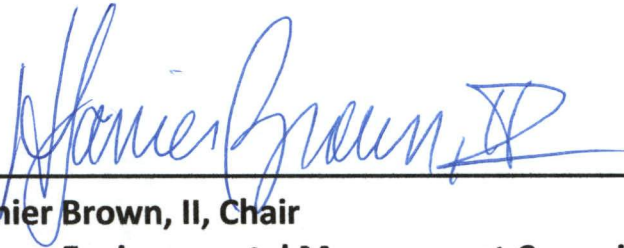


2/22/16

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**December 18, 2015**

**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 December 18, 2015.**



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**H. Lanier Brown, II, Chair  
Alabama Environmental Management Commission**

**Certified this 19th day of February 2016.**

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**December 18, 2015**

**Convened: 11:00 a.m.**  
**Adjourned: 12:26 p.m.**

**Part A**

**Transcript**  
**Word Index**

**Part B**

**Attachment Index**  
**Attachment 1**  
**Attachment 2**  
**Attachment 3**  
**Attachment 4**

**Part A**

Page 1

1 MEETING OF THE  
2 ABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
3  
4  
5  
6 ALABAMA DEPARTMENT OF ENVIRONMENTAL  
7 MANAGEMENT  
8  
9  
10 Alabama Room  
11 1400 Coliseum Boulevard  
12 Montgomery, Alabama 36110-2400  
13 December 18, 2015  
14 11:00 a.m.  
15  
16 \* \* \* \* \*  
17  
18  
19  
20  
21  
22 T REPORTER: PATRICK R. MILLER, ACCR 2037  
23 \* \* \* \* \*

Page 3

1 \* \* \* \* \*  
2 CHAIRMAN BROWN: Good morning,  
3 everyone.  
4 MS. MERRITT: Good morning.  
5 CHAIRMAN BROWN: We will call the  
6 December 18, 2015 meeting of the  
7 Alabama Environmental Management  
8 Commission to order. The Chair  
9 acknowledges a quorum. The first item  
10 on the agenda is consideration of the  
11 minutes of the meeting held on October  
12 16, 2015. The Chair knows that the  
13 minutes have been previously  
14 circulated to the Commissioners, and  
15 entertain a motion.  
16 MR. PHILLIPS: I move to adopt the  
17 minutes of the October 16, 2015  
18 meeting as circulated.  
19 DR. LAIER: Second.  
20 CHAIRMAN BROWN: Any discussion?  
21 (No response was heard.)  
22 CHAIRMAN BROWN: All in favor, say  
23 Aye.

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1 \* \* \* \* \*  
2 APPEARANCES  
3 COMMISSION MEMBERS:  
4 Mr. H. Lanier Brown, II, Esq., Chair  
5 Mr. W. Scott Phillips, Vice Chair  
6 Samuel L. Miller, M.D.  
7 Terry D. Richardson, Ph.D.  
8 Elliott Craig Martin, D.V.M.  
9 James E. Laier, Ph.D., P.E.  
10 Mary J. Merritt  
11  
12  
13  
14  
15  
16 PRESENT:  
17 Mr. Lance R. LeFleur, ADEM Director  
18 Mr. Russell A. Kelly, P.E.,  
19 Chief, Permits and Services Division  
20 Mr. Robert D. Tambling, EMC Legal Counsel  
21 Ms. Debi Thomas, EMC Executive Assistant  
22  
23

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1 (A unanimous response was  
2 heard.)  
3 CHAIRMAN BROWN: Resolution passes.  
4 Next on the agenda item is elections  
5 for the Personnel Committee and  
6 Rulemaking Committee. For the  
7 Personnel Committee, nominations are  
8 Jim Laier for Chairman, Craig Martin  
9 and Sam Miller as members. For  
10 Rulemaking Committee, Scott Phillips  
11 as Chair, Mary Merritt and Terry  
12 Richardson as members.  
13 Again, the Chair will entertain a  
14 motion.  
15 DR. MILLER: I move that we accept  
16 the nominations.  
17 DR. MARTIN: Second.  
18 CHAIRMAN BROWN: Any discussions?  
19 (No response was heard.)  
20 CHAIRMAN BROWN: All in favor, say  
21 Aye.  
22 (A unanimous response was  
23 heard.)

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1 CHAIRMAN BROWN: Resolution passes.  
2 Agenda Item Number 3 is the report  
3 from the Director. Good morning.  
4 MR. LEFLEUR: Good morning, sir.  
5 Good morning to all that are present  
6 today.  
7 MS. MERRITT: Good morning.  
8 MR. PHILLIPS: Good morning.  
9 DR. LAIER: Good morning.  
10 MR. LEFLEUR: Today's entire report  
11 will address the proposed permit fee  
12 increase to be considered by the  
13 Commission later in this meeting. Due  
14 to the depth -- the in-depth nature of  
15 the budget and funding report, the  
16 RCRA Hazardous Waste Dashboards will  
17 once again be rescheduled until the  
18 next Commission meeting.  
19 Today's report is intended to  
20 provide you a comprehensive analysis  
21 of ADEM's budget, issues involving  
22 EPA, funding options, concerns that  
23 have expressed, and other related

Page 6

1 matters as you consider the proposed  
2 permit fee rulemaking. At the October  
3 16th, 2015 Commission meeting, I  
4 reported the results of the State  
5 General Fund budgeting process that  
6 concluded on September 16, 2015, where  
7 the Department received a substantial  
8 funding reduction, and an additional  
9 requirement for the Department to  
10 transfer dedicated cleanup fees to the  
11 General Fund. The Department, the  
12 Commission, regulated industries, and  
13 others have all voiced aversion to any  
14 increase in permit fees to make up for  
15 the cuts; however, in order to  
16 maintain the Departmental performance  
17 levels necessary to retain the NPDES  
18 water program under the control of the  
19 State, the Department initiated a  
20 rulemaking process to increase permit  
21 fees, excluding Clean Air Act Title V  
22 fees, which are regulated by Federal  
23 statute, by 20 percent to replace the

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1 General Fund cut.  
2 Why and how the decision to seek  
3 the permit fee increase was reached is  
4 as follows.  
5 First, the Department has been  
6 under the scrutiny of EPA for more  
7 than five years for insufficient  
8 funding. State -- State environmental  
9 programs receive Federal funding and  
10 State funding. The State sources are  
11 General Fund appropriations and fees.  
12 EPA looks to the total of General Fund  
13 appropriations plus State fees, which  
14 equals the total funds provided by the  
15 State to run environmental programs.  
16 Let's see here. What am I not doing  
17 right? You got to slide? Well, we  
18 seem to have a technical difficulty  
19 here. Please bear with me for a  
20 moment.  
21 (A brief recess was taken.)  
22 MR. LEFLEUR: All right. The  
23 following table illustrates the cause

Page 8

1 for EPA's concern. The information  
2 displayed shows State-sourced funding  
3 for 2013, which is the most current  
4 data available. The numbers in this  
5 table are before the FY 2016 General  
6 Fund budget cuts. The left column  
7 ranks each state by its per capita  
8 General Fund appropriation. The  
9 center column ranks each state by its  
10 per capita total state fees. The  
11 right column is the sum of the other  
12 two columns and ranks each state by  
13 its total state-sourced funding.  
14 Federal funding is not displayed.  
15 Some states elect to provide large  
16 General Fund appropriations to keep  
17 fees to regulated industries low while  
18 other states provide little or no  
19 General Fund appropriations and  
20 implement fees to cover virtually all  
21 the non-Federally funded costs of  
22 their environmental programs. Of  
23 course, some states come closer to

<p style="text-align: right;">Page 9</p> <p>1 balancing the two sources of funding. 2 Each state determines independently 3 how much it will rely on one source or 4 the other. 5 As you can see, only five states 6 provide less funding from General Fund 7 appropriations per capita than 8 Alabama, and only nine states provide 9 less funding from fees. Being at the 10 lower end of both funding sources 11 results in Alabama being lower than 12 all but one state in total 13 state-sourced funding. 14 State funding is necessary to 15 supplement Federal funding in order to 16 meet Federal work plan requirements 17 for numbers of inspections, timeliness 18 of various activities, permit quality 19 reviews, water quality monitoring, and 20 many other measured criteria. 21 Personnel costs are the largest 22 component of any State program budget. 23 Without sufficient funding, staffing</p>	<p style="text-align: right;">Page 11</p> <p>1 me -- let me continue with my 2 comments, if I may. 3 The FY 2016 General Fund budget 4 cut, excluding the transfer to the 5 General Fund of cleanup fees, is 6 equivalent to reducing headcount by 7 approximately twelve. If the FY 2016 8 required transfers to the General Fund 9 are included, the impact of the cuts 10 is doubled. The proposed permit fee 11 increase is intended to replace the FY 12 2016 funding cut and simply -- and 13 simply maintain total funding at 49th 14 in the nation as is shown on this 15 chart. Given the extremely low 16 funding in recent years, the pending 17 petition to withdraw NPDES authority, 18 and the current level of Federal 19 scrutiny, not replacing the FY 2016 20 General Fund budget cut and hoping EPA 21 will not step in is a gamble. 22 Increased EPA involvement in 23 Alabama can potentially take several</p>
<p style="text-align: right;">Page 10</p> <p>1 levels must be reduced below those 2 necessary to meet work plan 3 requirements. Failure to meet minimum 4 performance standards, for whatever 5 reason, triggers EPA scrutiny. 6 As the displayed table illustrates, 7 the Department operates with 8 significantly less state-provided 9 funding than other programs throughout 10 the nation. Although the matter is 11 currently being contested by several 12 focused environmental groups, the 13 Department maintains that it has 14 consistently demonstrated performance 15 exceeding minimum standards through 16 FY 2015. 17 Let's see, I got a little something 18 here showing up on the screen. 19 Where's my expert? Oh, okay. He's 20 working on it. We'll have this 21 straightened out, perhaps, at the next 22 meeting. 23 Okay. While he works on that, let</p>	<p style="text-align: right;">Page 12</p> <p>1 forms. In its most aggressive form, 2 EPA can begin directly issuing all 3 permits, conducting all inspections, 4 and directly taking all enforcement 5 actions. At a lesser level, those 6 activities could be performed by 7 existing ADEM personnel, supplemented 8 with EPA personnel, all under the 9 direct supervision of EPA. At a low 10 level, EPA can elect to increase the 11 number of direct independent 12 inspections and enforcement actions it 13 takes in Alabama. It is not clear how 14 EPA's costs for any added oversight or 15 activity would be recovered. 16 Regardless of what form it may take, 17 any state program such as Alabama's 18 that is increasingly in financial 19 distress is subjected to increased 20 scrutiny and administrative 21 involvement by EPA. On a number of 22 occasions, EPA has stated that the FY 23 2014 funding level in Alabama is a</p>

<p style="text-align: right;">Page 13</p> <p>1 cause for concern. If funding is not 2 maintained at at least the FY 2014 3 level, an increased EPA presence in 4 the State should be expected. Again, 5 the proposed 20 percent permit fee 6 increase is not intended to bring 7 funding above the 2014 level. It is 8 intended to simply maintain total 9 state-sourced funding at the level 10 shown in the chart on the screen. 11 Comments at the October Commission 12 meeting, formal comments in the 13 official record, and informal comments 14 at regulated industry meetings have 15 focused less on the need to maintain 16 the prior funding level and more on 17 whether Federal funding, General Fund 18 appropriations, fee increases, or some 19 other source of funds is the best 20 means to address the funding 21 shortfall. I will briefly address 22 each of these possible funding sources 23 individually, beginning with Federal</p>	<p style="text-align: right;">Page 15</p> <p>1 cut -- is to have the legislature 2 reinstate the FY 2016 appropriation 3 reduction. There has been hope 4 expressed that the legislature, in its 5 next session, will reverse the 6 five-year trend of shifting the 7 financial burden of funding 8 environmental management from the 9 General Fund to the regulated 10 industries. Shifting the burden has 11 been done not only through reduced 12 General Fund appropriations but also 13 through transfers of environmental 14 fees to the General Fund to prop up 15 general expenditures of the State. 16 What the legislature will do in future 17 sessions is, obviously, unknown. No 18 one inside or outside the Legislature 19 can guarantee what the 20 legislative -- what the Legislature 21 will do as a body in the future; 22 however, I have had an opportunity to 23 discuss possible FY '17 Departmental</p>
<p style="text-align: right;">Page 14</p> <p>1 funding. 2 For at least five years, Federal 3 funding for every state has been level 4 to declining as Congressional 5 appropriations to EPA have, at best, 6 been in the form of Continuing 7 Resolutions. The Federal budget 8 agreement reached just this week calls 9 for EPA funding, which is the source 10 for Federal funding for states, to be 11 reduced to the 2010 funding level. 12 Federal funding as a source to make up 13 for the lost State General Fund 14 appropriation appears to be an option 15 only if it is accompanied by increased 16 Federal control over state programs. 17 This would potentially be a default 18 scenario if no sources of State 19 funding are provided. 20 The second and most often suggested 21 source of funding to make up for 22 General Fund appropriation cut -- for 23 the General Fund appropriation</p>	<p style="text-align: right;">Page 16</p> <p>1 funding with Senate and House 2 leadership. There is clear consensus 3 that the FY 2017 budgets will be even 4 more challenging than the 5 FY 2000 -- those in 2016. Based on 6 history, new demands for funding of 7 other state programs, and a projected 8 decline in general state revenues, 9 planning on increased ADEM funding 10 from the General Fund in FY 2017 would 11 be a long odds bet. The FY 2016 12 General Fund budget has already been 13 adopted and very well may be the one 14 in place when EPA acts on the 15 insufficient funding element of the 16 NPDES withdrawal petition currently 17 pending at EPA headquarters. An FY 18 2016 funding shortfall exists today. 19 The third remaining source of 20 funding is State-imposed environmental 21 fees. With no other viable source of 22 funding, the Department has proposed a 23 permit fee increase to make up this</p>



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1 funding shortfall.  
2 This proposed fee increase has  
3 raised at least three general areas of  
4 concern which have been expressed in  
5 formal comments in the official  
6 record, open meetings, and informal  
7 meetings prior to the  
8 previous -- previous permit fee  
9 increases, and expressed in similar  
10 forums again during the last several  
11 months regarding this proposed fee  
12 increase. One is a concern that the  
13 statutory cap limiting the amount of  
14 permit fees that can charged by the  
15 Department will be exceeded. Another  
16 concern is the possibility of undue  
17 influence on the Department by  
18 regulated entities resulting from the  
19 heavier reliance on fees from those  
20 regulated industries [verbatim]. The  
21 final obvious concern is the financial  
22 burden a permit fee increase will have  
23 on regulated industries on top of the

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1 calculation of the cap can be somewhat  
2 involved and subject to interpretation  
3 of how some costs are allocated among  
4 the various duties of the Department.  
5 A conservative computation by the  
6 Department puts the cost of the  
7 permitting functions of the Department  
8 at approximately \$20 million, which is  
9 about 30 percent of total Departmental  
10 expenditures. Considering that the  
11 Department's three primary functions  
12 are permitting, inspections, and  
13 enforcement, a calculation showing  
14 30 percent of expenditures  
15 attributable to permitting is  
16 certainly what would reasonably be  
17 expected.  
18 Okay. All right. Again. My  
19 apologies to the Commission and those  
20 present. If we were to get a new  
21 flashdrive, would that solve the  
22 problem? Oh, okay. Which button do I  
23 press? Oh, I press it up here again?

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1 two recent substantial permit fee  
2 increases.  
3 The Alabama statutory cap  
4 stipulates that the permit fees cannot  
5 exceed -- and I'm  
6 quoting -- Reasonable anticipated cost  
7 to be incurred by the Department and  
8 directly related to the issuance,  
9 reissuance, modification, or denial of  
10 any permit, license, certification, or  
11 variance, such fees to include, but  
12 not be limited to, the reasonable  
13 anticipated cost of the examination  
14 and processing of applications, plans,  
15 specifications, or any other data, and  
16 any necessary public hearings and  
17 investigations. Picking up further  
18 along, still quoting, With the  
19 understanding that the fees -- and  
20 here, it's referring to projected  
21 fees -- May be higher or lower. End  
22 of quote.  
23 Given that definition, a

Page 20

1 Okay. All right.  
2 Okay. We're back -- back on track.  
3 The graph on the screen is the one  
4 presented in the October Commission  
5 meeting. As you can see, the green  
6 portion, which represents permit fees,  
7 is projected to be well below the  
8 \$20 million calculated statutory  
9 limit. The difference between the  
10 \$20 million cost to issue permits and  
11 the permit fee revenue, as shown in  
12 green, is covered with funds provided  
13 by Federal grants. The State of  
14 Alabama Department of Examiners of  
15 Public Accounts just concluded a  
16 routine legal compliance examination  
17 of ADEM. The examination looked at  
18 the Department's compliance with all  
19 applicable Alabama laws and  
20 regulations, which would include  
21 compliance with the statute limiting  
22 the amount of permit fees that may be  
23 collected. Although the final report

<p style="text-align: right;">Page 21</p> <p>1 has not been completed, a draft final 2 report has been prepared and made 3 available to the Department which 4 summarizes the findings. No issues 5 were raised concerning compliance with 6 the statutory limit on permit fees. 7 Regarding the second area of 8 concern, at the last Commission 9 meeting, the potential for undesirable 10 influence by regulated industries over 11 the work of the Department was raised, 12 should the Department rely too heavily 13 on permit fees for funding. A similar 14 concern was expressed that reliance on 15 Federal funding carries the potential 16 risk of undesirable influence by EPA 17 over the work of the Department. Such 18 concerns are legitimate and applicable 19 to those as well as any other source 20 of funding. As the earlier table 21 illustrated, states vary widely on the 22 level of reliance on one source of 23 funding or another. It is appropriate</p>	<p style="text-align: right;">Page 23</p> <p>1 red, has been declining and is now 2 approaching zero. Permit fees, shown 3 in green, have increased at a rate 4 anticipated to replace the General 5 Fund decline in an effort to keep 6 total state-sourced funding, shown in 7 orange, approximately constant at 49th 8 in the nation where it has been since 9 2008. Previous permit fee increases 10 were 19 percent in 2011, and 50 11 percent in 2013. Even after the 12 proposed 20 percent permit fee 13 increase, environmental fees in 14 Alabama will still be among the lowest 15 in the nation. Nevertheless, both the 16 General Fund decreases and permit fee 17 increases, including this final one, 18 to offset the General Fund decreases, 19 have been objectionable to regulated 20 industry, members of the Commission, 21 and the Department alike. For many, a 22 permit fee increase is and should be 23 the funding source of last resort.</p>
<p style="text-align: right;">Page 22</p> <p>1 for the Department, the Commission, 2 and each of the Department's oversight 3 bodies to guard against any 4 unacceptable influence and to do so by 5 requiring management accountability 6 for adherence to the objective 7 standards set out in the ADEM 8 Administrative Code. The concern 9 about increased influence by Federal 10 authorities would only come into play 11 if the lack of state-provided funding 12 necessitates additional Federal 13 funding, which, of course, would be 14 accompanied by increased Federal 15 control. 16 Next is a concern about the 17 financial burden placed on regulated 18 industries. The approximate 19 \$2 million cost of the permit fee 20 increase will fall directly on 21 regulated industries. As the graph on 22 the screen now illustrates, ADEM's 23 General Fund appropriation, shown in</p>	<p style="text-align: right;">Page 24</p> <p>1 Not surprisingly, no regulated 2 industry wants to pay more in permit 3 fees, and, therefore, they want to 4 understand what other options are 5 available. 6 Recognizing these concerns, the 7 Department has for quite some time 8 actively solicited suggestions on 9 other ways to obtain the resources 10 necessary to administer its 11 environmental programs. 12 The Department has considered EPA's 13 offer to perform a portion of the 14 inspections and enforcements in 15 Alabama, which would allow the 16 Department to reduce its -- the 17 resources needed to maintain a full 18 complement headcount, although it is 19 unknown how EPA would be reimbursed 20 for its cost. For many reasons, this 21 is an undesirable option. 22 Another suggestion considered is to 23 institute new fees for currently</p>

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1 unregulated activities so as to  
2 maintain the same fees on currently  
3 regulated activities. Implementing  
4 new regulations for the purpose of  
5 generating fees raises many  
6 fundamental public policy questions  
7 regarding the purpose of environmental  
8 regulation. Additionally, new  
9 regulations, as is the case with  
10 existing regulations, often require  
11 expenditures that exceed the amount of  
12 the fees generated.

13 A third suggestion was to institute  
14 fees for activities currently  
15 performed by the Department, such as  
16 inspections, which is essentially  
17 equivalent to a fee increase, since  
18 such fees would be paid by currently  
19 regulated industries.

20 A final option or suggestion is to  
21 delay or do nothing. To delay or do  
22 nothing, anticipating some funding  
23 source will become available, or

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1 rising level of concern. It is  
2 difficult to imagine anything that  
3 would make Alabama more unattractive  
4 for new business investment and job  
5 creation than increasing EPA  
6 involvement in the State. The option  
7 to delay or do nothing raises the  
8 question, Is the gamble worth the \$2  
9 million budget increment being  
10 addressed? I am unable to tell you  
11 the odds of winning or losing the bet.  
12 I can say that the adverse  
13 consequences for economic development  
14 and jobs in Alabama of losing that bet  
15 far outweigh any possible benefit of  
16 not addressing the \$2 million budget  
17 shortfall.

18 As is the case with all proposed  
19 rule changes, the public was afforded  
20 an opportunity to provide input on  
21 this proposed rule change. A 45-day  
22 public comment period was provided,  
23 followed by a public hearing on the

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1 anticipating that increasing Federal  
2 involvement is unlikely, is a gamble.  
3 Earlier in this report, the known  
4 possible sources of funding and the  
5 likelihood of each were addressed. It  
6 is not known to ADEM when or how EPA  
7 will elect to act on its concern over  
8 past and increasingly inadequate  
9 current funding of the Department, but  
10 it has stated its intention to act on  
11 or before December 31, 2016. As noted  
12 in the October 16, 2015 report to the  
13 Commission, EPA is under considerable  
14 pressure to act as a result of appeals  
15 of its earlier determinations not to  
16 commence withdrawal proceedings for  
17 non-funding related matters. EPA  
18 continues to offer assistance with  
19 inspections and enforcement and has  
20 also made inquiries to individual  
21 programs about the Department's  
22 financial ability to implement those  
23 programs, which are signals of a

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1 proposed permit fee increase. Eleven  
2 different comments representing four  
3 interest groups were received. The  
4 comments, the Department's response to  
5 comments, and the transcript of the  
6 public hearing, all of which have been  
7 provided to you, constitute the  
8 official record for public input on  
9 the proposed rulemaking.

10 The four groups commenting were:  
11 Concentrated Animal Feeding  
12 Operations, or (CAFO) interests, a  
13 waste and recycling industry  
14 association, the Business Council of  
15 Alabama, and a Tallahassee,  
16 Florida-based environmental attorney.

17 Eight of the eleven total comments  
18 were from CAFO interests  
19 opposed -- eight of the eleven total  
20 comments were from CAFO interests  
21 opposed to the imposition of the CAFO  
22 fee schedule currently in the ADEM  
23 Administrative Code, as well as the

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1 proposed 20 percent increase to that  
2 fee schedule, on the basis of  
3 financial burden. Those fees have  
4 been suspended since the CAFO program  
5 began in 1999 as a result of the  
6 legislature providing line item  
7 funding for the program. In FY 2016,  
8 sufficient funding was not provided,  
9 so the Department no longer has the  
10 financial resources to fund the CAFO  
11 program and is, therefore, unable to  
12 continue to suspend the fees.  
13 One of the three remaining comments  
14 offered assistance with efficiency  
15 matters, requested confirmation about  
16 how fee increases would be allocated,  
17 and expressed disagreement with the  
18 legislature's action to reduce ADEM  
19 funding and thereby transfer the  
20 burden to Alabama's regulated  
21 community. Finally, two comments  
22 questioned the legal authority to  
23 increase permit fees, and the

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1 expressed, and weighing the risks  
2 associated with each course of action,  
3 the Department has concluded that the  
4 proposed fee increase provides the  
5 best available opportunity to maintain  
6 the performance necessary to retain  
7 State control of critical  
8 environmental programs, and it is,  
9 therefore, the most responsible course  
10 of action.  
11 Based on the official record and  
12 for the reasons set forth in this  
13 report, the Department recommends  
14 approval of the proposed permit fee  
15 increase.  
16 Whatever the future holds, the  
17 Department remains strongly committed  
18 to continue to effectively utilize  
19 whatever funding is available.  
20 Before closing, I would like to  
21 provide an example of that commitment  
22 by recognizing a significant milestone  
23 achieved by several of our dedicated

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1 commenters were provided the relevant  
2 legal references citing the legal  
3 authority. Other concerns expressed  
4 in the comments, as well as  
5 suggestions to consider possible  
6 options, were addressed earlier in  
7 this report and in the official  
8 response to comments.  
9 To review and summarize, it appears  
10 there is general agreement that it is  
11 in the best interest of Alabama, its  
12 citizens, and its regulated  
13 industries, for the State to maintain  
14 control over its environmental  
15 programs.  
16 After much analysis of budget  
17 issues and trends for the past -- past  
18 five years, discussions with  
19 individual legislators, seeking out  
20 and evaluating numerous alternatives,  
21 discussions with numerous potentially  
22 impacted parties and other interested  
23 groups, examining each of the concerns

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1 employees. The following individuals  
2 have completed the rigorous study,  
3 testing, and other requirements to  
4 earn the highly respected designation  
5 of Professional Engineer. We only  
6 have one of them with us today, but,  
7 Jeremy -- Jeremy Weant, in our Air  
8 Division, is one. The two that are  
9 not here are Ross Caton -- I assume  
10 they're not here -- and  
11 Taylor Griswell. They are not here.  
12 (An applause was heard.)  
13 MR. LEFLEUR: Thank you for your  
14 dedication to your profession and to  
15 your State.  
16 That concludes today's report. I  
17 will be pleased to address any  
18 questions you may have.  
19 CHAIRMAN BROWN: I recognize  
20 Commissioner Richardson.  
21 DR. RICHARDSON: Director, that  
22 first table that you put up with the  
23 states' listing -- I don't know if you

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1 can get that back up again or not.  
2 MR. LEFLEUR: There we go.  
3 DR. RICHARDSON: You said that  
4 these values were 2013 --  
5 MR. LEFLEUR: That's correct.  
6 DR. RICHARDSON: -- and I'm  
7 assuming -- and you said that was the  
8 most recent available. I'm assuming  
9 that means from all the states?  
10 MR. LEFLEUR: Correct.  
11 DR. RICHARDSON: Because you  
12 obviously have more information --  
13 MR. LEFLEUR: Oh, yeah, we  
14 have --  
15 DR. RICHARDSON: -- than from  
16 ours, right?  
17 MR. LEFLEUR: Certainly.  
18 DR. RICHARDSON: Alabama's  
19 positioning on there, under the fees  
20 per capita column, does that include  
21 the 2013 50 percent fee increase or  
22 not?  
23 MR. LEFLEUR: Yes, sir, to the

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1 degree that it was implemented at that  
2 time. These fees, total per capita  
3 fees, this represents all fees. They  
4 don't break out just permit fees, so  
5 there are other fees, such as Title V  
6 fees in there. Permit fees, I'm going  
7 to have to say are approximately two  
8 dollars of that total.  
9 DR. RICHARDSON: Also, I noticed on  
10 your chart that fees continue to  
11 increase, yet, 2013 was the last fee  
12 increase. Now, I know this is total  
13 money generated by fees. Is this from  
14 more permits, more regulated industry?  
15 What's -- what's responsible for the  
16 green bars continuing to climb?  
17 MR. LEFLEUR: Primarily fee  
18 increases. Primarily fee increases.  
19 DR. RICHARDSON: But not fee  
20 increases passed by us?  
21 MR. LEFLEUR: Yes, yes.  
22 DR. RICHARDSON: So -- but we only  
23 passed 19 percent in 2011 and 50

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1 percent in 2013, yet it increases  
2 again in 2014, it increases again in  
3 2015, and I understand the projection  
4 for 2016. I'm just trying to  
5 understand that continued increase.  
6 MR. LEFLEUR: Well, there are  
7 variations in our permit fee revenue.  
8 Permit fees have either a  
9 three-year -- typically a three-year  
10 or a five-year renewal cycle, and the  
11 trend lines are intended -- they're  
12 computed by the cal -- by the  
13 computer. The trend lines are  
14 intended to level out variations year  
15 to year.  
16 DR. RICHARDSON: Yes.  
17 CHAIRMAN BROWN: Yes?  
18 MR. PHILLIPS: Where to start? I  
19 think, Mr. Director, I'm just going to  
20 ask for clarifications from your  
21 discussion, and then when we get to  
22 the matter of yes or no on the fee  
23 increase, I'll ask -- or I'll make

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1 some other statements. But you made a  
2 comment that we're now approaching  
3 zero. I think it would be helpful if  
4 you could help the full Commission  
5 understand why it's not zero and also  
6 address the issue of -- that doesn't  
7 show the effect of the money remitted  
8 to the State General Fund.  
9 MR. LEFLEUR: Your point is well  
10 taken. The 2016 red bar on there  
11 represents \$280,000, which was the  
12 appropriation to the Department. You  
13 make the point that this graph does  
14 not reflect the \$1.2 million that was  
15 transferred from Departmental fees to  
16 the General Fund. Those fees --  
17 MR. PHILLIPS: So the true net  
18 impact of the State funding to the  
19 Department was roughly a negative  
20 million dollars?  
21 MR. LEFLEUR: That's correct.  
22 MR. PHILLIPS: Okay. Was the  
23 \$280,000 line item for CAFO, or was it

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1 just remitted to the Department?  
2 MR. LEFLEUR: It was line item for  
3 CAFO.  
4 MR. PHILLIPS: So even the \$280,000  
5 was not available for the Department  
6 for anything other than CAFO use?  
7 MR. LEFLEUR: That's correct.  
8 MR. PHILLIPS: And what's it cost  
9 to run the CAFO program?  
10 MR. LEFLEUR: That's correct.  
11 MR. PHILLIPS: No, what --  
12 MR. LEFLEUR: Oh, what are the  
13 costs? Okay.  
14 MR. PHILLIPS: -- are the costs to  
15 run the CAFO program?  
16 MR. LEFLEUR: Excuse me. I'm  
17 sorry. I misheard you. The CAFO  
18 program runs somewhere between \$400-  
19 and \$500,000 to operate.  
20 MR. PHILLIPS: So woefully short --  
21 MR. LEFLEUR: Well, yes, sir.  
22 MR. PHILLIPS: -- to meet that  
23 need. One other comment you made was

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1 that this final increase -- I ask  
2 that, because I think I was under the  
3 impression that maybe the 19 and the  
4 50 were the final increase, and it may  
5 be easy to say with such a small  
6 remittance to the Department of even  
7 \$280,000 -- they didn't stop there at  
8 this time. They went below the line.  
9 There's no guarantee that that won't  
10 happen again?  
11 MR. LEFLEUR: You are correct.  
12 MR. PHILLIPS: And in that case,  
13 should they ask for more money from  
14 the Department, what would be your  
15 strategy for making up that shortfall?  
16 MR. LEFLEUR: Mr. Commissioner, I  
17 have no way of knowing -- and nor does  
18 anyone else, obviously, what the  
19 Legislature might do. All I can say  
20 is that it will be a heavier lift to  
21 transfer money out of the Department  
22 than it is to not give money to the  
23 Department. I -- I do not know at

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1 this point what our options might be  
2 if they decide to take fees that are  
3 generated now and, in effect, make  
4 this a truly negative appropriation  
5 beyond what it is today.  
6 MR. PHILLIPS: But based on all the  
7 conversations I've heard today, you  
8 would be back before us asking for  
9 another fee increase?  
10 MR. LEFLEUR: I have no  
11 anticipation of doing that, sir.  
12 MR. PHILLIPS: Okay. Just -- just  
13 to make sure that we're on the same  
14 page, the 19 percent increase, the 50  
15 percent increase, and now the  
16 requested 20 percent increase over  
17 doubles fees and permits from  
18 that -- in that time period, correct?  
19 MR. LEFLEUR: Correct.  
20 MR. PHILLIPS: And then the last  
21 question -- you made -- that the  
22 Department initiated rulemaking. I  
23 think it would be helpful if you let

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1 the Commission know when you initiated  
2 that rulemaking.  
3 MR. LEFLEUR: What was the date of  
4 that? November -- or shortly after  
5 the -- the Legislature acted.  
6 MR. PHILLIPS: That's basically all  
7 I needed. I wanted to hear that it  
8 was after the --  
9 MR. LEFLEUR: Oh, yes. Yes.  
10 Absolutely. It was shortly after,  
11 although we had plenty of warning that  
12 the Legislature was moving in that  
13 direction.  
14 MR. PHILLIPS: And then my last  
15 clarification of your report is  
16 you -- you aptly reminded us that even  
17 this 20 percent fee increase gets us  
18 back to 2014 funding, correct?  
19 MR. LEFLEUR: That's correct.  
20 MR. PHILLIPS: Which doesn't remove  
21 the specter of EPA deciding or not  
22 deciding that the funding is still an  
23 issue?

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1 MR. LEFLEUR: That's absolutely  
2 correct.  
3 MR. PHILLIPS: And you clarified  
4 that EPA's date or commitment to make  
5 a decision relevant to that was  
6 December the 31st, 2016?  
7 MR. LEFLEUR: That was their  
8 statement in our arguments for the  
9 11th Circuit Court of Appeals.  
10 MR. PHILLIPS: Due process, I  
11 guess. Okay. That's all I have.  
12 Thank you.  
13 DR. MARTIN: I have a couple of  
14 questions though.  
15 Based on what you said, even with  
16 the fee increase, there's still a  
17 possibility that EPA could come in and  
18 take over?  
19 MR. LEFLEUR: That's correct.  
20 That's correct.  
21 DR. MARTIN: Okay. And the second  
22 question, I guess, it's just a  
23 clarification on Commissioner

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1 Phillips'. Assuming the State doesn't  
2 allocate funding for ADEM for 2017,  
3 what's the percent chance that we'll  
4 be in the same position next year?  
5 MR. LEFLEUR: Well, the --  
6 DR. MARTIN: Asking for funding and  
7 fee increases?  
8 MR. LEFLEUR: Well, by this time  
9 next year, EPA has indicated they are  
10 prepared to act, and the situation  
11 will have been determined by that  
12 time, I believe. We have no  
13 anticipation that we can come back for  
14 an additional fee increase based on  
15 General Fund appropriation declines.  
16 DR. MARTIN: Okay.  
17 CHAIRMAN BROWN: Yes?  
18 MR. PHILLIPS: Yes, just one more  
19 clarifying -- based on that statement.  
20 I appreciate that, because  
21 quite frank -- frankly, General Fund  
22 commitments, \$280,000, is no money, so  
23 going to zero is not a far cry. But

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1 the negative number is more concerning  
2 to me than the zero number.  
3 DR. RICHARDSON: Absolutely.  
4 MR. PHILLIPS: So you can't  
5 predict, any more than anyone else in  
6 this room can, what's going to happen  
7 in the legislative session. And so it  
8 just needs to be clear that there is  
9 absolutely no guarantee that they  
10 won't come back the second -- the  
11 first session and the regular session,  
12 they were looking at \$7.7 million to  
13 come out of the Department. That's a  
14 much bigger number than one, so we  
15 just need to be certain that we  
16 understand that our job is not done  
17 when this gets acted on, one way or  
18 the other.  
19 MR. LEFLEUR: Your point is well  
20 taken.  
21 MR. PHILLIPS: And I said I was  
22 going to reserve that until later.  
23 CHAIRMAN BROWN: Any of the

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1 Commissioners have any other questions  
2 or comments of the Director?  
3 (No response was heard.)  
4 CHAIRMAN BROWN: Thank you.  
5 MR. LEFLEUR: Thank you.  
6 CHAIRMAN BROWN: I guess a report  
7 from the Commission Chair would simply  
8 be bah humbug.  
9 MR. LEFLEUR: Oh, I would like  
10 to -- before I leave, speaking of bah  
11 humbug -- I would like to wish the  
12 Commission and everybody a very Merry  
13 Christmas.  
14 DR. LAIER: Merry Christmas to you.  
15 MR. PHILLIPS: Merry Christmas to  
16 you too.  
17 CHAIRMAN BROWN: Obviously, this  
18 fee increase is a matter of urgency,  
19 importance, and great interest. I  
20 think I would be remiss to point  
21 out -- if I didn't -- failed to point  
22 out that I think most of the  
23 Commissioners have received written

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1 communications, e-mail communications,  
2 phone communications, maybe even some  
3 smoke signals from virtually all  
4 segments of the stakeholders in the  
5 Department. I think most have a great  
6 concern for EPA's taking over. I  
7 think a lot of people are disappointed  
8 that the Legislature has not been able  
9 to fund ADEM as a critical State  
10 agency. I mean, it's a  
11 mission-critical agency, if you think  
12 about it in terms of both public  
13 health and economic development. So I  
14 think we have gotten a lot of  
15 communications supporting,  
16 reluctantly, a fee increase to support  
17 those objectives. Even though there  
18 has been a lot of dissatisfaction with  
19 the legislative funding.  
20 And with that, I'll move onto the  
21 next agenda item, which is a report  
22 and potential recommendation for the  
23 Rulemaking Committee on Administrative

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1 was -- a motion was made and seconded  
2 to postpone our recommendation to come  
3 before this full Commission until our  
4 February 19th 10 a.m. Rulemaking  
5 Committee meeting. So we will take  
6 this back up on February the 19th at  
7 10 a.m. in this chamber. I have asked  
8 Debi to go ahead and circulate where  
9 we are at this point to the  
10 stakeholders group that we had,  
11 including the full Commission. I  
12 tried not to burden you with any more  
13 paper than I had to, prior to us being  
14 ready to make a recommendation.  
15 However, considering that we're  
16 postponing it, I thought it would be  
17 good to request they come in to see  
18 what those guidelines and rule --  
19 potential rule changes were. So you  
20 will be getting that from Debi in the  
21 next week or so, and I would ask that  
22 you just -- as you have time, look at  
23 it. It may change when we come out of

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1 Code 335-2-3-.05 Section 1 through 3,  
2 and that's for a report from the  
3 Rulemaking Committee, Chair Phillips.  
4 MR. PHILLIPS: Thank you,  
5 Mr. Chairman. The Rulemaking  
6 Committee met this morning at 10 a.m.  
7 in this chamber and discussed some of  
8 the comments that we have been working  
9 with, and Mr. Tambling's input to us  
10 on those relative to rulemaking versus  
11 guidelines. We had some additional  
12 comments that were provided to the  
13 Rulemaking Committee on -- on  
14 different topics that we had talked  
15 about over the course of our  
16 deliberations in this last year. It  
17 was not as robust a discussion, as you  
18 can imagine, because there's a lot  
19 more on other -- on all the  
20 Commissioners' minds beyond where we  
21 are on the public comment, considering  
22 we have a pretty effective rule in  
23 place as we stand. However, it

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1 the Committee meeting next week -- or  
2 next meeting date. If it does, then  
3 we will give you sufficient time to  
4 absorb that. If it stays the same, we  
5 may be prepared to make a  
6 recommendation at that point.  
7 I will be happy to answer any  
8 questions from the Commissioners.  
9 CHAIRMAN BROWN: Any questions?  
10 Comments?  
11 (No response was heard.)  
12 MR. PHILLIPS: Thank you,  
13 Mr. Chairman.  
14 CHAIRMAN BROWN: Thank you. Well,  
15 next on the agenda is consideration of  
16 the adoption of proposed amendments to  
17 the Administrative Code 335-1, General  
18 Administration Regulations. We will  
19 call today's main events.  
20 MR. KELLY: Good morning,  
21 Mr. Chairman, Commission.  
22 DR. MARTIN: Good morning.  
23 CHAIRMAN BROWN: Good morning.



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1 MR. PHILLIPS: Good morning.  
2 MR. KELLY: I'm Russell Kelly,  
3 Chief of the Permits and Services  
4 Division. Before you now are the  
5 Division 1 proposed rule revisions.  
6 These revisions include an  
7 across-the-board fee adjustment that  
8 reflects a 20 percent fee increase  
9 with one exception. The comment  
10 period began on September 27th and  
11 continued until November 12th. A  
12 public hearing was held on November  
13 12th here at the ADEM central office.  
14 During the comment period, the  
15 Department received several comments  
16 from several entities. All the  
17 comments were addressed in your  
18 reconciliation statement that's part  
19 of your package.  
20 At this time, we ask for your  
21 favorable consideration of the  
22 proposed rules. We'll answer any  
23 questions you may have.

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1 CHAIRMAN BROWN: I recognize --  
2 MR. PHILLIPS: I might as well kick  
3 it off.  
4 Let me ask a clarifying question  
5 before I start. One, you said a 20  
6 percent across-the-board fee increase  
7 with one exception.  
8 MR. KELLY: Yes, sir.  
9 MR. PHILLIPS: Could you tell us  
10 what that one exception is?  
11 MR. KELLY: Yes, sir. The  
12 exception is the well driller's  
13 license and the fee, which is in one  
14 of our schedules, but it is  
15 established by statute.  
16 MR. PHILLIPS: Okay. So -- so, to  
17 make sure I'm correct, with  
18 the -- with that one exception,  
19 everyone else will pay fees?  
20 MR. KELLY: Yes, sir. The 20  
21 percent is across the board with every  
22 fee that's retrieved into any category  
23 or activity in those schedules with

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1 that lone exception. Again, you would  
2 have to -- we would have to go to that  
3 particular statute and change that  
4 fee.  
5 MR. PHILLIPS: And the Director  
6 advised us, relative to the suspension  
7 of the CAFO fee, what would be  
8 the -- what would happen there? Would  
9 the suspension remain? Would it not  
10 remain?  
11 MR. KELLY: The suspension  
12 currently is in place. It's -- that's  
13 a suspension allowed by the rules.  
14 Those CAFO fees are in the schedules.  
15 They are suspended and were suspended  
16 by a previous director, and that  
17 suspension is in place until it's  
18 revoked.  
19 MR. PHILLIPS: So -- but the simple  
20 answer would be they -- it would --  
21 MR. KELLY: Yes, sir. They are  
22 suspended.  
23 MR. PHILLIPS: So they would not

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1 pay fees? So there's more than one  
2 exception to this 20 percent across  
3 the board?  
4 MR. KELLY: Hey -- well, the CAFO  
5 fees themselves, the 20 percent  
6 is -- is being added to the CAFO fees.  
7 They're --  
8 MR. PHILLIPS: But they're not  
9 going to pay it?  
10 MR. KELLY: They're suspended yes,  
11 sir. At this point.  
12 MR. PHILLIPS: Just trying to get  
13 clarity.  
14 MR. KELLY: Yes, sir. I'm making  
15 sure I'm answering correctly. They  
16 are in the schedule. They are  
17 increasing 20 percent, but they're  
18 suspended from being paid.  
19 DR. MILLER: When do you anticipate  
20 the suspension to be lifted?  
21 MR. PHILLIPS: I would say that's  
22 up to --  
23 MR. KELLY: I defer that to

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1 the -- that's a director's call. The  
2 Director suspends and --  
3 MR. PHILLIPS: Isn't that a rule?  
4 MR. KELLY: Yes, sir. By rule.  
5 MR. PHILLIPS: That's the  
6 Commission's call, isn't it? Right?  
7 CHAIRMAN BROWN: Uh-uh.  
8 MR. KELLY: The rules state that --  
9 MR. PHILLIPS: Gives him the power  
10 to make that suspension or not?  
11 MR. KELLY: Yes, sir.  
12 MR. PHILLIPS: Or not?  
13 MR. KELLY: Yes, sir.  
14 MR. PHILLIPS: Okay. So it's not  
15 by rule other than he has the  
16 discretion?  
17 CHAIRMAN BROWN: By rule.  
18 MR. KELLY: That's correct. That's  
19 correct. That's what the rule states.  
20 MR. PHILLIPS: My point is that the  
21 suspension is not by rule; the option  
22 is by rule --  
23 MR. KELLY: The Director has that

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1 the time that this rule was initiated  
2 that seemed to have come to light to  
3 me. Least of which is the  
4 responsibility of this Commission, and  
5 the accountability of this Commission.  
6 I think very often we sit, and we look  
7 from up here, and we look at the  
8 Director, or we look at the  
9 Legislature, and we go, It's their  
10 fault that we're faced with this. And  
11 to some degree, it is. There are  
12 choices that were made, and there were  
13 answers that were provided that  
14 concern me greatly by legislators, by  
15 the Director, by the regulating  
16 community, by the environmental  
17 groups. There's a lot that has been  
18 said over the course of the last four  
19 months. Today is the day of the  
20 decision. As you say, the prize  
21 event. I'm concerned that we're still  
22 only getting back to the 2014 levels,  
23 even at 20 percent. I'm concerned

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1 authority by rule.  
2 MR. PHILLIPS: You understand the  
3 reason I'm trying to get  
4 classification here?  
5 MR. KELLY: Yes, sir.  
6 MR. PHILLIPS: It's not as simple  
7 as it first sounds. I don't think any  
8 of us feel good about where we sit up  
9 here right now. This funding issue is  
10 real. We understand that. I don't  
11 think anyone here thinks that it's not  
12 real. We don't think it's important,  
13 and I'm looking at you, but this is  
14 directed beyond you.  
15 MR. KELLY: Yeah, I understand.  
16 MR. PHILLIPS: You are in the  
17 unenviable position of getting to  
18 stand there and watch us. So I'm  
19 going to make a few points here for my  
20 fellow Commissioners, as much as for  
21 the rest of you in the room. There  
22 are -- there are quite a few things  
23 that have occurred over the course of

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1 that we -- as much as I've been  
2 told, it's been studied to death. I'm  
3 concerned that we're not thinking  
4 innovatively or creatively on how to  
5 do this in a fair and equitable way,  
6 so that everyone in the State of  
7 Alabama has a stake in this  
8 Department. I'm concerned that the  
9 Commission's responsibility in  
10 participating in this really has been  
11 to sit back and wait to see what's  
12 going to happen and then take a  
13 position one way or the other relative  
14 to a lack of State contribution. I'm  
15 concerned when I hear people say,  
16 Well, the Legislature has decided they  
17 made a mistake, and they're going to  
18 do something about it; and then on the  
19 other hand, I hear others say, But  
20 it's going to be worse than it was  
21 last year, and don't expect that  
22 there's any money. I'm concerned when  
23 I hear people say, Well, draw a line

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1 in the sand and make them do it, show  
2 them what their action does, but,  
3 quite honestly, we are the last line  
4 of defense, and we won't be doing our  
5 job if we don't do something. And  
6 that something is for the citizens of  
7 the State of Alabama, for the  
8 regulated community, for my kids, for  
9 your kids. And I don't believe EPA  
10 cares that much about my kids in the  
11 State of Alabama, about their jobs,  
12 about their environment. Everyone  
13 wants to take an extreme position on:  
14 It's about the environment. And it  
15 is. Absolutely it is, but the  
16 improvements we've made over the last  
17 decades are pretty obvious. The real  
18 issues that we're facing, we're not  
19 dealing with. Nonpoint source  
20 pollution. We keep talking about it,  
21 but we're really not dealing with it.  
22 We try to deal with it from the point  
23 side, when we can point at industry

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1 to do not forget it. I will vote for  
2 this fee increase as much as I have  
3 fought it and told you I will not.  
4 But I will not forget it, and I will  
5 work with the Department in some way,  
6 form, or fashion; the Legislature, in  
7 some way, form, or fashion; the  
8 regulated community and the  
9 environmental community, in some way,  
10 form, or fashion, to make sure we're  
11 not here, because my -- what's going  
12 to keep me up at night is EPA waiting  
13 for another year to tell us whether or  
14 not they think we are doing the right  
15 thing on funding. It would have been  
16 nice if they would have come over and  
17 said, Look, guys, you're faced with a  
18 big issue here. Let's see if we can  
19 resolve this in a way where we can  
20 tell you, Yeah, we're happy and be  
21 done with this. I still feel a little  
22 bit like I'm being extorted. I'm  
23 being asked to do a 20 percent fee

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1 and say, You have to pay for this.  
2 But we forget that's exactly where our  
3 kids get jobs, where our neighbors get  
4 jobs. And to a certain degree, while  
5 I'm not happy with the responses that  
6 I got from the Director or the  
7 Department, I asked for pieces of  
8 information that I think would have  
9 made my decision a little easier that  
10 I didn't get. I got words, I got  
11 discussions, and I feel good about the  
12 words and the discussions, but I don't  
13 think the effort of really showing me  
14 that there was no other option was  
15 apparent. So with that, I tell you  
16 that I think there are some issues  
17 that we still have to deal with. I  
18 was on a conversation  
19 yesterday -- phone call -- where  
20 someone said, Just vote yes, and in a  
21 week or two, it will be forgotten,  
22 nobody will remember it. I will. And  
23 I do not -- and I ask this Commission

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1 increase with a trust that EPA may not  
2 decide that funding is insufficient,  
3 while, at the same time, they wait  
4 another year, and we wait to see what  
5 happens in the Legislature to know  
6 whether or not we return to where we  
7 are today. I heard the word "final"  
8 at the 50 percent fee increase, and  
9 here we sit again, two years, two  
10 short years from that date. We're not  
11 doing our job. The Department and the  
12 Director are not doing their job if we  
13 let this happen again. If we don't  
14 address the issue of funding in a  
15 proactive way, not in a reactive way,  
16 shame on us. That's all I've got.  
17 CHAIRMAN BROWN: Any other  
18 comments?  
19 Commissioner Richardson?  
20 DR. RICHARDSON: Much of what I  
21 have to say will, I think, echo what  
22 Commissioner Phillips had to say, but  
23 I think one of the things that's

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1 important is -- is that I feel that  
2 the members of this Commission and I  
3 have been backed into some untenable  
4 corner with the only solutions being  
5 to raise fees on industries yet again,  
6 or run the apparent near certain risk  
7 of an EPA takeover revoking ADEM's  
8 Clean Water Act authority over  
9 permitting. It's my view that the  
10 Commission has been forced into this  
11 decision making -- essentially --  
12 position that is essentially a  
13 lose-lose proposition. To make this  
14 lose-lose situation even worse,  
15 there's no guarantee, as Commissioner  
16 Phillips has stated, and the Director  
17 concurred, that EPA will not revoke  
18 ADEM's permitting authority even with  
19 the proposed fee increase. The  
20 Alabama Legislature and its leadership  
21 have failed to provide ADEM the  
22 funding necessary to ensure ADEM's  
23 primacy over the Clean Water Act

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1 these will ultimately be passed on to  
2 the consumer.  
3 With the fee increase, however, the  
4 difference is the politicians in  
5 Montgomery will be able to direct the  
6 money elsewhere, primarily to this  
7 Commission. The people of this state  
8 deserve to have a vested financial  
9 interest and stake in ADEM through the  
10 funding from the General Fund; yet,  
11 the people's interest in this  
12 Department is being ignored by the  
13 Legislature. And, now, we have  
14 representative Steve Clouse and  
15 Senator Trip Pittman, the Chairs of  
16 the Legislature's General Fund  
17 committees saying that they expect  
18 further cuts to the budget this  
19 upcoming year and suggest that more  
20 fee increases may be at ADEM's future.  
21 Not only did the Legislature fail to  
22 adequately fund ADEM, but  
23 apparently --

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1 permitting, either by their own  
2 accord, or through the inefficient  
3 lobbying efforts of Alabama businesses  
4 and leadership, people of the State,  
5 and even as Commissioner Phillips  
6 pointed out, even a lack of engagement  
7 by this Commission with the  
8 Legislature. The Alabama Legislature  
9 has the constitutional responsibility  
10 to appropriate money to fund state  
11 agencies, especially agencies like  
12 ADEM with the statutory mandate of  
13 enforcing Federal and state laws. By  
14 refusing to address our state's dire  
15 budget needs, and their resistance to  
16 new taxes or revenue sources, the  
17 politicians of Montgomery have passed  
18 the buck to this Commission rather  
19 than deal with the rising costs. You  
20 can call it a tax increase, or you can  
21 call it a fee increase, but the end  
22 result's the same. Businesses will  
23 pay more to operate in Alabama, and

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1 MR. PHILLIPS: I hate to interrupt.  
2 (A brief recess was taken.)  
3 MR. PHILLIPS: I'm sorry,  
4 Commissioner Richardson, but I was  
5 having difficulty hearing you.  
6 DR. RICHARDSON: Fine, fine. Not  
7 only did the Legislature fail to  
8 adequately fund ADEM, but, apparently,  
9 they now see the Department as a  
10 revenue-generating branch of State  
11 government. The Legislature seized  
12 \$1.2 million dollars in earmarked fees  
13 from ADEM, while only appropriating  
14 280,000 in restricted-use funds, as  
15 we've already heard, a net  
16 confiscation of \$1 million. Now,  
17 Senator Pittman is saying that level  
18 funding for the next budget year is,  
19 quote, Optimistic, end quote, and  
20 suggests that agencies like ADEM could  
21 move towards increased fees. I  
22 propose to you that this is not a  
23 final fee increase. With any increase

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1 in fees, as I think Commissioner  
2 Phillips alluded to, there's nothing  
3 to stop the Legislature from  
4 commandeering even more of ADEM's  
5 budget in the next FY '17 cycle. It's  
6 clear that our State's legislature and  
7 its leadership apparently view ADEM as  
8 a state agency critical only to  
9 environmental concerns; yet, in  
10 reality, it is critical to the  
11 economic as well as the environmental  
12 health of Alabama. Failure to  
13 implement this fee increase followed  
14 by an EPA takeover of the permitting  
15 authority would, unfortunately, show  
16 Alabama's lawmakers the dual  
17 significance that this Department  
18 holds. But I say that decision has  
19 been theirs. I resent being put in  
20 this position. I resent being put in  
21 a position that I'm having to do what  
22 my elected officials have been  
23 constitutionally mandated to do. They

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1 Phillips alluded to. I think  
2 ADEM -- you know, we can't control  
3 what the State Legislature does. All  
4 we can do is control what we do, and  
5 regardless of what the outcome of the  
6 vote is, you know, I think we as ADEM,  
7 as a Commission, as a director, need  
8 to double down our efforts as it  
9 relates to the State Legislature. You  
10 know, we -- it's probably not an  
11 enjoyable process to deal with the  
12 State Legislature, but it's just part  
13 of the job, and I think we can do a  
14 better job at that, in having more  
15 effective lobbying, having better  
16 communication, and, you know, just  
17 plain common sense diplomacy between  
18 the State Legislature and ADEM. And I  
19 think it's just an opportunity for us  
20 to -- we have to work harder at this.  
21 I don't want to be in a situation like  
22 this in another few months.  
23 CHAIRMAN BROWN: Commissioner

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1 have passed the buck to this  
2 Commission, basically asking us to  
3 raise the taxes so that they can say  
4 they didn't. In light of these points  
5 and points that Commissioner Phillips  
6 made, unlike him, I cannot, in good  
7 faith, approve a flat 20 percent  
8 across-the-board fee increase in order  
9 to provide the Department what the  
10 Alabama Legislature is responsible for  
11 providing.  
12 That's all the comments I have at  
13 this time, Mr. Chairman.  
14 CHAIRMAN BROWN: Any other  
15 Commissioners?  
16 DR. MARTIN: I have one.  
17 CHAIRMAN BROWN: I recognize  
18 Commissioner Martin.  
19 DR. MARTIN: Yeah, I don't  
20 appreciate being in the position we  
21 are as well. I guess I would like to  
22 look at things from more of a  
23 proactive state as Commissioner

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1 Miller?  
2 DR. MILLER: You know, this has  
3 been a gut-wrenching time for all of  
4 us, especially when I found out that  
5 the Retirement Systems of Alabama  
6 presented a bill for \$983 million to  
7 be paid, which they received by  
8 statute. But having said that, to me,  
9 if we lessen the chance of EPA  
10 becoming the primary source for  
11 enforcing the rules, this is a  
12 situation that I don't see any way we  
13 cannot attempt to do that, because the  
14 economic livelihood of the State is  
15 really at stake. You know, I think if  
16 you vote for this, you're going to  
17 have to hold your nose and vote for  
18 it. I think that one thing we need to  
19 not overlook though is the fact that  
20 we're at zero funding now for our  
21 general budget. If they take money  
22 from us, it's going to be out of the  
23 trust funds, which won't really affect

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1 the Department operations per se. And  
2 we -- of course, need to lobby  
3 stringently to not let them do that  
4 again. But, again, that's not  
5 something we can control. We can  
6 publicize it, let people know what  
7 they're doing. I think that probably  
8 what they're doing is -- I don't know,  
9 I'm not a lawyer, but it seems to me  
10 to be a little bit shady from a legal  
11 standpoint. But I am going to vote  
12 for the fee increase. I'm going to  
13 hold my nose and do it, and I think  
14 that the regulated community, when  
15 faced with the fact that they're going  
16 to absorb another fee increase and  
17 lessen the likelihood of EPA taking  
18 over, that they're not going to fuss  
19 too much about it. That's just my  
20 opinion.  
21 CHAIRMAN BROWN: Commissioner  
22 Phillips?  
23 MR. PHILLIPS: I don't disagree

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1 with anything Commissioner Miller  
2 said at all, but I do want to clarify  
3 that the Legislature was pretty select  
4 in what they would allow money to be  
5 taken from the last time.  
6 DR. MILLER: Here, here.  
7 MR. PHILLIPS: So some of the trust  
8 funds were plundered as opposed to all  
9 of them. That doesn't mean that we  
10 can't change that, but that the one  
11 that was restricted, in my opinion,  
12 had much more latitude to produce  
13 revenue for the Department. But,  
14 ultimately, I guess, in that case, it  
15 would have ended up in the General  
16 Fund. So I would say this Commission  
17 and this Department need to work  
18 together to do some educating. And  
19 while those trust funds we can say  
20 don't have a direct -- I agree with  
21 you -- a direct impact on Department  
22 operations per se, they still were set  
23 aside to take care of the environment

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1 in the State of Alabama. And every  
2 person that pays those fees, when they  
3 buy tires, when they dump their  
4 garbage, when they buy gas, if they  
5 don't remember, I, at least, remember  
6 that that amount was put there for an  
7 environmental purpose. And, yes, I  
8 know the Legislature has power  
9 to -- in hard times -- to decide to  
10 free that up. But we need to hold  
11 people accountable. The  
12 Department and the Director being held  
13 accountable, we need to hold ourselves  
14 accountable, and we need to make sure  
15 that we educate people when they start  
16 taking money that everybody knows  
17 where it's coming from. I'm done.  
18 CHAIRMAN BROWN: Anybody else?  
19 Yes, Commissioner Laier?  
20 DR. LAIER: Yes, I just would like  
21 to commend my fellow Commissioners  
22 that have made statements today.  
23 These are hard things to do, and I

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1 think the presentation and statements  
2 were hard and clear as to what we have  
3 to do as Commission members,  
4 particularly in the future. My  
5 sentiments were best stated by  
6 Commissioners Miller and Martin. I'm  
7 a little bit less aggressive than our  
8 other Commissioners, but I'm on their  
9 team.  
10 CHAIRMAN BROWN: Thank you. Anyone  
11 else? I have just a couple questions.  
12 First, Mr. Director, did I understand  
13 that you were going -- from your  
14 comments, your report, that you're  
15 going to lift the suspension on CAFO  
16 fees?  
17 MR. LEFLEUR: If the Department has  
18 funds sufficient to operate the  
19 program for some period of time  
20 without lifting the suspension, that  
21 would be the case. When funds run  
22 out, the suspension will be lifted.  
23 CHAIRMAN BROWN: I share all the

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1 concerns of all the other  
2 Commissioners. I think it is absurd  
3 that we are, you know, essentially  
4 raising the fees for the third time in  
5 four years to a point that's more than  
6 doubling what the fees were at that  
7 time. I think it's even more tragic  
8 when we're only raising the fees to  
9 get to a level of 2014 funding which  
10 was criticized by the EPA. I  
11 think -- I don't know how we arrived  
12 at 20 percent to keep us at that level  
13 versus some other level, but it seems  
14 like -- I don't see how we're not  
15 going to be sitting here having the  
16 same discussion next year, given the  
17 current outlook from the Legislature  
18 and the budget. So a couple of things  
19 that I would like to see: I  
20 think -- it is apparent to me that the  
21 Department, the environmental  
22 community, and the regulated community  
23 all believe that the Legislature

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1 CHAIRMAN BROWN: Any comment?  
2 Discussion?  
3 Yes, Mr. -- Commissioner  
4 Richardson, I'm sorry.  
5 DR. RICHARDSON: In light of  
6 everything that's been said and trying  
7 to keep from having to hold my nose as  
8 I vote for this, I would like to move  
9 to amend the resolution as presented.  
10 My amendment would be inserted at the  
11 end of the final paragraph of the  
12 resolution, that is, at the end of the  
13 Now, therefore, paragraph. This  
14 amendment would read: These revisions  
15 to Alabama Administrative Code  
16 335-1-6, as adopted by the Alabama  
17 Environmental Management Commission on  
18 December 18th, 2015, shall expire one  
19 year from the effective date of the  
20 revisions as stated herein, or with  
21 the restoration of \$2 million from the  
22 State of Alabama General Fund,  
23 whichever comes first. Additionally,

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1 should be funding ADEM. I urge you  
2 all to get together and work to get  
3 legislative funding. Second of all, I  
4 would ask that the Rulemaking  
5 Committee get with the Director and  
6 address how we can be more proactive  
7 and more fair in raising the revenue  
8 of the Department by the Department,  
9 where it can be. And with that, I  
10 think it's obvious that there is  
11 little choice in what we have to do  
12 today. I think that is what makes it  
13 so upsetting -- or anguish -- or  
14 angst-inducing for the Commissioners.  
15 And with that, are there any other  
16 comments or questions for the  
17 Department?  
18 (No response was heard.)  
19 CHAIRMAN BROWN: Is there a motion  
20 from the Commission?  
21 DR. MILLER: I move that we proceed  
22 with the 20 percent fee increase.  
23 DR. LAIER: Second.

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1 the Commission charges the Department  
2 to work with the Rulemaking Committee  
3 to develop a long-term funding  
4 strategy providing sufficient  
5 operating funds for the Department.  
6 That ends the amendment.  
7 DR. MARTIN: So you presented that  
8 as a motion?  
9 DR. RICHARDSON: That is a motion  
10 to amend.  
11 DR. MARTIN: I'll second his motion  
12 to amend.  
13 CHAIRMAN BROWN: Any discussion?  
14 MR. PHILLIPS: Can we do that?  
15 DR. LAIER: Yes.  
16 CHAIRMAN BROWN: I was about to ask  
17 that of Counsel.  
18 DR. MARTIN: Counsel?  
19 MR. TAMBLING: I see no reason why  
20 you shouldn't be able to do that if  
21 you want to.  
22 DR. MILLER: Does that require two  
23 separate votes?

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1 DR. MARTIN: Well --  
2 MR. TAMBLING: I think there's a  
3 motion to adopt the rule -- there's a  
4 motion, I guess, to amend -- to make  
5 an amendment to the rule. I think,  
6 under Robert's Rules of Order you're  
7 allowed to do that, aren't you?  
8 MR. PHILLIPS: My question relative  
9 to the amendment is not whether it's  
10 okay under Robert's Rules of Order to  
11 introduce an amendment. My question  
12 is: Does that change the rule to  
13 such --  
14 MR. TAMBLING: Oh, yes. So the  
15 question would be whether the final  
16 rule that is ultimately adopted by the  
17 Commission here today deviates too  
18 sharply from the proposed rule? Is  
19 that -- is that your question?  
20 MR. PHILLIPS: Yeah, I'm trying to  
21 assess the vote.  
22 MR. TAMBLING: And whether --  
23 MR. PHILLIPS: We're in discussion

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1 on the amendment, I assume.  
2 MR. TAMBLING: Yeah, and whether  
3 the affected parties would be deprived  
4 of notice in an opportunity to respond  
5 to the proposed rule. So the legal  
6 test here would be whether the  
7 Agency's action or notice would fairly  
8 apprise interested persons of what the  
9 ultimate rule is. So the rule before  
10 you proposes -- the one that has been  
11 proposed by ADEM -- proposes a  
12 20 percent permanent across-the-board  
13 fee increase that will apply to all  
14 permit applicants; is that correct?  
15 CHAIRMAN BROWN: Correct.  
16 DR. LAIER: Uh-huh.  
17 MR. TAMBLING: The proposed  
18 amendment would impose a 20 percent  
19 fee increase that would, by operation  
20 of law, be sunset after one year?  
21 CHAIRMAN BROWN: Correct.  
22 MR. PHILLIPS: Or --  
23 DR. RICHARDSON: Or with the

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1 restoration --  
2 MR. TAMBLING: Right.  
3 DR. RICHARDSON: -- of \$2 million  
4 from the State.  
5 MR. TAMBLING: So the amendment  
6 would result in a fee increase for  
7 permit applicants during 2016, but not  
8 the permit applicants beyond that  
9 year; is that correct? In my mind,  
10 that constitutes a significant enough  
11 change that you would have to go back  
12 to rulemaking to -- to do that  
13 properly. So if you were to go  
14 forward with that amendment, I would  
15 recommend that the  
16 Commissioners -- the Department to go  
17 back to rulemaking so that everybody  
18 that has a stake in this rule gets  
19 proper notice and an opportunity to  
20 comment. Because I think that is  
21 going to affect certain parties  
22 differently.  
23 MR. PHILLIPS: Does the Department

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1 have any comment relative to this?  
2 MR. LEFLEUR: Well -- well, my  
3 comment would be that the rulemaking  
4 process is time consuming, and it  
5 would require approximately -- or a  
6 minimum of approximately 100 days to  
7 achieve, without a special meeting of  
8 the Commission -- or -- and it may  
9 incur a special meeting of the  
10 Commission. It could  
11 take -- depending on when the starting  
12 gun is fired, if you will. If it's  
13 fired today, it would take  
14 approximately 100 days.  
15 MR. PHILLIPS: Yes.  
16 MR. KELLY: Could I just add one  
17 comment? If these rules are adopted  
18 with the amendment such as that,  
19 there's an expiration on them. We  
20 need to make sure that we have some  
21 other rules in place, or we'll have no  
22 fees. It needs to be carefully  
23 crafted. I know it's not what you



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1 intend --  
2 DR. RICHARDSON: Well, but that  
3 is -- and that is not -- that is not  
4 what the amendment would cause --  
5 MR. KELLY: This is concern.  
6 DR. RICHARDSON: The amendment  
7 sunsets this change only, not all  
8 previous fees or fees set. Only this  
9 change.  
10 DR. MILLER: I'd like to make a  
11 comment that if we do the sunset rule,  
12 that's going to go over like a lead  
13 balloon with EPA's decision. I mean,  
14 they're -- they're going to look at us  
15 like we've lost our mind. I just  
16 think that that's a -- we can always  
17 come back and lower the fees if  
18 that's -- that's what Commissioner  
19 Richardson talks about -- we can  
20 always come back and lower the fees,  
21 but this is not going to sit well with  
22 Atlanta and the EPA if we do that. I  
23 think that's a bad, bad thing to do.

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1 CHAIRMAN BROWN: Agreed.  
2 Mr. Tambling?  
3 MR. TAMBLING: I just had one more  
4 point to make. It would be time  
5 consuming to go back to rulemaking.  
6 It would also be time consuming to  
7 litigate an appeal, probably more time  
8 consuming than it would take to go  
9 back to rulemaking if -- if the  
10 amendment is adopted.  
11 DR. LAIER: I -- I  
12 personally -- I personally agree with  
13 Commissioner Miller. I think his  
14 point of view is actually very  
15 important for us to consider, but I  
16 concur with his thoughts.  
17 CHAIRMAN BROWN: Commissioner  
18 Richardson?  
19 DR. RICHARDSON: I would like to  
20 point out that without a sunset  
21 clause, the 20 percent fee increase  
22 has the potential of being perpetual.  
23 It also, without a sunset clause,

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1 gives no incentive to our Legislature  
2 to do anything. As far as EPA's  
3 position, how does having  
4 this -- we're saying we'll raise fees  
5 20 percent for one year. How is that  
6 any different than our Legislature  
7 saying, We'll give you \$2 million this  
8 year? Next year they may give us  
9 nothing. And EPA is in the same boat  
10 they're in, you know? This is -- this  
11 is, in fact, more definitive than  
12 relying on the legislative route in  
13 EPA's mind. So I think that  
14 Commissioner Miller is off base in his  
15 comment about how EPA's going to look  
16 at this. Because they have to look at  
17 the fluctuations and the -- the  
18 vagaries of legislative allocations of  
19 moneys. And this is -- this is, at  
20 worst, no different than what we've  
21 dealt with in the history of this  
22 Agency.  
23 CHAIRMAN BROWN: I --

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1 DR. RICHARDSON: We're just simply  
2 providing a point to stop this, so  
3 that maybe this Commission, this  
4 Department, and the Legislature can  
5 put their collective heads together  
6 and come up with some viable funding  
7 solutions instead of relying  
8 continuously and ultimately solely on  
9 fee increases.  
10 CHAIRMAN BROWN: I think those  
11 points are well taken, but the bottom  
12 line is we have virtually zero funding  
13 from the Legislature. So going with  
14 the fee increase, it does  
15 provide, presumably, more stable  
16 financing in that it will be there  
17 year and year. It does not mean that  
18 it is necessarily adequate. We are  
19 only raising enough money to put us  
20 back to a level that's already  
21 criticized by EPA, which, I'm not sure  
22 is good enough action by the  
23 Commission, but it's what is before us

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1 at this time. So I believe strongly  
2 that the Commission needs to act. I  
3 don't think we can kick this down the  
4 road another 90 days, 100 days, to  
5 send this back to rulemaking. I think  
6 there are some -- obviously going to  
7 be a lot of pushback from permit  
8 holders or permit applicants or  
9 renewals from people who are going to  
10 have a fee -- see a 20 percent  
11 increase this year if they  
12 happen to have to renew this year.  
13 But, you know, people that, you know,  
14 had to renew last year or the year  
15 after catch a break. I don't know  
16 that that's necessarily fair.  
17 DR. RICHARDSON: Kind of like the  
18 people that renewed last year.  
19 CHAIRMAN BROWN: Right.  
20 DR. RICHARDSON: So that they don't  
21 experience this 20 percent fee  
22 increase --  
23 CHAIRMAN BROWN: But they won't

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1 have to be -- if it's 20 percent going  
2 forward, when it comes back up,  
3 everybody has to pay it, not just the  
4 people who got lucky or unlucky and  
5 renewed in fiscal year 2016.  
6 DR. MILLER: Mr. Chairman, I call  
7 for the question.  
8 CHAIRMAN BROWN: All in favor?  
9 (A partial response was  
10 heard.)  
11 CHAIRMAN BROWN: All opposed?  
12 (A partial response was  
13 heard.)  
14 CHAIRMAN BROWN: Fails. Any  
15 discussion --  
16 MS. THOMAS: Could you review that  
17 vote? Was that on --  
18 CHAIRMAN BROWN: On the amendment.  
19 MS. THOMAS: Okay. Yes, sir.  
20 CHAIRMAN BROWN: That was the  
21 question on the amendment.  
22 DR. MILLER: Right -- oh, I didn't  
23 realize that either. I vote against

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1 the amendment.  
2 MR. TAMBLING: Yeah.  
3 DR. MILLER: Sorry.  
4 DR. MARTIN: Can we re-vote on  
5 that?  
6 CHAIRMAN BROWN: Yeah. For  
7 clarification, we're calling for the  
8 question on Commissioner Miller's -- I  
9 mean, Richardson's -- I'm sorry. I'm  
10 looking at you -- amendment to the  
11 motion.  
12 DR. MILLER: Okay. Now, I  
13 understand.  
14 CHAIRMAN BROWN: All in favor, say,  
15 Aye.  
16 (A partial response was  
17 heard.)  
18 CHAIRMAN BROWN: All opposed --  
19 MS. THOMAS: Could we have a raise  
20 of hands?  
21 CHAIRMAN BROWN: A raise of hands  
22 then.  
23 MS. THOMAS: Thank you.

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1 CHAIRMAN BROWN: If you're in favor  
2 of the amendment. Got it, Debi?  
3 MS. THOMAS: Yes, sir.  
4 CHAIRMAN BROWN: All opposed, raise  
5 of hands. It fails. Now, is there  
6 any additional discussion on the  
7 motion to raise fees across the board,  
8 with the one exception, by 20 percent?  
9 (No response was heard.)  
10 CHAIRMAN BROWN: Therefore, we will  
11 call for the question. All in favor,  
12 raise of hands. All opposed? It  
13 passes.  
14 DR. RICHARDSON: How about  
15 abstentions?  
16 CHAIRMAN BROWN: I'm sorry. Did we  
17 have any abstentions?  
18 (No response was heard.)  
19 MR. KELLY: Thank you,  
20 Mr. Chairman, and Commission.  
21 CHAIRMAN BROWN: Well, Agenda Item  
22 7 is -- at the risk of opening up a  
23 can of worms -- is there any other

1 business anybody wishes to raise?  
 2 DR. LAIER: Not today.  
 3 CHAIRMAN BROWN: The Chair notes  
 4 that future proposed dates for  
 5 Commission meetings in 2016 have been  
 6 circulated. Obviously, the meetings  
 7 have been right here where we meet  
 8 today. The times are 11 a.m. The  
 9 proposed dates are February 19, April  
 10 15, to -- June 17, August 19, October  
 11 21, and December 16, 2007 [verbatim].  
 12 The Chair will entertain a motion to  
 13 adopt those meeting dates and times  
 14 and location.  
 15 DR. MILLER: I believe that's 2016.  
 16 DR. LAIER: Yeah, 2016.  
 17 CHAIRMAN BROWN: Well, I think  
 18 that's what it said.  
 19 DR. RICHARDSON: Move to -- move to  
 20 accept the dates.  
 21 MS. MERRITT: I second.  
 22 CHAIRMAN BROWN: All in favor?  
 23

1 (A unanimous response was  
 2 heard.)  
 3 CHAIRMAN BROWN: Resolution passes.  
 4 Chair will entertain a motion to  
 5 adjourn.  
 6 MR. PHILLIPS: So moved.  
 7 DR. LAIER: Second.  
 8 CHAIRMAN BROWN: All in favor.  
 9 (A unanimous response was  
 10 heard.)  
 11 CHAIRMAN BROWN: We're out of here.  
 12 (Whereupon, the meeting  
 13 concluded at 12:26 p.m.)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23 \* \* \* \* \*

1 REPORTER'S CERTIFICATE  
 2 E OF ALABAMA  
 3 GOMERY COUNTY  
 4 I, Patrick Miller, Alabama Certified  
 5 t Reporter No. 2037, and Commissioner for the  
 6 e of Alabama at Large, hereby certify that on  
 7 ay, December 18th, 2015, I reported the  
 8 IMONY AND PROCEEDINGS in the matter of the  
 9 going cause, and that the pages herein contain  
 10 ue and accurate transcription of said  
 11 eedings.  
 12 I further certify that I am neither kin  
 13 of counsel to the parties to said cause, nor in  
 14 manner interested in the results thereof.  
 15 This 10th day of January, 2016.  
 16  
 17  
 18  
 19  
 20 PATRICK MILLER, ACCR-2037  
 21 Commissioner for the  
 22 State of Alabama at Large  
 23 MY LICENSE EXPIRES: 8/24/16  
 MY COMMISSION EXPIRES: 2/19/19

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2 STATE OF ALABAMA

3 MONTGOMERY COUNTY

4 I, Patrick Miller, Alabama Certified  
5 Court Reporter No. 2037, and Commissioner for the  
6 State of Alabama at Large, hereby certify that on  
7 Friday, December 18th, 2015, I reported the  
8 TESTIMONY AND PROCEEDINGS in the matter of the  
9 foregoing cause, and that the pages herein contain  
10 a true and accurate transcription of said  
11 proceedings.

12 I further certify that I am neither kin  
13 nor of counsel to the parties to said cause, nor in  
14 any manner interested in the results thereof.

15 This 10th day of January, 2016.  
16  
17  
18

19 *Patrick Miller*

20 PATRICK MILLER, ACCR-2037  
21 Commissioner for the  
22 State of Alabama at Large  
23 MY LICENSE EXPIRES: 8/24/16  
MY COMMISSION EXPIRES: 2/19/19

	31:23	<b>adjustment (1)</b> 49:7	<b>Alabama's (4)</b> 12:17;29:20;33:18; 65:16	82:7
<b>\$</b>	<b>acknowledges (1)</b> 3:9	<b>administer (1)</b> 24:10	<b>alike (1)</b> 23:21	<b>appeals (2)</b> 26:14;41:9
<b>\$1 (1)</b> 64:16	<b>across (3)</b> 50:21;52:2;88:7	<b>Administration (1)</b> 48:18	<b>allocate (1)</b> 42:2	<b>appears (2)</b> 14:14;30:9
<b>\$1.2 (2)</b> 36:14;64:12	<b>across-the-board (4)</b> 49:7;50:6;66:8; 78:12	<b>administrative (6)</b> 12:20;22:8;28:23; 45:23;48:17;75:15	<b>allocated (2)</b> 19:3;29:16	<b>applause (1)</b> 32:12
<b>\$2 (6)</b> 22:19;27:8,16;75:21; 79:3;83:7	<b>Act (8)</b> 6:21;26:7,10,14; 42:10;61:8,23;85:2	<b>adopt (3)</b> 3:16;77:3;89:13	<b>allocations (1)</b> 83:18	<b>applicable (2)</b> 20:19;21:18
<b>\$20 (3)</b> 19:8;20:8,10	<b>acted (2)</b> 40:5;43:17	<b>adopted (5)</b> 16:13;75:16;77:16; 80:17;82:10	<b>allow (2)</b> 24:15;70:4	<b>applicants (4)</b> 78:14;79:7,8;85:8
<b>\$280,000 (5)</b> 36:11,23;37:4;38:7; 42:22	<b>action (6)</b> 29:18;31:2,10;57:2; 78:7;84:22	<b>adoption (1)</b> 48:16	<b>allowed (2)</b> 51:13;77:7	<b>applications (1)</b> 18:14
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<p><b>Uh-uh (1)</b> 53:7</p> <p><b>ultimate (1)</b> 78:9</p> <p><b>ultimately (4)</b> 63:1;70:14;77:16; 84:8</p> <p><b>unable (2)</b> 27:10;29:11</p> <p><b>unacceptable (1)</b> 22:4</p> <p><b>unanimous (4)</b> 4:1,22;90:1,9</p> <p><b>unattractive (1)</b> 27:3</p> <p><b>under (8)</b> 6:18;7:6;12:8;26:13; 33:19;38:2;77:6,10</p> <p><b>undesirable (3)</b> 21:9,16;24:21</p> <p><b>undue (1)</b> 17:16</p> <p><b>unenviable (1)</b> 54:17</p> <p><b>unfortunately (1)</b> 65:15</p> <p><b>unknown (2)</b> 15:17;24:19</p> <p><b>unlike (1)</b> 66:6</p> <p><b>unlikely (1)</b> 26:2</p> <p><b>unlucky (1)</b> 86:4</p> <p><b>unregulated (1)</b></p>	<p style="text-align: center;"><b>W</b></p>	<p><b>1 (2)</b> 46:1;49:5</p> <p><b>10 (3)</b> 46:6;47:4,7</p> <p><b>100 (3)</b> 80:6,14;85:4</p> <p><b>11 (1)</b> 89:8</p> <p><b>11:00 (1)</b> 1:14</p> <p><b>11th (1)</b> 41:9</p> <p><b>12:26 (1)</b> 90:13</p> <p><b>12th (2)</b> 49:11,13</p> <p><b>1400 (1)</b> 1:11</p> <p><b>15 (1)</b> 89:10</p> <p><b>16 (5)</b> 3:12,17;6:6;26:12; 89:11</p> <p><b>16th (1)</b> 6:3</p> <p><b>17 (3)</b> 15:23;65:5;89:10</p> <p><b>18 (2)</b> 1:13;3:6</p> <p><b>18th (1)</b> 75:18</p>	<p><b>20 (25)</b> 6:23;13:5;23:12; 29:1;39:16;40:17;49:8; 50:5,20;52:2,5,17; 55:23;59:23;66:7; 73:12;74:22;78:12,18; 82:21;83:5;85:10,21; 86:1;88:8</p> <p><b>2000 (1)</b> 16:5</p> <p><b>2007 (1)</b> 89:11</p> <p><b>2008 (1)</b> 23:9</p> <p><b>2010 (1)</b> 14:11</p> <p><b>2011 (2)</b> 23:10;34:23</p> <p><b>2013 (6)</b> 8:3;23:11;33:4,21; 34:11;35:1</p> <p><b>2014 (7)</b> 12:23;13:2,7;35:2; 40:18;55:22;73:9</p> <p><b>2015 (10)</b> 1:13;3:6,12,17;6:3,6; 10:16;26:12;35:3; 75:18</p> <p><b>2016 (19)</b> 8:5;11:3,7,12,19; 15:2;16:5,11,18;26:11; 29:7;35:4;36:10;41:6; 79:7;86:5;89:5,15,16</p> <p><b>2017 (3)</b> 16:3,10;42:2</p> <p><b>2037 (1)</b> 1:22</p> <p><b>21 (1)</b> 89:11</p> <p><b>27th (1)</b> 49:10</p> <p><b>280,000 (1)</b> 64:14</p>	
				<b>3</b>
	<p><b>wait (3)</b> 56:11;60:3,4</p> <p><b>waiting (1)</b> 59:12</p> <p><b>wants (2)</b></p>	<p><b>working (2)</b> 10:20;46:8</p> <p><b>works (1)</b> 10:23</p> <p><b>worms (1)</b> 88:23</p> <p><b>worse (2)</b></p>		<p><b>3 (2)</b> 5:2;46:1</p> <p><b>30 (2)</b> 19:9,14</p> <p><b>31 (1)</b> 26:11</p> <p><b>31st (1)</b></p>



41:6 <b>335-1 (1)</b> 48:17 <b>335-1-6 (1)</b> 75:16 <b>335-2-3-05 (1)</b> 46:1 <b>36110-2400 (1)</b> 1:12				
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<b>5</b>				
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<b>90 (1)</b> 85:4				

**Part B**

## **Attachment Index**

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**Attachment 2 Order to adopt motion to accept nominations to committees as cited by Chair  
(Agenda Item 2)**

**Attachment 3 Director's Slides  
(Agenda Item 3)**

**Attachment 4 Resolution to adopt amendments to ADEM Administrative Code 335-1,  
General Administration Regulations (NPDES-Related Matter)  
(Agenda Item 6)**

**Attachment 1**

AGENDA\*  
 MEETING OF THE  
 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
 DATE: December 18, 2015  
 TIME: 11:00 a.m.  
 LOCATION: Alabama Department of Environmental Management (ADEM) Building  
 Alabama Room (Main Conference Room)  
 1400 Coliseum Boulevard  
 Montgomery, Alabama 36110-2400

<u>ITEM</u>	<u>PAGE</u>
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6. Consideration of adoption of proposed amendments to ADEM Admin. Code 335-1, General Administration Regulations (NPDES-Related Matter)	2
7. Other business	2
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\* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov), under Environmental Management Commission.

\*\* The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON OCTOBER 16, 2015

2. ELECTIONS

The Commission will elect Chairs and Members of the Commission's Personnel and Rulemaking Committees.

3. REPORT FROM THE ADEM DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. REPORT AND POSSIBLE RECOMMENDATION FROM THE RULEMAKING COMMITTEE ON ADEM ADMIN. CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

The Rulemaking Committee Chair will report on the Committee's re-examination and study of ADEM Admin. Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3). The Committee will also consider presenting to the Commission a recommendation as to whether the Commission should proceed to rulemaking and whether the Commission should consider adopting proposed guidelines to accompany the proposed Rule.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE 335-1, GENERAL ADMINISTRATION REGULATIONS (NPDES-RELATED MATTER)

The Commission will consider proposed amendments to ADEM Admin. Code 335-1, General Administration Regulations for the purpose of amending Chapter 335-1-6 to increase permit fees. The Department held a public hearing on the proposed amendments on November 12, 2015.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSIONS

**Attachment 2**

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

MOTION

Accept nominations to committees as cited by Chair

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 a copy of the list of committees is attached and made a part hereof; and
3. That this action has been taken and this Order shall be deemed rendered effective


as of the date shown below.

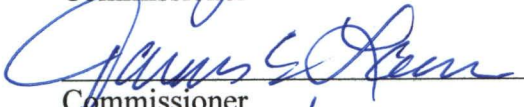



Environmental Management Commission Order  
Page 2

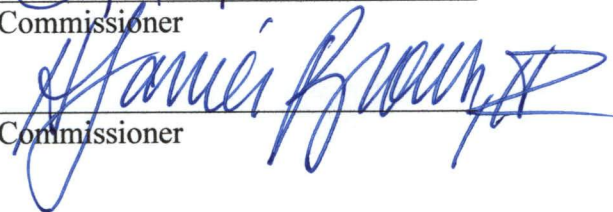
ISSUED this 18th day of December 2015.

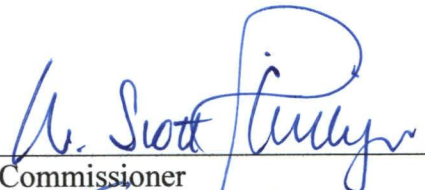
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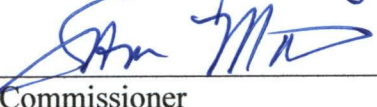
  
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Commissioner

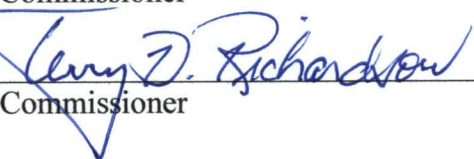
  
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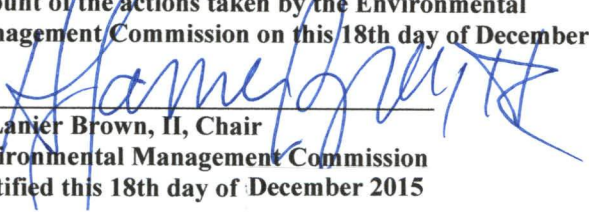
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Commissioner

\_\_\_\_\_  
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 18th day of December 2015.

  
\_\_\_\_\_  
H. Lanier Brown, II, Chair  
Environmental Management Commission  
Certified this 18th day of December 2015

12/18/15

## Alabama Environmental Management Commission 2016 Committees

### Personnel Committee

Chair: Jim Laier

Members: Craig Martin  
Sam Miller

### Rulemaking Committee

Chair: Scott Phillips

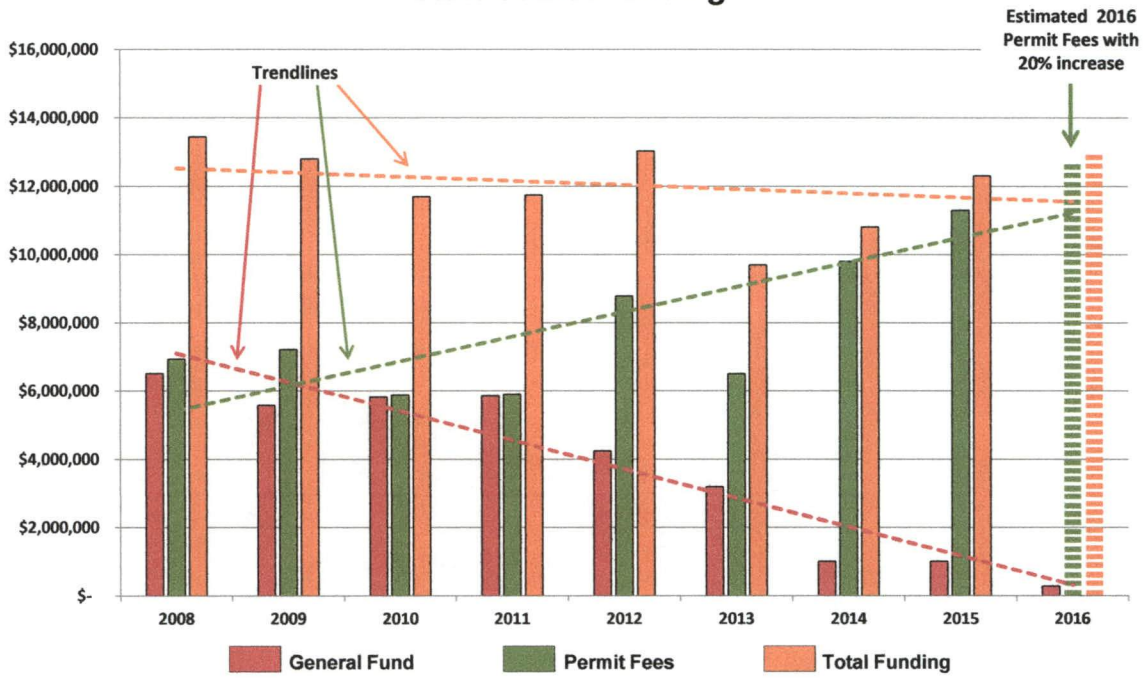
Members: Mary Merritt  
Terry Richardson

**Attachment 3**

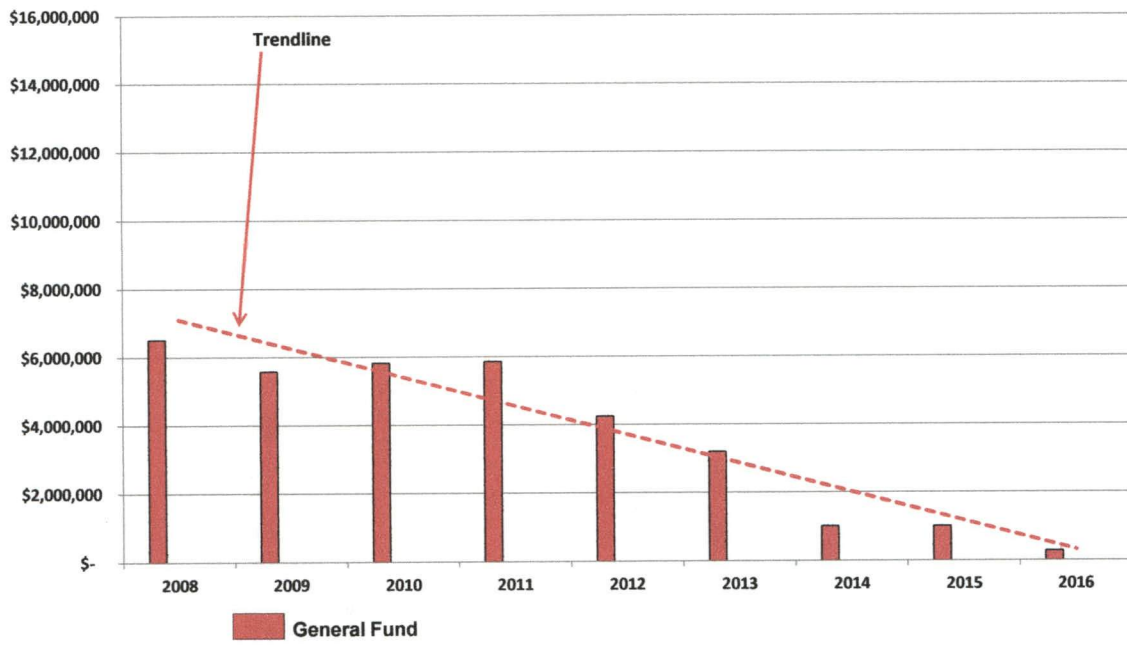
**Comparison of State-sourced Funding per Capita**

<u>\$ Gen Fund / Capita</u>	<u>\$ Fees / Capita</u>	<u>\$ Gen fund + Fees / Capita</u>
67.63 Alaska	136.52 West Virginia	140.90 West Virginia
27.18 Wyoming	92.67 Delaware	116.15 Delaware
23.48 Delaware	83.78 New Hampshire	95.65 New Hampshire
18.95 Connecticut	74.48 Missouri	83.51 Alaska
13.33 North Carolina	65.95 Maryland	75.85 Missouri
12.64 New Jersey	59.27 Hawaii	71.40 Maryland
11.87 New Hampshire	50.70 Arizona	61.18 Hawaii
11.02 Vermont	39.72 Maine	51.79 Arizona
10.99 Rhode Island	39.26 Vermont	50.28 Vermont
9.97 Pennsylvania	31.47 Montana	44.81 Maine
9.63 New York	29.49 Mississippi	39.44 Wyoming
9.11 Idaho	26.37 Arkansas	36.99 Montana
8.47 Massachusetts	28.10 California	33.44 Mississippi
6.96 Wisconsin	27.92 Minnesota	30.82 Iowa
6.79 South Dakota	24.27 Michigan	30.19 Pennsylvania
6.65 Iowa	24.18 Iowa	30.13 Arkansas
5.53 Montana	22.26 Wisconsin	29.36 California
5.45 Maryland	21.12 Louisiana	29.24 New York
5.13 North Dakota	20.88 Washington	29.21 Wisconsin
5.10 Maine	20.22 Pennsylvania	28.88 Minnesota
4.74 Kentucky	19.61 New York	27.28 Michigan
4.38 West Virginia	19.58 Nevada	25.74 North Carolina
4.30 Washington	18.72 Virginia	25.69 Connecticut
4.05 Utah	18.69 Oregon	25.18 Washington
3.95 Mississippi	17.95 Nebraska	22.57 Virginia
3.85 Virginia	17.41 Illinois	22.47 Oregon
3.78 Oregon	17.20 Florida	21.17 Louisiana
3.76 Indiana	15.88 Alaska	21.09 Nebraska
3.23 Georgia	15.52 Tennessee	20.21 Kentucky
3.14 Tennessee	15.47 Kentucky	19.58 Nevada
3.14 Nebraska	14.51 Kansas	19.29 Florida
3.06 South Carolina	13.31 Indiana	18.66 Tennessee
3.01 Michigan	12.41 North Carolina	17.99 Rhode Island
2.20 Oklahoma	12.26 Wyoming	17.64 South Dakota
2.09 Florida	11.86 Ohio	17.41 Illinois
1.91 Hawaii	11.14 Texas	17.07 Indiana
1.75 Arkansas	10.91 Oklahoma	16.52 Idaho
1.37 Missouri	10.85 South Dakota	15.78 Kansas
1.27 Kansas	8.46 South Carolina	15.06 New Jersey
1.26 California	<b>8.10 Alabama</b>	13.11 Oklahoma
1.15 Ohio	7.77 Utah	13.01 Ohio
1.10 Arizona	7.42 Idaho	12.50 Massachusetts
0.96 Minnesota	7.15 Colorado	11.82 Utah
<b>0.62 Alabama</b>	7.00 Rhode Island	11.51 South Carolina
0.50 Colorado	6.74 Connecticut	11.38 Texas
0.24 Texas	5.89 Georgia	9.89 North Dakota
0.06 Louisiana	4.76 North Dakota	9.11 Georgia
0.00 Nevada	4.02 Massachusetts	<b>8.72 Alabama</b>
0.00 Illinois	2.41 New Jersey	7.64 Colorado

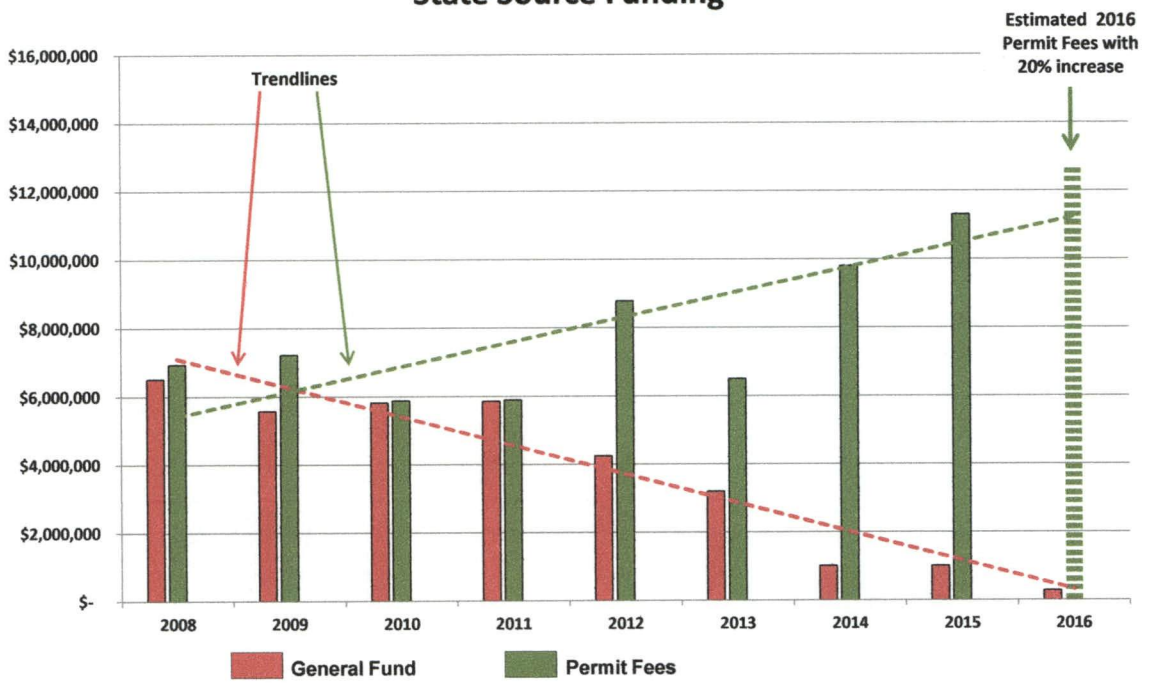
### State Source Funding



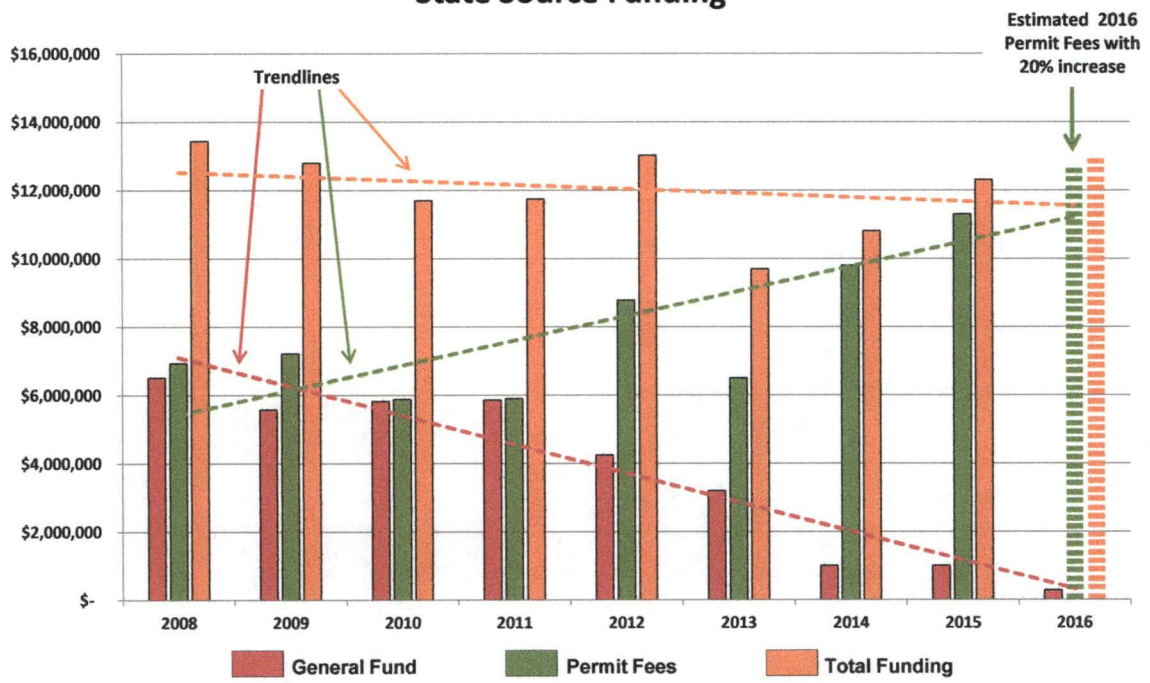
### State Source Funding



### State Source Funding



### State Source Funding





**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 335-1 of the Department's General Administration Division Program Rules 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.



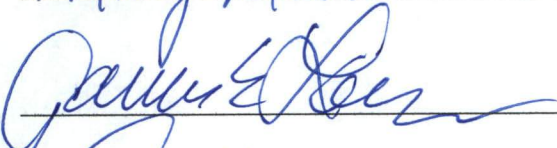

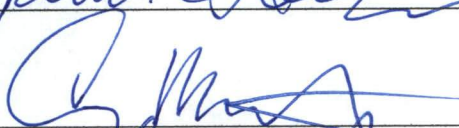
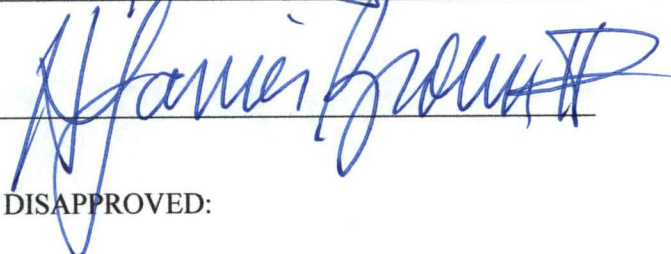
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [335-1-6-.04/Permit Application Fees (Amend); 335-1-6-.07/Payment of Fees] of the Department's General Administration Division Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-1 – General Administration Division Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 18th day of  
December 2015.

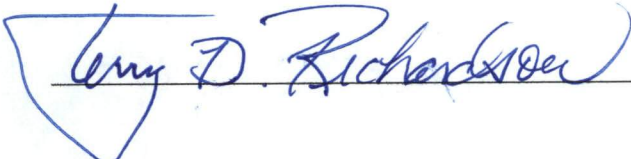
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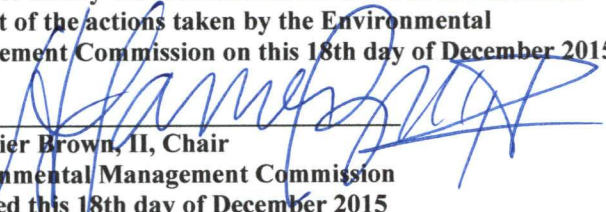
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_____	_____
_____	_____
_____	_____
_____	_____

ABSTAINED:

  
\_\_\_\_\_

This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 18th day of December 2015.

  
\_\_\_\_\_  
H. Lanier Brown, II, Chair  
Environmental Management Commission  
Certified this 18th day of December 2015