

NEW N.C. PUMPOUT LAW CAUSES MISUNDERSTANDING

By Jim Hackney, P

On July 27, 2009, the State of North Carolina adopted a new law (Session Law 2009-345, House Bill 1378) that, in part, requires owners of recreational vessels with a marine sanitation device (MSD), operated in certain areas, to maintain a log of MSD pumpouts. These provisions become effective July 1, 2010. However, as is so often the case, portions of the law have been taken out of context and therefore misunderstood.

Let us say up front that this law applies **ONLY** to North Carolina coastal waters that are (1) designated by the EPA as a no discharge zone (NDZ), or (2) are included in a petition to the EPA *to be* designated as a no discharge zone (unless the petition has been denied by the EPA). Most North Carolina coastal and inland waters are excluded from this definition. However, the General Assembly mandated a pilot program in New Hanover County (Wilmington) to begin phasing in the requirements of the new law, including designating the waters there as a no discharge zone. Consequently, cruisers transiting ICW areas such as Carolina Beach, Snow's Cut and the upper Cape Fear River, and ocean waters adjacent to New Hanover County, will be subject to this new law, beginning July 1, 2010.

The law goes far beyond the simple keeping of pumpout logs. It affects both boaters and marinas, and carries some significant penalties. All boaters should become familiar with its provisions, even if not immediately subject to it. As with most laws, its reaches will likely be expanded to eventually cover our area.

The first provisions of the law affect what are called "large vessel marinas". These are defined as public or private marinas with docking facilities of more than ten wet slips for vessels of 26 feet or more that have marine sanitation devices. Owners or operators of these marinas must provide MSD pumpout facilities, either their own or contract with an outside provider for regular services. They must maintain records of the boats they pump out. Further, if the owner or operator of such marinas knows of a vessel docked at the marina knowingly discharging sewage into the waters, they must report it to the appropriate law enforcement agency, or be subject to a civil penalty of up to \$10,000.

The second provisions of the law affect boaters in non discharge waters. Such boaters must not discharge any sewage into the water. This is not limited to MSDs; men urinating overboard from the deck of a boat are also in violation. The boats must have their MSD discharge valves secured so that they cannot discharge untreated or treated sewage except at a pumpout facility. Violation of these provisions is a Class 1 (serious) Misdemeanor and also carries a civil penalty. The boaters must maintain a log of MSD pumpouts, showing the date and place of the pumpout., and must maintain this information for at least a year. It goes without saying that, since both marina and boater must maintain separate pumpout records, these can be matched up to verify (or dispute) a log entry. Violation of the log requirement is a Class 3 (less serious) Misdemeanor, but carries no civil penalty. There is no mention in the law of the penalty for falsifying log entries, but one would assume it is a more serious violation.

The third provisions of the law assign responsibility for regulation of pumpout facilities to the N.C. Department of Environment and Natural Resources (DENR). DENR is to establish criteria such as standards for pumpout facilities, required services to the public, hours of operation, inspections, and recordskeeping. DENR will have jurisdiction over both public and privately owned marinas.

The fourth provisions of the law govern enforcement. In short, almost every agency can enforce it, including wildlife protectors, marine fisheries inspectors, ANY sworn local law enforcement officer with appropriate jurisdiction, and the U.S. Coast Guard. Anyone who can legally stop your boat in affected waters can check your pumpout log and your discharge valves.

The final provision establishes the "phasing in" pilot program in New Hanover County.

The term “phasing in” leads one to believe that it is the intention of the State to expand the area covered by the law as widely and as rapidly as is possible.

In summary, although local boaters and local marinas may not be immediately subject to the new MSD pumpout law, we can assume it is coming. And, boaters transiting NDZ waters in New Hanover County will be subject to the law as they pass through this area after July 1, 2010. Therefore, we should all become familiar with the new requirements and start thinking about compliance.