

March 7, 2011

VIA EMAIL AND U.S. MAIL

Michelle Mata
Water Resources Control Engineer
California Regional Water Quality Control Board
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Re: Comments to Draft Tentative Order No. R9-2011-022
Comment Letter-3/11/2011 Board Workshop-Draft Fireworks Permit
Reg Measure 375971: MMATA
Place: 656901

Dear Ms. Mata:

Pyro Spectaculars, Inc., (PSI) submits the following comments to the referenced Draft Tentative Order. These comments address the Fireworks Best Management Practices Plan (BMP's) set forth in Section V., Paragraph B., and proposed for inclusion in the Order.

In particular, PSI's comments focus on the practical aspects of implementing the BMP's in a manner that is consistent with applicable rules, regulations, law and safe handling practices for public fireworks displays. PSI also proposes alternative language for the BMP's that incorporates the practical pyrotechnic considerations offered here but still provides the same level of protection for the environment as the BMP's in the Draft Tentative Order.¹

Introduction

PSI supports the efforts of the Regional Board in considering the input of the people and organizations that are interested in the development of this permit. Among us are those interested in protecting our water resources, ensuring that our community and public events will continue, and demonstrating our national pride in the traditional way with public displays of fireworks. We do not view these interests as incompatible with each other.

PSI of course has an interest in seeing that public fireworks displays for expressions of national pride and entertainment continue. But we are mindful too of the value to us all of clean water, enthusiastic communities and even spirited debate on such matters.

PSI is a fifth generation family company that has been performing public fireworks displays for more than three decades, including many displays in the San Diego area. The owners and employees of PSI have vast experience in the professional display of fireworks and perform hundreds of displays every year throughout California, the nation and the world.

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PSI is committed to the highest possible levels of professional industry participation, and we regularly participate and assist in the development, maintenance and enforcement of state, national and international fireworks standards, laws and regulations. Our employees provide many training sessions each year for our pyrotechnic operators. PSI works directly with the State Fire Marshal's office in the development and presentation of in-service training for hundreds of authorities with jurisdiction over fireworks displays and pyrotechnic special effects.

I am General Counsel for PSI. I have been licensed in California as an attorney since 1979 and for the past fifteen years have focused on the law, safety, regulation and practices of the fireworks industry. I serve on two California State Fire Marshal's Advisory Committees addressing the regulatory needs and requirements for both fireworks and pyrotechnic special effects in California. I am an active participant on the National Fire Protection Association Technical Committee on Pyrotechnics, working in the development and revision of national and international consensus codes and standards that affect fireworks, pyrotechnic special effects, and model and high power rocket motors. I have testified before the United States House of Representatives, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity regarding security for transportation of hazardous materials including explosives and fireworks.

In addition, I have been licensed as a California Commercial Pyrotechnic Operator since 1984. I have worked on and served as operator in charge of numerous public fireworks displays including displays from barges. I served on the Task Group of the NFPA Technical Committee on Pyrotechnics that developed the Code for Fireworks Displays Discharged from Floating Vessels and Floating Platforms.

Based on our experience with public fireworks displays, including the applicable rules, regulations, law and safe handling practices, PSI submits the following comments and alternative text for certain of the proposed BMP's.

Comments to Fireworks Best Management Practices Plan

Under Section V., Paragraph B., the permit would normally be issued to the sponsoring person or organization, which would be the permittee or "Discharger" as we understand those terms. That entity would not usually be the fireworks operator actually performing the display, but it could. Because of these potentially multiple parties and/or dual roles, the provisions of Paragraph B seem vague about who is responsible for what under the proposed permit.

Some of the practices set forth in the BMP's would normally be performed by the sponsoring organization². Other responsibilities would normally be performed by the fireworks contractor, some of which require a professional fireworks license. If it is intended that the entity obtaining the permit is responsible for either performing the requirements or ensuring that the requirements are performed by others (for example those with the appropriate licensure) that intention might be more clearly stated in the final permit.

As we address individual paragraphs in the following discussion, we will suggest changing to a more neutral voice on the subject of *who* must do something, and choose instead to specify *what* must be done. This would cause the person or entity obtaining the permit to remain responsible for the necessary elements of the BMP and leave it to them to determine by whom that element would be accomplished, except in the case where licenses are required.

Paragraph 4

Paragraph 4 has several practical difficulties that might best be addressed by reference to compliance with existing laws, regulations and permitting that would affect the display. For ease of reference, Paragraph 4 is discussed in smaller pieces. The centered text is excerpted from the draft Tentative Order, Section V., Paragraph 4. Following the discussion of the text in Paragraph 4, we suggest alternative text.

If the fireworks are launched or ignited on barges, the barges shall be setup in accordance with the requirements, and under the supervision of the Fire Department having jurisdiction.

There are many requirements for setting up fireworks displays wherever located in California. Few of those requirements flow from local codes or authority. Most of the requirements arise from California state law and regulation, which first provide that the display must be conducted by a licensed pyrotechnic operator, such as PSI, and supervised by a licensed pyrotechnician who is the individual in charge of supervising the setup and discharge of the display. There are often multiple authorities having jurisdiction over such displays and that group may or may not include a "Fire Department" depending upon a number of variables. The Coast Guard is also likely to have jurisdiction in addition to state, county, harbor or city authorities.

The "mortars" used to hold and launch the fireworks shall be secured properly and use fire-retardant material, such as sand, in accordance with local codes. Barges shall be inspected for leaks and other potential safety issues.

The equipment used in a public fireworks display must meet both installation methods and physical requirements established by the state fireworks laws and regulations, which are at odds with the draft language. For example, wooden racks and mortar boxes would not meet the proposed "fire-retardant" standard proposed in Paragraph 4, yet those materials are required to be used by state fireworks regulations. Sand alone may not be used to stabilize mortars, and there are a number of regulatory, practical and safety considerations in deciding just how to stabilize them. Again, "local codes" rarely have any application to such displays, and for good reason. Statewide uniformity of regulation by authorities having the most experience and knowledge of explosives, fireworks and fireworks displays is of great advantage to the safety and security of the public and its resources.

As soon as practicable, and no later than 24 hours following a public display of fireworks, the Discharger shall sweep the decks of each barge to prevent debris and other solid waste from blowing into the water.

We certainly agree that we should minimize the debris entering the water following a display. However, we suggest not specifying that the Discharger should be the individual or entity to sweep the decks. This is perhaps a matter best left to those managing a particular display considering any number of matters. Generally the fireworks licensee would perform this responsibility, but not necessarily. Similarly, inspection of the barges (mentioned in the prior paragraph) is best left to those most knowledgeable about such things, and the use of the non-specific requirement in that sentence seems preferable over the Discharger-specific requirement for sweeping.

The barges shall be returned to the loading or setup area to be further cleaned and to have the mortars removed.

Concluding our look at Paragraph 4, sometimes there are barges, or floating platforms, that remain anchored in position with the mortars set for additional displays, and potentially for safety or other reasons. There also could be barges that return to a different location than the loading or setup area for safety and other considerations as well. The requirements that the barge be returned to a particular location or have the mortars removed would seem to just increase traffic and the risks and burden of handling of the equipment without a clear offsetting benefit.

With these matters in mind, we propose alternative language for Paragraph 4 as follows:

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 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.

We think this proposed alternative text for Paragraph 4 fully incorporates the same environmental protections that the Regional Board's proposed Paragraph 4 is intended to provide, while making Paragraph 4 consistent with applicable rules, regulations, law and safe handling practices for public fireworks displays.

Paragraphs 5 and 6

Paragraphs 5 and 6 present some ambiguity in light of the applicable fireworks laws and regulations. As mentioned above, the "Discharger" is not necessarily a licensed fireworks operator, but Paragraph 5 seems to require the Discharger to do things that only a licensed fireworks operator may do. Also, not all material remaining after a display is necessarily waste, let alone hazardous waste. For example, there may be unfired shells after a show that properly are re-packed in Department of Transportation approved boxes and returned to the fireworks display company. Finally, the terms *wholesaler*, *manufacturer*, *importer*, *exporter*, and *pyrotechnic operator* all have specific meanings and responsibilities under the fireworks laws. We suggest the following alternative language:

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.

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.

Paragraph 7

We simply suggest that the word “firing” be added to Paragraph 7 in the list of activities requiring compliance with Titles 19 and 22.

Paragraph 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.

Conclusion

Thank you for the hard work of the Board Staff that drafted the Tentative Order. PSI hopes that you will consider the value of its suggestions as a contribution from the fireworks professionals that will have to understand and comply with the elements of the final BMP’s so that public fireworks displays are protective of both public safety and the environment.

I will be in attendance at the March 11 workshop and would be pleased to respond to any questions regarding PSI’s proposed revisions to the text for certain of the Draft BMP’s.

Respectfully submitted,

PYRO SPECTACULARS, INC.



Gary E. Brown
General Counsel

¹ PSI does not believe the draft NPDES permit is authorized or required for the reasons set forth in the December 9, 2010 letter from PSI’s outside counsel, Brian Zagon, to the Regional Board. PSI continues to reserve its rights on all issues raised in the December 9, 2010 letter, but offers these comments in a spirit of cooperation.

² For example, take a look at the third proposed BMP. In actual practice, the range and/or surrounding areas may be cleared of debris either by the sponsor or the fireworks company, or both. However, certain requirements, such as handling “un-ignited pyrotechnic material including aerial shells...” must be performed by a licensed fireworks operator.