

RESPONSE TO SIGNIFICANT COMMENTS
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
RESIDUAL FIREWORK POLLUTANT WASTE DISCHARGERS
TO WATERS OF THE UNITED STATES IN THE SAN DIEGO REGION FROM THE
PUBLIC DISPLAY OF FIREWORKS
ORDER NO. R9-2011-0022
NPDES NO. CAG999002

The San Diego Water Board will hold a public hearing on May 11, 2011 to consider adoption of General Waste Discharge Requirements and NPDES Permit for Residual Firework Pollutant Waste Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks (Tentative Order No. R9-2011-0022, NPDES No. CAG999002). This document contains responses to written comments received from interested parties in response to all previously released versions of the Tentative Order. The comment period ranged from September 23, 2010 to April 20, 2011.

All written comments submitted to date are available to view at the San Diego Water Board's website:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/npdes/fireworks/fireworks.shtml

Table of Contents

1.	List of Commenters.....	2
2.	Responses to comments on Version 3/21/2011 of Tentative Order (Post 2 nd workshop).....	4
3.	Responses to comments on Version 2/8/2011 of Tentative Order (Post 1 st workshop).....	22
4.	Responses to comments on Tentative Order R9-2010-0124 released 9/23/2010 (Pre 1 st workshop).....	30
5.	Responses to comments submitted during the March 11, 2011 Workshop.....	52

Commenter ID Number	Company/Agency	Representative
1	Cardiff-by-the-Sea Resident	Dr. Lorri Greene
2	City of Coronado	Blair King
3	City of Chula Vista	Khosro Aminpour
4	City of Dana Point	Kevin Evans
5	City of Laguna Niguel	Tim Casey
6	City of Laguna Beach	Kenneth Frank
7	City of Laguna Beach, Mayor's Office	Toni Iseman
8	City of Mission Viejo	Dennis R. Wilberg
9	City of Murrieta	Rick Dudley
10	City of Santee	Pedro Orso Delgado
11	City of San Clemente	Sylvia N. Rosenthal
12	City of San Diego	Kris McFadden
13	City of San Diego, Mayor's Office	Jerry Sanders
14	City of San Diego Resident	Mike Weinberg
15	Clean Water Now! Coalition	Roger von Bütow
16	Coastal Environmental Rights Foundation	Sara S. Honadle
17	Coast Law Group	Marco A. Gonzalez
18	Coronado 4 th of July Committee	Andy Szymanski
19	Environmental Health Coalition	Laura Hunter
20	Fireworks & Stage FX America	Joseph R. Bartolotta
21	Hornblower Cruises & Events	Jim Unger
22	Hunsucker Goodstein & Nelson PC on behalf of Pyro Spectaculars, Inc.	Brian L. Zagon
23	Latham & Watkins on behalf of the La Jolla Community Fireworks Foundation	Robert Howard Kelly E. Richardson
24	Ocean Beach Main Street Association	Denise Knox
25	Private Individual	Joel Goldberg
26	Procopio, Cory, Hargreaves and Savitch on behalf of San Diego Armed Forces YMCA	John Lormon
27	Pyro Spectaculars, Inc.	Gary E. Brown

Commenter ID Number	Company/Agency	Representative
28	San Diego Armed Services YMCA	H.P. "Sandy" Purdon
29	San Diego Coastkeeper	Nate Hausman, Jill Witkowski
30	San Diego Port Tenants Association	Lee E. Wilson
31	San Diego Symphony	Edward B. Gill
32	San Diego Unified Port District	
33	SeaWorld San Diego	
34	The Creadore Law Firm on behalf of the National Fireworks Association	Donald Creadore
35	Valley Center Resident	Joan Salat
36	22 nd District Agricultural Association, Del Mar Fairgrounds	Rebecca Bartling

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Committer ID	Comment Summary	Comment Response
12, 20, 22, 23, 26, and 34	<p>1 Objection to Regulation of firework pollutant waste as a “point source” discharge. Several commenters (Nos. 11, 21, 22, 25, and 32) contend that the San Diego Water Board does not have the authority to regulate the public display of fireworks. A common statement from the commenters is, <i>“There is not sufficient precedent rooted in federal case law or any provision of the Clean Water Act that would categorize fireworks displays as a “point source” discharge.</i></p> <p>Does not believe that there is a scientific basis for the Regional Board's decision to regulate fireworks displays within the San Diego Region.</p>	<p>1. Generally speaking, the Clean Water Act (CWA) prohibits a person from "discharging pollutants" from a "point source" into "waters of the United States" unless that person obtains an NPDES permit for the discharge. The term pollutant is very broadly defined under the CWA and anything put into water can be a pollutant with few exceptions. The CWA's definition of a "discharge of a pollutant" is equally broad and refers to "any addition of any pollutant from any point source" to surface waters from a discharge, and would encompass minor discharges with low or de minimis levels of pollutants. The term "point source" in the CWA similarly embraces the broadest possible definition of any identifiable conveyance from which pollutants might enter surface waters. As a result of numerous court cases the definition of "point source" has been very broadly interpreted to include a wide variety of sources including ordnance from military aircraft, spent shot from a gun fired over water, and pesticides sprayed via airplane or helicopter over water. For fireworks, the point source is the instrument that shoots the firework into the air and causes the discharge. The device that sets off the firework is a discrete, identifiable instrumentality that discharges the firework into the air and causes the pollutants to enter surface waters. Since there is a discharge of pollutants from a point source, the San Diego Water Board may properly regulate</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

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		<p>fireworks through an NPDES permit. Based on all of these considerations the San Diego Water Board has concluded that firework pollutant discharges are subject to the CWA's requirement that all discharges covered by the statute must have an NPDES permit.</p>
17,19,23,26	<p>2 Objections to the threshold criteria and tiered approach for receiving water monitoring. Comments were received regarding the analysis and criteria used to identify which fireworks displays would be subject to receiving water monitoring requirements specified in Section IX of the Monitoring and Reporting Program. Commenter No. 16 noted numerous perceived deficiencies in the analysis and urges applying the approach proposed in the first draft dated 9/23/2010 (Tentative Order No. R9-2010-0124), which did not distinguish between categories and require monitoring in at least one location for each water body where fireworks discharged. Commenter 25 stated that it is not clear why a discharger who exceeds 1,000 pounds net explosive weight would be treated differently if they were discharging over inland versus bay waters.</p>	<p>2. The San Diego Water Board's tiered approach to receiving water monitoring in the current version of the Tentative Order was taken in response to concerns raised the by the pyrotechnic industry and their supporters that the monitoring requirements prescribed in earlier versions of the Tentative Order were excessive. The tiered threshold approach provides a methodology for identifying major firework events that would initiate water quality and sediment monitoring to assess the effectiveness of the standard best management practices being implemented by the dischargers. Under this approach an annual firework pollutant mass-based net explosive weight threshold of 1,000 pounds or more was established to classify dischargers who must conduct or participate in receiving water monitoring in Mission Bay or San Diego Bay. The rationale for the tiered approach is described in the Fact Sheet in section V.D. Based upon the information being submitted by all dischargers subject to this Order and the receiving water monitoring data from a selected few of the dischargers, the tiered approach may be revised in the future.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

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		<p>The San Diego Water Board recognizes the shortcomings of the existing monitoring data and its applicability to other discharges. The San Diego Water Board contends that utilizing an approach which combines (a) BMP monitoring for all firework events with (b) receiving water monitoring requirements restricted to Category 1 Dischargers, holding firework events exceeding the 1,000 pound net explosive weight threshold in San Diego Bay or Mission Bay, is reasonable for a first term general NPDES permit. The San Diego Water Board considered smaller firework shows discharging within the same water body, and determined that that restricting the required monitoring to BMP monitoring was an adequate monitoring approach for these dischargers during the first permit term. The Tentative Order provides in Section IX.B.2. that the Executive Officer may require receiving water monitoring by any discharger at any time based on the receiving water characteristics or other special considerations. BMP and receiving water monitoring information gathered under the monitoring program during the first five year permit term will be utilized to reevaluate the monitoring requirements for the next permit term.</p> <p>The San Diego Water Board considered many factors in developing the structure of the monitoring requirements. The required monitoring is currently limited to San Diego Bay and Mission Bay, where (a) there is an increased potential of overlap in</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
		<p>fireworks events around the same location, (b) the majority of firework discharges are expected to occur, and (c) CWA section 303(d) impaired water body segments for constituents found in fireworks are located. The monitoring program structure also provides in Section IX.B.2 that other firework event discharges, whose size, location and frequency the San Diego Water Board may not be currently aware of, may be required to monitor on a case-by-case basis as determined by, in part, the factors laid out by the commenter.</p>
3,34	<p>3 Concerns that the receiving water monitoring is cost prohibitive. Commenters 3 and 32 contend that an unintended consequence of the Board's proposed water quality monitoring requirements will be the loss of large fireworks displays in Mission Bay and San Diego Bay due to additional monitoring costs.</p>	<p>Federal NPDES regulations at 40 CFR 122.44 and 122.48 require that NPDES Permits contain appropriate monitoring and reporting requirements. Water Code Sections 13267 and 13383 also authorize the San Diego Water Board to require technical and monitoring reports. The receiving water quality monitoring program of the Tentative Order correctly and properly implements the applicable federal and California laws and regulations.</p> <p>The burden of collecting the receiving water monitoring information and preparing the required reports bears a reasonable relationship to the need for the information and the benefits to be obtained from the reports. The receiving water monitoring in the Tentative Order is designed to determine if required best management practices for major firework events in Mission Bay and San Diego Bay</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Committer ID	Comment Summary	Comment Response
		<p>are adequate to prevent an exceedance of the receiving water and sediment quality limitations of the Tentative Order. The monitoring is necessary and appropriate in order for the San Diego Water Board to effectively regulate firework discharges under an NPDES Permit and to develop a broader understanding about the receiving water quality and sediment quality effects of firework discharges. The information will also allow the San Diego Water Board to develop more rapid and efficient response strategies to protect beneficial uses of shorelines and state waters and to improve upon the structure of the Tentative Order in the next permit term.</p> <p>Cost estimates for sediment quality sampling and analysis were provided by the State Water Resource Control Board in the Staff Report for the Water Quality Control Plan For Enclosed Bays and Estuaries – Part 1 Sediment Quality (September 18, 2008). The report estimated per sample costs to range from \$3,940 - \$5,810 per sample (see Table 7.2). Additional water quality monitoring (primarily water column) analysis is expected to add an estimated \$1200 per sample to this estimated cost, resulting in estimates of \$5,140 to \$7,010 per sample. It should be noted the higher end cost from the 2008 Report reflects the additional sampling specificity required for San Francisco Bay.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
		<p>The Tentative Order encourages dischargers conducting receiving water monitoring to achieve maximum efficiency and economy of resources by establishing or joining a San Diego Bay or Mission Bay water body-monitoring coalition. Monitoring coalitions enable the sharing of technical resources, trained personnel, and associated costs and create an integrated water and sediment monitoring program within each water body.</p> <p>No adequate economic information has been provided to indicate that the sampling required is too expensive. No sufficient and non-speculative information has been submitted to show that large fireworks displays over Mission and San Diego Bay will be lost, and that there will be tens of millions of dollars lost as a result.</p>
17, 19	<p>4 Objection to allowing discharges to ASBS areas. Commenter 15 states the tentative Order allows for these discharges by inappropriately invoking a limited term activity exception to the ASBS discharge prohibition in the Ocean Plan.</p> <p>Our inability to define truly natural water quality, and the reality that water quality at ASBS and reference sites will only deteriorate with population growth, is a truly compelling</p>	<p>The San Diego Water Board disagrees with this statement. The Implementation Provisions in Section III.E of the Ocean Plan provide the San Diego Water Board the flexibility to allow limited term discharges. Fireworks events are limited-term discharges, so they are allowed under Section III.E.</p> <p>As stated in Section VI.D.1.c. of the Tentative Order Fact Sheet, the Natural Water Quality Committee (NWQC's) purpose and role is to provide guidance on determining "natural water quality" and provide scientific advice regarding</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Committer ID	Comment Summary	Comment Response
	<p>reason to strictly enforce the Ocean Plan discharge prohibition. It is at the very least a reason to prohibit unnecessary pollutant discharge directly adjacent to or within an ASBS.</p> <p>Committer 22 believes that the Special Provisions of the Tentative Order at Section VII.C.2 (pages 24-25) related to the Ocean Plan and allowable discharges to the La Jolla Area of Special Biological Significance (“ASBS”) are also reasonable approaches that are well supported by the science.</p>	<p>assessing impacts in ASBS. A regional water quality assessment that includes ASBS will occur utilizing Proposition 84 funding. This effort is expected to better characterize the receiving water condition (“natural water quality”) of all ASBS waters across the state, including those which may receive discharges from fireworks.</p>
26	<p>5 This Order should treat each barge displaying fireworks as a separate event especially if these barges are located at a distance where water quality impacts create separate impacts, where the show is one time a year, and where each barge or the net explosive weight of fireworks on each barge is less than 1,000 pounds.</p>	<p>The San Diego Water Board understands there are instances in which multiple barges are used for an event. The San Diego Water Board also understands that each barge may contain a net explosive weight of less than 1,000 pounds.</p> <p>The requirement for a water-body specific event threshold was established in order to obtain monitoring data for those events that discharge a mass load during a short time period that is comparable to the amount that resulted in documented elevated levels of pollutants within the SeaWorld fireworks discharge zone. This approach is also consistent with the water-body based monitoring approach within the SWRCB Sediment Quality Control Plan. While the distance between barges may result in diminished detected levels immediately within a specific barge’s discharge</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
		<p>zone, the overall mass loading of pollutants may exceed the 1,000 pound threshold and may cause or contribute to a condition of pollution in these water bodies which are already impaired for copper, sediment toxicity and benthic community effects. Once the fireworks residue and debris enters a water body it can be easily transported throughout the waterbody and to shorelines outside the fallout area due to wind shear and tidal effects.</p> <p>Based on the above considerations the San Diego Water Board will require receiving water monitoring for firework event discharges involving multiple barges where the combined mass loading of the discharge would exceed a net explosive weight of 1,000 pounds.</p>
26	6 Once a discharger files its notice of intent ("NOI"), the Regional Board has the opportunity through the notice of enrollment ("NOE") to include specific conditions not stated in the Order. We request that the Order include a notice and an opportunity to comment before special conditions are added to this Order.	This sentence has been removed.
26	7 The definitions for "Fallout Area" and "Firing range" are vague and do not provide reasonable certainty or provide legally sufficient guidance to create and bind a discharger to the legal obligations established in the Order.	Attachment A of the Tentative Order provides reasonable and specific definitions for "Fallout Area" and "Firing Range" The receiving water fallout area affected by the fireworks residue can vary depending on wind speed and direction, size of the shells, the angle of mortar placement, the type and

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

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	<p>Fallout Area should be defined as a 300 meter radius, which is what the Coast Guard uses</p>	<p>height of firework explosions and other environmental factors. It is the responsibility of the Discharger to evaluate these specific factors and determine the extent of the “Fallout Area” and “Firing Range” area so that the affected receiving water can be identified and targeted for cleanup or monitoring following the firework event.</p> <p>The U.S. Coast Guard (USCG), pursuant to 33 CFR 100, implements a Marine Safety Program designed to ensure the safety of vessels and recreational boaters on navigable U.S. waters during firework display events. The fallout area the United States Coast Guard uses to achieve this goal is not established for the purposes of determining water quality effects and targeting BMP implementation.</p> <p>The San Diego Water Board relies on the professional judgment of the fireworks contractor to identify and estimate the fallout area on a case-by-case basis. By limiting the area to 300 meters, the San Diego Water Board would in effect be ignoring the effects of firework pollutant discharges beyond 300 meters.</p>
26	<p>8 We ask that a single permittee such as the Port of San Diego be allowed to authorize all events within its jurisdiction. While the Board cannot order the Port to do that, we ask the Board if this possibility would be acceptable to the Board.</p>	<p>Under the terms of the Tentative Order one party can file one Notice of Intent application for multiple firework event displays.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
26	<p>9 Need to add definitions to many terms that are open to uncertainty and confusion.</p> <p>a. For example, what is the difference between discharger, sponsor, host and operator?</p> <p>b. Point source is not sufficiently interpreted nor applied to the unique nature of fireworks, which staff groups into three general categories.</p> <p>c. The definition for the term "net explosive weight" is not sufficient and leaves room for</p>	<p>a. The term "discharger" in the Tentative Order refers to the person who proposes to discharge pollutant waste from the public display of fireworks to surface waters of the U.S. in the San Diego Region and signs and submits the Notice of Intent for coverage under the Order. The "discharger" is also the entity(s) that is accountable for compliance with the terms and conditions of the Tentative Order. The term "host" as used in the Tentative Order refers to the chief organizer of the firework event. The term "operator" as used in the Tentative Order refers to any licensed pyrotechnic operator, who by examination, experience, and training, has demonstrated the required skill and ability in the use and discharge of fireworks as authorized by the license granted.</p> <p>b. Please see the Memorandum from the San Diego Water Board's Counsel dated April 20, 2011 which concludes that firework discharges are a "point source" discharge within the meaning of the Clean Water Act and that the San Diego Water Board may properly regulate firework discharges through an NPDES permit.</p> <p>c. This definition of the term "net explosive weight" provided in Attachment A of the Tentative Order is adequately defined and</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
	<p>debate.</p> <p>d. The word "continuous" is not found in the definition section of the Order.</p> <p>e. There is no definition for environmentally friendly fireworks.</p>	<p>taken from the definition provided in the California Code of Regulations (22 CCR § 67384.3).</p> <p>d. The commenter does not provide enough information for the San Diego Water Board to evaluate why “continuous” needs to be defined in the Order.</p> <p>e. This term “environmentally friendly” has been removed from the Tentative Order and replaced with the term “alternative fireworks”. The definition of “alternative fireworks” has been added to Attachment A of the Tentative Order.</p>
22	10 Requests that the Tentative Order be modified to require that a show sponsor apply for an application at least 20 days before the event (instead of 60).	The San Diego Water Board’s review and evaluation of applications submitted for coverage under the Order is a new workload that will require a significant staff resource investment during a time of increasingly severe resource constraints. The San Diego Water Board has determined that 60 days is the time period the Board will need to evaluate and process the applications, review the BMP plans, meet with the applicants to resolve issues and issue the Notice of Enrollment. The San Diego Water Board will consider reducing this time frame in the future as it gains experience with the resources needed to administer the Order.

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
22	11 Request that the Tentative Order be modified to provide 30 days for completion of the Fireworks Post Event Report. In addition, PSI requests that the Fireworks Post Event Report for shows on July 4 th be due to the Regional Board by August 15.	The request is reasonable and changes will be made to the Tentative Order
20, 34	12 Permit Fee is excessive	The Division of Administrative Services- Fee Branch of the State Water Resources Control Board is responsible for the administration and collection of the annual permit fees for the Order. The annual fee is designated in section 2200(b) (8) of Title 23, CCR, which is available at http://www.waterboards.ca.gov/resources/fees/ Fees are based on the threat to water quality and complexity of the discharge. This is the lowest fee for this type of discharge.
32	13 Section IX.A.1.a, Category 1 Discharger Criteria defines which discharges are subject to monitoring. The Port recommends that this definition include discharges to surface waters which can flow into or are adjacent to San Diego Bay.	The San Diego Water Board has the option under Section IX.B.2. of the Tentative Order to require receiving water monitoring by Category 2 dischargers who discharge to San Diego Bay tributaries. The 303(d) listing of tributary waters for constituents found in fireworks may be considered in the evaluation of Category 2 dischargers.
32	14 In Section IX.A.2, Category 1 Dischargers are encouraged to establish or join water body monitoring coalitions for San Diego Bay and/or Mission Bay. As you know, these bays have been sampled at regular intervals for the last 15 to 20 years through the Bight Program	Comment Noted. The San Diego Water Board encourages the use of monitoring coalitions and regional monitoring efforts due to economies of scale, efficient use of resources and data comparability. However, the San Diego Water Board cannot “require” individual discharges to

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
	<p>and, as a result, have established a solid baseline of water and sediment conditions. The Port recommends, in lieu of the proposed monitoring coalition, that dischargers contribute to the regional Bight monitoring program.</p>	<p>participate in a specific regional effort in lieu of monitoring their individual discharge.</p>
3	<p>15 Section II.C of the Order</p> <p>In order to provide reasonable time for developing Fireworks BMP Plans, our recommendation is to start permit coverage requirement at least 75 days after the permit effective date of June 1, 2011.</p>	<p>Comments received to date in writing and at the workshops, indicate that the Fireworks Best Management Practices required under the Tentative Order are already being largely implemented. Under the terms of the Tentative Order the discharger must submit the Fireworks BMP Plans at the time the application for permit coverage is submitted. General Permit coverage is effective when all of the following have occurred: (1) The Discharger has submitted a complete permit application; (2) The Fireworks Best Management Practices Plan has been accepted by the San Diego Water Board; and (3) the San Diego Water Board has issued a Notice of Enrollment (NOE).</p>
3	<p>16 Section II.D of the Order</p> <p>It is recommended that the Notice of Enrollment be provided to the discharger at a reasonable time (for example 30 days) before the fireworks event date, to allow the discharger to plan and implement specific conditions included in the Notice of Enrollment. This minimum time period should be specified in the Order.</p>	<p>Under the terms of the Tentative Order the Discharger must submit a complete application for coverage no later than 60 days prior to a fireworks event. The San Diego Water Board typically responds to a NOI within 30 days of its receipt. Depending on when the NOI is submitted to the San Diego Water Board, there may not be enough time to provide the Discharger with a Notice of Enrollment 30 days prior to an event.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
3	<p>17 Definitions</p> <p>Please revise the definition within the Order and Attachments to clarify if the threshold weight of 1000 pounds is per calendar year, per event, or per location.</p>	<p>The definition in the Tentative Order is as follows: A Discharger that discharges fireworks containing a net explosive weight of 1,000 pounds or more, in any calendar year, from a single event to Mission Bay or San Diego Bay. SeaWorld San Diego is also considered a Category 1 Discharger.</p> <p>The definition is per a single event that meets the threshold, per the calendar year, and per location (San Diego or Mission Bay).</p>
3	<p>18 Attachment D- Special Provisions Sections don't appear to apply. Please revise or clarify</p>	<p>The commenter is referring to the Standard Provisions (Attachment D) of the Tentative Order. According to 40 CFR Section 122.41, these conditions apply to all NPDES permits and must be incorporated into the permits either expressly or by reference. These Standard Provisions are included in all NPDES permits regardless of discharge type.</p>
3	<p>19 Attachment E, Question No.2, Are BMPs Adequate? - This question cannot be answered by water and sediment sampling and testing since background legacy pollution from other sources at each event location are unknown.</p>	<p>First, Question No. 2 in Attachment E applies to the entire monitoring and reporting program for all discharges, and includes BMP monitoring and receiving water monitoring. Irregardless of background legacy conditions, the BMP monitoring required is expected to ensure that the BMPs implemented are sufficient to protect water quality, and also identify what additional or better tailored BMPs need to be utilized in order to protect water quality. This applies to both Category 1 and 2 dischargers.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Committer ID	Comment Summary	Comment Response
		<p>For those dischargers required to conduct receiving water monitoring, this monitoring is expected to further evaluate if the BMPs implemented are protective of water quality standards.</p> <p>For water column monitoring, it is unclear how or why legacy pollution would prevent post-fireworks event monitoring from detecting pollutants within the water column attributable to fireworks.</p> <p>For sediment monitoring, the San Diego Water Board recognizes the on-going and legacy pollutant contributions to sediments in San Diego and Mission Bays. The potential contribution of other pollutant sources was considered in the State Water Resources Control Board's Water Quality Control Plan For Enclosed Bays and Estuaries – Part 1 Sediment Quality (SWRCB Sediment Quality Control Plan). The requirements for monitoring in the SWRCB Sediment Quality Control Plan include constituents that are not found in fireworks discharge (i.e. pesticides and PCBs). If the narrative objective in the SWRCB Sediment Quality Control Plan is exceeded at a specified frequency, a stressor identification is required to be conducted to determine what stressor(s) is responsible for the exceedance. The stressor identification is expected to assess other potential sources.</p> <p>Additionally, current sediment monitoring efforts conducted throughout San Diego and Mission Bays</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
		<p>will allow the discharger(s) and the San Diego Water Board to compare post-firework monitoring results with other bay samples to evaluate firework discharge impacts.</p>
3	<p>20 Attachment E, Section II, Monitoring Locations - This section requires Category 1 Dischargers under the Order to establish receiving water and sediment monitoring locations for discharges to Mission Bay and San Diego Bay. It is not clear how many monitoring locations are needed and if they are intended to be on a per event basis, or if they are supposed to look at San Diego and Mission Bays as a whole.</p>	<p>The receiving water requirements in Attachment E of the Tentative Order were drafted to allow maximum flexibility for Category 1 dischargers to prepare a Water and Sediment Monitoring Plan to assess compliance with Receiving Water Limitations of the Order. These plans must propose the frequency and timing for sample collection in accordance with a conceptual model developed by the discharger. The monitoring may be performed either by individual dischargers for their specific firework events or through participation in a San Diego Bay or Mission Bay water body monitoring coalitions. Individual dischargers are required to sample at the locations where their discharges occur, while monitoring coalitions may choose to sample a subset of discharge areas.</p> <p>The receiving water monitoring should be conducted on an event basis, as the monitoring is required to be representative of the discharge. The receiving water monitoring in the Tentative Order is designed to determine if required best management practices for major firework events in Mission Bay and San Diego Bay are adequate to prevent an exceedance of the receiving water and</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Commenter ID	Comment Summary	Comment Response
		<p>sediment quality limitations of the Tentative Order Receiving water monitoring is not meant to assess San Diego and Mission Bay as a whole, as bay-wide monitoring is already conducted by other entities, but to ensure that the BMPs implemented are adequate to protect water quality in the area of the fireworks discharge.</p>
3	<p>21 Attachment E, Section IX.A3.b.iLL, Sediment Sampling Frequency This section requires that sediment sampling occur once every three years, but does not state when monitoring should begin.</p> <p>The timing of sediment sampling in relation to each fireworks event has not been specified.</p>	<p>The section has been written so dischargers have sufficient time to draft sampling plans prior to conducting the required sampling.</p> <p>The Tentative Order requires the discharger to specify the timing of sampling events following fireworks events in the Water and Sediment Monitoring Plan.</p>
4	<p>22 What is the purpose of the Public Fireworks Display Log? It is redundant with the Post Fireworks Display Report. To streamline paperwork and reporting, both these documents should be merged.</p>	<p>The purpose of the Public Fireworks Display log is to document any field observations, data, and notes on the implementation of BMP's that may be used to complete the <i>Public Display of Fireworks Post Event Report Form</i>.</p>
4	<p>23 Although the Instructions for Completing the NOI on page B-6 note that for a municipality a "duly authorized representative" can execute the Certification, which we feel is most appropriate, the Standard Provision on Page D-6, B.(c.) do not clearly provide that option.</p>	<p>All application submitted to the San Diego Water Board must be signed and certified in accordance with Section V.B.1 of Attachment D. All reports required by the Tentative Order and other information request by the San Diego Water Board may be signed by a duly authorized representative</p>

Comments on Tentative Order No. R9-2011-0022 (Version 3/21/2011)

Committer ID	Comment Summary	Comment Response
	Please clarify that a "duly authorized representative" can execute the Certification statements.	as described in Section V.B.2 of Attachment D.

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
32	<p>24 Please define the parameters of the Risk Assessment. SeaWorld would like to see the Risk Assessment removed from the language of the permit as it reads now, and human health or ecological risk assessment should be handled outside of the scope of this general permit, if deemed necessary by Water Board staff.</p>	<p>As specified in the SWRCB Sediment Quality Control Plan, Sediment Quality Objectives include both aquatic life (IV.A) and human health (IV.B). Human health requires that pollutants not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health (see also Attachment D, Section I.C regarding NPDES). Thus, it may be appropriate to require discharger(s) to conduct risk assessments to ensure compliance with the objective and NPDES permitting requirements. As specified in the SWRCB Sediment Quality Plan, the implementation would be required on a case-by-case basis.</p>
27	<p>25 Propose alternative language for Section V.B.4 as follows:</p> <p>“4. If the fireworks are launched or ignited on barges or floating platforms, the fireworks and fireworks equipment shall be setup, discharged and taken down in accordance with the laws and regulations applying to that display by a public display fireworks operator licensed in the State of California. All required permits and permissions shall be obtained from the authorities having jurisdiction of the fireworks display, and the parties responsible under applicable law and regulation shall comply with the requirements and conditions</p>	<p>The request is reasonable. Changes have been made to Section V.B.4 of the Tentative Order.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
	<p>of those permits. All equipment used to hold and launch the fireworks shall be secured properly in accordance with applicable laws and regulations and in such a way as to minimize the risk that they would fall into the water. Barges and floating platforms shall be inspected for leaks and other potential safety issues. Other than system firing cables and common or grounding wires intended to be recovered after the display, electric igniter wires used to trigger the fireworks shall be secured to minimize the risk that the wires would fall into the water during or after discharge. As soon as practicable, and no later than 24 hours following a public display of fireworks, the decks of each barge or floating platform that contained fireworks shall be raked or swept to gather fireworks debris and prevent it from being deposited into the water. Sand used to secure fireworks or fireworks equipment need not be swept from the decks.”</p>	
27	<p>26 Propose the following language for Section V.B.5:</p> <p>“5. All hazardous fireworks waste resulting from the setup, firing, and strike of the public display including live pyrotechnic waste shall be handled and managed in accordance with applicable fireworks and hazardous waste laws and regulations.”</p>	<p>The request is reasonable. Changes have been made to Section V.B.5 of the Tentative Order.</p>

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
27	<p>27 Propose the following language for Section V.B.6:</p> <p>“6. All non-hazardous solid waste resulting from the setup, firing, and strike of the public display, including wires, boxes, and packaging, shall be collected to the extent practicable and properly disposed of.”</p>	<p>The request is reasonable. Changes have been made to Section V.B.6 of the Tentative Order.</p>
27	<p>28 Suggest that the word "firing" be added to Section V.B.7 in the list of activities requiring compliance with Titles 19 and 22.</p>	<p>No change in the Tentative Order is warranted.</p>
27	<p>29 Section V.B.9 Because the permits and licenses enumerated in this paragraph are examples only and do not constitute an exhaustive list, we suggest either changing the "i.e." to "e.g." or removing the examples.</p>	<p>The requirement has been removed.</p>
32	<p>30 Concerned with the term “sponsor” and request that it be defined</p>	<p>Changes have been made to the Tentative Order</p>
32	<p>31 Section IX.A.1 defines a Category 1 Discharger, in part, as a discharger of fireworks "containing a net explosive weight of 1,000 pounds or more, ... ", which requires water monitoring. In contrast, in Section IX.B.2, no water monitoring routinely is required for fireworks containing a net explosive weight of less than 1,000 pounds. Please clarify why this distinction was made.</p>	<p>The threshold has been modified to a per event basis. Please see page F-34 of the Tentative Order Fact Sheet for a discussion regarding monitoring requirements. See Response to Comment No. 2.</p>
32	<p>32 Section IX.A.3 requires sediment sampling every three years. Please provide the basis</p>	<p>This requirement is based on the SWRCB Sediment Quality Control Plan, sections V.II.D and</p>

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
	for this requirement, as most long-term monitoring programs evaluate sediment trends using a five-year sampling strategy.	V.II.E, which specify a required monitoring frequency.
32	33 Section IX.A.3 also requires the development of a Conceptual Model identifying the physical and chemical factors that control the fate and transport of pollutants and receptors that could be exposed to pollutants in the water and sediment. Please clarify how this model will distinguish the pollutant contributions from fireworks events from historic and legacy conditions and other ongoing sources of pollutants or discharges in the vicinity.	Please see response to Comment No. 32. Additionally, the conceptual model is required to consider other anthropogenic inputs when determining the appropriate sampling points within the discharge area in order to ensure samples that are representative of the discharge.
32	34 Please clarify how the proposed fireworks monitoring would use the established monitoring information to identify impacts that are specific to fireworks sources.	Please see response to Comment No. 32.
23, 26, 34	35 The San Diego Water Board does not have the authority to regulate the public display of fireworks. There is not sufficient precedent rooted in federal case law or any provision of the Clean Water Act that would categorize fireworks displays as a “point source” discharge.	Please see the Memorandum from the San Diego Water Board’s Counsel dated April 20, 2011 which concludes that firework discharges are a “point source” discharge within the meaning of the Clean Water Act and that the San Diego Water Board may properly regulate fireworks through an NPDES permit.
23	36 We believe the annual weight limit should be higher for such periodic, short-duration San Diego Bay fireworks displays that in the aggregate may exceed 1,000 pounds net weight annually, but which involve insignificant pyrotechnic weight during each	The Tentative Order has been revised the Tentative Order to remove the cumulative weight from the Category 1 threshold. The current revised definition of a Category 1 Discharger is as follows: <i>A Category 1 Discharger is a Discharger that meets any one of the following criteria:</i> <i>a. Discharges fireworks containing a net explosive weight of</i>

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
	individual event.	<i>1,000 pounds or more, in any calendar year, from a single event to Mission Bay or San Diego Bay; or b. Discharges fireworks from SeaWorld San Diego to Mission Bay.</i>
23	37 Only one NOI, processed by the operator should be required. Non-profit groups sponsoring these events do not have the expertise or manpower to track these regulatory requirements.	The NOI must be submitted by the person hosting the fireworks event. The person hosting the event may delegate duties to the person conducting or operating the event.
23	38 No later than June 10, 2011, or 24 days prior to the Fourth of July event in 2011, and 60 days starting in 2012, is not practicable or reflective of when this Order will be implemented.	Under the terms of the Tentative Order the discharger must submit the Fireworks BMP Plans at the time the application for permit coverage is submitted. General Permit coverage is effective when all of the following have occurred: (1) The Discharger has submitted a complete permit application; (2) The Fireworks Best Management Practices Plan has been accepted by the San Diego Water Board; and (3) the San Diego Water Board has issued a Notice of Enrollment (NOE).
23	39 It is unclear whether a sponsor of a fireworks show will need to complete a NOI each year, prior to an annual Fourth of July fireworks show, and obtain a new NOE each year. Will a single NOI (and payment) in the first year of permitting followed by an NOE issued by the Regional Board suffice for the life of the Order, as long as no changes to the display are made?	Only one NOI needs to be completed once during the five year permit cycle. The permit fee is an annual fee.
23	40 Permit fee is excessive	The Division of Administrative Services- Fee Branch of the State Water Resources Control Board is responsible for the administration and

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
		<p>collection of the annual permit fees for the Order. The annual fee is designated in section 2200(b) (8) of Title 23, CCR, which is available at http://www.waterboards.ca.gov/resources/fees/</p> <p>The annual fee is based on the threat to water quality and complexity of the discharge. This is the lowest fee for this type of discharge.</p>
23	41 The terms “practicable” and “economically feasible” are used in this section, but neither is defined in the Tentative Order. Section V.B.1 should be removed	<p>The Tentative Order retains the requirement in Section V.1. for a discharger to consider the use of alternative fireworks whenever practicable and economically feasible. The term practicable is used in the Tentative Order as defined in American Heritage Dictionary of the English Language: “Capable of being effected, done, or put into practice; feasible”. The term ‘economically feasible’ is a term of art used in the Tentative Order to describe when the benefit of doing the activity is greater than the cost of doing it. The practicality and feasibility of implementing certain BMPs may differ based upon site specific conditions.</p>
23	42 Section V.B.2 requires the permittee to consider alternative firing ranges. We do not believe that we should be required to justify the current location of the event for 2011 for each and every subsequent year.	<p>The site-specific design of the firing range is considered a best management practice (BMP). A definition of BMPs has been added to the Tentative Order. Section V.B.2 requires that whenever practicable and feasible the discharger should consider alternative firing ranges to eliminate or reduce residual firework pollutant waste discharges to waters of the United States. The practicality and feasibility of implementing this BMP may differ over</p>

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
		time for repeat firework events so this BMP should be considered each subsequent year by the discharger.
20, 23, 34	43 Section V.B.5 – Remove the term hazardous waste	Section V.B.5 has been revised. See Response to Comment No. 26.
23	<p>44 Post Event Report</p> <p>a) This should only be submitted by Category 1 Dischargers</p> <p>b) What is the definition of “Solid Rocket Gross Weight”</p> <p>c) Defective shells section should be removed</p>	<p>a) This reports needs to be completed and submitted to the San Diego Water Board by dischargers for all firework events, regardless of the net explosive weight of fireworks discharged. The report will allow the San Diego Water Board to track and quantify the number and location of public fireworks events and affected receiving waters as well as ensure compliance with BMP’s</p> <p>b) This term has been removed from the Post Event Report form.</p> <p>c) Defective shells referred to as “duds” may fall directly into the water. Duds is a defined term in the Tentative Order and refers to a pyrotechnic item which leaves the mortar and returns to earth without producing the intended burst or effect. Dud shells contain 100% concentration of the pyrotechnic chemical constituents which could leak into the receiving waters with little dilution. If a particular firework</p>

Comments on Tentative Order No. R9-2011-0022 (Version 2/8/2011)

Commenter ID	Comment Summary	Comment Response
		event has a significant amount of “duds”, the San Diego Water Board would want to be aware of that fact.
34	45 The additional expense to comply with the requirements prescribed in the revised Tentative Order will vastly exceed the present cost of the fireworks display	Please see response to Comment No. 3 regarding sampling costs.
20	46 Discharger is not clearly defined	See response to Comment No. 9
20	47 Who is responsible for filing the Post Display Report to the Board	The person who has applied for and obtained coverage under the Order, pursuant to a Notice of Enrollment (NOE) provided by the San Diego Water Board, is responsible for compliance with the Order and submitting the report.
20	48 60 Days advance notice to the Water Board for a permit is unreasonable; should be 10 days	The San Diego Water Board’s review and evaluation of applications submitted for coverage under the Order is a new workload that will require a significant staff resource investment during a time of time of increasingly severe resource constraints. The San Diego Water Board has determined that 60 days is the time period the Board will need to evaluate and process the applications, review the BMP plans, meet with the applicants to resolve issues and issue the Notice of Enrollment. The San Diego Water Board will consider reducing this time frame in the future as it gains experience with the resources needed to administer the Order.
20	49 Many of these elements are found naturally in sea water	Comment noted.

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
1	50 It is important to make sure that chemicals that enter waterbodies are safe; fireworks over water pollute, therefore strict regulation need to be maintained. Do not continue to allow fireworks to pollute water any further.	Comment noted.
15	51 Newly designated State Marine Reserve listings by the California Fish & Game in the Marine Life Protection Act now being considered by the State should affect the San Diego Water Board's decision-making process in the fireworks matter.	The San Diego Water Board is aware of the Marine Life Protection Act and the Southern Coast efforts to date. It is unclear how the designations should affect the decision making process in this matter.
15	52 Fireworks are not just a short-term, insignificant impairment, insular incidences or impairments. Their adverse impacts, especially upon sediment, are long-term, they cascade throughout marine eco-systems and water columns, not to mention impose sustained bio-magnification effects.	Comment noted.
5, 6, 9, 10, 11, 21, 23, 24, 34, 11	53 The requirements of the Order are not proportional to the activity and violate cost benefit analyses. Once-per-year events should be exempt from the Order Fireworks that occur at a frequency of less than 10 times year should have a deminimis exception under any NPDES permit requirements The tentative Order should only apply to fireworks displays over large water bodies	No change to the Tentative Order is warranted. As discussed on page F-4 of the Fact Sheet, the Clean Water Act broadly prohibits the discharge of any pollutant to waters of the United States, except in compliance with an NPDES permit. The term pollutant is very broadly defined under the CWA and anything put into water can be a pollutant with few exceptions. The CWA's definition of a "discharge of a pollutant" is equally broad and refers to "any addition of any pollutant from any point source" to surface waters from a discharge,

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
		and would encompass minor discharges with low or de minimis levels of pollutants Although some fireworks displays may discharge pollutants in small amounts and intermittently, the Clean Water Act requires the discharge to be subject to a NPDES permit.
13, 22, 23	54 The Regional Board has no jurisdiction to regulate public displays of fireworks as they are not a "Point Source" under the Federal Clean Water Act	See Response to Comment No. 1. Also see the Memorandum from the San Diego Water Board's Counsel dated April 20, 2011 which concludes that firework discharges are a "point source" discharge within the meaning of the Clean Water Act and that the San Diego Water Board may properly regulate firework discharges through an NPDES permit.
5, 20, 22,	55 There is no scientific basis that justifies regulation of fireworks displays.	Certain constituents contained in pollutant waste discharges associated with the public display of fireworks threaten to cause or contribute to excursions above narrative and/or numeric water quality objectives contained in state and federal regulations. Constituents of concern include, but are not limited to, copper and perchlorate.
22	56 Section 13269 of the Cal. Water Code allows the Regional Board to waive WDRs as to a specific discharge or type or discharge - in this case, fireworks displays over water - if two criteria are met: (1) the Regional Board determines that the waiver is consistent with applicable state or regional water quality control plans; and , (2) the waiver is in the	The San Diego Water Board cannot waive regulation of firework discharges to surface waters under Water Code section 13269 because these discharges require an NPDES permit. (See response to comment 1). Water Code section 13269 authorizes Regional Water Boards to waive reports of waste discharge and issuance of waste discharge requirements for specific discharges or

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	public interest. Both of these criteria are met.	<p>types of discharges if the waiver is not against the public interest. However these types of waivers cannot be adopted for discharges requiring an NPDES permit, since the federal Clean Water Act mandates that all discharges covered by the statute must have an NPDES permit.</p> <p>It should be noted that discharges of wastes from public fireworks events to <u>land</u> are subject to regulation under the San Diego Water Board's Conditional Waiver No. 11 pursuant to Water Code Section 13269 and are not subject to regulation under the Tentative Order. Additional information on the San Diego Water Board Conditional Waivers can be found at the San Diego Water Board website: http://www.waterboards.ca.gov/sandiego/</p>
5, 8, 10, 11, 21, 22, 23, 24, 28, 30, 31, 36,	57 Extensive permitting, monitoring and BMP's proposed could make fireworks shows economically infeasible	<p>The Monitoring and Reporting Program has been revised and would limit monitoring to Mission Bay and San Diego Bay for discharges meeting the threshold criteria (set at 1,000 lbs net explosive weight). The Tentative Order does not require receiving water monitoring over inland surface waters or the Pacific Ocean, unless the Executive Officer determines that monitoring is required for a specific waterbody.</p> <p>For Dischargers that exceed the threshold criteria, the Tentative Order encourages the Dischargers to</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
		<p>establish or join a San Diego Bay or Mission Bay water body-monitoring coalition thereby reducing monitoring costs. Furthermore, receiving water monitoring is not required after every fireworks event. The frequency of sediment monitoring is once every three years based upon the requirements of the State Water Boards Sediment Quality Control Plan for discharges having a minimal threat to water quality. The frequency of water column sampling will be developed based upon review of a "conceptual model" required to be submitted by the Dischargers after adoption of the Tentative Order</p> <p>See response to Comment No. 3 regarding receiving water monitoring costs.</p>
16, 19, 25, 29	58 Support adoption of Tentative Order No. R9-2010-0124, including the requirement of Best Management Practices and Water Quality and Sediment Monitoring	Comment noted.
34	<p>59 Is the San Diego Water Board relying on any scientific data or engineering research or test results that substantiate or conclude:</p> <p>a) Firework displays cause an adverse impact to the quality of the receiving waters?</p> <p>b) Firework displays can exceed prevailing actionable levels of reported pollutants to</p>	<p>a) See the Tentative Order Fact Sheet (starting on page F-11) for a discussion of the summary and analysis of existing data on fireworks discharges.</p> <p>b) It is unclear what "prevailing actionable levels" the commenter is referring to. See Tentative</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>receiving waters?</p> <p>c) Firework displays cause acute or chronic toxicity in the receiving waters?</p> <p>d) The need for testing sediment at depths of 50 feet?</p>	<p>Order Fact Sheet (starting on page F-11) for a detailed summary and analysis of firework discharge monitoring data collected at SeaWorld San Diego results and water quality criteria.</p> <p>c) See Figure 3 on page F-17 of the Tentative Order Fact Sheet in regards to toxicity testing conducted by SeaWorld San Diego. Sublethal sediment toxicity was not conducted.</p> <p>d) The State Water Board's <i>Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality</i>, has narrative sediment quality objectives for the protection of aquatic life and human health in California's enclosed bays and estuaries. These objectives are applicable to subtidal sediments within bays and estuaries that have been deposited or emplaced seaward of the intertidal zone regardless of the subtidal depth. The Tentative Order Fact Sheet on page F-16 concludes that the increase in pollutant levels within the sediment in the fireworks fallback area at SeaWorld San Diego shows that the discharge of pollutants associated with larger fireworks events has the reasonable potential to cause or contribute to an exceedance of the narrative sediment quality objectives stated in section VI.A.3.c of the Tentative Order. This conclusion provides a basis for the Tentative</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>e) Fireworks products in sediments “in quantities that alone or in combination”, are toxic to benthic communities?</p> <p>f) Firework displays create pollutants.... in sediments at levels that will bio-accumulate in aquatic life to levels proven to be harmful to human health?</p> <p>g) Public displays of fireworks discharge pollutant wastes to surface waters?</p> <p>h) Firework displays produce or generate wastewater?</p> <p>i) Firework displays involve a process of production or manufacturing</p>	<p>Order’s sediment monitoring requirement.</p> <p>e) See Tentative Order Fact Sheet (starting on page F-11) for a discussion of the summary and analysis of existing SeaWorld San Diego data. See above response to Comment 59.e).</p> <p>f) See above response to Comment 59.e). The Tentative Order provides at Section IX.A.4. that based on the Water and Sediment Monitoring Report conclusions the San Diego Water Board may require a human health risk assessment to determine if the human health objective contained in Receiving Water Limitations V.A.3.c)(2) has been attained at each sample station. The San Diego Water Board has not, to date, required this assessment at SeaWorld San Diego.</p> <p>g) See the Tentative Order Fact Sheet on pages F-3 through F-10 and F-11 through F-18. This discussion provides the basis for the San Diego Water Board’s conclusion that firework events do result in the discharge of pollutant waste to surface waters.</p> <p>h) The Tentative Order does not identify fireworks displays as a source of wastewater.</p> <p>i) The Tentative Order does not contain any language that concludes fireworks displays</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>j) Fireworks are demonstrably equivalent to munitions or ammunitions</p> <p>k) Firework display products constitute pollutant waste?</p> <p>l) Best Management Practices that are more stringent than the current custom and practice are needed?</p> <p>m) Fireworks mortars are designed to function as conveyance of pollutants?</p>	<p>involve a process of production or manufacturing.</p> <p>j) The Tentative Order does not contain any language that concludes fireworks are demonstrably equivalent to munitions or ammunitions.</p> <p>k) The Tentative Order Fact Sheet at pages F-3 through F-10 provides the basis for the San Diego Water Board's conclusion that fireworks residue waste discharged into surface waters constitutes discharge of a pollutant from a point source within the meaning of the federal Clean Water Act.</p> <p>l) The San Diego Water Board has received comments, in writing and at the public workshops for the Tentative Order, which indicate that the consistency and amount of BMP implementation varies from event to event. The San Diego Water Board's adoption of the Tentative Order will promote establishment of a level playing field by providing for consistent regulation of firework event discharges and BMP implementation.</p> <p>m) See the Memorandum from the San Diego Water Board's Counsel dated April 20, 2011 which concludes that firework discharges are a "point source" discharge within the meaning of</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>n) A mortar containing a finished, non-ignited fireworks shell is considered a non-point source?</p>	<p>the Clean Water Act and that the San Diego Water Board may properly regulate firework discharges through an NPDES permit.</p> <p>n) The Tentative Order does not contain any language that concludes mortar containing a finished, non-ignited fireworks shell is considered a non-point source.</p>
34	<p>60 What information has the San Diego Water Board received from SeaWorld that establishes fireworks have a demonstrable adverse impact upon water quality of the receiving waters?</p>	<p>A See Tentative Order Fact Sheet (starting on page F-11) for a detailed summary and analysis of firework discharge monitoring data collected at SeaWorld San Diego.</p>
34	<p>61 Under what circumstance will a person be exempt or excused from having to file a Notice of Intent?</p> <p>a) Can a sponsor seek a waiver of enrollment and under what circumstances and terms will the waiver be provided?</p> <p>b) Under what circumstances will a joint NOI be required?</p>	<p>Only persons who proposes to discharge pollutant waste from the public display of fireworks to surface waters of the U.S. in the San Diego Region may submit a Notice of Intent (NOI) for coverage under the Tentative Order</p> <p>a) A waiver will be provided only if there is no potential for discharge of fireworks pollutants to waters of the United States.</p> <p>b) Tentative Order provides in Section II.B. on page 6 that the San Diego Water Board may require the joint submission of an NOI from both the host person (the person or entity organizing the firework event) and the person operating the fireworks event on a case-by-case basis. The San Diego Water Board may</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>c) Under what circumstance would the San Diego Water Board impose additional or increased monitoring and how and when will it do so?</p> <p>d) What dispute process is available to sponsors in the event that the Notice of Enrollment includes “additional or increased monitoring due to specific circumstances of the discharge”?</p>	<p>elect to require the joint submission of the NOI at the request of a host person or operator or other situations where the Board finds its appropriate to hold both the host person and the person operating the firework event jointly or severally liable for compliance with the Tentative Order.</p> <p>c) The Tentative Order provides in Section IX.B.2. that the Executive Officer may require receiving water monitoring by any discharger at any time based on the receiving water characteristics or other special considerations listed in this section. The San Diego Water Board may implement this provision of the Tentative Order through various means such as inclusion of special conditions in the Notice of Enrollment (NOE) described in Section II.D. of the Tentative Order and issuance of an investigation order pursuant to Water Code sections 13267 and 13383.</p> <p>d) See response to Comment No. 6.</p>
34	62 What receiving waters are known to have documented and reported adverse impacts attributed specifically to particulate matter and	See Tentative Order Fact Sheet (starting on page F-11) for a detailed summary and analysis of firework discharge monitoring data collected at

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	miscellaneous debris associated with firework displays?	SeaWorld San Diego.
34	63 What background data did the San Diego Water Board rely upon in developing the requirements of the Order?	The Tentative Order Fact Sheet in Attachment F provides the legal authority and technical rationale that serve as the basis for the requirements of the Technical Order.
34	64 What studies to establish water quality based effluent limitations have been conducted by the San Diego Water Board?	The Tentative Order does not contain any water quality based-effluent limits. See Section III.G of the Tentative Order.
34	65 Why are sediment quality objectives being pursued in connection with Order regulating surface waters?	<p>The sediment within receiving waters (surface waters) is a component of the receiving water(s). See the Sate Water Boards <i>Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality</i>.</p> <p>The Tentative Order Fact Sheet on page F-16 concludes that the increase in pollutant levels within the sediment in the fireworks fallback area at SeaWorld San Diego shows that the discharge of pollutants associated with larger fireworks events has the reasonable potential to cause or contribute to an exceedance of the narrative sediment quality objectives stated in section VI.A.3.c of the Tentative Order. This conclusion provides a basis for the Tentative Order’s sediment monitoring requirement.</p>
34	66 What are the established effluent and	The Tentative Order is a BMP based permit and

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	receiving water limits germane to firework displays intended to be enforced by the San Diego Water Board?	<p>does not contain numeric effluent limitations. Section 122.44(k)(3) of 40 CFR allows the use of other requirements such as BMPs in lieu of numeric effluent limits if the latter are infeasible.</p> <p>The applicable Receiving Water Limitations are listed in Section VI.A of the Tentative Order.</p>
34	67 What are the other requirements referenced in the Order (page 12)?	Other requirements refers to Best Management Practices specified in the Tentative Order in accordance with 40 CFR 122.44(k).
34	68 How many sweeps of a fireworks display event satisfies the BMP as proposed in the Order?	This may vary depending on the duration of show, size of shells, wind speed and direction and receiving water. The Discharger is responsible for determining the numbers of sweeps needed to comply with this BMP requirement.
34	69 What are dangerous fireworks and how are they materially different from display fireworks?	All fireworks used in the public displays of fireworks would fall within the definition of Dangerous Fireworks as defined in Section 1205 of the California Health and Safety Code.
34	70 How many fireworks display events does one permit cover?	One Notice of Intent (NOI) and the subsequently issued Notice of Enrollment (NOE) covers all firework discharge events during the five-year term of the permit for the entity that is identified on the NOI and the NOE as the Discharger.
34	<p>71 Are all volunteer organizations subject to the Tentative Order?</p> <p>Can co-sponsors jointly apply and, if so, how?</p>	<p>Volunteer organizations may be subject to the permit if they are identified in the NOI and the subsequently issued NOE as the Discharger.</p> <p>Co-sponsor hosts of public firework events may jointly submit an application for coverage under the</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	c) Surface Water?	c) See b) above
34	<p>76 Under what circumstances will would the San Diego Water Board determine:</p> <p>a) The Discharge from a fireworks display will not affect or have the potential to affect the quality of the waters of the state, prompting a refund of all or part of the annual fee?</p> <p>b) To extend a waiver of to fireworks displays in accordance with Section 13269 of Porter-Cologne?</p>	<p>a) The Tentative Order covers discharge of pollutant waste from the public display of fireworks to surface waters of the United States. The term pollutant is very broadly defined under the Clean Water Act (CWA) and anything put into water can be a pollutant with few exceptions. The CWA's definition of a "discharge of a pollutant" is equally broad and refers to "any addition of any pollutant from any point source" to surface waters from a discharge, and would encompass even minor discharges with low or de minimis levels of pollutants. If based on these considerations it is determined that an applicants firework events will not result in a discharge to waters of the United States, the San Diego Water Board will notify the applicant that a portion or all of the annual fee should be refunded, the State Water Board refunds any monies due as the law allows.</p> <p>b) The San Diego Water Board cannot waive regulation of firework discharges to surface waters under Water Code section 13269 because these discharges require an NPDES permit. (See response to comment 1). Water</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>c) To waive the monitoring requirements described in Section 13269 of Porter-Cologne?</p>	<p>Code section 13269 authorizes Regional Water Boards to waive reports of waste discharge and issuance of waste discharge requirements for specific discharges or types of discharges if the waiver is not against the public interest. However these types of waivers cannot be adopted for discharges requiring an NDPES permit, since the federal Clean Water Act mandates that all discharges covered by the statute must have an NPDES permit.</p> <p>It should be noted that discharges of wastes from public fireworks events to <u>land</u> are subject to regulation under the San Diego Water Board's Conditional Waiver No. 11 pursuant to Water Code Section 13269 and are not subject to regulation under the Tentative Order. Additional information on the San Diego Water Board Conditional Waivers can be found at the San Diego Water Board website: http://www.waterboards.ca.gov/sandiego/</p> <p>c) The monitoring requirements described in 13269 of Porter-Cologne pertain to monitoring that is required pursuant to the issuance of a waiver of waste discharge requirements. Thus, the San Diego Water Board would first need to issue a waiver of waste discharge requirements in order to consider waiving monitoring requirements that would be included if a waiver of waste discharge</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>d) The Discharge of fireworks will nor affect or have the potential to affect the quality of the waters of the state, prompting a exemption in accordance with Section 13269 of Porter-Cologne?</p>	<p>requirements is issued. This would be decided by the State or Regional Board after a necessary meeting. Thus, if a waiver was determined by the San Diego Water Board to be appropriate, monitoring may be waived if the Board also determines there is not a significant threat to water quality</p> <p>d) It is unclear in what the commentor means by an exemption, as Section 13269 of Porter-Cologne does not include exemptions. Section 13269 of Porter Cologne is a waiver of Waste Discharge Requirements and not an exception. Section 13269 requires monitoring to demonstrate that waiver conditions are effective.</p>
23	77 The Tentative Order may require individual compliance with the California Environmental Quality Act for each Public Fireworks Display	<p>The Ocean Plan allows limited discharges into an ASBS within the constraints in Section III.E. The San Diego Water Board isn't granting an exception or modifying any prohibition, because limited term discharges were never prohibited to begin with. The San Diego Water Board is issuing an NPDES permit that complies with existing plans and policies. Since the fireworks are not a new source, the NPDES permit is exempt from CEQA.</p>
14	78 The Commenter Is subjected to fireworks noise and smoke pollution nearly every Friday, Saturday, and Sunday from the San Diego Pops concerts held at the South	<p>Comment noted.</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	Embarcadero. Fireworks events cause an inevitable cloud of pollutants that hovers for hours forcing them to keep their windows closed until the smoke dissipates; this is especially difficult on hot summer nights.	
9	79 These discharges may be covered under the MS4 permit	Discharges of firework pollutant waste to MS4s are not covered under the MS4 permit(s) but and person discharging firework pollutant waste to MS4s will be required to obtain coverage under the Tentative Order. These discharges are non-storm water and prohibited under the MS4 permit(s) unless authorized by an individual NPDES permit. The MS4 copermitees are expected to implement BMP's pursuant to the NPDES storm water permits to prevent non-storm water discharges from entering the MS4.
9	80 The permit fee should be for the permit term and not annually	See response to Comment No. 23
16, 19, 25, 29	81 The Commenters support adoption of Tentative Order No. R9-2010-0124, including the requirement of Best Management Practices and Water Quality and Sediment Monitoring	Comment noted.
30	82 Clarify that the Tentative Order does not require or intend to require surface water quality monitoring on a per event basis	The Tentative Order no longer requires receiving water monitoring for each fireworks event. Please see the Monitoring and Reporting Program of Order No. R9-2011-0022 (Version 3/21/2011).
30	83 Can the Regional Water Board provide specific examples of existing regional water	Yes. Some examples of water body monitoring coalitions include:

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>body monitoring coalitions that are currently conducting monitoring and the goals and objectives of these coalitions</p>	<ul style="list-style-type: none"> • Regional Harbor Monitoring Program (RHMP) is a collaborative program initiated in response to a request for water quality information for Dana Point Oceanside, Mission and San Diego Bays made pursuant to Water Code section 13255 issued by the San Diego Regional Board. The RHMP is supported by the Port of San Diego, and the Cities of San Diego and Oceanside, and the County of Orange. RHMP’s objectives include assessing the quality of water and sediment to sustain healthy biota, and the long-term trends in the following four local harbors: San Diego Bay, Mission Bay, Oceanside Harbor and Dana Point Harbor. • Southern California Bight Regional Monitoring Surveys managed by the Southern California Coastal Water Research Project (SCCWRP) to evaluate the physical, chemical and biological impacts to ocean, bay and estuarine waters from Point Conception to the U.S Mexico Border. These surveys are performed every 4 to 5 years. The most recent effort, “Bight 2008 Survey” included chemical analysis of tissue and sediment, sediment toxicity, analysis of benthic invertebrate and fish community structure, evaluation of gross pathology in trawl caught fish in bays and coastal waters. Collaborators include storm water agencies,

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
		<p>sanitation districts.</p> <ul style="list-style-type: none"> • Stormwater Monitoring Coalition formed in 2001 by cooperative agreement of the Phase I municipal storm water NPDES lead permittees, the NPDES regulatory agencies in southern California (including the San Diego Water Board) and the Southern California Coastal Water Research Project (SCCWRP).to develop technical information necessary to better understand storm water mechanisms and impacts, and then develop the tools that will effectively and efficiently improve storm water decision-making. • Water Boards Surface Water Ambient Monitoring Program (SWAMP) SWAMP's mission is to provide decision makers and the public with the information necessary to evaluate surface water quality throughout California. SWAMP supports the collection of high quality data in all regions for 303(d) listing and 305(b) reporting on impaired waterbodies and waters supporting beneficial uses.
30	84 The State Water Resources Control Board's Water Quality Control Plan for Enclosed Bays and Estuaries - Part I Sediment Quality (Effective August 25, 2010), Section V, Benthic Community Protection guidance is	The Tentative Order only requires receiving water monitoring for dischargers who meet an event threshold for San Diego and Mission Bay. Thus, the Tentative Order's citation of the SQO Guidance is appropriate.

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>identified as the assessment tool for monitoring surface water (referred to as the Sediment Quality Objective [SQO] guidance). As is stated in the guidance document in Section C. Applicable Waters, "Part 1 does not apply to ocean waters' including Monterey Bay and Santa Monica Bay, or inland surface waters'." This fact needs to be clarified in the tentative order.</p>	
30	<p>85 Based upon the inconclusive results to date for the multiyear Sea World monitoring program, which is conducted within an area that the RWQCB describes as having the highest potential for fireworks-related water and sediment effects, it is unclear how the proposed integrated SQO program would be able to identify fireworks-specific impacts to the benthic community in locations that experience a small fraction of the events that Sea World conducts per year, over a wider expanse (e.g., San Diego Bay). Please clarify.</p>	<p>The San Diego Water Board does not believe that all results to date for the SeaWorld monitoring data are inconclusive, as water quality effects are clearly documented in the Tentative Order Fact Sheet (see page F-11). The inconclusive results regarding benthic community effects were due to the differing habitat types sampled and the lack of a sublethal toxicity test. These shortcomings are addressed in the sediment monitoring program required under the Tentative Order.</p> <p>There is a source identification process described in the SQO program to determine the source of pollutants impairing sediment quality through stressor identification studies. The stressor identification approach consists of development and implementation of studies to seek confirmation and characterization of pollutant-related impacts, pollutant identification and source identification. Methods to help determine cause may be statistical, biological, chemical or a combination.</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
		<p>The SQO program requires sampling for a multitude of constituents, many of which are not found in fireworks, and it is possible that the failure to meet the SQOs will not be attributed to fireworks discharges. In order to help distinguish firework specific impacts, the sediment monitoring program required under the Tentative Order includes unique firework-related constituents such as perchlorate and other metals. (See Table 1 in Section IX.A.3. of the Tentative Order) to help determine if major firework event discharges are causing or contributing to SQO exceedances.</p>
35	<p>86 Valley Center had a display which left about 10 pounds of exploded debris within 150 feet of Moosa Creek; the fireworks committee did not pick up any debris. Concerned with the effects of pollutants in debris and their effects on aquatic life</p>	<p>Comment noted. The Tentative Order requires the development and implementation of Best Management Practices, which includes proper clean up and disposal of debris.</p>
5	<p>87 The draft Tentative Order requires further consideration and consultation with all affected stakeholders</p>	<p>Prior to the issuance of the current version Tentative Order (Version 3-21-2011), San Diego Water Board staff held two (2) public workshops to discuss at length the conditions and requirements to be included in the Tentative Order and to consider comments from interested persons. Significant revisions have been made to the tentative Order based on comments received at the workshops.</p>
23, 34,	<p>88 Request to postpone public workshop on December 16, 2010</p>	<p>This comment is no longer applicable.</p>

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
		The San Diego Water Board proceeded with the December 16 Workshop. A written summary of presentations made by the San Diego Water Board staff and other interested persons as well as follow-up discussions on specific issues at the Workshop is posted at the San Diego Water Board website.
10	89 Fireworks over land should be specifically exempted from the Order	Discharges of waste from public fireworks events to land are subject to regulation under the San Diego Water Board's Conditional Waiver No. 11 and are not subject to regulation under the Tentative Order. Additional information on the San Diego Water Board's Waivers can be found at the San Diego Water Board website.
12	90 Fireworks Displays must be located a sufficient distance from an ASBS. Define sufficient distance.	Sufficient distance means the fireworks range will not fall within the ASBS
12	91 Clarify the association between sponsor and the other identified parties (i.e. permittees, discharges, and enrollees)	The term sponsor has been removed from the Tentative Order.
12	92 The proposed Order should allow for special studies to demonstrate that other sources may also be contributing to the degradation of sediment quality.	Please see response to Comment No. 85. Additionally, the San Diego Water Board retains the capability of requiring special studies beyond what is contained in the Tentative Order.
12	93 The definition of "Degrade" is not consistent with the definition in the State Board Resolution No. 68-16 (Antidegradation Policy)	The definition of "Degrade" is consistent with the California Ocean Plan.
12	94 We recommend that a prevailing nighttime indirect deposition zone be added as a Conceptual Model component, and request a	See page F-13 of the Tentative Order Fact Sheet. The San Diego Water Board encourages

Comments on Tentative Order No. R9-2010-0124 (Released 9/23/2010)

Commenter ID	Comment Summary	Comment Response
	<p>definition be included in Attachment A. This request is also based on documentation provided in the US Environmental Protection Agency Frequently Asked Questions About Atmospheric Deposition: A Handbook for Watershed Managers, EPA-453/R- 01-009, dated September 2001.</p>	<p>conceptual model development to incorporate applicable guidance regarding deposition, as the purpose of the conceptual model is for the discharger to determine the fate and transport of discharged pollutants in order to conduct sampling that is representative of the discharge. The calculation of the fireworks deposition area (particulate fallback, duds, etc...) would be included as a core component of the conceptual model. However, the inclusion of a definition is not warranted. It is also unclear how this would be defined, as it is not clearly defined in the referenced material.</p>
<p>2, 18, 22, 23, 24, 28, 34</p>	<p>95 Postpone November 10, 2010 San Diego Water Board hearing</p>	<p>This comment is no longer applicable.</p>

Comments on March 11, 2011 Workshop

Commenter ID	Comment Summary	Comment Response
Comment from workshop	<p>96 Does this Order apply to drinking water reservoirs?</p> <p>Why is there no monitoring for perchlorate in drinking water reservoirs?</p>	<p>The Tentative Order applies to all discharges to waters of the United States, including reservoirs. Monitoring of drinking water reservoirs was removed from the first draft tentative Order in order to focus the efforts of the first order on impacts to the beneficial uses of receiving waters that are already impaired and are believed to receiving the bulk of fireworks discharges (San Diego and Mission Bays). Monitoring of drinking water reservoirs may be required in the future.</p>
Comment from workshop	<p>97 Will a sponsor of a fireworks event need to submit an NOI annually?</p>	<p>No. Only one NOI needs to be submitted per 5-year permit cycle. Permit fees are annual.</p>
Comment from workshop.	<p>98 The term Discharger is not clearly defined</p>	<p>The Tentative Order has been revised to further clarify. The term “discharger” in the Tentative Order refers to the person who proposes to discharge pollutant waste from the public display of fireworks to surface waters of the U.S. in the San Diego Region and signs and submits the Notice of Intent for coverage under the Order. The “discharger” is also the entity(s) that is accountable for compliance with the terms and conditions of the Tentative Order.</p>
Comment from workshop	<p>99 Why does an NOI need to be submitted 60 days prior to an event? Other State Agencies and City of San Diego require 10 days</p>	<p>The San Diego Water Board’s review and evaluation of applications submitted for coverage under the Order is a new workload that will require a significant staff resource investment during a time of increasingly severe resource constraints. The San Diego Water Board has determined that 60</p>

Comments on March 11, 2011 Workshop

Commenter ID	Comment Summary	Comment Response
		<p>days is the time period the Board will need to evaluate and process the applications, review the BMP plans, meet with the applicants to resolve issues and issue the Notice of Enrollment. The San Diego Water Board will consider reducing this time frame in the future as it gains experience with the resources needed to administer the Order.</p>
<p>Comment from workshop</p>	<p>100 Fees seems excessive</p>	<p>The Division of Administrative Services- Fee Branch of the State Water Resources Control Board is responsible for the administration and collection of the annual permit fees for the Order. The annual fee is designated in section 2200(b) (8) of Title 23, CCR, which is available at http://www.waterboards.ca.gov/resources/fees/ The annual fees is based on the threat to water quality and complexity of the discharge. This is the lowest fee for this type of discharge.</p>
<p>Comment from workshop</p>	<p>101 Post Event Report</p> <p>a) 5 days is too soon to submit report</p> <p>b) Who is responsible for submitting the report?</p>	<p>a) Based on comments received at the March 11 workshop and subsequent comments on the 3-21-2011 version of the Tentative Order, the time frame for completing the report will be changed to 30 days</p> <p>b) The person who has applied for and obtained coverage under the Order is responsible for submitting the report</p>

Comments on March 11, 2011 Workshop

Commenter ID	Comment Summary	Comment Response
	<p>c) Category 2 Dischargers should not have to submit this report</p> <p>d) Why is this information not obtained from the Fire Marshall or Fire Department</p> <p>e) What is the Solid Rocket Motor Gross Weight?</p> <p>f) Why does the San Diego Water Board need to know about defective shells?</p>	<p>c) This reports needs to be completed and submitted to the San Diego Water Board for all events, regardless of discharge amount. The report will allow the San Diego Water Board to quantify the number of public fireworks events in this region as well as ensure compliance with BMP's</p> <p>d) This information is not readily available to the San Diego Water Board.</p> <p>e) The term has been removed from the Post Firework Event Report form</p> <p>f) Defective shells may fall directly into the water. These shell contain 100% concentration of chemical constituents which fall undiluted into the receiving waters. If there is a particular firework event that has a significant amount of "duds", the San Diego Water Board will want to investigate the matter.</p>
Comment from Workshop	<p>102 How was the distinction was made between Category 1 and Category 2</p> <p>How are multiple small events similar to one large event</p>	<p>This is discussed in the Tentative Order Fact Sheet on pages F-16 through F-18.</p>
Comment from Workshop	<p>103 Can Port of San Diego be head of a coalition or can monitoring be added to their existing monitoring</p>	<p>It may be feasible for monitoring efforts be added to the existing efforts by the Port of San Diego and their partners. However, the San Diego Water Board is not requiring individual dischargers to form</p>

Comments on March 11, 2011 Workshop

Commenter ID	Comment Summary	Comment Response
		a coalition or add monitoring onto existing efforts by other dischargers.
From Workshop Laguna Niguel	104 Are Category 2 Dischargers required to upload “monitoring of BMP implementation” to CEDEN and CIWQS? Please clarify	<p>This pertains to water and sediment monitoring and has thus been relocated for clarity.</p> <p>Monitoring of BMP implementation does not need to be uploaded into CEDEN or CIWQS at this time. The Tentative Order has been revised to clarify language</p>
Comment from Workshop Laguna Niguel	105 The Public Fireworks Display Log and Post Fireworks Display Report should be merged into one document	Please see response to comment No. 22.
Comment from Workshop 32	106 Please define the parameters of the Risk Assessment SeaWorld would like to see the Risk Assessment removed from the language of the permit as it reads now, and human health or ecological risk assessment should be handled outside of the scope of this general permit, if deemed necessary by Water Board staff.	<p>The State Water Board’s <i>Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality</i>, has narrative sediment quality objectives for the protection of aquatic life (IV.A) and human health (IV.B) in California’s enclosed bays and estuaries.</p> <p>The Tentative Order Fact Sheet on page F-16 concludes that the increase in pollutant levels within the sediment in the fireworks fallback area at SeaWorld San Diego shows that the discharge of pollutants associated with larger fireworks events has the reasonable potential to cause or contribute to an exceedance of the narrative sediment quality objectives stated in section VI.A.3.c of the Tentative Order. This conclusion provides a basis for the Tentative Order’s sediment monitoring requirement at Section IX.A.4. that based on the Water and Sediment Monitoring Report</p>

Comments on March 11, 2011 Workshop

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		<p>conclusions the San Diego Water Board may require a human health risk assessment to determine if the human health SQO contained in Receiving Water Limitations V.A.3.c)(2) of the Tentative Order has been attained at each sample station.</p> <p>The human health SQO requires that pollutants not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health (see also Attachment D, Section I.C regarding NPDES). Thus, it may be appropriate to require discharger(s) to conduct human health risk assessments to ensure compliance with the human health SQO. Consistent with the SWRCB Sediment Quality Plan at Section VI, the San Diego Water Board would implement the human health risk assessment required under Section IX.A.4. of the Tentative Order on a case-by-case basis.</p>