

BALCH & BINGHAM LLP

A L A B A M A

Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF AUGUST 27, 2002

The Commission opened its meeting by passing a resolution recognizing the life and service of the late Commissioner, Mr. R.D. Hicks, who passed away on July 2, 2002. The Commission noted that Mr. Hicks served on the Commission for six years and will be missed.

DIRECTOR'S REPORT:

Director James Warr began his report by stating that the Department “remains right on target” with its budget for the remaining two months of the fiscal year. Director Warr noted that he does not expect this forecast to change.

The Director next addressed regulatory changes the Department will likely consider in the next few months. These changes include: (1) amendments to the Department’s NOx monitoring requirements to assure consistency with federal requirements, (2) amendments to clarify NOx emission requirements for new combustion turbine power plants, (3) regulations implementing EPA’s Phase II stormwater regulations, and (4) regulations implementing the Dry Cleaner Trust Fund Program.

The Director reminded the Commission that the Clean Water Act celebrated its 30th anniversary this year. The Commission then passed a resolution which recognized the 30th anniversary of the Clean Water Act and set October 18th as Clean Water Day.

Director Warr continued his report by introducing Russell Kelly to discuss the Department’s updated website (www.adem.state.al.us). Mr. Kelly explained that the Department has expanded the scope of information available on the Department’s site, including contact information, maps to ADEM offices and various watersheds, ozone forecasts, monitoring data, forms, regulations, calendar of events, and public notices.

Finally, the Director noted that John Poole, Chief of Water Division, was retiring at the end of this week. Director Warr announced that James McIndoe would be replacing Mr. Poole as the Department’s Chief of Water Division.

COMMISSION ACTIONS:

The Commission began by approving amendments to the Department's Division 1, General Administration Regulations, Chapter 335-1-6, to adjust and add application fees. The Commission noted that the only substantive negative comments it received were submitted by the Legal Environmental Assistance Foundation, questioning ADEM's authority to adopt such a regulation. Olivia Jenkins, General Counsel for the Department, responded to this comment by noting that Alabama statutes enable the Department to collect fees for costs associated with permits and necessary "investigations." Ms. Jenkins also noted that the Alabama Attorney General's office agrees with the Department's interpretation of that enabling statute.

The Commission next approved amendments to the Department's Division 3, Air Regulations, Chapter 335-3-8. The amendments provide greater flexibility to reward sources that achieve quantifiable reductions of NOx ahead of compliance deadlines. Additionally, the amendments incorporate by reference changes to the New Source Performance Standards, the National Emission Standards for Hazardous Air Pollutants, and changes relating to hazardous waste combustors.

Finally, the Commission tabled proposed amendments to the Department's Division 2, Environmental Management Commission Regulations, Chapter 335-2-3-.05, which would have allowed greater public comment at the conclusion of the Commission's regular order of business. The Commission noted that it received substantial public comments on the proposed amendment and that the changes reflecting those comments would require the Commission to renounce the proposed amendments. Commissioner Pat Byington noted that the Commission was not abandoning this issue; rather, the Commission was "trying to do it right."

NEXT MEETING:

The Commission's next meeting is scheduled for October 8, 2002, at 1:30 p.m.

OTHER ITEMS:

In June, 2001, the **Financial Accounting Standards Board (FASB)** issued Statement of Financial Accounting Standards No. 143 (Statement 143), *Accounting for Asset Retirement Obligations* (AROs). Statement 143 addresses the accounting for legal obligations (e.g., laws, regulations, ordinances, and written or oral contracts) associated with the retirement of certain assets. Because of diverse practices in current accounting for AROs various industries and companies will be affected differently. For example, many companies currently account for estimated dismantlement, restoration, and abandonment costs (including environmental costs) at the time the asset is retired, which could be decades after the asset was acquired, developed, or constructed. Statement 143, however, requires companies to recognize such liabilities, and the offsetting capitalized cost, upfront.

Statement 143 applies to all entities that incur legally enforceable obligations for the retirement of certain assets. For example, a manufacturing company that builds a waste storage facility or construction and demolition landfill that is legally required to be removed or closed at the end of its economic useful life would be covered by Statement 143. This statement is

effective for financial statements for fiscal years beginning after June 15, 2002 (January, 2003 for calendar year-end companies).

For further information about Statement 143, please contact Grady Moore at (205) 226-8718.

Questions about items appearing in this Update may be directed to Bill Satterfield at (205)226-3423 in Birmingham or Jim Byram at (334)834-6500 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.