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A L A B A M A

Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF OCTOBER 8, 2002

DIRECTOR'S REPORT:

Director Warr began his report by reporting to the Commission that September 30, 2002, marked the end of the Department's most recent fiscal year. Although the Department still has outstanding payments to collect, these were incurred during the last fiscal year and will be credited accordingly. Given those payments, the Department is expected to close the fiscal year out "in the black" and within its budgetary constraints.

Director Warr then called the Commission's attention to a list of the Department's contractual obligations. He specifically highlighted a contract with the Department of Public Health and stressed its importance for conducting bacteriological analyses on waters of the state.

The Director next notified the Commission that the permit fee regulations under the Phase II Stormwater rules became effective last week. Director Warr stated that this will enable the Department to absorb the costs of implementing the Stormwater Phase II regulations. He reported that a draft of those Phase II regulations is expected in the next few weeks and will then go through the normal notice and comment rulemaking process.

Next, Director Warr noted that October 18th is National Monitoring Day. He announced that numerous individuals and groups from Alabama will be participating in this national undertaking. The Director also reported that for the second year in a row no discrepancies were found during the Department's property audit. Director Warr commended the Department's property manager for his efforts in that regard.

Finally, the Director announced that Glenda Dean would become the deputy chief of ADEM's Water Division. That division is now headed by James McIndoe. He also announced that Eric Sanderson will become chief of the division's Industrial Section.

COMMISSION ACTIONS:

After hearing oral argument regarding the petitioner's request that his objections to the Administrative Law Judge's Recommendation not be considered as time barred and not be denied, the Commission accepted

the Administrative Law Judge's recommendation to the Commission that the Department's Motion to Strike be granted in the matter of John A. Gillman v. ADEM, EMC Docket No. 02-09.

In the matter of Robert H. Adair, Jr. v. ADEM, and Fort Morgan Paradise Joint Venture, Intervenor, EMC Docket No. 02-10, after hearing oral argument, the Commission accepted the Recommendation of the Administrative Law Judge and affirmed ADEM's issuance of the permit in question.

After accepting Florida Rock Industries as an intervenor, and after hearing oral argument, the Commission denied petitioner's motion for stay in the matter of East Central Alabama Alliance for Quality Living v. ADEM, EMC Docket No. 03-01.

The Commission also heard comments from Brad McLane, representing the Alabama Rivers Alliance, regarding the Clean Water Act's Triennial Review of Water Quality Standards. Based on these comments, the Commission recommended to the Department that written responses be prepared for any comments received in the process of the Triennial Review.

OTHER ITEMS:

On June 6, 2002, the U. S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, "the Services") issued a proposed rule to designate **critical habitat for the Gulf sturgeon**. The Services proposed approximately 1,580 river miles and 2,333 square miles of estuarine and marine habitats as critical habitat for the sturgeon in Alabama, Mississippi, Florida, and Louisiana. Additionally, on August 8, 2002, the Services released an economic report analyzing the economic impacts which would occur as the result of the proposed designation. In response to the Services' actions, on October 4, 2002, the Alabama-Tombigbee Rivers Coalition, a sixteen-member organization composed of industries, businesses, trade associations and state agencies, submitted comments to the Services supporting the Services' decision not to include the Mobile River Basin as part of the Gulf sturgeon's critical habitat. In their comments, however, the Coalition criticized the Services' failure to comply with the National Environmental Policy Act of 1969 and raised questions regarding the sufficiency of the Services' economic impact report. For more information regarding this matter contact Bill Satterfield at (205) 226-3423 or Rob Fowler at (205) 226-8733.

The Sierra Club and the Alabama Environmental Council recently filed a citizen suit under the Clean Air Act alleging that a power plant owned by the Tennessee Valley Authority in Colbert County, Ala., violates both federal and state laws by emitting pollutants that exceeded **opacity requirements** over 8,000 times during the past five years. Because opacity test methods are quicker, easier to apply, and less costly than direct measurement of particulate matter, opacity is often used as a surrogate for particulate mass emissions standards. The citizens' complaint is based on data and reports from the plant's continuous opacity monitoring systems (COMS), which measure opacity average opacity conditions every six minutes, even though the applicable test to determine compliance is EPA's reference "Method 9," which only requires periodic visual determinations of opacity by trained observers. The outcome of this lawsuit could substantially impact those industries in Alabama employing COMS to measure opacity. For more information, contact Grady Moore at (205) 226-8718 or Tripp Head at (205) 226-3414.

NEXT MEETING:

The Commission's next meeting is scheduled for December 17, 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.