

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

**ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING OF JUNE 25, 2002**

DIRECTOR'S REPORT:

Director James Warr began his report by discussing ADEM's budget. He stated that ADEM is still on the mark for this fiscal year. For the next fiscal year, however, he expressed concern over how ADEM will fare. Normally, according to Director Warr, at this point ADEM would have already received grant guidance from EPA for the next fiscal year. To date, however, ADEM has not received that guidance. Consequently, ADEM has not been able to begin applying for grants yet. Furthermore, even though EPA's fiscal year is 75% complete, ADEM still does not have all federal grant monies that it should have received by this point. Director Warr predicts that it will be hard to adjust the budget for a few remaining months and another method will have to be instituted to fund those costs until reimbursed at a later date.

Director Warr then reported on four ADEM contracts with DeKalb County Water Conservatorship. These contracts reflect the beginning of implementation of various efforts to control non-point source pollution. A number of streams have been identified containing some degree of impairment due to such pollution and are in need of corrective action. Projects have been started to address this pollution. These projects require matching funds on the part of the farmer or land owner involved, but there is still some confusion as to the exact percentage of matching funds required.

Next, Director Warr reported that ADEM has been designated to receive \$1 million to create a revolving hazardous waste cleanup fund in coordination with its brownfields program. According to the Director, it is essential that groundwater legislation be passed in the next legislative session to enable ADEM to take advantage of this funding source.

The Commission then received an update on the anti-degradation policy litigation recently faced by ADEM. Following a preliminary injunction which enjoined ADEM's emergency regulations implementing its anti-degradation policy, ADEM and several environmental groups reached an agreement on June 12, 2002, which allowed several pending permits to be issued. This policy, it should be noted, was subject to an ADEM rulemaking later during today's Commission meeting.

Finally, Director Warr discussed proposed modifications to ADEM's permit fee regulations. He reported that a hearing on the proposed fees is scheduled for August 2, 2002. The modifications

are reportedly needed in order to, among other issues, position the state to be eligible for and receive authorization to administer and implement ADEM's stormwater regulations. Phase II of these regulations affects municipalities and state agencies and is far more expansive than Phase I. Phase I of the stormwater regulations only governs surface activity disturbance greater than 5 acres, while Phase II will encompass activities down to 1-acre lots.

COMMISSION ACTIONS:

The Commission's first act of business was to unanimously adopt rules amending Division 6 of ADEM's water quality regulations in order to establish the procedures ADEM will use for implementing Alabama's anti-degradation policy during its review of permit applications for new and expanded discharges into Tier II waters. The adoption of these procedures as permanent rules fulfills the requirements of a recent Alabama Supreme Court ruling which had struck down ADEM's informal procedures. Those procedures, the Supreme Court had reasoned, were, in fact, rules that had not been adopted through the formal rulemaking process and were thus illegal. The new rules essentially codify the EPA-approved procedures which ADEM has previously followed in applying its anti-degradation policy. Because ADEM stopped reviewing applications and issuing permits for most new and expanded discharges into Tier II waters in April 2002, the Commission's action is significant for business and industries in Alabama. Although the Commission adopted the new rules, it will be approximately thirty-five days before those rules become effective. As such, it is expected that ADEM will once again begin issuing draft permits for new and expanded discharges into Tier II water at the end of August 2002.

Next, the Commission adopted proposed changes to ADEM's Division 1 General Administration Regulations and Departmental Forms, Instructions and Procedures. The Commission also adopted a set of proposed amendments to ADEM's Division 6 Water Quality Regulations and National Pollutant Discharge Elimination System regulations. These changes to Division 6 were reportedly made to ensure consistency with federal regulations. The amendments added language to provide clarification related to prohibited discharges and the duration of general permit coverage. In addition, the amendments revised the rules to allow the extension of the eighteen-month deadline for initiating construction under the NPDES permit rule in response to an administrative or judicial stay and added a requirement for the immediate reporting of notifiable sanitary sewer overflows.

The Committee then considered the Joint Legislative Committee of Administrative Regulation Review's proposal to delete a recent amendment to Ala. Admin. Code R. § 335-6-11-.02 that modified the water use classification of Five Mile Creek in Jefferson County. That amendment, rejected by the Committee, changed the classification from Agriculture & Industry to Fish, Game & Wildlife. The Commission agreed unanimously to return the classification of Five Mile Creek to the Agriculture & Industry use classification. Following this development, Sloss Industries Corporation and ABC Coke withdrew their request that the Commission stay those regulations that had previously classified Five Mile Creek as Fish & Wildlife.

Finally, in the matter Alabama Rivers Alliance v. ADEM, and O'Dell Mining Co., Inc., Intervenor, EMC Docket No. 02-01, Petitioner's counsel withdrew the request for a hearing challenging an NPDES permit issued to O'Dell Mining Co.

NEXT MEETING:

The Commission's next regular meeting is scheduled for August 27, 2002, at 1:30 p.m.

Questions about items appearing in this Update may be directed to Steve McKinney at (205) 226-3496 in Birmingham or Dorman Walker at (334) 269-3159 in Montgomery, or our website can be accessed at www.balch.com. This publication is intended to provide general information. It is not intended as a solicitation and, in the event legal services are sought, no representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.