



LOS ANGELES AREA
CHAMBER OF COMMERCE
125th anniversary

Public Comment
Marina del Rey Toxics TMDL
Deadline: 5/13/14 by 12:00 noon



May 7, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

RE: State Water Board Action on Marina del Rey TMDL

Dear Members of the State Water Board:

The Los Angeles Area Chamber of Commerce cares about clean water. We also care about good public policy. We are concerned about the precedent that would be set should the State Water Board vote to affirm the Los Angeles Regional Quality Water Board's action on Marina del Rey's Total Maximum Daily Load requirements. We ask that the State Board remit this action back to the Regional Board for further study, the creation of an interagency working group as well as a close check of the legal issue involved.

We feel that the Regional Water Board's recent action doesn't follow the established environmental law, use best management practices, nor is it based upon the readily available good science on the issue. Yet, these ill-advised regulations could establish far-reaching precedent that could be relied on for implementing regulations on other issues.

Fundamentally, we are most concerned that the action before you would name specific parties (e.g. anchorages and persons owning boats moored in the harbor) as "responsible parties" for "load allocation assigned to discharges of dissolved copper."

We believe this action would be improper and unlawful. This proposal violates both the Clean Water Act and CERCLA. "Responsible parties" is a term of art under CERCLA, a federal statute designed to allocate liability for clean-up of past contamination. This cannot be implemented in a TMDL. A TMDL is an informational document that establishes goals. It is not a document that can assign liability.

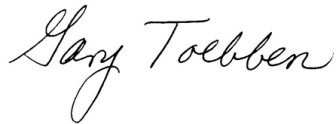
The Regional Board has used the TMDL process to create a legal impossibility. Under existing laws, it cannot assign liability for 'nonpoint' pollution to anchorages that have no control over the 'nonpoint' discharge. Furthermore, it has been documented that sources of copper in the marina include stormwater runoff from surrounding communities, as well as leaching from hull paints, and the State has previously recognized that marinas are 'nonpoint' sources. Nor can the Regional Board assign responsibility to boaters in a TMDL for components in hull paint that is legally sold and used in California. To do so would be like holding individual car owners personally responsible for copper levels in their automotive brake pads, and parking lots responsible for copper residue therefrom. These types of responsibilities have not been legislatively or judicially created and this course of action by an appointed board will create precedent that could have far reaching implications.

The Marina del Rey TMDL needs to be revised to restore its statutory purpose as a goal-setting informational tool, and to remove all references regarding “responsible parties” and allocations of liability to anchorages and boat owners.

We respectfully request you send this proposal back to the Los Angeles Regional Water Quality Control Board for further action, including removing the current language on “responsible parties” and creating a framework that incorporates all key stakeholders in addressing water quality issues in Marina del Rey.

If you have any questions or would like to discuss the issue further, please contact Frank Lopez, Public Policy Director at flopez@lachamber.com or 213.580.7573.

Sincerely,

A handwritten signature in black ink that reads "Gary Toebben". The signature is written in a cursive style with a large, stylized 'G' and 'T'.

Gary Toebben
President & CEO