

The Coppergate Chronicles

Senate Bill 623

SB-623 Calls for Removal of Copper from Boat Bottom Paint

This Bill is held in Committee with action expected to proceed in 2012

Background: In 1996, California State regulatory agencies found trace elements of copper in the Shelter Island Yacht Basin, San Diego Bay. The reported trace elements exceeded EPA/WQC Standards (Federal Standards arbitrarily set ignoring good science). These findings led the Regulatory Agencies and the Unified Port of San Diego to conclude that the scarcity of aquatic species in the Yacht Basin was the result of excess copper. Without confirming scientific evidence the Port embarked upon an aggressive long term program (a Witch Hunt) to locate the source of said copper. Those efforts, paid for by the Taxpayers, eventually resulted in Senate Bill 623, the initiative to remove copper from boat bottom paint. More specifically the Bill targets only recreational boats and excludes all other port structures and vessels. The stated justification for the bill was based upon the aforementioned Federal EPA/WQC standards for copper effluents. Furthermore the Port speculated that trace elements of copper were deemed toxic to California aquatic species therefore copper must be eliminated or reduced in all California estuaries.

San Diego Port Authorities along with their "Pocket Senator" Diane Kehoe (The Copper Queen of the California Senate) chose to make, what should have been contained as a local issue, a Statewide California issue, thereby involving all of California Ports, Bays, Marinas, Estuaries and more specifically all California Tax Payers in unnecessary expensive legislation.

The technical problem with EPA/WQC is that the mandated levels are at, or very close to, the ambient or "background" concentrations of copper found in many estuaries, which are at the extreme low ug/L level. The treatment of copper contaminated effluents to achieve such low mandated levels, even if they are technologically attainable, will be cost-prohibitive, and are not warranted since there is no direct evidence in the natural environment (in the real world) of toxicity caused by localized small trace levels of copper as it pertains to local aquatic species.

Said another way if this Bill becomes law it will increase the cost of recreational boat maintenance by 300% to 500%, it will be difficult if not impossible to administer and enforce, it will only create many long term make-work jobs for bureaucrats and other public employees offering no advantage to the public or the environment.

Environmental standards developed in Washington D.C. are not always compatible with environmental conditions 2500 miles and a Continent away like on the Pacific West Coast. Federal Standards such as the EPA/WQC should be used for information purposes only. Land stewardship must remain in the capable hands of the individual Sovereign States. Should the States fail to maintain their sovereign status the people therein become but "Vassals to the King" in that remote wonderland land of Washington D.C.?

SB-623 fails to recognize that California has almost 1000 miles of coastline encompassing many diverse geographical and environmental locales. Given the size and geographic diversity of California it should be obvious that all estuaries along the extended California Pacific Coast are not the same, do not contain the same aquatic species, what may be a problem for one may not be for another, what is good for one may be a liability for another. The Port of San Diego being the southernmost Port bordering Mexico has its own unique environmental problems and a political agenda unlike other California Ports and Marinas.

For an example of a diverse environment only 95 miles apart one only has to study the Port of Los Angeles/Cabrillo Marina versus the Port of San Diego/Shelter Island Yacht Basin. The overall amount of copper input from all known sources into the Port of Los Angeles, one of the world's busiest container and cargo seaports ports operating 24/7/360 is several hundred times the amount entering San Diego Bay, yet Cabrillo Marina has one of the most diverse aquatic populations in California, a virtual aquarium, in the farthest backwaters of the Port of Los Angeles sea bass are thriving. Shelter Island Yacht Basin San Diego is almost devoid of aquatic species. The Port of Los Angeles/Cabrillo Marina has good water circulation; the Port of San Diego/Shelter island Yacht Basin has poor water circulation. San Diego Bay has its own unique set of problems; trace elements of copper are not one of them.

Google "NOAA Chart#18773". Chart reveals in detail a shallow bottom structure all around the entrance to Shelter Island Yacht Basin that impedes in/out tidal flow (water circulation). Shelter Island Yacht Basin was designed from the get-go to be a quite water boat basin not an aquatic preserve. If warranted tidal flow can be improved by dredging; enlarging and deepening the entrance thus improving water circulation and opening the Basin to native aquatic species, and further reducing the miniscule non-hazard trace elements of copper to near ambient Pacific Ocean background levels.

The scientific evidence supporting SB-623 as it concerns aquatic species is based in part upon two studies undertaken by the California Department of Pesticide Regulation and Weston's Solutions, Inc., a private firm for hire. Reviews of these documents undertaken by myself and other professionals more knowledgeable in the specific science than I have found therein serious technical flaws and outright misrepresentations. These are not neutral unbiased scientific reviews; both papers have been carefully tailored to support the Bills allegations.

Our objections to Senate Bill SB-623 are fourfold:

1. The Bill is not necessary; there is no scientific evidence that trace elements of copper are a problem.
2. The known advantages of copper used to control bacteria growth harmful to humans were ignored.
3. The scientific underpinnings supporting the Bill are false; not based upon good peer reviewed science.
4. This Bill is all about a "problem" between the Port of San Diego and the tenant boat owners in Shelter Island Yacht Basin, who just happen to be a major source of income for the Port. Like what's going on here? The Port of San Diego seems hell bent on projecting their "politically correct green image" thus eating few of their own "children" is a small price to pay. Governor Brown and the entire California Legislature please take note; this is a local issue, certainly not a California issue.

We support the 1998 study (Document 3044) undertaken by the SPAWAR Systems Center, Office of Naval Research, San Diego, CA. Said document is considered the quintessential scientific paper on this subject earning international peer review kudos. Document 3044 sets forth essential and well-defined guidelines to enable scientists in various localities to determine criteria for their specific area, such as the chemistry, toxicity and bioavailability of copper and its relationship to those native aquatic species and to regulation in the marine environment. Documents 3044, and other available peer reviewed data, were by choice ignored by the Port and their hired investigators thus leaving the Legislatures with insufficient scientific evidence necessary to properly evaluate SB-623.

It should go without saying that legislation based upon complex science unfamiliar to the lay-public and the Legislatures should be supported by user friendly neutral third party peer reviewed science. If such data is not available to the Legislature then it is incumbent upon the State to provide such data. If SB-623 becomes law it will be a costly burden to California Taxpayers thus we urge the Governor to use his good office to put this matter and these scientific documents out for an unbiased peer review. But herein we have a serious problem: the Legislature has to actually read and comprehend the Bills before them, history suggest otherwise, Bills are funded and sail forth unread based solely upon political party lines

thus the people must rely upon the Governor to take a neutral third party position and use his veto appropriately.

Considering the complex science involved we suggest that before this Bill is reopened the State direct and fund the Scripps Institution of Oceanography to undertake the task of reviewing the related scientific data. Scripps enjoys considerable prestige among Ocean Science Professionals throughout the world, their review; comments and suggestions regarding this complex issue would be welcomed.

We fear that if the false scientific underpinnings of this Bill are not quickly investigated and exposed and the truth about copper remains hidden it will lead to a plethora of mischievous legislation against all things copper, such as the removal of all copper fresh water pipes in public owned facilities, and from the entire State's fresh water distribution system, from the source to the kitchen sink. If that statement sounds off-the-wall consider the following: The Co-Sponsor of SB-623: San Diego Coastkeeper, an extreme environmental activist group, has fired the first test shot of what may be a coming salvo, a quote from their publication: "**Restoring San Diego's Toxic Waters: Would you choose to take a bath in copper-filled water? Chances are you'd pass, but did you know that copper is one of the most common pollutants in the San Diego Bay?**".....

Senator Kehoe, if you really care about the environment, concerned about the California economy and the ongoing uncontrolled spending on wasteful self-serving projects you can prove it by withdrawing this unnecessary legislation.

Signed: Manfred von Borks, a political Independent private citizen taxpayer, sport fisherman and recreational boat owner. Comments welcome: vonborks@gmail.com

The von Borks' are not related to the Knights of La Mancha, jousting windmills is not our forte. The foregoing "rant" was inspired by that memorable line from NETWORK 1976:

"I'm mad as hell and I'm not going to take it anymore"

And those that feel the same may forward this on to: senator.kehoe@sen.ca.gov