



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

Re: Opposition to the Proposed Amendment to the Los Angeles Regional Basin Plan to Revise the Total Maximum Daily Loads for Marina del Rey Toxic Pollutants

Dear Ms. Townsend,

I am the General Manager of the California Yacht Club with more the 900 members, who own more than 300 boats in our anchorage and many more throughout the marina. I am firmly opposed to the Los Angeles Regional Water Quality Control Boards proposed TMDL Amendment and ask the State Water Control Board to reject the Amendment for the reasons stated in this letter.

1. The Board's Notice Fails the Due Process Test

Although California Yacht Club may have been on the mailing list to receive notice of the proposed TMDL Amendment, I don't recall seeing it and I never realized the importance of the notice as it referenced only "technical changes". There was never any indication that California Yacht Club or our member boaters, or the County of Los Angeles were going to be individually named as "Responsible Parties," who would be liable for copper pollution in the Marina. Many of our boat owning members were not on the Board's mailing list and did not receive notification of the Amendment. 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 California Yacht Club and its boater members to a fair and impartial hearing in developing the TMDL.

2. The Responsible Party Designation is Illegal

The Board would have us believe that it has the legal authority in a TMDL Amendment to name California Yacht Club responsible for copper pollutants in the Marina. It does not. We have been further advised that this is the first time that the Board has ever tried to hold a private party responsible for the load allocation in a TMDL. There is no statutory or judicial authority under either federal or California law that recognizes a load allocation in a TMDL as retroactively and prospectively creating, by itself, joint liability for non-profit sources. The Marina del Rey TMDL Amendment is an unauthorized and unlawful means to assign legal responsibility to our anchorage

3. 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. Remember, Marina del Rey was once a swamp area called "Mud Lake" and was home to oil rigs up until a few decades ago; dredging it could prove an unwise decision.

3. The Economic Impact

Marina del Rey anchorages, including California Yacht Club suffered a major downturn in our slip occupancy after the economic slowdown in 2009 particularly with boats in the 30 to 35' length. Even today, we continue to have empty slips in the lower length range and a very small wait list for slips 50' and above. Our members will have to make a decision; keep their boat at California Yacht Club and face a waste discharge permit, pay \$8,000 or more to strip and paint their boat and be named a "Responsible Party," or move to another marina where they won't be subject to the same risks. The board states that there will be no loss of business in the Marina. I do not believe that. In fact, I am certain that California Yacht Club would lose at the very least, 10% of our member's boats. If a member's boat isn't in the CYC anchorages, chances are that they will no longer remain members. This would have a much broader fiscal impact to our business than just the revenue from slip rentals. Potential litigation, if our load allocation is not met or if third parties sue the "Responsible Parties", creates an insurance nightmare. The cost of compliance, enforcement or litigation for California Yacht Club and for other anchorages is not adequately discussed in The Board's Economic Analysis, nor does it discuss the increased costs of insurance or the inability to secure financing because of the cloud of potential pollution liability, or the general loss of business. Unlike governments and regulatory bodies who can spend other people's money, we can't. California Yacht Club and other businesses have to earn the money to stay in the Marina and pay their bills. What the board doesn't realize is that even a small 5-10% loss of business to anchorages and to the surrounding community can mean the difference between running a successful business or closing an unsuccessful business. In San Diego, that Board adopted a phased program to give the boating community and businesses an opportunity to deal with the potential impact before incurring serious economic and legal risks and they provided for a 17 year compliance period. This would seem far more reasonable and make compliance possible.

4. Compliance is impossible

A 10 year deadline imposed for compliance by the Board is impossible to meet and much more aggressive than what was implemented in San Diego's Shelter Island, a significantly smaller body of water. Boaters strip their boats about every twenty years, not the 7 to 10 years as claimed by the Board. Boaters won't choose an unproven, less effective, more expensive non-copper hull paint over a less expensive, proven product without good reason and a fundamental shift in behavior. This can only be accomplished through sound science, educations, boater acceptance and time. Most importantly, the boatyards in Marina del Rey cannot strip and repaint all the boats in Marina in the 10 year allotted by the Board.

Finally, The Board wrongly attempts to make boaters and anchorages, both nonpoint sources, legally liable for "discharges" of dissolved copper passively leaching from boat hulls when the law provides that only point sources can be held liable for discharges of a pollutant. This creates a legal impossibility and it wrongfully implies that an anchorage can be held responsible for discharges over which it had no control. This contravenes the holding of several court cases and the Porter-Cologne Act.

I formally request that the State Board reject the TMDL Amendment as currently drafted.

Sincerely,
Michele I. Underwood
General Manager
California Yacht Club

Copy to: Concern citizens of Marina del Rey, cmichaels90292@gmail.com