



Alabama Environmental Update

Alabama Environmental Management Commission Meeting of March 20, 2009

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The meeting began by approving the minutes from the December 14, 2007, meeting. Commissioners Phillips, Gardner, Archie, and Wainwright were present at the meeting.

Director's Report

Director Glenn's report began with Director Glenn began his report by noting that ADEM is "on track" with the current budget, and that he has submitted memoranda to the Commission regarding potential rulemaking and contract issues. He then reported on external affairs, mentioning the General Regulatory Overview Conference will be held May 22, 2008, at the Renaissance Montgomery Convention Center and will provide a general overview of all the major programs ADEM administers. Regarding legislative matters, Director Glenn reported that the executive budget as introduced included cuts to ADEM that would set ADEM back to 2007 level. Additionally, he noted that

the Solid Waste or Recycling Bill made it out of the Committee last week and will most likely see additional movement next week.

Director Glenn next addressed the reorganization of the Water Division. He said that historically the municipal and mining/non-point source programs have been spread over different divisions, but now that the programs are mature, it is time to combine them into a more streamlined group. The proposed reorganization includes a Permitting Branch led by Glenda Dean, with Chip Crockett working closely beside her to make timely and appropriate enforcement decisions, and a Field Operations Branch that will report back to the Permitting Branch. According to Director Glenn, the reorganization will result in increased efficiency, consistency, and greater cost management for an overall more effective program. Director Glenn also reported that the Underground Storage Tank ("UST") program will be moved

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from the Water Division to the Land Division.

Lastly, Director Glenn mentioned that ADEM's aerial surveillance program is a major asset for programs undergoing significant changes because it provides a new method for tracking and reporting data.

Commission Actions

Following the Director's report, the Commission addressed several agenda items. Commissioner Wainwright reported that the Personnel Committee met February 8, 2008, and reviewed the Director's performance evaluations that each Commissioner had completed. The Commission voted unanimously to receive a summary of the evaluations and to authorize the Chair of the Commission to review and discuss the forms with the Director. Commissioner Gardner expressed concern about the evaluation form itself, and the Commission issued instructions for Commissioner Wainwright and the Committee to review the form and report to the Commission at the August meeting.

Second, the Commission heard from Mr. Gerald Hardy, Chief of ADEM's Land Division, on the proposed amendments to the UST regulations, Ala. Admin. Code r. 335-6-15, which would allow the Department to prohibit delivery of regulated substances to a UST facility that has failed to comply with applicable regulations. The amendments would make it unlawful for anyone to deliver regulated substances to such a facility, and the Department would

add the facility to its "prohibited delivery list" on the Department's website. After receiving proper documentation showing that a facility is in compliance, the Department would remove the facility from the "prohibited delivery list." Mr. Hardy reported that these amendments are necessary to implement the requirements of the Secondary Containment Provisions of the Federal Energy Policy Act of 2005. Mr. Hardy also assured Commissioner Wainwright that this regulation would not negatively impact hospitals and nursing homes because facilities will be provided several advance notices before the prohibition is implemented, and because the Department also has the ability to allow delivery in emergency situations. Despite Mr. Wainwright's opposition, the Commission voted to adopt the amendments.

Next, the Commission addressed the matter of which EPA sources to use to set reference dose values for toxic substances in Ala. Admin. Code r. 335-6-10, Appendix A, including those for Acrolein and Phenol, and possible rulemaking to amend the rule. Commissioner Phillips noted that ADEM is currently waiting on word from EPA regarding this matter, and suggested that the Commission include this item in the April agenda instead. The Commission voted unanimously to table this item for the April meeting.

Lastly, Commissioner Phillips acknowledged Petitioner's withdrawal of the request for a hearing in the matter involving the issuance of consent orders to Dunn

Questions about items appearing in this update may be directed to Steve McKinney at (205) 226-3496 in Birmingham or Jim Byram at (334) 269-3159 in Montgomery. This publication is intended to provide general information and does not constitute advice. 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.

Construction Company, Birmingham Airport Authority, and APAC-Southeast, Inc., in *Black Warrior Riverkeeper, Inc. v. ADEM and Birmingham Airport Authority*. Before the Commission, the Petitioner admitted to deficiencies in the service of the pleadings, including a response that was not sent to the proper party, but requested that his client be allowed to have an evidentiary hearing. The Department argued that Petitioner did not comply with the rules and therefore the Administrative Law Judge's dismissal should be upheld. The Commission voted unanimously to uphold the Administrative Law Judge's recommendation to deny Petitioner's request for a hearing.

Other Items

Congress has amended the federal Freedom of Information Act or "FOIA" for the first time in ten years. See Pub.L.No. 110-175 (effective Dec. 31, 2007). The "2007 FOIA Amendments" make several changes that are beneficial to individuals or businesses who are regulated by or seek records from federal agencies. One change makes it easier for FOIA requesters to recover their attorney fees in lawsuits over the wrongful withholding of federal records. Other changes include a provision that subjects certain federal contractors to FOIA requests from the public and provisions on time limits for agency responses and the tracking of FOIA requests as they are processed. For more information, contact Stephen Gidiere at (205) 226-8735 or sgidiere@balch.com.

On March 12, 2008, EPA strengthened its national ambient air quality standards (NAAQS) for ground-level ozone, the primary component of smog. EPA revised the 8-hour "primary" ozone standard, designed to protect public health, to a level of 0.075 parts per million (ppm). The previous standard, set in 1997, was 0.08 ppm. Every county in the State of Alabama is currently meeting the old ozone standard. However, it is expected that the Birmingham, Mobile, and Huntsville metro areas and possibly Montgomery and Tuscaloosa will not meet the new standard. For more information, contact Tripp Head at (205) 226-3414 or thead@balch.com.

Next Meeting

The Commission will hold its next regularly scheduled meeting at 11 a.m. on April 18, 2008.