
Santa Ana Regional Water Quality Control Board

November 8, 2017

Mr. George Farnsworth
Assistant Director
Pesticide Programs Division
California Department of Pesticide Regulation
1001 I Street
P.O. Box 4015
Sacramento, CA 95812-4015

Dear Mr. Farnsworth:

I am the Executive Officer of the Santa Ana Regional Water Quality Control Board (Regional Board). For a number of years, Regional Board staff have been working on the development of total maximum daily loads (TMDLs) to address exceedances of water quality standards for copper in Newport Bay. Our studies indicate that the majority of the copper in Newport Bay is from copper antifouling paints. Information related to this effort can be found at the following link: https://www.waterboards.ca.gov/santaana/water_issues/programs/tmdl/tmdl_metals.html.

The reason I am contacting you is because several stakeholders, including the City of Newport Beach, have raised discrete legal issues related to the perceived conflict between the California Department of Pesticide Regulation (CDPR) and the Regional Board in terms of authority and responsibility for addressing the copper from copper antifouling paints (AFPs). While our legal counsel has weighed in on these issues, I thought it would be helpful, both to our Regional Board and to the public in general, to reach out directly to CDPR to assist us in addressing these comments. If possible, I would appreciate your thoughts on the following:

1. Is there any legal conflict between CDPR's regulation of the copper AFPs and the adoption by the Regional Board of Copper TMDLs addressing exceedances of water quality standards for dissolved copper in Newport Bay?
2. Is it CDPR's position that the use of copper AFPs alone (with leach rates at or below the maximum allowable leach rate of $9.5 \mu\text{g}/\text{cm}^2/\text{d}$) will lead to the attainment of the water quality standards for dissolved copper, based on the California Toxics Rule (CTR) chronic criterion, in salt water marinas where those water quality standards are already exceeded?
3. Would Copper TMDLs, which include as part of the implementation plan the use of mitigation measures, such as Best Management Practices for in-water hull cleaners, incentives for the conversion of boats using copper AFPs to alternative paints, and/or the dry docking of boats, be consistent with CDPR's position as to what will be necessary to protect aquatic organisms from the effects of exposure to copper discharges from copper AFPs in those areas where water quality standards for copper are being exceeded?

Thank you in advance for your assistance with this important matter. If you have any questions or would like to discuss this further, please feel free contact me at (951) 782-4493 or Hope.Smythe@waterboards.ca.gov. Your staff may also contact Terri Reeder, Supervisor of the Coastal Waters Planning and CEQA Section, at (951) 782-4995 or Terri.Reeder@waterboards.ca.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hope Smythe".

Hope A. Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board