



BALCH & BINGHAM LLP

ALABAMA

Environmental Update

NEW CHAIR AND VICE-CHAIR

After calling the meeting to order, Commissioner Sanders transferred the position of Chairman to Commissioner Phillips. Commissioner Byington assumed the Vice-Chairmanship.

DIRECTOR'S REPORT

After expressing gratitude to the Commission for selecting him as the new director, Trey Glenn presented his vision of ADEM becoming the State's leading agency. The Director's personal plan of action for accomplishing this goal includes ensuring that the Department has a good relationship with the Legislature, the Governor, other state agencies, and Alabama's congressional delegation. Also, Director Glenn described his plan to tour the state to hear the concerns and ideas of citizens along with those of the environmental and regulated communities.

The Director then discussed the major issues the Department is currently facing. He noted that plans for ADEM's new laboratory in Montgomery are moving forward with an anticipated ground-breaking in April 2005. Director Glenn also explained that, at Governor Riley's request, he would continue Alabama's fight in the "Water Wars" with Georgia since water allocation has a substantial impact on Alabama's water quality.

The Director next highlighted several bills currently being considered by the Alabama Legislature. He urged the Commission to support the proposed legislation that would increase the solid waste disposal fee and require solid waste landfills to provide financial assurances. However, Director Glenn expressed concern over the proposed legislation that would remove ADEM's car tag program, eliminating much needed ADEM revenue. The Director also explained that he plans to continue an open dialogue concerning environmental justice, noting that he recently met with Congressman Artur Davis regarding this issue.

In addition, Director Glenn provided a summary of recent contracts executed by ADEM. Commissioner Wainwright asked that the Director begin to do this annually. The Director provided the Commission with copies of several regulatory changes that ADEM is currently considering, ensuring that the Commission has advance notice of the agency's rulemakings. Finally, the Director explained that ADEM has issued an enforcement order against the Alabama Department of Corrections in response to recent sewage discharge problems at the Donaldson Correctional Facility in Bessemer. Olivia Rowell, ADEM General Counsel, explained that this matter has been referred to the Attorney General who is currently pursuing injunctive relief against the facility.

COMMITTEE REPORTS

Commissioner Byington presented a report from the Enforcement and Administrative Penalties Stakeholder Committee. He noted that the chairman of the committee, Ron Farley, expects to present the completed recommendations in March 2005, which will include a list of needed agency policies and recommended regulations. Commissioner Byington expressed his hope that many of the recommended policies could be implemented by this summer. He also thanked Olivia Rowell for her extensive help to this committee.

COMMISSION ACTIONS

First, the Commission considered proposed amendments to the Division 3 - Air Regulations that will, among other things, remove outdated open burning provisions, update ADEM's air regulations to conform with EPA's regulations, and revise the air regulations to note that Jefferson and Shelby Counties are in nonattainment by new 8-hour ozone standard. Ron Gore, Chief of ADEM's Air Division, explained that ADEM received no written or verbal comments on this proposal. The Commission voted unanimously to approve the changes.

Next, the Commission considered proposed amendments to the Division 14 - Hazardous Waste Regulations. Gerald Hardy, Chief of ADEM's Land Division, explained that the revisions are necessary to ensure that ADEM's hazardous waste program continues to retain EPA approval. Among other changes, the proposal revised rules regarding waste mixtures, used oil, and recordkeeping, and

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reorganized the definitional section. Mr. Hardy noted that no changes to the proposal were made in response to the two public comments ADEM received. The Commission unanimously adopted the proposed regulations.

COMMISSION RESOLUTIONS

Commissioner Byington presented a resolution supporting the proposed legislation that would create a solid waste disposal fee and impose financial assurance requirements on landfills. He explained that this legislation is needed to adequately fund the state's solid waste program. Commissioner Wainwright argued that this legislation was tantamount to a "back-door tax" on Alabama's citizens. In response, Commissioner Byington noted that the average Alabama citizen would only pay 32 cents per year more for solid waste disposal. Gerald Hardy of ADEM's Land Division agreed, stating that the tipping fee amounted to an average of a one dollar per year fee per Alabama household. The Commission voted 5-1 in favor of the resolution with Commissioner Wainwright casting the only opposition vote. Commissioner Byington also presented a resolution in support of legislation to revise the qualifications for the well-driller and certified geologist positions on the Commission. Commissioner Byington agreed to withdraw the resolution after concerns were raised by Commissioners Wainwright and Sanders.

The Commission entertained comments from Mark Johnston, who spoke on behalf of the ADEM Reform Coalition. Mr. Johnston, who also serves as the President of the Alabama Rivers Alliance, congratulated Director Glenn on his new position and explained that the environmental community appreciates the positive dialogue already begun. Also, Gail Gant with an African-American environmental justice organization suggested several priorities for Director Glenn, including reforming the agency's enforcement policies, increasing ADEM's diversity, improving public access to records, promoting environmental justice issues, and improving ADEM's fiscal health.

OTHER ITEMS

The following significant environmental legislation has been introduced thus far in the 2005 Regular Legislative Session:

SB 234/ HB 270 - would require financial assurance for municipal solid waste landfills in Alabama and would authorize ADEM to develop rules setting forth applicable minimum standards.

SB 231/ HB 263 - would impose a fee on the disposal of solid waste to be paid by the generator of the operators of certain solid waste disposal facilities. Revenues generated by the fee would be deposited into the Environmental Management Fund and would provide annual operating funds for ADEM's solid waste.

SB 222/ HB 321 - under existing law, one member of the Environmental Management Commission must be certified by the National Water Well Association Certification Program. This bill would provide that the member must either have been certified by the National Water Well Association Certification Program, or its successor, the National Ground Water Association, or the member must be a geologist licensed to practice geology by the State of Alabama.

SB 188/ HB 141 - general law currently provides for local county and municipal plans for the management of solid waste generated within their respective jurisdiction. This bill would further provide for the application process to include an application fee.

SB 245 - would require the governing bodies of municipalities and counties affected by a proposed granite and limestone surface mining operation to approve the operation prior to the issuance of the permit for operations by ADEM.

SB 227 - would provide that small farm operations could not be found to be a public or private nuisance or guilty of violating county or municipal ordinances or resolutions unless certain conditions are met.

SB 226/ HB 332 - would remove ADEM from the appropriations process and would require the state comptroller to disburse all environmental tag proceeds directly to Legacy, Inc. In addition, Legacy, Inc. would be subject to examination by the Examiners of Public Accounts and would further permit Legacy, Inc. to establish a perpetual trust for environmental education and provide, upon dissolution of Legacy, Inc., for the disbursement of the trust fund proceeds.

NEXT MEETING

The Commission will meet on Friday, April 8, 2005, at 10 a.m. in Montgomery, Alabama.

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