

Environmental UPDATE

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ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF DECEMBER 9, 2011

All six members (Richardson, Miller, Lester, Brown, Laier and Phillips) attended the meeting, and the Commission began by approving the minutes from the previous meeting. The Commission then appointed the Chairman of the Personnel Committee and Chairman of the Rules Committee.

Director's Report

ADEM Director LeFleur began his report by discussing the challenges associated with the upcoming 2013 budget. Director LeFleur explained that ADEM's funding comes from three sources: an allotment from the State's general fund, fees collected from the regulated community, and funding from the Federal government. Director LeFleur stated that for FY2012 ADEM received \$4.25 million from the State's general fund, which is a full \$2 million less than its operating budget last year. Although general State funds represent a relatively small portion of total Department funding, federal matching funds are based on the level of state funding and comprise 30% to 40% of ADEM's total budget. Consequently, a decreasing level of State funding is a significant challenge for the Department. Director LeFleur indicated that further budget cuts could be made in the near future—some level of proration is probable, but this has yet to be determined. Regarding the Fiscal Year 2013 budget, Director LeFleur stated that ADEM has been meeting with the State finance department and urging for at least level funding for 2013, as it is clear that further budget cuts would lead to significant deficits in ADEM's budget. ADEM hopes to offset budget deficits through a 19% increase in permit fees approved during the last EMC meeting, and by increasing ADEM's use of technology such as its eFile and eComplaint systems to reduce Department costs.

Director LeFleur then discussed several issues not related to the budget, including updates on Alabama clean air issues, municipal landfill management, clean-up efforts along the Gulf Coast following the Deepwater Horizon Spill, and environmental justice issues. First, Director LeFleur announced EPA's recent proposed rule to reclassify Jefferson County and Shelby County as having achieved attainment for fine particulate matter. 76 Fed. Reg. 70078 (Nov. 10, 2011). Second, the Alabama Legislature recently enacted a two year moratorium on permitting for municipal landfills of a certain size to give ADEM time to evaluate the State's landfill management strategies. ADEM has issued a Request for Proposals from independent third-party firms to assist the State in implementing new landfill monitoring and management strategies. Third, LeFleur explained that the Gulf Coast oil spill clean-up had entered Stage 5, which is the final responsive stage before the work transitions into a recovery stage. The standard by which the coast's recovery is to be judged is "no visible oil." Finally, the Director expressed ADEM's effort to address environmental justice issues across Alabama. He

presented a series of state maps of low income areas and their proximities to landfills and discussed ADEM's plans to educate low income residents of Alabama about environmental issues through a series of workshops.

Report from the Commission Chair

The Commission passed a resolution honoring the service of Commission Executive Assistant Debi Thomas, who retired on December 1. Dr. Lester next announced that he had received and accepted documents from the Toxic Air Study Commission and would distribute them to the other members on the Commission for their review.

The Commission's last order of business was the unanimous adoption of four proposed amendments to the Alabama Administrative Code. First, the Commission adopted a proposed amendment to Division 335-3 to delete rules related to the Federal Clean Air Interstate Rules (CAIR), which was remanded by the D.C. Circuit in 2008 and is being replaced by EPA. Second, the Commission adopted proposed amendments to Division 335-6 to add certification requirements for individuals prior to performing underground storage tank system installation, closure, or repair. Third, the Commission adopted another proposed amendment to Division 335-6 to decrease the annual Trust Fund Charge for underground and aboveground storage tanks from 1.25 cents per gallon to 1 cent per gallon. Fourth, the Commission adopted amendments to Division 335-13 and created a new Division 335-17 to add definitions resulting from passage of Alabama Law 2011-258 regarding management and disposal of coal combustion residues and ash, and to create a separate medical waste rule apart from the existing solid waste program.

Next Meeting

Before adjournment, the Commission announced the dates of its 2012 meetings: February 24, April 20, June 15, August 17, October 19, and December 14. All meetings will be held at 11:00 am.

Other Items

On December 2, 2011, the Alabama Court of Civil Appeals issued an order affirming, without opinion, the December 8, 2010, trial court opinion in *Black Warrior Riverkeeper, Inc. v. ADEM and MCoal*. The trial court had affirmed the June 25, 2010, decision of the Alabama Environmental Management Commission approving issuance of Clean Water Act NPDES Permit No. AL0080080 to MCoal Corporation for discharges associated with MCoal's Rosa Mine in Blount County, Alabama. Black Warrior Riverkeeper had challenged several aspects of MCoal's NPDES permit, including the permit's discharge limitations and Pollution Abatement and Prevention Plan. MCoal has been represented at all phases of the case by Balch & Bingham LLP. Black Warrior Riverkeeper is represented by the Southern Environmental Law Center.

Questions about items appearing in this Update may be directed to Steve McKinney at (205) 226-3496 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 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.