

SENATE BILL REPORT

SB 6210

As Reported by Senate Committee On:
Environment, Energy & Technology, January 30, 2020
Ways & Means, February 6, 2020

Title: An act relating to antifouling paints on recreational water vessels.

Brief Description: Concerning antifouling paints on recreational water vessels.

Sponsors: Senators Lovelett, Rolfes and Wilson, C.; by request of Department of Ecology.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/14/20, 1/30/20 [DP-WM].
Ways & Means: 2/04/20, 2/06/20 [DPS].

Brief Summary of First Substitute Bill

- Delays restrictions on copper-based anti-fouling paint use to January 1, 2026, provided that the Department of Ecology (Ecology) has conducted certain requirements.
- Bans the sale and application of antifouling paints containing Cybutryne/Irgarol for recreational vessels, beginning January 1, 2023.
- Grants Ecology authority to request information from paint manufacturers, wholesalers, and retailers regarding products, product ingredients, and other relevant data.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Brown, Das, Hobbs, Liias, McCoy, Nguyen, Rivers, Short, Stanford and Wellman.

Staff: Greg Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 6210 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Billig, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

Staff: Jed Herman (786-7346)

Background: Antifouling Paints. Fouling refers to the growth and colonization of aquatic organisms, such as algae and barnacles, on the surfaces of vessels and structures. Fouling reduces the performance of vessels by increasing drag, impairs maneuverability, and it can cause physical damage to vessels and structures. To prevent fouling, boat owners often use hull paints containing pesticides and other chemicals, referred to as biocides. Copper-based hull paints are the most commonly used antifouling paints.

Antifouling Paint Legislation. In 2011, the Legislature restricted antifouling paint use on recreational water vessels in Washington as follows:

- new recreational water vessels with antifouling paint containing copper may not be sold after January 1, 2018;
- antifouling paint, intended for use on a recreational water vessel, which contains more than 0.5 percent copper may not be offered for sale beginning January 1, 2020; and
- antifouling paint containing more than 0.5 percent copper may not be applied to a recreational water vessel beginning January 1, 2020.

The legislation also required Ecology to survey the types of antifouling paints sold in Washington, study how antifouling paints affect marine life and water quality, and report its findings to the Legislature by December 31, 2017.

In the 2017 report, Ecology recommended delaying the antifouling paint restrictions to allow time for further study, due to concerns some non-copper alternatives might be more harmful to the environment than the copper-based paints they replace.

In 2018, the Legislature delayed antifouling paint restrictions to 2021. The legislation also exempted wood boats from the restrictions and directed Ecology to submit a report to the Legislature by September 30, 2019 on the environmental impacts of antifouling paints and their ingredients; safer alternatives to antifouling paints or ingredients found in antifouling paints; and whether changes to the existing regulation of antifouling paints are needed.

In 2019, Ecology made the following recommendations:

- delay the existing statutory ban on copper-based anti-fouling paints for an extended period, to allow more scientific information to be developed;
- grant Ecology authority to request information from paint manufacturers regarding ingredients, leach rates, and other relevant data; and
- ban the sale and application of antifouling paints containing Cybutryne/Irgarol for recreational vessels in Washington.

Summary of Bill (First Substitute): The restrictions on the use of copper-based antifouling paint on recreational vessels are delayed to January 1, 2026.

New restrictions on the use of Cybutryne-based antifouling paint are established as follows:

- new recreational water vessels with antifouling paint containing Cybutryne may not be sold after January 1, 2023;
- antifouling paint intended for use on a recreational water vessel that contains Cybutryne may not be offered for sale beginning January 1, 2023; and
- antifouling paint containing Cybutryne may not be applied to a recreational water vessel beginning January 1, 2023.

A manufacturer, wholesaler, or retailer of antifouling paints or related substances may be required to submit a notice to Ecology containing the following information:

- a list of products, including a brief description of each product or product component containing the substance;
- product ingredients, including the names of chemicals used or produced and applicable chemical abstracts service registry numbers;
- information regarding exposure and chemical hazard;
- a description of the function of each chemical in the product;
- the amount of the chemical used in each unit of the product or product component;
- the name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;
- any other information the manufacturer deems relevant to the appropriate use of the product; and
- any other information requested by Ecology.

The notice must be provided to Ecology no later than six months after receipt of the request.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Directs Ecology to conduct a review and report to the Legislature by June 30, 2024, on information about antifouling paints and ingredients; the feasibility of best management practices and nonbiocidal antifouling alternatives; and any additional relevant scientific or technical information;
 - prior to finalizing the report, Ecology must conduct a public comment process and consider input received.
- Makes the 2026 ban on copper-based antifouling paints contingent on a determination by Ecology that safer and effective alternatives to copper-based antifouling paints are feasible, reasonable, and readily available.
- Requires Ecology to conduct a second review and report by June 30, 2029, of relevant studies and information on alternatives to copper-based antifouling paints, if Ecology does not determine by June 30, 2024, that safer and effective alternatives to copper-based antifouling paints are feasible, reasonable, and readily available.
- Specifies that none of the provisions restrict Ecology from reviewing and restricting antifouling paints under the Pollution Prevention for Healthy People and Puget Sound Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): PRO: The department needs more time to implement the ban. There are some cost-effective alternatives to copper. Copper is especially dangerous, not only toxic, with olfactory effects on salmon. More significantly, copper does not break down and it bioaccumulates in marine organisms. Zinc and E-cone are out there and being used. In Sweden, boaters use non-biocides and boat washing.

There is acknowledgement for additional research and steps to be taken. Unlike California, Washington has an inland sea which has unique conditions regarding how pollutants enter and stay. Ecology believes the science is sufficiently developed on the environmental dangers of copper. Ecology needs information to learn what paint alternatives are safer and have less environmental impacts. While a leach rate seems like a solution, Ecology does not have information about how paint manufacturers are achieving leach rates and what chemicals are added to make copper leach out more slowly.

OTHER: It is premature to ban without a better alternative. The end date is arbitrary with no opportunity for review down the road. The work of Ecology is appreciated, and it is clear from their work that implementation of a ban on copper is premature. The five-year delay is not a complete solution, but there must be a bill passed this session. Copper is not banned anywhere else in the world. Ecology should do a study between now and 2026 to produce the best solution and a way forward.

Previous efforts were made in San Diego to come up with alternatives to copper. Nothing worked as well as copper. The industry has been able to reduce amounts of copper and have come up with a leach rate model that is best for everyone. It is believed that this is the best alternative for all stakeholders involved, whether it be marinas, boatyards, do-it-yourselfers, the port authority, or the state. It is the best alternative in terms of invasive species, greenhouse gases, fuel consumption, and limiting pollution.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Liz Lovelett, Prime Sponsor; Mark Johnson, Washington Retail Association; Bruce Wishart, Puget Soundkeeper; Darcy Nonemaker, Washington Environmental Council; Kimberly Goetz, Department of Ecology.

OTHER: Peter Godlewski, Association of Washington Business; Peter Schrapen, Northwest Marine Trade Association; Tony Bulpin, Seahawk Paints; Jim Brown, Monkey Fist Marine; Neal Blossom, American Chemet and American Chemistry Council.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):
No one.

Staff Summary of Public Testimony on Original Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The department appreciates the support for this request legislation. The expenses associated with the bill are for dedicated staff to take a scientific investigation into alternatives. I have been working on this issue for ten years, we support the bill. Boat yards have reduced copper in stormwater discharge by an order of magnitude, we should be looking at other sources for controlling pollution. We reluctantly support the bill, copper is extremely dangerous to salmon. My industry signed in pro to extend the effective date.

Persons Testifying (Ways & Means): PRO: Kimberly Goetz, Department of Ecology; Barry Kellems, Integral Consulting Inc; Tony Bulpin, Sea Hawk Paintsa; Bruce Wishart, Puget Soundkeeper; Peter Schrappen, Northwest Marine Trade Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.