

12/28/09

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
October 16, 2009**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on October 16, 2009.

A handwritten signature in black ink, appearing to read "Anita L. Archie", written over a horizontal line.

Anita L. Archie, Chair
Environmental Management Commission

Certified this 11th day of December 2009.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
October 16, 2009

Convened: 11:00 a.m.
Adjourned: 12:10 p.m.

Part A

Transcript

Part B

Attachment Index

Attachments 1 – 11

Part A

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ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

Alabama Department of Environmental
Management (ADEM) Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama

October 16, 2009 11:00 a.m.

COMMISSION MEMBERS PRESENT:

MS. ANITA L. ARCHIE, CHAIR
DR. JOHN H. LESTER, VICE-CHAIR
DR. LAUREL G. GARDNER
SAM H. WAINWRIGHT, P.E.
DR. J. CONRAD PIERCE
H. LANIER BROWN, II
W. SCOTT PHILLIPS(not present)

ALSO PRESENT:

DEBI THOMAS, EXECUTIVE ASST.
ROBERT TAMBLING, LEGAL COUNSEL

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1	INDEX	1	DR. GARDNER: Good morning
2		2	everybody. I'm going to call this
3	Page	3	meeting to order. I acknowledge that
4		4	there is a quorum present.
5	Consideration of minutes of 4	5	Agenda Item Number 1 is
6	meeting held on August 21, 2009	6	consideration of the minutes of the
7		7	meeting held on August 21st.
8	Elections 5	8	I'll entertain a motion
9		9	from the Commission regarding those
10	Report from Director Glenn 9	10	minutes.
11		11	DR. LESTER: So moved.
12	Consideration of adoption of 30	12	DR. GARDNER: Do I have a
13	proposed amendments to ADEM	13	second?
14	Administrative Code Division 6,	14	DR. PIERCE: Second.
15	Water Quality Program	15	DR. GARDNER: We have a motion
16	(Underground Storage Tank)	16	and a second.
17	Regulations, Chapter 335-6-15	17	Is there any discussion
18		18	regarding the minutes?
19	Consideration of adoption of 34	19	(No response.)
20	proposed amendments to ADEM	20	DR. GARDNER: All in favor,
21	Administrative Code Division 6,	21	please say aye.
22	Water Quality Program	22	(Commission members in favor
23	(Underground Storage Tank)	23	of the motion so indicated.)
24	Regulations, Chapter 335-6-16		
25			
26	Consideration of adoption of 37		
27	proposed addition of Chapter		
28	335-13-12 to ADEM Administrative		
29	Code Division 13, Solid Waste		
30	Program Regulations		
31			
32	Consideration of adoption of 39		
33	proposed addition of Chapter		
34	335-13-13 to ADEM Administrative		
35	Code Division 13, Solid Waste		
36	Program Regulations		
37			
38	Black Warrior Riverkeeper, Inc. 22		
39	versus ADEM and Shepherd Bend,		
40	L.L.C. EMC Docket No. 09-04		
41	(NPDES-Related Matter)		
Page 3		Page 5	
1		1	DR. GARDNER: All opposed same
2	Other business 65	2	sign.
3		3	(No response.)
4	Future business session 65	4	DR. GARDNER: Okay. Agenda
5		5	Item Number 2 is the election. We're
6	Request from the Birmingham 67	6	going to consider the election of the
7		7	Chair and Vice-Chair. And before we
8	Water Works Board	8	do this, I would just like to thank
9		9	this Commission for making the past
10	Alabama River Alliance to 68	10	year very easy. This is a great group
11	address the Commission.	11	of people to work with, and whoever
12		12	winds up taking over will find that
13	Meeting adjourned 69	13	out.
14		14	So first I'll entertain a
15		15	motion from the Commission regarding
16		16	the election of Chair.
17		17	DR. LESTER: For Chair?
18		18	DR. GARDNER: Yes, sir.
19		19	DR. LESTER: First, I'd like
20		20	to say thank you for your service last
21		21	year as Chair. And I would like to
22		22	nominate Anita Archie.
23		23	MR. WAINWRIGHT: And I'll

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<p style="text-align: right;">Page 6</p> <p>1 second. 2 DR. GARDNER: Okay. I have a 3 motion and a second for Ms. Archie as 4 Chair of the Commission. 5 Is there any discussion? 6 DR. LESTER: I move a motion 7 to close. 8 DR. GARDNER: Okay. Motion to 9 close. All in favor of Ms. Archie 10 being Chair say aye. 11 (Commission members in favor 12 of the motion so indicated.) 13 DR. GARDNER: All opposed same 14 sign. 15 16 (No response.) 17 DR. GARDNER: That motion 18 carries. Congratulations, Ms. Archie. 19 MS. ARCHIE: I hope I can live 20 up to your exceptions. 21 DR. GARDNER: I'll now 22 entertain a motion from the Commission 23 regarding the election of Vice-Chair.</p>	<p style="text-align: right;">Page 8</p> <p>1 for consideration is the election of 2 committee chairs and members will now 3 be considered. 4 DR. GARDNER: Ms. Archie? 5 MS. ARCHIE: Dr. Gardner? 6 DR. GARDNER: I'd like to move 7 that we table the Committee elections 8 until the December meeting. 9 But -- but also if there 10 is no objection, that we allow you to 11 set those up and allow them to start. 12 MS. ARCHIE: Do I have a 13 second? 14 DR. WAINWRIGHT: I'll second. 15 MS. ARCHIE: Any discussion? 16 (No response.) 17 MS. ARCHIE: No discussion. 18 Everyone in favor of the 19 motion say aye. 20 (Commission members in favor 21 of the motion so indicated.) 22 MS. ARCHIE: Those opposed? 23 (No response.)</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. WAINWRIGHT: I move 2 Dr. John Lester. 3 MS. ARCHIE: I second. 4 DR. GARDNER: Okay. I have a 5 motion and a second for Dr. Lester to 6 be Vice-Chair of the Commission. 7 Is there any discussion? 8 MR. PIERCE: I move the 9 nomination closed. 10 (No response.) 11 DR. GARDNER: Nominations are 12 now closed. 13 All in favor. 14 (Commission members in favor 15 of the motion so indicated.) 16 DR. GARDNER: All opposed same 17 sign. 18 (No response.) 19 DR. LESTER: That's what you 20 call a railroad. 21 MS. ARCHIE: Yeah. 22 DR. LESTER: All right. 23 MS. ARCHIE: Okay. Next item</p>	<p style="text-align: right;">Page 9</p> <p>1 MS. ARCHIE: The motion 2 carries. Agenda Item Number 3 is 3 report from the Director. 4 Mr. Glenn. 5 MR. GLENN: Thank you, Chair 6 Archie and Commissioners. 7 As always, it's my 8 pleasure to stand before you in this 9 capacity and update you on what all 10 has been going on in the Department. 11 Let me first start with 12 just the general administrative items. 13 You should have received a memo from 14 me fairly recently outlining recently 15 executed contracts as usual. 16 Also, on the budget as 17 the -- the major budget information 18 has not changed since we talked over 19 the last several months except for we 20 are now in fiscal year 2010. We're 21 now operating with -- from that 22 budget. 23 And at this time, I'd</p>

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<p style="text-align: right;">Page 10</p> <p>1 point your attention -- did each of 2 y'all get the memo from me I believe I 3 put in there? 4 And I could have done a 5 better job by actually having them in 6 order, I think. But the -- it looks 7 like the last thing on mine, I hope 8 it's on yours, is a copy of our 2010 9 budget. And so what you have there is 10 a breakout of our major programs and 11 the anticipated budget that we have 12 for the year 2010, as well as where 13 the funds will come from to support 14 that budget. Also, just for general 15 reference, we have attached the 16 expenditures from last year, at least, 17 as of the last talley that we have of 18 those right -- right now. 19 And so I hope that will 20 be of benefit to you and to all of us 21 as we continue in the direction of the 22 strategic plan and operating plan 23 regarding transparency and line of</p>	<p style="text-align: right;">Page 12</p> <p>1 in place, such as hiring freezes and 2 merit raises and the like. So you 3 don't see increases necessarily 4 because of that. It is simply for the 5 retirement or insurance benefits that 6 went up there. 7 MS. ARCHIE: One second. 8 MR. GLENN: Yes, ma'am? 9 MS. ARCHIE: Any Commission 10 member have any question regarding 11 budget? 12 (No response.) 13 MS. ARCHIE: I have one 14 question. 15 MR. GLENN: Yes, ma'am. 16 MS. ARCHIE: On your budget 17 ADEM 2010 budget, could you possibly 18 give us -- I see where you're saying 19 that you got the budget -- 2010 budget 20 and 2009 expenditures. 21 Could you possibly give a 22 chart that lists out last year and -- 23 last year and this year with proration</p>
<p style="text-align: right;">Page 11</p> <p>1 sight and making sure that y'all are 2 very clear on that. And, again, this 3 is in the memo that was given to y'all 4 not in my presentation. So if you 5 have questions, I'll certainly be 6 happy to answer them, but obviously -- 7 hopefully, this will just be a 8 starting point so that you can look at 9 this and a basis for conversation as 10 we move forward. 11 In general, you'll look 12 at the budget. It is approximately 13 what it was last year. You saw a 14 minor increase. And as I believe we 15 discussed in previous meetings, the 16 2009 regular legislative session 17 brought with it some changes to 18 overhead or fringe benefits, if you 19 will, that go into our budget. 20 But all the things that 21 we discussed that are in place, 22 regarding the budget controls, if you 23 will, at a statewide level are still</p>	<p style="text-align: right;">Page 13</p> <p>1 consideration and -- so we can see how 2 much a decrease each one of these 3 items, if you can follow what I'm 4 saying. You have each one of these 5 programs here -- 6 MR. GLENN: Yes, ma'am. 7 MS. ARCHIE: And so I'm 8 interested in the state funds that you 9 have. Not really -- federal funding 10 as well. 11 MR. GLENN: Yes, ma'am. 12 MS. ARCHIE: Just to try to 13 see what the percentage change may 14 have been from the -- this one -- the 15 fiscal year we just ended and the 16 fiscal year we will begin. 17 MR. GLENN: Yes, ma'am. I 18 believe I understand you. To restate 19 what I heard, it was could I provide 20 you with the sources of funding on 21 this chart that were used last year, 22 and the answer to that is yes. We are 23 still closing out all the books,</p>

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<p style="text-align: right;">Page 14</p> <p>1 obviously, from last year. So it 2 might be -- we might have to wait 3 until we close all that out for all 4 this to come true, but absolutely we 5 can. We know where the monies were 6 spent, where monies were placed, and 7 we can absolutely provide you with 8 that. 9 MS. ARCHIE: Just want to see 10 the increases and decreases or if 11 everything remained the same. 12 MR. GLENN: Yes, ma'am. We 13 can do that. 14 MS. ARCHIE: Go ahead. 15 MR. GLENN: All right. Now 16 moving on to the next major item as 17 discussed at several meetings. We 18 want to provide you with an updated 19 operating plan for the fiscal year 20 2010. As you know, the operating plan 21 is designed to support the strategic 22 plan laid out there. It is to support 23 the achievement of the four goals that</p>	<p style="text-align: right;">Page 16</p> <p>1 slash sitting there that Dr. Gardner 2 and I had fun with earlier. 3 But -- and so, this is 4 what I'll be referring to now for the 5 remainder of my Director's Report if 6 you'll find that document. 7 So now getting into that, 8 in the area of compliance. We had a 9 very successful regulatory conference 10 this past year. I believe 11 Commissioner Wainwright and 12 Chair Archie actually were able to 13 participate in some of that, and I 14 received very positive remarks from 15 them. Hats off to our great staff and 16 all that they did to put that 17 together. But we obviously want to do 18 that again and continue to focus on 19 providing compliance assistance and 20 providing information to the entities 21 in which we regulate. 22 We feel that the more 23 information they have up front, the</p>
<p style="text-align: right;">Page 15</p> <p>1 were identified in the strategic plan, 2 which are: effective and responsive 3 Commission, how to form a work 4 environment, creditable relationships 5 with external state boards, and 6 efficient effective Department 7 operations. So just a quick refresher 8 to reorient you on what we are 9 attempting to do with the operating 10 plan. We put a little more 11 specificity on what that means to us 12 and how the support of those goals 13 might turn into actions that we can 14 all see and touch and discuss. 15 The 2010 Operating Plan 16 has four major areas of focus. And at 17 this time, if you will, I'd like to 18 again point your attention to the memo 19 that I gave you this morning. An 20 attachment to that -- looks like this 21 document here, the ADEM Operating 22 Plan. Sorry. 23 There was a little errant</p>	<p style="text-align: right;">Page 17</p> <p>1 less problems, if you will, we'll have 2 having to deal with compliance on the 3 back end. So we want to have another 4 conference that really focuses on some 5 very similar topics that we saw last 6 time and just build -- continue to 7 build on that. 8 The other area of 9 compliance is increased compliance 10 rate. Again, the one thing that was 11 very unified by each of you was a 12 focus on the results, which is 13 compliance. Our ultimate goal would 14 be to take no enforcement actions 15 because everybody is in 100 percent 16 compliance. As we know, we're not 17 there yet. But we need to have our 18 eyes focused on that, so we can take 19 the Department there and take the -- 20 hopefully the regulated community 21 there. 22 So y'all, I know, are 23 still looking at the proposal of how</p>

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<p style="text-align: right;">Page 18</p> <p>1 to quantify that and how to talk about 2 that. And so once we pin that down, 3 we will then begin collecting that 4 data and that information and follow 5 on with the plan that is exactly the 6 same as what you saw last year as far 7 as making actionable commitments on 8 what we're going to do to try and move 9 that needle up and make adjustments 10 there. 11 The other area is 12 resource utilization. I've got three 13 major focuses there: two existing 14 ones, one new one. The first one is 15 the speed project. As you know, last 16 year we set goals in all of our major 17 programs. Goals associated with the 18 time we're going to strive to close 19 out complaints or permitting decisions 20 or compliance evaluations, enforcement 21 decisions, and ultimately the 22 execution of those enforcement 23 decisions.</p>	<p style="text-align: right;">Page 20</p> <p>1 that information so we'll have the 2 talking point -- base of the 3 conversation in front of us. 4 eData collection. Again, 5 striving to improve the efficiency in 6 which we operate by utilizing 7 electronic solutions and collecting 8 data or transferring data around. And 9 you will see a project plan for a 10 scrap tire underground storage tank 11 compliance and Stage 1 air programs, 12 and how we collect data there. 13 The other one is 14 permitting cost. We've talked about 15 this now for several years, but as you 16 know, we subsidize permit fees here at 17 ADEM. And as you pointed out, these 18 budget times are getting more 19 interesting every year, which says 20 either more monies have to come in or 21 our costs have to go down to continue 22 to maintain those operations. And I 23 don't know which one that needs to be.</p>
<p style="text-align: right;">Page 19</p> <p>1 So we're going to 2 continue to implement that. For the 3 ones who are making their goals, we're 4 going to reduce goals by 10 percent to 5 try to continue to move forward on 6 what is one of the primary purposes 7 that we were reformed, which is speedy 8 response to the citizens of Alabama 9 and the regulated community of Alabama 10 and the environment. So we're going 11 to continue to move in that direction. 12 We now have a baseline to do that and 13 a conversation piece so we can discuss 14 are those efforts being successful or 15 not and what we might need to do 16 differently. 17 As you can imagine some 18 of those things may be 100 percent in 19 the Department's control and some of 20 might need Commission action and some 21 might need Legislature or EPA or 22 others. So we're just going to 23 continue on that path and provide you</p>	<p style="text-align: right;">Page 21</p> <p>1 I think as you see with project speed, 2 we're going to work to decrease the 3 amount of monies that we spend in 4 taking these actions. We're going to 5 try to reduce our cost of all of our 6 actions. And so we will begin to take 7 actions to equalize the cost of making 8 a decision with the amount of money 9 that comes in to make that decision. 10 And the initial step 11 there will be to capture that 12 information and share it with you to 13 see where we are, to benchmark it if 14 you will, for six months just to see 15 if we can get a good handle on that 16 and then give a -- analyze the 17 information and come up with some 18 ideas, prepare a report, and give it 19 to you within a year of maybe -- of 20 some things that we might could do to 21 continue to move in the right 22 direction there. 23 The next area is</p>

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1 information availability. You, as a
2 Commission, have done some outstanding
3 things. And through your leadership
4 we, at the Department, have taken
5 great strides to exchange information
6 more readily with folks who need that
7 information.
8 One of the shining
9 successes that our staff has
10 implemented is what used to be called
11 E-file. We didn't want to get the IRS
12 mad with us, so we call it -- we're
13 calling it eDocs now. And as far as
14 -- and that allows you from an
15 external website to view any
16 electronic file that I can view here
17 internally. It's our internal filing
18 system. That's available today. So
19 we will continue to get more
20 information electronic as it comes in
21 or either from the backlog of
22 information here. We will also
23 continue to strive to make it easier

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1 to search the information and find
2 things. Of course, there's a whole
3 lot of information on the Internet,
4 but finding it sometimes is a little
5 challenging, so that's where our focus
6 is as well. Specifically, committing
7 to -- by the first part of next year,
8 outlining some custom queries for some
9 of the reports that we get a lot of
10 requests for, such as underground
11 storage tank incidents, releases that
12 have been -- that have occurred
13 somewhere, the DMR's, the discharge
14 monitoring reports, for our surface
15 water/waste water discharges, tank
16 release report, and NPDES inspection
17 reports. This has made that easier to
18 get a hold of.
19 We will also initiate a
20 special search tool, some kind of map
21 and GIS system -- for at least one of
22 our programs -- to build that backbone
23 so that we can ideally add more

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1 programs to that as we ensure that the
2 quality of the locational data, if you
3 will, is suitable for people to look
4 at it.
5 Project transparency.
6 We're going to continue to give you
7 bimonthly reports. You have the --
8 well, we've been giving you monthly
9 reports. But what we're going to do
10 is modify that to bimonthly, if that's
11 okay, to coincide with these
12 Commission meetings for all these big
13 speed goals and everything we're
14 working on to give you the information
15 that you would, I think, need at your
16 fingertips to make informed decisions
17 about the Department and the direction
18 of the Department.
19 Project Assist
20 Commission. We're from the
21 government. We're here to help you.
22 We're ready. And we'll continue to
23 take steps to provide information to

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1 you more proactively and continue to
2 take steps to make sure it is the
3 information that you will need to make
4 the decisions that you need to make.
5 Last thing on that, I
6 want to introduce one thing new, and I
7 have to apologize for not giving this
8 to you before. So if you will, let me
9 give you just an example of what this
10 will look like, but penalty orders.
11 We have for years been
12 taking steps to make our penalty
13 orders clearer so people could
14 understand where the numbers come
15 from; most importantly, for you to be
16 able to understand that when cases
17 come before you. You are our ultimate
18 customer in enforcement actions like
19 that. We want to make sure that is
20 clear. So we will enhance the content
21 of those penalty orders to include
22 more specific information regarding
23 the derivation of that penalty amount.

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<p style="text-align: right;">Page 26</p> <p>1 So what you should see -- 2 and that sounds fluffy kind of, but 3 what you should see is a penalty 4 calculation worksheet, a matrix -- 5 whatever words you might have heard 6 used or used -- in each order that is 7 initiated after this month. There are 8 many orders in the pipeline right now, 9 so I'm not asking anyone to go reach 10 back and redo those things. I think 11 that would go against our speed goals. 12 So -- but for any new ones, we're 13 going to start implementing more 14 information. 15 And if it's okay with 16 you, I'll give you copies of what that 17 one -- an example of what that will 18 look like. Basically, just a table 19 that outlines how we derive, including 20 a discussion of the six penalty 21 factors, and -- I mean, it would 22 support the discussion of the six 23 penalty factors and make that more</p>	<p style="text-align: right;">Page 28</p> <p>1 working on. 2 And lastly, I want to 3 touch on the internal management 4 aspects. Again, continuing more of 5 what we have begun there. Project 6 line of sight. As each of you and I 7 have discussed it's very critical that 8 there is alignment between the policy 9 decisions that you are making and the 10 actions of each and every person at 11 ADEM is taking; everything from an 12 entry level staff individual to my 13 position at ADEM. And so we will 14 continue to clarify roles and make 15 sure that there are opportunities to 16 align functions and align actions with 17 their -- with the policies or the 18 overall direction of the Commission 19 and the Department. And, again, 20 that's a furtherance of those efforts 21 that we started over the past year -- 22 last year. 23 And lastly, quality</p>
<p style="text-align: right;">Page 27</p> <p>1 clear in the order. And it would -- 2 so it would serve and compliment with 3 the language of the order. Just an 4 example. Obviously, those are some 5 example types of issues that our 6 enforcement staff deals with. 7 Obviously, those are water related in 8 front of you. So that would not be 9 the exact worksheet that everyone 10 would use, because that's not 11 applicable to each and every program. 12 But the structure of the worksheet and 13 how we would address the break out of 14 the dollars is what that is meant to 15 show you. And you should begin seeing 16 the actual orders here in the coming 17 weeks or months as they -- because 18 we've worked through that process and, 19 they become -- and they go out for 20 public notice and the like. You'll be 21 able to see those with the actual 22 numbers in there associated with an 23 actual enforcement case that we're</p>	<p style="text-align: right;">Page 29</p> <p>1 management system. We will continue 2 to implement the quality management 3 system, continue to do what we call -- 4 what I call internal audits of that 5 system so as to identify anywhere 6 where we might can make some 7 improvements and then identify those 8 steps and have an action plan and make 9 the improvements in those programs. 10 And we'll start reporting that 11 information to you, as a Commission, 12 through the transparency side of the 13 business. 14 And so with that said, 15 that concludes my Director's Report, 16 because I kind of felt like that was 17 enough information based on the 18 operating plan coming before you 19 today. I'll be happy to answer any 20 questions about the information. 21 MS. ARCHIE: Are there any 22 questions from the Commission? 23 (No response.)</p>

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<p>1 MS. ARCHIE: Thank you, 2 Mr. Glenn. 3 MR. GLENN: Thank you. 4 MS. ARCHIE: Agenda Item 5 Number 4 is the report from the 6 Commission Chair. I do not have a 7 report at this time, so we'll move on 8 to Agenda Item Number 5. The 9 Commission will consider the adoption 10 of proposed amendments to ADEM 11 Administrative Code Division 6, Water 12 Quality Program (Underground Storage 13 Tank) Regulations. 14 At this time, I'd like to 15 call on Chair -- I mean, on the 16 Department's Chief. 17 MR. HARDY: Good morning, 18 Madam Chair. 19 MS. ARCHIE: Good morning. 20 MR. HARDY: Congratulations. 21 MS. ARCHIE: Thank you. 22 MR. HARDY: Members of the 23 Commission, my name is Gerald Hardy,</p>	<p>1 store clerks or station attendants. 2 Training requirements are specified in 3 the proposed regulations for each 4 classification. One person will be 5 allowed to fulfill one or more 6 operator requirements, with 7 appropriate training, as will be the 8 case in many small businesses. 9 EPA has reviewed the 10 proposed regulation revisions and has 11 indicated that the proposed 12 regulations are consistent with the 13 EPA guidance provided to the state 14 agencies for implementation of 15 Operator Training requirements. 16 During the comment 17 period, the Department received one 18 written comment, which suggested 19 specific changes to the proposed regs. 20 And at the public hearing held on 21 September the 11th of 2009, one person 22 presented oral testimony. No 23 substantive changes were made to the</p>
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<p>1 and I'm Chief of the Land Division 2 here at ADEM. 3 You have information 4 provided to you -- in the information 5 provided to you proposed revisions to 6 Division 6, Chapter 335-6-15 of the 7 ADEM Administrative Code, which 8 contains technical standards and 9 requirements for regulated underground 10 storage tanks. 11 This rulemaking was 12 initiated to meet the requirements of 13 the Underground Storage Tank Operating 14 Training provisions of the Federal 15 Energy Policy Act of 2005 as well as 16 to provide re-certification 17 requirements for cathodic protection 18 testers for underground storage tanks. 19 As required by EPA 20 guidance, three classes of UST 21 operators are proposed, corresponding 22 generally to senior company managers, 23 first-line operator managers, and the</p>	<p>1 regulations from the version which was 2 public noticed. 3 As a result of the 4 written comment, editorial changes 5 were made. These comments and their 6 resolution are discussed specifically 7 in the reconciliation of comments 8 which has been provided to you. 9 The Department recommends 10 to the Commission that the proposed 11 regulations be adopted with the minor 12 changes noted. And I'll be glad to 13 answer any questions you may have. 14 MS. ARCHIE: Do I have a 15 motion? 16 MR. BROWN: So moved. 17 MS. ARCHIE: Second? 18 MR. WAINWRIGHT: Second. 19 MS. ARCHIE: I call for aye's 20 and no's. All in favor say aye. 21 (Commission members in favor 22 of the motion so indicated.) 23 MS. ARCHIE: Any opposed?</p>

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<p style="text-align: right;">Page 34</p> <p>1 (No response.) 2 MS. ARCHIE: The motion 3 carries. 4 MR. HARDY: Thank you. 5 MS. ARCHIE: We move onto 6 Number 6 -- Agenda Item Number 6 is 7 consideration of the proposed 8 amendment to ADEM's Administrative 9 Code Division 6, Water Quality 10 Program, Underground Storage Tank 11 Regulations, Chapter 335-6-16. 12 MR. HARDY: Good morning, 13 Madam Chair and members of the 14 Commission. My name is Gerald Hardy, 15 and I am Chief of the Land Division. 16 You have in the 17 information provided to you proposed 18 revisions to Division 6, Chapter 19 335-6-16 of the ADEM Administrative 20 Code, which contains the 21 administrative procedures for the 22 Alabama Underground and Aboveground 23 Storage Tank Trust Fund.</p>	<p style="text-align: right;">Page 36</p> <p>1 requirements have been completed and a 2 public hearing was held on 3 September the 23rd, 2009. No oral or 4 written comments were received. 5 The Department recommends 6 that the proposed rule revisions be 7 adopted. I will be glad to answer any 8 questions you may have. 9 DR. PIERCE: What is a 10 voluntary charge? 11 MR. HARDY: It's a voluntary 12 program. This is a -- in lieu of an 13 insurance program, it provides 14 coverage for storage tank owners and 15 operators for releases to the 16 environment for the cleanup and 17 remediation. So we have to go 18 through -- in order to reimburse for 19 those costs, there's certain criteria 20 to be covered. 21 DR. PIERCE: I guess voluntary 22 was the word I was looking for. Yeah. 23 That's fine.</p>
<p style="text-align: right;">Page 35</p> <p>1 On July the 21st, 2009, 2 the Alabama Underground and 3 Aboveground Storage Tank Management 4 Board voted to recommend to the 5 Environmental Management Commission 6 that the trust fund charge be raised 7 from one cent per gallon of motor 8 fuel, to one and one-quarter cent per 9 gallon. The trust fund charge is 10 assessed upon the first withdrawal 11 from bulk storage and is a voluntarily 12 charge. 13 In a separate vote during 14 that same meeting, the board also 15 voted to recommend to the Commission 16 that the per-occurrence 17 indemnification limit be increased 18 from one million to 1.1 million 19 dollars. In the rulemaking proposal 20 you have before you, Proposed Rules 21 335-6-16-.07 and 335-6-16-.09 would 22 implement these changes respectively. 23 Rulemaking public notice</p>	<p style="text-align: right;">Page 37</p> <p>1 MS. ARCHIE: At this time, I 2 entertain a motion on the proposed 3 amendment. 4 DR. GARDNER: So moved. 5 MS. ARCHIE: Do I have a 6 second? 7 DR. PIERCE: Second. 8 MS. ARCHIE: Any discussion? 9 (No response.) 10 MS. ARCHIE: Being none, I 11 call for ayes and no's. 12 All in favor say aye. 13 (Commission members in favor of 14 the motion so indicated.) 15 MS. ARCHIE: All opposed, no. 16 (No response.) 17 MS. ARCHIE: The motion 18 carries. Okay. Agenda Item Number 7. 19 Consideration of Adoption of the 20 proposed addition of Chapter 21 335-13-12, to ADEM Administrative Code 22 Division 13, Solid Waste Program 23 Regulations.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Take it away, Mr. Hardy. 2 MR. HARDY: Thank you. 3 I am again before you to 4 recommend that the Commission adopt 5 amendments to the Department's Solid 6 Waste Regulations. 7 The proposed regulation 8 before the Commission today would 9 establish the requirements for a 10 certification program for solid waste 11 landfill operators. The establishment 12 of this program was required by the 13 Solid Waste and Recyclable Materials 14 Management Act passed in 2008 by the 15 Legislature. 16 The proposed regulations 17 necessary to establish this program 18 were the subject of a public comment 19 period that ran from July the 12th to 20 September the 4th, 2009, and of a 21 public hearing held on August the 22 26th, 2009. No written or oral 23 comments on these regulations were</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. ARCHIE: Agenda Item 2 Number 8. Consideration of Adoption 3 to the proposed addition to Chapter 4 335-13-13, to ADEM Administrative Code 5 Division 13, Solid Waste Program 6 Regulations. 7 Mr. Hardy. 8 MR. HARDY: Thank you. 9 I am again before you to 10 recommend that the Commission adopt 11 amendments to the Department's Solid 12 Waste Regulations. 13 The proposed regulations 14 would establish by rule a goal for the 15 percentage, on a statewide basis, of 16 the reduction in the amount of solid 17 waste. And the time frame for the 18 reduction pursuant to the requirements 19 of the Solid Waste and Recyclable 20 Materials Management Act of 2008. 21 This reduction may be by 22 means of recycling source reduction, 23 waste minimization, reused composting,</p>
<p style="text-align: right;">Page 39</p> <p>1 received. 2 Pending any questions you 3 might have, the Department asks that 4 the Commission adopt these changes to 5 the Solid Waste Regulations. 6 MS. ARCHIE: At this time, I 7 entertain a motion from the Commission 8 regarding the proposed addition. 9 DR. GARDNER: So moved. 10 MS. ARCHIE: Do I have a 11 second? 12 DR. PIERCE: Second. 13 MS. ARCHIE: Any discussion? 14 (No response.) 15 MS. ARCHIE: I call for the 16 ayes and no's. All in favor say aye. 17 (Commission members in favor of 18 the motion so indicated.) 19 MS. ARCHIE: Those opposed? 20 (No response.) 21 MS. ARCHIE: The motion 22 carries. 23 MR. HARDY: Thank you.</p>	<p style="text-align: right;">Page 41</p> <p>1 or other reasonable means of waste 2 reduction. 3 Proposed regulations were 4 the subject of a public comment period 5 that ran from August the 9th through 6 October the 5th, 2009, and of a public 7 hearing held on September the 23rd of 8 2009. No written or oral comments on 9 these regulations were received. 10 Pending any questions you 11 might have, the Department asks that 12 the Commission adopt these changes to 13 the Solid Waste Regulations. 14 MS. ARCHIE: At this time, do 15 I have a motion from the Commission 16 regarding the proposed additions? 17 DR. PIERCE: So moved. 18 MS. ARCHIE: Do I have a 19 second? 20 MR. WAINWRIGHT: Second. 21 MS. ARCHIE: Any questions? 22 (No response.) 23 MS. ARCHIE: I call for the</p>

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<p style="text-align: right;">Page 42</p> <p>1 questions -- question. All in favor 2 say aye. 3 (Commission members in favor of 4 the motion so indicated.) 5 MS. ARCHIE: Those opposed? 6 (No response.) 7 MS. ARCHIE: The motion 8 carries. 9 MR. HARDY: Thank you. 10 MS. ARCHIE: Agenda Item 11 Number 9, Black Warrior Riverkeeper, 12 Incorporated, versus Alabama 13 Department of Environmental Management 14 and Shepherd Bend LLC, EMC Docket 15 No. 09-04. 16 What we have before us 17 for consideration is the 18 Administrative Law Judge's recommended 19 findings of facts and conclusion of 20 law in which the ALJ recommends that 21 the Commission grant summary judgement 22 on the grounds that the issue raised 23 by Black Warrior Riverkeeper are not</p>	<p style="text-align: right;">Page 44</p> <p>1 Petitioner's objection, and a proposed 2 order, which adopted, would return 3 this proceeding to a Hearing Officer 4 to be appointed by the Commission for 5 a hearing on the following questions: 6 Number one, whether BWR, Black Warrior 7 Riverkeeper, is aggrieved by ADEM's 8 administrative action and, two, 9 whether there is a preponderance of 10 evidence that the administrative 11 action of the Department authorizes 12 discharges for pollutants, which upon 13 discharge, would either cause or 14 contribute to a detectable 15 contravention of state water quality 16 standards. 17 Now, I will try to break 18 up that very long statement to 19 something that everybody understands. 20 At this time, I would entertain a 21 motion from the Commission regarding 22 ADEM's motion to extend time to 23 respond to the Petitioner's objections</p>
<p style="text-align: right;">Page 43</p> <p>1 ripe for appeal. 2 The Petitioner has filed 3 a request for oral argument and 4 objection to ALJ's recommendation, 5 along with alternate findings of fact 6 and conclusions of law and a proposed 7 order, which adopted, would grant the 8 Petitioner's first and second motion 9 for summary judgement and vacate 10 Shepherd Bend NPDES Permit 11 No. AL0079162. 12 The Intervenor has filed 13 a reply brief in responding to 14 Petitioner's objection. Also filed 15 were the Petitioner's motion to strike 16 portions of the Intervenor's reply 17 brief and the Intervenor's response to 18 the motion to strike. 19 The Department has filed 20 a motion to extend the time to 21 response to Petitioner's objection to 22 the ALJ's recommended findings of fact 23 and conclusions of law, a response to</p>	<p style="text-align: right;">Page 45</p> <p>1 to recommended findings of facts and 2 conclusions of law. 3 DR. GARDNER: Madam Chair, I 4 move that we grant ADEM's motion. 5 MS. ARCHIE: Do I have a 6 second? 7 DR. LESTER: Second. 8 MS. ARCHIE: Any discussion? 9 (No response.) 10 MS. ARCHIE: I call for the 11 question: All in favor say aye. 12 (Commission members in favor 13 of the motion so indicated.) 14 MS. ARCHIE: Those opposed? 15 (No response.) 16 MS. ARCHIE: That motion 17 carries. 18 I'd like to note one 19 thing for the -- one item for the 20 record. According to our rules, 21 Mr. Tambling, that that motion could 22 have been made -- that decision could 23 have been made by the Chair?</p>

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<p style="text-align: right;">Page 46</p> <p>1 MR. TAMBLING: The Chair can 2 make that decision, Madam Chair. 3 MS. ARCHIE: Thank you. 4 At this time, I'll 5 entertain a motion from the Commission 6 regarding the Petitioner's request for 7 oral arguments. 8 MR. WAINWRIGHT: Madam Chair, 9 I move that the Petitioner's request 10 for oral argument be granted. 11 MS. ARCHIE: Do I have a 12 second? 13 MR. BROWN: Second. 14 MS. ARCHIE: Any discussion? 15 (No response.) 16 MS. ARCHIE: I call for the 17 question: All in favor say aye. 18 (Commission members in favor of 19 the motion so indicated.) 20 MS. ARCHIE: Those opposed? 21 (No response.) 22 MS. ARCHIE: That motion 23 carries. After the signing of the</p>	<p style="text-align: right;">Page 48</p> <p>1 distinct issues, and I understand that 2 you're going to hear from ADEM, and 3 ADEM is requesting that part of this 4 case go back to the Hearing Officer. 5 There is one issue, however, that I 6 want to talk about that we think you 7 should reverse the Hearing Officer's 8 decision on, which would invalidate 9 the permit outright. 10 The Hearing Officer 11 concluded that Shepherd Bend did not 12 submit a Pollution Abatement Plan to 13 ADEM, but that this was fine; that 14 that that was okay because the Alabama 15 Service Mining Commission was going to 16 later review that plan. We disagree 17 with that claim. 18 Alabama -- ADEM's 19 regulations couldn't be clearer, and 20 we just printed these out on a big 21 board. This is from your website. I 22 want to make sure that everybody can 23 see in the audience. These are your</p>
<p style="text-align: right;">Page 47</p> <p>1 order, we will hear from the attorneys 2 from the parties. 3 Ms. Thomas, could you be 4 our timekeeper? 5 Each side will get a 6 total of 10 minutes. 7 At this time we'll begin 8 oral arguments. Please state your 9 name and present your position. 10 MS. WANNAMAKER: Good morning. 11 I'm Catherine Wannamaker. I'm an 12 attorney for the Black Warrior 13 Riverkeeper in this matter. 14 Thank you for our chance 15 to present this case to you. This is 16 actually a very important and concrete 17 case. It involves a proposed coal 18 mine just adjacent to the drinking 19 water source for the City of 20 Birmingham. Many of the outfalls are 21 800 feet from the drinking water 22 source for the City of Birmingham. 23 There are several</p>	<p style="text-align: right;">Page 49</p> <p>1 regulations on Pollution Abatement 2 Plans, which basically say, all 3 surface mine operators shall provide 4 the Department with a Pollution 5 Abatement Plan and that this plan has 6 to be reviewed by ADEM and that the 7 issuance of NPDES permit shall be 8 based on a determination by ADEM; that 9 the Pollution Abatement Plan and 10 accompanying data are sufficient or 11 adequate to provide for protection of 12 water quality. It really couldn't be 13 clearer. 14 Here, in this case, the 15 applicant certified on his application 16 to ADEM with both the certification 17 from a professional engineer and from 18 a corporate official that they had a 19 comprehensive Pollution Abatement and 20 Prevention Plan and that it was going 21 to be employed at this facility and it 22 had been prepared in accordance with 23 ADEM's regulations.</p>

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<p style="text-align: right;">Page 50</p> <p>1 As it actually turns out, 2 there was no Pollution Abatement Plan. 3 Shepherd Bend didn't have one. And 4 this is a document -- on top of this, 5 is a document from Shepherd Bend's 6 engineer saying we do not specifically 7 have a Pollution Abatement Plan. 8 In the ALJ's ruling, she 9 basically said it's undisputed that 10 the Pollution Abatement Plan was not 11 attached to the application, nor has 12 one currently been submitted to ADEM. 13 This is not a trivial 14 part of the application. It is 15 basically the way that you ensure a 16 surface coal mine meets water quality 17 standards. And you can't make that 18 finding, that a surface coal mine's 19 discharges are going to meet water 20 quality standards, without reviewing a 21 Pollution Abatement Plan. ADEM's regs 22 couldn't be clearer that that has to 23 be done, yet it wasn't done here. So</p>	<p style="text-align: right;">Page 52</p> <p>1 MS. WANNAMAKER: Thank you. 2 MS. ESPY: Good morning. My 3 name is Schuyler Espy. James Wright 4 and I represent the Department in this 5 matter. 6 Riverkeeper objects to 7 the Hearing Officer's recommended 8 findings of facts and conclusions of 9 law. The Department's response 10 addresses Riverkeeper's objections 11 concerning the Pollution Abatement and 12 Prevention Plan and the state water 13 quality standards. 14 First, Riverkeeper 15 contends that Shepherd Bend's current 16 application was incomplete for lack of 17 a Pollution Abatement and Prevention 18 Plan. Riverkeeper objects to Hearing 19 Officer's finding that the PAP Plan 20 was not a necessary part of the 21 Department's NPDES permitting process. 22 The Hearing Officer was 23 correct in determining that Shepherd</p>
<p style="text-align: right;">Page 51</p> <p>1 we think on that basis alone, the 2 permit should be vacated and sent 3 back, and that a Pollution Abatement 4 Plan must be submitted to ADEM, 5 reviewed by ADEM, and approved by ADEM 6 before they can issue this permit. 7 On the second main issue 8 in the case was water quality 9 standards and whether the discharges 10 from this coal mine would violate 11 water quality standards. 12 ADEM now is requesting 13 that issue be remanded to the Hearing 14 Officer, and that we are entitled to a 15 hearing on that. We did not get a 16 hearing on that originally, and so we 17 are in agreement with ADEM that that 18 is appropriate on that claim. 19 With that, I'm happy to 20 take questions. 21 MS. ARCHIE: Any questions? 22 (No response.) 23 MS. ARCHIE: Thank you.</p>	<p style="text-align: right;">Page 53</p> <p>1 Bend's permit application did not 2 require a PAP Plan. PAP plans include 3 pollution control engineering for 4 water pollution control impalement at 5 surface -- surface coal mines. 6 The rule requiring a PAP 7 Plan was adopted by ADEM's predecessor 8 the Alabama Water Improvement 9 Commission, prior to the creation of 10 the Alabama Surface Mining Commission 11 in 1981. 12 When the Legislature 13 created the Surface Mining Commission, 14 the Legislature gave it statutory 15 jurisdiction over pollution control 16 engineering at surface coal mines, 17 including water pollution control 18 impalement. 19 The Hearing Officer found 20 that while ADEM regulates pollutant 21 discharges to waters of the State, 22 only the Alabama Surface Mining 23 Commission has statutory jurisdiction</p>

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<p style="text-align: right;">Page 54</p> <p>1 to determine the sufficiency of 2 pollutant control engineering at the 3 surface coal mines. 4 In other words, while 5 ASMC regulates water pollution control 6 impalements within surface coal mines, 7 which is what the PAP Plan addresses, 8 ADEM regulates pollutant discharges to 9 waters of the State from water 10 pollutant control impalements at 11 surface coal mines. And not 12 surprising, these functions can be a 13 little convoluted. 14 As the Hearing Officer 15 notes, ADEM and ASMC entered into a 16 memorandum of understanding, in which 17 ADEM agreed to suspend its requirement 18 that a PAP Plan be filed with 19 applications for surface coal mining 20 NPDES permits. 21 The PAP Plan must 22 subsequently be submitted to ASMC as 23 part its permitting process. The</p>	<p style="text-align: right;">Page 56</p> <p>1 therefore implicitly abrogated ADEM's 2 more general authority over the same 3 subject matter. 4 The memorandum doesn't 5 transfer any regulatory functions to 6 ADEM, rather ADEM retains the 7 authority to enforce the provisions of 8 the Alabama Water Pollution Control 9 Act, the Clean Water Act and all NPDES 10 regulations applicable to discharges 11 from surface coal mine sites. 12 For all these reasons, 13 the Commission should agree with the 14 Hearing Officer and deny the 15 Riverkeeper's claim regarding the PAP 16 Plan. 17 Second Riverkeeper 18 contends that Shepherd Bend's permit 19 authorizes the discharge of pollutants 20 that will cause or contribute to a 21 contravention of state water quality 22 standards. 23 The Hearing Officer found</p>
<p style="text-align: right;">Page 55</p> <p>1 memorandum's purpose, aside from 2 simple clarification, was to prevent 3 duplication of regulatory functions 4 and to promote cooperation between 5 ADEM and ASMC, with respect to surface 6 coal mine pollution control. 7 Under the memorandum ASMC 8 recognizes ADEM's interest in surface 9 coal mining and water pollution 10 control just as ADEM defers to ASMC's 11 ultimate authority over surface coal 12 mines by prohibiting discharges 13 pursuant to a NPDES permit until the 14 permittee certifies to ASMC that 15 construction of the mine is in 16 compliance with ASMC approved plans 17 and specifications. 18 Essentially, ADEM and 19 ASMC agree that the Alabama 20 Legislature delegated to ASMC specific 21 statutory authority to approve or not 22 environmental engineering at ASMC 23 regulated surface coal mines and</p>	<p style="text-align: right;">Page 57</p> <p>1 that ADEM performed an analysis of 2 potential impacts of permitted 3 discharges from mining activities, and 4 ADEM determined that the water quality 5 at Mulberry Fork would not be 6 significantly affected by the permit. 7 No party disputes that 8 ADEM performed the analysis. The 9 Riverkeeper disputes ADEM's 10 determination. The Riverkeeper 11 objects to the Hearing Officer's 12 conclusion that the ASMC will address 13 Riverkeeper's water quality claims, 14 and that Shepherd Bend's permit cannot 15 be challenged until after the ASMC 16 permitting process is complete. 17 ADEM agrees that Shepherd 18 Bend's permit forbids discharge of 19 pollutants pursuant to that permit 20 until the ASMC permit issues. 21 Meaning, that there can be neither 22 cause nor contribution to a breach of 23 state water quality standards until</p>

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<p style="text-align: right;">Page 58</p> <p>1 the ASMC permit issues. 2 Nonetheless, the Alabama 3 Environmental Management Act and the 4 Commission's regulations entitle an 5 aggrieved person to a hearing to 6 contest these particular issues, not 7 withstanding any action by ADEM or 8 ASMC. 9 So for these reasons, the 10 Commission should agree with the 11 Hearing Officer that ADEM performed 12 the analysis of potential impacts, and 13 ADEM determined the water quality of 14 Mulberry Fork would not be 15 significantly affected. 16 Additionally, the 17 Commission should agree that under the 18 terms of the NPDES permit, Shepherd 19 Bend cannot discharge pollutants 20 pursuant to that permit, and thus can 21 neither cause nor contribute to the 22 contravention of state water quality 23 standards until the ASMC permit</p>	<p style="text-align: right;">Page 60</p> <p>1 Oh, sorry. We got 2 another party. 3 MR. DAVIS: Madam Chairman, 4 Commissioners, my name is 5 Richard Davis, and I represent 6 Shepherd Bend. I don't intend to 7 repeat what the Department has argued 8 substantively, because in a vast 9 majority of points, we're in full 10 agreement with the Department. We 11 believe that the permit was 12 legitimately and appropriately issued. 13 I would like to call to 14 your attention a couple of points 15 though, if we can. On this appeal, 16 what I understand to be before the 17 Commission, is the issue of standing; 18 whether Riverkeeper can even be here 19 in front of you. 20 And at the last 21 Commission meeting, and I won't repeat 22 it because I won't do it justice. You 23 heard a very forceful and</p>
<p style="text-align: right;">Page 59</p> <p>1 issues. However, the Commission 2 should reject the Hearing Officer's 3 conclusion that ASMC will address 4 Riverkeeper's water quality claims, 5 and that Shepherd Bend's NPDES permit 6 cannot be challenged until after the 7 ASMC permitting process is complete. 8 In summary, the 9 Department respectfully requests that 10 this matter be returned to a Hearing 11 Officer upon two questions: One, 12 whether Riverkeeper is aggrieved by 13 the Department's administrative 14 action; and, two, whether there is 15 preponderating evidence that Shepherd 16 Bend's permit authorizes discharges of 17 pollutants, which upon discharge, will 18 either cause or contribute to a 19 detectable contravention of state 20 water quality standards. 21 Thank you. 22 MS. ARCHIE: Are there any 23 questions?</p>	<p style="text-align: right;">Page 61</p> <p>1 well-reasoned standing argument from 2 the ADEM's general counsel. We would 3 submit that since there is no 4 discharge, based on this permit, that 5 while the permit itself may be right 6 to be challenged by an injured party 7 because it has been issued that the 8 Riverkeeper nor its members have any 9 injury from this permit because 10 there's no discharge taking place. 11 Nevertheless, we're -- 12 have always been and have always 13 focused our arguments on the merits of 14 the permit issuance. I would briefly 15 like to note for the Commission that 16 while there has been much talk about 17 the absence of a PAP Plan, that that 18 is kind of a word that -- when it 19 really comes down to it -- what's 20 ignored is, that while there is not a 21 document with a bright cover on it 22 that says PAP Plan, all of the things 23 that go into the PAP Plan were</p>

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<p>1 presented: design drawings, 2 engineering materials, discharge 3 information. ADEM did look at all of 4 these things very, very hard. So it's 5 not as if this permit were issued in a 6 vacuum based on some boxes being 7 checked off a checklist. 8 And I think that's all I 9 have. 10 MS. ARCHIE: Thank you. 11 At this time I will 12 entertain a motion from the Commission 13 regarding the Petitioner's motion to 14 strike portions of the Intervenor's 15 reply brief in response to 16 Petitioner's objection to the ALJ's 17 recommended findings of facts and 18 conclusions of law. 19 I just want to remind you 20 that the Petitioner is asking that the 21 Commission strike portions of the 22 Intervenor's reply brief. They refer 23 to an April 13th, 2009, memorandum of</p>	<p>1 findings of fact and conclusions of 2 law and the ALJ's recommendation. You 3 can either move to adopt the 4 Administrative Law Judge's recommended 5 findings of fact and conclusions of 6 law and the Administrative Law Judge's 7 recommendation or move to adopt the 8 Petitioner's proposed order or move to 9 adopt ADEM's proposed order. 10 Do I have a motion? 11 DR. GARDNER: I move that the 12 Commission adopt ADEM's proposed 13 order. 14 MS. ARCHIE: Do I have a 15 second? 16 MR. WAINWRIGHT: Second. 17 MS. ARCHIE: Any discussion? 18 (No response.) 19 MS. ARCHIE: I will call for 20 the question: All in favor say aye. 21 (Commission members in favor of 22 the motion so indicated.) 23 MS. ARCHIE: Those opposed?</p>
Page 63	Page 65
<p>1 understanding between ADEM and the 2 Alabama Surface Mining Commission. 3 The Intervenor has requested that the 4 motion to strike be denied. 5 Do I have a motion to 6 strike or deny? 7 DR. GARDNER: I move to deny 8 the Petitioner's motion to strike. 9 MS. ARCHIE: Do I have a 10 second? 11 DR. LESTER: I second. 12 MS. ARCHIE: Any discussion? 13 (No response.) 14 MS. ARCHIE: I call for the 15 question: All in favor say aye. 16 (Commission members in favor of 17 the motion so indicated.) 18 MS. ARCHIE: Those opposed? 19 (No response.) 20 MS. ARCHIE: The motion 21 carries. At this time I will 22 entertain a motion from the Commission 23 regarding the ALJ's recommended</p>	<p>1 (No response.) 2 MS. ARCHIE: The motion 3 carries. 4 Agenda Item Number 10 is 5 other business. We move to Agenda 6 Item Number 11. The proposed date for 7 the next Commission meeting is 8 December 11th. 9 DR. LESTER: So moved. 10 DR. GARDNER: Second. 11 MS. ARCHIE: Any discussion? 12 (No response.) 13 MS. ARCHIE: So we vote on 14 that. Everybody in favor of the 15 meeting date say aye. 16 (Commission members in favor of 17 the motion so indicated.) 18 MS. ARCHIE: Those opposed? 19 (No response.) 20 MS. ARCHIE: At this time, we 21 will entertain a motion regarding 22 approval or disapproval of the request 23 to address the Commission. I will</p>

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Page 66	<p>1 note that former Chair Gardner has 2 indicated that she will -- she will 3 recommend it -- recommend approval of 4 the request from the Alabama River 5 Alliance, and that she asked Mr. Reid 6 to limit the presentation to 10 7 minutes. 8 At this time, I will 9 entertain a motion for the Commission 10 regarding a request from the Alabama 11 River Alliance to address the 12 Commission. 13 DR. GARDNER: So move. 14 MR. PIERCE: Second. 15 MR. WAINWRIGHT: Second. 16 MS. ARCHIE: Any discussion? 17 (No response.) 18 MS. ARCHIE: Call for the 19 question: All in favor say aye. 20 (Commission members in favor 21 of the motion so indicated.) 22 MS. ARCHIE: Any opposed? 23 (No response.)</p>	Page 68	<p>1 entertain a motion to move to approve 2 the request to address the Commission 3 or move to disapprove this request 4 from the Commission. 5 MR. WAINWRIGHT: I move to 6 disapprove. 7 MS. ARCHIE: Any discussion? 8 (No response.) 9 MS. ARCHIE: I call for the 10 question: All in favor say aye. 11 (Commission members in favor 12 of the motion so indicated.) 13 MS. ARCHIE: Those opposed? 14 (No response.) 15 MS. ARCHIE: The motion 16 carries. 17 Now, Mr. Reid. 18 (Alabama River Alliance 19 addresses the Commission.) 20 MS. ARCHIE: This concludes 21 the business of the Commission. 22 MR. LESTER: You have got to 23 adjourn us.</p>
Page 67	<p>1 MS. ARCHIE: The motion 2 carries. 3 At this time we will hear 4 from Mr. Reid. 5 I'm sorry. Before you 6 get started, do I have a motion to 7 adjourn this meeting? 8 Sorry guys. 9 DR. GARDNER: We need to vote 10 on -- 11 MS. ARCHIE: Give us a second. 12 I'm sorry. I apologize. I'm new at 13 this. I'll get better. Take your 14 seat. 15 I think we need to take 16 up another request for oral arguments. 17 I note that former Chair Gardner 18 indicated that she would recommend 19 disapproval of the request from the 20 Birmingham Water Works Board due to 21 the subject matter pertaining to an 22 appeal on the agenda. 23 At this time, I will</p>	Page 69	<p>1 MS. ARCHIE: Huh? 2 MR. LESTER: You have to move 3 to adjourn us. 4 MS. ARCHIE: Move to adjourn? 5 MR. PIERCE: Move. 6 MR. BROWN: Seconded. 7 (Meeting adjourned.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>

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1 *****
2 REPORTER'S CERTIFICATE
3 *****

4
5 I, Mishan Williamson, Certified
6 Shorthand Reporter and Notary Public
7 in and for the State of Alabama at
8 Large, do hereby certify that I
9 reported stenographically and then
10 reduced to typewritten form by means
11 of computer-aided transcription my
12 stenographic notes of the foregoing
13 Alabama Environmental Management
14 Commission Meeting.

15
16 I further certify that the
17 foregoing transcript is a true and
18 correct transcript of the proceedings
19 contained herein.

20
21 I further certify that I am
22 neither of kin nor of counsel to the
23 parties to said meeting, nor in any

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1 manner interested in the results
2 thereof.

3
4 Done this, the 27th day of
5 October, 2009.

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9 Mishan Williamson, ACCR #417
10 Reporter and Notary Public
11 State of Alabama at Large
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manner interested in the results
thereof.

Done this, the 27th day of
October, 2009.

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Reporter and Notary Public
State of Alabama at Large

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Part B

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- Attachment 5 Resolution adopting amendments to ADEM Admin. Code
Division 6, Water Quality Program (Underground Storage
Tank) Regulations, Chapter 335-6-16**
- (Agenda Item 6 – Consideration of adoption of proposed
amendments to ADEM Admin. Code Division 6, Water
Quality Program (Underground Storage Tank) Regulations,
Chapter 335-6-16)**
- Attachment 6 Resolution adopting addition of Chapter 335-13-12 to
ADEM Admin. Code Division 13, Solid Waste Program
Regulations**
- (Agenda Item 7 – Consideration of adoption of the proposed
addition of Chapter 335-13-12 to ADEM Admin. Code
Division 13, Solid Waste Program Regulations)**

Attachment Index

- Attachment 7** **Resolution adopting addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations**
- (Agenda Item 8 – Consideration of adoption of the proposed addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations)
- Attachment 8** **Order granting ADEM’s Motion to Extend Time to Respond to Petitioner’s Objections to Recommended Findings of Fact and Conclusions of Law**
- (Agenda Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))
- Attachment 9** **Order granting Petitioner’s Request for Oral Argument**
- (Agenda Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))
- Attachment 10** **Order denying Petitioner’s Motion to Strike**
- (Agenda Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))
- Attachment 11** **Order returning this proceeding to a Hearing Officer to be appointed by the Commission for a hearing on the two questions set forth in the Order**
- (Agenda Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))

Attachment 1

Amended 10/9/09

AGENDA*
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING
Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
Friday, October 16, 2009
11:00 a.m.

<u>ITEM</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on August 21, 2009**	2
2. Elections	2
3. Report from the Director	2
4. Report from the Commission Chair	2
5. Consideration of adoption of proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-15	2
6. Consideration of adoption of proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-16	2
7. Consideration of adoption of the proposed addition of Chapter 335-13-12 to ADEM Admin. Code Division 13, Solid Waste Program Regulations	2
8. Consideration of adoption of the proposed addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations	3
9. <u>Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C.</u> EMC Docket No. 09-04 (NPDES-Related Matter)	3
10. Other business	3
11. Future business session	3
PUBLIC COMMENT PERIOD	4

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under EMC Information and Calendar of Events.

** The Minutes for this meeting will be available on the ADEM website under EMC Information.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 21, 2009
2. ELECTIONS
3. REPORT FROM THE DIRECTOR
4. REPORT FROM THE COMMISSION CHAIR
5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 6, WATER QUALITY PROGRAM (UNDERGROUND STORAGE TANK) REGULATIONS, CHAPTER 335-6-15

The Commission will consider proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-15, "Technical Standards, Corrective Action Requirements and Financial Responsibility for Owners and Operators of Underground Storage Tanks." The amendments are being proposed to provide updated regulations to meet the requirements for cathodic protection testers, provide for UST Operator Training Requirements, and other necessary updates. The Department held a public hearing on the proposed amendments on September 11, 2009.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 6, WATER QUALITY PROGRAM (UNDERGROUND STORAGE TANK) REGULATIONS, CHAPTER 335-6-16

The Commission will consider proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-16, "Administrative Guidelines and Procedures for the Alabama Underground and Aboveground Storage Tank Trust Fund" to establish the annual Trust Fund Charge and scope of Trust Fund coverage, effective January 1, 2010. The Trust Fund Charge is proposed at \$0.0125 per gallon, and the scope of Trust Fund coverage is proposed at \$1.1 million per incident. The Department held a public hearing on the proposed amendments on September 23, 2009.

7. CONSIDERATION OF ADOPTION OF THE PROPOSED ADDITION OF CHAPTER 335-13-12 TO ADEM ADMIN. CODE DIVISION 13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider the proposed addition of Chapter 335-13-12 to ADEM Admin. Code Division 13, Solid Waste Program Regulations. Chapter 335-13-12 would establish the regulatory requirements necessary for the implementation of the Solid Waste landfill operator certification program. The Department held a public hearing on the proposed addition on August 26, 2009.

8. CONSIDERATION OF ADOPTION OF THE PROPOSED ADDITION OF CHAPTER 335-13-13 TO ADEM ADMIN. CODE DIVISION 13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider the proposed addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations. Chapter 335-13-13 would establish a statewide solid waste reduction and recycling goal. The Department held a public hearing on the proposed addition on September 23, 2009.

9. BLACK WARRIOR RIVERKEEPER, INC. V. ADEM, AND SHEPHERD BEND, L.L.C., EMC DOCKET NO. 09-04 (NPDES-RELATED MATTER)

The Commission will consider the Administrative Law Judge's (ALJ) "Recommended Findings of Fact and Conclusions of Law" in which the ALJ recommends to the Commission that ADEM's and Shepherd Bend's Motions for Summary Judgment be granted as to the issue of standing, particularly the issues expressed by Black Warrior are not ripe for appeal. The Commission will also consider the Petitioner's Request for Oral Argument; the Petitioner's Objections to the ALJ's "Recommended Findings of Fact and Conclusions of Law"; the Petitioner's Alternative Findings of Fact and Conclusions of Law; the Petitioner's Proposed Order; the Intervenor's Reply Brief in Response to the Petitioner's Objections; the Petitioner's Motion to Strike Portions of the Intervenor's Reply Brief; the Intervenor's Response to the Petitioner's Motion to Strike; ADEM's Motion to Extend Time to Respond to Petitioner's Objections to Recommended Findings of Fact and Conclusions of Law; ADEM's Response to Petitioner's Objections to Recommended Findings of Fact and Conclusions of Law; and ADEM's Proposed Order.

The ADEM administrative action appealed under Docket No. 09-04 is ADEM's issuance of NPDES Permit AL0079162 on July 21, 2008, to Shepherd Bend, L.L.C., Shepherd Bend Mine, Walker County.

10. OTHER BUSINESS

11. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

Mitchell Reid, on behalf of Alabama Rivers Alliance
SUBJECT: Presentation by Mitchell Reid (Alabama Rivers Alliance)
and Matt Rota (Gulf Restoration Network) of findings from the
Clean Up Your Act! Report Card for gulf water quality standards
(Chair Gardner will recommend approval of this request.)
(This request to address the Commission is attached to the agenda.)

Mac Underwood, on behalf of the Birmingham Water Works Board (BWWB)
SUBJECT: Presentation by Patrick Flannelly, P.E. (designated speaker for the BWWB)
regarding the Shepherd Bend Mine permit
(Chair Gardner will recommend disapproval of this request.)
(This request to address the Commission is not attached to the agenda
because it pertains to an appeal on the agenda.)



Alabama Rivers Alliance
Water Is Life

September 22, 2009

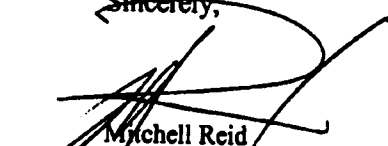
Mr. Laurel G. Gardner, D.V.M.
Chair, Environmental Management Commission
c/o Debi Thomas, Executive Assistant
1400 Coliseum Blvd.
Montgomery, Alabama 36110-2059

Dear Chair Gardner,

The Alabama Rivers Alliance requests to have a representative speak during the October 16th Environmental Management Commission meeting. On September 2nd ARA joined the Gulf Restoration Network in publishing *Clean Up Your Act!* Report Card for gulf state water quality standards. In this report Alabama, along with Florida, Mississippi, Louisiana, and Texas, received unsatisfactory grades for its failure to implement several key components of the Clean Water Act of 1972. The report grades the Gulf States on issues such as water quality standards, policies to prevent Dead Zone-causing pollution, public health protection, and facilitating public participation in the policy-making process. ARA's Mitch Reid and GRN's Matt Rota would like to present these findings with the Commission so that we can all work together to better meet the needs of the citizens who's lives are affected daily by our state's environmental policies.

Thank you for considering our request.

Sincerely,



Mitchell Reid
Program Director
Alabama Rivers Alliance

CC: Onis "Trey" Glenn, III
1400 Coliseum Blvd.
Montgomery, Alabama 36110



2027 Second Avenue North, Suite A / Birmingham, Alabama 35203
205.322.6395 / Toll Free 877.862.5260 / Fax 205.322.6397
www.alabamarivers.org

Attachment 2

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTIONS

Elect Anita Archie as Chair

Elect John Lester as Vice-Chair

ORDER

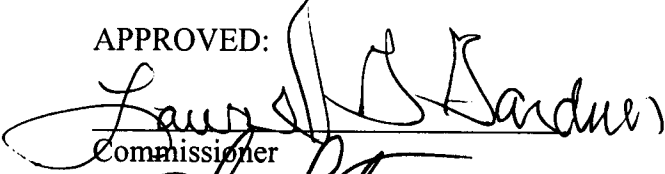
This cause having come before the Environmental Management Commission pursuant to the above motions, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motions are hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

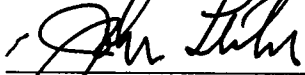
Environmental Management Commission Order
Page 2

ISSUED this 16th day of October 2009.

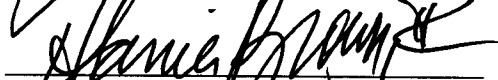
APPROVED:


Commissioner

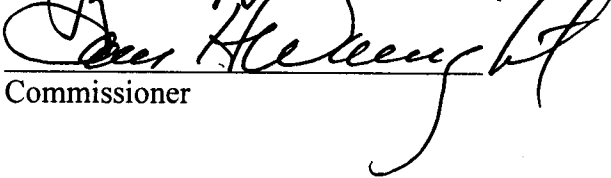
Commissioner


Commissioner

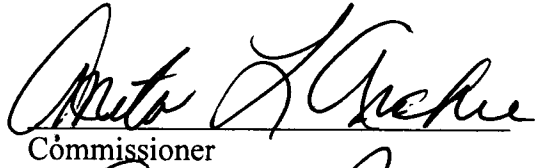
Commissioner


Commissioner

Commissioner


Commissioner

Commissioner


Commissioner

Commissioner


Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

ABSTAINED:

Commissioner

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 16th day of October 2009.


Chair

Environmental Management Commission
Certified this 16th day of October 2009

Attachment 3

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Table the Committee elections until the December meeting and allow Commission Chair Archie to set up the Committees and allow them to start

ORDER

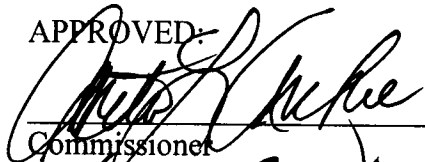
This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

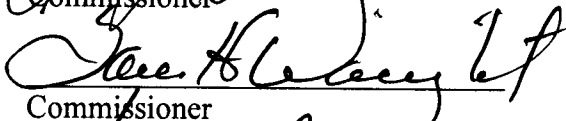
1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

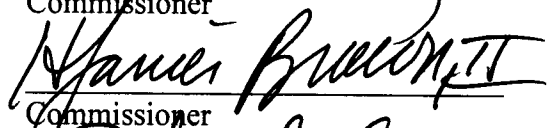
Environmental Management Commission Order
Page 2

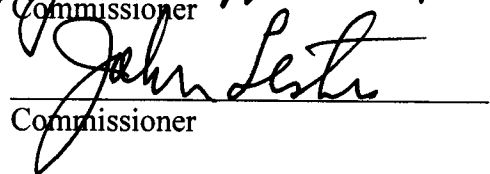
ISSUED this 16th day of October 2009.

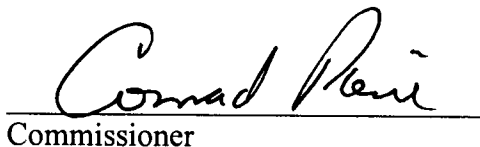
APPROVED:

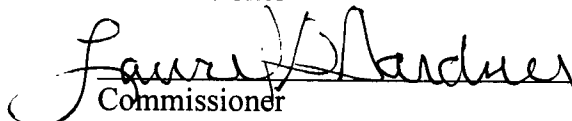

Commissioner


Commissioner


Commissioner


Commissioner


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Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.


Chair

Environmental Management Commission
Certified this 16th day of October 2009

Attachment 4

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-6 of the Department's Water Quality Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

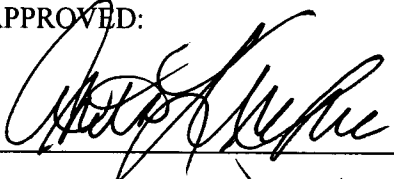
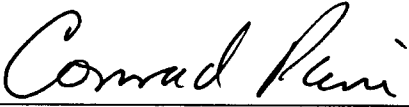

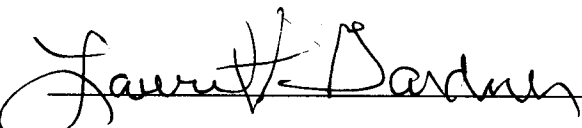

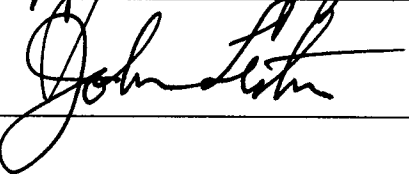
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [335-6-15-.02/Definitions (Amend); 335-6-15-.04/Interim Prohibition for Deferred UST Systems (Amend); 335-6-15-.10/Operation and Maintenance of Corrosion Protection (Amend); 335-6-15-.13/Reporting and Recordkeeping (Amend); 335-6-15-.45 /Delivery Prohibition (Amend); 335-6-15-.46/Operator Training (Amend); 335-6-15-.47 /Severability (Amend)] of the Department's Water Quality Program-UST rules, administrative code attached hereto, to become effective thirty-five days after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-6 – Water Quality Program Rules-UST

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2009.

APPROVED:

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DISAPPROVED:

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_____	_____

ABSTAINED:

_____	_____
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This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.



Chair
Environmental Management Commission
Certified this 16th day of October 2009

Attachment 5

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-6 of the Department's Water Quality Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [335-6-16-.07/Trust Fund Fee and Charge (Amend); and 335-6-16-.09/Scope of Tank Trust Fund Coverage (Amend)]; of the Department's Water Quality Program-UST rules, administrative code attached hereto, to become effective ~~thirty five days after filing with the Alabama Legislative Reference Service~~ January 1, 2010.*


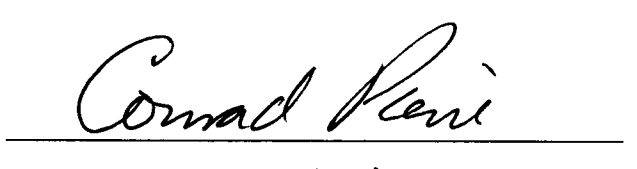


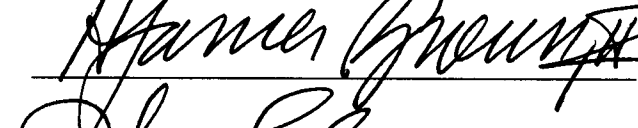
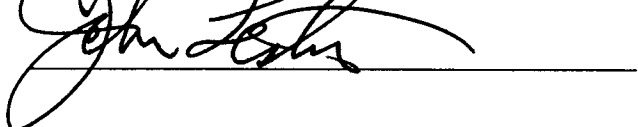
*Amended per motion adopted by the Commission on December 11, 2009

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-6 – Water Quality Program Rules-UST

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of
October 2009.

APPROVED:


 _____	 _____
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DISAPPROVED:

 _____	 _____
 _____	 _____

This is to certify that this Resolution is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 16th day of October 2009.

ABSTAINED:



Chair
Environmental Management Commission
Certified this 16th day of October 2009

Attachment 6

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-13 of the Department's Solid Waste Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-13 [335-13-12 Landfill Operator Certification Requirements (New)] of the Department's Land Division – Solid Waste Program rules, administrative code attached hereto, to become effective thirty-five days after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

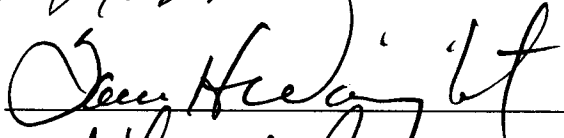
ADEM Admin. Code division 335-13 – Solid Waste Program Rules

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of
October 2009.

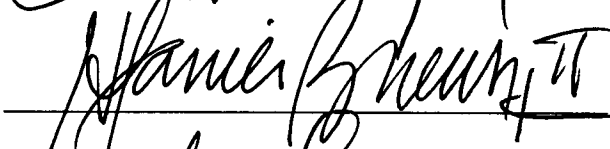
APPROVED:

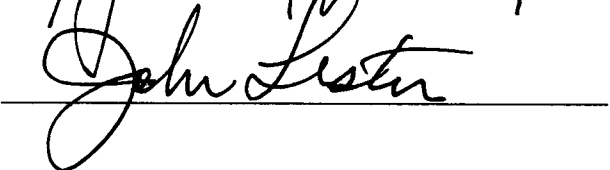












DISAPPROVED:

This is to certify that this Resolution is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 16th day of October 2009.

ABSTAINED:



Chair
Environmental Management Commission
Certified this 16th day of October 2009

Attachment 7

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-13 of the Department's Solid Waste Program Rules and Regulations in accordance with Code of Alabama 1975, §§ 22-22A-8 and 41-22-4; and

WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.


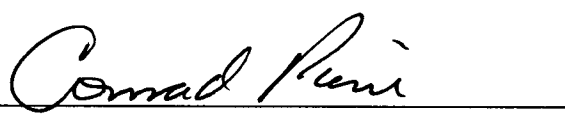
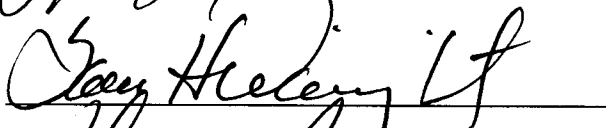

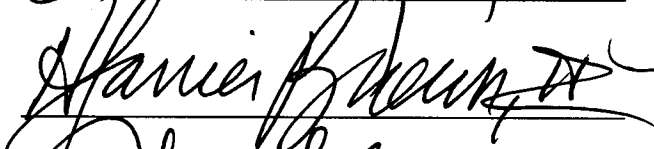
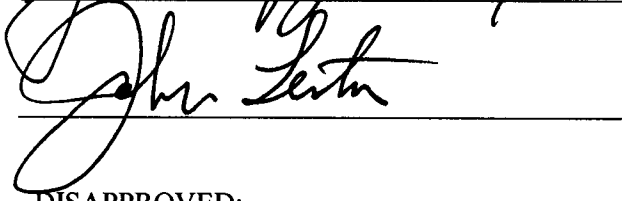
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-13 [335-13-13 Statewide Solid Waste Reduction Goal (New)] of the Department's Land Division – Solid Waste Program rules, administrative code attached hereto, to become effective thirty-five days after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-13 – Solid Waste Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2009.

APPROVED:


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DISAPPROVED:

_____	_____
_____	_____
_____	_____

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

ABSTAINED:



Chair
Environmental Management Commission
Certified this 16th day of October 2009

Attachment 8

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Black Warrior Riverkeeper, Inc.,)	
Petitioner,)	
)	
vs.	)	EMC Docket No. 09-04
)	
Alabama Department of	)	[ADEM Administrative Action:
Environmental Management,	)	ADEM's issuance of NPDES Permit
Respondent,	)	AL0079162 on July 21, 2008, to
	)	Shepherd Bend, L.L.C., Shepherd Bend
and	)	Mine, Walker County]
)	
Shepherd Bend, L.L.C.,)	
Intervenor.)	

ORDER

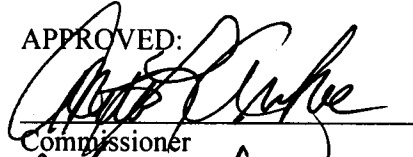
This cause having come before the Environmental Management Commission pursuant to ADEM's Motion to Extend Time to Respond to Petitioner's Objections to Recommended Findings of Fact and Conclusions of Law, and having considered the same, the Commission hereby **ORDERS, ADJUDGES, and DECREES** as follows:

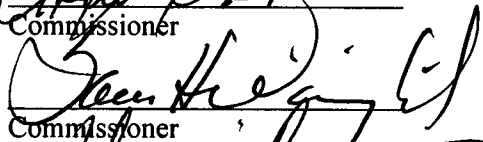
1. That the ADEM's Motion to Extend Time to Respond to Petitioner's Objections to Recommended Findings of Fact and Conclusions of Law is hereby granted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
3. That a copy of this Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.


Environmental Management Commission Order
Page 2 of 2

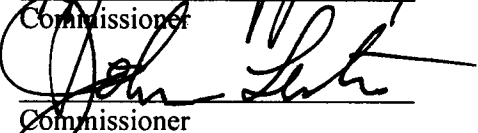
ISSUED this 16th day of October 2009.

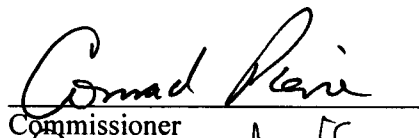
APPROVED:

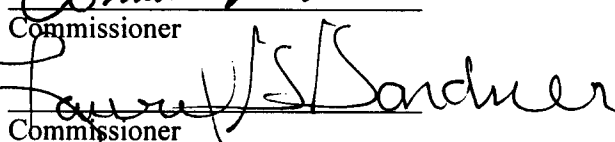

Commissioner


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DISAPPROVED:

Commissioner

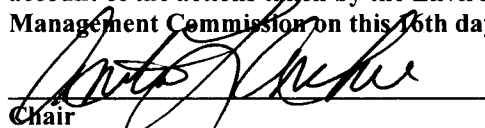
Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.


Chair

Environmental Management Commission
Certified this 16th day of October 2009

Attachment 9

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Black Warrior Riverkeeper, Inc.,)	
Petitioner,)	
)	
vs.	)	EMC Docket No. 09-04
)	
Alabama Department of	)	[ADEM Administrative Action:
Environmental Management,	)	ADEM's issuance of NPDES Permit
Respondent,	)	AL0079162 on July 21, 2008, to
	)	Shepherd Bend, L.L.C., Shepherd Bend
and	)	Mine, Walker County]
)	
Shepherd Bend, L.L.C.,)	
Intervenor.)	

ORDER

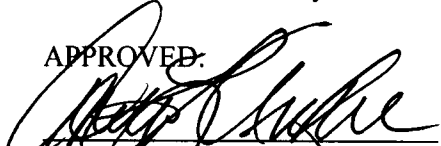
This cause having come before the Environmental Management Commission pursuant to the Petitioner's Request for Oral Argument, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner's Request for Oral Argument is hereby granted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
3. That a copy of this Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.


Environmental Management Commission Order
Page 2 of 2

ISSUED this 16th day of October 2009.


APPROVED:



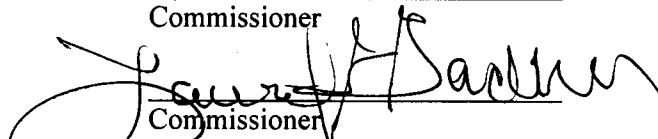
Commissioner



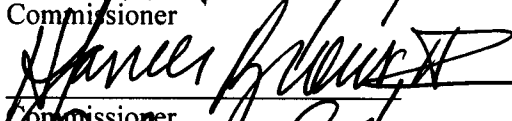
Commissioner



Commissioner

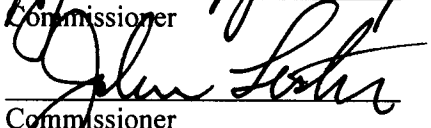


Commissioner



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DISAPPROVED:

Commissioner

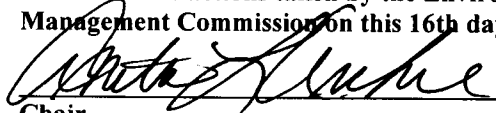
Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 16th day of October 2009.



Chair

Environmental Management Commission
Certified this 16th day of October 2009

Attachment 10

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Black Warrior Riverkeeper, Inc.,)	
Petitioner,)	
)	
vs.	)	EMC Docket No. 09-04
)	
Alabama Department of	)	[ADEM Administrative Action:
Environmental Management,	)	ADEM's issuance of NPDES Permit
Respondent,	)	AL0079162 on July 21, 2008, to
	)	Shepherd Bend, L.L.C., Shepherd Bend
and	)	Mine, Walker County]
)	
Shepherd Bend, L.L.C.,)	
Intervenor.)	

ORDER

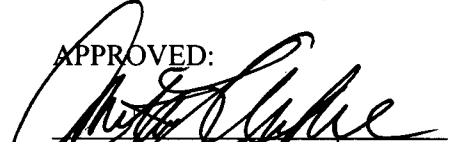
This cause having come before the Environmental Management Commission pursuant to the Petitioner's Motion to Strike Portions of Shepherd Bend's Reply Brief in Response to Petitioner's Objections to the Hearing Officer's Recommended Findings of Fact and Conclusions of Law (Motion to Strike) and the Intervenor's Response to the Petitioner's Motion to Strike, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner's Motion to Strike is hereby denied; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
3. That a copy of this Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

Environmental Management Commission Order
Page 2 of 2

ISSUED this 16th day of October 2009.

APPROVED:

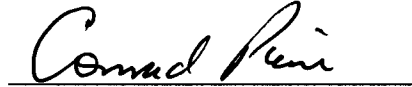


Commissioner

Commissioner

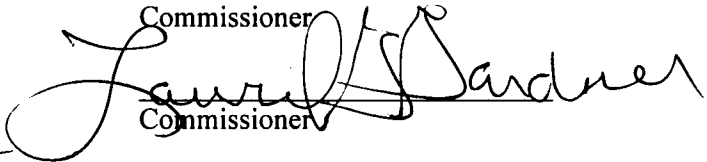
Commissioner

Commissioner



Commissioner

Commissioner



Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 16th day of October 2009.



Chair

Environmental Management Commission
Certified this 16th day of October 2009

Attachment 11

BEFORE THE
 ENVIRONMENTAL MANAGEMENT COMMISSION
 OF THE
 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BLACK WARRIOR RIVERKEEPER, INC.,)	
)	
Petitioner,)	
)	
v.	)	DOCKET NO. 09-04
)	
THE ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
)	
Respondent,)	
)	
AND)	
)	
SHEPHERD BEND, LLC,)	
)	
Intervenor.)	
)	
)	

ORDER

Before the Commission is the Hearing Officer’s Recommended Findings of Fact and Conclusions of Law. The Commission finds as follows:

- 1) The first error alleged by Black Warrior Riverkeeper’s (“BWR”) Hearing Request contends the administrative action of the Department – the issuance of National Pollutant Discharge Elimination System (“NPDES”) Permit No. AL0079162 to Shepherd Bend, LLC – is void for lack of notice of the administrative action of the Department. Because this proceeding is de novo, the Hearing Officer found and concluded that contention is due to be denied. The Commission accepts this particular recommendation of the Hearing Officer and denies this contention.

- 2) The second error alleged by BWR's Hearing Request contends the administrative action of the Department is due to be disapproved because the permit application was incomplete, specifically that a Pollution Abatement and Prevention Plan ("PAP Plan") was missing from the application. The Hearing Officer found and concluded that the application upon which the administrative action of the Department was based does not require a PAP Plan. The Commission agrees and denies this contention for the reasons set forth in the Hearing Officer's Recommendation.
- 3) The third and fourth errors alleged by BWR's Hearing Request contend the administrative action of the Department authorizes the discharge of pollutants that will cause or contribute to a contravention of State water quality standards. The Hearing Officer found that the Department performed an analysis of potential impacts of permitted discharges from mining activities and determined the water quality in Mulberry Fork area of the Black Warrior River would not be significantly affected. The Commission agrees ADEM performed this analysis, and there is no dispute among the parties the Department performed this analysis, but BWR disputes the Department's determination. The Hearing Officer concluded that BWR's dispute is unripe because no permit for surface mining had been issued to the Intervenor by the Alabama Surface Mining Commission ("ASMC") and that the Intervenor cannot discharge pursuant to the NPDES permit until that ASMC permit is issued. The Commission agrees with the Hearing Officer that under the terms of the NPDES permit the Intervenor cannot discharge any pollutants pursuant to the NPDES permit, and thus can neither

cause nor contribute to a contravention of State water quality standards until that ASMC permit issues. However, the Commission concludes the Alabama Environmental Management Act entitles "an aggrieved person" to a hearing in which to contest these particular questions notwithstanding any action by ADEM or the ASMC and rejects this particular conclusion of law by the Hearing Officer.

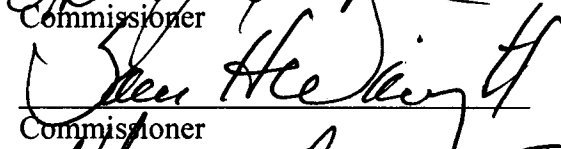
For the reasons stated above, the Commission hereby ORDERS, ADJUDGES, AND DECREES as follows:

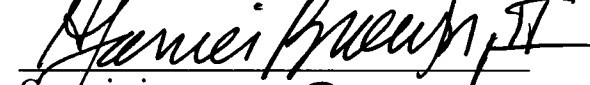
The Commission returns this proceeding to a Hearing Officer to be appointed by the Commission for a hearing upon the questions: (1) whether BWR is aggrieved by ADEM's administrative action, and (2) whether there is preponderating evidence that the administrative action of the Department authorizes discharges of pollutants which, upon discharge, will either cause or contribute to a detectable contravention of State water quality standards.

ISSUED this the 16th day of October, 2009.

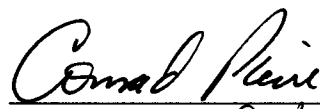
APPROVED:

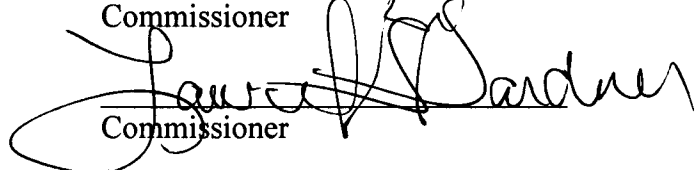

Commissioner


Commissioner


Commissioner

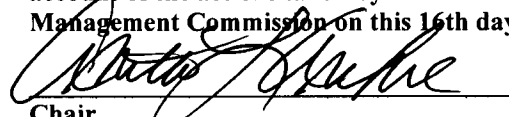

Commissioner


Commissioner


Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.


Chair
Environmental Management Commission
Certified this 16th day of October 2009

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner