



# Alabama Environmental Update

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## Alabama Environmental Management Commission Meeting of October 19, 2007

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### Election of Committees

The meeting began with the election of committees and the formation of an ad hoc strategic plan committee. The strategic plan committee is tasked with updating the current strategic plan by 2009.

### ADEM Director's Report

ADEM Director Trey Glenn touched on many subjects during his report. As an initial order of business, Director Glenn discussed an overview of ADEM's aerial program, which allows for the agency to ensure stormwater compliance most cost effectively. He also noted that ADEM is reviewing the cost model to reflect the increased complexity of permitting and to identify efficiencies captured by technology or changes in programs. With respect to TMDLs and permitting, Director Glenn wanted the Commission to be aware that he is personally involved in reviewing

the wasteload allocations and the pending NPDES permits to ensure protection of Alabama water. Director Glenn also provided the Commission with an overview of the current status of the "Water Wars." Lastly, Commissioner Felker praised Director Glenn for his efforts with respect to the implementation of a new enforcement policy, which will become effective in January 2008.

### Commission Actions

Following the Director's report, the Commission addressed several agenda items. First, the Commission voted unanimously to approve the Performance Evaluation Form for the Director and the Performance Evaluation Schedule, which will be filled out by the Commissioners to evaluate the Director. Second, the Commission voted unanimously to approve the proposed amendments to Division 1, NPDES General Administration Regulations, which

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will increase fees by 10.5 percent. Third, the Commission voted unanimously to approve proposed amendments to Division 3, Air Regulations and Division 7, Drinking Water Regulations, to conform with the federal regulations. Then, the Commission turned its attention to two petitions to amend certain ADEM regulations.

The first rulemaking petition was submitted by various Alabama environmental groups and sought to amend ADEM Administrative Code Rule 335-6-10-.07 by revising the risk level used to calculate numeric water quality criteria for over fifty carcinogens. The rulemaking petition as submitted would revise the risk level used to calculate numeric water quality criteria for 58 carcinogens from  $1 \times 10^{-5}$  to  $1 \times 10^{-6}$ . ADEM developed an Advisory Board, which gathered information and submitted its findings to the EMC about the risk level. Commissioner Felker reviewed these findings and advocated for the Department to initiate rulemaking to amend the factor from  $1 \times 10^{-5}$  to  $1 \times 10^{-6}$  with the exclusion of arsenic. Commissioner Felker supported the amendment because comments provided by EPA showed that the range nationally is from  $10^{-5}$  to  $10^{-7}$  and that  $10^{-6}$  would be in the middle, rather than at the bottom of the range. Commissioner Felker went on to note that she did not find that anyone demonstrated any significant economic impact that would occur due to the proposed revision. However, she also concluded that arsenic levels were already at a more stringent level and did not need to be revised at this

time. Commissioner Wainwright did not find any scientific connection between the mortality rates and the risk factor; however, the other Commissioners voted to approve to direct ADEM to rulemaking.

The second petition sought to amend the reference dose (RfD) for acrolein and phenol found in ADEM's water quality regulations. Acrolein and phenol are chemicals commonly used by various industries in Alabama. ADEM's current RfD for these chemicals is consistent with EPA's 2006 National Recommended Water Quality Criteria. The rulemaking petition would amend the RfD for acrolein from 0.0156 mg/(kg-day) to 0.0005 mg/(kg-day) and the RfD for phenol from 0.6 mg/(kg-day) to 0.3 mg/(kg-day). In establishing the RfD, Commissioner Gardner explained that the U.S. EPA recommends that states use the Integrated Risk Information System (IRIS), while EPA Region 4 recommends that states use the National Recommended Water Quality Criteria. Because IRIS provides more stringent RfD for acrolein and phenol, Commissioner Gardner made a motion to direct the Commission to amend its regulations to conform recommend doses of acrolein and phenol to those set by IRIS. During discussion of such motion, Commissioner Felker noted that the remaining 56 other carcinogens obtained their RfD from the National Recommended Water Quality Criteria and urged the Commission to consider reviewing both IRIS and the National Recommended Water Quality Criteria so that one document can

be utilized to establish the RfD for all carcinogens. Then, Commissioner Felker made a motion to table the voting on the amendments to investigate the appropriate document to use for all carcinogens. The motion passed and the RfD issue will be addressed at the April 2008 EMC meeting.

Lastly, David Ludder withdrew the Petition for Rulemaking to amend ADEM Administrative Code R. 335-6-6-.14 because Director Glenn agreed to incorporate the Petitioner's or EPA's language into its regulations in a subsequent rulemaking.

#### **Next Meeting**

The Commission will hold its next regularly scheduled meeting on February 22, 2008.

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. 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.