

**REPORT OF THE
STATE WATER COMMISSION**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
RICHMOND
1987**

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Report of the
State Water Commission
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1987

To: Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

I. INTRODUCTION

The State Water Commission is a legislatively mandated fifteen-member panel (Va. Code § 9-145.5) whose purpose is to:

1. Study all aspects of water supply and allocation problems in the Commonwealth.
2. Coordinate the legislative recommendations of all state entities having responsibility with respect to water supplies and allocation issues.

In 1986, the Commission reviewed water policy related to the issues of underground storage tanks, crop irrigation reporting, and long term groundwater management. This document is offered as the Commission's report on its 1986 activities.

II. COMMISSION DELIBERATIONS

The State Water Commission held meetings on December 10 and 11, 1986, in Williamsburg. The first meeting was held jointly with the State Water Control Board in order to review issues pertinent to the work of both groups. The December 11 meeting included briefings on debris landfill problems and the status of two carry-over bills. The following summaries describe the issues addressed by the Commission and are listed below in a topical order.

A. UNDERGROUND STORAGE TANKS

At its joint meeting with the State Water Control Board (SWCB), Commission members heard from the Executive Director of the SWCB, Richard Burton. He described the status of the development of an underground storage tank program in the Commonwealth.

Congress has required states to indicate by February, 1987, whether they will develop individual underground storage tank (UST) programs. If not, the federal government will regulate underground storage tanks in the state. The SWCB has been charged as the lead agency responsible for the development of a UST program in Virginia.

House Bill 682 was introduced during the 1986 Session of the General Assembly as an effort to establish Virginia's program. It was carried over to the 1987 Session and assigned to a General Laws Subcommittee for revisions and recommendations.

The following information was presented to the Commission to reflect the need to adopt UST legislation for the Commonwealth.

1. Between 1979 and 1985, a 900% increase in petroleum-related pollution incidents was reported in Virginia.
2. Virginia is in the top 20% nationally for reported UST releases.
3. UST leakage problems go unnoticed in areas without nearby wells.
4. Only a small fraction of the UST pollution problems are documented.

In the spring of 1986, the SWCB sent out 100,000 notification and registration forms to UST owners and operators. Twenty-two thousand forms were returned representing 60,000 tanks. As a result of this survey, the SWCB has established a good deal of data on UST ownership, construction material, location, type of substance stored, tank age, external protection and internal protection. Such information is of great value to developing the state UST program.

Members were informed that the SWCB, in addition to working with the General Laws Subcommittee, had formed a 13-member advisory committee to identify the major issues. Three options were proposed to the General Laws Subcommittee. Generally described, they are:

Option A - Which proposes effective groundwater protection within reasonable resource constraints;

Option B - Which describes a minimum program which would meet federal requirements but be less effective in protecting groundwater; and

Option C - Which proposes a maximum program with the greatest protection of groundwater but also the greatest commitment of public and private resources.

The General Laws Subcommittee favored "Option A" with the recommendation that a mandatory UST fund be developed. Another recommendation would require owners of heating oil tanks greater than 5,000 gallons capacity and tanks taken out of operation before January 1, 1974, to submit notification forms. These requirements are over and above what is required by federal standards.

As a corollary to HB 682, Chairman Parker revealed to the Commission and the State Water Control Board his plan to introduce a new UST bill in the 1987 Session. The new bill was explained as having two draft forms, one to closely parallel HB 682 and another to provide specific language regarding financial responsibility and liability. The latter bill includes a taxing program of 2/10 of one cent on all motor and diesel fuels in order to create a state UST fund. Liability under the bill was described as a three-tiered approach. The individual would have to show insurance or

financial responsibility for spills or leaks up to \$100,000 (or \$300,000). The state UST fund would cover cleanups from \$300,000 to \$1 million, and the federal government would be liable for cleanup costs beyond \$1 million. While the bills described were admittedly only in a preliminary draft form, Chairman Parker expressed hope that the Commission and the SWCB would support the concepts which his bills advance.

B. VIRGINIA GROUNDWATER PROTECTION STRATEGY

In 1984, the Environmental Protection Agency (EPA) adopted a national groundwater protection strategy. Under the strategy, states have primary responsibility for groundwater protection with federal assistance. In December of 1985, Virginia received a grant of \$148,700 to prepare a state strategy and the SWCB was appointed by the Governor as the lead agency on this project. A groundwater protection steering committee was established and the Institute for Environmental Negotiation at the University of Virginia was contracted to coordinate the process.

Commission members were briefed on the work which has taken place during 1986 on the strategy and were informed that a final report will soon be released constituting seven chapters and over fifty recommendations. Some of the general findings of the report were set forth as follows:

- a. 80% of Virginians depend on groundwater for some use.
- b. Groundwater is the primary drinking source in 66 of 95 counties.
- c. 65% of manufacturing industries in Virginia use groundwater.

Recommendations from the report in general terms include:

- a. Agencies that operate programs that affect groundwater should share in protection responsibility.
- b. Education and coordination on groundwater protection issues are needed at all levels of government.
- c. Existing permit programs should be strengthened to increase groundwater protection provisions.
- d. Emphasis should be on prevention rather than remediation.
- e. A state underground storage tank regulatory program should be established.
- f. Septic tank regulations should receive special considerations.
- g. A secure source of funding is needed for state cleanup of contaminated groundwater.
- h. Groundwater protection should be a goal of local land use planning and decision making.
- i. Local governments should assist in developing groundwater vulnerability maps as a basis for land use planning decisions.

In the conclusion of the review of this project, Commission members were told that short and long versions of the state groundwater protection strategy would be published in early 1987, and that a series of educational seminars are being planned to present the strategy to affected agencies and to the public.

C. REPORTING WATER USE FOR CROP IRRIGATION

Another topic which was reviewed by the State Water Commission dealt with the current voluntary program for the reporting of water withdrawals for irrigation purposes. It was noted that under the law, irrigation withdrawals are exempt from the standard reporting requirement for major water use. However, HJR 161 was passed by the 1986 General Assembly and focuses on the need to assimilate data on crop irrigation withdrawals. That resolution directs VPI extension agents to assist farmers in submitting such data in reports to the SWCB.

Pursuant to this directive, the SWCB targeted 1,440 major irrigators statewide and sent report forms to them. State Water Control Board representatives reported that statewide, 505 (35%) of the report forms were returned. In the Groundwater Management Area, Tidewater had a 72.6% return rate and the Eastern Shore had a 36.4% return rate.

Commission members expressed regret that the return rate was low and emphasized the need to make the practice of reporting more well known during 1987. Officials with the SWCB speculated that the late start on the reporting program in 1986 may have resulted in low returns and also informed members that plans were underway to simplify the report forms.

At the December 11 meeting of the Commission, members voted to have a letter forwarded to the VPI & SU Extension Division strongly urging better coordination in the reporting program for 1987. A recommendation reflecting this consensus appears in Part III of this report.

D. DEBRIS LANDFILLS

At their December 11 meeting, Commission members were made aware of a situation in Prince William County where private debris landfills are prohibited by local ordinance. A representative of the Department of Waste Management explained that the county had instituted such a prohibition over concerns that such landfills could pollute a local watershed. Private debris landfills were described as depositories for construction materials, tree stumps and other solid debris cleared from construction sites. Normally, these landfills pose no pollution threat; however, if sites are left unmonitored, hazardous materials are sometimes deposited illegally.

It was reported to Commission members that the Department of Waste Management (DWM) was in the process of developing new regulations for private debris landfills. It is proposed that such landfills include liners, leachate collection systems, and groundwater monitoring. Some leeway on these requirements will probably be afforded to localities which show that the site will be sufficiently monitored to ensure that improper materials are not deposited. Commission members expressed interest in receiving a follow-up briefing on the situation in Prince William County and the regulations proposed by DWM. No recommendations were made pertaining to this issue due to the fact that the legality of the local ordinance implementing the prohibition is being challenged in court.

E. CARRY-OVER BILLS

During the 1986 Session of the General Assembly, two legislative proposals related to water issues were considered by the House Committee on

Conservation and Natural Resources and carried over to the 1987 Session. In October of 1986, the House Committee voted to refer the two measures to the State Water Commission for further recommendation.

1. House Bill 832

One measure, House Bill 832, would require major crop irrigators to report their withdrawals through a mandatory program. Since the results of reporting rates from the voluntary program were poor for 1986, several members viewed HB 832 as a suitable requirement to enable the SWCB to collect the data needed for more efficient water management. However, the Commission ultimately voted to recommend the continuation of the current voluntary reporting program; thus, HB 832 was not recommended for passage in 1987. A recommendation urging an improved reporting program appears in Part III.

2. House Bill 508

The second carry-over measure proposes amendments to current state laws which would produce a type of state "superfund" for the cleanup of oil and petroleum product spills. The bill specifies that a tax would be assessed on operators and producers who import into the state, or sell in the state, any petroleum products at wholesale prices. Those paying the tax and following other provisions of law would be exempt from liability for oil spill cleanups. House Bill 508 is similar in many ways to the UST bills. The patron of the carry-over legislation, Delegate Parker, admitted that there was some overlap between his carry-over bill and the UST bill proposals and explained that he would attempt to condense some of the objectives of HB 508 into the UST bill drafts. While the Commission members did not recommend the passage of HB 508 in 1987, they did take a consensus vote agreeing with the concept and general intent of the carry-over legislation. (See Part III)

F. REPORT OF THE STATE WATER PLAN ADVISORY COMMITTEE (SWPAC)

One other matter taken up by the Commission in 1986 was to receive a report from SWPAC. The Chairman of that committee, Folger Taylor, presented members with a copy of the SWPAC report and reviewed the recommendations. During this review, Commission members discussed the importance of minimum instream flow standards and the merit of proposed legislation endorsed by SWPAC; however, the Commission made no recommendations in furtherance of the committee report.

III. RECOMMENDATIONS

The State Water Commission recommends the following:

1. Without proposing the adoption of any particular legislative draft, the Commission endorses the concept and intent of the bill proposals which advance an underground storage tank program for the Commonwealth and which create a state fund for the cleanup of petroleum and other regulated substances.

2. The Commission strongly urges the VPI & SU Extension Division to better coordinate communication with farmers to make them aware of the importance of the crop irrigation reports and to make farmers aware of the availability of extension agent assistance in completing the reports.
3. The Commission* recommends the continuation of the voluntary crop irrigation reporting program and recommends against the passage of carry-over bill HB 832 by the 1987 General Assembly.

* Senator Mitchell and Delegates Abbitt and Dillard recorded their dissent to this recommendation.

IV. IN MEMORIAM

The Commission wishes to recognize the passing of an honored and long respected ex-officio member, Millard B. Rice, Jr. His years of service to the State Water Commission and the State Water Control Board made him a leading figure in water policy development in the Commonwealth and his kindness and wisdom will be greatly missed by the entire Commission and the citizens of Virginia.

Respectfully submitted,

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