



ALABAMA ENVIRONMENTAL UPDATE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF AUGUST 22, 2008

All Commission members were present for the EMC meeting. The Commission began the meeting by voting to approve the minutes of the last meeting.

Director's Report

ADEM Director Trey Glenn covered many subjects during his report. As an initial order of business, Director Glenn noted that ADEM is currently on budget. He also discussed the recent vacatur of the Clean Air Interstate Rule ("CAIR") by the D.C. Circuit. He indicated that the EMC had adopted regulations in compliance with CAIR. Because the federal regulations are no longer valid, ADEM will need to determine how to proceed in light of the CAIR decision. The Director also updated the Commission on ADEM's progress concerning the development of the Unified Strategic Plan. Lastly, Director Glenn notified the Commissioners that ADEM is currently drafting regulations to implement the Recycling Bill, Act 2008-151, which was adopted by the Alabama Legislature last session.

Commission Chair Report

The Commission discussed the development of a "Code of Conduct" policy for the Commissioners and whether to undertake its implementation through an informal process or as official rulemaking. The Commission determined to send the policy to the Rulemaking Committee and for that committee to decide how to proceed.

Commission Actions

Prior to addressing the rulemaking items on the agenda, Dr. Felker discussed with the Commission her actions related to quarry permitting. The Department discussed the quarry permitting process and recent quarry-related legislation that had been proposed in previous legislative sessions. Dr. Felker also noted that she met with environmental groups as well as industry representatives to discuss quarry related matters. She noted that the application to obtain a permit for quarry operations is about 1000 pages, not a one-page application, which she was told was the case, and that she was still going to look into the matter and report her findings at the December Commission meeting.

Next, the Commission voted unanimously to approve revisions to Alabama's opacity regulations. The revisions to the opacity regulations specify continuous opacity monitoring systems ("COMS") data as the official compliance method, reduce (by 80%) excused six-minute periods, from 2,160 per quarter to 432 per quarter and limits them to no more than 24 per day, and add a 22% cap on daily average opacity. Some of the Commissioners asked questions about the revisions and, specifically, about the impact this rule would have with respect to PM2.5. The Department confirmed that this rule would not impact the PM2.5 nonattainment areas nor would it have any impact on other, important air quality regulations, such as rules designed to address ozone or acid rain.

The Commission also voted unanimously to approve proposed amendments to Division 13, Solid Waste Regulations, which update and modify the State Solid Waste Management Plan.

Turning its attention to ongoing administrative proceedings, the Commission voted to approve the Administrative Law Judge's ("ALJ") recommendation upholding the City of Birmingham's Solid Waste Permit for the New Georgia Landfill in Thistlethwaite v. ADEM, EMC Docket No. 06-08. Second, the Commission considered the recommended order of dismissal issued in Alabama Recycling v. ADEM, EMC Docket No. 08-02 and 08-03; however, ADEM requested that the Commission not dismiss the case, but remand it to the ALJ for a prehearing conference. The Commission voted to remand the case

Next Meeting

The Commission will hold its next regularly scheduled meeting on October 17, 2008. Commissioner Phillips also noted that his term will expire in September, but that the Governor has not named someone to replace him yet, and until he does so, Commissioner Phillips will remain on the Commission.

Other Items

The U.S. Fish and Wildlife Service recently issued new guidance for recovery credit systems ("RCS"). Under the guidance, a federal agency may use private land to build credits to offset the impacts of the agency's actions to threatened and endangered species. The new RCS program provides the opportunity to realize value from private lands with habitat value. Unlike other habitat crediting mechanisms, RCS credits may be temporary rather than perpetual.

A recent article by Stephen Gidiere and Steven Burns in an American Bar Association newsletter provides general background on habitat trading concepts. See "New Interagency Agreement Facilitates Habitat Credit Trading," available at <http://www.balch.com/environmental/> (click on the link to "Related Publications" on the right). For more information, please contact Stephen Gidiere (sgidiere@balch.com; (205) 226-8735) or Steven Burns (sburns@balch.com; (205) 226-8736).

Questions about items appearing in this Update may be directed to Steve McKinney at (205) 226-3496 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 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.