

CSAW
Campaign to Safeguard America's Waters



Earth Island Institute

3/2/09

Re: CS HB 134 Testimony of Gershon Cohen Ph.D.

Dear Chairmen and Members of the Alaska House of Representatives Committee on Resources,

Thank you for accepting this testimony in opposition to HB134, which seeks to remove the ban on mixing zone authorizations for cruise ship discharges established by majority vote of the people of Alaska in 2006.

The State of Alaska has traditionally been generous in allowing dischargers to circumvent the State's Water Quality Standards (WQS) through the application of mixing zones, which permit polluters to dilute contaminated wastewater within public waters. Nevertheless, the frequency of past mixing zone use should not be presumed to indicate the practice is consistent with the fundamental goals of the federal Clean Water Act or our State's water quality objectives to make all waters fishable and swimmable and eliminate the discharge of pollutants.

I agree with the intent of the sponsors of HB134 that discharge permits should be based on the best scientific evidence available. By definition, the State's WQS represent the best scientific information regarding the protection of aquatic life. Assigning mixing zones to mobile dischargers such as cruise ships would not represent the best science available. This practice would create multiple regions in our marine waters that cannot be tested for toxicity, often in places where wastes may or may not disperse efficiently depending upon the location of the discharge due to local currents, tides, salinity, temperature, and/or topography. It is entirely likely the waste from multiple ships might use the same water repeatedly for dilution. Worst of all, this practice will risk contaminating any fish or other marine life unfortunate enough to be within the mixing zone at the time of discharge. Mixing zones are not based on biological science; they are engineering-based risk analyses that presume organisms will either not be present when the discharge occurs, not be harvested and consumed, or represent a small enough percentage of the population so as to not result in long term harm to the overall ecosystem.

The cruise industry asserts it should be allowed to use the mixing zone loophole because some other dischargers have mixing zones. Poor performance by other dischargers, be they private or municipal, does not justify allowing the cruise lines to seek the lowest common denominator of wastewater treatment. It is important to

note that many of their “peers,” in particular many Alaskan communities, are using equipment designed in the 1950’s and built in the 1970’s and struggle to find the money to improve performance, which usually only occurs through property tax increases and the selling of municipal bonds to match federal dollars received through the under-funded State Revolving Loan Fund. The Alaska cruise fleet probably averages ten or at most fifteen years in age and the cruise industry has recorded billion dollar profits year after year – they can afford to do the job right now, and in doing so they will show others how they can improve their performance.

Alaska’s WQS implementation rules, in addition to containing provisions for authorizing mixing zones, also include an Antidegradation Policy (18AAC70.015) requiring the State to prohibit lowering the quality of a receiving water unless the best possible treatment method(s) is applied. On February 17th, DEC released a draft feasibility study describing multiple technologies capable of meeting WQS at the point of discharge. The study stated that while some of the technologies were not ready to be installed on ships immediately, there appeared to be no reason the technologies could not be adapted for shipboard use in the near future. On Feb 18th, DEC hosted a technology conference in Juneau on the same issue. Vendors and scientists testified throughout the day on their ability and willingness to re-engineer existing land-based treatment systems that can meet all WQS at the point of discharge for use in the cruise fleet. The draft DEC report and conference discussions directly contradict the cruise industry's claim that no such technologies exist or are likely to be available in the foreseeable future.

In fact, there is little (if any) evidence to support any recent testing or installation of new equipment in the cruise fleet to address pollutants such as heavy metals or ammonia, even though the industry has known since the initiative election in 2006 that State law would eventually require them to either improve their performance, discharge on-shore, or discharge outside of Alaska waters. Rather than invest the time and money necessary to improve their performance they have chosen to spend their resources on lobbyists and lawyers to try and get the law changed. HB134 (as passed out of HCRA) is the industry's vehicle for achieving this objective. Regardless of the opinion one might have on the broad question of mixing zone authorization, it cannot honestly be argued that this bill is anything but premature given the information released in the recent DEC report and at the technology conference the following day.

I trust you recall that in 2001 we heard the same cry from this industry when Alaska demanded better performance regarding the removal of fecal bacteria from their wastestreams. They said such performance was impossible. They said no applicable technologies existed. They threatened that requiring cleaner discharges would result in the death of their industry in Alaska, and along with it the demise of the Alaska tourism economy. What was the result of our demand for better treatment? Several companies that design wastewater treatment systems immediately launched efforts to build better machines for removing solids and bacteria on ships. Today, two thirds of the fleet coming to Alaska has these improved technologies on board.

There is little doubt that if the cruise lines had already been making the effort to comply with our rules they would have succeeded by now. Even so, DEC has given the industry a pass on meeting the no-mixing zone discharge rules until 2010, and that date could be extended to accommodate the added research, design, and testing phases necessary to bring the new technologies on line. No fines or penalties have been assessed to date and the grace period could be extended provided an honest effort to comply was underway. In other words, the bill before you today seeks to remove an achievable performance requirement that will not come due for another year *at minimum*. There is simply no harm whatsoever to this industry in keeping the present law in place while new and better treatment methods are adapted for ship board use. For these reasons, it is clear that HB134 is premature, and should not move forward at this time.

Our oceans are finite. Discharging more pollutants into our waters, regardless of the potential for dispersal will eventually result in deleterious impacts on our fisheries resources. One would hope we'd have learned this lesson by now, given the result that similar applications of the "dilution-solution" have had on our atmosphere.

I apologize I cannot attend the hearing to testify in person today. I coach the Haines High School Debate/Drama/Forensics team, and I am traveling with the team today as we return from the State championships where I am proud to say Haines High placed second in the State for 1A/2A/3A schools.

Thank you for considering my comments on this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Gershon Cohen Ph.D.".

Gershon Cohen Ph.D., Project Director, CSAW
Co-sponsor, Alaska Cruise Ship Ballot Initiative