



# ALABAMA ENVIRONMENTAL UPDATE

## ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF DECEMBER 12, 2008

### Commission Elections

The meeting began with the Commission approving the minutes from the previous meeting of October 17, 2008. The Commission then unanimously adopted the proposed 2009 Committee memberships. Commissioner Phillips explained that the External Relations Committee will work with the Chair, Vice Chair, and Director to determine and accomplish its objectives. The Chair of the 2009 Personnel Committee is Dr. John Lester, and its members consist of Dr. Kathleen Felker and Mr. Ken Hairston. The Rulemaking Committee is chaired by Ms. Anita Archie, and its members include Mr. Scott Phillips and Mr. Sam Wainwright. Finally, the Strategic Planning Ad Hoc Committee will continue as it currently stands, with Mr. Sam Wainwright as Chair and Mr. Ken Hairston and Dr. John Lester as committee members.

### ADEM Director's Report

ADEM Director Trey Glenn began his report by stating that the FY 2009 budget was on track. Next, the Director summarized the accomplishments that have been made since the 2004 plan that called for an enhanced focus on external relations, funding, legislative relations, and internal operations. Some highlights included passing the recycling law, enhanced environmental justice, better internal budget and quality management of local operations in the department, and increased use of technology.

Director Glenn then stated that the implementation of the Unified Strategic Plan was in place, which provides a clear alignment of staff members around environmental goals. He also noted that within the next six months, he would improve the Office of Innovation by pulling together compliance related activities into one program and making more files available online which will improve the speed with which ADEM can communicate with entities. He then concluded the report by noting that at least 4 rulemakings could come before the Commission at the next meeting, including: 1) financial assurance rules for privately owned wastewater treatment facilities treating domestic wastewater; 2) deletion of the Clean Air Mercury Rule (CAMR) in response to vacatur of CAMR; 3) Clean Air Interstate Rule (CAIR) and the Acid Rain Program amendments to reflect changes to both programs; and 4) hazardous waste modifications to maintain equivalency with EPA.

### Report from the Commission Chair

Commission Chair Garner began her report by addressing items from the past year that the Commission was supposed to act upon but had not. The first action point involved revising the Director's evaluation form. The Commission unanimously agreed that they would continue to delay revisions to the Director's evaluation form until it can be re-evaluated in line with the strategic plan. The next item that had been overlooked was the development of operational guidelines and a code of conduct for the Commission. Commissioner Phillip noted that he compiled his ideas with comments from three Commissioners regarding a set of standards for Commission operations and submitted the document to the rulemaking committee for review. Commissioner Phillips then recommended that the Commission re-refer the document to the rulemaking committee for review. To conclude her report, Commissioner Garner mentioned a letter from the Attorney General regarding changes to the hearings that will be held before the Administrative Law Judges. Robert Tambling, EMC Legal Council, noted that the ALJ will still be handling the cases that are currently pending before them, but that the future of administrative hearings is uncertain.

### Report from the Strategic Planning Ad Hoc Committee

Following the Director's report, Commissioner Wainwright reported that the Strategic Planning Ad Hoc Committee had met Friday morning and reviewed the last draft of the strategic plan. The committee also discussed timing for

the rulemaking process and strategic plan rollout. Commissioner Wainwright noted that the Commission had been working on the plan since December 2007, and thanked the Director for his hard work on it.

John Hagood then provided a brief overview of two proposed rule changes. The first proposed change involves Ala. Admin. Code r. 335-2-2-.05, and would require consideration of the strategic plan in rulemaking—essentially making the strategic plan an extra consideration that points to the relevance and relationship of the strategic plan to the proposed rule. The second proposed change adds a fourth paragraph to the Division 1 organization rules that essentially states that the strategic plan is effective for five years, and after such time, the Director will deliver notice of a chance to update the plan. Commissioner Felker was concerned with the five-year term of the plan, but Mr. Tambling responded that at this stage, the language of the rule can still be worked on if needed.

Lastly, Director Glenn provided an overview of the strategic plan rollout. The Director stated that the Department would begin by making the public and media aware of the plan. He said that although the strategic plan is vague now, they will gradually begin building upon it and that the Commission will see notable progress by April. Commissioner Felker responded that the plan was weak in environmental details, and the Director replied that more specifics would come out later regarding environmental goals. A motion to adopt the Unified Strategic Plan was passed by all except Commissioner Felker.

### **Other Commission Actions**

Commissioner Felker summarized research she and Director Glenn performed regarding concerns from legislators and private citizens in the state about the quality of life around quarries. Director Glenn noted that several bills have been introduced in the Legislature designed to consider the “quality of life” issues in quarry siting, but none have been enacted. Alabama currently regulates only the quality of air and water discharge, and its permitting process is not significantly different from neighboring states. However, Director Glenn recommended that he present to the Commission in six months a report on the relationship between water quality impacts of quarries (which ADEM has authority to control) and water quantity impacts of quarries (which ADEM does not have authority to control). Along with this report, Director Glenn will submit a report on antidegradation in Alabama, and a report on environmental justice and the effects of the ADEM permitting business processes on specific segments of the populations.

The Commission then heard from Ron Gore, Chief of the Air Division, regarding revisions to the Division 3 – Air Quality Regulations. Mr. Gore proposed revisions to rules 335-3-10-.01, 335-3-10-.02, 335-3-10-.03, 335-3-11-.01, 335-3-11-.06, 335-3-17-.01, and Appendix C to incorporate by reference changes to the EPA’s New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs) promulgated by EPA from July 3, 2007, to July 17, 2008. Revisions were also proposed to incorporate revisions made by EPA to the Transportation Conformity Rule. The Commission unanimously adopted the proposed amendments.

Next, the Commission heard from Mr. Russell Kelly, Chief of the Permits and Services Division. Mr. Kelly requested that the Commission amend rule 335-1-1-.07 to add two new departmental forms (9 & 522) which would create an application for grants under the Alabama Recycling Fund and a new form for NPDES General Permit Number ALG640000. The Commission unanimously adopted this revision, and then unanimously adopted revisions proposed by Mr. Gerald Hardy, Chief of the Land Division, to Division 13 to establish regulatory requirements necessary for the implementation of the Alabama Recycling Fund grants program.

### **Other Items**

On December 11, 2008, EPA issued a final rule adjusting for inflation the statutory civil monetary penalties that may be assessed for violations of EPA administered statutes and their implementing regulations. The inflation adjustment for most civil penalties set forth in the final rule were calculated by comparing the consumer price index (CPI) from June 2004 (the last time most penalty amounts were increased) to the CPI for June 2007, resulting in an inflation adjustment factor of approximately 10 percent. The adjusted penalty amounts are applicable to violations that occur after January 12, 2009.

### **Next Meeting**

The Commission will hold its next regularly scheduled meeting on February 20, 2009, in Montgomery, AL.