

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING  
Marine Sanitation Devices  
TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Robert W. Ackerman**  
**Ralph L. Axselle, Jr.**  
**Warren E. Barry**  
**Elmo G. Cross, Jr.**  
**George H. Heilig, 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, 1984**

**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. Membership this year remained the same as last year except for the addition of George H. Heilig, Jr., who replaced Thomas W. Moss, Jr.

**II. DELIBERATIONS**

Since its establishment, much of the work of the Subcommittee has been concerned with the Commonwealth's petition to declare portions of the Rappahannock River a no-discharge area. The Department of Health has received no written reply from the Environmental Protection Agency (EPA) on this petition.

The Subcommittee received testimony from the Coast Guard this year on the current federal MSD program. A written copy of that testimony is attached to this report as Appendix A. A Coast Guard representative explained that while the agency is charged with enforcing MSD regulations, states may apply to the EPA to have a body of water designated as a "no-discharge area" (the Rappahannock petition is an example) and state enforcement officers may board vessels and forward reports of MSD violations to the local Coast Guard District Commander, who may take civil penalty action.

In regard to recent developments, the Coast Guard and the EPA have submitted a regulatory review of the cost and benefits of MSD's. This study was forwarded to the Department of Transportation in May of 1983. A recommendation to Congress is anticipated as a result of this study, and it appears the EPA is delaying any reply to Virginia's no-discharge petition until Congress takes some action on this recommendation. The Coast Guard plans to issue a press release and publish the study report in the Federal Register if it is approved.

Testimony given to the Subcommittee pointed out that H.R. 1421 had been introduced in Congress. This bill would eliminate the federal requirement that a vessel 65 feet or less with an installed toilet have an MSD on board. It would also allow states to prohibit sewage discharge from vessels which are 65 feet or less that have installed toilets and are not equipped with a Coast Guard certified MSD. The status of H.R.1421 is uncertain at this time.

Another function of this Subcommittee has been to coordinate policy and monitor

cooperation between the Department of Health, the Virginia Boating Advisory Commission, and the State Water Control Board. Representatives of these organizations met in November, 1983, to seek a compromise on state regulation of MSD's, but negotiations were suspended pending modification of the Clean Water Act by Congress.

### 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 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,

Clive L. DuVal, 2d, Chairman

Robert W. Ackerman

Ralph L. Axelle, Jr.

Warren E. Barry

Elmo G. Cross, Jr.

George H. Heilig, Jr.

Richard J. Holland

APPENDIX A

COAST GUARD REMARKS FOR THE LEGISLATIVE SUBCOMMITTEE  
OF THE VIRGINIA GENERAL ASSEMBLY STUDYING  
MARINE SANITATION DEVICES

DECEMBER 5, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM LIEUTENANT JUNIOR GRADE WILLIAM DAUGHDRILL FROM THE PORT AND ENVIRONMENTAL SAFETY ENFORCEMENT BRANCH AT COAST GUARD HEADQUARTERS IN WASHINGTON, DC. I AM HERE TODAY TO TALK ABOUT OUR MARINE SANITATION DEVICE (MSD) PROGRAM. WE UNDERSTAND YOU ARE PRIMARILY INTERESTED IN THE STATUS OF THE FEDERAL MSD REGULATIONS, COAST GUARD ENFORCEMENT, AND ANY TECHNOLOGICAL ADVANCES WITH RESPECT TO MSDs.

AS YOU KNOW, SECTION 312 OF THE CLEAN WATER ACT IS THE LEGISLATIVE AUTHORITY FOR THE CURRENT FEDERAL MSD PROGRAM. THE ACT REQUIRES THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO ISSUE DISCHARGE STANDARDS FOR MSDs. THE EPA ISSUED THESE REGULATIONS IN 40 CFR 140 ON JANUARY 29, 1976. THE ACT ALSO REQUIRES THE COAST GUARD TO ISSUE REGULATIONS FOR MSDs BASED UPON THE EPA STANDARDS. THE COAST GUARD ISSUED ITS ORIGINAL MSD REGULATIONS IN 33 CFR 159 ON JANUARY 30, 1975 AND AMENDED THEM ON APRIL 12, 1976 TO CONFORM WITH THE EPA STANDARDS. THESE REGULATIONS APPLY TO ALL VESSELS WITH INSTALLED TOILETS WHILE OPERATING IN U. S. WATERS. SINCE JANUARY 30, 1980, ALL VESSELS WITH INSTALLED TOILETS ARE REQUIRED TO BE EQUIPPED WITH A COAST GUARD CERTIFIED AND OPERABLE TYPE I, II, OR III MSD. DIRECT DISCHARGE TOILETS ARE ILLEGAL UNLESS THE VESSEL IS OPERATING UNDER A WAIVER GRANTED BY THE COAST GUARD.

UNDER THE PRESIDENT'S TASK FORCE FOR REGULATORY RELIEF, THE DEPARTMENT OF TRANSPORTATION IDENTIFIED THE MSD REGULATIONS AS BEING COSTLY AND CONTROVERSIAL AND TASKED THE COAST GUARD ON FEBRUARY 27, 1981, WITH CONDUCTING A REGULATORY REVIEW. THE COAST GUARD AND EPA HAVE WORKED CLOSELY DURING THIS PROGRAM REVIEW BECAUSE OF THE INTERRELATIONSHIP OF BOTH AGENCIES' REGULATIONS. THE REPORT IS CURRENTLY BEING REVIEWED BY DOT.

WHILE THE COAST GUARD IS THE AGENCY CHARGED WITH ENFORCING THE FEDERAL MSD REGULATIONS, THERE ARE PRESENTLY SOME PROVISIONS WHICH PERMIT THE STATES THE OPPORTUNITY TO ASSIST IN THE ENFORCEMENT PROCESS. FIRST, STATES MAY APPLY TO THE EPA TO HAVE PARTICULAR WATER BODIES DESIGNATED AS "NO DISCHARGE" WATERS, WHICH THEN ALLOWS STATES TO TAKE ACTION TO PROVIDE FOR ENFORCEMENT. SECOND, STATE ENFORCEMENT OFFICERS MAY BOARD VESSELS AND, UNDER THE CIVIL PENALTY PROCEDURES IN 33 CFR 1.07, FORWARD REPORTS OF INVESTIGATIONS OF POSSIBLE MSD VIOLATIONS TO THE LOCAL COAST GUARD DISTRICT COMMANDER, WHO MAY TAKE CIVIL PENALTY ACTION. IN VIRGINIA ANY SUCH REPORTS WOULD BE FORWARDED TO THE COAST GUARD'S FIFTH DISTRICT OFFICE IN PORTSMOUTH. ADDITIONALLY, THE CLEAN WATER ACT AUTHORIZES THE COAST GUARD TO ENTER INTO AGREEMENTS WITH OTHER AGENCIES, INCLUDING STATES, FOR MSD ENFORCEMENT ASSISTANCE. WE ARE DRAFTING GUIDANCE FOR OUR DISTRICT COMMANDERS TO FORMALLY ENTER INTO THESE AGREEMENTS WITH INDIVIDUAL STATES.

COAST GUARD ENFORCEMENT OF THE MSD REGULATIONS IS DONE IN CONJUNCTION WITH OUR ROUTINE POLLUTION PREVENTION, SAFETY, AND LAW ENFORCEMENT BOARDINGS. FOR LARGER COMMERCIAL VESSELS, SUBJECT TO ROUTINE COAST GUARD INSPECTION, THIS

APPROACH IS SUFFICIENT TO ENSURE COAST GUARD APPROVED DEVICES HAVE BEEN INSTALLED; HOWEVER, ONLY A SMALL PERCENTAGE OF THE MANY RECREATIONAL BOATS AND SMALL UNINSPECTED COMMERCIAL VESSELS WITH MSDs ARE INSPECTED EACH YEAR. OF THE 8.2 MILLION RECREATIONAL VESSELS REGISTERED IN THE UNITED STATES, APPROXIMATELY 750,000 HAVE INSTALLED TOILETS. FROM A PRACTICAL STANDPOINT THE COAST GUARD LACKS THE ABILITY TO EFFECTIVELY ENFORCE THE CURRENT PROGRAM FOR THIS LARGE NUMBER OF VESSELS. CONSEQUENTLY, ENFORCEMENT OF THE MSD REGULATIONS FOR THE RECREATIONAL VESSEL SEGMENT IS INSUFFICIENT TO ENSURE COMPLIANCE. WHILE APPROXIMATELY 90% OF THE COMMERCIAL VESSELS COMPLY, WE ESTIMATE ONLY 25% OF THE RECREATIONAL BOATS NATIONWIDE ARE IN COMPLIANCE.

THE MSD REGULATIONS WERE INITIALLY PROPOSED UNDER THE WATER QUALITY IMPROVEMENT ACT OF 1970 AND HAVE GENERALLY BEEN SUPPORTED BY MOST ENVIRONMENTAL GROUPS. SOME OF THESE GROUPS ARE CONCERNED ABOUT THE PROTECTION OF SHELLFISH HARVESTING AREAS, FRESHWATER IMPOUNDMENTS INCLUDING DRINKING WATER SUPPLIES, AND THE PREVENTION OF DISEASE FROM WATERBORNE ORGANISMS TRANSMITTED IN HUMAN SEWAGE. THOSE GROUPS THAT OPPOSE MSD REQUIREMENTS CONTEND THAT THERE IS A HIGH COST OF COMPLIANCE, AN INABILITY TO COMPLY IN MANY INSTANCES, AND THAT THE AMOUNT OF WASTES DISCHARGED FROM VESSELS MAY BE AN INSIGNIFICANT PART OF THE TOTAL POLLUTION PRESENT IN THE NAVIGABLE WATERS OF THE UNITED STATES.

SOME OF THE ALTERNATIVES THAT HAVE BEEN SUGGESTED WOULD ALLOW STATES TO ADOPT AND ENFORCE VESSEL SEWAGE DISCHARGE REQUIREMENTS BASED ON FEDERAL STANDARDS. FOR EXAMPLE, THE CLEAN WATER ACT COULD BE CHANGED TO ALLOW STATES TO REGULATE SEWAGE DISCHARGES FROM VESSELS 65 FEET IN LENGTH OR LESS, WITH THE COAST GUARD CONTINUING TO REGULATE ALL VESSELS GREATER THAN 65 FEET. ENFORCEMENT OF THE MSD PROGRAM WOULD BE SHARED BETWEEN THE STATES AND THE COAST GUARD. THIS WOULD ENSURE MORE LOCAL CONSIDERATION OF SEWAGE DISCHARGE PROBLEMS.

IN FEBRUARY OF THIS YEAR CONGRESSMAN YOUNG OF ALASKA INTRODUCED H.R. 1421, "A BILL TO ELIMINATE COAST GUARD RESPONSIBILITIES REGARDING MARINE SANITATION DEVICES ON SMALL VESSELS, AND FOR OTHER PURPOSES." THIS BILL, WOULD AMEND SECTION 312 OF THE CLEAN WATER ACT AND ELIMINATE THE FEDERAL REQUIREMENT THAT A VESSEL, WHICH IS 65 FEET OR LESS IN LENGTH, WITH AN INSTALLED TOILET HAVE A MARINE SANITATION DEVICE ON BOARD. IT WOULD ALSO ALLOW STATES TO PROHIBIT SEWAGE DISCHARGES FROM VESSELS WHICH ARE 65 FEET OR LESS IN LENGTH THAT HAVE INSTALLED TOILETS AND ARE NOT EQUIPPED WITH A COAST GUARD CERTIFIED MSD. THE STATES COULD NOT APPLY THIS PROHIBITION AGAINST A VESSEL REGISTERED IN ANOTHER STATE WHILE THE VESSEL IS ENGAGED IN INTERSTATE TRAVEL. IT WOULD REQUIRE THAT THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY (EPA) DETERMINE THAT PUMPOUT FACILITIES ARE "ACCESSIBLE" BEFORE A STATE COULD ESTABLISH A "NO DISCHARGE ZONE." WE ARE UNCERTAIN AS TO THE STATUS OF HR 1421 AT THIS TIME.

THERE HAVE BEEN NO SIGNIFICANT TECHNICAL ADVANCES WITH RESPECT TO MSDs REPORTED TO OR RECOGNIZED BY THE COAST GUARD WITHIN THE PAST YEAR. WE FEEL 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. FOR ALMOST A YEAR WE HAVE BEEN WORKING WITH A GROUP INCLUDING MSD MANUFACTURERS, TESTING LABORATORIES, MARINE INDUSTRY AND OTHER GOVERNMENT AGENCIES IN AN EFFORT TO DEVELOP VOLUNTARY STANDARDS TO IMPROVE MSD DURABILITY AND RELIABILITY. DEVELOPMENT OF THESE VOLUNTARY STANDARDS ARE IN AN EARLY STAGE.

THIS CONCLUDES MY PREPARED STATEMENT AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.



**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, the Coast Guard and the Environmental Protection Agency have conducted a regulatory review of the costs and benefits of marine sanitation devices and reported their findings to the Department of Transportation; and**

**WHEREAS, the Department of Transportation is currently reviewing this report; and**

**WHEREAS, action on federal legislation may be taken due to the recommendation that will be made as a result of this report; and**

**WHEREAS, new federal legislation may significantly alter Virginia's responsibilities in its marine sanitation devices program; and**

**WHEREAS, legislative review may be required prior to the 1985 Session to revise the Commonwealth's marine sanitation devices 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 Subcommittee shall be composed of five members. The Senate Committee on Privileges and Elections shall appoint two members from the Senate Committee on Agriculture, Conservation and Natural Resources and the three House members 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 1985 Session of the General Assembly.**

**All direct and indirect costs of this study are estimated to be \$4,200.**





