

# **Shelter Island Yacht Basin TMDL**

## ***Bay Council Perspective on Hull Paint Regulation Local and Statewide***

Marco Gonzalez, Esq., Partner, Coast Law Group, LLP  
Gabriel Solmer, Esq., San Diego Coastkeeper  
Nate Cooper, San Diego Coastkeeper

August 13, 2007

# San Diego Bay Council

*A coalition of environmental organizations  
dedicated to protection and restoration of  
San Diego coastal waters*

**Member organizations, representing 22,000  
San Diegans:**

- Environmental Health Coalition
- San Diego Coastkeeper
- The Surfrider Foundation (San Diego Chapter)
- San Diego Audubon Society
- The Sierra Club (San Diego Chapter)

# **Agenda**

- 1) Regional Board's Regulatory Authority**
- 2) Failure to Act During the Grace Period**
- 3) Potential Solutions**
- 4) Legal Enforceability of the TMDL**

# **The Regional Board's Regulatory Authority**

**The RWB may hold a party responsible for the discharges of others based on 3 criteria:**

- 1) Ownership or operation of the land on which activity occurs that results in discharge**
- 2) Knowledge of the activity causing discharge**
- 3) The ability to *control* the activity**

# **The Regional Board's Regulatory Authority**

**Analogous cases have required the party responsible for concentrating a large number of individual dischargers to obtain an NPDES permit.**

- **Caltrans**
- **MS4 Copermittees**
- **Shooting Ranges**

# **Statewide Regulation**

- **Department of Pesticide Regulation Statewide AFP Monitoring Study**
- **Feasibility Study of Alternative Hull Coatings and Management Practices (DTSC, DPR, Port)**
- **Localized Monitoring Studies (SF, Newport)**
- **Marina Del Ray TMDL**
- **Naval Study in San Diego Bay**
- **EPA Registration Eligibility Decision and Ecological Risk Assessment**

# The Failure to Act During the Grace Period

- The Clean Marina program required no reductions in copper loading from participants.
- Virtually no Marinas participated in *meaningful* voluntary programs designed to ease the transition to alternative hull coatings.
- The Port has taken less than a leadership role in reducing copper antifouling paints (AFPs) ahead of schedule.

# **The Potential Solutions**

**The Port and the Marina Owners and Operators should take prompt action to facilitate future compliance and ease the burden on boat owners.**

# The Potential Solutions

## Implementation Methods

- *Transitioning to non toxic or less toxic hull coatings*
  - Epoxy, ceramic epoxy, silicone, siloxane, fiber epoxy, polymer, water based urethane, bottom wax, and coatings that go over the existing copper AFP
  - But NOT Zinc
- *Reducing the effects of copper-based paints through Management Practices*
  - Slip liners, dry storage, less abrasive hull cleanings

# The Potential Solutions

## Incentives and Controls

- *Port imposed controls on Marinas*
- *Marina imposed controls on boat owners*
- *Incentives from Port to Marinas*
- *Incentives from Marinas to the boat owners*

# **The Legal Enforceability**

**The TMDL is legally enforceable against the marina owners and operators for their individual failures to meet benchmarks, either through Waste Discharge Requirements (WDR) or National Pollution Discharge Elimination System (NPDES) permits.**

# Closing

- **It is important that the Port and Marina Owners and Operators realize that they are the regulated parties.**
- **No more time should be wasted waiting for a statewide solution.**
- **Alternatives are available, and prompt action should be taken.**
- **Failure to reach the TMDL benchmarks is likely to result in legal enforcement.**