

BEFORE THE COMMISSIONER OF THE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE OF ALASKA

In the matter of:)
)
Alaska Cruise Association's Request)
for Adjudicatory Hearing and Conditional)
Request for Partial Stay of Large Commercial)
Passenger Vessel Wastewater Discharge)
General Permit No. 2007DB0002,)
dated May 1, 2008)
_____)

ORDER ON REQUEST TO STAY ADJUDICATORY HEARING PROCEEDINGS

The Alaska Cruise Association filed a Request for Adjudicatory Hearing and Conditional Request for Partial Stay of the above general permit. In the Request for an Adjudicatory Hearing, the Cruise Association requested that I stay all proceedings on the Request for Adjudicatory Hearing and Request for Stay, pursuant to the alternative dispute resolution procedures in 18 AAC 15.205, to allow time for the cruise lines represented by the Alaska Cruise Association (ACA) to gain a better understanding of their ability to meet the final effluent limits in General Permit No. 2007DB0002 by 2010, and with that information, assess the need to pursue their request for a hearing. If they decide to withdraw their request for an adjudicatory hearing, this could avoid the expenditure of significant time and money by the parties.

On June 11, 2008, a public notice was issued requesting comments on the request for stay of proceedings. I have received comments on the proposed stay of proceedings from the DEC Water Division and Mr. Gershon Cohen.

The Water Division did not oppose the procedural stay provided that they receive an extension of time to respond to the requests and that I seek an update from ACA,

Division Staff and interested persons at the end of the 2009 cruise season (approximately late September 2009) on whether the stay should be lifted. Gershon Cohen opposed the request for a procedural stay, expressing concern that the stay would delay the cruise industry's ultimate compliance with the final effluent limits.

I have considered the ACA request for a stay of proceedings and the Water Division and Mr. Cohen's responses to that request. I note at the outset that the provisions of the General Permit remain in effect and that at this juncture I am only being asked to stay the proceedings on ACA's requested challenge to the General Permit. I am not now being asked to stay compliance with any of the provisions of the General Permit itself. (I note that a change in the compliance schedule in the General Permit could be viewed as a request for modification of the permit, subject to DEC regulations applicable to the modification of waste discharge authorizations. Regardless, it would be DEC's intent, if it is asked in the future to modify the compliance schedule in the General Permit, to provide ample opportunity for public comment on the request before making a substantive decision on the request.)

I understand from the briefing that the issue of the feasibility of meeting the specific effluent limits, which are the subject of the ACA challenge, has not yet been determined. The companies discharging under the General Permit appear to be working towards the compliance deadlines. Granting the request to stay the proceedings will avoid the parties incurring the time and cost of resolving the issues raised in the request for hearing during the stay period. Giving the cruise industry this time to further assess the feasibility of meeting the final effluent limitations and whether to pursue their request for an adjudicatory hearing, could ultimately avoid the time and cost of the appeal

altogether if they decide to withdraw their request for a hearing. Accordingly, further proceedings on the request for hearing are stayed and conditional request for stay is granted. The request for adjudicatory hearing is stayed through June 1, 2009. If the stay is lifted before that time, I will provide Water Division staff and interested members of the public twenty days from notice of the lifting of the stay to file responses under 18 AAC 15.220(a) to the Request for Adjudicatory Hearing.

In the interests of ensuring that this dispute is resolved in both a cost-effective and timely manner, I am requesting that the Alaska Cruise Association, Water Division staff and interested members of the public provide me with status reports no later than March 1, 2009 concerning the cruise lines efforts to resolve compliance with the contested final effluent limits and whether the stay of the proceedings be continued or lifted. If prior to June 1, 2009, the Alaska Cruise Association, the Water Division, Mr. Cohen or interested members of the public believe that new information or circumstances warrant a lifting of this procedural stay, that person may also file a motion, served on others as provided by 18 AAC 15.340, requesting appropriate relief.

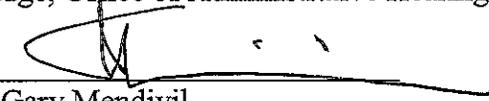
Nothing in this order is intended to modify any of the terms of the General Permit, including but not limited to the schedule for meeting final effluent limits or the requirements relating to source reduction evaluations.

IT IS SO ORDERED.

Dated: July 25, 2008


Larry Hartig
Commissioner

The undersigned certifies that on July 25, 2008, this order was distributed by U.S. mail to the following: Eric Jenkins, Richard Elliot, Lynn Tomich Kent, Gershon Cohen and Ruth Hamilton Heese, Assistant Attorney General. A courtesy copy was mailed to Terry Thurbon, Chief Administrative Law Judge, Office of Administrative Hearings.



Gary Mendivil