



BALCH & BINGHAM LLP

ALABAMA

Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF JUNE 2, 2006

Strategic Planning Standing Committee

Prior to the Commission's meeting, the Strategic Planning Standing Committee met to discuss the Draft Strategic Plan 2010. After approving the minutes from the April 25, 2006 meeting in Huntsville, the Committee considered whether to refer the draft plan to the Commission with a recommendation that it be made available for public comment. Commissioner Byington discussed for the record the process employed to develop the draft plan, which included three meetings attended by a diverse group of stakeholders. These stakeholders provided comments on multiple revisions of the draft plan. However, since the three meetings were held from April 25 to May 16, Commissioner Byington explained that little time was available to develop a comprehensive and complete strategic plan. Both Commissioners Felker and Hairston believed the process was too rushed and that the plan should not be presented to the Commission until the August 11, 2006 Commission meeting. Commissioner Felker moved to table the plan until that time and the motion passed. In an effort to complete the draft plan prior to August 11, the Committee scheduled two additional meetings, on June 12 and June 16, in Huntsville.

Director's Report

ADEM Director Trey Glenn began his report with the announcement of the opening of the ADEM analytical laboratory. He also reported that ADEM's budget is currently on target for the 2006 fiscal year, although he noted that ADEM still faces funding challenges.

The Director also updated the Commission on several of the Department's current initiatives. By October 1, 2006, ADEM plans to begin using an "e-database" for discharge monitoring reports. In addition, by 2007, ADEM intends to conduct "e-permitting." ADEM is also focusing on Brownfield redevelopment and plans to offer low-interest loans to those interested in the redevelopment of those areas. Next, Director Glenn informed the Commission that EPA has objected to the use of a "general permit" in the Concrete Batch Regulations, which were adopted by the Commission at the December 2, 2005 meeting and were submitted to EPA earlier this year. ADEM is in the process of re-working those regulations.

The Director also announced that EPA has upgraded Jefferson and Shelby counties to attainment status for ozone levels, making the entire state of Alabama in attainment for ozone. Nonetheless, he noted that two areas in Alabama are not in attainment for particulate matter. Commissioner Byington questioned Director Glenn on the status of the triennial review process for the state's water quality standards. The Director replied that ADEM expects to receive all comments within thirty days.

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

Commission Actions

Chairman Phillips welcomed the Commission's newest member, Dr. Laura Gardner. He also thanked ADEM's staff for their diligent efforts in opening ADEM's new analytical laboratory. Before addressing the Commission's action items, Commissioner Byington provided an update on the Strategic Planning Standing Committee meeting, explaining that, if the Commission adopts the draft plan at the August 11th Commission meeting, it will then be made available for public comment.

Next, the Commission voted unanimously (with Commissioner Smith abstaining) to approve the proposed amendments to Division 1 - General Administrative Regulations, which involved various NPDES matters. The Department proposed to amend Rule 335-1-6-.07, Payment of Fees-Schedule D, to establish fees to cover costs related to ADEM's review of biological study proposals, data, and reports related to cooling water intake structures; Rule 335-1-1-.07, Departmental Forms, Instructions and Procedures, to add three new forms, modify six existing forms, and delete one form; Rule 335-1-1-.06, Availability of Records and Information, to revise fees for black and white copies of wide-format documents, such as maps and blueprints, and establish a fee for color copies of wide-format documents. The Commission also voted unanimously to approve the adoption of the proposed amendments to the Division 3 - Air Regulations concerning ADEM's cap and trade program for sulfur dioxide and NOx.

Turning its attention to ongoing administrative proceedings, the Commission granted the Petitioner's Motion to Stay Action Pending Issuance of Order in Marshall Durbin Companies of Jasper v. ADEM, EMC Docket No. 06-06, with Commissioner Smith abstaining. Chairman Phillips noted that there is a motion to intervene by the City of Jasper pending in that case, which the Administrative Law Judge (ALJ) should entertain. Also, in Wild Alabama and the East Central Alliance for Quality Living v. ADEM, EMC Docket No. 02-13, the Commission voted unanimously, with Commissioner Smith abstaining, to approve the ALJ's recommendation to dismiss the appeal.

Public Comments

Before adjourning, the Commission heard comments by Rev. Mark Johnston of the ADEM Reform Coalition, David Harris, President of the Legal Environmental Assistance Foundation (LEAF), and David Ludder, General Counsel of LEAF. These individuals also presented a PowerPoint presentation entitled "Toxic Air Pollution in Jefferson County, Alabama," which argued that pollution in the Birmingham area has disparate impacts on minority and low-income communities.

Other Items

Last month, Montgomery County Circuit Court Judge Johnny Hardwick dismissed a lawsuit that sought to remove Commissioner Byington from the Environmental Management Commission, holding that Commissioner Byington qualified to hold the ecologist's seat on the Commission and that he had not violated any conflict of interest rules.

Next Meeting

The Commission's next meeting is scheduled for 10 a.m. on Friday, August 11, 2006.

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 and does not constitute advice. 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.