



ALABAMA ENVIRONMENTAL UPDATE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF JUNE 19, 2009

ADEM Director's Report

ADEM Director Trey Glenn reported that the Department is operating within its 2009 budget. There will be an increase in funds for 2010, with a budget of \$63.5 million. This represents an increase of \$600,000 from the 2009 budget.

Next, the Director reported on current issues, including the Decatur area biosolids issue. The Director explained that EPA approved a program to regulate the disposal of biosolids as fertilizers but recently discovered high levels of harmful substances in the biosolids from several utilities in the Decatur area. ADEM is now working with EPA to ensure that the drinking water in the area is safe. Local legislation is being proposed to prohibit biosolids from being used as fertilizer in several counties.

The Director also reported on the removal and disposal of the nonhazardous remediation waste byproduct of the TVA Kingston spill to a landfill in Perry County, Alabama. The Director noted that ADEM will continue to monitor the disposal activity and will work with EPA, the regulator in the remediation, to make sure the landfill is operating in compliance with the regulations.

Next, the Director explained that a new "efile" program has been initiated, which will provide a link on ADEM's website allowing anyone to search ADEM documents. The Director also addressed pre- and post-construction runoff requirements, noting that ADEM has developed a best management practices plan template for construction activities. The template is available on ADEM's website.

Finally, the Director remarked on the April 24 EPA proposed endangerment and cause or contribute findings for greenhouse gases ("GHG"). Essentially, EPA determined that six GHGs contribute to air pollution and threaten the public health and welfare, and that cars are significant contributors of these harmful GHGs into the atmosphere. Combined, these findings enable the regulation of GHG emissions from cars. Comments are due June 23, 2009. ADEM has issued preliminary comments encouraging EPA to deal with this issue through legislation and asking EPA for an extension of the deadline for comments. The Commission requested a copy of these comments.

Commissions Actions

The Commission unanimously adopted proposed amendments to ADEM's Ground Water and Underground Injection Control Regulations, ADEM Admin. Code § 335-6-8. The Commission heard from Ms. Sonja Massey, Chief of the Groundwater Branch of ADEM's Land Division, who explained the purposes of the proposed amendments. Ms. Massey explained that the proposed amendments provide clarification of permitting requirements for Class V wells by identifying facilities that are subject to the permitting requirements of the chapter. The proposed amendments include a definition of "vertical well," require a Class V permit for the disposal of sanitary wastewater, clarify the siting requirements for Class V wells, and prohibit the construction or operation of Class V vertical wells for the direct injection of sanitary waste into the well. The Department has permitted around 100 Class V wells for indirect injection, but studies show that direct injection can result in violations of the drinking water standards for metals and other pollutants. Ms. Massey noted that the Department will not issue a permit that calls for

direct injection, and the Department will not grandfather in any such permits. The proposed amendments also revise the public notice procedures to be consistent with other Water Division public notice requirements.

The Commission then unanimously granted the joint motion to dismiss the appeal in Chalkville, L.L.C. v. ADEM, ADEM Doc. No. 00-19.

In the matter of John Jordan, Sr. D/B/A Alabama Recycling v. ADEM, ADEM Doc. No. 08-02, the Commission unanimously adopted a motion to strike petitioner's objection to the ALJ's recommendation and to adopt the ALJ's recommendation that the Administrative Order issued to Mr. Jordan for failing to obtain a permit before operating, installing, or modifying a sweat furnace at the Alabama Recycling facility be approved as issued.

Finally, in the matter of Portersville Revival Group, Inc. v. ADEM and Utilities Bd. of Bayou La Batre, ADEM Doc. No. 09-01, the Commission unanimously adopted the ALJ's motion for summary judgment against a citizen group's appeal of the City of Bayou La Batre's issuance of a NPDES permit for a new wastewater treatment plant.

Other Items

On June 5, 2009, the Northern District of Alabama held that the issuance of a final consent decree can moot a pending citizen suit brought under the citizen suit provision of the Clean Water Act. See *Black Warrior Riverkeeper v. Cherokee Mining*, slip op., No. 07-1392 (June 5, 2009). In November of 2008, the Eleventh Circuit had affirmed a ruling of the same court holding that the commencement of a state administrative enforcement action did not statutorily bar a citizen suit. See *Black Warrior Riverkeeper v. Cherokee Mining*, No. 08-10810 (Nov. 13, 2008). However, the Northern District of Alabama's new opinion holds that an ongoing citizen suit is moot, and no longer justifiable, where the state administrative agency enters a final consent order remedying the underlying violation of the Clean Water Act at issue in the citizen suit.

On June 19, 2009, The Senate Environment and Public Works Committee approved a change to the definition of "water" used in the federal Clean Water Act. Under the new definition set forth in the bill, references to "navigable waters of the United States" in the Act would be replaced with "waters of the United States." The change is designed to assert federal jurisdiction over all water sources in the United States, in response to the Supreme Court's decision in *Rapanos v. United States*, which limited the scope of the Act. The bill will now move to the Senate floor.

Next Meeting

The Commission will hold its next regularly scheduled meeting on August 21, 2009, in Montgomery, Alabama.