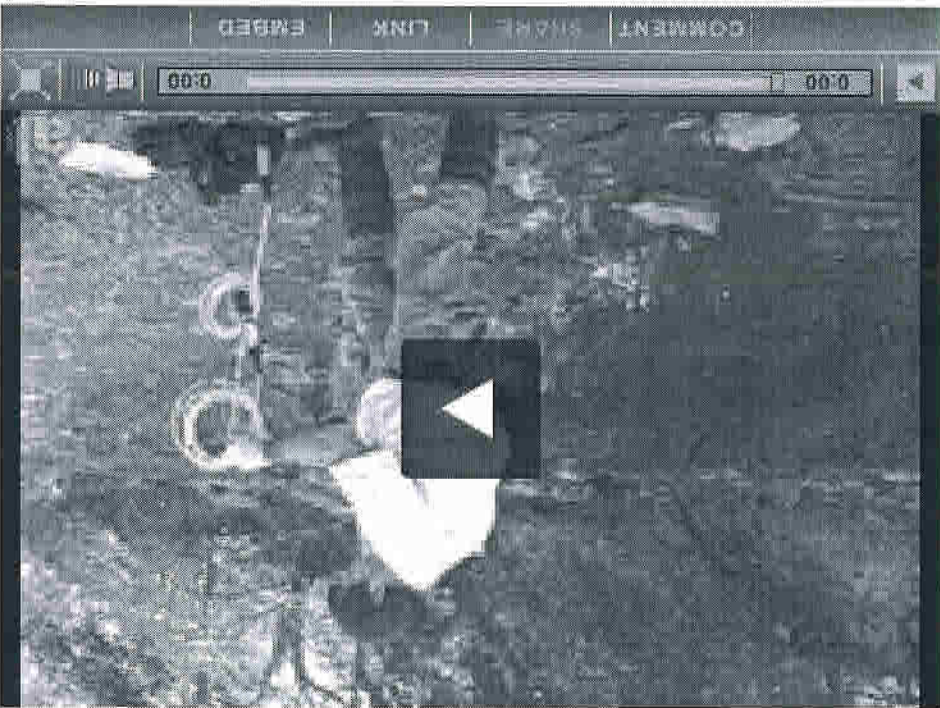


EPA criticizes ADEM over standards (with video and slideshow)

Published: Sunday, October 03, 2010, 12:00 PM

Thomas Spencer -- The Birmingham News



The U.S. Environmental Protection Agency has threatened to take over enforcing part of the Alabama Department of Environmental Management doesn't hold cities to higher standards for keeping waterways clean.

The warning from the EPA, which specifically applies to storm sewer pollution control in small cities, is one of several steps the agency has taken recently focusing on Alabama's program for protecting water quality.

The EPA has issued a series of audits critical of how local governments, under ADEM's watch, have been carrying out their obligations to control sediment and other pollutants that run into creeks and streams during rain storms. Sedimentation, caused by muddy runoff and by the rush of water flowing off paved surfaces, is considered a principal source of harm to rivers such as the Cahaba. It makes the river inhospitable to aquatic life, makes it harder to treat for drinking water and increases the potential for flooding as the river channel fills in.

The federal agency also has been reviewing ADEM's standards for strip-mine discharge permits, leading to a backlog in issuing new permits.

The EPA also is considering a petition filed earlier this year by environmental groups that asks that all of ADEM's authority to administer federal clean water law be revoked, which would lead to the federal agency taking oversight of all water pollution

enforcement in the state.

EPA officials in Atlanta and ADEM representatives in Montgomery downplay the impression that the federal agency is taking a particular focus on Alabama's environmental protection agency. Both say the agency under the Obama administration is making a nationwide push to strengthen water resource protection, and the state and federal agencies are working through the issues raised.

However, business and environmental groups both see Alabama's program as being under particular scrutiny.

The EPA's formal objection to ADEM's proposed storm water permits, which could

trigger a federal takeover, is believed to be the first time the EPA has taken that step.

"This action by EPA was not only precedent-setting for Alabama and the Southeast, but potentially throughout the nation," said Beth Stewart, executive director of the Cahaba River Society.

"I'm not aware of any other state in Region 4 that is under this type of review by EPA on all facets of their water program," said Joel Gilbert, an attorney who represents the Business Alliance for Responsible Development, an alliance of developers and landowners that includes Alabama Power, Drummond Co., the Barber Companies, the Greater Birmingham Association of Home Builders and U.S. Steel.

Old conflict

The issues the EPA is wading into are part of a long-running conflict over how clean water regulations, particularly in regard to construction activities, are carried out in Alabama.

Business groups insist that a single statewide environmental enforcer is preferable and is, in fact, mandated by Alabama law. For example, ADEM issues storm water permits for all construction sites one acre or greater, so business groups say it should oversee activity on those sites. Similarly, ADEM issues pollution discharge permits to industries and by law has primary jurisdiction over those permits.

Requiring local governments to regulate those sites amounts to double oversight and will cost the governments money they cannot afford, Gilbert said.

Environmental groups, on the other hand, say ADEM's inspection and enforcement program is woefully inadequate, and the federal Clean Water Act demands a robust local role in water pollution control.

The EPA seems to agree. In its formal objections to ADEM's proposed storm water permits for small cities, the agency objected to a provision that would allow cities to rely on ADEM's enforcement and inspection program.

The EPA noted that ADEM does not review site plans when issuing storm water permits. And ADEM has historically inspected only 10 percent to 15 percent of its active construction sites annually. At that rate, most construction sites within any city would never be inspected, the EPA wrote.

According to ADEM, the agency has 29 employees tasked with inspecting and enforcing violations at the state's 7,523 actively

-permitted construction sites.

"EPA has determined that without significant modification or enhancement, ADEM's current program would not fulfill the oversight and enforcement responsibilities required," the objection letter states.

Conflicting views

To environmentalists, who long have complained that ADEM's clean water enforcement is lax, the EPA's stance is a long overdue intervention.

"EPA has been pretty consistent in what needs to be done," said David Hanson, an attorney with the Southern Environmental Law Center. "It's just that EPA is no longer putting up with ADEM not doing what EPA is telling them to do."

But BARC attorney Gilbert says the EPA's demands to ADEM are an overreach by the Obama administration, pushing changes that would amount to new regulations that contradict state law.

"What EPA doesn't take into account is state law and the state constitution," Gilbert said. "EPA is reinterpreting the

regulations to this administration's liking. And they are focusing on Alabama because the environmental community has lobbied them to do it."

The Cahaba River Society's Stewart said she had no apologies for meeting with the EPA about Clean Water enforcement. It's common for interested parties, including business groups, to talk to regulators.

In fact, it was lobbying by the business community that led to the permit conditions the EPA is now objecting to.

When ADEM released a draft of the small city storm water permits early this year, it more closely conformed to the EPA's expectations. But after response from the business community, the revised version of the permit drew the EPA's objection.

The revised permit allowed cities to continue relying on ADEM and allowed cities five years, till the end of the permit, to reach compliance with the permit's term.

ADEM has until mid-October to respond to the EPA's objections. ADEM can revise the permit to meet the EPA's wishes. Or it can request a public hearing from the EPA, which would trigger a formal review. Or it can accept an EPA takeover of that facet of the storm water program.

National initiatives

ADEM spokesman Scott Hughes said the agency is working with the EPA.

"There have been numerous discussions and meetings on the proposed storm water permits and we will continue to maintain an open dialogue with EPA staff," Hughes said.

He said the EPA has very publicly announced national initiatives both on storm water and coal mine discharge regulations, so it is a mistake to assume Alabama is being singled out.

"Since this is a national enforcement initiative, it appears to contradict the perception that there is a specific interest in Alabama," Hughes said.

Jim Giattina, the director of the EPA's Region 4 Water Division, agreed that Alabama is not being singled out. The EPA is working closely with Florida and Kentucky in the development of permits for those state. Tennessee has produced a permit that met EPA expectations, Giattina said. The EPA's formal objection in Alabama's case came after Alabama announced it was about to start issuing permits that the EPA had objected to.

"Our interest in Alabama is no different than in any of our other states," he said. "We have been very interested in storm water issues, particularly in the past couple of years. ADEM hasn't necessarily gotten any more special attention than other states."

Giattina said the EPA's current thrust is to make sure storm water permits being issued to local governments are clear, specific, and enforceable with measurable results. Cities must have a program of inspection and enforcement to control storm water. That doesn't preclude a cooperative relationship between the local governments and ADEM. At the same time, Giattina said, "it does not alleviate the responsibility of cities to have their own appropriate programs in place. A community can't just say, 'That's ADEM's responsibility.'"

Giattina said he was aware that voices in Alabama's business community were describing the EPA's suggested permit standards as beyond what is legally required.

"I understand that they have that viewpoint," Giattina said, "but our objections are grounded in the law and in the regulatory requirements."

On the petition filed by environmentalists seeking to have all of ADEM's authority over Clean Water regulation revoked, Giattina said no decision has been made.

"ADEM gave us a very robust response," Giattina said. "We are in the process of both reviewing ADEM's response and doing our own evaluation."

Giattina said the agency is working expeditiously and hopes to have a response to the petition in three to six months. He said Alabama's environmental enforcement effort is not that different from efforts in other states. Agencies across the South are stretched thin, since environmental protection often is not the top priority in tough economic times.

"Resources always present a challenge," Giattina said. "But ADEM has strong programs in many regards."

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