From the desk of
Mike Foresman

TO MAX MC COMBS

FOR A BUSINESS POINT OF VIEW I WOULD FOCUS ON THE ADDITIONAL "COST" OF THE NEW PROGRAMS. I THINK THE LEGISLATION IS OVERREACHING AND DOESN'T PROVIDE ENOUGH NEW BENEFITS. A RESPONSE FROM THE BUSINESS COUNCIL SHOULD FOCUS ON COSTS, CURRENT PROGRAMS ARE EFFECTIVE.

Mike

From the desk of

Max W. McCombs

Kevin -
Fundamentally, we would rather see the state administer federal programs. This now, it seems to go way beyond this. If scope can't be narrowed I believe we would oppose based on cost and added burden. See also Mike Foresman's comments.

Max

DSW 133020

STLCOPCB4032978

10/23/98

Mike Foresman - Comments. I believe Superfund delegated authority to Alabama would be good. However, the "details" could be objectionable. Brownfields and Prospective Purchaser agreements may create more govt oversite and new tax need than is necessary.

How should we respond to Kevin?

Max

sent 10/23/98 JM

BCA TODAY

OCT 16 1998

XC: Max McCombs

Do you have a preference regarding a response from Solutia? Let me know

Ken (4-7518)

MEMORANDUM

TO: Environment & Energy Committee

FROM: David L. Roberson DR
Committee Chair

DATE: October 6, 1997

SUBJECT: ADEM Letter of Request

Enclosed is a letter dated September 30, 1998, to members of the Associations/Industries Workgroup from Jim Warr, Director of the Alabama Department of Environmental Management (ADEM). Mr. Warr is requesting our views, comments, and position relating to the legislative concepts spelled out in his September 30, 1998 letter. I am forwarding it to you, as a committee member, for in-put back to BCA as to your views on these ideas.

Please note that Mr. Warr has requested a response by October 30, 1998. You may comment back to me prior to October 28 in order to get your comments included in a letter back to ADEM. If you respond to ADEM directly, please copy me on your submittal. If the desire is to go forward with needed legislation on one or more of these issues, BCA will be involved in the process, working with ADEM and other groups.

Thanks for your immediate attention to this matter.

DSW 133021

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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JAMES W. WARR
DIRECTOR

FOB JAMES, JR.
GOVERNOR

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Education/Outreach: 213-4399

September 30, 1998

Mr. David Roberson
Environmental Guidance Corp.
P.O. Box 2386
Montgomery, Alabama 36102

Dear Mr. Roberson:

This letter is to provide the thoughts of the Alabama Department of Environmental Management (ADEM) staff regarding the need for new legislation addressing state authorities for hazardous sites response (analogous to the federal CERCLA, or Superfund law), hazardous sites reuse and redevelopment (also known as brownfields redevelopment), and a voluntary cleanup program.

As you are aware, the Department is charged by the Alabama Legislature with administering various programs designed to protect human health and the environment through statutes and regulations related to the protection of air, water and land resources from the effects of pollution. The Department currently administers these responsibilities through its regulations covering air pollution, water pollution, hazardous waste, solid waste, underground storage tanks, and others. In addition to implementing these laws and regulations under state authority, the Department has received federal authorization from the USEPA to implement these laws in lieu of the counterpart federal programs.

The benefits of such federal authorization to Alabama are substantial. Federal authorization of a state program results in a regulatory program which is more responsive to the needs of the people in Alabama, while reducing the duplication of valuable resources and jurisdiction conflicts which are inherent in any dually-implemented program. Perhaps the most important benefit of federal authorization is that decisions are made in Alabama, by Alabamians, regarding the benefits and costs of protecting our valuable environmental resources and more importantly, our people.

It has come to the Department's attention in recent months that the pending reauthorization of the federal Superfund law will likely include, for the first time ever, provisions for delegating the implementation of this important program to individual states, provided the state has the requisite state statutory authority and demonstrates the technical capability to implement the program. The Department has assisted EPA in the administration of the Superfund program, and has also independently administered its federally authorized hazardous waste corrective action program for many years. Accordingly, the Department anticipates that the major obstacle to receiving federal authorization for Superfund will be enabling legislative authority. Also, you should be aware that this need for additional statutory authority is not limited to when and if the federal Superfund is reauthorized. The Department is aware that the USEPA is currently working within the existing Superfund framework to transfer

DSW 133022

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Superfund implementation to states who desire this authority and who have the requisite state statutory authority. As discussed above, the ability to obtain federal authorization to implement a state program in lieu of the federal program would be of great benefit to the citizens of Alabama.

In addition to the issue of statutory authority to implement a "Superfund type" program, the Department's experience in implementing its existing laws has shown the need for enabling legislation to implement "brownfields redevelopment" and voluntary cleanup programs. The benefit of a brownfields redevelopment program is obvious – it would foster the cleanup, redevelopment, and return to productive use of former industrial sites, which are often passed over by prospective new tenants in favor of previously unused "greenfield sites" due to uncertainties regarding the costs and (potentially hidden) liabilities associated with their cleanup and reuse. The Department believes it to be sound environmental and public policy to encourage the reuse and redevelopment of these previously used sites.

Regarding a voluntary cleanup program, the Department routinely encounters facilities that have discovered areas of contamination on their property (which often is not covered by existing laws and regulations), and who desire to proactively clean up under Departmental oversight. Many of these areas are the result of past spills (often incidental spillage over a number of years) which have occurred, and frequently are discovered during property transfer audits, and subsequently self-reported to the Department for guidance on how to proceed with cleanup. The Department currently addresses these sites through binding settlement agreements, but we believe it is important to establish a more defined effort to ensure equitable entry into the program, as well as to establish consistent and enforceable cleanup standards these sites must meet. The Department believes it to be sound environmental (and fiscal) policy to encourage and facilitate voluntary cleanup, to safe standards, of areas of contamination in the state.

The Department has developed an outline of its concept for legislation to address the above discussed issues which is attached. The proposed legislation could be in the form of three separate bills or one single bill that combines all three issues. We seek your feedback. The Department is prepared to go forward with the drafting of a legislative proposal to address the above issues; however, such a proposal can be successful only if there is broad and substantial support for the concept proposed and broad agreement on the need for, and benefits of, such a proposal.

John Poole will serve as our contact person on this proposal. Please direct any questions to him and let us know your position by October 30, 1998.

Sincerely,

James W. Warr
Director

JWW/GAH/rdg

cc: John Poole, Chief, Land Division

DSW 133023

HIGHLIGHTS OF PROPOSAL FOR LEGISLATION TO ADDRESS STATE SUPERFUND, BROWNFIELDS, AND VCP ACTIVITIES

I. HAZARDOUS SITES RESPONSE
(aka State Superfund)

This legislation should:

1. Enable ADEM to establish a program to identify, investigate, and if necessary remediate sites contaminated with hazardous wastes, hazardous substances, or hazardous constituents that may pose a threat to human health or the environment.

2. Express legislative support for waste minimization, source reduction, reuse and recycling, and pollution prevention with respect to hazardous wastes, hazardous substances, and hazardous constituents.

3. Enable ADEM to establish, implement, and enforce rules and regulations to provide for remediation of releases of hazardous wastes, hazardous constituents, and hazardous substances into the environment that pose a present or future danger to human health or the environment, and to provide incentives for the reduction of the amount of hazardous wastes generated or managed in the state.

4. Establish a Hazardous Sites Trust Fund to finance administration of the Hazardous Sites Response program. The primary revenue sources for the trust fund would be hazardous waste management fees and hazardous substance reporting fees which are non-duplicative of existing hazardous waste disposal fees collected on wastes disposed at commercial hazardous waste disposal facilities (i.e., CWM-Emelle) in Alabama. The fees would be incremented based on the amount of hazardous waste generated and the amount of SARA Title III emissions.

5. Provide for the use of trust fund monies to pay for state and local government costs associated with the investigation, remediation, and post-closure care and maintenance of sites listed on the National Priorities List.

6. Provide ADEM with the authority to compel remediation at recalcitrant facilities, to implement remediation using trust fund monies when necessary to protect human health or the environment, and to recover remediation costs from responsible parties.

7. Provide for the use of site specific, risk-based cleanup standards.

8. Provide for proportional (not joint and several) liability for responsible parties at hazardous sites.

9. Provide for limitation of liability for innocent landowners, responsible parties who voluntarily perform remediation, and certain others such as remediation contractors performing remediation activities at hazardous sites.

10. Require ADEM to establish and maintain an inventory of known and suspected sites where hazardous wastes, hazardous constituents, or hazardous substances have been disposed or released.

11. Require owners/operators to notify ADEM of certain releases and disposal of hazardous wastes, hazardous substances, and hazardous constituents.

12. Require placement of notices to the deeds of properties which require remediation due to contamination from hazardous wastes, hazardous substances, or hazardous constituents.

DSW 133024

STLCOPCB4032982

II. HAZARDOUS SITES REUSE AND REDEVELOPMENT
(aka Brownfields Redevelopment)

This legislation should:

1. Enable ADEM to establish a program to encourage the reuse and redevelopment of sites contaminated, or believed to be contaminated with hazardous wastes, hazardous substances, or hazardous constituents through the use of prospective purchaser agreements.

2. Enable ADEM to establish rules and regulations governing eligibility, qualification, application and approval criteria and procedures through which prospective purchasers of hazardous sites may obtain a limitation of liability in return for remediating the site.

3. Enable ADEM to establish rules and regulations regarding the content, review, approval, and enforcement of prospective purchaser remediation plans.

4. Establish criteria for property qualification for limitation of liability.

5. Establish criteria for prospective purchaser qualification for limitation of liability.

6. Establish requirements for remediation plans and financial assurance for prospective purchasers.

III. VOLUNTARY CLEANUP OF HAZARDOUS SITES

This legislation should:

1. Enable ADEM to establish and implement a program to encourage the voluntary cleanup of sites contaminated, or believed to be contaminated with hazardous wastes, hazardous substances, or hazardous constituents by the owner or operator.

2. Enable ADEM to establish rules and regulations governing eligibility, qualification, application and approval criteria and procedures through which owners or operators of hazardous sites may obtain a limitation of liability in return for voluntarily remediating the site.

3. Enable ADEM to establish rules and regulations regarding the content, review, approval, and enforcement of voluntary cleanup plans.

4. Establish criteria for property qualification for limitation of liability.

5. Establish criteria for facility qualification for limitation of liability.

6. Establish requirements for remediation plans and financial assurance for voluntary cleanup activities.