring requirements accordingly. There is a reasonable argument that all once-per-year public fireworks

displays should be completely exempted from the NOI filing, fee and monitoring requirements of the Draft Tentative Order.

2. The Draft Tentative Order Fails to Differentiate between Event Sites of Greater or Lesser Sensitivity and Proximity to Surface Waters

The City of Laguna Niguel conducts its annual 4th of July public fireworks display from an inland County Regional Park site that is 3.5 miles from the Pacific Ocean and 6.0 miles from the nearest Area of Special Biological Significance (ASBS). Prevailing coastal winds are more likely to carry fireworks-related constituents and particulates away from sensitive surface waters. Any Final Order should recognize such site differences and scale or tier new permitting and monitoring requirements accordingly. There is a reasonable argument that once-per-year public fireworks displays at less sensitive sites should be completely exempted from the NOI filing, fee and monitoring requirements of the Draft Tentative Order.

3. The Sea World San Diego Monitoring Studies Suggest that the Affects from Once-Per Year Public Fireworks Displays are Insignificant

The Draft Tentative Order cites water and sediment quality monitoring that has been conducted by Sea World San Diego since 2001. Despite the frequency of Sea World public fireworks displays (up to 150 times per year) and the unique characteristics of Mission Bay (restricted circulation and shallow depth of bay in the vicinity of the fireworks events), water chemistry sampling showed little evidence of pollutants that exceeded applicable water quality objectives. Sediment chemistry monitoring revealed highly variable and temporal results that were seemingly inconclusive. Based on the Sea World monitoring results, it is reasonable to assume that the pollutant affects from once-per-year public fireworks displays are insignificant.

4. The Draft Tentative Order Would Impose Costs for Annual Administrative and Monitoring Compliance that Would Be Burdensome and Out-of-Proportion for Once-A-Year Fireworks Displays

The City's annual fireworks display currently costs about \$32,000 to produce, and the show lasts for 20 to 30 minutes. The Draft Tentative Order would add \$1,452 for filing an annual Notice of Intent (NOI). In another comment letter, the City of Santee has estimated a cost of \$16,000 for development and implementation of a sampling and quality assurance plan and the sampling and analytical analysis of the water column, sediment chemistry, and benthic fauna at strategic locations. It has been suggested that all of a region's fireworks event sponsors form a coalition to share the costs of a regional monitoring program. It is questionable that such an approach would reduce individual monitoring costs given the diversity of fireworks launch locations, fireworks deposition zones and surface and receiving waters. As a result, adding 50% or more to the current cost of once-per-year public fireworks displays, as well as new staffing burdens, may cause future fireworks displays to be significantly cut back or cancelled.

5. The Draft Tentative Order Requires Further Consideration and Consultation with All Affected Stakeholders

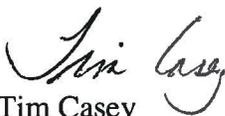
The Draft Tentative Order will potentially affect numerous public agencies, non-profit organizations and associations and private commercial enterprises that are either sponsors or operators of public fireworks displays in the San Diego region. It is not clear that the Regional Board has identified the full range of public and private stakeholders who will be affected by the regulation of public fireworks displays as a pollutant waste discharge. Additional time should be taken to gather information on the number of public and private fireworks display sponsors in the San Diego region, the location and frequency of fireworks events, and the proximity of such events to sensitive water bodies. Any Final Order should not take effect until January 1, 2012 to avoid disruption to events that are already planned and/or contracted for in 2011 including the 4th of July.

In summary, the City of Laguna Niguel respectfully requests that the Regional Board:

1. Reconsider the necessity and merits of the Draft Tentative Order to regulate public fireworks displays.
2. Consider an exemption or waiver for sponsors of once-per-year public fireworks displays.
3. Recognize the significant differences in event size/magnitude/frequency and event locations/proximity to surface waters and modify the Draft Tentative Order accordingly.
4. Defer the effective date of any Final Order to January 1, 2012 to avoid impacts on events that are already planned or scheduled for 2011.

Thank you for your consideration of the City's comments.

Yours truly,



Tim Casey
City Manager

Cc: Mayor and City Council
Terry Dixon, City Attorney
Pam Lawrence, Deputy City Manager
John Banks, Deputy Director of Recreation
Nancy Palmer, Environmental Programs Manager