



# ALABAMA ENVIRONMENTAL UPDATE

## ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF DECEMBER 10, 2010

### ADEM Director's Report

ADEM Director Lance LeFleur reported that, after two months of operating under the current fiscal year's budget, the Department is on track with its revenues and expenditures. He attributed the Department's ability to weather difficult economic times to the Department's proactive efforts to financially shore up its divisions. He noted, however, that the Water Division is in need of improved funding because the state general fund, which supplements inadequate federal funding, is in relatively poor shape. Director LeFleur said that maintaining adequate funding in the next fiscal year will be a challenge and that ADEM will be working closely with new state legislators to help them understand the importance of the Department's work.

Director LeFleur highlighted several of ADEM's accomplishments over the past year, beginning with the Air Division. He reported that air quality in Birmingham continues to improve and that the city has attained the 24-hour fine particle standard and will likely attain the annual standard soon. Remarkable headway has also been made in the water division despite its funding woes. The Water Division has made great strides in improving the stormwater system, including significant advancements in the MS4 permit program. Director LeFleur said that the Department will clear a multiple-year mining and MS4 backlog within the next few months. He touted the success of the eDMR program, in which over 725 permittees now participate, thanks in part to fifteen training sessions that were held throughout the State. He noted that Alabama is one of just three states that transmits permit data to EPA using the eDMR program and that it saves time and resources. Next, Director LeFleur praised the Field Operations Division for having obtained drinking water certification for its lab from EPA this year and for the Division's work in responding to the Deepwater Horizon oil spill. He said the Division logged 60,000 man hours in working to clean up the spill and protect the environment. Additionally, the Field Operations Division is increasing its presence at construction sites in order to improve stormwater compliance. Within the Land Division, the Waste and Remediation Programs have seen fifteen communities benefit from recycling grants, and \$2.8 million from the stormwater fund has enabled eighty-three remediation projects. In the realm of hazardous waste, the last train of TVA coal ash arrived in Perry County last weekend, marking the end of that remediation and disposal effort. Director LeFleur reported that the Brownfields Division is using a \$200,000 grant to assess abandoned UST sites along the Highway 80 Voting Rights Trail in an environmental justice initiative.

Finally, Director LeFleur thanked John Hagood, who is leaving ADEM, for his years of service to the Department, and Mr. Hagood, in turn, thanked ADEM and the Commission.

### Commission Actions

The Commission unanimously adopted proposed amendments to ADEM Air Pollution Control Regulations, Rule 335-3-14-.04, for air permits authorizing construction in clean air (PSD) areas. The amendments address the greenhouse gas (GHG) tailoring rule, which establishes thresholds for GHG emissions that trigger the requirement for permitting. The amendments will add additional thresholds and are meant to make ADEM's regulations consistent with EPA's. The Commission also unanimously adopted proposed amendments to Division 335-6 of ADEM's water quality regulations (NPDES), which

will add numeric nutrient criteria to eight lakes, update certain use classifications within the Choctawhatchee River Basin and the Tennessee River Basin, and make minor administrative changes. The Commission unanimously adopted proposed administrative and technical water supply amendments to Division 335-7 in order to clarify certain elements such as EPA's approved best available technology, as well.

Next, the Commission acknowledged the withdrawals of two requests for hearings: first, in the matter of *John T. Davis Oil Company v. ADEM*, EMC Docket No. 10-08, which involved a UST release incident, and second, in the matter of *Lenton G. Williams v. ADEM, and Veolia ES Cedar Hill Landfill, Inc.*, EMC Docket No. 07-03, which concerned a solid waste facility permit. Finally, in the matter of *Southeastern Cheese, LLC v. ADEM*, EMC Docket No. 10-06, the Commission considered the report of the hearing officer and, no objections having been filed on either side, unanimously adopted the hearing officer's report, which reduced Southeastern Cheese, LLC's civil penalty for violation of its SID permit.

### **Other Business**

Commission Chair Lester listed, and the Commission unanimously adopted, the following dates for next year's meetings: February 18, April 15, June 17, August 19, October 21, and December 9, 2011. Accordingly, the next regularly scheduled meeting will be held on February 18, 2011.

### **Other Items**

On August 8th, EPA formally objected to ADEM's May 18th draft Phase II municipal separate storm sewer system (MS4) permit and threatened to take over the Phase II MS4 permit. In response, on November 10th, ADEM substantially revised the proposed Phase II MS4 permit and submitted it to EPA for approval. In its current form, the Phase II MS4 permit will impose a significant financial and administrative burden on small Phase II municipalities and subject industries and businesses that operate in these municipalities to double regulation at the federal/state and local levels. In addition, because of the inclusion of EPA "guidance" provisions as regulatory permit requirements, many of which are unfeasible for small municipalities and not required by the federal CWA, Phase II municipalities will be more susceptible to third-party citizen suits and/or ADEM or EPA enforcement actions. Should EPA approve the draft Phase II permit as presently proposed, Phase II municipalities will be left with two options: seek to contest the permit before the Alabama Environmental Management Commission or implement a Phase II MS4 program as contemplated under the draft permit.

On December 15, the Coastal Recovery Commission of Alabama, an organization formed by Governor Riley and tasked with developing a roadmap to recovery in response to the oil spill, will present its report to the Governor. The Commission was formed on September 27, 2010, and has been working in collaboration with individuals and organizations affected by the spill in order to understand the impacts and develop attainable goals for establishing long-term resilience in the Gulf region. The report is intended to guide Alabama, regional, and even national leaders in implementing policies that protect, enhance and preserve the assets of Alabama's Gulf Coast.

President Obama formed a similar organization on October 5, 2010—the Gulf Coast Ecosystem Restoration Task Force. Headed by EPA Administrator Lisa Jackson, the creation of the Task Force was recommended by Navy Secretary Ray Mabus in his September report on long-term recovery for the Gulf. Jackson named John Hankinson, former EPA Administrator for Region Four, as Executive Director of the Task Force. Other members include one senior official from each of several federal agencies, including the departments of Defense, Justice, Interior, Agriculture, Commerce and Transportation, and a representative from each affected state (Alabama, Mississippi, Louisiana, Texas, and Florida), who are recommended to the President by the Governors of each state. The Task Force is aimed at coordinating planning and information exchange between the federal government and coastal interests in order to

develop a regional ecosystem restoration strategy for the Gulf. The Task Force will provide biennial updates to the President on its progress towards Gulf ecosystem restoration.

**Next Meeting**

The Commission will hold its next regularly scheduled meeting on February 18, 2011, in Montgomery, Alabama.