

CSAW
Campaign to Safeguard America's Waters



Earth Island Institute

2/17/09

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

Dear Chairmen and Members of the Alaska House of Representatives Committee on Community and Regional Affairs,

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 mixing zone use in the past should not be presumed to indicate that (1) the practice is consistent with the fundamental goals of the Clean Water Act to make all waters fishable and swimmable and eliminate the discharge of pollutants, or (2) such regulatory negligence adequately protects Alaska's aquatic resources.

I agree with the intent of the sponsors of HB134 that discharge permits 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 does not represent the best science available, it will create multiple regions in our marine waters which cannot be tested for toxicity, where wastes may or may not disperse well depending upon the location of the discharge due to local currents, tides, salinity, temperature, and/or topography, and will likely contain the waste from multiple ships using the same water for dilution. Worst of all, it 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 or toxicology; they are engineering-based risk analyses that assume, or at least hope, that organisms will either not be present when the discharge occurs, not be harvested and consumed, or represent a small enough percentage of the population as to not result in long term harm to the overall ecosystem.

The cruise industry believes it should be given mixing zones because some other dischargers have mixing zones. Poor performance by other dischargers does not

justify allowing the cruise lines to seek the lowest common denominator of waste treatment. It is important to note that many of their “peers” are using equipment designed in the 1950’s, built in the 1970’s, and perhaps in a few cases marginally improved in more recent years. Many of these communities and private dischargers have not had the financial resources to even begin trying to improve their performance. The cruise industry has recorded billion dollar profits year after year – they can afford to do the job right, and in doing so they will show others how they can improve their performance.

Alaska’s WQS not only contain provisions for authorizing mixing zones, they also include an Antidegradation Policy (18AAC70.015) requiring the State to prohibit lowering the quality of a receiving water unless the best possible treatment methods are applied. The cruise industry claims to be using the best treatment methods available, but in fact, the industry has not tested or installed any new equipment on their ships since 2006 to address pollutants such as heavy metals or ammonia even though they have known since the initiative election 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. Many of those lobbyists and lawyers are probably sitting in your chambers today.

Regardless of your feelings about the authorization of mixing zones, it cannot be honestly argued that this bill is anything but premature. Tomorrow morning DEC will host a meeting at which scientists and high-tech companies will present their ideas on how cruise ships can meet the WQS without mixing zones. These technologies may not be ready to be installed in the fleet immediately for the simple reason that waste treatment firms have never been asked to build such devices for ships. That does not mean the fundamental science and technology does not exist, or cannot be adapted for ships within a reasonable period of time.

I’m sure you recall that in 2001 we heard the same cry from this industry when Alaska demanded they do a better job of removing fecal bacteria from their wastestreams. They said such performance was impossible. They said no applicable technologies existed. They threatened that imposing the requirement would mean the death of their industry in Alaska and along with it the demise of the Alaska tourism economy. But what was the result of our demand for better treatment? Several companies immediately launched efforts to build better machines for removing solids and bacteria on ships. Today, two thirds of the fleet that comes to Alaska has these improved technologies on board.

There is little doubt that if the cruise lines made the effort to comply with our rules they would succeed. Furthermore, not only has DEC recently initiated a process to identify technologies that have been improved in recent years, DEC has given the industry a pass on meeting the no-mixing zone discharge rules until at least 2010. No fines or penalties have been assessed to this point, and 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.

The authorization of mixing zones is fundamentally illogical. Our oceans are finite and putting more pollutants into our waters must at some point result in deleterious impacts on our fisheries. 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 be here in person to testify today, but I am traveling to Juneau this afternoon to participate in DEC's cruise ship technology conference that begins on Wednesday morning.

Sincerely,

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

Gershon Cohen PhD, Project Director, CSAW
Co-sponsor, Alaska Cruise Ship Ballot Initiative