

**REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
February 9, 2022**

ITEM 4

SUBJECT

NPDES Permit Reissuance: *General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Firework Pollutant Discharges to Waters of the United States in the San Diego Region from the Public Display of Fireworks* (Tentative Order No. R9-2022-0002, NPDES No. CAG999002). (*Debbie Phan*)

STAFF RECOMMENDATION

Adoption of Tentative Order No. R9-2022-0002 (Tentative Order; **Supporting Document No. 1**) is recommended.

KEY ISSUES

The existing general NPDES permit for residual firework pollutant discharges to surface waters under Order No. R9-2011-0022 (Existing Order) expired on May 31, 2016, but remains in effect under an administrative extension until such time as it is superseded by a reissued NPDES permit. The general NPDES permit is being proposed for reissuance under the Tentative Order. Significant differences between the Tentative Order and the Existing Order are described in the Significant Changes section of this Executive Officer Summary Report.

The Tentative Order, if adopted, will regulate residual pollutant discharges associated with the public display of fireworks to surface waters in the San Diego Region. The Tentative Order refers to public display of fireworks as an entertainment feature where the public or a private group is admitted to, or permitted to, view the display or discharge of fireworks.

PRACTICAL VISION

The Tentative Order integrates best management practices (BMPs), post-event monitoring, and applicable receiving water monitoring ensure the discharges associated with the public display of fireworks do not cause pollution or nuisance conditions in surface waters. This is consistent with the mission of the Strategizing for Healthy Waters chapter of the *San Diego Water Board Practical Vision*.¹

DISCUSSION

The Tentative Order is a general NPDES permit that will continue the regulation of residual pollutant discharges associated with the public display of fireworks to surface waters throughout the San Diego Region. The residual pollutant discharges are currently regulated under the Existing Order, which will be superseded on the effective date of the Tentative Order. If adopted, the Tentative Order will remain in effect for a five-year fixed term.

¹ Practical Vision: https://www.waterboards.ca.gov/sandiego/water_issues/programs/practical_vision/

Under the terms and conditions of the Tentative Order, prospective dischargers are required to submit Fireworks Best Management Practices Plans (FBMPPs) to prevent and/or reduce the discharge of pollutants associated with the display of fireworks. Discharges to designated Areas of Special Biological Significance (ASBS) are prohibited excepted as provided in 1) section 7.3.2 of the Tentative Order, *Special Provisions for Discharges into the La Jolla ASBS and Heisler Park ASBS* or 2) an exception issued by the State Water Board pursuant to the provisions of *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan). Authorized discharges to designated ASBS are subject to additional conditions, including being limited to one event per calendar year (on the Fourth of July) and not exceeding 1,000 pounds of pyrotechnic material.

Fireworks net explosive weight varied among Dischargers enrolled under the Existing Order, ranging from approximately 100 pounds to more than 1,000 pounds. In the San Diego Region, SeaWorld San Diego (SeaWorld) conducts the most frequent fireworks events at Mission Bay, and the Armed Services YMCA conducts the largest fireworks events at San Diego Bay. The most significant and widespread use of fireworks displays in the San Diego Region are for annual Fourth of July and New Year's Eve events.

The Tentative Order was noticed for a public hearing and released for public review and comment for a 30-day period starting on October 13, 2021. The public comment period closed on November 12, 2021. The San Diego Water Board received three comment letters regarding the Tentative Order during the comment period (**Supporting Documents 2.a – 2.c**). The comment letters have been provided to San Diego Water Board Members for consideration and are available for review by interested persons upon request. The Response to Comments Report (**Supporting Document No. 3**) contains the San Diego Water Board responses to all the comments received and, if applicable, describes actions taken to revise the Tentative Order in response to the comments received.

The following is a summary of the most significant comment received and the response to that comment:

Comment

The Port of San Diego requested that the Tentative Order define the number of repeated firework events that would require water quality and/or sediment monitoring.

Pyro Spectaculars, Inc. expressed concerns regarding the uncertainty on whether Dischargers will be required to conduct water quality and/or sediment monitoring. The only Category 1 Discharger enrolled under the Existing Order is SeaWorld, who historically hosted nightly shows during summer, but has reduced the number of fireworks display events from 2017 to 2021. The Tentative Order removes the categories and makes all Dischargers susceptible to the water quality and/or sediment monitoring requirements. The San Diego Water Board estimates that compliance with the monitoring and reporting will cost between

\$25,000 to \$70,000 annually for Dischargers required to conduct water quality and sediment monitoring, a cost that is difficult for small businesses.

Response

The only changes proposed by the Tentative Order regarding water quality and sediment monitoring are to remove discharger categories and explicit requirements for SeaWorld to conduct water quality and sediment monitoring. The Existing Order already requires water quality and sediment monitoring on a case-by-case basis.

Section 8.2 of the Monitoring and Reporting Program (Attachment E of the Tentative Order) carries forward the same factors first used by the San Diego Water Board in the Existing Order for determining which Dischargers will be required to conduct water quality and/or sediment monitoring. The need to require water quality and/or sediment monitoring will be considered on a case-by-case basis to ensure that fireworks displays are not impacting beneficial uses.

The Tentative Order also carries forward the requirement for Dischargers to submit a Water and/or Sediment Monitoring Plan that includes a Conceptual Model, a Quality Assurance Project Plan, and a Sampling and Analysis Plan if water quality and/or sediment monitoring is required for specific fireworks events. The development of a Conceptual Model will allow the Discharger to determine, and subsequently propose, a sampling frequency and timing that is representative of the discharge. The Water and/or Sediment Monitoring Plan allows the Discharger flexibility in designing a cost-effective monitoring program for evaluating the effects of the discharge as detailed in section 7.4.2 of the Fact Sheet (Attachment F of the Tentative Order).

Based on information submitted by entities enrolled under the Existing Order, the San Diego Water Board does not anticipate entities seeking re-enrollment under the Tentative Order will be required to conduct water quality and/or sediment monitoring.

SIGNIFICANT CHANGES

The following are the significant differences between the Tentative Order and the Existing Order:

1. The Tentative Order incorporates applicable total maximum daily load (TMDL) wasteload allocations into its Discharge Prohibitions.
2. The Tentative Order requires Dischargers to develop an FBMPP that address the following additional elements:
 - a. When practical and feasible, the Discharger shall remove all plastic and aluminum labels and wrappings from aerial shells and special effect pyrotechnic devices prior to use and before they are launched or detonated.

- b. When practical and feasible, the Discharger shall select fireworks that do not contain plastic outer casings or have non-biodegradable inner components that make up more than five percent of the mass of the shell/device.
 - c. Residual firework pollutant discharges shall be located a sufficient distance from receiving waters subject to TMDLs for fireworks constituents to assure fireworks pollutants do not contribute to the pollutant load allocation or impairment of the water body.
 - d. All personnel implementing the BMPs shall be properly trained regarding BMP implementation. The Discharger shall identify the personnel to be trained, their responsibilities, and the type of training they are to receive.
 - e. As soon as practicable, the Discharger shall collect visual observations to assess the effectiveness of the BMP and update the FBMPP accordingly. All FBMPP changes must be submitted to the San Diego Water Board.
3. The Tentative Order requires discharges to ASBS to minimize the use of aerial “salutes” shells or devices and prohibits the use of these fireworks during the first five minutes of a fireworks display to minimize the noise and flash impacts on surrounding wildlife.
4. The Existing Order classifies SeaWorld as a Category 1 Discharger and other Dischargers as Category 2. The Tentative Order removes Discharger categories. The San Diego Water Board will instead consider the need to require water quality and/or sediment monitoring on a case-by-case basis.
5. The Tentative Order requires self-monitoring reports to be submitted through California Integrated Water Quality System (CIWQS), a regulatory information tracking system used by the State and Regional Water Boards.
6. If there were no fireworks displays during the monitoring period, the Tentative Order requires Dischargers to submit a statement certifying there were no fireworks displays during the monitoring period.
7. The Tentative Order includes a Visual Monitoring Report and a Post-Fireworks Display Log to provide consistent reporting.

PUBLIC NOTICE

Tentative Order No. R9-2022-0002 was noticed and released for public review and comment on October 13, 2021, with comments due by November 12, 2021. The Notice of Public Hearing and Opportunity to Comment (Notice) was posted on the San Diego Water Board website for the duration of the comment period and sent to all existing Dischargers and all interested parties. The Notice announced a public hearing to be held February 9, 2022; announced the availability of the Tentative Order for review; and provided instructions for submittal of written comments. On January 14, 2022, a Revised Public Hearing Notice was posted on the San Diego Water Board website to announce that the public hearing would occur solely via remote presence. A copy of the Revised Public Hearing Notice and Notice are provided in **Supporting Documents**

No. 4 and 4a. Notice of the public hearing on the Tentative Order was also provided in the Meeting Notice and Agenda for the February 9, 2022, San Diego Water Board meeting, which was posted on the San Diego Water Board website.

SUPPORTING DOCUMENTS

1. Tentative Order No. R9-2022-0002
2. Comment Letters Received (available to interested persons upon request)
 - a. City of Dana Point, October 28, 2021
 - b. Port of San Diego, November 10, 2021
 - c. Pyro Spectaculars, Inc., November 12, 2021
3. Response to Comments Report
4. Revised Public Hearing Notice
 - a. Notice of Public Hearing and Opportunity to Comment