

BALCH & BINGHAM LLP
A L A B A M A
Environmental Update

**ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING OF DECEMBER 17, 2002**

DIRECTOR'S REPORT:

Director Jim Warr reported that, with the federal government continuing to operate under a continuing funding resolution as opposed to an adopted budget, federal funds for ADEM's programs have continued to be delayed. Unfortunately, this is becoming an increasingly common predicament for ADEM. Director Warr expects that ADEM will not receive all of the federal funding it is due for the current fiscal year until the spring of 2003. Nevertheless, Director Warr stated that ADEM otherwise was remaining "right on target" for its budget implementation this fiscal year to date. He warned, however, that the Department was aware of the ongoing concerns about the State of Alabama's financial health and that ADEM was trying to ensure that its activities were responsive to those concerns and contingencies.

Director Warr then presented Pollution Prevention Awards on behalf of the Department to several companies to honor those companies' pollution prevention and reduction efforts. Occidental Chemical and Olin Corporation received the Director's Award, while GE Plastics and Ciba Specialty Chemicals received the Achievement Award.

Finally, Director Warr announced that Sloss Industries, in light of the U.S. Environmental Protection Agency's threats to classify Birmingham's Village Creek as a Fish & Wildlife water use-classified stream, no longer opposed ADEM's efforts to pursue a similar classification through a state-level rule-making and regulation. At Director Warr's invitation, a representative from Sloss Industries reiterated that position to the Commission and encouraged ADEM to proceed expeditiously with such rulemaking.

Upon the conclusion of Director Warr's report, Commissioner Pat Byington encouraged the Department to respond in writing to questions it had received regarding ADEM's triennial water quality review. He also requested information on news reports that ADEM was being assessed the cost of the plaintiffs' attorneys' fees in the recent Lowndesboro landfill permit case (a sum of approximately \$300,000) and that ADEM had been sued by a coalition of citizen groups opposing the Anniston chemical weapons incinerator. Director Warr explained that the Department intended to appeal the award of attorneys fees and had not yet been served the complaint in the incinerator matter.

COMMISSION ACTIONS:

Commission Chairman Sam H. Wainwright, P.E., welcomed two new Commission members to the Commission. Earlier this week, Governor Siegelman appointed Conservation Commissioner Riley Boykin Smith to fill the vacant at-large seat and Malcom Pirnie vice president Scott Phillips to fill the vacant position reserved for water well driller-certified professionals. Due to the recent nature of their appointments, both men recused themselves from any of the Commission's deliberations at this particular meeting.

The Commission voted to adopt the Commission's rulemaking subcommittee's recommendations to undertake rulemaking to amend the Department's Division 2 regulations. This rulemaking will amend the regulations to accurately reflect the Commission's and Department's Coliseum Boulevard address and will formalize procedures for

public comment at future Commission meetings.

The Commission also voted to adopt amendments to (i) the regulations' Division 1, which will add nine new forms, modify one departmental form, and delete another form, (ii) Division 3, which will establish standards for NO_x air emissions from new combined-cycle electric generating units, and (iii) Division 6, to eliminate the section regarding the use or disposal of sewage sludge and to add a new chapter regarding NPDES permits for certain land disturbance activities.

The Commission considered two matters on appeal. In Marshall County Commission v. ADEM, and Bishop Landfill, Inc., Intervenor, EMC No. 02-03, the Commission heard oral argument and then accepted the Hearing Officer's recommendation that Bishop Landfill's permit be denied. In Town of Loachapoka, et al., v. ADEM, and Florida Rock Industries, Inc., Intervenor, EMC No. 03-02, the Commission, again rejected the Petitioners' request for oral argument and declined to impose a stay on the permit.

At the conclusion of the Commission meeting, Commissioner Byington read into the record a letter he intends to send to the Commission. In it, he called for ADEM to develop a strategic plan and to submit it for the Commission's approval by June 2003. Six months thereafter, according to Commissioner Byington, the Commission would evaluate both ADEM's and the Director's performance in light of the strategic plan's stated goals.

OTHER ITEMS:

On November 22, 2002, the U.S. Environmental Protection Agency ("EPA") released both a **final rule and a proposed rule** revising the **Clean Air Act's New Source Review ("NSR") program**. EPA's final rule implements changes in the following areas to the NSR program: plantwide applicability emissions limits, pollution control and prevention projects, improved regulatory flexibility for plants that have achieved "clean unit" status, and EPA's emissions calculation test methodology. The proposed rule specifically addresses the "routine maintenance, repair and replacement" exclusion to NSR permitting requirements. **These two rules involve major changes in the NSR program**, and companies regulated under the Clean Air Act will want to familiarize themselves with the new requirements and opportunities associated with the new final and the proposed rule. For a copy of these rules or for additional information, contact Grady Moore at (205) 226-8718.

In recognition of their excellent work on behalf of Balch & Bingham and our clients, we are very pleased to announce the promotion of two new partners in the firm's Environmental and Natural Resources Section - Rob Fowler and Stephen Gidiere. Rob began his career with the firm after graduating from Cumberland School of Law, *magna cum laude* in 1996. Stephen graduated from the University of Alabama School of Law, *summa cum laude* in 1996 and practiced in the Solicitor's Office of the United States Department of Interior for two years prior to joining the firm. As with the other attorneys in our Section, Rob and Stephen represent clients in all areas of environmental and natural resources law. In particular, Rob's practice includes environmental permitting and compliance matters, endangered species matters, environmental litigation, and environmental issues in real estate development and transactions. Stephen's practice often involves administrative law matters, environmental litigation, and representing clients in negotiating creative solutions to resource development issues, such as through Safe Harbor Agreements under the Endangered Species Act.

NEXT MEETING:

The Commission's next meeting is scheduled for February 25, 2003 at 1:30 p.m.

Questions about items appearing in this Update may be directed to Bill Satterfield at (205) 226-3423 in Birmingham or Jim Byram at (334) 269-3159 in Montgomery, or our website can be accessed at www.balch.com. This publication is intended to provide general information. 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.