



ALABAMA ENVIRONMENTAL UPDATE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF AUGUST 19, 2011

Report from the Director

The Director first discussed ongoing matters, beginning with the Department's response to current budgetary pressures. The Director mentioned greater automation, increased use of general permits, and delaying filling staff positions as particular responses that the Department has made to reduce expenses. ADEM has also handed over all inspection and enforcement efforts for its construction/stormwater program to the Field Operations Division in order to streamline the process. Sites determined to be out of compliance will be given notice and reasonable time to come into compliance before penalties will be assessed. The Director next addressed the proposed 19% increase in permit fees, beginning in December 2011, intended not only to address budgetary needs but also to ensure that enforcement activities continued at the State (rather than Federal) level. The process to implement this change has already begun. A public hearing will be held on September 21, 2011 and, barring delays, the matter will come before the Commission for rulemaking on October 21, 2011. The Director also briefly noted that ADEM's BP oil spill response is an ongoing effort that is still a major priority to which substantial resources continue to be devoted. Final close-out of the response phase is targeted for November 30.

Finally, the Director outlined a new ADEM initiative to better manage its external relations. The Director highlighted steps taken to improve relations with: (1) the environmental community, including the creation and implementation of a new web-based complaint system that allows anyone aware of a violation to register a complaint electronically and then track that complaint to its eventual conclusion; (2) the media; (3) EPA, in order to ensure continued state control and enforcement of environmental programs; and (4) the regulated community.

Other Business

Consideration of adoption of proposed additions and amendments to ADEM Admin. Code Division 335-6, Water Quality Program, *Groundwater/Underground Injection Control (UIC) Regulations*

Sonja Massey, the Chief of ADEM's Groundwater Branch in the Land Division, discussed the rules proposed in response to EPA's issuance of final requirements for the UIC Program for CO₂ Geological Sequestration, or Class VI, injection wells (December 10, 2010). ADEM's rulemaking would incorporate EPA's Requirements into ADEM's Administrative Code in order for the State to obtain primacy for the regulation of these wells. The proposed revisions also include additional requirements for Class V experimental wells (*i.e.*, for CO₂ injection technologies related to sequestration), as well as some non-substantive changes. The rulemaking requirements have been fulfilled, and a public hearing was held July 11, 2011. No comments were received. ADEM, therefore, recommended adopting the revisions. The Commission voted on the rulemaking and the motion was passed.

U.S.S. Real Estate (a division of U.S. Steele) v. ADEM (NPDES related matter)

The Petitioner reached an agreement with ADEM and withdrew its request for a hearing.

Reynold Inliner, LLC v. ADEM

The Petitioner withdrew its request for a hearing.

Wynlake Development, LLC v. ADEM (NPDES-Related Matter)

Petitioner filed objections to the recommendation of the hearing officer. ADEM filed a reply in support of the hearing officer's recommendation. The Commission voted and adopted the hearing officer's recommendation.

Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, LLC/Intervenor (NPDES-Related Matter)

The Petitioners (Black Warrior Riverkeeper) filed objections to the recommendation of the hearing officer, including alternative facts and conclusions of law. ADEM and Shepherd Bend both responded to these objections. The Commission voted to adopt the recommendation of the hearing officer.

Next Meeting

The Commission will hold its next regularly scheduled meeting on October 21, 2011.

Other Items

As a part of the remedial investigation for the Capital City Plume site in Montgomery, Alabama, EPA will begin collecting air samples during the week of August 15, 2011. Samples will be collected at various locations, including the former *Montgomery Advertiser* building, to determine if perchloroethylene (PCE) and trichloroethylene (TCE) vapors are present. The plume, which encompasses about 50 city blocks of downtown Montgomery, is the result of a "major commercial printing industry" that disposed of contaminated industrial wastewater through the sanitary sewer and stormwater systems from the 1940s to the '70s, according to EPA documents.

On July 27, 2011, the U.S. Fish and Wildlife Service (FWS) issued notice of a 12-month finding on a petition to list the gopher tortoise as threatened under the Endangered Species Act and to designate critical habitat for the tortoise in the eastern portion of its range (east of the Mobile and Tombigbee Rivers). In its finding, FWS concluded that the current listing of the gopher tortoise as a threatened species in the western portion of its range was accurate, and that listing the tortoise as endangered in the eastern portion of its range was warranted, but was currently precluded by higher priority actions. FWS will develop a proposed rule to list the tortoise as threatened in the eastern portion of its range as its priorities allow. In the interim, FWS has added the tortoise in the eastern portion of its range to its candidate species list.

Also, on August 9, 2011, FWS issued a Federal Register notice listing as endangered under the Endangered Species Act five southeastern fish species: the cumberland darter, rush darter, yellowcheek darter, chunky madtom, and laurel dace. Of the five species, only the rush darter is found in Alabama in the Turkey Creek, Clear Creek, and Cover Creek watersheds of the Tombigbee-Black Warrior drainage. The listing of these five species becomes effective September 8, 2011.

On August 4, 2011, seventeen federal agencies signed the Memorandum of Understanding on Environmental Justice and Executive Order 12898 (EJ MOU) in an effort to renew and bolster Environmental Justice efforts. Notably, the EJ MOU expands the scope of the Interagency Working Group on Environmental Justice by including federal agencies that were not originally named in Executive Order 12898. Moreover, by signing the EJ MOU, each agency, among other things, is required to post online its "Environmental Justice Strategy" by September 30, 2011.