

BALCH & BINGHAM LLP
A L A B A M A
Environmental Update

**ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING OF FEBRUARY 5, 2002**

DIRECTOR'S REPORT:

Director James Warr began his report to the Commission by discussing ADEM's pending contracts. This contractual activity involves source water assessments, marina pump-out station grants, Clean Water Act § 319 nonpoint source pollution programs, and operator training.

In related financial matters, Director Warr reported that the Department's budget execution was "proceeding in an appropriate manner" but that the funding made available to Alabama pursuant to the federal Superfund program appears to fall short of requirements. ADEM intends to address this deficiency by shifting personnel from unfunded to funded efforts.

With regard to other budgetary matters, Director Warr noted that the state's General Fund has been cut in Governor Siegelman's latest budget proposal. The decrease in the General Fund will cause a \$189,000 cut in ADEM's operating budget. Coupled with a proposed 3% cost-of-living raise for ADEM employees, this budget cut means that "Fiscal Year 2003 presents a significant financial challenge," to the Department, according to Director Warr. This financial situation will likely be exacerbated by shifting priorities in the federal budget. While it appears that President Bush's recent budget proposal calls for increases in spending in the areas of brownfields, enforcement initiatives, water supply protection, and counterterrorism, it envisions cuts in the areas of water quality programs and Superfund activities.

With water supply protection in mind, Director Warr informed the Commission that water system security continues to be a concern for the state and ADEM. Accordingly, ADEM is continuing to pass on threat advisories to local water systems and intends next month to participate in a panel discussion of water supply security issues at the annual meeting of the Alabama Rural Water Association. On a happier note, Director Warr informed the Commission that ADEM's laboratory's certifications had been renewed by EPA following EPA's annual audit of its chemical and drinking water lab testing program.

Director Warr then notified the Commission that ADEM would likely submit rulemaking proposals this year in the air program (in order to address changes required by the NOx SIP call program) and in the solid waste program. He also informed the Commission that it was likely that either late this week or next three bills increasing the enforcement capability of the Alabama Office of Water Resources would be introduced in the legislature.

Director Warr concluded his report by introducing Jeff Crockett, of ADEM's Land Division, Hazardous Waste Branch. Mr. Crockett presented a report summarizing the history of and ongoing efforts regarding the investigation and remediation of Anniston's PCB contamination.

COMMISSION ACTIONS:

Prior to the afternoon meeting of the Commission, the Commission's Rulemaking Subcommittee met. The Rulemaking Subcommittee, which was reorganized following the departure of Dr. Richard Thigpen, currently consists of Mr. Sam Wainwright, Dr. William Sanders, and Dr. John Lester. Two petitions for rulemaking to amend ADEM Rule 335-2-3-.05 were before the Subcommittee. Both petitions were practically identical and requested that rulemaking commence to allow a public comment period at Commission meetings. These two petitions, however, were received in complete form only this past Friday by the Commission. Thus, according to statute, the Commission had to either make a decision on the petitions today or at a specially-convened Commission meeting within the next thirty days. Given these time constraints, the Subcommittee, therefore, elected to deny the rulemaking petition without prejudice but encouraged the petitioners to resubmit the petitions immediately following today's Commission meeting. At the Commission meeting this afternoon, the Commission followed the lead of the Subcommittee and voted 4-1 to deny the rulemaking petition.

The Commission's first action of the afternoon, however, was to pass a resolution honoring former Commissioner and Commission Chairman Dr. Richard Thigpen. Dr. Thigpen had served on the Commission for over six years. He recently resigned, leaving a vacancy on the Commission reserved for an attorney. On a related note, the Commission elected Dr. Sanders as its new chairman and Mr. Wainwright as its vice-chairman.

A variety of proposed regulations were presented to the Commission for its approval. The Commission approved regulations amending sections of the Department's air, drinking water, hazardous waste, and solid waste regulations. The majority of these changes simply ensured that the Department's regulations were being kept consistent with their federal counterparts. The Department also formally adopted the State Solid Waste Management Plan as regulation. That action formalized the Department's emergency rulemaking late last year in that same matter.

The Commission also noted the withdrawal of requests for hearings in the matters of The Beach Club v. ADEM, EMC Docket No. 01-08, Stewart v. ADEM, EMC Docket No. 02-02, and Gold Kist v. ADEM, EMC Docket No. 02-05. Additionally, it noted for the record the continuation of the hearing officer's recommendation in the matter Bronson v. ADEM, EMC Docket No. 01-05, until the April 9, 2002, Commission meeting.

At the conclusion of the Commission meeting, Commissioner Byington read a resolution which he explained that he hoped to introduce for the Commission's consideration at some point in the future. Essentially, the draft resolution called for the establishment of a stakeholder's advisory committee to assist in the development of revisions to the State Solid Waste Management Plan. No action was taken on this draft resolution.

NEXT MEETING: The Commission's next regular meeting is scheduled for April 9, 2002, at 1:30 p.m.

OTHER ITEMS:

The State Legislature is currently in session. The environment-related bills that have been considered or are being considered are summarized in the following table:

ALABAMA LEGISLATURE 2002 REGULAR SESSION: ENVIRONMENTAL BILLS

HB 31 - Compliance Assurance Fees	This bill enables ADEM to assess “compliance assurance fees” or permitted facilities in order to generate additional revenue to support ADEM’s inspection program. Sponsored by Rep. Johnson (R-Talladega).
HB 44 - Scrap Tire Bill	This bill enables ADEM to assess a \$1 fee on each new tire in order to fund the cleanup of scrap tire dumps and economic incentives for reuse. It would also provide ADEM with an increased ability to bring enforcement action against owners or operators of illegal scrap tire dumps. Sponsored by Rep. Gipson (R-Autauga & Elmore).
HB 55 and SB 29 - Vessel Dumping	This bill prohibits dumping of sewage from vessels into Alabama lakes and streams. Sponsored by Rep. Venable (D-Elmore & Coosa) and Sen. Preuitt (D-Elmore & Coosa). Passed/signed into law 1/31/02.
HB 54 and SB 109 - Solid Waste Bill	This bill clarifies the local approval process for permitting solid waste landfills. It also provides for nominal local fees. Sponsored by Rep. Dukes (D-Morgan) and Sen. Roberts (D-Lawrence, Morgan & Winston).
HB 261 – Sewer Sludge	This bill enables ADEM to further regulate and prohibit certain activities relating to sewer sludge handling, cultivating, and land application, and authorized the State Department of Public Health to respond to public health hazard complaints. Sponsored by Rep. Crigler (R-Mobile).
HB 281 – ADEM Appeals	This bill provides for the hearing of appeals of ADEM actions by a panel of Attorney General administrative law judges. Sponsored by Rep. Schmitz (D-Madison).
HB 286/HB 287 – Tank Farms (Marshall County)	These bills prohibit the location of a petroleum product tank farm or petroleum pipeline within one and one-half miles of any existing school, require local approval for tank farm siting, and provides for fire protection assistance by tank farm or pipeline operators. Sponsored by Rep. McLaughlin (D-Marshall) and McDaniel (D-Marshall & DeKalb).
HB 365 – Low Emission Vehicle Tax Credit	This bill provides for income tax credits for the purchase or lease of zero emission vehicles. Sponsored by Rep. Gaines (R-Jefferson & Shelby) and Hill (R-Shelby).
HB 397 – Solid Waste Plans	This bill provides for the adoption of local solid waste plans, prohibits certain smaller municipalities from adopting such plans, and requires counties to receive referendum approval for such plans in unincorporated areas of the county. Sponsored by Rep. Major (D-Jefferson), Curry (R-Jefferson & Shelby), and Houston (D-Jefferson).
SB 79 - Family Farm Preservation Act	This bill prevents farms from being sued for nuisances if they are in compliance with federal, state, and local statutes and regulations. Sponsored by Sen. Butler (D-Limestone, Madison & Morgan).
SB 235/HB 225 –	This bill authorizes the Commissioner of Conservation and Natural Resources to

Animal Importation Prohibition	prohibit the importation of certain animals, birds, reptiles, amphibians, and fish. Sponsored by Sen. Biddle (R–Jefferson & St. Clair).
SB 324 – Rock Quarry Prohibition (Lee County)	This bill prohibits ADEM from issuing a permit for the site approval or operation of a new or expanded rock quarry in Lee County for one year. Sponsored by Sen. Little (D–Russell & Tallapoosa) and Clay (D–Macon, Bullock, Barbour, Lee, Russell, & Henry).

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