



JERRY SANDERS
MAYOR

December 9, 2010

Executive Officer Gibson and Honorable Board Members
San Diego Regional Water Quality Control Board
9175 Sky Park Court, Suite 100
San Diego, CA 92123- 4340
Attn: Michelle Mata

Re: City of San Diego Comments regarding Tentative Order R9-2010-0124

Dear Mr. Gibson and Honorable Board Members:

Thank you for the opportunity to comment on the Tentative Order issued by the Regional Water Quality Control Board (RWQCB) considering the possible adoption of an order establishing General Waste Discharge Requirements and a NPDES Permit scheme for the discharges associated with the public display of fireworks. I write to express my grave concern that the proposed tentative order results in a series of damaging consequences that are not fully contemplated, nor vetted within the document. These consequences not only threaten the viability of future fireworks displays in San Diego, but also set a national precedent, devoid of adequate factual or scientific basis. The following repercussions must be seriously considered and fully vetted prior to moving forward with any new legislation.

The proposed tentative order will produce a de facto ban on most if not all fireworks displays in the San Diego region, including July 4th fireworks shows.

For a large number of Americans, few things are more sacrosanct than the right to watch July 4th fireworks. Many of these shows, such as the one in La Jolla and Ocean Beach, are beloved traditions that stretch back decades. Many of the organizations that sponsor fireworks displays operate on a shoe-string budget, oftentimes funded through individual community members and small local business donations. In many cases, local businesses go so far as to place coffee cans on their counters in attempt to raise the funds needed to produce the show. The proposed regulatory requirements would result in exorbitant and prohibitive expenses that these organizations simply will be unable to bear.

Fireworks have never been categorized as a point source discharge in the history of the Clean Water Act.

The Clean Water Act has been in existence for almost forty years. Since inception, fireworks shows have been enjoyed throughout the nation, yet no other state or local agency has applied the Act as proposed by the RWQCB. Regulation in the field creates a new and misguided interpretation of long-standing federal legislation.

No scientific evidence exists to suggest that fireworks, especially shows held only once a year, generate environmental impacts that would require such extreme measures.

The City of San Diego is committed to ensuring the quality of our water. However, insufficient data exists that indicates infrequent firework displays result in negative impacts to water quality. In fact, all available scientific evidence shows just the opposite – these fireworks shows have no measurable impacts whatsoever. Monitoring reports from regular shows, such as those sponsored by SeaWorld, demonstrate minimal impacts on water and sediment quality after 25-years of nightly fireworks shows. These findings are further detailed in our attached comments.

Based on the severity of the consequences listed above, I appreciate your serious consideration of our attached comments. I fully support the efforts of our community organizations that struggle to ensure these celebrations can be honored throughout the year and offer such a valuable benefit to the public. Regulations of the proposed magnitude should not be applied to fireworks displays that are only held on an occasional basis. As such, I urge your reconsideration and look forward to working toward a fair and equitable resolution.

Sincerely,



JERRY SANDERS
Mayor

City of San Diego Comments for the December 16, 2010 Workshop Regarding Tentative Order No. R9-2010-0124; NPDES Permit No. CAG999002; General Waste Discharge Requirements for Discharges Associated with the Public Display of Fireworks to Surface Waters within the San Diego Region

The City of San Diego respectfully requests that the Regional Water Quality Control Board (RWQCB) consider the following issues concerning the proposed Tentative Order:

1) Proposed regulations will result in the cancellation of most, if not all fireworks displays in San Diego.

Cost associated with monitoring and compliance create an undue financial hardship for community organizations that sponsor fireworks shows, as these organizations rely on community and business donations to fund the events. Preliminary estimates indicate monitoring costs in excess of \$30,000 for basic compliance. This amount exceeds the total budget for most shows and will result in a de facto moratorium on fireworks shows throughout the region.

2) The permitting and monitoring requirements associated with the proposed tentative order are disproportionate to water quality impacts.

The hypothetical benefits achieved through the proposed permit requirements do not justify the costs. Local water quality consultants have estimated that the water quality and sediment monitoring required by the terms of the Tentative Order will cost between \$30,000 and \$100,000. This enormous financial burden is not supported by any scientific data or information that demonstrates the need for the report. Therefore, the Tentative Order violates California Water Code section 13267(b)(1), as no reasonable relationship can be shown between the costs of the Tentative Order's water quality and sediment monitoring requirements and any significant impact occasional firework displays may have on water quality.

3) Fireworks are not a "point source" discharge under the Clean Water Act.

The CWA defines a point source as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." The City of San Diego does not agree that the legal authority of CWA applies. The Tentative Order would constitute the first and only interpretation in the county that public fireworks displays are a "point source" discharge under CWA.

4) Current monitoring data does not support the need for the level of monitoring proposed in the Tentative Order.

Significant water quality, sediment quality, and sediment toxicity data is available from Sea World, a current permit holder, who has displayed over 3,500 firework shows since 1985. Review of their reports indicates negligible environmental concerns. This demonstrated minimal impact on water and sediment quality after 25-years of fireworks displays calls into question if occasional displays will have any appreciable impact on water and sediment quality.

Furthermore, the Tentative Order states, "Sea World's public fireworks events represent the highest level of water and sediment effects because (1) Mission Bay is unique due to the restricted circulation of waters within the bay and the shallow depth of the bay in the vicinity of the fireworks events, and (2) the high frequency of repeat fireworks events throughout the year at the same location results in maximum pollutant loading." If the conditions associated with Sea World's fireworks shows constitute the most fertile environmental conditions for potential water impairment, then fireworks detonated on an infrequent basis over various depths and circulation patterns should not be held to the same standards.

5) If the order becomes effective as proposed, small-scale fireworks displays should be authorized under a de minimis exemption.

If the proposed Tentative Order is adopted as written, provisions should be included to treat occasional fireworks displays as a de minimis exemption under any general NPDES permit. State law defines a de minimis source as "types of wastes that have low pollutant concentrations and are not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters yet technically must be regulated under an NPDES permit." Occasional public fireworks displays undoubtedly fit within this de minimis definition, however; it remains questionable that whether NPDES permitting requirements apply in general. As evidenced in available monitoring reports, little to no water quality impacts are associated with these displays.

6) The definition of "significant distance" is unclear as it relates to the prohibition of fireworks in Areas of Special Biological Significance (ASBS).

This term should be clarified and defined.

The City of San Diego appreciates your consideration of the comments listed above. It is our hope that the Tentative Order can be significantly modified to ensure the continued operations of community fireworks displays on the 4th of July as well as during special events throughout the year. If you have any questions or require additional information, please contact Ruth Kolb at (858) 541-4328.