



# ALABAMA ENVIRONMENTAL UPDATE

## ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF FEBRUARY 18, 2011

The Commission began its meeting by approving the minutes of the December 10, 2010 meeting. Commissioners Davis, Miller, Lester, and Laier were present at the meeting.

### **Director's Report**

ADEM Director Lance LeFleur began his report by introducing Vernon Barnett as ADEM's new Executive Counsel. Mr. Barnett is replacing John Hagood.

The Director then provided the EMC with an update on the current budget crisis the agency is facing. ADEM's current budget is at the same level as it was 20 years ago and, moreover, ADEM has been told to expect a 15% cut in funding prorated to the beginning of this fiscal year, which equates to a 30% cut for the rest of the fiscal year. In addition, ADEM receives a large portion of its budget from the U.S. Environmental Protection Agency. President Obama's budget includes a 13% cut in funding to the U.S. EPA, which ADEM expects will trickle down to impact the amount of money EPA provides to states. One way ADEM hopes to tackle the budget cuts includes the use of electronic filing systems, such as eDMRs, eNOIs, eDW, e-Pay, e-File, and a web-based complaint system. This will reduce manpower in reviewing paperwork.

Next, Director LeFleur discussed the \$2.8 million dollars in grants that have been distributed by ADEM. Director LeFleur expressed ADEM's support for the Forever Wild program noting that the goals of Forever Wild complement ADEM's programs and policies, including the purchase of lands around the Tensaw and Hatchett Creek watersheds, both of which are classified by ADEM as Outstanding Alabama Waters. Director LeFleur encouraged the EMC to pass a resolution at the next meeting to urge the state legislature, during the 2011 regular legislative session, to reauthorize Forever Wild funding for an additional period of time.

Finally, Beth Stewart from the Cahaba River Society awarded ADEM with a Conservation Development Award for its support of the restoration of the Little Shades Creek.

### **Other Items**

This week, the U.S. Army Corps of Engineers published a notice of a proposed reissuance and modification of the nationwide permits (NWP) under the wetlands program. The Corps' proposal includes significant modifications to NWPs governing coal mining. Among other things, the Corps has proposed limiting the scope of NWP 21, 49, and 50. Comments on the proposal must be filed by April 18, 2011.

The U.S. Office of Surface Mining Reclamation and Enforcement (OSM) has approved proposed amendments to Alabama's Surface Mining Control and Reclamation Act of 1977 (SMCRA) regulatory program. For the purpose of improving operational efficiency, Alabama proposed

revisions to its regulations regarding the Alabama Surface Mining Commission, licensing, hearing officers, fees, and several minor editorial changes throughout the regulations. The amendments establish in Alabama Code section 9-16-73(b) a requirement that the members of the Commission reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. It also allows the Commission to promulgate rules and regulations charging reasonable fees for the administration of blasting rules, regulations, and standards in section 9-16-74(4), including for certifications, renewals, and continuing education for certified blaster applicants. Regarding hearing officers, the revised regulations amend existing provisions for their hiring or contracting to preside over administrative appeals of agency actions and add a prohibition against hearing officers having represented or having been employed by a coal mine operator within the previous 24 months. Finally, a revision to section 9-16-81(b) establishes that only U.S. citizens or persons legally present in the U.S. with appropriate documentation who also possess a mining license may engage in surface coal mining operations within Alabama. A notice of OSM's final rule approving these amendments will be published in the *Federal Register* on February 22, 2011.

Balch & Bingham LLP welcomes two new members to its Environmental & Natural Resources Section, Rich Glaze and Gretchen Frizzell. Rich Glaze is an environmental lawyer with more than 20 years of experience with EPA Region 4 in Atlanta and in private practice. While Rich has wide experience among various environmental statutes and programs, he has very unique experience in EPA's criminal enforcement programs, policies, and practices. Rich will be working out of the firm's Atlanta office. Gretchen Frizzell joined the Environmental & Natural Resources Section in the firm's Birmingham office this past fall. Gretchen attended The University of Alabama School of Law and Davidson College. During law school, she served as Executive Editor of the *Alabama Law Review* and was a member of the John A. Campbell Moot Court Board.

Balch & Bingham LLP's Environmental & Natural Resource Section is also pleased to announce that Alexia Borden has moved from the firm's Birmingham office to the firm's Montgomery office. Alexia is the first full-time environmental regulatory attorney to work out of the firm's Montgomery office.

### **Next Meeting**

The Commission will hold its next regularly scheduled meeting on April 15, 2011.