

## Business Council of Alabama Opposes Public Comment

The Alabama Environmental Management Commission (Commission) has long operated in a closed and undemocratic manner, not providing citizens with an opportunity to comment before it. The Commission is charged with the duty of overseeing the Alabama Department of Environmental Management (ADEM). The Commission hears appeals of ADEM decisions, is responsible for hiring and overseeing the Director of the agency, and has ultimate authority over ADEM's environmental regulations.

Recently, multiple environmental groups joined hands to formally ask the Commission to create a public comment period at its meetings. While the Commissioners did not act favorably upon our request, they agreed to the general concept of allowing citizens the opportunity to speak directly to the Commission. The Commission subsequently proposed its own rule creating a public comment period at Commission meetings, but considerably limiting the scope of comments that may be presented.

Surprisingly, the Business Council of Alabama (BCA) submitted comments on June 4, 2002 opposing these regulations. The BCA's comments argue that an informal public comment period would be superior to a comment period mandated in regulations. BCA states: "adding a formal mandate in the Commission's regulations has the potential to be disruptive during the Commission meeting as well as to adversely affect the Commission's future ability to efficiently conduct business.....Additionally, the Commission may be forced to limit consideration of more pressing or appropriate matters before the Commission in order to cater to the demands of a vocal minority."

The Alabama Rivers Alliance disagrees strongly with the Business Council of Alabama on this matter. We believe that citizens should have the right to comment on relevant matters before the Commission. In a democracy, the public's ability to communicate with elected and appointed decision-makers is a fundamental right, not a privilege.

**The Commission will vote on the proposed rule at its upcoming meeting to be held on August 27 at 1:30 PM at the ADEM Headquarters building in Montgomery. We encourage you to attend the upcoming meeting to show your support.**

**[www.911environment.org](http://www.911environment.org)  
Is New Web Page for Reporting  
Water Pollution Problems**

The Alabama Rivers Alliance is pleased to reveal a new web page for reporting observed water pollution problems in Alabama. The web page is a joint project of the Alabama Rivers Alliance, World Wildlife Fund and Alabama Environmental Council. If you notice any problems in your watershed please go to <http://www.911environment.org> and report them. Also, if you have reported water pollution problems to ADEM in the past, please record these on the web site so that we can maintain a database of such reports. The Alabama Rivers Alliance will receive the information from all reports you send, and forward them to the appropriate environmental agencies as well as to other environmental and watershed groups with an interest in your area. We will then work with our sister organizations to do all we can to ensure that ADEM follows up to address any violations of water quality laws.

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# Hair tests begin big mercury study

Samples are being collected in eight area communities

Close to 400 south Alabamians got their hair clipped last month all in the name of protecting the Mobile Bay area from mercury pollution.

Mobile Bay Watch Executive Director Casi Callaway said that her group commissioned the study in response to a series of stories in the Mobile Register revealing unusually high mercury levels in some Gulf Coast residents who regularly eat large marine fish. A Boston University professor designed the study while students and teachers at the University of South Alabama collected hair samples from about 400 willing participants. The collection sites were set up at high-traffic retail and grocery stores in order to get a wide diversity of hair samples.

"We're studying the Mobile area in particular, because we want to know exactly where we stand," Callaway said.

The hair collected will be analyzed for its mercury content, and participants who volunteered filled out a confidential survey describing their eating habits and other factors that might contribute to high mercury levels, such as where they work and live.

The survey not only was designed to compare mercury levels in Mobile and Baldwin County residents with the national population, but also to help identify more precisely how the exposure might be occurring.

Sixty percent of the participants were selected from Mobile County, and 40 percent from Baldwin County; half were male, half female; about 25 percent of those sampled were over 65; and the percentage of white and "non-white" participants will reflect local demographics.

When the study first was announced in May, it was going to be limited to 120 people. But Casi said that many people suggested that a larger sample size would be a far better measure of potential mercury exposure, given the diversity of the population in the Mobile Bay area and the patterns of mercury exposure highlighted by recent Mobile Register tests.

Results of the exposure study should be available in September.

For more information about the mercury study, please contact:

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## *Outdoors with Bill East*

When most people think of fishing in Alabama, they visualize either driving to the coast for deep sea fishing or hooking up the bass boat, driving to the nearest lake, and spending the day casting for bass in the hot sun. But there's another method of fishing that most people have never tried, nor even thought about, that's small stream fishing. Everything discussed here applies equally to wade fishing or float fishing from a canoe.

Equipment required is a pair of old tennis shoes, tee shirt, shorts, and either a fly rod or ultra light spinning outfit. Fly rod purists, including many of the ARA Board of Directors and staff, insist that is the only way to fish. But with all the trees and overhanging bushes present along many small streams, I suggest you practice until you become adept at it, else a day of fly fishing may turn into a day of untangling lines and flies. Besides, an ultra light spinning outfit, with two or four pound test line, will give you all the thrill you can handle.

Lures/flyes can be as varied as the individual using them. For maximum excitement top water lures can't be beat. The strike of even a small red eye bass on a top water lure is thrilling. Small rapalas, or any number of lures resembling natural bait, such as grasshoppers, crawfish or baitfish imitations should prove successful. That old standby, a popping bug, is still the favorite of many fly rod users. In either case the preferred method of fishing is to make the cast, then wait a couple of seconds before beginning the retrieve. Many times the strike will come before the retrieve begins.

What quarry do we pursue? On occasion a large mouth or small mouth bass will be hooked, and panfish of all descriptions will eagerly attack most anything thrown their way, sometimes hitting a lure almost as large as they are. You might catch that prettiest of all fresh water fish which goes by various names, but is best known as a pumpkinseed bream. The fact that it seldom gets more than four or five inches long does not distract from its beauty. But the primary targets for this type fishing are the spotted and redeye bass. Both species range through most of the northern portions of Alabama.

Clear free flowing streams are the natural habitat for both the redeye and spotted bass. The old adage "To catch a fish, think like a fish" certainly applies here. Like most of us, fish want to get as much food as possible with as little effort as possible, by cruising the edge of pools looking for the easy meal. Pools just below rapids are especially

inviting, since bait of all manner will be washed down the rapids and into waiting jaws. Fishing can begin in early spring and continue through November. Problems may be encountered when wading in cold water since waders are required and slippery rocks present a challenge. Also, after leaves begin to fall they tend to entangle lures/flyes. Redeyes tolerate water a bit colder than spots, and can be found in water cold enough to support trout. In the summertime early morning and late afternoon are the prime fishing times.

For those who treasure peace and solitude, this type fishing is for you, whether it's canoeing or wading. One of the bonuses is the wildlife that may be encountered, since deer, turkey, and beaver are common, and many times wood ducks will be flushed as you round a bend. But many fishable streams are in urban areas as well. Shades Creek, which flows through urban areas around Birmingham, is an excellent fishing spot, particularly for bream. I say is an excellent spot, at least it was before the remodeling of Brookwood Village Shopping Center. Although there was an effort made to keep silt out of the stream during construction, only time will tell how successful it was. Shades Creek is a good example of a stream large enough to fish but too small to canoe under normal conditions.

It would be difficult to drive over twenty miles on any road in Alabama, in any direction, without passing over a stream that is fishable. My general rule is that any stream capable of providing thigh deep pools is capable of holding fish that I would like to catch.

Try it, I think you'll like it.



# Water Policy Round Up

By Brad McLane



## TriState Water Negotiations

On May 30 in Gadsden the Alabama Rivers Alliance joined with the Neely Henry Lake Association, Weiss Lake Improvement Association, Coosa River Society, and Coosa River Basin Initiative to hold a "Water Negotiations Summit." The Alabama Rivers Alliance, on behalf of the TriState Conservation Coalition, unveiled comments on the State of Alabama's most recent interstate water allocation proposal for the Alabama-Coosa-Tallapoosa (ACT) River Basin.

Chaired by Mr. Jack Rutledge, General Manager of the Gadsden Water Works Board, the meeting attracted more than one hundred thirty people interested in learning more about the water negotiations. Representatives of the TriState Conservation Coalition presented concerns with the current draft agreement. Mr. Trey Glenn and Mr. Tom Littlepage, Director and Deputy Director of the Alabama Office of Water Resources, presented on the State of Alabama's proposed water allocation agreement.

The TriState Conservation Coalition's are opposed to the State of Alabama's proposal in its current form. While Alabama has been receptive to our past comments and made modifications to its proposals, serious flaws remain in the current document. On a May 9, 2002 meeting held by the State of Alabama negotiators in Gadsden, Alabama Chief Negotiator Jim Campbell acknowledged that the Alabama proposal does contain flaws and that the document requires revision before he will recommend that Governor Siegelman sign it.

The Alabama Rivers Alliance's primary concerns with the draft Act Basin agreement include the following:

- **Interbasin Transfers.** The State of Alabama's draft water allocation proposal does not place adequate restrictions on "interbasin transfers" of water from the Coosa River Basin to the Chattahoochee River Basin. We believe that interbasin transfers should generally be discouraged and should be disallowed whenever flows on the Coosa River downstream at Rome, Georgia drop below 1200 cubic feet per second (cfs).
- **Seasonal Flow Variability.** The proposal does not ensure that adequate seasonal flow variability will be maintained on the Coosa, Tallapoosa and Alabama Rivers. Additional provisions must be added to the agreement to provide for protection of seasonal flow variability.

- **Minimum Flow Requirements Can Be "Waived."**

The current proposal requires that a certain "weekly average flow" be maintained on the Coosa River near Rome Georgia. These minimum flows are based on the reservoir elevations of Allatoona and Carters. However, when reservoir levels fall below a certain point, then no specific flows are required at Rome, except that these dams must each release a continuous minimum flow at each dam (currently this release is generally 240 cfs at each dam). We believe that a minimum weekly average flow of 1200 cfs should be maintained on the Coosa River at Rome, GA at all times.

The TriState Conservation Coalition comments are available on the Alliance's web page at [www.alabamarivers.org](http://www.alabamarivers.org). For more information, visit the web page or contact the Alliance by phone (877-862-5260) or e-mail ([bmclane@alabamarivers.org](mailto:bmclane@alabamarivers.org)).

## ARA files notice of intent to sue Sloss Industries

On June 24 the Alabama Rivers Alliance (ARA), Legal Environmental Assistance Foundation (LEAF), and Black Warrior Riverkeeper filed a 60-day notice of intent to sue Sloss Industries Corporation under the Clean Water Act for ongoing violations of its permit to discharge toxic pollution into Five Mile Creek, a tributary of the Locust Fork of the Black Warrior River flowing through Tarrant, Alabama.

"Sloss discharges toxins such as cyanide and heavy metals that kill fish, as well as carcinogenic compounds that can harm people. Yet they are consistently unwilling to implement pollution control that would meet the weak requirements in their current permit, and they have used political influence to successfully resist the imposition of tougher standards" said Brad McLane, Executive Director of the Alabama Rivers Alliance. "Of the hundreds of pollution permits our office has reviewed, Sloss' discharge permit to Five Mile Creek allows some of the highest levels of toxic pollution that we have ever seen."

Studies of Five Mile Creek show that Sloss Industries is the creek's primary abuser. During an assessment of the creek in September 2001, Alabama Department of Environmental Management (ADEM) employees documented significant degradation of the creek resulting from the Sloss discharge. They found the creek to be relatively clean and healthy upstream of the discharge but very polluted and lifeless downstream. They also documented several dead fish and crawfish near the discharge pipe.

According to discharge monitoring records submitted to ADEM, Sloss has regularly violated its permit limits for years. ADEM did not fine Sloss until March 2001, when ADEM and Sloss entered into a consent order - a legal enforcement agreement where the discharger agrees to pay a fine and come into compliance within a certain time frame. Under the order, Sloss agreed to pay a fine of \$16,900 up front, come into compliance within six months, and pay set fines for subsequent violations.

Several months after the agreed upon deadline to comply, Sloss continues to violate its permit, and ADEM has imposed \$46,500 in fines on the company to date since the Consent Order was signed according to a July 10, 2002 editorial in the *Birmingham News* entitled "Sloss Costs: Coke Plant Pollution Endangers Five Mile Creek."

### **Alliance Fights to Advance Goals of the Clean Water Act in Alabama**

Working hand in hand, the Legal Environmental Assistance Foundation and Alabama Rivers Alliance have been struggling to bring about many needed improvements to Alabama's water quality standards. In the last several months, the responses of the Alabama Department of Environmental Management (ADEM) and its Commission - the Alabama Environmental Management Commission (AEMC) have been mixed.

#### **Five Mile Creek**

For example, after many years of arguments and litigation, ADEM recently pushed for upgrading the clean water standards applied to Five Mile Creek in order to reduce toxic pollution of this stream to levels that would make this Jefferson County tributary of the Locust Fork River suitable to support fish and wildlife populations. Unfortunately, after ADEM narrowly secured the approval of the AEMC for this rule change (the vote was 4 to 3), a committee of the Alabama Legislature exercised its authority to initiate a legislative "veto" of the rules. The AEMC subsequently accepted the Legislative Committee's recommendation to invalidate them at its June 25 meeting. These actions collectively make it likely that the US Environmental Protection Agency will be forced to step in and apply more stringent federal standards to Five Mile Creek.

While ADEM's efforts to clean up Five Mile Creek are

The antidegradation policy is a part of the Clean Water Act that is intended to protect high quality waters from degradation by new pollution discharges, unless some degradation of water quality is "necessary to accommodate important economic or social development." Alabama is required by the Clean Water Act to have a state version of the federal policy and to specify its implementation procedures. The Alabama Rivers Alliance joins with the Legal Environmental Assistance Foundation (LEAF) in objecting to the content of Alabama's current procedures because they are too lax. For example, a business seeking a permit to pollute does not have to consider the use of more protective pollution control technologies if such pollution treatment will cost 10% more than the costs of meeting minimum pollution control standards.

The recent history of the development of Alabama's antidegradation policy has generally been a litigious one. On October 29, 1999, LEAF filed suit against the Alabama Department of Environmental Management (ADEM) seeking to invalidate the implementation procedures it had informally adopted in 1997. LEAF's claim asserted that the procedures are in fact "rules" which were adopted without the required opportunity for public notice and public comment. After initially losing in the lower courts, LEAF recently prevailed on appeal to the Alabama Supreme Court. On March 1, 2002, the Court issued a decision siding with LEAF and invalidating ADEM's Antidegradation Implementation Procedures. In fact, Chief Justice Roy Moore referred to ADEM's practice of using policies that were not subject to public review and comment as "the very definition of tyranny."

Anticipating the imminent commencement of rulemaking by ADEM to validly adopt the its existing procedures as rules, on March 26, 2002 LEAF filed a Petition to amend the ADEM regulations to establish strong antidegradation implementation procedures. The ADEM Commission denied this petition outright.

On March 29, 2002, ADEM published notice of its intent to adopt an "emergency rule" virtually identical to its weak procedures declared unlawful by the Alabama Supreme Court. On April 9, 2002, the Environmental Management Commission adopted antidegradation implementation procedures as a short-term "emergency rule," arguing that the rules were needed to allow ADEM to issue permits that businesses needed in order to operate, meanwhile initiating the process for adoption of a permanent rule. Subsequently, the "emergency rule" was challenged by LEAF, and the East Central Alabama Alliance for Quality Living represented by Wildlaw. On April 17, 2002, the Court disagreed with the adoption of the "emergency rule" stating "The Court is not persuaded that this is a case of immediate danger to the public health, safety or welfare."

At its recent, June 25<sup>th</sup> Commission meeting, ADEM

## 5th Annual Conference Great Success by Adam Snyder

ARA celebrated the fifth anniversary of the Watershed Leadership Conference with more than 90 of our friends at the Alabama 4-H Center April 26-28, 2002.

This year's sessions ranged from smart growth discussions, ADEM reform, biodiversity in Alabama, building and sustaining your grassroots organization, and the affects of mining in the state. We received keynotes from County Commissioner Ted Crockett regarding development pressures in Shelby County, Dr. George Folkerts on Alabama's ecological diversity, and an update on activities in the state legislature from Representative John Robinson and AlaLEAVS Executive Director Jeff Martin.

Saturday night, we enjoyed the catfish fry, awards presentation, silent and live auction, and the bluegrass tunes of Glenn Tolbert and Co.

We got great suggestions for improving the conference next year, including moving the date up a few months. We are in the process of planning the sixth annual conference, and we would love to hear your ideas and suggestions.

Thanks to all of you who participated and made this year's conference a great success. We look forward to seeing you in 2003!

Special thanks to our sponsors and donors!

This year was the first year we sought corporate sponsorship of our annual conference. Thanks to our sponsors support, and to the many people who donated items for the silent and live auctions, we were able to raise close to \$4,000 to help defray the cost of the conference.

Special thanks to our contributors:

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Watershed Leadership Awards Presented at Conference

In continuing the tradition of honoring groups and individuals at the Watershed Leadership Conference, the Alabama Rivers Alliance presented four awards this year.

The Watershed Leadership Champion of the Year award went to David Ludder of the Legal Environmental Assistance Foundation. David's tireless effort to reform ADEM, push for public comment at the Environmental Management Commission meetings, ward off not-so-urgent "emergency" anti-degradation rules, and many other efforts made him the clear choice for this award. Thanks for all that you do, David.

The Watershed Group of the Year was awarded to the Society to Advance the Resources of Turkey Creek (S.T.A.R.T.) Since the group's inception just a few years ago, ARA has been work with START to protect the vermilion darter and Turkey Creek. This year, the darter was placed on the endangered species list and close to 400 acres around the Turkey Creek has been bought and preserved by a land trust in Jefferson County. It goes to show hard work does pay off.

We had co-receipients of the Best New Watershed Group of the Year. Slaton Crawford has been the driving force behind the Wilcox County Friends of the Alabama River. He is working with multiple stakeholders in Camden to protect the Alabama and have it as an economic resource for the Black Belt county.

The other group is Save and Preserve Swift Creek, a tributary of the Alabama River in Autauga County. Fannie Mae Brady and a group of dedicated volunteers have been working tirelessly over the past year to slow the impacts of sand and gravel mines on the creek and find ways to restore it. Congratulations to two of our newest groups!



**Beth Wentzel Leaves Staff of Rivers Alliance**

The Alabama Rivers Alliance is sad to report that Beth Wentzel has left the staff of the Alabama Rivers Alliance to move back to her home state of Illinois. Beth will be working for the Prairie Rivers Network based in Urbana-Champagne. Beth has performed extraordinary work for the Alabama Rivers Alliance. The board and staff will greatly miss her and wish her well in her new position. The Alliance is working to hire a new Watershed Restoration Specialist. For more information on the position, please visit the Alliance's web site at [www.alabamarivers.org](http://www.alabamarivers.org).

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2027 2nd Avenue North, Suite A  
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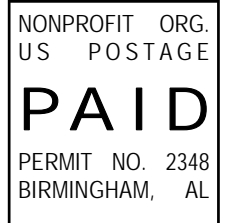
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