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VIA ELECTRONIC MAIL ONLY gibson@waterboards.ca.gov
David W. Gibson
Executive Officer
California Regional Water Quality Control Board
9174 Sky Park Court – Suite 100
San Diego, CA 92123

In reply refer to:
Reg. Measure ID 375971: MMATA
Place 656901

Re: Tentative Order No. R9-2010-0124, General Permit No. CAG99902
General Waste Discharge Requirements for the Public Display of Fireworks

Dear Mr. Gibson:

This law firm represents the National Fireworks Association ("NFA"). As and for a response to the November 17, 2010 Notice Of Public Workshop (the "Notice") by the California Regional Water Quality Control Board, San Diego Region ("San Diego Water Board"), requesting topics of discussion, comments and suggestions relating to Tentative Order No. R9-2010-0124, General Permit No.CAG99902 (the "Tentative Order"), the NFA submits the following information:

COMMENTS AND TOPICS OF DISCUSSIONS

By reason of the fact that the San Diego Water Board has not issued a complete, final document for review and consideration by the public, essentially preventing the NFA from furnishing a full and proper response, at this time it offers various topics of discussions in the form of questions.[1]

[1] The NFA expressly reserves all rights to challenge the actions of the San Diego Water Board in proceeding in this manner as a violation of various provisions of the Federal and State Administrative Procedures Act, as well as to demand legal and equitable relief, including injunctive relief and attorneys' fees.

QUESTIONS:

1. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks displays cause an adverse impact to the quality of either receiving waters or surface water and, if so, please identify?

2. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks displays can exceed prevailing actionable levels of reported pollutants to either receiving waters or surface waters and, if so, please identify?

3. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks displays cause acute or chronic toxicity in receiving waters or surface water and, if so, please identify?

4. Is the San Diego Water Board relying upon any scientific or engineering research or test results that substantiate the need for testing sediment at depths of 50' and, if so, please identify?

5. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that the display of fireworks "have the reasonable potential to cause or contribute to an exceedence of a water quality standard, including numeric and narrative objectives within a standard." And, if so, please identify?

6. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks products in sediments "in quantities that alone, or in combination, are toxic to benthic communities and, if so, please identify?

7. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks displays create "pollutants....in sediments at levels that will bio-accumulate in aquatic life to levels proven to be harmful to human health" and, if so, please identify?

8. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that public displays of fireworks *discharge pollutant wastes* to surface waters and, if so, please identify?

9. What information has the San Diego Water Board received from SeaWorld that establishes that fireworks have a demonstrable adverse impact upon the quality of either receiving waters or surface water?

10. Given that "Under the terms of the Tentative Order any person who discharges or proposes to discharge pollutant wastes from a public display of fireworks to surface waters in the San Diego region *may submit a Notice of Intent...*" (emphasis added), under what circumstances will a person be exempt or excused from having to file a Notice of Intent?

11. Can a sponsor seek a waiver of enrollment and, under what circumstances shall a waiver be provided, and upon what terms?

12. Upon what circumstances will the San Diego Water Board demand "the joint submission of an NOI from both the sponsor and the person operating the fireworks event."?

13. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks displays produce or generate wastewater and, if so, please identify?

14. Is the San Diego Water Board relying upon any studies that have determined that fireworks displays involve a process of production or manufacturing, and, if so, please identify?

15. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks are demonstrably equivalent to munitions or ammunition, and if so, please identify?

16. Is the San Diego Water Board relying upon any scientific or engineering research or test results that argue or conclude that fireworks display products constitute "pollutant wastes" as asserted in the Tentative Order, and if so, please identify?

17. 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,"?

18. Under what circumstances will the San Diego Water Board impose "additional or increased monitoring" requirements, and how and when will it do so?

19. Which receiving waters or surface waters are known to the San Diego Water Board to have documented and reported adverse impacts attributed specifically to particulate matter and miscellaneous debris associated with fireworks displays?

20. What background data did the San Diego Water Board rely upon in developing the requirements in the Order?

21. What studies to establish (water quality-based effluent limitations (WQBELs) have been conducted by the SDWB?

22. Why are sediment quality objectives being pursued in connection with an order relating to surface water and receiving waters?

23. What are the established effluent limits germane to fireworks displays intended to be enforced by the San Diego Water Board?

24. What are the established receiving water limits?

25. What are the "other requirements" referenced in the Order, (source, Tentative Order, page 12)?

26. Is the San Diego Water Board relying upon any scientific or engineering research or test results in deciding to impose Best Management Practices ("BMP") that are more stringent than current custom and practice and, if so, please identity?

27. How many sweeps of a fireworks display event satisfies the BMP as proposed in the Tentative Order? [BMP 'f']

28. What are "dangerous fireworks", and how are they materially different from display fireworks? [BMP 'e'].

29. How many fireworks display events does one permit cover?

30. Are all-volunteer organizations subject to the Tentative Order?

31. Can co-sponsors jointly apply and, if so, how?

32. Under the Tentative Order, are the terms "discharger" and "permittee" synonymous?

33. Can a 'Discharger' be determined to be liable under the terms of the Tentative Order where it is not an enrollee and, if so, under what circumstances?

34. Under what circumstances will the San Diego Water Board require a person to also apply for an individual NPDES permit?

35. What is the intended definition of "discharger" pursuant to the Tentative Order?

36. What is the intended definition of "receiving waters" pursuant to the Tentative Order?

37. What is the intended definition of "surface water" pursuant to the Tentative Order?

38. Is the San Diego Water Board relying upon any scientific or engineering report or study that either suggests or concludes that fireworks mortars are designed to function as conveyances of pollutants and, if so, please identify?

39. Is the San Diego Water Board relying upon any scientific or engineering report or study that either suggests or concludes that a mortar containing a finished, non-ignited fireworks shell is considered a non-point source?

40. Under what circumstances would the San Diego Water Board determine that the discharge from a fireworks display will not affect, or have the potential to affect, the quality of the waters of the state, prompting the refund of all or part of the annual fee?

41. Under what circumstances would the San Diego Water Board determine to extend a waiver to fireworks displays in accordance with § 13269 of the Porter-Cologne Water Quality Control Act (Ca. Water Code, Division 7)?

42. Under what circumstances would the San Diego Water Board determine to waive the monitoring requirements described in § 13269 of the Porter-Cologne Water Quality Control Act (Ca. Water Code, Division 7)?

43. Under what circumstances would the San Diego Water Board determine that the discharge from fireworks displays will not affect, or have the potential to affect, the quality of waters of the state, prompting a exemption in accordance with § 13269 of the Porter-Cologne Water Quality Control Act (Ca. Water Code, Division 7)?

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COMMENTS:

Comment 1

The requirements of the Tentative Order in its present form are not proportional to the activity sought to be regulated. The NFA strongly believes that the additional expense to each Discharger, in terms of the annual fee and to comply with the requirements prescribed in the Tentative Order, will approximate or exceed the expense of the fireworks display, effectively eliminating fireworks displays that rely upon volunteer donations, and further burdening the budgets of municipalities that provide fireworks displays for its citizens.

Comment 2

The BMP relating to unexploded fireworks is confusing, as well as contradictory: on the one hand the BMP requires the operator to collect and return to the manufacturer/wholesaler all unexploded fireworks, including duds and misfires while, on the other hand, the regulation mandates managing the collected material as hazardous waste [compare BMP 'g' and 'e']. Display fireworks duds and misfires which are collected are not waste, but viable product which can be reworked and reused.

Comment 3

The expense associated with segregating material for disposal as hazardous materials is prohibitively expensive and outweighs any documented benefit to be derived.

The NFA remains ready to assist the San Diego Water Board in achieving responsible regulation, and you may direct any questions regarding this communication to my attention.

Respectfully submitted,

THE CREADORE LAW FIRM, P.C.
Attorneys for the National Fireworks Association

Donald E. Creadore