



BALCH & BINGHAM LLP

ALABAMA

Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF AUGUST 24, 2004

DIRECTOR'S REPORT:

Director James Warr opened by stating that the budget was on target for the fiscal year. In a related matter, the Director noted Governor Riley has announced new "SMART" (Specific, Measurable, Accountable, Responsive and Transparent) budgeting procedures to be used in agency budget requests, which ADEM expects to have in place shortly.

The Director next discussed the Department's contract with the Clean Water Partnership and requested an update from Mr. John Grogan, the partnership's Chairman. Mr. Grogan reported that the Partnership is made up of ten water basin organizations, whose two primary goals are to identify what makes waters impaired, and to design a water basin plan based upon this information. Currently, five management plans have been implemented, six plans are being developed, and two are in the beginning stages.

The Director then discussed ADEM's contract with Stormcenter Communications, Inc., to enhance environmental education regarding watersheds and people's effects on them. Under this program, watershed information will be presented during local news weathercasts and on an Internet site. ADEM hopes to implement this program in the four major news markets within the next several months.

Director Warr then announced that he had been asked to serve on Congressman Davis' Black Belt Economic Development Committee as a member of the infrastructure subcommittee.

With respect to ADEM's Strategic Plan, Director Warr noted that the funding subcommittee has proposed a tipping fee bill that has been drafted and circulated to stakeholders. In addition, the Director expects a report on new funding opportunities to be provided to the Commission some time in the fall.

COMMISSION ACTIONS:

Commissioner Wainwright offered, and the Commission adopted, a resolution changing ADEM Rules 335-2-3 and 335-2-3-.04 to require all Commission meetings to be noticed, open to the public and subject to Robert's Rules of Order. The changes were adopted to specifically include all meetings lacking a quorum, which are not currently subject to public notice requirements.

The Commission also adopted amendments to the Alabama Underground and Aboveground Storage Tank Trust Fund Regulations. The adopted amendments increase the trust fund charge from \$0.005 to \$0.01 per gallon of motor fuel withdrawn from bulk storage. The increase is expected to provide the trust fund with approximately \$18 million more per year. The amount of the assessment will be evaluated annually and may be reduced once the fund is solvent.

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Finally, the Commission discussed proposals to authorize ADEM to demand financial assurance from landfill operators, rather to rely as they currently do on the U.S. Environmental Protection Agency. Commissioner Byington urged ADEM to investigate the matter quickly, in order to enable legislative action, if necessary, in the next legislative session.

FUTURE BUSINESS:

In new business, the Commission heard a presentation of Michael Mullen of Choctawhatchee Riverkeeper, who asserted that ADEM does not adequately consider available information concerning water quality from outside sources. Mr. Mullen noted that Alabama has fewer waters on its 303(d) list than other states within EPA Region IV.

Congressman Artur Davis briefly addressed the Commission to express concern for environmental justice issues. He noted that his environmental justice working group was holding an economic development summit on October 22, and he invited and urged ADEM to participate. The Commission then unanimously passed a resolution offered by Commissioner Hairston to endorse the creation of the position of Environmental Justice Ombudsman, who will be tasked with working with Congressman Davis' office to identify and investigate environmental justice issues in Alabama. The qualifications and functions of the ombudsman will be determined by the personnel committee chaired by Commissioner Hairston in conjunction with Congressman Davis.

The Commission approved a motion to hear a presentation by Tanisa Foxworth of the Alabama African American Environmental Justice Action Network and David Ludder of the Legal Environmental Assistance Foundation, who presented data purporting to correlate the location of landfills in Alabama with high-minority, high-poverty and low-income persons. Both speakers urged the Commission to adopt a number of proposals, including (1) amending ADEM rules to require any notice of permits to include demographic information for the area in which the facility would be located; (2) requiring the creation of an environmental justice division within ADEM to collect such demographic data, assess exposures to demographically defined populations, and employ toxicologists and other relevant staff; and (3) supporting legislation to prevent a disparate impact on populations defined by demographics. In response, the Commission adopted a resolution to refer for further review to the rulemaking committee the matter of incorporating demographic data with ADEM's notice of permits.

OTHER ITEMS:

In June 2003, the Alabama Legislature passed the Alabama Scrap Tire Environmental Quality Act (the Act) to comprehensively regulate scrap tire accumulations and to provide for cleanup and remediation of illegal scrap tire piles. The Act placed a \$1.00 per tire fee on all replacement tires sold to establish a scrap tire fund, and required ADEM to develop a program to regulate the management of scrap tires. The Act requires ADEM to have its program start October 1, 2004, however, ADEM Administrative Code, Division 4, which contains the regulations and requirements, became effective August 4, 2004. Mr. David Roberson is Chair of the Scrap Tire Commission.

NEXT MEETING:

The Commission's next regular meeting is scheduled for Tuesday, October 19, 2004.

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