



Alabama Environmental Update

Alabama Environmental Management Commission Meeting of December 1, 2006

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The meeting began by approving the minutes from the August 11, 2006 meeting. The Commission approved the membership of the four standing committees. Members of the External Relations Committee are Dr. Laurel Gardner (Chair), Anita Archie, and Sam Wainwright. Members of the Personnel Committee are Anita Archie (Chair), Kathleen Felker, and Dr. John Lester. Members of the Rulemaking Committee are Sam Wainwright (Chair), Kathleen Felker, and Dr. John Lester. Members of the Strategic Planning Committee are Kenneth Hairston (Chair), Dr. Gardner, and Dr. Lester. All Commissioners were present at the meeting.

Director's Report

ADEM Director Trey Glenn began his report by noting that, as the end of Fiscal Year 2006 is approaching, certain federal funding has been slow to arrive due to federal budget issues. The Director met recently

with the State Finance Director to discuss ADEM's future fiscal needs. Director Glenn also noted that ADEM did not currently plan to introduce any additional rulemaking proposals in the near future. In his presentation, Director Glenn thanked Marshall Sanders, ADEM's Chief Financial Officer, for his service to the State. Mr. Sanders is retiring at the end of the year.

The Director explained that ADEM is currently working to address the PM2.5 attainment plan for Birmingham, which he expects to be complete by the end of 2007. Moreover, ADEM is working to address ozone attainment in the Birmingham area. In addition, the Director explained that the Department continues to look at ways to enhance its Environmental Justice programs. He noted that funding for Environmental Justice is not likely to be available in the next fiscal year, although Director Glenn explained that the Department is committed to continuing those

efforts notwithstanding. The Director also highlighted ADEM's recent marketing efforts to promote the Brownfield Program.

Concerning implementation of the Strategic Plan, Director Glenn explained that ADEM is currently reviewing all programs as part of its Quality Management System and looking for innovative ways to improve the Department's efficiency and effectiveness. Finally, Director Glenn stated that he met yesterday with David Ludder to discuss the rulemaking petitions which the Legal Environmental Assistance Foundation plans to submit to the Commission in the near future. The Director expressed some concern over the petitions and cautioned the Commission on the basis for adoption.

Commissioners' Reports

Commission Chair Scott Phillips reported on the implementation of the Commission's Strategic Plan. While much has been accomplished, Commissioner Phillips explained that additional efforts were necessary, including improvements to ADEM's procedures for imposing civil penalties as a result of enforcement actions. In addition, Commissioner Phillips stated that he would work with Debi Thomas to ensure that the meeting minutes are posted on the internet immediately following future Commission meetings. Commissioner Phillips also referred to the Rulemaking Committee a proposed guidance document establishing procedures for hearing public comments at the Commission's meetings.

Commissioner Wainwright, Chair of the Rulemaking Committee, reported that the committee met this morning to discuss the reconciliation of public hearing comments on the proposed revisions to the Commission's regulations concerning "conflict of interests." The Rulemaking Committee voted not to report the proposed rulemaking to the Commission due, in part, to concerns associated with the Commission's legal authority to adopt the amendments.

Commission Actions

The Commission noted for the record that the Rulemaking Committee did not vote out of committee the proposed "Conflict of Interest" amendments to Chapter 335-2-4 of the Commission's regulations. Next, the Commission voted unanimously to approve the recommendation of the Administrative Law Judge to grant ADEM's Motion to Strike and Dismiss, as well as deny as moot the Application to Intervene filed by Perry County Associates, LLC, in the case styled Concerned Citizens of Perry County v. ADEM, EMC Docket No. 06-07.

Public Comments

Before adjourning, the Commission listened to comments by Mr. David Ludder, General Counsel of the Legal Environmental Assistance Foundation, Inc., and Ms. Casi Callaway, Co-Chair of the ADEM Reform Coalition. Mr. Ludder gave a presentation concerning two proposed rulemaking petitions. The first rulemaking petition would amend ADEM Administrative Code Rule 335-6-10, Appendix A, to

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conform the pollutant toxicity values of acrolein and phenol to those established by EPA. The second rulemaking petition would amend ADEM Administrative Code Rule 335-6-11-.01, which determines the criteria for upgrading a state waterbody use designation, to ensure that ADEM reclassifies waters to “fishable/swimmable” uses when such uses are “attainable.” Mr. Ludder plans to submit both petitions in the near future. Next, Ms. Callaway offered comments on the Strategic Plan, stating that the Commission and ADEM still have many more goals to accomplish. Ms. Callaway asked the Commission to provide an opportunity for public comment on the new Strategic Plan before it is finalized.

Other Items

The courts are currently considering several important environmental cases. On November 1, 2006, the United States Supreme Court heard oral arguments in Environmental Defense v. Duke Energy Corporation, which involves the Clean Air Act’s Prevention of Significant Deterioration regulations (commonly referred to as “New Source Review”). For more information on the status of this litigation, please contact Steve McKinney, who attended the Supreme Court’s oral arguments in Washington, D.C., at (205) 226-3496.

This week, the U.S. Supreme Court heard oral arguments in Massachusetts v. EPA, which involves a lawsuit by various states and environmental groups asking

EPA to regulate carbon dioxide and other so-called “greenhouse gas emissions” from new motor vehicles, on the basis that those emissions contribute to global warming.

Closer to home, on November 6, 2006, the U.S. Court of Appeals for the Eleventh Circuit heard oral arguments in the Alabama sturgeon litigation, Alabama-Tombigbee Rivers Coalition v. Kempthorne. For more information on the status of this litigation, please contact Robert Fowler, who represents the appellants, at (205) 226-8733.

Next Meeting

The Commission will hold its next regularly scheduled meeting at 11 a.m. on February 23, 2007.

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. 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.