



BALCH & BINGHAM LLP

ALABAMA

# Environmental Update

---

## ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION SPECIAL MEETING OF MARCH 19, 2004

On Friday, March 19, 2004, the Commission held a special meeting to consider two agenda items. First, the Commission heard and considered a report from the Commission's Strategic Planning Special Committee on the Commission's draft strategic plan. The draft plan had its genesis in 2003, when the Commission initiated a planning process involving both the Commission and ADEM with the objective of establishing a strategic plan for both entities. To assist in this process, AEMC established a 23 member stakeholder committee and held five public meetings across the state.

In February 2004, the Commission released a draft strategic plan. Some of the principal recommendations included the following: developing a more defined enforcement and penalty policy; expanding ADEM's pollution prevention programs; addressing quality of life issues, including environmental justice; recommending measures to fund ADEM; establishing a committee to evaluate the director and provide comments on the performance of senior staff; creating a better working relationship with the governor, the legislature, other agencies and the public; and improving technology. The draft plan can be reviewed on the ADEM website <http://www.adem.state.al.us>.

On Friday, the Commission's Strategic Planning Special Committee met prior to the Commission's special meeting to discuss the draft plan. The committee discussed comments on the draft plan already received from the public and voted to extend the comment period until 12:00 pm on March 19 to consider additional comments. After considering all of the public comments the special committee plans to develop a revised draft which will be submitted to the full Commission for consideration at the April meeting. The committee reported on its plan during today's special meeting of the Commission. The Commission then considered and approved the special committee's report and plans to vote on the revised plan at the April meeting.

With respect to the second and final item on the agenda, the Commission considered various motions and objections filed by ADEM, Tuscaloosa Resources Inc. (TRI), the Business Council of Alabama (BCA), and the Alabama Coal Association (ACA) opposing the hearing officer's recommended order in Alabama Rivers Alliance et al. v. ADEM, No. 02-06 (Feb. 11, 2004). Over two years ago, ADEM issued a National Pollutant Discharge Elimination System (NPDES) permit to TRI, authorizing the limited discharge of various constituents including iron, aluminum, and other solids into the North Fork of Hurricane Creek. One month later, the Alabama Rivers Alliance and Friends of Hurricane Creek challenged the issuance of the permit, arguing that ADEM should be prohibited from allowing any discharges into streams that do not currently satisfy water quality standards.

---

1710 Sixth Avenue North  
Birmingham, Alabama 35203  
(205) 251-8100

14 Piedmont Center, Suite 1100  
3535 Piedmont Road, N.E.  
Atlanta, Georgia 30305  
(404) 261-6020

1901 Sixth Avenue North  
Birmingham, Alabama 35203  
(205) 251-8100

1310 Twenty Fifth Avenue  
Gulfport, Mississippi 39501  
(228) 864-9900

2 Dexter Avenue  
Montgomery, Alabama 36104  
(334) 834-6500

401 East Capitol Street, Suite 200  
Jackson, Mississippi 39201  
(601) 961-9900

655 Gallatin Street  
Huntsville, Alabama 35801  
(256) 551-0171

1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 347-6000

At the hearing, experts testified that TRI's discharge could actually improve the stream's water quality by lowering the concentration of some pollutants present in the stream. In fact, ADEM's long-standing policy has been to allow discharges into impaired streams if, based on many factors, the discharge does not contribute to a violation of the water quality standards. Nonetheless, the hearing officer agreed with the environmental groups and held that ADEM could not issue an NPDES permit that would authorize a discharge into an impaired stream even if the discharge would have no detectable (or even a positive) impact on water quality. Prior to the last Commission meeting, ADEM, TRI, the BCA, and others filed objections with the Commission, arguing that the recommended order reverses Departmental policy and misinterprets the applicable regulations. The Commission tabled consideration of this matter until today's special meeting.

After extensive discussion, the Commission denied the motions to intervene filed by the BCA and ACA. Further, the Commission issued an order rejecting the hearing officer's recommendation and adopted a modified version of ADEM's statement of facts and conclusions of law. The modification required the permit be reopened when EPA promulgates a final TMDL for Hurricane Creek for a determination on whether TRI's discharge would impact water quality. The modification also required TRI to conduct voluntary monitoring, which TRI was already committed to do.

Finally, Commissioner Byington introduced a resolution affirming the Commission's support for HB116 and HB542 (summarized below). The Commission unanimously approved the resolution.

#### **OTHER ITEMS:**

The following environmental bills are currently being considered by the Alabama Legislature:

HB116 (SB244) authorizes local governments to reduce or eliminate local, non-education transaction and ad valorem taxes for the purchase and sale of property which qualifies for participation in the Alabama brownfield redevelopment program. The tax relief would be limited to those properties with an approved voluntary cleanup plan.

HB214 amends Alabama's existing nuisance law to provide limited protection from damages and nuisance claims based on water discharges so long as the discharges are authorized by environmental laws or permits and are in substantial compliance with those laws or permits.

HB351 requires ADEM to publish a quarterly list of all persons who the department has determined to be in violation of any permit, rule, order, or statute administered or enforced by ADEM and all persons who have submitted reports admitting to be in violation of any such permit, rule, order, or statute.

HB542 (SB289) amends existing law regarding the composition of the Alabama Environmental Management Commission. The existing law provides that one member of the Commission must be certified by the National Water Well Association Certification Program (NWWACP). The bill provides that the member must either have been certified by the NWWACP, or its successor, the National Groundwater Association, or the member must be a geologist licensed to practice geology by the State of Alabama.

Current bill status is available at <http://aisdb.legislature.state.al.us/acas/ACASLogin.asp>.

#### **NEXT MEETING:**

The Commission's next regular meeting is scheduled for Tuesday, April 20, 2004.