



City of Del Mar



March 22, 2013

Mr. David Gibson
Executive Officer
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
dgibson@waterboards.ca.gov

Re: Public Hearing to Consider Adoption of Tentative Order R9-2013-0001
NPDES No. CAS01092662

Dear Mr. Gibson:

On behalf of our client the City of Del Mar, we formally object to the "Hearing Procedures and Order of Proceedings" dated March 15, 2013, and received on March 18, 2013 ("Hearing Procedures"). The proposed Hearing Procedures are not in compliance with the California Government Code, California Code of Regulations, and the Code of Federal Regulations applicable to NPDES Permit adoption proceedings. There are two main issues with the Hearing Procedures: 1) the Tentative Order has not been released, so no informed decision with regard to formal/informal proceedings can be made; and 2) the proposed process has significant limitations on what can be presented to the RWQCB ("Board") and how the public may interact. Specifically, the Hearing Procedures limit the time for all parties to present and be heard and it limits the scope of what may be presented:

"...the scope of oral testimony at the public hearing will be strictly limited to summarizing the previously submitted written comments, commenting on revisions to the Tentative Order made since the written comment period closed, and making policy statements. No new issues may be raised at the hearing." [emphasis added]

Given the level of interest and potential controversy in this proceeding, the prohibition of additional written comments and the ability to raise new issues based on the yet-to-be-released Tentative Order, the Board violates the provisions of state and federal law with respect to due process by barring their right to comment for the administrative record. Any "new" issues raised by the Tentative Order (which has not yet been issued) would be deemed waived, and deprive the City of Del Mar the opportunity to be heard and present evidence based on the to-be released Tentative Order. In addition, the proposed time limitations are inappropriate and inconsistent with the City of Del Mar's rights and obligations to create an administrative record for review.

Because of the (i) potentially significant changes made to the prior draft permit as a result of public comment and testimony, (ii) the proposed limitations on written comments, and (iii) proposed ban on raising new issues at the hearing and the informal hearing process as proposed, the City of Del Mar requests the following:

1. The public hearing on April 10 and 11, 2013, to receive testimony and comments and consider adoption of Tentative Order No. R9-2013-0001, NPDES No. CAS0109266 be postponed and/or continued to allow a reasonable review of the proposed permit language and requirements by the permittee(s).



City of Del Mar



Mr. David Gibson
Executive Officer
Regional Water Quality Control Board
San Diego Region
March 22, 2013

2. The limitations on the time for all parties to present and be heard and the prohibition of new issues to be presented based on the new/revised permit must be removed. However, because the revised Permit has not been issued, the City does not know at this time whether a formal or an informal hearing process would be necessary and/or appropriate. The City of Del Mar specifically requests a formal hearing pursuant to 23 CCR § 648.7 as a reservation of its rights to such formal proceedings.

Thank you for your consideration of the above.

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation

A handwritten signature in blue ink that reads "Leslie E. Devaney".

Leslie E. Devaney
City Attorney of Del Mar

cc: Scott Huth, Del Mar City Manager (shuth@delmar.ca.us)
Wayne Chiu, RWQCB San Diego Region (atwchiu@waterboards.ca.gov)