

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 25, 2009

1:02 p.m.

MEMBERS PRESENT

Representative Craig Johnson, Co-Chair
Representative Mark Neuman, Co-Chair
Representative Bryce Edgmon
Representative Kurt Olson
Representative Paul Seaton
Representative Peggy Wilson
Representative David Guttenberg
Representative Scott Kawasaki
Representative Chris Tuck

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 134

"An Act relating to the terms and conditions of commercial vessel permits for the discharge of graywater, treated sewage, and other waste water; and providing for an effective date."

- HEARD AND HELD

OVERVIEW(S):

LARGE MINE PERMIT PROCESS

- OVERVIEW CANCELED

BRIEFING ON THE ENDANGERED SPECIES ACT

- OVERVIEW CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 134

SHORT TITLE: CRUISE SHIP WASTEWATER DISCHARGE PERMITS

SPONSOR(S): REPRESENTATIVE(S) HARRIS

02/13/09 (H) READ THE FIRST TIME - REFERRALS

02/13/09	(H)	CRA, RES
02/17/09	(H)	CRA AT 8:00 AM BARNES 124
02/17/09	(H)	Moved CSHB 134(CRA) Out of Committee
02/17/09	(H)	MINUTE(CRA)
02/18/09	(H)	CRA RPT CS(CRA) NT 5DP
02/18/09	(H)	DP: HARRIS, MILLETT, KELLER, HERRON, MUNOZ
03/02/09	(H)	RES AT 1:00 PM BARNES 124
03/02/09	(H)	Heard & Held
03/02/09	(H)	MINUTE(RES)
03/16/09	(H)	RES AT 1:00 PM BARNES 124
03/16/09	(H)	Heard & Held
03/16/09	(H)	MINUTE(RES)
03/25/09	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE JOHN HARRIS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 134, presented an amendment for the committee's consideration.

LARRY HARTIG, Commissioner
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: During hearing on HB 134, provided an overview of the sponsor's amendment and answered questions.

LYNN TOMICH KENT, Director
Division of Water
Department of Environmental Conservation
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 134.

ACTION NARRATIVE

[1:01:59 PM](#)

CO-CHAIR MARK NEUMAN called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Neuman, Johnson, Guttenberg, Kawasaki, Tuck, and Olson were present at the call to order. Representatives Wilson, Edgmon, and Seaton arrived as the meeting was in progress.

HB 134-CRUISE SHIP WASTEWATER DISCHARGE PERMITS

1:02:48 PM

CO-CHAIR NEUMAN announced that the first order of business would be HOUSE BILL NO. 134, "An Act relating to the terms and conditions of commercial vessel permits for the discharge of graywater, treated sewage, and other waste water; and providing for an effective date." [Before the committee was CSHB 134(CRA).]

CO-CHAIR NEUMAN said much hard work was done over the past two weeks to come up with a solution that everyone could work with. On behalf of Representative Harris, he offered Amendment 3, labeled 26-LS0570\E.6, Bullard, 3/25/09, which read [original punctuation provided]:

Page 1, line 2, following "water;":

Insert "**establishing a science advisory panel on wastewater treatment in the Department of Environmental Conservation;**"

Page 1, following line 4:

Insert a new bill section to read:

"* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that the minimum standards for the terms and conditions of wastewater discharge permits for large commercial passenger vessels meet all applicable state and federal effluent limits or standards, including Alaska Water Quality Standards, governing pollution at the point of discharge if the Department of Environmental Conservation, in consultation with its science advisory panel on wastewater treatment, determines that compliance with those limits or standards is technologically and economically feasible."

Page 1, line 5:

Delete "**Section 1**"

Insert "**Sec. 2**"

Page 1, line 11:

Delete "[AT THE POINT OF DISCHARGE]"

Insert "at the point of discharge, except as provided in 46.03.462(e)."

Page 2, line 9:

Delete all material and insert:

"* **Sec. 3.** AS 46.03.462 is amended by adding new subsections to read:

(e) When issuing, reissuing, renewing or modifying a permit required under (a)(1) of this section, the department may include effluent limits or standards less stringent than those required under (b)(1) of this section if the department finds that a permittee is using methods of pollution prevention, control and treatment found by the department to be the most effective, technologically and economically feasible in controlling all wastes and other substances in the discharge but is unable to achieve compliance with Alaska Water Quality Standards at the point of discharge.

(f) In developing an effluent limit or standard under (e) of this section, the department shall

(1) require use of methods of pollution prevention, control and treatment found by the department to be the most effective, technologically economically feasible; and

(2) apply all other applicable provisions of state law and this section.

(g) When reissuing, renewing or modifying a permit required under this section that was issued after the effective date of this bill section, the department may not include effluent limits or standards less stringent than the comparable effluent limitations in a previous permit issued under this section.

(h) Nothing in this section shall be construed to limit the authority of the department to

(1) restrict the areas in which discharges permitted under this section may occur; or

(2) impose additional terms and conditions on the manner in which discharges permitted under this section may be made in a specific area.

* **Sec. 4.** AS 46.03 is amended by adding a new section to read:

Sec. 46.03.464 Advisory panel on wastewater treatment; commissioner's reports to the legislature.

(a) A science advisory panel is established in the department. The panel consists of members selected by the commissioner. Members of the panel serve without compensation but are entitled to transportation

expenses and per diem as authorized for members of boards and commissions under AS 39.20.180.

(b) The panel shall

(1) meet at the call of the commissioner and give public notice of meetings of the panel as required under AS 44.62.310 and 44.62.312;

(2) hold one or more public conferences or workshops; and

(3) assist and advise the commissioner in conducting the analyses and preparing the reports required in (c) and (d) of this section.

(c) On or before January 1, 2012, the commissioner, in consultation with the panel, shall provide a preliminary report to the legislature that summarizes

(1) methods of pollution prevention, control and treatment in use and the level of effluent quality achieved by commercial passenger vessels;

(2) additional methods of pollution prevention, control and treatment that could be employed to provide the most effective, technologically and economically feasible measures to control all wastes and other substances in the discharge; and

(3) the environmental benefit and cost of implementing additional methods of pollution prevention, control and treatment identified in (c)(2) of this section.

(d) On or before January 1, 2014, the commissioner, in consultation with the panel, shall provide a final report to the legislature that includes the topics identified in (c)(1) - (3) of this section.

* **Sec. 5.** AS 46.03.465 is amended by adding a new subsection to read:

(h) On request, the owner or operator of a commercial passenger vessel discharging wastewater under AS 46.03.462(b) shall provide the department with information relating to wastewater treatment, pollution avoidance, and pollution reduction measures used on the vessel, including testing and evaluation procedures and economic and technical feasibility analyses.

* **Sec. 6.** AS 46.03.464 is repealed.

* **Sec. 7.** Section 6 of this Act takes effect June 1, 2014.

* **Sec. 8.** Sections 1 through 5 of this Act take effect immediately under AS 01.10.070(c)."

CO-CHAIR JOHNSON objected for discussion purposes.

[1:03:28 PM](#)

REPRESENTATIVE JOHN HARRIS, Alaska State Legislature, sponsor of HB 134, explained that Amendment 3 was developed in consort with the Department of Environmental Conservation, as well as in consultation with the governor and the Department of Law. Amendment 3 would ensure through statute that there is no backsliding by the cruise ship industry and would encourage ongoing development of science.

REPRESENTATIVE HARRIS said HB 134 does not advocate for or tolerate a worsening of the current water quality standards for cruise ships. Rather, it advocates for more stringent regulation up to the 2010 standard when those technologies become available and can be economically installed on board the ships. Amendment 3 gets the state where it wants to go. Both the cruise ship industry and the Department of Environmental Conservation would be in compliance with the statute, and the ships can stay in port longer, allowing crews and passengers to spend money in the port communities. He urged that HB 134 be amended and moved out of committee today.

[1:07:34 PM](#)

CO-CHAIR NEUMAN read from a March 19, 2009, letter written to Representative Harris by Governor Palin. The full text of the letter is as follows [original punctuation provided]:

Thank you for your letter requesting my help clarifying expectations for the Department of Environmental Conservation (DEC) should your legislation, known as HB 134, pass the Legislature and become law. I share your confidence in DEC's abilities and efforts, and agree that DEC officials are working hard to implement the best treatment technology as quickly as possible.

I would like to assure you, and anyone else interested in this issue, that in the event that this legislation passes, DEC will retain the ability to preserve and protect water quality through their existing permitting authority. While discharge

permits could be modified to include mixing zones where appropriate, cruise ships would still have to obtain and comply with permits that will fully protect aquatic life and other uses of Alaska's waters. Permits could include a variety of conditions to ensure water quality is protected.

DEC would retain the authority to prevent backsliding by reassuring that any standards currently achieved must continue to be met and would have the ability to mandate that the best and most feasible treatment technology be used. As you may know, DEC is aware of no technologies currently available for widespread shipboard use that would allow standards to be met. From DEC's technology conference held last month, it appears there are new waste reduction and treatment options that could become commercially available in the future. We want to encourage improvement, and continue to explore these options.

I appreciate your interest and efforts in this issue and hope this information is helpful as you continue hearings on this legislation.

[1:09:10 PM](#)

REPRESENTATIVE SEATON inquired whether Amendment 2 [which he offered on March 16, 2009] was still on the table.

CO-CHAIR NEUMAN said Amendment 2 had been tabled, but that it could be addressed, pulled, or left as tabled.

REPRESENTATIVE SEATON agreed to leave Amendment 2 tabled.

CO-CHAIR NEUMAN noted that DEC Commissioner Hartig has worked hard on Amendment 3 and supports the amendment.

[1:10:07 PM](#)

LARRY HARTIG, Commissioner, Department of Environmental Conservation, thanked the committee and Representative Harris for the opportunity to work on possible amendments to HB 134. Amendment 3 addresses some of the issues that DEC had, he said, and is hopefully something that everyone can agree on.

COMMISSIONER HARTIG recognized that under the 2006 Alaska Cruise Ship Initiative voters called for a higher level of treatment.

However, he explained, at DEC's February 2009 technology conference it was determined that the technology for vessels is not yet there for meeting all state water quality standards in the pipe. It was therefore recognized that there needed to be some kind of relief to the requirements of the initiative that had been embodied in state law. The question was how to provide that relief, and over what time period, and how to proceed, and this is the substance of the amended bill. He said HB 134 retains the at-the-point-of-discharge requirement, but in the interim vessels would be allowed relief from the standard if DEC finds that the most effective technology is being employed that is both technically and economically feasible.

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COMMISSIONER HARTIG explained that in addition to the minimum treatment standard, Amendment 3 would create a science advisory panel. This panel would work with DEC to review both on-vessel and on-shore technologies that would provide a higher level of treatment. The panel would provide an interim report to the legislature in two years and a final report in four years as to what advances in technology had been achieved during that period of time. These reports and input would allow DEC to apply the latest technology and standards when the permit for cruise ships next comes up for renewal. Thus, if cruise ships could not meet the at-the-point-of-discharge standard for certain pollutants, DEC would know what technology is available and could implement that into the permit.

COMMISSIONER HARTIG noted that a technology-forcing element already exists in DEC's powers, so it is not included in the amended bill. If a permittee cannot achieve the effluent limits in a permit, DEC can require a compliance schedule with specific steps and deadlines by which a permittee must install new equipment or take other action to reduce pollution. If HB 134 passes, DEC will evaluate the technology information from the conference and the source reduction evaluation reports and monthly discharge monitoring reports filed by the cruise ship companies to determine what the technology standard would be in the new modified permit. The department would then develop compliance schedules for those ships that are not already achieving the standards, thus implementing technology-forcing vessel by vessel. At the end of that period, the four year final report would be complete and DEC would see whether the standard could be raised again five years from now when the permit comes up for renewal.

COMMISSIONER HARTIG pointed out that Amendment 3 has an anti-backsliding provision that prevents DEC from issuing a permit that loosens the standard. Given the aforementioned technology-forcing, this means the standard can only get tighter and tighter over the permit cycles.

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CO-CHAIR NEUMAN inquired whether Commissioner Hartig believes that Alaska's waters and fisheries would be protected under Amendment 3.

COMMISSIONER HARTIG answered yes.

COMMISSIONER HARTIG, in response to Co-Chair Johnson, said DEC envisions the science advisory panel being made up of some government members such as the U.S. Coast Guard and Environmental Protection Agency (EPA). The U.S. Coast Guard currently regulates treatment systems on vessels and EPA regulates certain discharges that are covered by this permit. The department also envisions members from the public sector, primarily people with an expertise in water treatment as it relates to vessels or on shore where vessels can use treatment, chemical and environmental engineers, marine architects and others who understand the modification of vessels, key stakeholders with an interest and expertise in this issue, and operational people. It is important for the panel to have technical people as well as people who understand the implementation issues, he said.

COMMISSIONER HARTIG, in further response to Co-Chair Johnson, explained that vessel treatment systems is a fairly narrow area, so there would be few experts available for such a long time period. Thus, a large group would be needed for the panel because only half the members would likely be able to show up for each meeting. He said he therefore anticipates that the panel would have eight to twelve members.

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CO-CHAIR NEUMAN surmised that the DEC commissioner would decide the panel members.

COMMISSIONER HARTIG responded correct.

REPRESENTATIVE WILSON inquired whether having a science advisory panel would change the zero fiscal note.

COMMISSIONER HARTIG said there is no fiscal note because this is already in DEC's base budget. The department has been relying on the cruise ship registration fees to fund its current studies, so these fees would be used to support the panel and the additional studies that DEC has in mind.

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REPRESENTATIVE WILSON requested Commissioner Hartig to discuss the term "economically feasible" as written on page 1, line 15, in Amendment 3. She expressed her concern that this could be a loophole.

COMMISSIONER HARTIG answered that this is not unique and is the standard that DEC expects any industry to be held to. He said he envisions getting everyone together in the room - vendors, academics, EPA, U.S. Coast Guard, and so forth - to get their thoughts. The language says it has to be the "most effective" technology that is technologically and economically feasible. The department would then use its best professional judgment to set the standard. For those that cannot immediately meet that standard, DEC would use its existing authorities to set up a schedule for attainment under the permit.

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REPRESENTATIVE WILSON remarked that the date of January 1, 2014, on page 3, line 20, of Amendment 3, seems like a long time [for receipt of the final report by the legislature]. She asked whether the timeline could instead be every other year.

CO-CHAIR NEUMAN pointed out that page 3, line 9, of Amendment 3 requires a preliminary report be provided to the legislature by January 1, 2012.

COMMISSIONER HARTIG added that DEC will be issuing a report this April from the [February 2009] technology conference, so it is pretty much a two-year cycle. It was reported at this conference that there may be some new technologies, one in particular that would address ammonia, but that these are two years out; so this is one reason why the department picked two year intervals. The second two-year interval would end one year prior to the end of the next normal five-year permit cycle.

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REPRESENTATIVE SEATON inquired how DEC determines what is economically feasible from an agency standpoint, as opposed to what the cruise ships would say is economically feasible.

COMMISSIONER HARTIG explained that under the Clean Water Act, the EPA sets regulations for what technology should be able to achieve for different industries. However, EPA has not done that for the cruise ship industry. Normally, DEC looks to the EPA technology requirements, called effluent limitation guidelines, to see what EPA prescribes for a particular industry sector and then relies on that. Therefore, since EPA has not set a standard for this industry, DEC must rely on its best professional judgment.

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REPRESENTATIVE SEATON asked whether DEC's science advisor will be determining what is economically feasible or what is technologically feasible.

COMMISSIONER HARTIG responded that he does not know that those two can be split apart. He reiterated that this is not unique, and the cruise ships are not being treated differently or given a break because the term economically is included in the language. These sorts of evaluations apply to all the industries in the state. The department looks at the various technologies and evaluates and compares the options to see what can be achieved at what cost.

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CO-CHAIR NEUMAN interjected that Commissioner Hartig has been put in the hard spot of the cruise ship industry saying this is either not achievable or not economically feasible along with the financial impacts to Alaska's communities if there is no cruise industry. The commissioner has to make the decision of where economically feasible starts and stops and he must depend on the best advice that he can get to distinguish that.

REPRESENTATIVE SEATON countered that there is a difference between what an industry player might say is economically feasible. He said he interprets DEC's support of a bill that would eliminate the point-of-discharge requirement to mean that the department thinks mixing zones are clean enough.

CO-CHAIR NEUMAN disagreed.

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REPRESENTATIVE SEATON asked for further definition of what constitutes economically feasible.

COMMISSIONER HARTIG clarified that DEC does want point of discharge in the legislation and this language is in Amendment 3. He explained that DEC can relax the point-of-discharge standard only if the cruise ships cannot achieve it despite using the most effective treatment that is both technologically and economically feasible. Right now the cruise ships are meeting that standard for the majority of the pollutants, he said. Only a handful of ships are not achieving this and even those are pretty close. Whether it is the state or the EPA implementing the Clean Water Act, there must still be some reliance on judgment calls in terms of evaluating the economic aspects of various treatment technologies. There is nothing in either state or federal law that pins down what is considered economic.

COMMISSIONER HARTIG continued, explaining that Amendment 3 adds even more checks and balances than there already are. The department will implement this by evaluating the technologies as part of a permit modification, which is a public process that allows the public to review the information and weigh in on it. If the public disagrees with DEC's decision, an appeal can be filed through the courts. The science advisory panel and technology conferences provided by Amendment 3 add two more levels of review. The conferences already have a successful track record, he pointed out.

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CO-CHAIR NEUMAN added that the purpose of the science advisory panel is to take the politics out of it, provide advice from all interested parties, and bring everything to the legislature for a final decision.

REPRESENTATIVE GUTTENBERG agreed that taking out the politics is an important role. He noted that Amendment 3 spans more than just the next election and is needed to ensure that the legislature's direction is known to whoever might be commissioner of DEC. Thus, the panel's membership will be an important part of HB 134. He requested Commissioner Hartig to walk the committee through the provisions of Amendment 3 that prevent backsliding.

COMMISSIONER HARTIG advised that Section 3, subsection (g), must be read in context with all of Amendment 3 and DEC's existing authority. The idea is to progress as quickly as technology will allow toward meeting at the point of discharge for all pollutants, he said. The technology conference showed this cannot be achieved now, but Amendment 3 addresses getting there. Over the five-year life of this next permit, DEC will be investigating all the technology options to find those that will get closer to, or all the way to, the goal of at the point of discharge. Those options would then be implemented in either the next modified permit or the renewed permit. Although the permit is on a five-year cycle, DEC has the authority to modify the permit prior to the next renewal should a technology be found sooner. Subsection (g) prevents DEC from backtracking below the standard that is in place today. The assumption is that technology will always advance, so the permit standard will either stay where it is or get tighter. Thus, over time as technology advances, it can only go in the direction of ultimately being at the point of discharge for all pollutants.

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REPRESENTATIVE SEATON inquired whether the backsliding provision is already in federal law and state regulations.

COMMISSIONER HARTIG answered that the backsliding provision is in the federal Clean Water Act as well as in Alaska Pollutant Discharge Elimination System (APDES) regulations, where the state is now getting primacy to issue Clean Water Act permits. However, commercial passenger vessels do not need a Clean Water Act permit for their wastewater discharges, so the APDES regulations and the Clean Water Act requirements relating to that program do not apply here. This is why the state is putting in its own provision and adapting it specifically to this situation.

CO-CHAIR JOHNSON removed his objection to Amendment 3.

REPRESENTATIVE SEATON objected to Amendment 3.

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REPRESENTATIVE SEATON asked whether there is anything in Amendment 3 that would prevent the DEC commissioner from having only three people on the science advisory panel.

COMMISSIONER HARTIG replied that DEC did not prescribe that and does not have a minimum in mind, but the legislature could weigh in. He said the department is interested in getting good input from a variety of people with science, technological, and implementation knowledge, as well as key people interested in this issue and the initiative.

COMMISSIONER HARTIG, in response to Co-Chair Neuman, said DEC will make sure this is an effective panel.

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REPRESENTATIVE KAWASAKI noted that Amendment 3 does not mention qualifications for members of the science advisory panel, how many members the panel must have, or whether the DEC commissioner must listen to the panel's recommendations.

COMMISSIONER HARTIG agreed that the qualifications are not spelled out. He said his vision for this language is that he would convene a panel that would include experts in water treatment for both on-shore and on-vessel systems, chemical and environmental engineers with understanding of treatment systems, people who understand implementation issues on vessels such as weight and balance, people who understand regulatory programs like the EPA and U.S. Coast Guard, and people from the public with a technical background and a particular interest in the purposes of the initiative and the panel.

REPRESENTATIVE KAWASAKI observed that all other state boards and commissions have specific definitions for how many people, who the people would be, and what their actual jobs are. He said he does not know the value of this science advisory panel.

CO-CHAIR NEUMAN interjected that the value is the DEC commissioner testifying before the House Resources Standing Committee on what the intent is, and passing this amendment is the legislative intent of what was heard.

REPRESENTATIVE KAWASAKI pointed out that the reports will not be until 2012 and 2014 and this particular person may not be commissioner at that point in time.

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REPRESENTATIVE SEATON said he shares the same concern about establishing a panel that has no defined makeup, qualifications, or number of meetings. The only requirement is one conference

before 2012. This is not to say that this particular commissioner will not work to make this panel effective, he said, but this issue is of concern because it is being put into a law for resolving this water quality issue. He asked for Commissioner Hartig's definition of how many meetings there would be.

COMMISSIONER HARTIG noted that the idea of the science advisory panel stems from 2004 when such a panel was successfully convened to look at DEC's initial dilution studies for cruise ships. This panel of public and private members discussed the information publicly. People were generally satisfied with what came out of this and that the information had been peer reviewed from a technical standpoint, thus filtering out any biases. This is what DEC is looking to achieve here, he said. When the legislature gets the reports it will be clear whether the reports are biased or good peer-reviewed products. The number of meetings depends on when there is the background information to make a meeting productive, coupled with where DEC is at in the cycle of its own work. Right now DEC staff is busy gearing up for this cruise season, so the first meeting will be this fall to identify the key issues and then another meeting in a matter of months. He said he envisions one to two meetings per year, with probably two meetings the first year, although there could be more. The idea is to have a group that is helpful to the department, that provides peer review, and that screens out any potential for bias so the report is something the legislature can rely on.

CO-CHAIR NEUMAN added that there will be a report in 2012, so the legislature would have a second shot if it does not like the report it receives. This is trying to allow the flexibility that the commissioner needs, he said.

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REPRESENTATIVE HARRIS recommended that a minimum number of panel members should be spelled out for the comfort of legislators. He offered to work with Representative Seaton, Commissioner Hartig, and others to come up with an amendment for the floor that spells out a minimum number of panel members and that directs the panel to report to the legislature as well as the commissioner.

CO-CHAIR NEUMAN responded that the intent is to continue working on this with the commissioner even if the bill passes.

REPRESENTATIVE HARRIS said he is hearing members of the legislature expressing concerns. There should be a minimum number of people representing certain agencies on the panel, he advised. The panel will not set the policy, but it will make recommendations to the commissioner and to the legislature through the reports. In regard to the concern about economic feasibility, he said that is a tough issue because sometimes the answer is unknown until the technology becomes available for sale and because feasibility can be different for each company. Representative Harris said he sees the advisory panel as having two purposes for its reports to the commissioner: to determine the cost and effectiveness of the products available and whether the product will meet the standards. The people on the panel need to have those qualifications to do this.

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CO-CHAIR NEUMAN stated that this bill needs to be moved along and discussion will continue to happen and the recommendations will happen for the floor. He expressed his trust in Commissioner Hartig to set up the appropriate science advisory panel in consultation with Representatives Harris and Seaton.

REPRESENTATIVE SEATON said he believes the legislative process is that legislators offer their opinions through amendments and through committee. A law is being passed; this is not just giving the administration the flexibility to do what it wants. Amendment 3 was not seen until 11:00 a.m. today, he added, so there was no time to review it and work on the issues.

[1:57:07 PM](#)

REPRESENTATIVE SEATON referenced Sections 6 and 7 of Amendment 3 which would repeal AS 46.03.464 as of June 1, 2014. He understood this repeal to mean that the science advisory panel would be eliminated, while Section 3, subsection (e), of Amendment 3, which provides an exception for allowing less stringent effluent standards, would remain in effect.

COMMISSIONER HARTIG answered correct. He said DEC's belief is that the panel would have served its purpose after five years. By the panel's 2014 sunset date, a minimum of two technology conferences would have been held and there would be seven years of data and source evaluation reports from the cruise ships, so the technology would be understood by that point.

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REPRESENTATIVE SEATON surmised that after 2014 the law would not require meeting the standards at the point of discharge but rather meeting them in mixing zones.

COMMISSIONER HARTIG replied that this is incorrect. The at-the-point-of-discharge requirement is the expectation, he said. Right now a handful of pollutants are close but not quite there. Last month's technology conference found that the cruise ships would be able to get closer to that standard, if not there, if given more time. So, what is being said is that, at a minimum, the cruise ships must achieve what can be achieved with the most effective pollution reduction technology that is technologically and economically feasible at each point in time. When new technology is available the bar will be raised and the cruise ships will have to meet that new standard. This will continue until the at-the-point-of-discharge requirement is met and at which point there will be no ability to get an exception and backslide.

[2:00:34 PM](#)

REPRESENTATIVE SEATON understood that this is DEC's goal, but he pointed out that Amendment 3 only repeals the science panel and not the exception granted under Section 3, subsection (e). He asked for further clarification.

COMMISSIONER HARTIG explained that subsection (e) "is a self-executing sunset provision". The at-the-point-of-discharge requirement must be met. Relaxation from this standard can only be done if the available technologies cannot meet the requirement. However, once the technology is there, there is no exception. There is no date included because it is unknown when the technology that can meet the requirement will be there. Once there is technology that achieves the at-the-point-of-discharge requirement for all parameters, it becomes the standard and there are no exceptions.

[2:03:13 PM](#)

REPRESENTATIVE KAWASAKI inquired whether Commissioner Hartig thinks the 2006 Alaska Cruise Ship Initiative had an impact on the industry as far as effluent discharge.

COMMISSIONER HARTIG responded that he has not had discussion in this regard with the industry or anyone else, but DEC is seeing consistent improvement in the treatment. However, he continued,

that is not unique because this improvement happens in most industries as technology advances and standards are tightened. He said he is therefore unable to say whether the improvement relates specifically to the initiative.

2:04:07 PM

REPRESENTATIVE KAWASAKI offered his belief that previous testimony indicated the advancements were due in part to the initiative's requirements. He asked what the incentive would be for the cruise industry to keep moving forward in pursuing technology if the standard is reduced by allowing the exception provided by Section 3, subsection (e).

COMMISSIONER HARTIG answered that there are several technology forcing measures in the amendment. The department is satisfied that these measures will be sufficient to move this along, he said. If they are insufficient, DEC will know pretty quickly given the science advisory panel, public conferences, and the first report due to the legislature in two years. If technology advances and is available for use on cruise ships, DEC will know and the public will know, and the cruise companies will have to respond to that. If a company drags its feet, then the legislature or the courts will step in.

2:06:24 PM

COMMISSIONER HARTIG, in response to Co-Chair Neuman, clarified that it is not the constitution but the federal Clean Water Act and Alaska law that require DEC to review the state Water Quality Standards every three years to determine whether they adequately protect aquatic life and other uses. This review is different than the technology forcing being talked about here, he explained, but DEC does look at the technologies regularly, as does EPA. When DEC writes permits, it looks at what technology can achieve. For any water quality permit it issues, whether for cruise ships, a mine, or oil and gas facilities, DEC starts with at the point of discharge. If the point of discharge cannot be achieved, then DEC looks at what technology can achieve. Therefore, this is not unique.

2:07:45 PM

REPRESENTATIVE SEATON inquired as to how many permits with a reduced mixing zone standard have been issued to mines by DEC and that have not been re-permitted.

CO-CHAIR NEUMAN said today's discussion is not about mines, but about HB 134 and cruise ships.

REPRESENTATIVE SEATON responded that the testimony was about how business is done, but agreed to refrain from further questions related to mining.

CO-CHAIR NEUMAN added that this topic could be discussed during the presentation on the large mine permit process that is scheduled next.

2:08:39 PM

REPRESENTATIVE SEATON asked whether onshore treatment of effluent, as would be provided under the tabled Amendment 2, would be economically feasible, given there would be no capital outlay by the cruise ships for this type of treatment.

COMMISSIONER HARTIG answered that DEC was mindful of Amendment 2 when it was looking at Amendment 3. Therefore, the options described in Amendment 3 were left broad enough to be interpreted as treatment on-shore, on-vessel, or a combination.

REPRESENTATIVE SEATON inquired whether Amendment 3 looks at a funding source or would the ships be required to capitalize the treatment facility regardless of whether it is on-vessel or on-shore.

COMMISSIONER HARTIG said this type of information would be included in DEC's report to the legislature. The report would present the option that DEC thinks is best, as well as discuss the pros and cons of the other options that were considered. Thus, the report would identify any on-shore opportunities that required legislative or economic incentive.

2:11:15 PM

REPRESENTATIVE SEATON asked whether Commissioner Hartig still stands by the following statement made by his department in a request for an adjudication on the large commercial passenger vessel wastewater discharge general permit:

The staff believes that there may be existing technology, developing technology, and other actions including treatment process, source, and source reductions that could potentially and reasonably be applied to resolve the cruise ship compliance problems

with long-term effluent limits set under the general permit. However, staff also believes that it is equally reasonable to allow the cruise ship lines more time to explore and obtain technology or other actions by extending the stay through December 31, 2009, as long as the cruise industry's efforts, progress reports, and answers to DEC inquiries reflect a genuine intent to pursue compliance solutions.

COMMISSIONER HARTIG said the aforementioned statement is from a report that came to him from the department in the context of an adjudication. He said he cannot take a position on the statement because he is basically sitting separate from the department as the judge in that adjudication. He explained that he was asking for a status report as to whether he should proceed with that adjudication to a decision or continue to stay it as the parties tried to work it out. The statement reflects the conclusions of the Division of Water, which then came to him as the adjudicator, he said.

2:13:20 PM

REPRESENTATIVE SEATON inquired why Amendment 3 provides for a five year extension, given that the position of DEC staff is to consider a one-year extension as long as progress is being made toward compliance with the standards.

COMMISSIONER HARTIG reiterated that the aforementioned statement is in a status report dealing with the issue of whether he should continue the stay of that adjudicatory appeal; it does not go toward staying permit compliance and it does not have anything to do with permit compliance. The appellant in that matter was raising certain legal questions regarding the general permit that DEC had issued, he explained. The stay was whether DEC should stay the consideration of those issues raised by the appellant, pending resolution of some of those issues through this legislation or some other matter. The aforementioned statement is a response to the concern that was raised by those on the other side of the appeal that staying the adjudication would slow down the effort of the cruise ship companies to try to come into compliance. So, it is in a different context.

2:15:55 PM

REPRESENTATIVE TUCK offered his thanks for the work that was done to address the committee's concerns. He noted that he did not receive Amendment 3 until 11:00 today. He asked whether

Amendment 3 would permit ships individually and, if so, how often those permits would be reviewed.

COMMISSIONER HARTIG answered that right now DEC has a general permit and any vessel can ask to be authorized for discharge by the general permit or an individual permit. If the vessel decides to be authorized under the general permit, then it must meet all of those standards. Regardless of this, DEC can decide to issue an individual permit if it decides that an individual vessel is different enough. The department also has the option to issue a general permit but still require special conditions that are applicable to particular vessels, such as defined steps for the compliance schedule. He said he envisions that within the next year DEC will be issuing a modified permit and could require special conditions for particular vessels, if warranted, or do individual permits.

2:18:39 PM

REPRESENTATIVE TUCK surmised that the general permit is by classification of ship and not by cruise line industry.

COMMISSIONER HARTIG replied correct.

REPRESENTATIVE TUCK inquired whether it was DEC's forecast at the time the deadline was previously extended from the initiative that the cruise industry would meet the standards.

COMMISSIONER HARTIG responded that when the original permit was extended he did not know what the schedule would be so he chose the minimum possible. He explained that this was one of several purposes for the February 2009 technology conference because he knew that DEC would probably need to extend that deadline again. However, under DEC's existing statutory and regulatory authority a compliance deadline can only be extended if there is a plan and a schedule for getting the permittee into compliance. So, DEC needed to have a handle on whether there was a technology that would get the cruise ships there and how long that might take so that the schedule could be lawfully extended.

2:19:56 PM

REPRESENTATIVE TUCK asked whether Amendment 3 will give DEC the plan and schedule to do that.

COMMISSIONER HARTIG said DEC will look at doing a modified permit within the year. In issuing the modified permit, DEC

would consider what it has learned from the technology conference and what it has learned from the cruise ships existing reports. Under the current general permit, he explained, the cruise ship companies must provide DEC with source reduction evaluation reports which identify pollutants on the vessels, whether the ship is achieving water quality criteria at the point of discharge, what efforts the ship has made, and what efforts the ship thinks it can make to reduce pollutants to come into compliance. The cruise ships also supply DEC with monthly monitoring data as to what they have been able to achieve. He noted that in the modified permit, DEC would set a minimum standard for what technology can meet for only those parameters that the ships are not meeting at the point of discharge. This would continue to be revisited and included in modified permits.

[2:21:22 PM](#)

REPRESENTATIVE TUCK, in regard to the [zero] fiscal note, understood that DEC already has revenues coming in that could be used to meet the parameters of Amendment 3.

COMMISSIONER HARTIG deferred to Director Kent.

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation, explained that DEC's base budget contains a certain amount of funding to fund a portion of the cruise ship program. This funding was established by legislative direction as a per berth fee and the funds are used for annual cruise ship registration. When the 2006 cruise ship initiative passed, DEC said it would transfer the work that it was doing under the prior rules for cruise ships, and how DEC regulated them, to the permitting process. So, in its base budget, DEC has money in contractual funds to enable the department to conduct various studies, such as looking at the opacity from vessels, testing any new pollutants that might be identified, or addressing any changes there might be in the potential for discharges. Over the past year, DEC used those funds to hire a contractor to help with the technology review conference and to produce a report on that conference, as well as to hire a contractor to review the source reduction evaluation reports submitted by the cruise ships. If HB 134 passes, DEC will use some of those funds next year to get started on the next technology review and the science advisory panel.

[2:23:28 PM](#)

REPRESENTATIVE TUCK inquired as to whether the standards established by the initiative will be met by 2014.

COMMISSIONER HARTIG said that is difficult to answer. The cruise ships have come a long way, and some of the vendors and academics at the technology conference were optimistic for ammonia and a little less optimistic for copper. Things are really close on nickel and zinc; an improvement in copper will also improve the other metals. He pointed out that percentage-wise it may sound larger, but when looking at the difference between what the Water Quality Standard is and what is currently being achieved, the difference for copper is measured in parts per billion, so it is very close already. Even if the standards are not met by 2015, he said, it will be very, very close.

[2:25:58 PM](#)

REPRESENTATIVE TUCK asked whether some cruise ships would be unable to get a permit should Amendment 3 become law.

COMMISSIONER HARTIG answered that some ships may choose not to apply, but based on current DEC data there are no cruise ships that are so far off that DEC would be unable to permit them. Some ships may have different compliance requirements than others if DEC thinks more needs to be done to reach a level that technology can achieve for the handful of parameters that are not currently meeting the at-the-point-of-discharge requirement. He anticipated that anyone wanting to get a permit would get it, but some may have more strings attached.

[2:27:14 PM](#)

REPRESENTATIVE TUCK inquired what gives DEC the meat to ensure that any technology advancements are really implemented.

COMMISSIONER HARTIG urged that members not look at this too narrowly because the treatment technologies that the cruise ships would employ are not unique to cruise ships. These technologies are being used in a lot of other contexts, he explained. The pollutants are not unique and the systems are not unique. People are already looking at putting technologies into smaller packages and making them more efficient, so the technology is advancing outside the cruise ship world. It is just a matter of when developing technology can be transferred to a cruise ship. There are vendors interested in getting their systems to a point where they can be sold to cruise ships, so

there is pressure moving this along. All DEC is doing is shining a light so that the vendors and ships know it is important to keep advancing.

REPRESENTATIVE TUCK asked how often the permits will be reviewed and re-permitted.

COMMISSIONER HARTIG replied that the normal permit cycle is five years, but DEC has the discretion to issue a modified permit at any point in time if the laws change or there is new technology. Currently, DEC is on a two year technology review schedule, having just finished the February 2009 conference and two more conferences scheduled, each two years apart.

[2:29:59 PM](#)

REPRESENTATIVE EDGMON asked whether the economically feasible standard is built into other permits for mixing zones that are under the Alaska Water Quality Standards.

COMMISSIONER HARTIG responded that this standard appears in several places, such as DEC's anti-degradation policy that applies to all discharges in the state. When the water quality of the receiving water is of a higher quality than is required to protect aquatic life and other uses, the anti-degradation policy allows that water to be degraded only if certain findings are made by the department, and one of those is a technology requirement. The standard similarly comes up in the context of authorizing a mixing zone. In this regard, the 19 factors that were previously discussed before the committee must meet the technology standards.

REPRESENTATIVE EDGMON commented that in terms of having the expertise within DEC to measure economically feasible, the realm is very different in this context. He said he supports the bill sponsor coming forward to work with the committee to reach the middle ground that everyone is interested in achieving. He urged that someone with expertise in the economic feasibility standard be included on the science advisory panel.

[2:31:47 PM](#)

CO-CHAIR JOHNSON remarked that no one is more skeptical of the various state departments than he. However, there comes a point where a department can be micro-managed to death and the committee is almost at that point. He said he trusts that the sponsor will work to solve the problems the committee has

regarding the number of people on the science advisory panel. The bill can go to the House Rules Committee for amendments so that committee work is not being done on the floor. He called the vote on Amendment 3.

REPRESENTATIVE SEATON objected.

REPRESENTATIVE KAWASAKI objected.

The committee took an at-ease from 2:33 p.m. to 2:39 p.m.

[2:39:09 PM](#)

CO-CHAIR NEUMAN specified that since there has been a call for the amendment, a vote must be taken on the amendment.

REPRESENTATIVE EDGMON asked for clarification as to what exactly is being voted on.

CO-CHAIR NEUMAN responded that the vote is on whether to accept Amendment 3.

A roll call vote was taken. Representatives Neuman, Guttenberg, Johnson, Tuck, Wilson, and Olson voted in favor of Amendment 3. Representatives Edgmon, Kawasaki, and Seaton voted against it. Therefore, Amendment 3 was adopted by a vote of 6-3.

[2:40:49 PM](#)

REPRESENTATIVE TUCK noted that in Amendment 3 the three terms "the most effective, technologically and economically feasible" appear together on page 2, line 9, and on page 3, line 14; but not on page 1, line 14. To provide consistency, he moved that the committee adopt [Conceptual] Amendment 4 to Amendment 3 as follows:

Page 1, line 14, of Amendment 3, following "is"
Insert "the most effective,"

Thus, page 1, lines 13-15 of Amendment 3 would read as follows:

Environmental Conservation, in consultation with its science advisory panel on wastewater treatment, determines that compliance with those limits or standards is the most effective, technologically and economically feasible."

REPRESENTATIVE KAWASAKI objected.

REPRESENTATIVE GUTTENBERG objected and asked for clarification on whether "most effective" or "effective" would be inserted.

REPRESENTATIVE TUCK said "the most effective".

REPRESENTATIVE WILSON suggested adding a comma after effective.

CO-CHAIR NEUMAN restated Conceptual Amendment 4 [see above].

[2:43:28 PM](#)

REPRESENTATIVE GUTTENBERG withdrew his objection.

[Representative Kawasaki's objection was treated as withdrawn.]

There being no further objection, Amendment 4 was adopted.

CO-CHAIR JOHNSON asked for clarification that Representative Tuck's amendment is Amendment 4.

CO-CHAIR NEUMAN responded yes.

REPRESENTATIVE TUCK noted that he thought the call of the vote was to put Amendment 3 on the table, but instead the vote was to pass Amendment 3. He said he therefore agrees that his amendment would be Amendment 4.

[2:44:49 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Conceptual Amendment 5 to Amendment 3 as follows:

Page 2, line 7, of Amendment 3, following "section"
Insert "for no more than two years duration"

Thus, page 2, line 7, of Amendment 3, would read as follows:

stringent than those required under (b)(1) of this
section for no more than two years duration if the
department finds that a

CO-CHAIR NEUMAN noted that Amendment 3 replaces [CSHB 134(CRA)].

[2:45:28 PM](#)

CO-CHAIR JOHNSON objected in order to hear Commissioner Hartig's opinion.

CO-CHAIR NEUMAN requested Commissioner Hartig to address how Conceptual Amendment 5 would impact DEC.

COMMISSIONER HARTIG said DEC typically issues water discharge permits on a five-year basis, unless there is a change in circumstances, statutes, or a big change in technology. These permits take a lot of time and effort to put together and they go through an extensive public process, he explained. While he understood there is a high degree of interest in achieving the at-the-point-of-discharge standard for all pollutants as soon as possible, he said it would be very difficult and burdensome to make it less than a five-year rotation period. In further response to Co-Chair Neuman, Commissioner Hartig agreed that the department already has the ability to shorten the time period if needed.

[2:47:05 PM](#)

REPRESENTATIVE WILSON understood that under Amendment 3, DEC would already be looking at things every two years, given the schedule of the future technology conferences.

COMMISSIONER HARTIG answered correct.

REPRESENTATIVE SEATON maintained that the bill does not say this. He cited page 3, line 6, of Amendment 3, which states, "hold one or more public conferences or workshops". It does not say that there will be two conferences, he argued, and it does not say that there will be one conference every two years. Nor does it say that there will be a conference before the preliminary permit and one before the final report. So, if that is the desire, then there needs to be an amendment. Speaking to Amendment 5, he said the committee has heard that progress is being made, that technology will have to be used as it becomes available, and that backsliding cannot occur at the end of the permit but this backsliding is not on an ongoing basis in between permit cycles without revoking the permit. Thus, the logical thing is to make sure there is a mechanism that ensures the two-year schedule rather than leaving it on an ad-hoc basis. The permit does not provide that it can be revoked if the commissioner decides that better technology has come along.

CO-CHAIR NEUMAN said Commissioner Hartig testified that this is provided by other statutes.

REPRESENTATIVE WILSON surmised that Amendment 3 does mean that these things need to be done because page 3, line 9 of the amendment states, "On or before January 1, 2012, the commissioner, in consultation with the panel, shall provide a preliminary report to the legislature that summarizes....".

2:50:20 PM

REPRESENTATIVE GUTTENBERG asked when the permits will next be renewed.

COMMISSIONER HARTIG explained each individual permit is renewed every five years, so all of them do not come up at once every five years.

REPRESENTATIVE GUTTENBERG inquired how many permits will be coming up in the next cycle that would be affected by HB 134 and Conceptual Amendment 5.

COMMISSIONER HARTIG responded that right now all of the cruise ships are discharging under one general permit. Ships that choose not to discharge under this one general permit go more than three miles out to discharge. Although it is just one permit for cruise ships, DEC administers thousands of other water discharge permits, he explained. When DEC looks at this individual permit, it looks at the permit in the context of all of the department's permits.

2:52:30 PM

REPRESENTATIVE SEATON pointed out that Amendment 5 would affect the special subsection related to cruise ships that is being added to AS 46.03.462. Amendment 5 would be for a two-year permit, he said, and then if technology improves there would be a re-issuance of the permit to incorporate the new technology. Otherwise, under the current five-year cycle, the permit would have to be revoked to incorporate the new technology that testimony has indicated is moving quickly.

COMMISSIONER HARTIG explained that while two years is the number used [in Amendment 3], it is still a guess as to when treatment might be available to bring ammonia to at the point of discharge; however, he has not heard that for metals. He further explained that two years is the guess as to when the technology might become available and then it would still have to be implemented. The ships already have schedules and

implementation means bringing them into dry dock for modification. Additionally, a modification can affect the vessel in other ways due to the weight and so forth. The department thought this five year period was realistic, he said. Consideration was not about what was convenient for DEC and its workload and what is fair to other permittees waiting for permits, it was about what DEC thought was feasible in terms of reviewing and vetting, and getting it implemented.

[2:54:59 PM](#)

REPRESENTATIVE SEATON understood that AS 46.03.462 applies to cruise ship discharges at the point of discharge.

COMMISSIONER HARTIG answered correct, AS 46.03.462 applies just to cruise ships and addresses the at-the-point-of-discharge requirement.

REPRESENTATIVE SEATON maintained that AS 46.03.462 affects only the one general permit for cruise ships and not the thousands of other water quality permits. He said he therefore believes that Amendment 5 is in line with the testimony that has been received about technological upgrades.

CO-CHAIR NEUMAN offered his belief that DEC already has this ability.

COMMISSIONER HARTIG replied correct. The permit issued to cruise ships under AS 46.03.462 has a cross reference to AS 46.03.100, which is DEC's general permitting authority. Under this general permitting authority, DEC can modify and re-issue permits when it deems this to be appropriate.

A roll call vote was taken. Representatives Kawasaki, Edgmon, Tuck, Seaton, Guttenberg, and Wilson voted in favor of Amendment 5 to Amendment 3. Representatives Olson, Neuman, and Johnson voted against it. Therefore, Amendment 5 passed by a vote of 6-3.

[CSHB 134(CRA), as amended, was held over.]

[2:58:34 PM](#)

ADJOURNMENT

The House Resources Standing Committee meeting was recessed at 2:59 p.m. to a call of the co-chair. [The meeting was reconvened March 26, 2009.]