



BALCH & BINGHAM LLP

ALABAMA

Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT SPECIAL COMMISSION MEETING OF NOVEMBER 19, 2004

Chairman Sanders opened the meeting by recognizing Allen Barnes of EPA Region 4. Next, Chairman Sanders stated that he perceived the termination of Director Warr at the last meeting as a collaborative effort between certain Commission members. Accordingly, he had requested that the Alabama Attorney General's office investigate whether proper procedures were followed in this matter. Chairman Sanders further stated that his request was not aimed at any individual Commissioner, but only to ensure that all proceedings before the Commission remained transparent and open to the public.

Next, in light of the legal questions recently raised regarding the qualifications of Commissioners Phillips and Byington, Commissioner Wainwright inquired whether they were eligible to participate and vote in any further matters brought before the Commission. The Commission's attorney responded by citing Ala. Code § 36-1-2 which addresses the validity of official acts of public officials. He stated that it was clear under the Code that until all appellate efforts had been exhausted, all actions taken by Commission members whose status may be in question are valid and binding.

COMMISSION ACTIONS:

Commissioner Hairston then provided recommendations of the Personnel Subcommittee on the selection process for a new Director. Commissioner Hairston began by identifying several factors that the Personnel Subcommittee believed should be used in the selection process. He proposed the formation of a ten-member stakeholder committee to provide input on submitted applications. The ten members would be made up of representatives from the environmental and regulated communities, the Governor's staff, and agency personnel. Furthermore, due to the urgency of identifying and hiring a Director, Commissioner Hairston proposed that the full Commission meet on December 3, 2004, to identify members of the stakeholder committee and approve its formation. Next, Commissioner Hairston addressed the solicitation for, and review of, applications from prospective applicants. Advertisements seeking applications for the Director's position will be placed in state and national publications beginning on Monday, November 22, 2004. The stakeholder committee will be in charge of reviewing submitted applications and recommending ten finalists to be interviewed by the full Commission in a public hearing on January 11, 2005. Following Commissioner Hairston's recommendations, the Commission voted 4-3 to approve a motion accepting this process for the selection of a new Director.

Next, Commissioner Hairston suggested the Commission consider hiring a law firm to help guide them in this process. After much discussion, the Commission approved a motion to reconsider this recommendation at the Dec. 3 meeting.

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The Commission then considered a petition for rulemaking to amend provisions on the election of a Chair and Vice-Chair of the Commission in Division 2 - Environmental Management Commission Regulations, Rules 335-2-3-.03(1), (2) and (5). The Commission unanimously approved a motion to allow the proposed rulemaking to proceed.

The Commission moved on to consideration of proposed amendments to the Division 6, Volume 1 - Water Quality Program (NPDES) Regulations for concrete batch plants. After lengthy discussion from both petitioners and ADEM, the Commission unanimously approved a motion to reconsider the proposed amendments at the December 3, 2004, Commission meeting.

Finally, the Commission, without discussion, unanimously rejected a petition to undertake rulemaking to amend ADEM Rules 335-3-14-.01, 335-3-15-.05, 335-6-6-.21, 335-13-5-.03, and 335-14-8-.08. These proposed rules would have required ADEM to collect demographic data in conjunction with various air, water, and waste management permits from surrounding communities.

NEXT MEETING:

The Commission's next meeting is scheduled for 10:00 a.m., Friday, December 3, 2004.

COMMISSION ACTIONS:

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

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