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Environmental Update

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING OF APRIL 8, 2005

Director's Report

ADEM Director Trey Glenn provided a detailed report on the Department's ongoing activities. First, Director Glenn expressed gratitude to former Director Jim Warr for his assistance during the transition of leadership at the Department. Mr. Warr's last day at the Department was April 1, 2005.

Director Glenn then stated that ADEM remains "on track" to meet its budget despite hiring several new engineers and breaking ground on the Department's new laboratory this month. The Director also explained that ADEM's Land Division is currently collecting and analyzing data concerning the alleged mercury contamination affecting McIntosh, Alabama, and hopes to complete a thorough analysis in the near future.

Director Glenn next discussed ADEM's participation in Congressman Artur Davis' Sustainable Development Summit held on April 1-2. ADEM plans to hold "listening sessions" with the public and the regulated community with hopes of producing an environmental justice strategy to present to the Commission in the near future. On the legislative front, the Director discussed several pending bills including financial assurances legislation for landfill operators, which was passed by the House but remains under consideration in the Senate, and the solid waste tipping fee legislation, which is awaiting action by both houses. The Director then updated ADEM's efforts concerning the Anniston incinerator and the Donaldson Correctional Facility. The Director also stated that ADEM plans to increase various permit fees to raise additional revenue.

The Director next explained that ADEM plans to propose revised New Source Review regulations in accordance with the regulations issued by EPA in 2002. In addition, the Director noted that EPA designated Jefferson and Shelby Counties and parts of Walker and Jackson Counties as nonattainment for the Particulate Matter-2.5 standard, while Russell, Dekalb and Etowah Counties were designated as attainment for this standard. The Director concluded by addressing the Department's current efforts to implement the Strategic Plan. Following the Director's report, three companies were recognized by the Department for their pollution prevention programs, including: Englehardt Corporation, SCA Tissue North America, and Occidental Chemical Corporation.

Report from the Commission's Attorney

Mr. Robert Tambling briefed the Commission on the recently enacted Alabama Open Meetings Act. He explained that, while the Commission already complies with most of the Act's requirements, it will need to begin sending notices of any meetings to the Secretary of State and any special committees will most likely be required to comply the Act.

Report from the Enforcement & Administrative Penalties Stakeholder Committee

Commissioner Byington reported that the committee has prepared a final report with 22 recommendations regarding ADEM's enforcement and penalty policies. This report will be posted on ADEM's website soon and public comments will be accepted.

Commission Actions

First, the Commission voted to table consideration of the proposed amendments that would have revised the regulations governing, among other things, the succession of chair and vice-chair of the Commission and the holding of elections to fill any vacancies for chair and vice-chair. Also, the Commission voted 5-0 to adopt the Administrative Law Judge's recommendation to dismiss the pending appeal in Hunters Crossing WWTP, LLC v. ADEM, EMC Docket No. 04-09, based on the parties' decision to enter a consent order. Commissioner Smith recused himself from this matter because it involved an NPDES-related matter.

Finally, the Commission voted 6-0 to withdraw the proposed contract to hire the law firm of Milton, Espy & Williams. Before adjourning, the Commission entertained a presentation by David Ludder of the Legal Environmental Assistance Foundation regarding ADEM's need to begin conducting cumulative risk assessments for multiple facilities when issuing permits.

Other Items

Summary of Environmental Legislation Introduced in 2005 Regular Session (passage by either house noted if applicable)

SB 188/HB 141 - would allow local governments to impose an application fee for local approval of proposed municipal solid waste landfills (HB 141 passed by House)

SB 222/HB 321 - would expand criteria for one slot on the Environmental Management Commission from a person certified by the National Water Well Association to also include licensed geologists (HB 321 passed by House)

SB 226/HB 332 - would direct environmental license tag proceeds to Legacy, Inc. without proceeds going through ADEM or having any portion used by ADEM for environmental education activities

SB 227 - would provide protection from nuisance claims for farming operations

SB 231/HB 263 - would impose a fee on disposal of solid waste with revenues earmarked to fund ADEM's solid waste program

SB 234/HB 270 - would require financial assurance to insure that operators of landfills could pay for future closure and post-closure care of landfills (HB 270 passed by House)

SB 245 - would create local approval process for surface mines and quarries similar to local approval process for landfills

SB 316/HB 447 - would make technical changes to the existing Scrap Tire Environmental Quality Act

SB 335/HB 505 - would establish an environmental justice division within ADEM to review permit applications to determine the impact of discharges on subpopulations with specified demographic characteristics and to prevent disproportionate impacts

HB 427 - would require ADEM to perform a statewide risk assessment by county and to reduce toxic discharges in environmental high impact areas

HB 487 - would add two members to the Environmental Management Commission to be appointed by the Governor from a list of three names for each position submitted by the Black Caucus of the Alabama Legislature

HB 659 - would provide that claims for exposure to toxic substances would accrue from the date the injury should have been discovered rather than the date of the injury as under current law

HB 660 - would amend the constitution to allow revival of claims for exposure to toxic substances that would otherwise be barred by the statute of limitations

HB 718 - would reduce fees for disposal of certain wastes from steel manufacturing facilities at hazardous waste landfills in Alabama

Montgomery County Circuit Court Judge William A. Shashy affirmed ADEM's issuance of an NPDES permit to Sloss Industries Corporation, holding -- among other things -- that LEAF's challenge to the completeness of an NPDES permit application is beyond the Commission's jurisdiction to review. See Legal Environmental Assistance Foundation v. ADEM, CV-4-1991 (Montgomery County Circuit Ct. April 4, 2005). For questions, contact Balch & Bingham attorneys, Rob Fowler and Jeff Wood, who successfully represented the Business Council of Alabama as an intervenor on behalf of ADEM in this matter.

Next Meeting

The next Commission meeting will be June 17, 2005, at 10 a.m.

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.