

REPORT OF THE
JOINT SUBCOMMITTEE
STUDYING MARINE SANITATION DEVICES
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



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Delegate Warren E. Barry
Senator Elmo G. Cross, Jr.
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**Report of the
Joint Subcommittee Studying Marine Sanitation Devices
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1982**

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

I. INTRODUCTION

As a participant in the National Shellfish Sanitation Program, the Commonwealth of Virginia works as a partner with the federal government to ensure that interstate shellfish shipments originating in Virginia are safe for human consumption. If the federal government determines that a state shellfish control program offers the necessary protection, it will endorse interstate shipments from that state. If endorsement is not given to a state, it can destroy the shellfish industry there.

The Virginia Department of Health is understandably anxious to maintain federal endorsement of its shellfish sanitary control program. In order to do so, it must properly classify the areas from which shellfish are taken as approved or not approved. Those which are approved must be protected from all raw sewage discharge, as well as industrial and radioactive wastes. In addition, they must meet a Fecal Coliform Standard of 14 per 100 milliliters. No shellfish may be taken from non-approved areas.

In its administration of this program, and more particularly in an attempt to protect shellfish areas from raw sewage discharges, the Health Department has sought to require the retention of sewage on all vessels within shellfish areas. Some boaters argue that shellfish areas can be protected adequately through the use of "flow-through" devices, which release treated sewage into the water. The Health Department fears that the introduction of any sewage, even if treated, into shellfish areas is dangerous. For several years now the Department, together with the State Water Control Board, has been attempting to implement regulations requiring that vessels kept in certain waters of the Commonwealth have holding tanks. The regulations have also sought to ensure that marinas in these areas have adequate facilities to remove sewage from these holding tanks.

The enforcement of these regulations has been complicated by federal statutes and regulations. Provisions of the Federal Water Pollution Control Act forbid states and other political subdivisions from adopting or enforcing regulations pertaining to marine sanitation devices after January 30, 1977, for new vessels, and January 30, 1980, for all other vessels with installed toilets. Marine sanitation device (MSD) is a term used to identify all those appliances installed on vessels to prevent the discharge of untreated sewage into water. The most common types of MSD's are those already described above—holding tanks and flow-through devices.

The regulations originally adopted to implement the federal act would have required either holding tanks or flow-through devices producing no more than 200 fecal coliform per 100 milliliters. Because of technological deficiencies, however, the Coast Guard changed the MSD requirement for vessels under 65 feet; they may utilize MSD's which produce up to 1,000 fecal coliform per 100 milliliters.

Only if it determines that some of its waters need protection greater than that given by federal statutes and regulations can a state supersede these federal provisions. In such cases, a state can completely prohibit discharges of treated or untreated sewage. In doing so, however, it must petition the U.S. Environmental Protection Agency (EPA) for a finding that sufficient pump-out facilities can be found at marinas in an area with a ban to serve vessels in that area.

II. ESTABLISHMENT OF SUBCOMMITTEE

Senate Resolution No. 34 (1977) first established this Subcommittee. It has been continued by subsequent resolutions of the General Assembly, and assigned the task of monitoring state and federal developments with respect to MSD's. The most recent authority for the Subcommittee is derived from Senate Joint Resolution No. 119, whereby the 1981 General Assembly continued this

study.

Members of the Subcommittee during 1981 included Senators Clive L. DuVal, 2d (who serves as Chairman), Elmo G. Cross, Jr., and Joseph T. Fitzpatrick. Delegates Ralph L. Axselle, Warren E. Barry, Thomas W. Moss, Jr., and A. Victor Thomas also served on the Subcommittee last year.

III. SUMMARY OF DEVELOPMENTS DURING 1981

The Subcommittee was informed of and reports the following developments which took place in 1981.

A. "No-Discharge" Petition

In August, 1979, the State Department of Health and the State Water Control Board filed a petition with EPA for a finding that a portion of the Rappahannock River contained a sufficient number of pump-out facilities to designate it a "no-discharge" area. A chronology in Appendix A of this report details correspondence between the Commonwealth and EPA since the original petition was filed. Although the Department of Health maintains that it has documented sufficient pump-out facilities to serve the area, EPA has not yet ruled on the matter. It is not known when such a ruling will be given.

B. Status of Marina Pump-out Facilities in the Commonwealth

State Health Department regulations require the installation of sewage pump-out facilities in certain marinas. The Department has compiled a list consisting of seventy-four marinas which contain or have access to pump-out facilities; a copy of this list can be found in Appendix B of this report. A large number of these are in that portion of the Rappahannock where a no-discharge petition is being sought.

A number of suits have been filed in recent years in an effort to have marinas install pump-out facilities. Only two had not been fully settled by the end of the year.

C. Marine Sanitation Device Technology

There have been no technological breakthroughs with respect to marine sanitation devices during the past year.

D. Enforcement of Federal Marine Sanitation Device Regulations

Due to budgetary and other problems, Coast Guard enforcement of MSD regulations has not been as active as the Coast Guard had hoped. The Coast Guard is relatively certain that most large vessels are in compliance with these regulations; it estimates, however, that only twenty-five percent of recreational boaters nationwide adhere to them. The Coast Guard expressed interest, as it has in the past, in entering into cooperative agreements with states to establish joint programs for the enforcement of MSD regulations.

The federal government itself is nearly in full compliance with MSD regulations with respect to its Navy and Coast Guard ships.

E. Federal Regulatory Review

Since they were originally proposed in 1971, federal MSD regulations have been the subject of considerable debate and criticism. In large part because of the controversy surrounding them, these regulations are currently being reviewed. Included in this review is an analysis of the costs and benefits of the current MSD program and alternative programs. The Environmental Protection Agency is assisting in this review, since that agency's standards form the basis for the Coast Guard's regulations. This regulatory review is expected to be completed during the Spring of this year.

E. Discussions Between the Department of Health and the Virginia Boating Advisory Committee

The Department of Health and the Virginia Boating Advisory Committee have begun discussions aimed at a compromise position on which they can agree to prevent waste discharges from boats in

no discharge areas. Such a position would probably include these provisions:

a. development of a technique that would prevent accidental discharges in a no-discharge area (e.g., an electric switch in the helm area to activate a discharge system); and

b. roll-back of the no-discharge area to exclude some present portions which do not have active shellfish beds.

These discussions were still taking place at the time this report was being written.

IV. RECOMMENDATIONS

A number of issues with respect to MSD's have yet to be resolved. The Subcommittee is very interested in reviewing the outcome of the federal MSD regulatory review. It is also encouraged by the discussions between the Department of Health and the Virginia Boating Advisory Committee, and hopeful that these discussions will lead to an acceptable compromise.

During the next year the Subcommittee would like to continue to monitor matters relating to MSD's, especially (1) the federal MSD regulatory review, and (2) the Boating Advisory Committee-Department of Health discussions. It therefore recommends that the General Assembly approve the following resolution to continue this study.

SENATE JOINT RESOLUTION NO.

To continue the study of flow-through marine sanitation devices.

WHEREAS, Senate Resolution No. 34, passed during the 1977 session of the General Assembly, requested the appropriate Senate and House Committees to study the effectiveness of flow-through marine sanitation devices and related matters; and

WHEREAS, subsequent resolutions passed by both houses of the General Assembly have continued this study every year since then; and

WHEREAS, the main purpose of the study in recent years has been to monitor any technical improvements with respect to marine sanitation devices and federal action on a no-discharge certification request for certain state waters; and

WHEREAS, the subcommittee has found that during the past year the Virginia Boating Advisory Commission and the Department of Health have been discussing, and appear to be nearing agreement on, a mutually acceptable means of ensuring that proper marine sanitation devices are used in state waters where shellfish beds are found; and

WHEREAS, the subcommittee has also been advised that federal marine sanitation device regulations are being reviewed and may be revised upon the completion of this review; and

WHEREAS, the discussions between the Boating Advisory Commission and the Department of Health, as well as the possibility of regulatory changes, make advisable the continued monitoring activity of the subcommittee; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the joint subcommittee studying the effectiveness of flow-through marine sanitation devices, established pursuant to Senate Resolution No. 34 of 1977 and continued through subsequent joint resolutions of the General Assembly, is requested to continue its study and to focus its attention especially on the discussions and regulatory review described above.

The subcommittee shall be composed of three members of the Senate Committee on Agriculture, Conservation and Natural Resources and four members of the House Committee on General Laws, all of whom shall be appointed by the respective committee chairmen.

The subcommittee shall complete its work in time to submit recommendations to the 1983 Session of the General Assembly.

The cost of this study shall not exceed \$800.

