

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 6, 2017

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Natasha von Imhof
Senator Bert Stedman
Senator Shelley Hughes
Senator Kevin Meyer
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW: ALASKA'S PRIMACY PROGRAM FOR WATER AND AIR

- HEARD

CS FOR HOUSE JOINT RESOLUTION NO. 6 (RES) AM
Expressing the Alaska State Legislature's support and appreciation for legislation introduced by the state's congressional delegation that would allow for the construction of a single-lane gravel road through the Izembek National Wildlife Refuge, connecting the community of King Cove with the Cold Bay Airport; and urging the United States Congress to pass the legislation.

- MOVED CSHJR 6 (RES) AM OUT OF COMMITTEE

SENATE BILL NO. 3

"An Act relating to the regulation of wastewater discharge from small commercial passenger vessels in state waters; relating to art requirements for certain public facilities; and providing for an effective date."

- MOVED SB 3 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 6

SHORT TITLE: SUPPORT ROAD: KING COVE & COLD BAY

SPONSOR(S): REPRESENTATIVE(S) EDGMON

01/18/17 (H) READ THE FIRST TIME - REFERRALS
01/18/17 (H) RES
01/27/17 (H) RES AT 1:00 PM BELTZ 105 (TSBldg)
01/27/17 (H) Moved CSHJR 6(RES) Out of Committee
01/27/17 (H) MINUTE(RES)
01/30/17 (H) RES RPT CS(RES) 8DP 1NR
01/30/17 (H) DP: BIRCH, TALERICO, WESTLAKE, JOHNSON,
DRUMMOND, RAUSCHER, PARISH, TARR
01/30/17 (H) NR: JOSEPHSON
02/01/17 (H) TRANSMITTED TO (S)
02/01/17 (H) VERSION: CSHJR 6(RES) AM
02/03/17 (S) READ THE FIRST TIME - REFERRALS
02/03/17 (S) RES
02/06/17 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 3

SHORT TITLE: SMALL VESSEL WASTEWATER EXEMPTION; 1% ART

SPONSOR(S): SENATOR(S) STEDMAN

01/09/17 (S) PREFILE RELEASED 1/9/17
01/18/17 (S) READ THE FIRST TIME - REFERRALS
01/18/17 (S) RES
02/01/17 (S) RES AT 3:30 PM BUTROVICH 205
02/01/17 (S) Heard & Held
02/01/17 (S) MINUTE(RES)
02/06/17 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE EDGMON, Speaker of the House
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HJR 6.

TIM CLARK, staff to Representative Edgmon
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on HJR 6 for the sponsor.

WILLIAM DUSHKINS, SR., representing himself
King Cove, Alaska

POSITION STATEMENT: Supported HJR 6.

JENNIFER HARRISON, CEO
Eastern Aleutian Tribes
King Cove, Alaska
POSITION STATEMENT: Supported HJR 6.

MIKE SALLEE, representing himself
Ketchikan, Alaska
POSITION STATEMENT: Opposed HJR 6.

HENRY MACK, Mayor
City of King Cove, Alaska
POSITION STATEMENT: Supported HJR 6.

GARY HENNIGH, representing himself
King Cove, Alaska
POSITION STATEMENT: Available for questions on HJR 6.

LARRY HARTIG, Commissioner
Alaska Department of Environmental Conservation (DEC)
Anchorage, Alaska
POSITION STATEMENT: Provided overview of Alaska's primacy program for water and air.

MICHELLE HALE, Director
Division of Water
Alaska Department of Environmental Conservation (DEC)
Anchorage, Alaska
POSITION STATEMENT: Participated in the overview of Alaska's primacy program for Tier 3 waters and commented on SB 3.

CHRIS PELOSO, Assistant Attorney General
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Commented on SB 3.

ACTION NARRATIVE

[3:30:26 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Stedman, von Imhof, Meyer, Coghill, Hughes, and Chair Giessel.

HJR 6-SUPPORT ROAD: KING COVE & COLD BAY

[3:31:15 PM](#)

CHAIR GIESSEL announced consideration of HJR 6 [CSHJR 6(RES) am, labeled 30-LS0329\J.A was before the committee]. It relates to a small one-lane gravel road access to an all-weather airport in nearby Cold Bay that people of the Alaskan Village of King Cove have been requesting for decades. According to the Alaska delegation, that request has been met with "secretarial antipathy."

Specifically, HJR 6 asks the legislature to support efforts by Alaska's congressional delegation to achieve a land exchange authorized by Congress in which the federal wilderness area surrounding King Cove would receive approximately 43,000 acres of state land to add to it. In return, less than 400 acres for a road corridor would be opened for access between the two settlements.

[3:32:15 PM](#)

SENATOR WIELECHOWSKI joined the committee.

CHAIR GIESSEL said the sponsor of HJR 6 is the Speaker of the House, Representative Bryce Edgmon.

[3:32:35 PM](#)

REPRESENTATIVE EDGMON, Speaker* Alaska State Legislature, Juneau, Alaska, sponsor of HJR 6, said HJR 6 basically expresses the legislature's appreciation and support for the legislation that Senator Murkowski and Representative Young have introduced that would allow the land exchange necessary to complete what is essentially a 30-mile road connecting King Cove and Cold Bay. About 18 miles of that road has already been constructed and is sitting there unused because of the remaining 12 miles that need to be constructed. This issue has been lingering for 30 years. The measure that created the land exchange in 2010 passed the Alaska Legislature unanimously with no opposition and most recently this resolution passed the House by a vote of 39-0. Being a resolution, it has no fiscal note.

[3:34:29 PM](#)

CHAIR GIESSEL said she appreciated the number of folks he provided in the resolution who were negatively affected by the lack of the road.

[3:34:59 PM](#)

SENATOR COGHILL noted the many letters of support.

SENATOR MEYER said even though everyone supports this issue, the State of Alaska (SOA) is in litigation over it and he wanted to know its status.

[3:35:31 PM](#)

TIM CLARK, staff to Representative Edgmon, Alaska State Legislature, Juneau, Alaska, said the SOA is in ongoing litigation with the Department of Interior over several issues related to the authorization for the land exchange and road that dates from the Public Lands Act of 2009. One is whether the authority for the exchange that was created in 2009, and through the state's reciprocating legislation in 2010, is still valid. In fact, this resolution was amended slightly to make sure it wasn't treading on any of the concepts under discussion, so now the last whereas clause refers to the new bills introduced by Alaska's delegation as ensuring the continuing authorization for the exchange and the road.

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CHAIR GIESSEL opened public testimony.

[3:37:25 PM](#)

WILLIAM DUSHKINS, SR., representing himself, King Cove, Alaska, supported HJR 6 saying if it saves one life, the state and federal government are paid in full. It didn't seem fair that the federal government is demanding so much land from the King Cove Corporation, because the military had installed 100 miles of road already and it didn't hurt anything. This road would open the gates to King Cove that has one of the biggest fish processing plants in the world.

[3:39:15 PM](#)

JENNIFER HARRISON, CEO, Eastern Aleutian Tribes, King Cove, Alaska, supported HJR 6. She said this organization manages the health clinics in King Cove and Cold Bay and that the 55 emergency evacuations and 17 Coast Guard incidents are numbers from her tracking system. She related two incidents that happened to her just this weekend when she tried to fly out of King Cove. The plane hadn't flown out for three days, because of a soft gravel runway, not because of bad weather. She finally found a fisherman who was willing to take her to Cold Bay. She got to climb "that ladder," saying it was windy and cold and you had to hold on for your life. An elderly who had already missed two health appointments was willing to go on the boat and climb up that ladder with her. Another man was medevacked from King Cove a half-hour later for all the same reasons.

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MIKE SALLEE, representing himself, Ketchikan, Alaska, opposed HJR 6. He asked what it is about King Cove that justifies expending that amount of political effort to get an exception to long standing environmental protections in order to punch a road across a critical habitat of a national wildlife refuge. Although he hadn't heard but "bits and pieces" of this issue, he thought this was an attempt to set the precedent of allowing development in wildlife refuges in order to weaken protections for places like the Alaska National Wildlife Refuge (ANWR).

He related that his mother lived in a remote homestead by choice for the last 15 years of her life. She had only a 14-foot skiff for transport to the Ketchikan road system and accepted the cost of operating and maintaining that skiff, as well as the risks and difficulty dictated by weather and sea conditions. But for her it was a fair trade-off for living in a place she loved. "She did not ever demand that her community or government provide her with a means to travel comfortably and safely to a remote home of her own choosing," he said. People are scattered all over Alaska living in remote settings where quick and ready access to medical services simply does not exist.

[3:45:17 PM](#)

HENRY MACK, Mayor, City of King Cove, Alaska, supported HJR 6. He was on the City Council back in 1976 when the first resolution was adopted identifying the need for road access to the Cold Bay Airport, which is their primary connection to the outside world. They have winds in excess of 50 mph on a regular basis. The small King Cove Airport is precariously perched adjacent to volcanic mountains and about 30-40 percent of the time single-engine planes cannot make their scheduled flights in and out of the community. This road will resolve their access problems so King Cove residents can have safe and dependable access to the Cold Bay Airport.

He remarked that a mother and new born came home from a check-up in Anchorage on the same boat that Jennifer Harrison went out on. The Mom had to wrap the baby inside of her coat and go down the same 20-foot ladder. He said even though they are fishermen used to bad weather, they don't like traveling with kids and families in bad weather.

[3:49:38 PM](#)

GARY HENNIGH, representing himself, King Cove, Alaska, said he was available for questions on HJR 6.

CHAIR GIESSEL closed public testimony on HJR 6.

SENATOR COGHILL moved to report CSHJR 6(RES) am, labeled 30-LS0329\J.A, from committee with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[3:50:43 PM](#)

At ease

Overview: Alaska's Primacy Program for Water and Air

[3:52:11 PM](#)

CHAIR GIESSEL announced the overview of Alaska's Primacy Program for Water and Air. She said DEC regulates air and water quality under the primacy authority of the Clean Air Act and the Clean Water Act. This means the state department is administering both state and federal requirements. Today he would provide an overview of those duties and identify points of discussion the commissioner has with the federal agencies.

[3:52:57 PM](#)

LARRY HARTIG, Commissioner, Alaska Department of Environmental Conservation (DEC), Anchorage, Alaska, said he would cover four topics today focusing on the primacy program for air and water permitting since they are most relevant to resource development in the state. He would touch briefly on their regulations, many of which are driven by federal requirements. He would then talk about the new federal administration and congress; they are anticipating changes but didn't have a crystal ball. He would lastly give a quick status report on specific topics including the status of developing a Tier 3 Outstanding Natural Resource Waters (ONRW) process. He would also talk about the Accidental Discharge Act (ADA).

COMMISSIONER HARTIG defined "primacy" as a federally required program that will be either delegated or assigned to the state to run. Most of the programs that are set up under Environmental Protection Agency's (EPA) regulations were put together by a congress with the idea that states would actually run them and that there should be "cooperative federalism" between the two where they are equal partners in environmental regulation.

Two big EPA programs are the Waste Water Discharge Permitting Program, nationally called the National Discharge Pollutant Elimination System (NDPES), which in Alaska is called the Alaska Discharge Pollutant Elimination System (ADPES). The two other

large primacy programs the state has are the Public Drinking Water Program in the Environmental Health Division and Pesticides, but he wouldn't talk about those today.

He said the state has had primacy in the Air Program going back to the beginning of the Clean Air Act's implementation in the 1970s, and in his mind it is the equal to any other states in the nation in terms of its quality, longevity, and staff expertise. He said the state pursued primacy and was given it by the federal government in 2008 under a four-year phased approach. At that time only five states didn't have primacy. Now in Region 10 only one state is left and that is Idaho, which is pursuing it now.

[3:57:51 PM](#)

COMMISSIONER HARTIG said having primacy provides benefits to the state, because before 2008 there was only one EPA permit writer in all of Alaska. If a complicated NPDES permit was need he would end up going to Seattle. Chances were that the permit writer had never set foot in Alaska and would be working on all sorts of other permits, and EPA's work priorities were largely being dictated by federal litigation within Region 10. So, it was hard getting the level of service needed out of the EPA.

Also, with the lack of understanding Alaska-specific conditions and the fact that they were reporting to headquarters and not the people of Alaska, EPA's discretion was largely exercised to mirror the rest of the country. This was frustrating to industry and to the state and led to a strong interest in pursuing primacy. While being more accessible and recognizing certain Alaska elements that may not work well in following the national model, the state still follows the same federal requirements.

[4:00:18 PM](#)

CHAIR GIESSEL asked if one of the responsibilities of primacy is to generate regulations.

COMMISSIONER HARTIG answered yes.

CHAIR GIESSEL asked what percentage of the regulations his department puts forth are the result of having primacy over water and waste water.

COMMISSIONER HARTIG replied that he puts them into two categories: one, an update to be consistent with required national standards and an update to the science (underlain by a federal requirement to periodically assess and update the

science). On the water side, it would just be updating permit fees following state statute.

4:01:28 PM

MICHELLE HALE, Director, Division of Water, Alaska Department of Environmental Conservation (DEC), added that they have had no updates to primacy regulations since 2008 or 2007 when they took over the program. There may have been one or two very small updates just to adhere to federal law and the other was periodic updates to fees.

4:01:52 PM

COMMISSIONER HARTIG said one of the challenges resource development people were having in Alaska prior to the state getting primacy is that permits weren't always issued timely. The maximum term of a permit under federal law is five years, and at the end of the five years if it hasn't been renewed it gets administratively extended. That means a person can still discharge, but they have to meet the requirements of the permit. A lot of facilities discharge under general permits, which is when one permit is issued for similarly-situated dischargers. But extended permit situations don't allow new discharges or modification (if you want to expand the facility or change the treatment, for instance). When Alaska first took primacy, one of the big problems was that fish processors that are generally under one to three different general permits couldn't get coverage. So, it is really important for the state to keep the permits current and it went from about 35 percent of facilities having current permits to 85 percent today. This is one of the key measures of their success, and it is still improving.

4:04:01 PM

COMMISSIONER HARTIG said several different permits are issued on air performance measures. He explained that sometimes air quality permits are very complicated and difficult to permit, like for a Point Thomson facility that has 100 or 200 different emission sources, or the controversial Wishbone Hill project that went through a public notice several times before it got reissued. Seventy new applications came in in 2016 and 83 were issued, evidence that some of the backlog is being taken care of and the department is doing pretty well.

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COMMISSIONER HARTIG explained that the air quality went through a lien process last year and minor construction discharge permits went down to an average 40-day turnaround performance, a 35 percent improvement. Water is going through some lien

exercises right now. So they are continually looking for efficiencies.

It's important to understand that the air quality permits are largely fee supported and the overall Air Quality Division budget is only about \$10.5 million. Of that, \$1.7 million is from unrestricted general funds (UGF); \$1.4 million of that is the state's required minimum investment that is called maintenance and effort and. So, that only leaves \$300,000 for other things.

4:06:21 PM

COMMISSIONER HARTIG said on the water side of the APDES program, the governor's proposed budget for FY17 is about \$4.5 million and of that, \$636.5 million is from UGF. So, giving up primacy wouldn't save the state that much money and performance would be lost. Also, AS 46.03.100 requires the DEC to issue water permits, so the state still needs to have a permitting program, and you can't get rid of that because one of the things it does is certify EPA-issued permits and other federal water permits to comply with state requirements. This is where the mixing zone program is added, because no federal agency has the authority to do that.

4:07:57 PM

COMMISSIONER HARTIG said the DEC follows a standardized rigorous process for creating regulations. A division will come to the commissioner's office and give their justification and an overview of the proposed set of regulations - an update in federal law or a fee study, perhaps - that would be discussed as a policy going forward. Then if it gets the green light, internal resources would be used to develop the regulations. Public work groups were formed to develop them in a more collaborative manner. For instance, the Air Quality Drill Rig Working Group meets with people from the North Slope and Cook Inlet including NGOs and Tribes and discusses ways of simplifying the mobile drilling rigs. Work groups have existed for fish consumption and human health values, anti-degradation, and petroleum clean up levels.

4:09:29 PM

SENATOR COGHILL said these working groups create their own "regulation weather pattern," and he has heard concerns that they overreach what one would generally think the federal government requires.

COMMISSIONER HARTIG answered that these groups don't do negotiated rule-making; they advise the department, but the department would "still hold the pin." The regulations go through a prescriptive process including an economic review by an internal economist. They also go through a Department of Law (DOL) review to make sure that both the process and the substance is within the law.

[4:10:56 PM](#)

SENATOR COGHILL said some of his constituents feel that DEC applies the regulations more stringently than the feds require, and asked if that is because it takes Alaska's unique characteristics into account.

COMMISSIONER HARTIG said he thought there could be some misunderstanding and asked to follow up on the specifics with him.

[4:12:10 PM](#)

He said the new federal administration hasn't appointed a lot of new people yet, but Scott Pruitt has been the nominee for EPA administrator, and he has expressed a lot of support for federal cooperation. Coming from a state that was contesting a lot of the new rules and initiatives it is expected that he would be more likely to want the states to have more discretion in development of new EPA requirements rather than just telling the states the way it needs to be done. Under the last administration, no matter what side of the line you were on, you were still being overly regulated. Somethings have come out of Washington, D.C., which the state DEC comments on that won't work well in Alaska, and they will bring those up in the next administration.

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CHAIR GIESSEL asked if the federal government withdrew some of these regulations, would his department be amenable to pulling back some state regulations, as well.

COMMISSIONER HARTIG replied that he would have to make sure there wasn't an underlying state requirement. Some of the recent federal rules that have come up could be revisited and a big one would be the definition of waters of the U.S. that is used for determining Clean Water Act jurisdiction, both for the Waste Water Discharge Permitting Program and also for the Dredge and Fill Program under Section 404 of the Clean Air/Clean Water Act.

COMMISSIONER HARTIG said Alaska was deferred from the Clean Power Plan that regulates greenhouse gas emissions from public power plants, because of a lot of differences in the way our systems are built and what could and could not be done to meet the requirements. That is in litigation, so what the next administration does is yet to be seen.

Congress just overruled the Stream Protection Rule by a majority. The House side has acted to overturn the Bureau of Land Management's (BLM) methane rules and there is a lot of interest in the Circle 108(b) financial assurances for Alaska mines. Alaska has its own rules for financial assurances for treating waste water and maintaining waste water systems including after closure of a mine. The EPA has proposed a set of rules under Circle, which is a much more onerous federal superfund statute, and the question is should this be left for state jurisdiction. He wasn't sure where that one was going to go.

COMMISSIONER HARTIG said that one of the things they looked at several years ago is whether the state should take primacy of the 404 Dredge and Fill Program. Only two states have taken primacy for it, and the reason is because states just don't get much. Even though Congress intended for states to get primacy of 404, the way it has been interpreted over the years, particularly by the Army Corps of Engineers (ACE), is that the Corps has to keep jurisdiction over most of the waters and very little is actually turned over to the states. So, what is turned over to the state doesn't make it worth running that program.

In the discussion over whether Alaska should assume primacy or not, the question came up of what the assumable waters are. Other states have the same issue and eventually pushed the EPA and ACE to form a federal advisory committee to make recommendations on changes. Michelle Hale sat on that committee and the report will be issued soon. The understanding is that the ACE will take a position that legally states won't get much out of this program, and hopefully the new congress and administration will address that. Although the state is not in the position to pursue 404 primacy now because of fiscal reasons, with 60 percent of the country's wetlands, all the issues around mitigation, and the flexibility the state might get in having that program is something that should continue to be looked at.

[4:19:32 PM](#)

Similar legislation (S. 168) has been introduced in congress called the Vessel Incidental Discharge Act (VIDA) that would do two things: it first would regulate ballast water discharge from larger vessels with a national approach that would be run by the Coast Guard and be based on best management plans (BMP) and practices. It would also preempt the states from regulating in that area.

Secondly, it would regulate incidental discharges, which is a defined term under the act and includes about 35 different waste streams. It would also rely on the Coast Guard and BMPs and preempt states. It also includes exemptions for smaller fishing and fish processing vessels.

COMMISSIONER HARTIG said the department has looked at this and commented on it in the past and it has good parts and some concerning parts. It would be good for the small fishing vessels in Alaska to continue to be able to be exempt from the EPA requirement for a Vessel General Permit (VGP) for discharges. It would be good to have oversight of ballast water, but the concern is that the Coast Guard wouldn't be able to effectively manage it. Invasive species are a huge concern to Alaska's fishing industry and we can't afford for it not to be managed right. So, for the state to give up its ability to be able to go in there and regulate gaps may not be safe. Much more assurance is needed on that.

Similarly, under incidental discharges it would mean the state couldn't regulate grey water, which raises the question of whether it would be able to regulate grey water (everything but sewage) mixed with black water (sewage) and of being able to continue the cruise ship permitting program. It would also preclude the department from looking at other waste streams that aren't regulated now but might be in the future. For instance, some ships are installing new systems dealing with air emissions that involve the use of scrubbers that generate other waste water streams that would need to be managed. The department would certainly want more assurances before having a national program run by the Coast Guard that doesn't have a history in this particular area of work.

CHAIR GIESSEL noted a briefing paper about VIDA in their packets along with a paper on Tier 3 waters.

[4:22:44 PM](#)

SENATOR STEDMAN said the pressing of fish and incidental discharge of red water off the decks of fishing boats is a big

issue in coastal Alaska. So, if this bill doesn't pass, they get a permanent exemption, but he asked if the state is still faced with getting a waiver on it. He asked how they should go forward to try to protect the industry and if they should get involved in helping steer S. 168 so it doesn't impact fisheries and other industries in Alaska.

COMMISSIONER HARTIG answered that is one of the many discharges in one of the many types of vessels that could be covered under VIDA. The larger vessels are more concerning to him, and to a lesser degree having a broader more pragmatic way of dealing with discharges from the smaller vessels that have less capacity to deal with the waste streams.

[4:25:42 PM](#)

SENATOR STEDMAN said he hears what the commissioner is saying, but it seems like the fishing industry has a lot of potential risk if this bill doesn't pass and the federal government decides to not allow halibut boats to discharge deck water, and it's impossible for them [halibut boats] to ever meet the standards.

COMMISSIONER HARTIG responded that he hadn't heard any pushback on exempting fishing vessels.

[4:25:59 PM](#)

COMMISSIONER HARTIG said a stakeholder letter went out today to those people who have expressed an interest on Tier 3 waters, known as "Outstanding Natural Resource Waters" (ONRW), a definition out of the Clean Water Act in which each state is required to have an anti-degradation policy. As part of the anti-degradation policy, there has to be a way of designating Tier 3 waters. These are waters that are preserve in whatever status they have at the time - good or bad. For example, a hot water spring might not be any good for drinking or fishing, but it will be protected in that state anyway because it has therapeutic or other values. Similarly for a really high-value recreational stream - maybe in a national park - that you want to keep in that exact status. So you're not going to allow any pollution into that water even if it wouldn't affect the aquatic life. That's the highest protection. It becomes more of a policy call, because the next level down, Tier 2, protects all uses like aquatic life, drinking water, and all that. Tier 3 is preservation.

Alaska doesn't have a process for designating Tier 3 waters, although it looked at one last year, and the administration is

not working on one now. Rather the department is reaching out to the public to get their ideas on different options, trying to build more of an understanding of what Tier 3 is, maybe form more of a consensus, and come back with either regulations or statutes and a proposed Tier 3 process for Alaska. So, they will have four workshops around the state - in Juneau, Anchorage, Dillingham, and Fairbanks - in March, and more if needed.

4:29:14 PM

MS. HALE added that rather than having a meeting in Dillingham, they will have a statewide teleconference to capture all the other communities that aren't able to come to the four major meetings, and then reach out to Dillingham later for a meeting in person.

COMMISSIONER HARTIG said one of the biggest source of greenhouse gases in the whole country are the big public power plants, particularly the coal-fired ones, since they are a relatively higher carbon fuel source. The Clean Power Plan targets those coal-fired plants nationally, but in Alaska they account for only 5-6 percent of greenhouse emissions and that is one reason Alaska was deferred. He didn't know if the administration's plans would affect the few coal plants in the state, one of which is in the Interior where Fairbanks is being fined by the EPA for going over the 2.5 particulate matter (PM) threshold. The particulate matter comes mostly from wood smoke, but also from coal. These power plants also generate PM 2.5 precursors, chemicals that end up forming PM 2.5 in the atmosphere later.

He said that the EPA is moving Fairbanks to "serious non-attainment" this spring, which means putting more rigorous controls on PM 2.5 in the precursors, which will require the department to do a technology review on how the coal-fired plants are controlling PM 2.5 emissions, and that may result in them having to add additional controls.

COMMISSIONER HARTIG said the different coal projects and infrastructure around the state include the Healy Mine, which is current on its air permits, but site-specific water criterion is being worked on for its renewal permit. Wishbone Hill has been held up on its Surface Mine Coal Permit, a federal permit that DNR has primacy of. They have a current air permit that went through an administrative appeal, but it didn't get appealed to the court, so that is final. The water permit was extended administratively and more water quality data is expected on that. Both the proposed Chuitna and Jumbo Dome projects have site-specific criterion.

COMMISSIONER HARTIG explained that water quality standards limit the amount of pollutant that can be discharged to protect different uses of the water, and those are set at a statewide number. Site-specific criterion is for individual projects and water bodies that justify either a higher or a lower number based on site-specific conditions that have to be identified and developed before the permit is issued.

He said the Seward Coal Terminal was originally covered under a general permit and then litigation by an outside group was successful in the Ninth Circuit and the EPA decided that the general permit didn't apply, so it has an individual permit. But there is no activity now.

[4:34:18 PM](#)

CHAIR GIESSEL thanked the presenters.

SB 3-SMALL VESSEL WASTEWATER EXEMPTION; 1% ART

[4:34:23 PM](#)

CHAIR GIESSEL announced consideration of SB 3 [labeled 30-LS0046\J] sponsored by Senator Stedman. She noted that the committee submitted questions to DEC and the responses are in their packets. She said SB 3 proposes to extend the exemption and alternative management programs for certain classes of marine vessels as it relates to discharge requirements. It also exempts the new Alaska-class ferries from the 1-percent for art requirement. She invite Michelle Hale, signatory on the letter, to come forward for follow-up questions. There were none, so she opened public testimony.

[4:36:28 PM](#)

At ease

[4:36:33 PM](#)

CHAIR GIESSEL called the meeting back to order and noted a letter of support for SB 3 from the Alaska State Council on the Arts as a one-time targeted exemption from the Alaska 1 percent for arts program.

[4:37:24 PM](#)

Finding no comments, she closed public testimony on SB 3.

SENATOR WIELECHOWSKI asked the Department of Law (DOL) if SB 3 has any issue with the single subject rule of the Constitution.

[4:37:45 PM](#)

CHRIS PELOSO, Assistant Attorney General, Department of Law (DOL), Anchorage, stated that he believes there may be a single subject rule issue with SB 3. The Alaska Constitution, Article II, Section 13, says that all bills have to have a single subject. While the courts tend to view that very broadly, this bill seems to have two different subjects: one is the waste water treatment from ships and the other is this 1-percent for art exemption.

MR. PELOSO said he believes two of the three ships that are covered by the 1-percent sections of this bill are not even covered by the waste water sections of the bill, because they don't fit under the standards for getting that exemption. The best he could say is that the two sides of this bill are related to boats, which in his opinion is "a pretty tenuous connection."

[4:39:11 PM](#)

SENATOR WIELECHOWSKI asked what the consequence is if the court decides this is a violation of the single subject rule. Would it strike down both aspects of it?

MR. PELOSO replied yes, it would strike down the whole bill.

SENATOR STEDMAN said the operative terms from Mr. Peloso's opinion were of possibilities rather than certainties; there are different legal opinions on whether it would be challenged or not, and he thought the matter should go forward and get sorted out.

[4:40:30 PM](#)

SENATOR COGHILL moved to report SB 3, version J, from committee with individual recommendations and attached fiscal note.

SENATOR WIELECHOWSKI objected to state that the single subject question is a real issue, and a challenge is likely. The whole bill could be struck down and expose a lot of small vessels to litigation. It might be better to break it down into two different bills. He then withdrew his objection.

CHAIR GIESSEL thanked Senator Wielechowski for his comments and announced that with no further objections, SB 3 moved from committee.

[4:42:38 PM](#)

CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 4:42 p.m.