



**ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING OF APRIL 9, 2002**

DIRECTOR'S REPORT:

Director James Warr began his report to the Commission by welcoming the newest member of the Commission, Kenneth A. Hairston. Commissioner Hairston, a Birmingham attorney, filled the vacancy created last year by Dr. Richard Thigpen's departure.

Director Warr also reported to the Commission on recent legislative activities. With the legislative session coming to a close, Director Warr noted that two bills supported by ADEM are not likely to be heard by the Legislature. Those bills include a bill removing an exemption currently enjoyed by Baldwin County well drillers and a bill for insurance compliance that would allow permit holders to pay additional fees for ADEM's continual oversight. Director Warr added that the Legislature has passed a \$400,000 increase in the general fund budget's operating account to better support ADEM's activities. Director Warr noted that this additional revenue should help alleviate the \$800,000 cost ADEM will incur should the Legislature approve a pending pay raise for state employees.

COMMISSION ACTIONS:

Noting that a recent Alabama Supreme Court decision held that ADEM's procedures for implementing its anti-degradation policy should have been promulgated as a rule, the Commission's first act of business was to consider a request for adoption of the Anti-degradation Implementation Procedures as Emergency Rule 335-6-10-.12-.01 under the water quality regulations. The emergency rule essentially codifies the procedures ADEM has previously followed in applying its anti-degradation policy. Although there was some protest regarding whether or not ADEM was faced with an emergency that threatened the public health, safety and welfare and was therefore able to lawfully implement the emergency rule, ADEM noted that if it did not implement the rule, over eighteen permits would be held in limbo. ADEM further noted that EPA had restricted ADEM's ability to return to its old policy of addressing anti-degradation on a case-by-case basis. The Commission therefore adopted the emergency rule. The rule will commence April 9, 2002, and continue until August 7, 2002.

Prior to the Commission's afternoon meeting, the Commission's Rulemaking Subcommittee met. The Rulemaking Subcommittee's agenda included the consideration of three petitions to amend ADEM Admin. Code R. 335-2-3-.05 that would allow oral argument from the public during Commission meetings. At the afternoon Commission meeting, the Subcommittee issued a report and recommended the Commission deny the petitions. The Commission adopted the Subcommittee's recommendation, but

Commissioner Wainwright presented the Commission with an alternative proposal that would amend ADEM Admin. Code R. 335-2-3-.05. Commissioner Wainwright's proposal essentially allows for a restricted public comment period at the end of a Commission meeting. Upon a motion to proceed with the rulemaking, the Commission adopted the motion.

The Subcommittee also submitted to the Commission a report on a petition to amend ADEM's anti-degradation policy by the Legal Environmental Assistance Foundation. Noting that the Department had set in motion its own rulemaking in response to the Alabama Supreme Court decision, the Subcommittee recommended that the Commission deny the petition to amend. The Commission adopted the Subcommittee's recommendation.

The Commission also adopted proposed amendments to water quality and water use classifications regulations at ADEM Admin. Code R. 335-6-10-11 that would establish or revise nutrient water quality criteria for several lakes. The Commission further adopted proposed regulations to ADEM Admin. Code R. 335-6-11-02 that would revise water use classifications for the remaining stream segments identified in the notice for the public hearing. However, because the changes in the regulations would upgrade certain Agricultural/Industrial classified waters to Fish and Wildlife and could therefore potentially impact the operations of industries discharging into affected waters, the Commission also passed a motion to endorse the idea of EPA and ADEM meeting to discuss possibilities to allow such industries to economically meet the new water use classifications.

The Commission also passed a repeal of the groundwater and underground injection control regulations, ADEM Admin. Code R. 335-6-8, and the adoption of new groundwater and underground injection control regulations that will make the department's regulations consistent with EPA Underground Injection Control regulations and clarify existing statutory authority. In addition, the Commission adopted the proposed Brownfield Redevelopment and Voluntary Cleanup Program regulations as Division 15 of the Department's regulations. The Brownfield Redevelopment and Voluntary Cleanup program provides a mechanism for the implementation of a cleanup program that encourages applicants to voluntarily assess, remediate, and reuse rural and urban areas following actual or perceived contamination.

Finally, the Commission noted for the record the withdrawal of a request for hearing from Advance Tank & Construction Co. in Advance Tank & Construction Co. v. ADEM, EMC Docket No. 01-12. The Commission also denied the Petitioners' Request for Oral Argument, and adopted the Hearing Officer's Recommendations, in Richard M. Bronson v. ADEM, and City of Alexander City and Russell Corporation, Intervenor, EMC Docket No. 01-05.

NEXT MEETING:

The Commission voted to extend the next scheduled meeting date until June 25th, 2002 in order to better accommodate the anti-degradation rulemaking process.

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