**Santa Ana Regional Water Quality Control Board Resolution No. R8-2018-0071**

**Overview & Response**

The Santa Ana Regional Water Quality Control Board (Water Board) has been attempting since 2016 to reduce the amount of copper (Cu) in the Newport Bay. By establishing a new Copper Total Maximum Daily Load (Cu TMDL) in Newport Bay and placing onerous regulations on all boaters to accomplish their goal. They report that 81.1% of copper found in Newport Bay is a result of the boat hull’s anti-fowling paint (AFP) and are demanding that an alternative be used and required for all boat owners. If their resolution passed as is, **“responsible parties”** which include the following: marina owners, **individual boat owners**, underwater hull cleaners, and boatyard operators shall accomplish the following:

1. **Within three months** of passage of this resolution, each responsible party shall submit their own proposed implementation plan and schedule to achieve reductions of Cu from Newport Bay. The report shall include monitoring and evaluation of Cu in marinas, channels, and open water sites. Then submit an annual report that includes the data and assessment of that data with respect to compliance with Cu criterion and identifies actions taken and the effectiveness of those actions.
2. Convert from Cu AFP’s to nontoxic AFP’s or Cu AFP’s with lower leach rates below 9.5 µg/cm2/d. Require new boats to use nontoxic AFPs or Cu AFP’s with lower leach rates ***only if*** **no significant adverse environmental impacts associated with their use is demonstrated**.
3. The implementation plans shall also consider strategies for continuing education that shall include the following:
	1. Cu water quality issues impairment due to Cu and TMDL requirements.
	2. Conversion from Cu to nontoxic AFP’s, only when it has been demonstrated to have no significant adverse environmental impacts associated with their use.
	3. New diver certification for underwater hull cleaners.
	4. Alternative boat storage options, such as dry dock storage or slip liners.
	5. Conditions and requirements established by the Santa Ana Water Quality Control Board.

Clearly these implementation plans are tedious, expensive, and at the current moment, simply impossible to accomplish; thus **paving the way for the Water Board to levy future fines for all “responsible parties.”** We have two major arguments that support our effort to make sure that the Water Board does not adopt this resolution.

1. **Alternative AFP’s need additional time for studying both human health factors and environmental impacts.**
	1. A memorandum submitted by Dr. Anghera of Latitude Environmental to the Water Board raises serious concerns, regarding human health impacts of the current AFP alternatives. Dr. Anghera stating from Ecology 2014 Study that, “All three paints identified as *preferred* contain hazardous chemicals that pose human health and/or environmental risks and are categorized to be avoided… These chemicals that have a combination of either high persistence in environment, high bioaccumulation potential, and high human toxicity or ecotoxicity and are recommended to be avoided.” This report is very concerning to us and we would implore the Water Board to investigate these concerns prior to adopting the proposed amendments.
	2. In the publication of Marina Dock Age in the May/June 2018 issue. *Washington State Halts Its Ban on Antifouling Copper Paints*, the article states, Washington State’s governor signed a bill on March 15, 2018 that delayed all phases of the ban on Cu AFP’s until January 1, 2021. Primarily due to the initial research conducted by Washington State’s Department of Ecology Hazardous Waste and Toxic Reduction Program, **“Our preliminary research indicated that some of the alternative biocidal paints might be more harmful to the environment than copper.”** Clearly, we need to ensure that the proposed amendments will have clear guidance on the environmental impacts of alternative AFP’s and ensure that alternatives are safe for human interaction.
2. **The economic costs of available alternatives are cost prohibitive for middle class boaters.**

The summary provided by Dr. Anghera states,

“… **there are only three** non-biocide paints tested in these studies that are still available… and were recommended in one or more studies. **All three paints are designed for commercial vessels**. **All three paints must be applied by professionals**. Even though the paints are recommended alternatives to copper, Ecology (2014 and 2017) maintains concerns over hazardous chemicals within the paint that could pose a risk to humans and the marine environment. Many of the paints evaluated do not have full disclosure of ingredients because of the proprietary rights and many of the compounds being used have not been tested.”

We are sure it is not the intention of the Water Board to drive middle class boaters out of enjoying Newport Bay. However, the proposed amendments will essentially require all boaters to have their hulls repainted with alternative AFP’s by professionals, which will force certain owners and families out of their boating experience.