

ALASKA STATE LEGISLATURE  
**SENATE TRANSPORTATION COMMITTEE**

June 7, 2001  
2:56 p.m.

**MEMBERS PRESENT**

Senator John Cowdery, Chair  
Senator Jerry Ward, Vice Chair  
Senator Robin Taylor  
Senator Gary Wilken  
Senator Kim Elton

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 260(FIN) am

"An Act requiring the owners or operators of certain commercial passenger vessels operating in the marine waters of the state to register with the Department of Environmental Conservation; establishing information-gathering, record keeping, and reporting requirements relating to the vessels' graywater, sewage, hazardous substances, hazardous wastes, solid wastes, and other pollutants; establishing certain sampling, testing, reporting, and record-keeping requirements as terms and conditions of permitting discharges from the vessels; authorizing the Department of Environmental Conservation to provide for independent verification of compliance by the vessels, and to monitor and supervise discharges from the vessels; prohibiting the discharge of untreated sewage from the vessels; placing limits on discharges of treated sewage and graywater from the vessels; providing that there is no audit report privilege for complying with a requirement that the owner or operator of a commercial passenger vessel must report discharges of sewage or graywater that violate laws; establishing a fee, ranging from \$.70 - \$1.75 per berth, with a maximum of \$3,750 per voyage, on commercial passenger vessels that are not operated by the state for each voyage during which the vessels operate in the marine waters of the state based on the overnight accommodation capacity of the vessels determined with reference to the number of lower berths; providing for a fee for vessels operated by the state to be determined by an agreement between the commissioner of environmental conservation and the commissioner of transportation and public facilities; authorizing the Department of Environmental Conservation to research, monitor, and study discharges and releases from commercial passenger vessels, including the opacity of air emissions from the vessels; establishing penalties for

failure to comply with certain laws relating to the vessels; authorizing the Department of Environmental Conservation to encourage and recognize superior environmental protection efforts related to commercial passenger vessels; authorizing the Department of Environmental Conservation to adopt regulations to implement laws relating to commercial passenger vessels and directing the department to use negotiated regulation procedures, when appropriate, to develop the regulations; establishing a commercial passenger vessel coastal protection fund; requiring a report from the Department of Environmental Conservation concerning matters relating to the vessels; and providing for an effective date."

MOVED SCS CSHB 260(TRA) OUT OF COMMITTEE

#### **PREVIOUS SENATE COMMITTEE ACTION**

HB 260 - See Transportation minutes dated 5/6/01.

#### **WITNESS REGISTER**

Mr. Bill Wolf  
Assistant to Senator Frank Murkowski  
United States Senate  
322 Hart Building  
Washington, DC 20510-0202

**POSITION STATEMENT:** Explained the provisions of the federal cruise ship discharge legislation.

Lt. Commander Spencer Wood  
Vessel Compliance  
17th Coast Guard District  
Juneau, AK 99801

**POSITION STATEMENT:** Answered questions about SCS CSHB 260(TRA) and the Coast Guard's operations.

Lt. Commander Mike Tousley  
Assistant Legal Officer  
17th Coast Guard District  
Juneau, AK 99801

**POSITION STATEMENT:** Answered questions about SCS CSHB 260(TRA) and the Coast Guard's operations.

Commissioner Michele Brown  
Department of Environmental Conservation  
410 Willoughby Ave. Ste. 105  
Juneau, AK 99801-1795

**POSITION STATEMENT:** Answered questions regarding SCS CSHB 260(TRA).

Mike Conway, Director

Division of Statewide Public Service  
Department of Environmental Conservation  
410 Willoughby Ave. Ste. 105  
Juneau, AK 99801-1795

**POSITION STATEMENT:** Answered questions regarding SCS CSHB 260(TRA).

Mr. Mike Harcourt  
Oceans Blue Foundation  
405-134 Abbott St.  
Vancouver, B.C. V6B2K4

**POSITION STATEMENT:** Expressed support for cruise ship discharge legislation.

Randy Ray, President  
U.S. Cruiseship Association  
P.O. Box 979  
Mercer Island, WA 98040

**POSITION STATEMENT:** Expressed support for cruise ship discharge legislation and requested SCS CSHB 260(TRA) be amended.

John Palmes  
No address provided  
Juneau, AK 99801

**POSITION STATEMENT:** Believes that SCS CSHB 260(TRA) is unnecessary.

#### **ACTION NARRATIVE**

**TAPE 01-19, SIDE A**  
Number 001

#HB260

[THE FOLLOWING IS A VERBATIM TRANSCRIPT.]

**CHAIRMAN JOHN COWDERY:** ...about 2:56 on the 7th of June. Today we're hearing testimony on the cruise ship bill. I'd just like to say early on that I've done quite a bit of work on this bill when I was back East with my wife who is doing quite well. I contacted Senator Lemman, as well as my staff, three or four times a day at times to try to work on this subject and did extensive work on this bill. The first thing I'd like to adopt - a motion to adopt the committee substitute.

**SENATOR WARD:** Mr. Chairman, I would move to adopt SCS CSHB 260(TRA), Version R, along with the accompanying [fiscal] notes and ask unanimous consent.

**CHAIRMAN COWDERY:** Hearing no objections, so moved. We're going to hear today - I'd like to note that we have a quorum here too,

Senator Wilken, Senator Ward and myself and I see Senator Elton and Senator Taylor in the hall just coming inside, so with that we'll move along. I apologize for the wait and the witnesses that had to wait for this but this is a very important issue so we had a more important issue that we dealt with in the Judiciary - certainly more important than this. But anyway, here we are and the first up - I notice the Coast Guard has been here and I'd like to ask them to come forward and identify themselves and, if I could, before I get to you, I just got notice that Senator Murkowski's staff is on line so as a courtesy to them - it's 7 or 8 o'clock back there now. Bill Wolf, are you there?

MR. BILL WOLF, congressional aide to Senator Murkowski: Yes, Mr. Chairman, I'm here.

CHAIRMAN COWDERY: Okay, if you could give a brief statement on Senator Murkowski's behalf I'd appreciate it.

MR. WOLF: All right, thank you Mr. Chairman. It's always a pleasure to visit with members of the Legislature. I've had that opportunity several times in my career back here. I did not, I will confess, come prepared to make much of a statement. My purpose in being with you at Senator Murkowski's request is to make myself available basically to answer any questions that you may have on the purpose and scope of the federal legislation. As everyone I think knows, Senator Murkowski took the lead on crafting federal legislation to address the wastewater issue that came to a head over the last couple of years. Although we began with various parties expressing various degrees of concern, we ended with a bill that all of the major parties, all of the different federal agencies that are involved, the state, the environmental community and the industry, all agreed was a good approach. And so, if you have questions on that, I'd be pleased to answer them.

CHAIRMAN COWDERY: Yes, Senator Ward.

SENATOR WARD: Can you just briefly outline what point the Senator was trying to get across in the letter that he sent to all of us?

MR. WOLF: Yes, Mr. Chairman. We've been following, with great interest, the press on this subject because of the history this office has with it. It appeared clear to us in doing so that there were some misunderstandings. There was not a clear picture, we felt, of the scope and extent of the federal legislation as to what it did and didn't do and so forth. Senator Murkowski obviously knew you all were moving into a special session. It has gotten a great deal of attention. This is a crucial - both as an environmental matter and as an economic matter and we wanted to be

sure that there was a clear understanding of what the federal legislation actually accomplishes in the hope that would better inform the deliberations that you're going to be undertaking here today.

SENATOR WARD: Thank you. Mr. Chairman, just a follow up on that and then I assume the Coast Guard will be able to fill us in on exactly what those misunderstandings may be or did you want to?

CHAIRMAN COWDERY: I'd prefer that the Senator's staff do that. I don't think we should put the Coast Guard on - make an opinion on what that ....

MR. WOLF: Mr. Chairman, if I may, I don't have a full set of press clippings in front of me to point out every little thing but I can give you one example off of the top of my head. One writer suggested that there was no control over hazardous waste and, in fact, there is. We have a situation and let me describe - perhaps it would be helpful if I described in a little bit greater detail. As we went in to this, we had a situation in which certain vessels had been found to be discharging unacceptable materials in their wastewater. We also had a situation where allegations had been made that vessels were being directed into the so-called donut holes, the small enclaves of federal waters that are actually within the Alexander Archipelago, to discharge untreated sewage. Both of those things are just intolerable and unacceptable so we undertook to address them.

At that time, and to the best of my knowledge, still the only issues of illegal discharge have involved wastewater discharges of one type or another. As we began to address it, we discovered that the issues we were trying to look at could be broken into three basic parts: there's the issue of untreated sewage, the issue of treated sewage, and the issue of graywater. Hazardous materials, toxic chemicals, such as photo-processing chemicals or solvents used in dry cleaning, were and are and will continue to be illegal under federal law as inclusions in wastewater. One of the companies that ended up paying a substantial penalty was caught because of the federal Clean Water Act, other regulations under which those types of discharges are already illegal. So what we dealt with were the types of discharges that were of concern but had not yet been addressed by federal law and I've named those three. Raw sewage was addressed very simply by outlawing the discharge of raw sewage in the waters of the state of Alaska, including the federal waters that are within the Alexander Archipelago or occur in the Kachemak Bay estuary preserve area, which also has some federal waters. Treated sewage has a standard that should be adhered to in federal law already. It is a standard

that was established for the operation of Type 2 marine sanitation devices. As an interim measure, because there is no science that we are aware of that examines in detail the effects of those discharges on marine organisms, we chose to adopt the standard for the Type 2 MSD. Graywater, again there are no standards other than saying that it is illegal to put chemicals and salts and those sorts of things in it. For graywater, additional scientific analysis is needed we feel. And so, in both of the latter two cases, our bill directs the Environmental Protection Agency to continue a study that it already has ongoing - do the science and come up with appropriate regulations based on the environmental concerns that are revealed by the scientific analysis and the types of materials that can be found in these two different types of discharge.

CHAIRMAN COWDERY: Thank you. When I first got this bill, I studied what Senator Murkowski had done and - you know, the old political statement of, if it isn't broken, don't fix it - and I didn't ever see and still don't understand what is really broken. I know that we've had testimony - the last time, or I've been reading in the paper, there's been a lot of press on this, sold a lot of newspapers, that we need this just because of the couple of incidents where there were illegal discharges recently. Well, in my opinion, it was taken care of timely. The Coast Guard was on top of it. They did their job. I think they're the best suited to do this and having other laws, or another body, to have jurisdiction over this, I fail to see where that would have stopped anything. The illegal discharges were taken care of. They should have been taken care of but, anyway, that's just a statement on my part. Do you have anything else or do you want to standby?

MR. WOLF: Mr. Chairman, I'd be happy to stand by if you have any other questions. I think that pretty well covers, although very basically, the bulk of the bill - at least that part of it that pertains to actual discharges. Obviously the bill contains other provisions providing for substantial administrative, civil and, in some cases, criminal penalties if those are required. It contains language that directs the Coast Guard and the Environmental Protection Agency to work together to sample and test effluents from cruise ships, wastewater discharges from cruise ships and to respond appropriately. There are provisions, also I would note, that specifically allow the state to take what action the state deems appropriate. That pretty well covers it.

CHAIRMAN COWDERY: Okay, thank you, and if you would stand by there may be some questions and feel free to interrupt if you have any comments. I'd like to go now - we have two gentlemen here from the Coast Guard. If you'd identify yourself and make a brief opening

statement and then we will maybe have some questions.

LIEUTENANT COMMANDER MIKE TOUSLEY, United States Coast Guard, 17th District: Mr. Chairman, Senators, I'm Lt. Commander Mike Tousley and I'm with the Coast Guard District legal office.

LIEUTENANT COMMANDER SPENCER WOOD, United States Coast Guard, 17th District: Senator - Lt. Commander Spencer Wood with the 17th District Coast Guard Office here in Juneau and I have been co-chair of the Wastewater Group for the Alaska Cruise Ship Initiative for the last two years.

CHAIRMAN COWDERY: Thank you. I'll start it off, if I could ask a few questions. I don't expect you to get involved in opinions or anything, but I would like to ask, do the Coast Guard ships comply with the provisions - presently comply with these provisions for sanitary systems that we're trying to achieve?

LT. COMMANDER WOOD: Mr. Chairman, Coast Guard cutters have Type 2 marine sanitation devices on board that meet the standards in 33 CFR 159, which are the 200 and 150.

CHAIRMAN COWDERY: All Coast Guard ships will comply then or just part of them?

LT. COMMANDER WOOD: All Coast Guard cutters comply, yes sir.

CHAIRMAN COWDERY: What about the Navy?

LT. COMMANDER WOOD: I can't speak to the Navy.

CHAIRMAN COWDERY: What about the large and small fishing vessels? Do they comply with this?

LT. COMMANDER WOOD: There are varying standards, depending on the size of the fishing vessel. Some do and some don't. The smaller ones don't. They typically have either a holding tank onboard and they pump it ashore or they get outside of areas where it is allowed to be dumped - discharged - and they discharge it untreated.

CHAIRMAN COWDERY: But they do - the question is, if this bill is adopted, would they - to your knowledge would the large and the small ones comply or would they have to do work to make it comply?

LT. COMMANDER WOOD: Would they comply with the bill that's before you sir?

CHAIRMAN COWDERY: Yes.

LT. COMMANDER WOOD: Fishing vessels, no.

CHAIRMAN COWDERY: Does the Coast Guard - have they checked all of the Alaska Marine Highway vessels regarding the gray and black water for standards.

LT. COMMANDER WOOD: No.

CHAIRMAN COWDERY: Who has jurisdiction over the Alaska waters?

LT. COMMANDER WOOD: Out to three miles, the State of Alaska has jurisdiction, and the federal government has jurisdiction. It depends on what laws you're speaking to.

LT. COMMANDER TOUSLEY: From the three miles - or from the baseline out to 200 miles, the federal government has jurisdiction.

CHAIRMAN COWDERY: Or the Coast Guard or the Navy or whoever.

LT. COMMANDER TOUSLEY: Yes, sir.

SENATOR WARD: Mr. Chairman, the baseline?

LT. COMMANDER TOUSLEY: The baseline is mean low water.

CHAIRMAN COWDERY: Do you see - I don't want to get you in a tight spot - I know our good Representative congressman has recently appropriated a lot of money for the Coast Guard to bring - it will be well spent and I'm sure you appreciate that but - do you see any duplicate efforts between the federal law, or the Murkowski bill and this present HB 260?

LT. COMMANDER TOUSLEY: I think the two bills complement each other. There are things in the state legislation that aren't accomplished in the federal legislation.

CHAIRMAN COWDERY: One last question on my part. When will the proposed federal regulations of the Murkowski bill be in effect? Do you know?

LT. COMMANDER WOOD: Well, the Title 14 legislation is in effect right now - as of December 21st. There are self-executing portions of that Murkowski legislation, which the cruise ships have to meet today - right now. And then there are sections of Title 14 that require promulgation of regulations in order to implement. We've just gone through the proposed rulemaking process. The public

comment closed on that on May 25th and we're now completing the packet for the final rule. We expect that to complete the process by mid-July and when it is published - we expect that to be published and enforceable on the date of publication.

CHAIRMAN COWDERY: Thank you. Are there any other questions of the Coast Guard? Senator Taylor.

SENATOR TAYLOR: Recently we had a tour ship in Southeast Alaska that turned itself in. It made some press. It was rumored that it could suffer a fine of up to \$25,000. Was that on inside waters where that boat was located and, if so, can you tell me about that incident?

LT. COMMANDER WOOD: There were actually two incidents. I think the one you're referring to was a vessel headed toward Ketchikan from Juneau, it was underway at the time. That vessel was in the old donut holes - beyond three miles but still within the Alexander Archipelago. We had received a letter from that company saying that they would hold their wastes while in the applicable waters of Alaska and that they would only pump those beyond the three-mile limit outside of the Alexander Archipelago. They had a second engineer onboard that, for some reason, either thought they were beyond those waters or, for whatever reason, started the system up and pumped treated sewage while still within the applicable waters of Alaska. As soon as the company discovered that, they shut that down. They notified the Coast Guard. We went down to do samples of the waste representative of what they were discharging and they exceeded the parameters in Title 14 and so civil penalty action is underway.

SENATOR TAYLOR: This was a vessel of more than 500 passengers?

LT. COMMANDER WOOD: Yes sir.

SENATOR TAYLOR: So it would fall both within [HB] 260 but it also falls - and I'm assuming at that point you were enforcing the Murkowski law, weren't you?

LT. COMMANDER WOOD: Yes sir.

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SENATOR TAYLOR: So that law is not only in effect, but it's actually being enforced right now on inside waters in Southeast Alaska?

LT. COMMANDER WOOD: Yes sir.

SENATOR TAYLOR: Is there any right for anybody, under federal or state law, to dump cleaning solvents or processing chemicals from photographic ...?

LT. COMMANDER WOOD: No sir.

SENATOR TAYLOR: So, we're not gaining anything by passing this law - that one, because you can't legally do that anyhow today. You'd be fined under federal law, wouldn't you?

LT. COMMANDER TOUSLEY: That's correct but there are different things other than the areas that are otherwise addressed by the federal legislation that Mr. Wolf referred to that are in the state legislation that otherwise complement the federal legislation. There's different stuff besides that. There's a greater assessment scheme. I think that the federal legislation is trying to get at more of an enforcement scheme. The state legislation has that, as well as more of an assessment - what is going on, what is the discharge on a vessel. There's some uncertainty as to what's there, and the state's trying to capture data so they can determine exactly what is being discharged. The federal statute isn't after that assessment portion so much as just enforcement of the standard.

SENATOR TAYLOR: But at least, under those two vessels that I was inquiring about, the Murkowski law is working and having an effect upon them? And that was all on inside waters?

LT. COMMANDER WOOD: Absolutely sir.

SENATOR TAYLOR: Did you gentlemen notice an article in the newspaper here in Juneau yesterday that talked about more than 50 percent of the vessels who may become subjected to this law have already declared, so to speak, publicly that they would be moving offshore now and dumping the very same products in the waters of the Pacific but would do so offshore and they talk about a 12 mile area?

LT. COMMANDER WOOD: Senator, Mr. Chairman, yes. I read that article and I'm also very familiar with that issue. We currently have 11 vessels that are participating in the ongoing voluntary program that was established last year and continued this year. The remainder of the vessels that come to Alaska have opted not to be involved in the voluntary sampling because they are holding their waste and not discharging it in the applicable waters of Alaska. The reasoning that I've heard from them is that we know we're not meeting the standard 100 percent of the time through our

systems and so we've opted to hold this waste until we get offshore where we can legally dump it and so, the point of sampling that waste seems moot because we know the numbers are going to be high and what are we going to learn from that? That was their reasoning.

SENATOR TAYLOR: Thank you very much.

CHAIRMAN COWDERY: Senator Ward.

SENATOR WARD: Thank you. I just wanted to clarify something here. You said that all Coast Guard vessels in Alaska meet the standards under HB 260 as it currently is written. Is that correct?

LT. COMMANDER WOOD: No, I think I misunderstood the question. I thought you were speaking to the existing laws.

SENATOR WARD: No. And, so this is what I would like to know - are the ships that are currently under the jurisdiction of the Coast Guard, if HB 260 was in law today, would they be in violation of the law?

LT. COMMANDER WOOD: Senator and Chairman, as I read the bill I understood those vessels to be exempted.

SENATOR WARD: All right, if I can maybe restate it. If they were to come under the same rules as we are going to put the cruise ships under - you know, we the people - the government - own your ships. We the people buy passage on the other ones. So, if our government-owned ships were under the same regulations as the ones that the people are buying tickets on, would they be in violation today under HB 260?

LT. COMMANDER WOOD: No sir, I don't believe they would be in violation.

SENATOR WARD: So they have this cleaning stuff already in them or do they go out to sea and dump?

LT. COMMANDER TOUSLEY: They do both, depending on class and size.

SENATOR WARD: Okay. Do you have any of them that do not have the capabilities of self cleaning itself and have to go out 12 miles in order to be legal? I need some help here because I'm trying to understand boats so you guys are it. Are you both lawyers?

LT. COMMANDER WOOD: Even as a ship driver, generally, our rule was if we had sewage waste, it was beyond three miles that we

discharged it because there are variances and whether or not our equipment is working properly occasionally, so our rule was, just to make sure that everything was working right, that we went beyond three miles. I'm not a naval engineer so I can't tell you specifically ....

SENATOR WARD: All right, then how - just some common sense stuff here. We're going to tell these guys you have to do some certain things in order to come into our waters. Do we now have Coast Guard ships that are going to go outside of the limit because they can't meet those same criteria we're putting on the cruise ships?

LT. COMMANDER TOUSLEY: Our operations will not be modified by what's in HB 260.

CHAIRMAN COWDERY: We understand that.

SENATOR WARD: That was not my question.

CHAIRMAN COWDERY: We understand you're exempt, but say if ....

LT. COMMANDER TOUSLEY: Even absent the exemption we would not have to modify our operations.

SENATOR WARD: Would you not - if I might, Mr. Chairman - would you not modify it because you are going out to dump at sea or because you had the capability of taking care of it?

LT. COMMANDER TOUSLEY: We don't have the same clean disposal equipment that would necessarily be required for all of what's in [HB] 260.

SENATOR WARD: And what would it cost the Coast Guard to make all their ships the same as what we're going to make the cruise ships do? Rough ball park - how many ships do you have?

LT. COMMANDER TOUSLEY: That's a hard question, Senator. I really would - it would be millions sir, just as it's millions for the cruise vessels.

SENATOR WARD: How many millions? We're the state legislature, millions don't bother us.

LT. COMMANDER TOUSLEY: No idea.

SENATOR WARD: Would it be \$30 million?

CHAIRMAN COWDERY: I don't think that we should put them through

the ....

SENATOR WARD: I was just trying to figure out what we are doing to people, Mr. Chairman.

CHAIRMAN COWDERY: It's obvious they are not going to break the law. It's obvious this bill doesn't have jurisdiction with the Coast Guard but I think that what we were trying to get at, you dump offshore, you don't break any laws and you don't intend to break any laws. But the reason you have to dump offshore, most of your facilities onboard would not meet the criteria that we're trying to establish here. Is that a true statement?

LT. COMMANDER TOUSLEY: Okay, thank you.

CHAIRMAN COWDERY: I'd like to make note too that we have a full quorum. I acknowledged you when you were outside. I saw you in the window. So Senator Elton, Senator Taylor, and Ward and Wilken have been here for the entire meeting. But anyway ....

SENATOR ELTON: Commander Wood, you've been a part of the cruise ship initiative process since the beginning and late in 1999, I think. And one of you, and I'm sorry I can't remember which one, described HB 260 as complementing the federal law. Could you articulate for the committee those discharges that are covered in HB 260 that aren't covered in the Murkowski bill?

LT. COMMANDER WOOD: Yes, Senator, Mr. Chairman. As I have read [HB] 260 and the latest version of that, I think the primary discharge that has specific standards that is not in Title 14 is the graywater beyond a mile and going more than six knots. Currently, Title 14 allows the EPA to establish standards which have not yet been set for graywater. This bill would set standards for graywater.

SENATOR ELTON: And my understanding, if I could follow up, Mr. Chair, my understanding also is that the federal law does not cover air emissions.

LT. COMMANDER WOOD: Right, right.

LT. COMMANDER TOUSLEY: The Murkowski legislation does not cover air emissions.

SENATOR WARD: But federal law does?

LT. COMMANDER TOUSLEY: Yes, sir.

SENATOR ELTON: That's delegated to the state now?

LT. COMMANDER WOOD: You'd have to speak to the EPA.

SENATOR ELTON: Thanks, Mr. Chair.

SENATOR WARD: Mr. Chairman?

CHAIRMAN COWDERY: Yes.

SENATOR WARD: Graywater and six knots makes something legal - that means how fast the boat is going when we dump the graywater and the shower water or bathroom water? Can you tell me more about that?

LT. COMMANDER WOOD: Yes, sir. In Title 14, for vessels operating within the applicable waters of Alaska, the standard is 200 fecal coliform and 150 total suspended solids for treated sewage discharges. For graywater, there is no standard for graywater established for either fecal coliform or total suspended solids. For less than a mile from shore, or for vessels going less than six knots in speed within the applicable waters of Alaska, there are standards for graywater and there are standards for treated sewage. They are much stricter standards that they have to meet with an associated sampling regime, but as long as the vessel is going at least six knots and the vessel is at least a mile from shore, the graywater standard doesn't apply.

SENATOR WARD: Thank you Mr. Chairman.

CHAIRMAN COWDERY: We appreciate that. I think that's all of the questions we have. If you want to sit by through this issue that would be fine. Whatever. I think you answered and I appreciate you standing by and holding for us.

LT. COMMANDER WOOD: Thank you, Mr. Chairman.

CHAIRMAN COWDERY: The next up - I've asked the DEC, Michele Brown, to come and make - we're trying to get through this so we don't need a lot of rhetoric and more statements but we're here to have you answer some questions so if you'd ....

MS. MICHELE BROWN, Commissioner of the Alaska Department of Environmental Conservation: With your permission, can Mr. Conway join us?

CHAIRMAN COWDERY: Sure. If you'd identify yourselves and your department?

COMMISSIONER BROWN: Thank you sir. Mr. Chairman, I'm Michele Brown from the Alaska Department of Environmental Conservation.

MR. MICHAEL CONWAY, Director of the Division of Statewide Public Service, Alaska Department of Environmental Conservation: I'm Michael Conway from the Alaska Department of Environmental Conservation.

COMMISSIONER BROWN: And with your caveat in mind, Mr. Chairman, I will not make a lengthy opening statement. I would just like to say we have worked at DEC long and hard with the industry, both the small operators and the large operators, and with members of the House to craft a bill that provides protections to Alaska's air and water and has reasonable operating rules that do not negatively affect the industry. We do have support for language, which the bill that came over to you on [HB] 260, for those provisions as well as for the CS that we had offered you that did some housekeeping changes, minor changes that legal drafting didn't take care of, and also some changes to the small operators. The reason we did that - and they'll be testifying later so if I make any misstatements - but the reason we did it, with the small operators, they are configured differently. They have different operating constraints and we need to be sensitive to that. They wanted to comply right away with the monitoring, reporting and testing provisions because they do believe in doing what they think is best in protecting waters. They needed some time to come into compliance with the standards and to budget for the fees. But the one mile, six knots requirements could be - make a complete restraint for them actually coming into our waters because they are not sized so that they can hold sufficient wastewater. So those amendments address those things and that's the package you had in front of you.

CHAIRMAN COWDERY: Senator Ward.

SENATOR WARD: Okay, and on that - and thank you for coming today, Michele. Can you - I think I know the answer to it but I probably should ask the question just so that I'm sure of it. Can you tell the committee what graywater is?

COMMISSIONER BROWN: Yes sir. Through the Chair, Senator Ward. Graywater is basically the wastewater that's not from the toilets. It's not the sewage water, which is called black water. Graywater comes from sinks, showers, laundry, galley water.

SENATOR WARD: If I may, Mr. Chairman, laundry but not dry cleaning - soap laundry.

COMMISSIONER BROWN: Exactly.

SENATOR WARD: And if I might Mr. Chairman? And if this graywater is shoved out or let go if it's going six knots, then it's all fine? Is that correct?

COMMISSIONER BROWN: Under the language of [HB] 260, that graywater has to be treated to a level that limits the amount of fecal coliform and TSS [total suspended solids] that comes out in the discharge as well as authorizes us to work with folks to set other effluent limits on other parameters that may be of concern. So it does have to meet a level of treatment, which it currently does not have to do under federal law.

SENATOR WARD: And if I might, Mr. Chairman? One last question. And the [HB] 260 would not allow that to be discharged any closer or at any less speed?

COMMISSIONER BROWN: Not unless it was treated to a higher quality. If it were treated to a higher quality it could be, but if it's not treated to a higher quality then it needs to be at one mile, six knots.

SENATOR WARD: Thank you Mr. Chairman.

CHAIRMAN COWDERY: On the graywater issue, I have - I'm sure you have a better understanding than I, but shower water - what if a guy didn't take a shower and jumped in the ocean. Would he be in violation? I mean, you know, this is a very, very fine line here that I'm wondering what we're trying to achieve if it's reasonable. Or, even if you talk about laundry - if he had his clothes on and did it - would it be in violation? I just wanted to point out that some of these are difficult to justify the reasoning of where we're trying to go on this. We all want clean water, clean air and everything.

COMMISSIONER BROWN: I think most people thought that graywater was going to be benign. That's why it hasn't been regulated under federal law. I think the industry believed it was benign. When we did the testing is when we discovered it was not benign. 70 percent of the graywater samples that we took exceeded the standards for treated sewage - some of them 50 thousand times the level. So, graywater does need to be treated as it comes off of these vessels because it does have high levels of contaminants. One individual jumping into the sea is different than the wastes over the course of a season, a million people, passengers and crew.

CHAIRMAN COWDERY: Or a million people jumping into the sea.

COMMISSIONER BROWN: A million lemmings jumping into the sea.

CHAIRMAN COWDERY: I just wanted to get that clarified. When we were here before we called this special session, I leaned a little bit on the cruise ship industry to get a memorandum of understanding, which they finally developed, not that they - well I kind of leaned on them a little bit. Your response, or the Administration's response, you don't do memorandums of understanding, you want it by law. I have to take issue with that because I think we did one with BP recently on the merger problem. I think we did one a few years ago on the gas - the flaring in the gas that was going on in the North Slope and I think it even had - the pollution that was created. But, anyway, you said that - just getting back to your statement, we don't do it - in Section 46.03.020 it tells the powers of your department. It says departments may enter into contracts and compliance agreements necessary or convenient to carry out the functions and powers of the department. Then, later on, it's a lengthy document but under definitions, it has - compliance agreement means a mutual understanding and voluntary enforceable agreement on a course of action for a specific set of circumstances, entered into by the department or a person to control, prevent, or abate air, water, land and subsurface land pollution. So, the fact is, you do have - you could have done that - am I correct in saying, getting a memorandum of understanding so we wouldn't have had to have this special session?

COMMISSIONER BROWN: Mr. Chairman, we have authority to do memorandums of understanding but we have never used that for regulatory matters. We do that, for instance, if we're going to do a study and we need to receive money or we need to work out with the municipality who is going to do which task so we don't have duplication, but we have never used a memorandum to establish regulatory authority. That is a matter and, certainly in my opinion, that ought to be done in discussion with the legislature. You are the body that makes laws and gives us our authorities and so we have never done it for regulatory matters.

On the issue - the BP Charter was specifically for non-regulatory matters. It was for things that go over and above. It was commitments from them for environmental improvements that are over and above regulatory requirements. So, it's not something they were already required to do by law or something that we intended to make them want to do by proposing a law to you. It was other commitments that they would make. I don't know, on the gas flaring, I could see what I can find out what that is. On compliance agreements, those are when you have a violation of law,

and rather than go to court and seek enforcement action, you enter into a compliance agreement.

CHAIRMAN COWDERY: Isn't that what we had here?

COMMISSIONER BROWN: No, because we didn't have a state law that they were violating. We didn't have the premise of - you know when we have a law, they violate it, we then make a settlement agreement, which is a compliance order.

CHAIRMAN COWDERY: Senator Taylor.

SENATOR TAYLOR: I was curious, Michele, in light of the discovery that you made on graywater, and this seems somewhat shocking to you people, what are our current graywater standards in Alaska for the average house? Aren't they different?

COMMISSIONER BROWN: We don't regulate the average house.

SENATOR TAYLOR: Well why not? If it's 3,500 times higher in fecal coliform, shouldn't we be doing that?

COMMISSIONER BROWN: Well, our law ....

SENATOR TAYLOR: Or are we only going to do this with the guy that comes in from out of town?

COMMISSIONER BROWN: We're going to do this where the volume is greatest. We didn't write the laws that didn't require us to do reviews of individual septic systems. State water quality standards do set a limit though for fecal coliform that would be in black water or graywater. And so when we do permits for facilities that are permitted, we do set a graywater effluent standard.

SENATOR TAYLOR: You have the capacity right now, don't you, to set those regulations and standards on graywater?

COMMISSIONER BROWN: Yes, for permitted facilities we set standards. For people that are not subject to our oversight we don't without coming back to you for laws. For instance, we don't permit individual septic systems.

SENATOR TAYLOR: Who does that?

COMMISSIONER BROWN: Either no one or local government. I mean if we have somebody discharging so much from the system that's creating a nuisance, then we have a violation of a state law in the sense of creating a nuisance or harm.

MR. CONWAY: Mr. Chair, if I could amplify that a little bit? First, the treated facilities that the Commissioner is talking about, the homes that are on treatment systems going to a sewage treatment plant, so that's the connection for the permitted facility. For septic systems, the state does not have a program. There used to be a program for septic systems years ago before budget cuts of the '90s hit. We do have a program for multiple dwelling complexes. We have the resources and the funding for plan approval, plan review and approvals and so forth, if there were to be an apartment building or a multi-complex building that had its own treatment system - it wasn't on the municipal treatment then there is regulation of that. It's just a matter of the number of people that you have, the amount of funding that you have in the agency, how far down you can get in doing that so we don't do individual septic systems.

SENATOR TAYLOR: How do you prioritize it - based on money?

MR. CONWAY: And the risk, the risk that's posed by the kind of discharge.

SENATOR TAYLOR: If you're not measuring, I'm kind of wondering how you'd know the risk. I guess you don't.

MR. CONWAY: Well the risk is - as I said before, we had a program before where we had information on that and then, when you look at a complex of four or five housing units together, as opposed to ones that are along the beach kinds of things, so there is information that is there that was used to evaluate that risk back when the funding was cut to be able to decide what facilities will we continue to regulate and which of those could we not regulate.

SENATOR TAYLOR: I guess the concern I have is, apparently, we now are going to regulate graywater standards on boats - oh I'm sorry, on some boats, not all boats, only boats that are above 250. Is that it?

COMMISSIONER BROWN: No, it will be vessels with overnight accommodations that carry over 50 passengers but ....

SENATOR TAYLOR: But that won't take effect for four years, will it?

COMMISSIONER BROWN: No, for the large ships it takes effect right away. For the smaller vessels, it would take effect in three years for the standards.

SENATOR TAYLOR: That's something I meant to ask you. When does this bill take effect? If we pass it tomorrow, when does it take effect?

COMMISSIONER BROWN: July 1.

SENATOR TAYLOR: There's no immediate effective date on this thing? We have a special session and we don't even have an immediate effective date?

COMMISSIONER BROWN: Well, if you pass it through this special session it will be in effect in time.

SENATOR TAYLOR: No, it would be in effect July 1, not immediately. Immediately would be June 8th or 9th, as soon as the Governor could sign it. It seemed to me he was pretty concerned about this because he said every day's delay in legislative action - these are the Governor's words - means up to 4.5 million gallons of pollution. Human waste and wastewater from kitchen sinks and laundries are dumped unregulated into Alaska's coastal waters. Are you guys recommending that - an immediate effective date to stop that 4.5 million that's going to get dumped in the water tomorrow or do you care?

COMMISSIONER BROWN: No, we're recommending the July 1 date.

SENATOR TAYLOR: That's not my question. The question is, do you recommend that this committee modify the bill to insert an immediate effective date so that the Governor can stop this quicker?

COMMISSIONER BROWN: It would certainly be fine if you want to move the effective date.

SENATOR TAYLOR: In fact, how many amendments have you suggested to the Chairman or to this committee, total?

COMMISSIONER BROWN: We offered a CS to you and I don't know what the total number of amendments were. There were a number of housekeeping and then the ones for the small operators.

MR. CONWAY: 13.

COMMISSIONER BROWN: 13.

SENATOR TAYLOR: Yes, I heard the number 13 Michele, but I didn't count them up to figure that out either.

COMMISSIONER BROWN: I hadn't counted them either.

CHAIRMAN COWDERY: Just to clarify that, that was 13 when we were here in the regular session. Is that right?

UNIDENTIFIED SPEAKER: Yes.

CHAIRMAN COWDERY: And there's been other amendments since then that have been proposed.

SENATOR WARD: From other people.

CHAIRMAN COWDERY: Yes.

MR. CONWAY: 13 based upon what passed the House.

COMMISSIONER BROWN: Yes, and I don't know that those were from - ours were the package that we gave to you.

CHAIRMAN COWDERY: Excuse me, Senator Taylor.

SENATOR TAYLOR: And apparently effective date - an immediate effective date was apparently another one that we should consider that the department endorses. The question, I guess, that I had was - this article just came out on June 5 and it was the Governor that wrote it and he says, now a handful of Senators continue to use irrelevant issues to try to divert attention from what the public demands. Is he referring to your 13 amendments because, you see, all his article talks about is passing [HB] 260 the way it came over from the House with no changes in it.

COMMISSIONER BROWN: No, I think what he was referring to - if [HB] 260 - it can be a better document with the changes we amended. If [HB] 260 were to pass this body, that would also be an acceptable outcome but the amendments actually do make it better, especially for the small operators. But I think what the Governor was referring to were issues that were raised earlier of the impact on the marine highway system and the fact that it might put the small operators out of business - that those issues really had been addressed through the amendment package.

SENATOR TAYLOR: I'm really confused. When we first got the bill, Mr. Chairman, we were told there was no impact on the marine highway system. Then two days before the legislature adjourned, we got a \$7.5 million fiscal note from the Department of Transportation saying that it would cost \$7.5 million to modify our ships. Is that another one of those irrelevant issues to divert attention or is that something of substance and import to the

Administration that they would like to have changed? I'm assuming we made those changes that the Administration asked for.

CHAIRMAN COWDERY: No we didn't.

SENATOR TAYLOR: Oh, those haven't been ....

CHAIRMAN COWDERY: We got handed them a couple of days just before we got the bill.

SENATOR TAYLOR: Has anybody ever found out whether or not it is a \$7 million fiscal note or \$20 million or zero?

CHAIRMAN COWDERY: We've got a lot of fiscal notes in front of us now.

SENATOR TAYLOR: Is that right? By DOT?

CHAIRMAN COWDERY: We have some from DOT.

MR. DON SMITH, Senate Transportation Committee Aide: It's on your desk.

CHAIRMAN COWDERY: You've got about four - three laying there in front of you.

SENATOR TAYLOR: \$10.5 million now. This must be - obviously John, the Governor needs to talk to somebody over at DOT and somebody in DEC because you keep coming up with these irrelevant \$10.5 million issues that we shouldn't be considering and we should have passed this bill in five days, at the end of the session. I'm a little confused by what the departments are bringing in here at the last minute. Maybe they're just trying to kill this bill in Finance.

SENATOR WARD: Michele - and thank you for answering my questions before [END OF TAPE 01-19, SIDE A].

**TAPE 01-19, SIDE B**

SENATOR WARD: ... meeting too, but from the tone of our last meeting, which I assume you watched, and a lot of people in this room and since have brought forth that there's not only the Alaska ferry system but communities, the fishing industry, small boats - there's a lot of people that some people feel aren't being held to the same standard. Assuming that this bill has passed, what thought has the Administration or you given to how we start addressing the rest of them? I think it is going to become painfully clear, especially if we start exempting our own ships

from this when they are not only [indisc.] alongside, but they are competing with the other ships. None of us want dirty water and pollution. So, what is the long term plan? Granted, I think that right now, at least in my mind, and we talked about communities and sewage and the city of Anchorage - you have a waiver to dump it in, Juneau having to rig their own testing in order to pass things and all of this stuff but what is the long term plan that we'll be able to address at the next regular session so that we can bring all of these entities into compliance if, in fact, we're going to bring this entity in?

Thank you, Mr. Chairman, and I know this is kind of a long question but that's kind of what this is all about right now because that was the hold up last time. It seemed like we were singling out one industry because it was politically correct to get them because it's, don't tax you, don't tax me, let's tax the fellow behind the tree and, sure enough, those boats aren't from here so who cares, and there's 5,000 people polluting us all at once so we can get them. If, in fact, this is a problem, how are we going to address all of the other ones, especially if we don't exempt the ferry system or the fishing industry. They are concerned and I don't know how you'd do that with people out here just fishing in a boat if they have to do what they have to do every day. Have at it.

COMMISSIONER BROWN: Senator Ward, through the Chair. Just to clarify - and I do appreciate the interest you shared, by the way, during this time in getting ready for the session and learning a lot about this, is - the marine highway systems were always covered in the bill so we never had any intention of exempting them. We do think that if other vessels similarly situated are doing their part to protect our waters, so should the marine highway system. On shore side facilities, they are under a very detailed permit program where we look at what's going in those facilities, how are they treating it, how are the operators trained. We constantly are checking on whether they're doing their job. They are self checking, whether they are doing their job. We look at what is coming out of the pipe, what's the nature of the receiving environment, how fast are the currents, how much mixing is there, what wildlife or resources are there, how sensitive are they. We look at all of those things and set standards that, we believe - and it's a very public process, standards that, if they meet those standards the waters will be protected. And then there's a rigorous compliance check and, yes, sometimes people don't do what they're supposed to and then there's an enforcement action. So, there is a rigorous climate for those kind of facilities.

When we initially started this inquiry, and we didn't do it because this is an out-of-state business, what really set it off in our

mind was two events. One is, just seeing year by year, more and more and larger and larger ships, but having no sense at all of how that waste was handled and those ships generate a lot more waste because of their size than a fishing vessel, even a large fishing vessel. And then there were the actions that were taken when they mixed up priority pollutants into their wastewater. So those things caused us to start looking at this and we didn't start with, okay, let's come regulate. What we started with, let's see what the facts are. Do we have a problem? If we don't have a problem, then maybe the systems that are in place are okay. What we found out is we did have a problem. We had a serious problem and then we set about, well how do we, in the future, figure out how to have better technology, better waste management practices? We did this with industry and with the public. And then, how do you verify compliance because long term compliance is what we want here. We initially, in the Governor's bill, proposed a permit system similar to what the shore side facilities have so we would really look at their operations, look what they're capable of doing - treatment at a reasonable cost, look at the receiving environment, look at the mixing and then offer them a number, an excellent number, that meets those conditions.

Although we never did the analysis, my best guess is the effluent number would have been higher by the time you do that analysis. The industry did not want to do that. They did not want to have that kind of scrutiny because they go from port to port, they didn't want to have any chance of somebody trying to tell them, gee, you ought to look at other equipment because they obviously can't change equipment as they go from one area to the next. They wanted to have more of what's called a performance standard - set the standard, they'll test against it, if they meet it, they're in compliance, if they don't, they have a violation. That was their preferred methodology and we, in working with them, said okay, if that's your preferred, it still will do the trick for us so we'll do it and that will give us the same assurance we have as with the shore side facilities but through very different means. One is where you do an analysis instead of a limit, and so it can be higher because you know it's safe or you set a safe number because you're not doing that analysis and you expect them to meet it and that was their preferred option so that's what came out in [HB] 260.

For fishing vessels, we have not looked at is there a problem with their MSDs in part because they don't carry that many people. For those of you who've been on them, they sure don't feed them the way they feed them on cruise ships so the waste volume is different. Where we do look at their MSDs is on processing vessels because if they are taking in water to deal with processing fish, you don't

want it to have been mixed with any waste that's coming out of the vessel so we do do checks with them there - our seafood inspectors do that. So, it's both a level of risk and a scale of risk that made us look at this particular industry. The other difference is, at least in my mind, a shore side facility providing waste treatment for a community is an absolutely essential public function. They have to do it for the residents who live there and you need to make sure that they can do it in a way that is protective but also affordable. That's different than a private enterprise that's using our water for their waste discharges.

SENATOR WARD: One quick follow-up. So that I clearly understand. Then, if in fact [HB] 260 is enacted, this bill, then your department would - and I think I do understand, I just came from the Kenai and I saw quite a few commercial fishing boats out there and I've also seen them out there for all of my life. That's not the same as a ship of 4-5,000 people dumping all at once. At some point, there's 4-5,000 boats so, at some point, does your department anticipate some kind of an analysis because I don't mind exempting onshore or fishing boats or any of those things if, in fact, they are not causing damage but just because it's easier to see the damage from 4-5,000 people huddled in one place, then it is from 4-5,000 people huddled in one place but on separate boats or living in a small community like Bethel, that doesn't make it any less into the pollution of the waters. I guess what I'm getting at is the harder question of what steps are you administratively going to take to bring into at least analysis to say we have done the proper thing by not addressing those fishing boats or Bethel at this time.

COMMISSIONER BROWN: Thank you Senator Ward, through the Chair. Right now we don't necessarily have any plans. We're looking at what was the highest risk that we saw. The large vessels were, of course, the highest risk. As we go through our clean water action plan, which is a way - Senator Leman's familiar with it - a way of assessing - it's trying to put our resources to our most critical water issues. That issue may very well come to the forefront if you have a very important watershed, like the Kenai River, and there are starting to be water quality impacts on there, then we will need to be looking at what are the sources of those and is there a way to address it and should that be handled through a permit, should that be handled by a performance standard, should it be handled by some other innovative way. All those things will be on the table so as we see where risks arise, then I do think it's proper, as you've raised, that we look at it, see if it's a problem and, if it is a problem, figure out a good way - good meaning a protective and reasonable way to address it.

SENATOR WARD: Thank you Mr. Chairman.

CHAIRMAN COWDERY: On that point, you keep saying what's affordable, what isn't. Who makes those decisions? Is it a deep pocket theory that you're working on? You know the - I know the coastal communities here, you talk about pollution, approximately 77,000 people that dump, at a very lower standard, waste into our waters. I think they dump something like 3.4 billion, is my calculation, 3.4 billion gallons a year into our clean waters and everything. With that, it seems to me anyway, and I know you made a statement in one of the things I've got here, something about me comparing shore side facilities with cruise ships was like comparing apples to broccoli, I think. My question was, how can you tell after it's digested whether it's apples or broccoli? That was my answer to that so it seems to me that we're all trying to get to the same goal but I'm just a little concerned when you talk about what's affordable. You know, we all want that and clean water and things are expensive as the cruise ships can tell you but it seems to me with the money it brings in, say for Juneau - I don't know how many are in here today - we don't even have a dump site that they can unload their sewage. Of all the money that comes in, why doesn't Juneau, or some of the communities, at least try to accommodate some of their problems? That's more of a statement. I don't know if you want to answer it or not, that's fine. Senator Elton's next.

COMMISSIONER BROWN: Just one point, if I may, Mr. Chairman, is we did - in talking in the industry about better waste practices, we did look at the idea of shore side dumping. I don't want to speak for them and I'm sure they'll testify in due time, but it was their preference to look at onboard treatment because that way they can treat well wherever they go.

CHAIRMAN COWDERY: Just the large ones you're talking about, not the ferries or the smaller ones?

COMMISSIONER BROWN: The large ones. I think the small operators are also aggressively looking at better treatment options. I think while Mike may want to address the apples and broccolis, but what we were talking about - yes, it's all wastewater going into the marine environment so, to that extent, it's wastewater and that's in common. But what we're talking about is how that waste is managed and the level of confidence that we have that it's safe. On the shore side facilities, because of the aggressive program we have, we believe that it's safe and that they can discharge that. When I talk about affordability, it's that kind of analysis that we go through with them of, let's say, it cost \$100 million to meet the strictest water quality standards but for \$10 million, they can

get 90 percent of the way there, so is it really worth the other \$90 million if you know that the receiving environment has good mixing, there's no critters that would be negatively impacted, it would disperse - if you have a mixing zone of 100 feet and then at the end of the 100 feet, they will meet the water quality standards? That's when I talk about - you look at the amount of improvement for the amount of cost and figure out a way to get them into compliance without causing any harm.

CHAIRMAN COWDERY: You mean there's no critters in these mixing zones?

COMMISSIONER BROWN: Critters that will not be harmed.

CHAIRMAN COWDERY: I guess they need nutrients too.

SENATOR ELTON: Two things, thanks Mr. Chair, and I'm sorry the member who raised the issue isn't here. I think it's unfair to criticize the different fiscal notes....

CHAIRMAN COWDERY: He'll be back shortly if you want to wait.

SENATOR ELTON: If you want to re-recognize me or maybe we can just pass it on again. It just seems unfair to me to criticize the fiscal notes when the bills before both bodies have had several different iterations and, in fact, the most recent fiscal note from the Department of Transportation for \$10.5 is for a bill that they first saw late yesterday afternoon. I don't think it's fair to criticize somebody for having different fiscal notes when we've had different iterations of the issue in front of us. The second thing is, the Commissioner spoke to this but I think it's important to make sure that everybody understands. When you talk about developing standards with other industries, you were talking about industries like mining, timber, fishing, a host of other industries. You were talking about communities that you developed standards with and for, to protect public health and safety. You right now don't have the ability to develop any standards at all for this one industry, the cruise ship industry. Is that correct?

COMMISSIONER BROWN: That is correct.

SENATOR ELTON: Under this bill, the provisions of this bill, these provisions, and I'll speak specifically to the 200 colonies per 100 milliliters and 150 total suspended solids, those are numbers that the industry has told you and has told the legislature that they're comfortable with. Is that correct?

COMMISSIONER BROWN: Yes, that's correct.

SENATOR ELTON: Just to follow up on this point. It's also correct that the standards that we will now - if this bill passes, the standards that we will now apply to the cruise ship industry are still - they don't give you the kind of leverage on this industry as the leverage that you can now exert over the mining, fishing, timber industries or individual communities.

COMMISSIONER BROWN: Thank you. This is the only large industry that we have no authority whatsoever to manage the waste that's coming from them.

MR. CONWAY: I was just - through permits, that's the key when you're talking about all of the other people there's a permitting process, they get a permit and that becomes the tool for the compliance agreements that you mentioned before. I was just whispering to her - through the permits, that's how we have that.

SENATOR ELTON: And, in fact, you can revoke those permits but because we're adopting legislation that does not have permitting authority for you, you have no ability to revoke permits for this industry?

COMMISSIONER BROWN: No, we cannot, but we can cite them for violations of the performance standard.

SENATOR ELTON: And those would be civil - they would be satisfied?

COMMISSIONER BROWN: The bill has both civil and criminal penalties.

SENATOR ELTON: Thanks Mr. Chairman.

CHAIRMAN COWDERY: Senator Ward.

SENATOR WARD: So, if I may, then not having authority over the cruise ships - [HB] 260 giving you authority over it, that is the emergency that has brought us all down here today. Is that correct?

COMMISSIONER BROWN: That is correct. We need to have some state authority to ensure that our standards for safe air and water are met with this industry that currently does not have an obligation to meet our standards.

SENATOR WARD: And, right now, we don't have a clear authority without this permitting process to do that so that is why we're here. I need to know. I've had a lot of people that - and maybe

because I'm from the Kenai and Anchorage, but there's a lot of people wondering why we're spending this amount of money on something that they maybe didn't see as a big problem. It's very real what I'm saying right now. Not everybody is as excited as 83 people in this room and most of them are being paid to be here. This is the emergency then, so that we can now have authority over them to make them - and they are self-complying but make sure that they comply. Is that correct?

SENATOR WARD: Okay. Thank you Mr. Chairman.

CHAIRMAN COWDERY: One other question and then maybe we've got some other witnesses. Under Alaska statute 40.030.040, it directs the department to formulate and annually review and revise a statewide environmental plan. What provisions does your plan make for the growing passenger cruise ship industry? In other words, what provisions does your plan have for this growing passenger cruise ship industry and how does your environmental plan address the other sources of pollution in Southeast waters, you know, like in Juneau and all of the coastal communities? Do you have a plan?

COMMISSIONER BROWN: For many years the department - it's been as long as I can remember and that's been back since about the late '80s, the department has used our agreement with EPA as to the federal monies we will get from them because the bulk of our budget is federal dollars and what that money will be allocated for to be our environmental plan. We have not done a separate one from that document.

CHAIRMAN COWDERY: So you have really not, in this Administration, updated any plans. Is that what you're saying?

COMMISSIONER BROWN: Well we update our plan with EPA and that is put out for public notice and because that is the bulk of our funding that explains what we will be working on and so that has been in effect as our plan and that gets re-noticed and reviewed every - it's now every two years. It was every year.

CHAIRMAN COWDERY: Well the way I understand, this is Alaska statute, not EPA or federal, so you're not conforming to the Alaska statute. Is that right?

COMMISSIONER BROWN: We do not do a separate plan because our planners, the people who were in the department as planners are long gone from budget cutting. What we do to comply with that statute is where we have to make agreements on how monies will be expended, either through our budget or through this agreement with EPA that outlines the activities that we will undertake, which is

essentially the plan for the next year's performance.

CHAIRMAN COWDERY: You've proposed that we empower you to deal with the smaller cruise ships by regulation. That's what you're proposing. But [indisc.] propose to base them on, not in writing, I mean you're basing them on some federal statute that - we have federal laws - maybe I'm out of here but it seems like the Murkowski bill addresses what we're trying to do and there's a lot of duplication here, it seems to me.

COMMISSIONER BROWN: The Murkowski bill does take an excellent first step and the Coast Guard, I agree with you, does an outstanding job but it doesn't set our own state requirements. It doesn't give us the independent authority. There's no other area that I know of where we just turn things over in the environmental arena to the federal government. In fact, when they try to step in over our actions we take great offense at that. We have a dual system - all the environmental laws have federal, state, often local, and Native aspects to them. With the Coast Guard, we currently regulate together the TAPS crude carriers, the non-crude carriers. There's a lot of areas where we have overlapping jurisdiction because there are different interests and we do it in a way that avoids duplication so we have a long history of doing that.

CHAIRMAN COWDERY: Speaking of duplication and the time that we're getting, are there any more questions of DEC or comments? We have people on line waiting. Thank you. I'm trying to get through this in a timely manner. We've got other matters to go and we also have here from - Mike Harcourt - are you online?

SENATOR WARD: He's here.

CHAIRMAN COWDERY: Oh, he's here? Okay, Mike? I'm sorry, please come forward and identify yourself, who you represent and give us a brief - I hope you can do it in a short time.

MR. MIKE HARCOURT, OCEANS BLUE FOUNDATION: Well, Mr. Chair and Senators, members of the Senate Transportation Committee, I'm delighted to be here as a neighbor from Canada, as the past Premiere of British Columbia and mayor of Vancouver for three terms, and I want to thank you for being able to be here to talk with you about the most magnificent coastal area in the world that we share. I want to, first of all, reinforce what I think we all recognize, which is the importance of the cruise industry to British Columbia and Alaska. So, if you'll permit me, I'll just briefly expand on the fact that from Vancouver and British Columbia's part, we appreciate the one million people a year that

are now coming through our facilities. It's about a \$500 million plus impact on our economy in British Columbia. Those are in Canadian dollarets, not American dollars. The importance of that activity is recognized by a variety of our authorities.

I happen to be a member here today for the Oceans Blue Foundation, which is a very significant foundation, a charity, dealing with environmental issues that was created by the tourism industry itself. It is out of the business community in British Columbia's concern about being successful economically and also being good stewards, in terms of environmental issues. I also am a member of the Vancouver Port Authority board of directors and a member of our airport authority board of directors where we are investing substantial sums of money to accommodate the growth in the cruise industry that we see. \$89 million has been invested as we speak on an expansion of our cruise facilities that will be ready for the 2003 cruise season. At the airport we have invested over \$1 billion in new runways, new international facilities, domestic facilities and another \$1 billion will be invested in upgrading the airport to accommodate the growth that we see - a lot of that around the cruise industry. We're looking at \$1.5 billion light, rapid transit system from the airport to the downtown. A lot of that will be to accommodate our visitors who are coming in aboard the cruise ships that we see now and we think there will be further expansion into the future. I just wanted to reinforce what we think is a very important industry to us as good neighbors in British Columbia and Alaska. Having said that, I want to let you know about the Oceans Blue Foundation's support for the legislation that you're looking at and to tell you about a complementary program that we are looking at introducing with the industry of a stewardship program - a certification program.

CHAIRMAN COWDERY: Senator Ward.

SENATOR WARD: Just so that I know, and thank you very much for coming up on this issue. What is the graywater standard for your community for cruise ships?

MR. HARCOURT: Well that's why I'm here. We do not have legislation yet. One of the points that I was going to make is we welcome in British Columbia the pioneering work that you are doing. I'm introducing some legislation because I think it's going to be important that we cooperate on this. We have similar approaches in British Columbia and Washington. So that was going to be, through you Mr. Chair, Senator, one of the points I was going to make is that we see what you're doing as very important so that we can have similar standards for cruise ships, not just in Alaska but also in British Columbia and I would say Washington state as well.

SENATOR WARD: Just one follow-up. Do you intend on doing just cruise ships or will you do your communities also under the same standards?

MR. HARCOURT: We have legislation for sewage treatment, if you're talking about ....

SENATOR WARD: I'm talking about onshore communities, as well as fishing fleets and smaller boats.

MR. HARCOURT: I think that's a very good issue and I heard you raise that, Senator, and I think the question of other vessels is something that we're going to have to come to grips with as neighbors. For example, I think there is somewhere around 250,000 recreational boats in Puget Sound, the Strait of Georgia, and Alaskan waters. The issue of treatment facilities for those boats I think is one that we should address.

SENATOR WARD: Thank you Mr. Chairman.

CHAIRMAN COWDERY: And while you're on the subject about the economic thing, a concern that I have is the - Boeing in Seattle thing. Alaska is unique, but I always like to attract dollars to Alaska so I was always concerned that we get the regulations to the point where they say - something like Boeing did. That is just a comment more than anything. I don't know if you have any response to that.

MR. HARCOURT: Well that's why I think it's important that we cooperate on similar standards, Mr. Chair. That's the interest that we have in British Columbia, particularly with the Oceans Blue Foundation, of trying to not have different regimes in different jurisdictions, recognizing the importance of this industry to our various communities. I'm here to say that we welcome what you are doing. We congratulate you on the leadership that you're showing. It's of interest to us to cooperate with you and we look forward to a continuing dialog on the issue of standards for cruise ships. Now, as well, and I'm going to table with you, the Oceans Blue Foundation, as I said, which is an environmental charity that was formed by the business community itself to deal with this issue and we are entering into a certification program with the industry to reward those cruise ship lines that adopt the best standards so the consumers can see that there are shipping lines who are attempting to take onboard the best technology for dealing with wastewater, for dealing with discharges, for dealing with air pollution issues, the impact on local communities, and so that will be a voluntary program between Oceans Blue Foundation, which exists both in Canada

and the United States, to work with the industry. I'll leave this with you rather than getting into details and I am really here not to advise you on the arcane details of the various bills that are before you but simply in conclusion to say that we welcome what you're doing. We'd like to cooperate and to see this industry become even more successful.

CHAIRMAN COWDERY: Thank you. Senator Taylor.

SENATOR TAYLOR: I just wanted to thank Mike for his comments and it's wonderful to see you again, it's been sometime and, to note for the record, the many leadership positions that he's held in the British Columbia government and the great efforts that he personally has made to work with our state over the years. He and I go back some period of time. It's good to see you old friend and I applaud you for coming forward on this because the very same vessels that we're attempting to regulate are literally based out of Vancouver, most of them, and operating out of your major city. I know that your B.C. fishermen on the coast, many of whom are friends, and I've talked with them at length about this, they're just as concerned as the fishermen in my district are about the quality of our waters, that our products live and ranch and farm and grow in. I think Senator Ward's question was very good and I know how strongly you personally have worked to try to get Victoria as an example to quit pumping sewage raw into the Pacific and to work on Vancouver and Vancouver's now done a great deal to clean up their own waste stream flows. The man sitting here has had a lot to do with that and I applaud you for that. I thank you for taking your time to come up here and join with us in this effort. As we work toward that effort, I hope we can come up with a standard that is uniform throughout the entire coastal regions of the North American continent so that a vessel complying in one community knows that it is in compliance in another so that each of us have the same level of security about purities of water that you and I have talked about in the past. Again, thank you for coming forward.

MR. HARCOURT: Through you, Mr. Chair, Senator Taylor I appreciate seeing you again too. We'll look at that road further.

CHAIRMAN COWDERY: I'm purposely not - we have Randy Roy here - Ray, I'm sorry. I see we have cruise industry people. I have talked with them and, in the interest of time, unless they have something drastically to add to this, they've given me indications that they support this bill. So with that ....

MR. RANDY RAY, United States Cruise Ship Association: I do have one amendment that I - we're down from 12 to one so I think we've

made a lot of progress. First of all, Randy Ray, United States Cruise Ship Association. I want to thank the committee for the work on the legislation and particularly the concern the committee has shown for the small cruise ships. We can tell a lot of work's been put into this, particularly by you Senator Cowdery. I want to thank you for putting this in while your wife's been undergoing treatment and there's been some technical changes on it we think that are improving the bill and I think we have to thank Senator Lemman for some of those efforts as well and we'd like to do that. As we testified at the last hearing, while the original House version exempted our types of vessels for three years, once we were put back into the bill, essentially we would have been kicked out of the state because we can't meet the House version after three years. We presented a number of amendments to you at that point in time and, again, you have perfected those amendments and now included those in the bill and so your version fixes almost all of our problems.

There is one issue that you did miss that we would like to - that appears to be inadvertent and we'd like to present to you and that has to do with the fees on the bill. Since we are exempted from the regulatory scheme of the bill for three years, since we are doing our own monitoring and test and we're just reporting that to DEC, we are not really using DEC's services and we could use the money to try and figure out how we're going to meet these standards once the three years are up. One of the things I described to you is the new technology that's available to the large cruise ships is not available to the small cruise ships. The manufacturers are not making those for our size. We've talked to them and so, besides having to buy new technology, we may actually have to go pay to have it designed and built and so that's when our expenses are going to be much higher and so we've presented an amendment to the committee, which is on your desk, that would, on page 17, line 19, add 'and 46.03.480' which is the fee section. So we'd ask you to adopt that and we'd like to close on a note and that is that we're all here to protect, the Alaska environment, which is our top priority, but as we move forward on this legislation what you are doing here is literally creating the model for the rest of the planet. I think we just had British Columbia here. I know that Hawaii now is looking at what you're going to do. California and Washington will soon follow and so the piece of legislation that you pass through this legislature, this weekend, is going to set the precedent for the planet and that's why we appreciate your perfecting the bill.

CHAIRMAN COWDERY: Thank you. We have, and I'm sorry, John Palmes? Is he in the ....

SENATOR ELTON: Excuse me - before we allow the U.S. flag vessel - just a short question. I think that some of us may understand the special problems that accrue to the smaller vessels, and you alluded to them. It would be helpful if you could articulate what some of those problems are - size of the vessel and some of the other technology issues that the U.S. flagships have.

MR. RAY: In the original HB 260, it says that one cannot discharge unless one is at least a mile from port and is underway. We simply do not have a holding capacity in our tanks. We might be able to hold our black water for eight hours but we are in port for 12 to 14 hours so all of a sudden we'd have stuff coming back up the system. Many of our graywater pipes do not at all have - once you turn the shower on it just goes directly over the side. The other thing we've determined with our MSDs, which is the old technology we're currently using, they work better if we run them 24 hours a day. We're more likely to meet the standard of 200 if we can run them 24 hours a day. If we have to shut them down while we're in port and start them back up, we're probably guaranteed to violate the 200 limit and then be subject to large fines. So, we are currently stuck with the old technology.

As I said, the new vessels, as you've seen, the large cruise ships have been moving on with some great new technology. We've met with those manufacturers. They don't make those for our size vessel. We just - they don't fit and so we don't know whether they're going to or not. We've asked them and their answer currently is no, we're not designing them for your ships. So the discharge, the holding capacity, are a number of things that we have to do. On the graywater, we've got systems that - as it comes over the side, we don't have holding capacity. We looked at one of our ships putting on 500 gallons for firefighting protection. We would have had to lengthen the entire ship 20 feet. That's a million dollar project so, to have a 4,000 gallon holding tank for graywater, black water, which means basically we'd have to scrap the entire U.S. fleet and start all over.

And, so we have got some major technical problems that we cannot meet under the old [HB] 260. Now we're exempt for three years under the House version of [HB] 260 but once we're thrown back into in, that's when we have the problem. Your bill that you've got here in front of us, perfects all that stuff now and so we would just like to ask you to consider that one last amendment.

CHAIRMAN COWDERY: Thank you.

SENATOR TAYLOR: I offer that amendment.

CHAIRMAN COWDERY: Is there any objection? You make note and we will - if there's no objection?

SENATOR ELTON: Object, just for the purpose of asking the Administration if they see any problems with the additional language. Thanks Mr. Chairman.

[COMMISSIONER BROWN nodded in support of the amendment.]

SENATOR TAYLOR: I just wanted to make sure this was not one of those irrelevant issues? Okay.

SENATOR WILKEN: I have a question.

CHAIRMAN COWDERY: Yes.

SENATOR WILKEN: Mr. Ray, when you came to us 9 a.m. on Sunday before we adjourned, you had a single sheet of paper that showed a list of ships that you said to us that 80 percent of that list wouldn't be able to ply Alaskan waters under [HB] 260.

MR. RAY: Yes.

SENATOR WILKEN: I wish in the last month, as I've tried to explain to people why I am here, I had that handout in front of me. Could I have another copy of that please?

MR. RAY: I don't have it with me but I will get you one of those by tomorrow.

SENATOR WILKEN: I'd very much like to have that.

SENATOR ELTON: You can stop by my office and get a copy.

MR. RAY: Thank you.

CHAIRMAN COWDERY: And the last person that I've got here scheduled is John Palmes. If he would come forward and identify himself and his affiliation and background.

MR. JOHN PALMES: I have no affiliation right now.

CHAIRMAN COWDERY: And if we could keep this to five minutes we've got other things.

MR. PALMES: I'll do my best. I'm a retired habitat biologist. I began my career with the Department of Fish and Game in 1971. I also have worked with the Governor's Division of Policy Development

and Planning, coordinating state reviews of permits and environmental impact statements, oil and gas leasing documents, and a lot of people who think that they're my friends aren't going to want to hear what I have to say. As a habitat biologist, I soon learned that conservationists don't support you if you allow any trees to be cut. The loggers don't like you if you won't let them cut all the trees, and when the legislature routinely threatens to cut your budget to zero, everyone you work with just wants you to keep your mouth shut. They're afraid your opinion is going to cause the loss of their job, so as a result of budget-cutting paranoia, I decided to become a retired biologist.

I'm here because as a citizen I'm concerned that we're avoiding our biggest problems like subsistence and alcohol related crime and violence while we focus on trivial issues and politically vulnerable targets. I'm also a boater and a commercial fisherman and I'm concerned that most boaters and Alaskan communities cannot meet the standards proposed for the tour industry. In fact, most of us have been outlaws for years as a result of the Clean Water Act passage. I'm concerned that we create and perpetuate a system of laws that can't be applied uniformly or rationally. I'm even more concerned that we will then decide to enforce against one group or another, based on how politically correct or how easy it is to cite and convict them. As a biologist I'm most concerned that everybody's talking buzz words rather than using their heads to estimate the potential impacts of tour boat sewage. The tour boats don't dump pollution. It is very important to realize that sewage is just food that's been digested and that fecal coliform bacteria, with a few rare exceptions, are harmless. Sewage and graywater are not pollution and the materials discharged are not pollutants unless they cause some kind of damage or nuisance.

For three decades or more, sewage has been discharged into the donut holes and no effects have been noted or even suggested. When the tour boats flushed out their holding tanks in the donut holes, it was perfectly legal to do it. In fact, it's likely that lobbyists for the tour companies worked hard to see that the federal Clean Water Act had some little loopholes in it - or donut holes in it - some convenient place to get rid of their sewage. I think a lot of people have known about these donut holes and the fact that you could discharge in them for a long time.

Some people have said that if you wait until sewage becomes a problem before you do something about it, then you lose the war but vigilance has its price. A little application of what we already know about sewage and the ecosystem leads to the conclusion that all this concern about sewage in the donut holes is just an exercise in political correctness. We'd all like to believe that

Alaskan waters are pristine but most of us discharge our own sewage into it. Tour boat sewage could be a problem if it caused so much growth that oxygen became depleted in the affected waters. However, given the amount of sewage that tour boats could discharge, and the high mixing rate and oxygen content of the receiving waters, this affect is unlikely. However, we know that sewage has to have some effect and I guess that the effects were trivial and unmeasurable, but let's assume that enough sewage was discharged to cause some significant environmental change. Sewage isn't toxic, it's just digested food. It's a great fertilizer. Sewage is rich in amino nitrogen compounds and Alaskan ecosystems are relatively poor in these nutrients. Depletion of nitrogen in mid-summer in ocean ecosystems can temporarily reduce their productivity. If the discharges were large enough to cause significant environmental change, and no undesirable changes were noted, the nutrients in the sewage must have contributed significantly to the productivity and biomass as a system. Instead of damaging the ecosystem, it's more likely that sewage in the donut holes provided a valuable input of nitrogen at a time when it was most scarce, thus allowing the system to support a greater biomass and increasing the productivity and fecundity of the endangered humpback whale.

When the U.S. Park Service began to study humpback whales in Glacier Bay, their first problem was to find the whales. It seems that they spend more time about Point Adolphus feeding than they do in the Bay. It's possible that the tour boat sewage and the large donut hole just a couple of miles east of Point Adolphus is what makes the area so productive and so attractive to whales. Frederick Sound also has a large donut hole and it's another area that supports large concentrations of endangered whales. Therefore, if you're worried about the effects of what you believe might have been tremendous quantities of sewage, then you should move quickly to resume discharge of sewage into the donut holes so the ecosystem, which supports the endangered humpback whale, is not deprived of a valuable source of nutrients. Maybe it's best not to wait for something to become a problem before you act to head it off but it's not prudent to ignore real problems while you try to watch out for everything that might be one, particularly when the Coast Guard and EPA are already doing the job. Furthermore, if you can't tell the difference between a potential hazard and a potential benefit, you really do have a problem. You better be able to prove or disprove the hypothesis that this is really a great thing that's been going on.

In the case of sewage, we have problems but they're not in the donut holes. They're in villages and small towns where sewage runs in the street. I'm concerned that we have real problems with

alcohol and with subsistence management of fish and game but we won't deal with them. The state's interest in clean water is not the same as the federal government's. Alaskans, fishermen, small towns, canneries, logging camps break the existing federal laws on sewage and garbage every day. It's a crime to piss in the ocean. I suggest that the state would make better and more perfect use of its resources if it let the Coast Guard and EPA do the work while we monitor the thoroughness and effectiveness of the federal agencies. We're only 600,000 people and our revenues are declining. We need to be vigilant but we don't have to take on the work if someone else is already doing it, and especially if the risks of doing nothing are trivial.

Look at the affect of the federal legislation anyway. Notice that the donut holes are three miles offshore and that tour boats will still be allowed to discharge at three miles from our coast, just not in a donut hole. That means that places like Cross Sound, Dixon Entrance and Salisbury Sound will become the new discharge locations. Why don't we have the same concerns for those places? Finally, we should note that treatment with chlorine is one of the ways that coliform counts are reduced in sewage and graywater. Chlorine is deadly poisonous and it poses a great risk on a ship if it's stored as a gas because if it gets lose it can kill somebody. Chlorine also combines with organic compounds to produce substances that tend to cause cancer. Although I'm personally not worried about it, those that are concerned with the release of potential carcinogens need to understand that it might be better to discharge more bacteria and treat the sewage less.

In summary, if the discharge of sewage into the donut holes were significant, and it's more likely that such discharges were beneficial and they should be resumed in order to ensure the well being of the endangered humpback whale. Federal pollution laws also make most rural Alaskans outlaws. The state's role should be to oversee the pollution control efforts of the federal agencies and to intercede for the public ... .[END OF TAPE]

**TAPE 01-20, SIDE A**

MR. PALMES: ... more money if we deal with the head end of the regulatory animal rather than the sewage producing end of the critter. Thanks for the opportunity to provide a different perspective on this not very critical environmental issue.

CHAIRMAN COWDERY: Could we have a copy of your statement for the record?

MR. PALMES: Yes.

CHAIRMAN COWDERY: I appreciate that and you can give it to my staff. What's the will of the committee?

SENATOR WARD: Mr. Chairman, I move SCS CSHB 260(TRA), Version R, with the accompanying notes out of committee with individual recommendations.

SENATOR ELTON: I object.

SENATOR WARD: Question.

SENATOR TAYLOR: There was objection, I think.

SENATOR ELTON: I object. I object for the purpose of a couple of amendments, Mr. Chair.

SENATOR WARD: I have a motion before us.

CHAIRMAN COWDERY: Let's vote on the motion and then ....

SENATOR TAYLOR: That's the only question I had, too. I had brought that one amendment and wondered if you wanted to do that.

CHAIRMAN COWDERY: Oh yes. That's right. Staff will put that in. What's the procedure?

SENATOR WARD: Mr. Chairman, I withdraw my motion and I would move Amendment 1 as identified by me to the committee substitute and ask unanimous consent.

[AMENDMENT 1 reads as follows:

Page 17, line 9, after "d" insert "and 46.03.480"]

CHAIRMAN COWDERY: Is there any objection? Hearing none ....

SENATOR WARD: Mr. Chairman I would move SCS CSHB 260(TRA) out of committee with individual recommendations, Version R, with accompanying notes.

SENATOR ELTON: Mr. Chairman, we can do this in a way that may be appropriate ....

CHAIRMAN COWDERY: Is there objection?

SENATOR ELTON: ... and we can do it in a way that allows only one person to make an amendment to this bill. I mean it's up to you, the Chair.

SENATOR WARD: Is there no objection?

CHAIRMAN COWDERY: We have a motion on the floor. Is there objection?

SENATOR ELTON: I object.

CHAIRMAN COWDERY: Roll call vote please.

[A roll call vote was taken. Senators Ward, Taylor, Wilken and Cowdery voted in favor, Senator Elton voted against.]

CHAIRMAN COWDERY: So the bill moves to the next committee of referral. Anyway, if there's nothing more to come, I'm glad to get rid of this one. We're adjourned.

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