



ALABAMA ENVIRONMENTAL UPDATE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF AUGUST 21, 2009

ADEM Director's Report

ADEM Director Trey Glenn touched on a number of subjects during his report. As an initial order of business, Director Glenn noted that ADEM's 2010 budget will be the same as its 2009 budget. ADEM received approximately \$1 million in federal stimulus money that helped offset budget cuts adopted by Governor Riley. Director Glenn noted that ADEM's 2011 budget will present a challenge because the State's 2011 budget will still be at the 2009/2010 level but will likely not be supplemented by federal stimulus money.

Director Glenn briefly discussed the Department's 2009 Operating Plan. All projects included in the Plan are on track and have helped the Department move closer to fulfilling its long-term goals under its Strategic Plan. Director Glenn noted that the Department is administering approximately \$70 million in stimulus funds, mostly through existing programs and mechanisms. Director Glenn discussed briefly the Department's "No Idle Zone" initiative. Describing idle automobile fumes as one of the greatest airborne risks in the environment, Director Glenn stated that the Department, in conjunction with the Alabama Department of Health and the American Lung Association, are working to implement zones around schools within which idle automobiles are not allowed to operate. The groups are still in discussions and hope to provide more details on the plan in the immediate future.

Commission Chair Report

The Commission stated that it was still in the process of reviewing the greenhouse gas emissions information it received during its last meeting. The Commission is still contemplating whether it will take a formal stance with respect to this issue. The Commission asked the Department to create a system to organize the emissions information so that it will be easier to review. The Commission also confirmed receipt of formulas and methodologies to quantify compliance rates for major ADEM programs. These methodologies were adopted in accordance with the Department's Operating Plan to reveal trends in compliance rates and pinpoint potential areas of improvement.

Commissions Actions

The Commission voted to grant the Department's motion to sever and stay an administrative appeal involving the denial of Class V injection well permits in order to address the potentially dispositive question of jurisdiction in the matter of Canaan Systems, Inc. v. ADEM, EMC Docket no. 09-06. The Commission considered the parties' arguments, determined that the Commission did not have jurisdiction to hear Canaan Systems, Inc.'s appeal, and granted the Department's motion to strike and dismiss the appeal.

In the matter of Russell D. Lippert, Lippert Bank Services, L.L.C. v. ADEM and Santek Environmental of Alabama, L.L.C., EMC Docket No. 09-05, the Commission adopted the Hearing Officer's recommendation to grant Santek's Motion for Summary Judgment and dismissed Lippert's request for hearing with prejudice.

The Commission considered, and rejected, the Hearing Officer's recommendations in the matter of Friends of Hurricane Creek and John Wathen, v. ADEM and SDW, Inc., EMC Docket No. 09-02. Friends of Hurricane Creek and Wathen challenged the adequacy of the Department's \$20,000 penalty to SDW. The Hearing Officer considered the challenge and ordered SDW to pay an adjusted penalty of \$21,325. The Commission determined that Friends of Hurricane Creek and Wathen did not present evidence of any injury in fact and therefore lacked standing. The Commission dismissed the petition on these grounds, thus leaving in place the Department's original order to SDW to pay a \$20,000 penalty.

The Commission agreed to table consideration of the Hearing Officer's recommendations until the next scheduled meeting in the matter of Black Warrior Riverkeeper, Inc. v. ADEM and Sheperd Bend, L.L.C., EMC Docket No. 09-04.

Public Comment Period

Mike Mullen, with the Choctawhatchee Riverkeeper, addressed the Commission on stormwater issues in the Choctawhatchee watershed. Mr. Mullen asked the Commission to consider enacting rules or requesting legislative action to give the Department enhanced power to issue cease and desist orders and citations for violations. Mr. Mullen also stated that the Department's inspectors should receive additional training in order to effectively enforce the State's stormwater regulations.

Attorney David Ludder spoke to the Commission about compliance and enforcement of NPDES programs in Alabama. Specifically, Mr. Ludder presented data on the number of facilities inspected by the Department each year, the number of facilities that were found to be non-compliant, the number of facilities with discharge violations, the number of formal and informal enforcement actions issued by the Department, and the trends revealed by this empirical data.

Other Items

Congress is considering legislation to impose security-related requirements on drinking water systems. On July 20, 2009, Rep. Henry Waxman (D-CA)—chairman of the powerful Energy and Commerce Committee—introduced H.R. 3258, the "Drinking Water System Security Act of 2009." If enacted, H.R. 3258 will apply to community water systems serving more than 3,300 persons and any other system that, in the judgment of the Environmental Protection Agency (EPA), presents "a security risk making regulation . . . appropriate."

Under the legislation, covered systems would have to prepare and obtain EPA approval for (1) security vulnerability assessments and (2) site security plans that include risk-based performance measures to address any vulnerabilities. EPA would also be empowered to collect information to determine a water system's risk level. The program would be similar to the existing chemical facility program administered by the Department of Homeland Security.

Next Meeting

The Commission will hold its next regularly scheduled meeting on October 16, 2009, in Montgomery, Alabama.