



PRESS-REGISTER

EPA report chides ADEM

Wednesday, August 29, 2007

By **BEN RAINES**
Staff Reporter

The U.S. Environmental Protection Agency has warned Alabama regulators that they're not measuring up to federal guidelines when it comes to penalizing polluters and inspecting companies dealing in hazardous waste.

While the Alabama Department of Environmental Management had "effective compliance and enforcement programs" and exceeded national averages for many aspects of its work, the EPA found that ADEM needs to adopt a formal written system for issuing penalties and be more aggressive about going after companies that violate pollution permits repeatedly.

"We completely agree with the EPA's assessments and are working on those issues," said ADEM spokesman Scott Hughes.

According to the report, ADEM sometimes issues multiple Letters of Violation to a polluter who exceeds permitted discharges, but those letters do not set a date by which the company must come into compliance with its permit and do not spell out a penalty for continued violation. EPA wrote that ADEM's Letters of Violation do not qualify as "formal" enforcement actions. Formal actions include such legal documents as consent orders, which place a legal burden on a company to comply with its permits.

"ADEM generally does not issue Consent or Unilateral Orders even when informal actions have proved to be insufficient; rather ADEM appears to prefer addressing violations informally," states the EPA report, meaning without issuing penalties.

The report cites several instances where Letters of Violation did not result in a company complying with pollution permits. "ADEM repeatedly issued Letters of Violation instead of escalating enforcement by pursuing appropriate enforcement action."

Hughes, the ADEM spokesman, said "the repeated issuance of Letters of Violations will become the exception and not the rule," as the agency addresses EPA's criticisms.

Hughes also promised that ADEM will become more aggressive in dealing with violators. "We are incorporating changes into our enforcement strategy," he said.

The EPA also found that ADEM failed to check to see if companies were in compliance with their hazardous waste permits as often as required, checking just half as many companies per year as EPA expects.

"If ADEM will not enforce their permits, what good is the permit? Enforcement is the most important thing they can do to protect people in Alabama," said Casi Callaway, director of Mobile Baykeeper and a founding member of the ADEM Reform Coalition, which has long criticized ADEM for its enforcement policies. "We need a penalty policy that's clear, understandable and defined. ADEM does not have one, which the EPA noted."

The "most significant" issue, according to the report, is that ADEM does not have proper written documentation to explain whether or not polluters had been fined after violations were discovered, nor does

the agency have a written policy that explains how fines are calculated. As a result, it is impossible to determine if fines were appropriate and handed out in a fair manner, according to the EPA report.

"ADEM allows too many repeated violations before they begin to take violations seriously. They need to be more aggressive," said David Ludder, an environmental lawyer who previously served as ADEM's chief lawyer. "They fail to disclose how they arrived at penalty amounts and they fail to take into consideration all of the penalty factors required by state law."

Hughes said the agency was going to start including written explanations of any penalties issued in all of its case files as a way to address EPA's criticism. He said ADEM will not adopt a "penalty matrix," where fines would be set through a formula, as EPA recommended. Instead, ADEM will make "changes that will definitely address the issues brought up by EPA," Hughes said.

© 2007 Press-Register

© 2007 al.com All Rights Reserved.