February 14, 2014

The Honorable Toni Atkins
California State Assembly
State Capitol, Rm 319
Sacramento, CA 95814

Subject: AB 425 (Atkins) Copper Antifouling Paint

Dear Assembly Member Atkins:

In order to comply with AB 425 (Atkins), the Department of Pesticide Regulation (DPR) has developed measures to address the amount of copper in California’s coastal marinas and potentially affecting marine life from copper antifouling paint (AFP). As you know, copper is used in paint for boat hulls as a pesticide to protect against the accumulation of barnacles, etc. on the underwater surfaces of boats and ships. At high concentrations, copper can be toxic to aquatic life including mussels, sea urchins, marine algae, and other organisms. Copper from paint enters the water from paint leaching off of boats and as a result of in-water boat hull cleaning practices.

AB 425 required DPR to, not later than February 1, 2014, (1) set a leach rate for cooper paint and (2) recommend mitigation measures. The attached memo explains in greater detail the steps DPR has taken to comply with AB 425. In summary, DPR established two maximum leach rates depending on the allowed cleaning practices on the painted boats. In addition, DPR recommended seven mitigation measures.

The leach rates will be:

- 9.5 ug/cm²/day if cleaning is allowed no more frequently than once per month and the in-water hull cleaners follow California Professional Divers Best Management Practices method using soft-pile carpet.

- 13.4 ug/cm²/day for products which claim to not require in-water cleaning.

DPR determined these leach rates using mathematical models based on sampling studies done in California salt water marinas on the quantity of copper found in the water column when boats with copper-based paint are docked in the water and cleaned in the water. By adopting these new rates, DPR believes most of California’s salt water marinas will come into compliance by achieving the state protective copper standard of 3.1 parts per billion.
DPR is recommending the following mitigation measures:

- Product reformulation to comply with established leach rates.
- Require in-water hull cleaners to implement best management practices for in-water hull cleaning.
- Reduce in-water hull cleaning frequency to no more than once every four weeks for paints that require cleaning and eliminate cleaning for those that do not.
- Include this hull maintenance information as part of product labels.
- Develop for distribution hull maintenance brochures to be provided to boaters via boatyards at the time of painting.
- Increase boater awareness and acceptance of copper AFP alternatives.
- Foster new incentive programs and continue support for existing programs to convert copper-painted boat hulls to those painted with alternatives.
- Consider site-specific objectives for copper for certain marinas or harbors.

These measures will require everyone who has a stake in boating and the health of California marinas to work together. This includes the State Water Resources Control Board, paint manufacturers, boat owners, boatyards, divers who clean the boats, marina operators and more. Fully addressing the problem of copper pollution in California's marinas will require a change in behavior and practices.

DPR has the authority to work with product manufacturers on copper-based AFP formulation. The implementation of the rest of DPR's recommendations will necessitate the cooperation of many stakeholders. Therefore in the coming months DPR will be expanding its outreach with manufacturers, marina operators, boat owners and other stakeholders. DPR will also be working with other regulatory agencies including the United States Environmental Protection Agency and State Water Resources Control Board.

Sincerely,

Brian Leahy, Director
Department of Pesticide Regulation

cc: Mr. Gareth Elliott, Legislative Secretary, Office of the Governor
    Ms. Kristin Stauffacher, Legislative Director, California Environmental Protection Agency