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May 7, 2012

Senator Christine Kehoe  
Room 5050, State Capitol  
Sacramento, California 95814

**SUBJECT: Request to Postpone SB 623 – Restrictions on Marine Antifouling Coatings**

Dear Senator Kehoe:

As you know, the American Coatings Association (ACA) has been working with you, your staff, and the sponsors of SB 623 over the past two years to develop legislation to assist Shelter Island Yacht Basin and potentially other ports in meeting a TMDL for copper. We appreciate the cooperative approach your office has taken with the marine coatings industry. However, over the past year, a number of activities directly related to marine antifouling coatings have begun which could fundamentally change the discussion, but no resolution on these activities will occur during the California legislative session this year. It is for this reason that the American Coatings Association is respectfully requesting that you delay the bill until these items are completed. We of course are open to working with the sponsors again following resolution of these activities in 2013.

ACA is aware of the following items that could directly impact the issue of marine antifouling coatings, as well as any future legislation on this issue.

1. **NEW STUDIES:** Several new studies in the Shelter Island Yacht Basin have indicated a lack of toxicity suggesting that the Basin is not impaired due to copper. The Department of Pesticide Regulation, the Regional Water Board, and the Port of San Diego need time to review those studies.
2. **EPA BLM:** The Federal Environmental Protection Agency is in the process of completing the marine Biotic Ligand Model (BLM) for copper in the next few months, which will allow the Port to more accurately determine the environmental protective level of copper for the Basin. Recent studies completed in Shelter Island Yacht Basin confirm the BLM's applicability. Requests are pending for the Regional Water Board to open the TMDL if site-specific water quality criteria is established using the BLM as the TMDL allows. The use of the BLM is also expected to more easily permit the Basin to meet the TMDL for copper by establishing protective site-specific water quality criteria. The Regional Water Board needs time to consider adoption of the BLM once the BLM receives final approval from the EPA.
3. **DPR DETERMINATION OF A LOW-LEACH RATE FOR COPPER COATINGS AND HULL CLEANING STUDY:** The Department of Pesticide Regulation is in the process of determining a level for low-leach rate copper coatings. As part of that determination, DPR has asked ACA to conduct a study to identify the amount of copper that may be prematurely released into the Basin through

**ATTACHMENT**

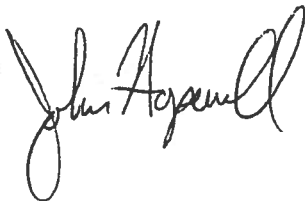
excessive/abrasive hull cleaning by divers, and whether reduced cleaning best management practices as recommended by the coating manufacturer might lower the amount of copper released in the Basin. That three-month study is expected to begin in the Basin in the next few months. Following the three-month study, the study and results will be peer reviewed and published, which will take an additional one to two months to complete.

4. **STATE LANDS COMMISSION BIOFOULING REGULATIONS FOR LARGE MARINE VESSELS:** The State Lands Commission, which regulates large marine vessels and invasive species in state marine waters, is planning to adopt biofouling regulations this year. As currently drafted, the regulations would require the use of the strongest biocide coatings and frequent in-water cleaning in order for the large marine vessels to comply with extremely low levels of biofouling allowed in the regulation. The goal of this regulation appears to be in direct contrast to where the ports and SB 623 are headed. Although SB 623 applies to pleasure craft only, this SLC biofouling regulation will set a precedent. The marine and coatings industries need time in the next few months to reconcile the goals of the ports with a more reasonable State Lands Commission biofouling regulation.
5. **NEW AQUATIC INVASIVE SPECIES WORKING GROUP:** SB 1251, authored by Senator Evans, was introduced this year " would amend the California Ocean Protection Act and establish an "aquatic invasive species working group with jurisdiction over aquatic invasive species, both coastal and inland." It is unclear how the various state, regional and local agencies with jurisdiction over invasive species will coordinate their efforts, but the outcome of this bill could impact how this issue is addressed in the future.

ACA is of course open to continuing to work with the sponsors on the TMDL issue once these items are given a chance to sort themselves out. However, until these activities are concluded and results known, ACA believes that it is premature to mandate any legislative remedies.

We appreciate your consideration of our request to delay this measure. If you have any questions, please contact ACA's lobbyist, Sande George, 916-443-5301, [sgeorge@stefangeorge.com](mailto:sgeorge@stefangeorge.com).

Sincerely,



John Hopewell, Assistant Director  
Environmental Affairs and International Programs, ACA