

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board



State Water Resources Control Board:

I urge the State Water Resources Control Board to delay implementation or approval of copper TMDLs in any salt water bodies in California until a number of key actions occur, and I urge the Board to reject the proposed amendment to the Los Angeles Regional Basin Plan to revise the Total Maximum Daily Loads for Marina del Rey Toxic Pollutants.

The following points were also raised by other interested parties in opposition to the proposed amendment in comment letters that were sent to the Board (including, but not limited to, those by Alston & Bird and the County of Los Angeles) and at the Los Angeles Regional Water Quality Control Board's February 6, 2014 meeting. The Board's responses are inadequate or factually incorrect, as noted herein and in opposition comments and statements by others.

### **1. Delay Implementation of TMDLs in Salt Water**

I urge the State Water Resources Control Board to delay implementation or approval of copper Total Maximum Daily Loads [TMDLs] in any salt water bodies in California and to reject the proposed amendment until the following occur:

- **Allow divers to implement best management practices** - on hull cleaning as per the state report issued pursuant to AB 425 (Atkins, Chapter 587, Statutes of 2013). It appears to date that implementing best management practices on hull cleaning has had a mitigating effect on copper in the water and there needs to be time to further review the effect.
- **Allow time for the USEPA to approve the Biotic Ligand Model (BLM)** - for determining copper toxicity in salt water. It is believed this approval is forthcoming shortly and therefore there would be accurate site specific information available to the Regional and State Water Boards in determining appropriate implementation methods needed, if any.
- **Allow the paint manufacturers to develop copper paints with lower leach rates** - also pursuant to AB 425 (Atkins). Effective and affordable paints with lower leach rates are in the foreseeable future.

### **2. Reject Proposed Marina del Rey Basin Plan Amendment**

Given the enormous cost to the State of California, Counties, Cities and boaters in implementing the revised copper TMDLs, and considering that the above factors may mitigate the need for TMDLs to be necessary at all, this request is reasonable and should be granted by the State Water Resources Control Board.

### **The Board's Notice Fails The Due Process Test**

Although boaters may have been on the mailing list to receive notice of the proposed TMDL, many don't recall seeing it and certainly would not have realized the importance of the notice because it referenced only "technical changes" to the TMDL. There was never any warning in the notice about the onerous burdens that would be placed on boaters, such as naming them as "Responsible Parties" and thus liable for copper pollution in the Marina.

By failing to ensure that affected parties were adequately and timely notified, the Board denied stakeholders the right to be heard. This is a fundamental denial of due process and it denied boaters, anchorages and other interested parties with the opportunity to provide meaningful input in the development of the TMDL Amendment.

### **This Regulation puts the Marina del Rey Community in Jeopardy**

Litigation is rampant in California. We all know that, and boaters do not want to be part of an environmental lawsuit because the Board unilaterally says that I'm the "Responsible Party" just because they keep a boat in Marina del Rey. Questions of liability should be established by an impartial judge, not a regulatory agency in the context of a TMDL Amendment.

Boaters in Marina del Rey have only used State approved copper based paint products on their boats and now the Board is telling them that they have a choice to make: Register for a \$1,094 Waste Discharge Permit, pay \$8,000 or more to strip and paint their boats, incur more than double the amount of cleaning costs, incur compliance costs, be named a "Responsible Party" for pollutants, risk litigation, and put their property into legal jeopardy --- or, leave the Marina so they won't be subject to these onerous burdens and legal jeopardy.

The Board says that its "unlikely" for boaters to leave Marina del Rey because of the new regulation. Would boaters seriously consider leaving the Marina or selling their boat under these circumstances? Absolutely.

### **Invasive Species**

The Regional Board failed to do a meaningful site specific environmental analysis of the increase in invasive species that will result from eliminating copper bio-cide paints. The Board stated that "adverse environmental effects are acceptable" including the "increased growth of fouling organisms and invasive species" as a result of using non-

copper based paints. Copper biocides have worked well over the decades to reduce the transport of invasive species. Eliminating this protection could have disastrous consequences. Non copper paints will foster the growth of biofilms on hulls, which harbor harmful bacteria and carbon, and which cause increased drag, resulting in the burning of more fuel and discharge of more emissions into the marina. This, plus the dredging the Regional Board wants could seriously threaten the delicate ecosystem of our marina, create new, unknown risks and outweigh the potential benefit from banning copper paint.

### **The Board's Economic Analysis Is Wrong**

Based on personal knowledge of many boaters, boats are stripped every 20-40 years in Marina del Rey... and not the 7-10 years stated by the Board. I don't know where they got that number, but it's wrong.

In many cases, boaters are not planning to strip their boats for another 20+ years, well beyond the 10 year compliance period. But under the Amendment, boaters are facing paint stripping costs, a doubling of cleaning costs, the registration of a Waste Discharge Permit at a current cost of \$1,094, potential compliance, enforcement and legal challenges. The Board's Economic Analysis was prepared by someone who clearly doesn't understand boating in Marina del Rey, or the potential costs of this ill-advised regulation.

### **The Board's Actions Are Illegal**

What's troubling to boaters is that an unelected, unaccountable board is undertaking to mandate new regulations, name "responsible parties" in a TMDL and create for itself the ability to order remedial action, require permits, impose fines on citizens, harm our local economy and effectively take away our property.

The Board is misusing its power to impose an unfair regulation that is more costly, more burdensome, and much harsher than what was approved for San Diego's Shelter Island.

The Board has no authority to name "Responsible Parties" in a TMDL. Its actions are outside the law and not authorized by statute or case law. If this Board can ignore the people, the law, economics, science and common sense, what's next?

The State Water Control Board should reject the TMDL Amendment.

Respectfully,

Andy Fuller