



The Birmingham News

ADEM, public at odds over enforcement

Groups' efforts often blocked by state

Friday, August 01, 2008

KATHERINE BOUMA
News staff writer

The state's environmental agency and citizens groups are clashing over who can do the best job enforcing laws to clean up Alabama's lakes and streams.

The nonprofit Conservation Alabama Foundation and the Alabama Department of Environmental Management agree that the state regulators often block nonprofit groups trying to enforce the Clean Water Act.

But environmental groups say it's not clear why the state is jumping between the violators and the groups trying to enforce the law, nor whether the state is getting the law enforced in the end.

"Nothing is wrong with the state taking enforcement action - that is, if it gets the violator back into compliance and it serves as a deterrent to keep others from violating the law," said David Ludder, a former ADEM general counsel who now represents the Conservation Alabama Foundation and several other environmental groups.

Conservation Alabama, Black Warrior Riverkeeper, Lakewatch of Lake Martin and other citizens or groups represented by Ludder can file suit under the U.S. Clean Water Act to enforce water rules. That is, if the government is not doing so.

But 60 days before filing suit, citizens are required to notify the violator, ADEM and the U.S. Environmental Protection Agency. The law includes that rule so violators have a chance to save themselves and the courts some trouble and get into compliance without a lawsuit.

ADEM spokesman Scott Hughes said it's not a secret that the state often takes that opportunity to enforce the law.

"It certainly brings it to the department's attention when we get a notice," Hughes said.

But, he said, that shouldn't be a problem, as long as everyone has the same goal of enforcing the law and keeping the lakes and streams clean.

Whether they're getting compliance is really the question, Ludder said.

As an example, Ludder said a typical ADEM fine against a longtime stormwater polluter is about \$15,000. The EPA in this region typically fines \$15,000 to \$40,000 for the same problems, he said,

There isn't any way to show whether either fine is effective, Ludder said.

ADEM for many years has discussed showing how it determines the penalties it issues. However, it has not found a way to show how much money a violator saves through the pollution, although that is a factor to be

considered in fines.

The state seems particularly eager to bail out cities and governments that have run afoul of the law, Ludder said.

"I am told their policy is to file litigation against government agencies where 60-day notices have been filed, and that it is not their policy to file actions against private entities where 60-day notices have been filed," Ludder said. "That raises the question: Why is the attorney general concerned about government violators and not private violators?"

List of violators:

In years past, ADEM officials have said that they don't like to fine or financially penalize cities or towns since that is essentially a fine on the taxpayers. However, the Clean Water Act does not mention such a distinction and the department has dropped that talk.

Hughes said he wouldn't comment on that question.

"If that's their perception, they're certainly entitled to that," Hughes said. "Any time we are given notice, whether it is a 60-day notice of intent, we are going to investigate that and determine the best means for getting compliance."

Ludder provided a list of 16 notices of intent to sue government entities that were followed by action by ADEM since March 2007. Most of them were faulty wastewater treatment plants, some with more than 1,000 violations when Ludder notified them of an intention to sue for enforcement.

Hughes did not dispute the list.

"The department has the same goal, that is, the safe operation of these wastewater treatment plants," Hughes said.

When citizens or groups sue under the Clean Water Act, they cannot win money from a violator. They can require enforcement, and a judge can require that the violator pay the attorney fees.

ADEM settles more than 90 percent of its cases out of court, with what are called consent orders. However, the attorney general's office has filed suit in many of these cases. The law requires a suit instead of a settlement if no work on a plea deal had begun before the citizens filed their notices.

Ludder said it's unclear if these suits will be tougher than the consent deals. Some of them are not moving, apparently because the violators are getting into compliance.

Hughes said it's obvious the lawsuits will be effective.

"I doubt that there's a municipality that wants to end up in front of a judge," he said.

E-mail: kbouma@bhamnews.com