

4/15/08

Ms. Lynn Kent
Director, Division of Water
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, AK 99501-2617

Re: Alaska Cruise Association (ACA) request for an informal hearing on General Permit No. 2007DB0002

Dear Ms. Kent,

Thank you for notifying us of ACA's request for an informal hearing on GP 2007DB0002. As you correctly presumed, Responsible Cruising in Alaska (RCA) and Earth Island Institute (EII) are very interested in this matter and wish to be involved in the proceedings to the full extent provided in Alaska statute and regulation.

Contrary to the opinions expressed in ACA's letter to you of April 9th 2008 requesting an informal hearing, RCA and EII believe that:

1. ADEC correctly interpreted Alaska statute and regulation by drafting a permit requiring compliance with Alaska WQS at the point of discharge. The permit is consistent with State law (AS §46.03.062) and although the State's mixing zone regulation (18AAC70.240) provides discretionary authority to the department for establishing mixing zones, it does not require ADEC to authorize a mixing zone, nor can it be used to override a precise application of statute.
2. ADEC's permit does not violate the Alaska Constitution's guarantee of equal protection under the law. The State has the authority to determine that cruise ship discharges are different from other discharges and regulate them accordingly.
3. ADEC's permit does not violate federal law preempting States from requiring particular treatment systems for sewage wastes. Requiring cruise ships to meet WQS at the point of discharge sets a performance-based standard within the powers granted to States by the Clean Water Act. The permit does not require the use of any particular treatment method or technology, or create a no-discharge zone without the approval of the EPA Administrator.
4. Further reductions in pollutant concentrations exceeding WQS may be possible with existing technologies and other options open to the industry. For example, the industry has made numerous public statements about their inability to meet the copper aquatic life standard following the purchase of drinking water containing a high level of copper from Ketchikan. Have they explored all other potential sources of drinking water, some of which might be lower in copper? Less copper in would mean less copper out. A second example: some of the ships in the fleet discharge effluent that exceeds the standard for ammonia. Are bio-reactors available capable of converting the ammonia to nitrate? Could the ships infuse sufficient quantities of oxygen to lower the ammonia concentration? These types of questions need to be fully answered before we accept the industry's position that technological or other procedural remedies do not already exist.

In fact, the State's Antidegradation Policy (18AAC70.015) requires a finding by the department as to whether such technologies and other options exist before authorizing a lowering of water quality. To our knowledge no such evaluation has taken place.

The industry's surrender is premature. We are unaware of any effort on their part to address their ongoing pollution problems since the 2006 election, when the question of how to assign discharge criteria to the industry was resolved in the statewide vote. And, as you know, the ADEC permit provides the industry with an additional two year grace period without penalties before compliance must be reached. During this grace period, all opportunities for better treatment or a reduction in pollutant input need to be thoroughly evaluated.

We had hoped that rather than fight the State and try to reverse the will of Alaska voters by spending financial resources on lawyers to pursue litigation, the industry would have engaged forward thinking wastewater engineers to propose solutions that would remedy their situation and serve the higher purposes of the State as a whole.

Please keep us apprised of all important dates and documents relevant to these proceedings. We strongly urge you to conduct these hearings in Juneau to facilitate a greater involvement of the concerned public.

Sincerely,

Gershon Cohen Ph.D.
Earth Island Institute

Theodore Thoma
Responsible Cruising in Alaska