



ALABAMA ENVIRONMENTAL UPDATE

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF JUNE 25, 2010

The Commission began the meeting by approving the minutes from the April Meeting. In attendance at the meeting were Commission Vice-Chair Lester and Commissioners Brown, Wainwright and Pierce.

ADEM Director's Report

ADEM Director LeFleur reported that the majority of his work since taking office as ADEM Director has been dealing with the Deepwater Horizon oil spill. He noted that today is day 67 of the oil spill, which is the largest disaster in U.S. History. Every 4-5 days the well leaks the equivalent of the amount of oil spilled in the Exxon Valdez disaster, meaning the Gulf of Mexico has experienced the equivalent of 15 Exxon Valdez disasters since the spill began. The disaster involves four Gulf Coast states (Alabama, Louisiana, Mississippi, and Florida) and is being overseen by the U.S. Coast Guard. ADEM is serving as the coordinating agency for the State of Alabama's response. Numerous ADEM officials have been on site and several other agencies are assisting, including, but not limited to, the Department of Emergency Management, the Department of Health, the National Guard, the Department of Public Services, the Forest Service, the Department of Industrial Relations, and the Department of Homeland Security.

ADEM is currently conducting air, water and sediment samplings, developing booming strategies, and communicating with local officials. ADEM's job is to protect sensitive estuaries and recreational areas, and there has been minimal environmental damage so far thanks to booming schemes and rapid clean-up of contaminated areas. Director LeFleur noted that thousands of people's lives and livelihoods have been affected by the spill. Bayou La Batre's seafood industry has been shut down; there are no charter fleets, and hotel owners, restaurants, stores and retail outlets are suffering. Unfortunately, Director LeFleur anticipates it will only get worse. It will be at least 30 days until the relief wells are completed and the leaking well is capped. In addition, hurricanes could cause additional negative impacts to the region. There is currently a tropical storm near the Yucatan peninsula. Director LeFleur thanked the ADEM employees for their hard work.

Next, Director LeFleur turned to other matters. The 2010 budget continues to be on track and new management practices are being implemented to deal with increasing mandates from the federal government. Director LeFleur also said that ADEM has responded to the pending petition filed by environmental activists to withdraw ADEM's NPDES permitting authority. He noted that Commissioner Archie's resignation dissolved any conflict of interest issues that may have existed. Director LeFleur noted that Olivia Rowell had retired after 26 years of service for ADEM, and that Tom Johnston had been elevated to the level of general counsel for ADEM this past week.

Director LeFleur mentioned the scrap tire management project conducted in Prichard, Alabama, in May, where 13,500 tons of tires were removed from the site and 50% of the tires were beneficially reused. He also stated that the regulatory update program held in May for stakeholders and the regulated community was a success with around 600 participants. Finally, Director LeFleur mentioned the \$200,000 brownfields grant from EPA to assess petroleum contamination sites from Montgomery to Union Town along the U.S. Highway 80 corridor site of the National Historic Trail.

Commission Actions

The Commission unanimously adopted the proposed amendments to ALA. ADMIN. CODE r. 335-6-6-.23, the Notice of Intent provision for General Permits under ADEM's NPDES program, to make it

consistent with the federal rule, 40 C.F.R. § 122.28. The amendments are purely administrative and do not change any discharge limits. Next, the Commission unanimously adopted the proposed amendments to ADEM's Solid Waste Program regulations that include three major revisions: (1) the amendments revise various definitions pursuant to the amendments to the Solid Wastes and Recyclables Materials Management Act enacted in 2008; (2) the amendments clarify closure requirements for unauthorized dumps, including the preparation and submission of a site closure plan and entering into an environmental covenant in accordance with ADEM's Uniform Environmental Covenants Program; and (3) the amendments establish registration requirements for facilities engaged in the receipt, storage, or processing of recyclable material, which will allow the Department to monitor the progress towards achieving the statewide waste reduction and recycling goal.

The Commission also unanimously adopted the Administrative Law Judge's ("ALJ") recommendation of dismissal of EMC Docket No. 08-01, Friends of Hurricane Creek and Alabama Rivers Alliance, Inc. v. ADEM, and Tuscaloosa Resources, Inc., as moot. This appeal concerns ADEM's reissuance of TRI's Panther Mine NPDES permit. The ALJ ruled that because ADEM had revoked TRI's permit at issue in this proceeding since the time the appeal was initiated, the proceeding was moot. The Commission also adopted Petitioner's Motion to Withdraw/Dismiss Appeal in the Brenson Creek, LLC v. ADEM, EMC Docket No. 10-02, NPDES-related matter.

Finally, the Commission unanimously adopted the recommendations of the Hearing Officer in Black Warrior Riverkeeper, Inc. v. ADEM, Docket No. 10-04. The case involves ADEM's issuance of an NPDES permit to MCoal Corporation for its Rosa Mine located in Blount County. The Southern Environmental Law Center, representing the petitioners Black Warrior Riverkeeper, Inc. and Friends of the Locust Fork, Inc., contested many of the standards and limitations contained in MCoal's NPDES permit, as well as ADEM's method for reviewing the adequacy of MCoal's Pollution Abatement and Prevention Plan. A week-long evidentiary hearing was held in February of this year before a Hearing Officer assigned by the AEMC. The Hearing Officer issued written recommendations following the hearing in favor of MCoal on all aspects of its NPDES permit. MCoal is represented by Balch and Bingham.

The Commission also approved the request of Michael William Mullen, Executive Director of the Choctawhatchee Riverkeeper, Inc., to present to ADEM the need for expansion and strengthening of stormwater management. Mullen's presentation showed examples of the potential for relatively small projects to cause severe damage to stream water quality, aquatic habitats and public infrastructure when there is no stormwater management.

Other Items

EPA Region 4 Closes Complaints on Five Environmental Justice Investigations

On October 27, 2009, EPA Region IV received 16 allegations involving environmental justice issues. Upon further investigation, EPA determined that five of the allegations warranted further investigation. These five allegations involved coal ash disposal at the Arrowhead Landfill in Perry County, Alabama; chemical contamination in McIntosh, Alabama, associated with an Olin Corporation facility; chemical contamination of a church in Columbus, Mississippi, by creosote from Kerr-McGee Corporation; groundwater contamination associated with a landfill in Dickson, Tennessee; and groundwater contamination near a former precision-weapons manufacturing facility in Tallavest, Florida. On June 14, 2010, EPA's Office of Inspector General released a special report regarding those five allegations, reporting that all five complaints had been closed with no further action from EPA. For more information on this matter or to obtain a copy of EPA's special report, contact Jim Noles at (205) 226-8767.

Next Meeting

The Commission will hold its next regularly scheduled meeting on August 27, 2010, in Montgomery, Alabama.