

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



SENATE DOCUMENT NO. 10

**COMMONWEALTH OF VIRGINIA
RICHMOND
1983**

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Clive L. DuVal, 2d, Chairman
Robert W. Ackerman
Ralph L. Axselle, Jr.
Warren E. Barry
Elmo G. Cross, Jr.
Richard J. Holland
Thomas W. Moss, Jr.

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Office of the Clerk, Senate of Virginia

**Report of the
Joint Subcommittee Studying
Marine Sanitation Devices
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1982**

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

I. INTRODUCTION

The Subcommittee to Study the Effectiveness of Flow-Through Marine Sanitation Devices was first established in 1977. Since that time, it has continued in existence, monitoring state and federal developments with respect to MSD's. Current members of the Subcommittee are Senators Clive L. DuVal, 2d, Chairman, Elmo G. Cross, Jr., and Richard J. Holland; and Delegates Robert W. Ackerman, Ralph L. Axselle, Jr., Warren G. Barry, and Thomas W. Moss, Jr.

II. 1982 DELIBERATIONS

Since its establishment, much of the work of the Subcommittee has been concerned with the No-discharge petition for portions of the Rappahannock River, a designation which the Commonwealth has been seeking from the Environmental Protection Agency since 1979.

At its 1982 meeting, this Subcommittee was informed by representatives of the State Department of Health that no action has been taken on this petition during the past year; neither is any likely until the completion of an MSD regulatory review program being conducted by the EPA and the Coast Guard. This review was begun during 1981, and was responsible in part for the continuation of this study into 1982.

The Subcommittee sought testimony on the status of this review from the United States Coast Guard, which has assisted with the study for several years. Although the Coast Guard was unable to send a representative to this year's meeting, it did send written remarks, which are attached to this report as Appendix A. In its comments, the Coast Guard explained that the current MSD regulations and six alternative programs are included in its review. The review process will not be completed any earlier than the first part of this year (1983); even when the process itself is complete, implementation of any recommendations may require amendments to EPA standards or federal statutes. Thus, the Subcommittee will be in no position to react to the federal regulatory review prior to or even during the 1983 Session.

A secondary reason for the continuation of this study during the past year was so that the Subcommittee could monitor, and if necessary react to, discussions between the Virginia Boating Advisory Commission and the Department of Health. These discussions were begun in an effort to find a compromise which both parties could accept with regard to waste discharges from boats in areas for which a no-discharge designation has been sought. Such a compromise envisioned approval of technology designed to prevent accidental waste discharges from boats, as well as a roll-back of the proposed no-discharge area to exclude portions in which no active shellfish beds are located. Work on this compromise was halted by the federal MSD regulatory review, since the review process might result in regulations with which any preceding compromise might conflict.

Some testimony given the Subcommittee suggested that the current MSD review program will result in a decision to require the federal government to regulate discharges from vessels sixty-five feet or more in length. States would then have to regulate smaller vessels (including most pleasure boats) or leave them unregulated. If this in fact is the Coast Guard recommendation, Congress must amend the Clean Water Act before such a proposal can be implemented.

III. SUBCOMMITTEE RECOMMENDATION

A great deal of uncertainty exists with respect to the federal MSD regulatory program. Until the current review of it is complete, it is difficult to administer or make changes to the state MSD program, since the state and federal programs are so intertwined. The Subcommittee was asked by interested parties at its meeting to continue its study. In response to this request, and because of the uncertainty over the federal MSD program and the possibility that changes in it will result in changes in Virginia's MSD program responsibilities, the Subcommittee seeks the continuation of its study. A draft of a resolution to continue the work of this subcommittee comprises Appendix B of this report.

Respectfully submitted,

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Clive L. DuVal, 2d, Chairman

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Robert W. Ackerman

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Ralph L. Axelle, Jr.

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Warren E. Barry

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Elmo G. Cross, Jr.

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Richard J. Holland

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Thomas W. Moss, Jr.

Appendix A

U.S. Department
of Transportation

**United States
Coast Guard**



Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol: (G-WPE-1)
Phone: (202) 755-7917

16457

DEC 10 1982

Dr. Bernard Caton
Division of Legislative Services
Commonwealth of Virginia
PO Box 3-AG
Richmond, VA 23208

Dear Dr. Caton:

Thank you for your letter inviting Lieutenant Commander Mastenbrook, to address the Virginia General Assembly. We appreciate the opportunity to participate again this year.

The MSD Regulatory Review has not been approved. Consequently, it would be difficult to discuss this sensitive matter at length.

Enclosed is brief written testimony which can be read to the Subcommittee for the record. Feel free to contact me or Lieutenant Commander Mastenbrook if there are any specific issues raised during the meeting.

Please accept our regrets for not attending this time. We wish the Subcommittee success in its continuing studies.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Peebles", written over a large, stylized circular flourish.

J. A. PEEBLES
Captain, U.S. Coast Guard
Chief, Port and Environmental
Safety Division
By direction of the Commandant

Enclosure

Coast Guard Remarks For The Legislative Subcommittee
Of The Virginia General Assembly Studying
Marine Sanitation Devices (MSD)

14 December 1982

Coast Guard requested to provide comments on:

1. Current status on the MSD Regulatory Review;
2. Technological advances with respect to MSDs;
3. Coast Guard enforcement of the current MSD regulations.

Last year the Subcommittee was advised that the Department of Transportation identified the MSD regulations (33 CFR 159) as costly and controversial and tasked the Coast Guard in February 1981 with conducting a priority regulatory review. The review was required to look at the origin of the regulations, their impact on the public, and the benefit they provide as opposed to their cost. The review includes an analysis of the current and six alternative programs. The Coast Guard's MSD regulations (33 CFR 159) are based upon the standards of MSD performance developed by EPA (40 CFR 140). Any regulatory changes may require amendment of the EPA standards or changes to the basic legislation (Federal Water Pollution Control Act). EPA was tasked by the Senate Appropriations Committee last year to conduct an analysis of the existing MSD program and viable options. Thus, early on, the Coast Guard and

EPA decided to work jointly in completing the respective tasks. The Coast Guard assisted in the preparation of the EPA report which was submitted to Congress in December 1981. This first phase of the project reviewed the legislative/regulatory background, discussed problems, and identified the six program alternatives. The second phase was the public comment period in which approximately 500 comments were submitted between 24 December 1981 and 19 April 1982 (extended period). Following the comment period, a detailed analysis of cost and benefits was conducted for the current and each alternative program as phase three. Also during the analysis phase, a summary of the public comments was prepared. We are now preparing a review report as the final phase which will enclose copies of the EPA report, the cost-benefit analysis report, and the summary of public comments, and provide conclusions and recommendations for the MSD program. The report is expected to be completed this winter, but we can not release the results of the review until the report is accepted and approved by the Department of Transportation.

There have been no significant technological advances with respect to MSDs reported to or recognized by the Coast Guard within the past year. It is felt that concern for possible future changes to the MSD regulations has resulted in an uncertain demand for MSDs and consequently a lack of significant new MSD development.

The Coast Guard is still the primary agency charged with enforcing the federal MSD regulations. Enforcement continues to be done in connection with our routine pollution prevention, safety, and law enforcement boardings. This approach is effective for commercial vessels of which we estimate at least 90%

are in compliance. However, compliance is estimated to be considerably less, perhaps 25%, by recreational vessels. With the recreational vessel sector nationwide being so large, the Coast Guard alone does not have near the resources for an effective small boat MSD enforcement program. There have been no recent changes to the MSD regulations; thus they remain effective and are being enforced to the extent possible.

The Coast Guard does not have any formal cooperative agreements with any state for enforcement of the federal MSD regulations at this time. The Federal Water Pollution Control Act provides for such agreements. Guidance for our District Commanders, with a proposed sample agreement, has been drafted for possible implementation with individual states. However, this Coast Guard/State MSD enforcement package has been placed on hold pending the results of the ongoing regulatory review.

The Subcommittee's concerns for the MSD program are appreciated. We will forward the results of our MSD regulatory review to you as soon as they can be released.

Appendix B

SENATE JOINT RESOLUTION NO.

Continuing 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, a major purpose of this study has been to monitor federal action on a no-discharge certification request for certain state waters; and

WHEREAS, no action has been taken on this request; and

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

WHEREAS, it appears that the Commonwealth's request for no-discharge certification will not be acted upon before this regulatory review is complete; and

WHEREAS, this review may also significantly alter Virginia's responsibilities in its MSD program; and

WHEREAS, legislative action may be required prior to the 1984 Session to revise the Commonwealth's MSD program; 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.

The current members of the Subcommittee shall continue to serve. Should any member of the Senate now serving vacate his membership on the Subcommittee, the Senate Committee on Privileges and Elections shall appoint a replacement for him from the Senate Committee on Agriculture, Conservation and Natural Resources; should a House member cease to serve, his replacement shall be named from the House Committee on General Laws by the chairman thereof.

The Subcommittee shall complete its work in time to submit recommendations to the 1984 Session of the General Assembly.

The cost of this study shall not exceed \$1200.

