

CSAW
Campaign to Safeguard America's Waters



Earth Island Institute



May 19, 2010

Commissioner Larry Hartig
Alaska Department of Environmental Conservation
Suite 303
PO Box 111800
410 Willoughby Ave.
Juneau Alaska 99811-1800

Re: Request for Administrative Appeal on the Large Commercial Passenger Vessel
Wastewater Discharge General Permit No. 2009DB0026

Dear Commissioner:

The Campaign to Safeguard America's Waters and Friends of the Earth hereby submit this request for an Administrative Appeal of the Alaskan Department of Environmental Conservation's (ADEC) Large Commercial Passenger Vessel Wastewater Discharge General Permit No. 2009DB0026 (General Permit). We request ADEC rescind any issuance of the General Permit to dischargers, cease further issuance of the General Permit until this adjudication proceeding and/or subsequent legal challenges are settled, and direct staff to redraft the General Permit to comply with Alaska law.

Requestors

Campaign to Safeguard
America's Waters
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Persons Adversely Affected

The Campaign to Safeguard America's Waters (CSAW), a project of the Earth Island Institute, has been representing the interests of thousands of Alaskans for the past decade on the issue of cruise ship pollution. CSAW's Director was appointed to the ADEC/EPA/CG Commercial Passenger Vessel Environmental Compliance Program in 2000, worked with then-Senator Murkowski's staff on the federal statute to regulate cruise ship wastewaters in Alaska in 2000, worked with then-Governor Knowles staff during deliberations on the first state-based Alaska cruise ship wastewater law, and co-authored the successful Cruise Ship Ballot Initiative (Ballot Measure 2, 2006) requiring ADEC to issue permits to cruise ships discharging into Alaska waters.

The tens of thousands of Alaskans from every corner of the State who voted to pass Ballot Measure 2 in 2006 (Requestors) support the principle that cruise ship discharges into Alaska waters must be permitted and meet all Water Quality Standards at the point of discharge. Although the Alaska Legislature modified the cruise ship wastewater statute after the two-year "grace period" provided for in the State Constitution to protect the intent of ballot initiatives, supporters of the Cruise Ship Ballot Initiative are being adversely affected by the new Cruise Ship Wastewater Discharge General Permit issued on April 22, 2010 by ADEC, which we believe violates Alaska law.

Friends of the Earth (FoE) has worked for more than a decade to reduce the significant environmental impacts of cruise ship wastewater discharges on marine, estuarine, and riparian environments, at the local, state, national, and international levels. FoE and our network of grassroots groups in 77 countries fight to create a more healthy, just world. FoE has more than 100,000 activists in the U.S. and more than 300 activists in Alaska.

Memorandum in Support of the Request

The Requestors believe ADEC has failed to fully exercise the mandatory, binding requirements for controlling pollution from cruise ships as required by AS46.03.462, "Terms and Conditions of Discharge Permits." There are no disputed issues of fact related to this request. All evidence cited was taken from public documents published by ADEC. The Requestors dispute with the department is based solely on interpretation of Alaska statute. Therefore, there is no need for an evidentiary hearing; a judgment can be made on this request solely on the basis of this brief and a reasoned examination of State law.

According to AS 46.03.462(a), every ship owner needs to obtain a permit to discharge treated material into waters of the State, and such discharges must meet all Alaska Water Quality Standards at the point of discharge unless the owner receives a permit including effluent limits developed under subsection (e) which states:

When issuing, reissuing, renewing, or modifying a permit required under (a)(1) of this section, the department may include effluent limits or standards less stringent than those

required under (b)(1) of this section for not more than three years duration if the department finds that a permittee is using economically feasible methods of pollution prevention control and treatment the department considers to be the most technologically effective in controlling all wastes and other substances in the discharge but is unable to achieve compliance with Alaska Water Quality Standards at the point of discharge.

AS 46.03.462(e).

The clear intent of subsection (e) requires the use of best available technologies, i.e., that “the most technologically effective” methods of control be employed by each ship requesting a discharge permit for Alaska waters. This intent is re-stated in subsection (f):

In developing an effluent limit or standard under (e) of this section, the department shall (1) require use of economically feasible methods of pollution prevention, control, and treatment the department finds to be the most technologically effective...

AS 46.03.462(f).

According to ADEC’s own data, published on the ADEC website in a document entitled “2004-2009 Results for Ammonia, Copper, Nickel and Zinc by Treatment System),¹ the Rochem reverse osmosis systems used on the Carnival Spirit, Mercury, Westerdam, and Oosterdam ships consistently out-perform other wastewater treatment systems for removal of metals and ammonia. The 2010 General Permit reaffirms the conclusion regarding the superior performance of the Rochem systems in a series of Tables (1-7) published on pages 9-11 of the General Permit.

AS 46.03.462 does not require the use of any particular wastewater treatment system, however, it does require a performance level equivalent to the best performing system that is demonstrated to be economically and technically feasible. Therefore the General Permit should require all ships applying for a permit including effluent limits weaker than the Alaska Water Quality Standards be equipped with treatment methods that can match or surpass the current Rochem performance level.

The fact that some cruise ships have installed and currently operate these systems proves they are technically feasible to be installed on cruise ships and they are economically feasible for use by the fleet. As evidenced by presentations given at the January 2009 ADEC Cruise Ship Wastewater Technology Conference by companies building wastewater treatment systems, and direct communications with ADEC staff, virtually any ship in the fleet is physically capable of installing better performing systems or appropriate components of better performing systems as an add-on to their existing systems in order to raise their level of performance to the requirements set forth in AS 46.03.462. AS 46.03.462(e) and (f) require ADEC “find” and “shall require” that the best methods of pollution treatment are employed. Given that ADEC was aware of the performance levels of all ships in the fleet from 2004-2009, there is no justification for ADEC’s failure to require the industry to perform to the level established in statute.

¹ Available at http://www.dec.state.ak.us/water/cruise_ships/gp/2010/Technology_Data_2010_GP.xls.

ADEC appears in the General Permit to be re-defining the concept of best available technology based on the brand of each wastewater treatment system on each ship. This approach is clearly flawed, since it simply requires each ship or brand system to do no better than it already does, i.e., *it sets the limits for each ship at their current level of performance*. This ignores the requirements of AS 46.03.462 subsections (e) and (f). It also financially penalizes the ships that have been willing to meet the requirements of the law, effectively rewarding ships that have failed to improve their performance for many years.

By allowing sub-standard performance to be acceptable in a three-year permit cycle, ADEC is permitting ships to release higher concentrations of heavy metals and ammonia – pollutants that have known, deleterious consequences for aquatic life. According to ADEC, ammonia “affects the life cycle as well as survival of some species. Ammonia at concentrations less than those chronically toxic to animals may stimulate growth and reduce reproduction of some red macroalgal species. Ammonia is primarily a product of biological processes such as microbial digestion of sewage due to the presence of urine. Ammonia is also present in some cleaning products.”² Further, according to the U.S. EPA, “the influx of excess nutrients [such as ammonia] can negatively affect marine ecosystems, resulting in diebacks of corals and seagrasses, eutrophication (oxygen-depleted “dead” zones), and increases in harmful algal blooms that can alter the seasonal progression of an ecosystem and choke or poison other plants and wildlife.”³ Copper can be toxic in aquatic environments and bio-concentrates in many different organs in fish and mollusks.⁴ Nickel and zinc both have chronic effects on marine life with zinc adversely affecting invertebrates, which ingest sufficient quantities of particulates containing zinc.⁵ Harming aquatic life in turn directly impacts Alaska subsistence, sport, and commercial harvesters and participants in the State’s tourism industry, as well as simply lowering the quality of life for all Alaskans.

Conclusion

Cruise ships operating in Alaska that cannot meet the State’s water-quality based standards at the point of discharge have the option to either (1) hold their discharges until they leave sensitive Alaskan waters, or (2) employ the best available technologies used by some other cruise ships to meet current Alaskan permit limits. ADEC may not undercut the State’s standards for all ships or permittees to accommodate cruise ships that refuse to comply with the law. Alaska’s water quality standards and implementation procedures for cruise ship wastewater discharges have successfully driven technology improvements in water treatment systems for a decade, and will continue to do so as long as ADEC upholds the law and requires that cruise ships meet all required water quality-based effluent limits that are achievable with today’s cost-effective technologies. Adopting weaker limits in violation of statute for a minimum of three years sends

² See ADEC 2010 Large Commercial Passenger Vessel Wastewater Discharge General Permit Information Sheet, April 22, 2010, pg. 19.

³ U.S. Environmental Protection Agency, *Cruise Ship Discharge Assessment Report* - EPA842-R-07-005, Dec. 29, 2008, pg. 2-33.

⁴ See ADEC 2010 Large Commercial Passenger Vessel Wastewater Discharge General Permit Information Sheet, April 22, 2010, pg. 21.

⁵ See ADEC 2010 Large Commercial Passenger Vessel Wastewater Discharge General Permit Information Sheet, April 22, 2010, pg. 22-23.

the wrong signal to the cruise industry and wastewater treatment manufacturers, and inappropriately allows for continued increases in the amount of industrial pollution released into Alaskan waters.

Sincerely,



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