



ALABAMA ENVIRONMENTAL UPDATE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF APRIL 15, 2011

Introductory Business

The Commission meeting began by approving the minutes from the previous meeting. Six Commissioners (Davis, Miller, Phillips, Lester, Brown and Laier) were present at the meeting.

Director's Report

ADEM Director LeFleur began his report by discussing the budget. He stated that 9% of ADEM's budget is supported by the state general fund, while 34% comes from federal funds, and 57% comes from fees collected by the Department. In 2012, there will be a 31% decrease in state funds from the 2011 budget and ADEM expects a 13% decrease in the amount of federal funding. Director LeFleur discussed some of the ways the Department is trying to reduce its operating budget, including by using more general permits, requiring the submittal of reports online, and eliminating some public outreach programs. However, Director LeFleur noted that the reduction in expenses will not involve layoffs of ADEM staff. In addition, LeFleur also stated that the regulated community should expect an increase in fees to help offset budget shortfalls. Lastly, Director LeFleur highlighted the productive partnerships the Department has with private groups around the state, including environmental organization and businesses. He emphasized that these partnerships play a key role in helping ADEM get its job done.

Commission's Actions

The Commission unanimously adopted a resolution supporting the reauthorization of the Forever Wild program for another 20 years.

Next, the Commission voted unanimously to approve proposed amendments to Division 3 of ADEM's air pollution control regulations. The revisions incorporate by reference changes promulgated by EPA to the New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (HAPs), and transportation conformity and general conformity regulations. In addition, the revisions address the greenhouse gas tailoring rule with respect to operating permits for Title V sources.

The Commission also voted unanimously to approve the proposed amendments to Division 6 of ADEM's water quality program regulations. These revisions will add a new Treasured Alabama Lake special designation and will designate the Tallapoosa River within Lake Martin as such. In addition, the revisions will classify one segment of the Tallapoosa River as an Outstanding Alabama Water.

Public Comments

After adjourning, the Commission heard comments by Mike Mullen from the Choctawhatchee Riverkeeper, David Ludder from the ADEM Reform Coalition, and Eva Dillard from the Black Warrior Riverkeeper. Mr. Mullen began his discussion by commending ADEM on the improvements the agency has made in stormwater regulation. However, he went on to say that ADEM needs to focus on general deterrence and not specific deterrence with respect to penalties, and that ADEM needs to publicize its penalty orders to deter others from violating the law. Ms. Dillard spoke next, recommending that ADEM utilize the six penalty criteria identified in Alabama Code § 22-22A-18(c) governing the issuance of

penalties in a more uniform manner. She also thanked ADEM for regularly meeting with environmental groups over the past couple of months. Lastly, Mr. Ludder criticized the pending bills in the legislature that would reduce the existing \$100 minimum penalty and he encouraged the Commission to develop a subcommittee focused on creating a penalty policy.

Next Meeting

The Commission will hold its next regularly scheduled meeting on June 24, 2011.

Other Items

On April 6, 2011, EPA issued a final rule claiming to disapprove current provisions of Alabama's Clean Air Act State Implementation Plan (SIP) that regulate visible emissions or "opacity." The provisions of Alabama's SIP that EPA is claiming to now disapprove had been previously approved by EPA in 2008, and EPA's approval became final in November 2008. EPA's disapproval seeks to delete the current EPA-approved SIP regulations under which certain sources in Alabama are currently operating. It does so without any attempt by EPA to comply with the Clean Air Act's statutorily-mandated SIP revision procedures found in Section 110(k)(5) of the CAA. The opacity provision revoked by EPA is in fact more stringent than the provision that was previously in effect. EPA's disapproval of Alabama's current opacity rule is set to take effect on May 6, 2011, and is the subject of judicial review before the Eleventh Circuit Court of Appeals.

In February 2011, EPA issued a final rule regulating emissions of hazardous air pollutants from industrial, commercial, and institutional boilers located at major source facilities and area source facilities (the "Boiler MACT" rules). The new Boiler MACT rules require, among other things, regular tune-ups for certain facilities and establish numeric emission limits for a number of pollutants. In March, EPA proposed its electric generating unit (EGU or "Utility") MACT regulations, which would establish emission limits for HAPs from oil- and coal-fired power plants. As with the Boiler MACT rules, EPA is working to meet a court-ordered deadline. EPA must sign a final Utility MACT by November 16, 2011. Facilities impacted by the new rules will have until 2015 to comply, but EPA will evaluate whether to grant individual sources a one-year extension on a case-by-case basis.

On April 11, 2011, Black Warrior Riverkeeper (BWR) sued the Alabama Department of Transportation (ALDOT) in federal court in connection with ALDOT's Northern Beltline project. BWR alleges violations of the National Environmental Policy Act ("NEPA"). ALDOT has not yet responded to the allegations contained in BWR's complaint.

On March 2, the Business Alliance for Responsible Development (BARD) and several counties and municipalities (MS4s) filed separate requests for hearings before the Alabama Environmental Management Commission to challenge NPDES General Permit No. ALR040000, applicable to Phase II municipal separate storm sewer systems, issued by ADEM on January 31, 2011. Both administrative appeals have been assigned to an administrative law judge. However, hearing dates have not yet been set.