



Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF JUNE 29, 2004

DIRECTOR'S REPORT:

Director James Warr began his report by stating that two-thirds of the way through the fiscal year ADEM's budget appears to be on track. Furthermore, the Director stated that due to automobile tag receipts, the Department should be able to return several employees to the solid waste program beginning the first of the new fiscal year.

The Director next reported that the Department had no further employees deployed overseas to help the war effort. However, he noted the Department has lost six employees in the last six months, equaling a total of one hundred and thirty-five years of experience.

At the conclusion of the Director's report, Commissioners Byington and Hairston inquired about various lawsuits involving ADEM and the Commission and requested that in the future the Department notify the Commission of significant court decisions that may affect the Department or the Commission.

COMMISSION'S ACTION:

First, the Commission considered proposed amendments to ADEM's regulations governing General Permits for Concrete Plants. The proposed provisions would add Chapter 335-6-7A regulating concrete batch plants' discharges of Type I and Type II wastewater. On the advice of counsel, the Commission approved a motion to re-notice the proposed regulations for adoption at the Commission's October meeting.

Second, the Commission unanimously passed a motion to adopt the addition of ADEM's Scrap Tire Program Regulations. The proposed regulations comprehensively manage scrap tire generation, transportation, processing and disposal. The regulations further provide for a remediation program for illegal scrap tire dumps utilizing funds collected from the Scrap Tire Environmental Fee.

Next, the Commission unanimously passed a motion to adopt amendments to ADEM's General Administration Regulations, Rule No. 335-1-1-.07 and Rule No. 335-1-6-.07. In addition to deleting, modifying, and adding certain forms, the amendments add Schedule I, the Permitting/Registration Schedule for the new Scrap Tire Program.

In a 4 to 3 decision, the Commission rejected a recommendation for rulemaking from Commissioner Wainwright on proposed revisions to ADEM's Environmental Management Commission Regulations, which would have made clear that Commission meetings would be open to the public and subject to two-weeks notice. The Commission suggested that Commissioner Wainwright's proposal be

1710 Sixth Avenue North
Birmingham, Alabama 35203
(205) 251-8100

1901 Sixth Avenue North
Birmingham, Alabama 35203
(205) 251-8100

2 Dexter Avenue
Montgomery, Alabama 36104
(334) 834-6500

655 Gallatin Street
Huntsville, Alabama 35801
(256) 551-0171

14 Piedmont Center, Suite 1100
3535 Piedmont Road, N.E.
Atlanta, Georgia 30305
(404) 261-6020

1310 Twenty Fifth Avenue
Gulfport, Mississippi 39501
(228) 864-9900

401 East Capitol Street, Suite 200
Jackson, Mississippi 39201
(601) 961-9900

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-6000

addressed by the Special Committee on Procedure, which was established through the Commission's Strategic Plan.

Next, the Commission considered several motions in pending administrative cases. The Commission noted for the record the Petitioner's withdrawal of request for hearing in Green Springs Retail Company, L.L.C. v. ADEM, No. 04-05 and in Citizens for a Better Gurley v. ADEM, No. 04-07.

The Commission then denied the Petitioner's request for oral argument in Legal Environmental Assistance Foundation, Inc. and Guy Moore v. ADEM, No. 03-09. Thereafter, the Commission unanimously adopted a motion to accept the recommendations of the Administrative Law Judge.

In new business, the Commission unanimously passed a resolution supporting the Legislative Environmental Committee and the appointment of Commissioner Phillips as a member. The Commission also passed motions for the establishment and appointment of chairs for the four committees suggested under the Strategic Plan. Specifically, Commissioner Wainwright was appointed Chair of the Special Committee on Procedure; Commissioner Smith as Chair of External Relations Standing Committee; Commissioner Hairston as Chair of Personnel Standing Committee; and Commissioner Byington as Chair of the Strategic Planning Standing Committee.

The Commission then voted to hear public comments from several parties, including Dorman Grace, who gave a farmer's perspective on environmental issues relative to CAFO regulations; Anne A. Payne, representing the Alabama Agricultural Business Council, who commented on ADEM's administration of CAFO and AFO regulations; and Dr. Bryan Burgess, representing Friends of Rural Alabama, Inc., who spoke on the need for ADEM to better enforce the CAFO requirement of vegetation buffers along waterways located on animal feeding operations. Next, Marsha Duffey and David A. Ludder of Legal Environmental Assistance Foundation provided comments on the need for requiring municipal solid waste landfills in Alabama to provide financial assurance of their operations. Finally, Casi Callaway, of Mobile Bay Watch, Inc., addressed ADEM's deficiencies in monitoring and enforcement on facilities in Mobile and southwest Alabama.

OTHER ITEMS:

The Circuit Court in Montgomery County issued an opinion on June 15, 2004, overturning **Alabama's water quality antidegradation policy**. The Legal Environmental Assistance Foundation ("LEAF") had sued both ADEM and the Commission, arguing that ADEM's antidegradation policy was flawed in a number of respects. The antidegradation policy articulates permitting policies for discharges into Alabama waters, based on the quality of the receiving water. The court ruled in favor of LEAF upon motions for summary judgment on six counts. Among other things, the court overturned the definition of Tier 1 waters, and found ADEM's interpretation of what constitutes "important economic and social development" for purposes of approving discharges into Tier 2 waters was arbitrary, unreasonable and in violation of the Alabama Constitution. The court invalidated the various parts of the regulations that it found to be unlawful. This decision will likely prohibit the permitting of new or expanded discharges until the deficiencies noted by the court are corrected. ADEM intends to appeal the Court's decision.

NEXT MEETING:

The Commission's next regular meeting is scheduled for Tuesday, August 24, 2004.

Questions about items appearing in this Update may be directed to Bill Satterfield at (205) 226-3423 in Birmingham or Jim Byram 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.