

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 7, 2007

1:02 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Co-Chair  
Representative Craig Johnson, Co-Chair  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Bryce Edgmon  
Representative David Guttenberg

**MEMBERS ABSENT**

Representative Vic Kohring  
Representative Bob Roses  
Representative Scott Kawasaki

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S)

Commissioner, Department of Environmental Conservation

ACTING COMMISSIONER LARRY HARTIG - Anchorage

- CONFIRMATION(S) ADVANCED

PRESENTATION: ALASKA GASLINE PORT AUTHORITY

- PRESENTATION CANCELED

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

ACTING COMMISSIONER HARTIG, Acting Commissioner  
Department of Environmental Conservation  
Juneau, Alaska

POSITION STATEMENT: Testified as the appointed commissioner of  
the Department of Environmental Conservation.

**ACTION NARRATIVE**

**CO-CHAIR CRAIG JOHNSON** called the House Resources Standing Committee meeting to order at [1:02:28 PM](#). Representatives Johnson, Gatto, and Wilson were present at the call to order. Representatives Seaton, Edgmon, and Guttenberg arrived as the meeting was in progress.

CONFIRMATION HEARING: COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION - ACTING COMMISSIONER HARTIG

[1:02:40 PM](#)

CO-CHAIR JOHNSON announced that the only order of business would be the confirmation hearing of the commissioner of the Department of Environmental Conservation (DEC). Co-Chair Johnson began the hearing by asking Acting Commissioner Hartig why he's interested in being the commissioner of DEC.

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ACTING COMMISSIONER HARTIG, Acting Commissioner, Department of Environmental Conservation, related that he hadn't expected this appointment, but when the opportunity arose there was no problem deciding to accept the appointment. He explained that for many years he has worked on environmental issues around the state, which he has enjoyed. He mentioned that he has also enjoyed working with the scientists, engineers, and other staff at DEC. He characterized DEC as an interesting department with an interesting and rewarding time ahead with the gas pipeline and other issues on the forefront. Furthermore, Acting Commissioner Hartig opined that Governor Palin is bringing new ideas to government, such as open government and government closer to the people.

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REPRESENTATIVE WILSON, referring to Acting Commissioner Hartig's work experience in environmental and natural resource matters, inquired as to whether he specialized in any area.

ACTING COMMISSIONER HARTIG related that as an attorney in private practice in Anchorage for 23 years, he worked on a variety of environmental issues. He specified that initially in his private practice he focused on contaminated site issues and his clients included the Public Employees' Retirement System (PERS) and Teachers' Retirement System (TRS). He recalled that he worked on situations that arose after the change in law

requiring businesses to upgrade or close out underground storage tanks. He further recalled performing a lot of investigative work regarding whether property was contaminated and how to allocate responsibility when it was contaminated. However, for the last 10 years, he said that he has been more focused on natural resource development in which he assisted those seeking permits for mines, oil and gas operations, and resource development and assisted them with environmental compliance.

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CO-CHAIR GATTO reminded everyone of the cruise ship tax that includes a \$4 tax for the ocean ranger program, which is operated under DEC. He inquired as to how that \$4 would be used by DEC. He further inquired as to how the ocean ranger program will be set up to monitor environmental conditions on the cruise ships.

ACTING COMMISSIONER HARTIG said that the department has had some difficulty and has approached the sponsors regarding the clear goals of the program in order to comply with the law. However, he said the department isn't sure that the sponsors of the initiative fully understood the logistical and practical concerns that would arise when trying to achieve the initiative's goal and whether the initiative is the best way to actually achieve the goal. He acknowledged that the legislature is also reviewing and debating whether there should be amendments to the initiative. Therefore, he said he has asked the department to review the initiative, what it requires, and what DEC can best do to implement the aforementioned when the first large cruise ships arrive. The department is also planning to track what the legislature is doing in terms of amending the initiative and anticipate what may need to be in place in response. If logistics are an obstacle, he said the department will do the best it can and provide an explanation as to why it doesn't have a program that provides everything specified on the first day. With the aforementioned in mind, it's difficult to specify how the funds will be used. Acting Commissioner Hartig stated that it's DEC's intent to implement the law as fully as possible, once the department is sure of what the law is.

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CO-CHAIR GATTO pointed out that an average ship with 2,000 passengers would generate \$8,000/week to implement the ocean ranger program. He related his understanding that an ocean

ranger needs to be certified by DEC rather than the U.S. Coast Guard.

MR. HARTIG related his understanding that the initiative requires a U.S. Coast Guard-certified marine engineer, although that's not the person who would need to perform the work contemplated by the initiative. One of the problems is that [U.S. Coast Guard-certified marine engineers] aren't readily available in Alaska and aren't necessary to do the specified job. A U.S. Coast Guard-certified marine engineer is more experienced and trained on the propulsion system for the boat versus air emissions. Therefore, using a U.S. Coast Guard-certified marine engineer would require a fair amount of training for someone who may not be the best person for the job. Furthermore, there are logistical concerns with regard to an ocean ranger's interaction with other people on the boat so that there is no disruption for the crew or passengers. Moreover, there are safety concerns.

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CO-CHAIR GATTO suggested that Acting Commissioner Hartig put out a request for proposals (RFP) for an entity that can provide training and supply the personnel for the specified training.

ACTING COMMISSIONER HARTIG answered that such has been done to a degree when the department had a consultant, who was a former DEC employee and U.S. Coast Guard member, review what the initiative appeared to require and how the logistical concerns would be addressed. The aforementioned knowledge is necessary before the department can put out a contract. However, the department recognizes that the initiative is in flux and could be amended. If there is no amendment to the initiative, he opined that it will be an accelerated situation in which people who could be trained would be placed on the cruise ships immediately and others would follow.

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REPRESENTATIVE GUTTENBERG requested that Acting Commissioner Hartig describe what he believes to be the function and responsibilities of the ocean rangers.

ACTING COMMISSIONER HARTIG emphasized that the department will start with what the law is, adding that this position isn't the creation of DEC. He then related his basic understanding that the initiative sponsors want there to be a watch dog on the

cruise ships to track what is being done on the cruise ships. The initiative sponsors are concerned, he opined, that there is no one really tracking what the cruise ships do while in Alaska waters; the sponsors want to know that there is compliance with state environmental laws and provide a manner in which to track that. The department is attempting to determine the full gamut of compliance issues and how one person can track all of those.

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REPRESENTATIVE SEATON asked if the department has considered using "able-bodied seamen" rather than a "marine engineer" since [the department will provide] training.

ACTING COMMISSIONER HARTIG said that the department doesn't believe a marine engineer is necessary, and noted his agreement that there are other qualified people who would be easier to find and perhaps even less expensive and able to do a better job. He noted that whether an able-bodied seaman or a marine engineer is used, a fair amount of training would be required.

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REPRESENTATIVE SEATON asked if any thought has been given to using an individual other than an individual licensed by the U.S. Coast Guard.

ACTING COMMISSIONER HARTIG answered, "Not that I'm aware of." He reiterated that the department would track the requirements of the initiative or any amendment passed by the legislature.

CO-CHAIR JOHNSON highlighted that the initiative calls for a licensed Coast Guard marine engineer. However, he remarked that he wasn't sure such an individual existed.

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CO-CHAIR GATTO related his understanding that the U.S. Coast Guard's main contribution is to ensure that whoever fills the position is licensed. If the individual is licensed, "the Coast Guard is now out of it and that person now has an obligation to you and the rest of us here," he said. Co-Chair Gatto said he envisioned that person would read dials and record any discrepancies, which would be brought to the attention of the environmental engineer on board to certify, verify, or explain. He asked if such monitoring requires a marine engineer.

ACTING COMMISSIONER HARTIG responded, "I don't believe so." He noted that the [department] performs inspections throughout the state of a wide variety of facilities and the department doesn't have (indisc.) in those instances.

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CO-CHAIR GATTO returned to the cost of \$8,000 a day. He opined that it isn't necessary to [monitor] this daily because much of the information is automatically recorded. Therefore, Co-Chair Gatto related his belief that this [monitoring] could be performed for \$1,000 a day. He then asked what the \$8,000 will be utilized for and could the program cost more than that a day.

ACTING COMMISSIONER HARTIG said that he doesn't have the exact figures on the budget, but offered to provide those. He noted that the [estimates/program] is scaled back from the initial point at which the [monitoring] had to be performed 24 hours a day every day. The department doesn't believe that such monitoring is necessary to verify environmental compliance.

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CO-CHAIR GATTO pointed out that the cruise ships will be coming in a little over two months and are coming [whether the ocean ranger program is ready or not].

ACTING COMMISSIONER HARTIG said that has been a concern for him, which has resulted in the department reviewing alternatives. He reiterated that his instructions to department staff are to follow the law as closely as possible. The reality, he opined, is that there won't be an ocean ranger on each boat on the first day.

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CO-CHAIR GATTO asked if there's a definition of a marine engineer.

CO-CHAIR JOHNSON commented that the initiative requires something that's relatively undeliverable.

REPRESENTATIVE SEATON interjected that there are different levels of certification of marine engineers. He opined that the person being licensed is necessary, "but I don't think that we need the ... Coast Guard licensing of an engineer. But we don't want to put someone on a vessel in the areas that they're going

to be when the ship is underway that doesn't at least have ... an able-bodied seaman card ...."

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CO-CHAIR GATTO pointed out that the crew on these cruise ships are typically foreign nationals and will need to work with an English speaker. He asked if that's a significant issue.

ACTING COMMISSIONER HARTIG said that's a level of detail to which he can't speak. He reiterated that the department went out for a contract to try to work out what the logistical concerns would be.

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CO-CHAIR GATTO recalled that after an accidental dumping of [waste] three years ago he boarded a cruise ship and was taken through all the procedures. After going through the procedures required [to dump waste], Co-Chair Gatto opined that the [dumping] was no accident. He further opined that the ocean ranger program is important, especially since these are people/entities who have had convictions. Co-Chair Gatto specified that this [program] is simply a safeguard for preventing the contamination of halibut beds and throwing plastic bags off the back of the boat. The only way to know that things are being done properly is to put someone on board to verify it. Co-Chair Gatto said that he would be very wary of objections stating that people didn't know what they were voting for because the voters asked for the ocean rangers.

ACTING COMMISSIONER HARTIG noted his appreciation of the input, and reiterated that the department wants to follow the law and the initiative.

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CO-CHAIR GATTO related his understanding that the department will spend money before collecting it. Therefore, he inquired as to how much funding the department has requested.

ACTING COMMISSIONER HARTIG specified that supplemental funding in the amount of \$811,000 has been requested. The supplemental funding is necessary due to the delay between the time the department will have to implement the program and actually be able to collect the funds to pay for it.

CO-CHAIR GATTO estimated that 1 million passengers paying \$4 each will result in the collection of \$4 million over the course of the season.

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REPRESENTATIVE GUTTENBERG reminded the members of the transition from the Lease Monitoring and Engineering Integrity Coordinator's Office (LMEICO) to the Petroleum Systems Integrity Office (PSIO). He inquired as to how Acting Commissioner Hartig views the department's role with the oil industry and its aging infrastructure.

ACTING COMMISSIONER HARTIG informed the committee that even before he was officially on board, he told those at DEC that he didn't want another pipeline corrosion issue on his watch. The department is developing a gap analysis in which the in-house resources of the agency will be used in order to identify any gaps with regard to regulation with DEC and between DEC and other agencies. He reminded the committee that the Alaska Oil and Gas Conservation Commission (AOGCC) regulates up to the wellhead, then DEC [regulates] the flow lines traveling to the Trans-Alaska Pipeline System (TAPS), and from there the U.S. Department of Transportation is in charge. Acting Commissioner Hartig noted that there was a gap in that the flow lines were not actually covered, which resulted in DEC creating a package of regulations that will cover the flow lines and become effective this fall. He said that he wanted to review the situation internally and perhaps even bring in a third party contractor to ensure that there are no gaps and overlap for risky areas. The department is going through the aforementioned now. Furthermore, some of the other commissioners are thinking along the same lines and are [reviewing] whether there are risks that are present that aren't being addressed that should be of concern. The effort with the liaison position doesn't dilute the effort, but rather will take everyone's collective efforts, put them together, review them collectively as well as individually and develop a budget that directly addresses what the [department] will be doing. At this point the department is building on what it saw and determining what is the most logical, efficient, and workable system that can be implemented.

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REPRESENTATIVE GUTTENBERG highlighted that the legislature has a vested interest to ensure that the gaps are addressed. He recalled a conversation with Department of Natural Resources

(DNR) in which department staff said that their leases had the ability to go anywhere that was covered under a lease. In response to whether that provided DEC with the same authority, DNR didn't know. Representative Guttenberg questioned who has authority on the sump after AOGCC leaves.

ACTING COMMISSIONER HARTIG confirmed that the department is reviewing that issue. With regard to whether DNR's authority under the lease and DEC's authority are co-extensive, he said that DEC's authority is broader. He explained that DNR has the lease arrangement and can include terms in the lease that the lessee has to meet. Therefore, DNR has that additional leverage that goes outside its environmental regulations or those of DEC such that DNR can address any of the concerns brought forth with the gap/risk analysis in the terms of the lease. Furthermore, DNR can incorporate DEC's requirements into the lease. He noted that besides the gap analysis each department would do, the lessee should have to put forth a plan that says what they plan to do to deal with this aging infrastructure. Therefore, the departments can review that together and concerns could be addressed under the terms of the lease. The aforementioned only addresses leases on state land. For leases not on state land, one has to review DEC's authority. Therefore, he opined that DEC's task is a bit different and perhaps a bit broader than that of DNR.

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REPRESENTATIVE GUTTENBERG turned to clean air standards. He related his understanding that the industry is willing to sell some of its hybrid cars in states that adopt standards allowing that. He pointed out that DEC has the ability to adopt standards allowing the sale of such cars in Alaska. He asked if Acting Commissioner Hartig has had any discussion on that.

ACTING COMMISSIONER HARTIG replied no, but offered to follow up. He said he didn't know why the department would stand in the way of anything that's environmentally beneficial. He mentioned that one of his [goals] is to do what's available to reduce pollution.

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CO-CHAIR GATTO inquired as to what the standards would say.

REPRESENTATIVE GUTTENBERG said the standards would utilize permissive language.

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REPRESENTATIVE SEATON asked if the department is proceeding with the National Pollutant Discharge Elimination System (NPDES).

ACTING COMMISSIONER HARTIG related that pursuing primacy from the Environmental Protection Agency (EPA) is a priority of the department. Currently, EPA issues the NPDES under the Clean Water Act in Alaska. Alaska is one of five states that does not have primacy. The 45 states that have primacy have received the authority from the EPA to issue the permits, albeit under EPA's regulations and oversight. Acting Commissioner Hartig explained that Alaska is pursuing primacy because utilizing local people could be more responsive to local concerns and perhaps provide quicker turnaround. He pointed out that permits coming out of Region 10 in Seattle compete against Oregon, Washington, and Idaho for prioritization. Furthermore, there were some problems obtaining modifications to permits since that wasn't a high priority with EPA. Therefore, there are a variety of pros and cons to state primacy. However, the state is pursuing primacy and put forth its draft application July 1, 2006, after which EPA identified about 199 concerns. There are about two concerns left. He recalled that EPA brought forward some changes requiring legislative changes, which is encompassed in HB 149. The aforementioned legislation uses more technical changes to place Alaska law in compliance with EPA requirements for a state to take primacy. He noted that no new permitting requirements are added, it merely gives the state some of the same authority the EPA has in Alaska regarding the issuance of NPDES permits. The department will provide another draft application to EPA July 1st and the EPA will provide any additional comments by September 1st. A final application will be provided to EPA, which will attempt to have a final decision on the state's application by March 31, 2008. If the decision is favorable, the state would then have the NPDES program, which would be phased in over three years. Over that three-year period the state would work with EPA to put together permits and train department personnel. At the end of the three-year period the state should be fully running the program.

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REPRESENTATIVE SEATON recalled that permits are backlogged with EPA because they have Washington and Oregon permits as well. He related his understanding that Washington and Oregon have

primacy, and surmised that there would still be a backlog if Alaska takes primacy.

ACTING COMMISSIONER HARTIG clarified that [those EPA staff] working on permits get pulled in different directions and permits just aren't a priority for the region. He opined that it's difficult for a small facility in Alaska to amend a permit because those require the same process as the original permit. The aforementioned is problematic, especially when the permit modification doesn't have direct environmental impacts and other priorities for staff and funding exist and result in a shifting of the priorities.

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REPRESENTATIVE SEATON related his understanding from DEC that there would be 20 fewer people working on NPDES permits than currently. Therefore, he expressed concern that this will slow the process. He opined that the [permitting process] will cost money, and therefore more money will have to be collected from permittees since the [program] will be self-sustaining in Alaska. Representative Seaton urged Acting Commissioner Hartig to review the situation carefully in order to ensure that the former administration's ideas related to streamlining the process are consistent with the ideas of the new administration.

ACTING COMMISSIONER HARTIG noted his agreement that the state has to have a program in which everyone has confidence, and thus corners can't be cut.

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REPRESENTATIVE EDGMON related his observation that there's no question that Acting Commissioner Hartig is qualified and has the integrity and background for the position of commissioner. However, he highlighted Acting Commissioner Hartig's membership in professional and community organizations and asked if the position of commissioner is a very different position.

ACTING COMMISSIONER HARTIG replied yes and no. He noted that he filled the recreation seat on the Board of Forestry, which he characterized as a position fairly analogous to what he's doing now. That board is somewhat unique in that it consists of representatives from key stakeholders, including environmental, fishing, biological, Native, recreation, and timber interests. Furthermore, decisions had to be unanimous less one and thus it resulted in people working together in a cooperative manner. He

expressed hope that he could bring that to this job. He opined that if he had a bias he wouldn't take the position.

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REPRESENTATIVE GUTTENBERG inquired as to Acting Commissioner Hartig's interest in holding the recreational seat on the Board of Forestry.

ACTING COMMISSIONER HARTIG related that he has always had a strong interest in state parks and was a member of various recreational groups. He noted that he sat on the Chugach State Park Regional Advisory Board and was head of the Alaska State Park Foundation.

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REPRESENTATIVE WILSON said she was glad to hear Acting Commissioner Hartig liked how the Board of Forestry was set up and recalled her time working in such a process that caused everyone to work together.

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REPRESENTATIVE WILSON moved that the committee forward the name of Larry Hartig to the position of commissioner of the Department of Environmental Conservation to the full body for consideration. There being no objection, it was so ordered.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [1:56:26 PM](#).