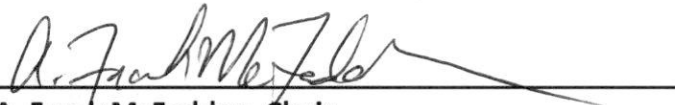


02/12/2024

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 8, 2023**

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 8, 2023.

A handwritten signature in black ink, appearing to read "A. Frank McFadden", is written over a solid horizontal line.

A. Frank McFadden, Chair

Alabama Environmental Management Commission

Certified this 9th day of February 2024.

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 8, 2023**

**Convened: 11:00 a.m.
Adjourned: 11:43 a.m.**

Part A

**Transcript
Word Index**

Part B

**Attachment Index
Attachment 1
Attachment 2
Attachment 3
Attachment 4
Attachment 5
Attachment 6**

Part A

Page 1

MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

LOCATION: ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT (ADEM) BUILDING
ALABAMA ROOM
1400 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110-2400
DATE: FRIDAY, DECEMBER 8, 2023
TIME: 11:00 A.M.

REPORTED BY: JEANA S. BOGGS, CCR
Commissioner for the
State of Alabama at Large

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1 APPEARANCES
2 COMMISSION MEMBERS:
3 A. FRANK MCFADDEN, P.E., CHAIR
4 KEVIN MCKINSTRY, VICE CHAIR
5 JOHN (JAY) H. MASINGILL, III
6 RUBY L. PERRY, D.V.M.
7 H. LANIER BROWN, II, ESQ.
8 J. PATRICK TUCKER, M.D.
9 MARY J. MERRITT
10
11 ALSO PRESENT:
12 LINDSAY BARTON, ESQ., EMC LEGAL COUNSEL
13 LANCE LEFLEUR, ADEM DIRECTOR
14 DEBI THOMAS, EMC EXECUTIVE ASSISTANT
15
16
17
18
19
20
21
22
23

Page 3

1 MR. MCFADDEN: Welcome, everyone.
2 Let's call the meeting to order of
3 December 8th, 2023, meeting of the
4 Environmental Management Commission. And I
5 do acknowledge we do have a quorum.
6 And so, we will start with Item
7 Number 1 on the agenda, consideration of
8 the minutes we have on October 13th, 2023.
9 Chair notes agenda, Item 1, is
10 consideration of the minutes of the
11 Commission meeting held on that date.
12 And I will entertain a motion
13 regarding those minutes.
14 MR. MASINGILL: I move that we
15 adopt the minutes.
16 MS. MERRITT: Second.
17 MR. MCFADDEN: All right. I have
18 a second, a motion and a second. Any
19 discussion on anything about that?
20 (No response).
21 MR. MCFADDEN: All right. Call
22 for a question. All in favor raise your
23 hand.

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1 (Commission Members raising
2 hands).
3 MR. MCFADDEN: Any opposed?
4 (No response).
5 MR. MCFADDEN: It carries.
6 All right. On to Item Number 2,
7 Report from the Director. Lance?
8 MR. LEFLEUR: Good morning and
9 welcome to all of you who are here at the
10 second meeting of the Alabama Environmental
11 Management Commission for FY 2024.
12 Before beginning my report, I am
13 pleased to welcome Dr. J. Patrick Tucker
14 as the newly appointed member of the
15 Alabama Environmental Management
16 Commission serving in the physician
17 position -- physician position. Welcome,
18 Dr. Tucker.
19 DR. TUCKER: Thank you very much.
20 I am honored to follow in Dr. Miller's
21 footsteps and to serve with this
22 distinguished group of Commissioners.
23 MR. LEFLEUR: Okay. Welcome

Page 5

1 aboard.

2 Today's report will be an update

3 on several internal ADEM initiatives

4 involving our FY 2025 General Fund Budget,

5 the Mobile Field Office, our CCR program

6 approval, the Ozone Transport State

7 Implementation Plan, and the 5-year

8 Unified Strategic Plan.

9 I will also introduce you to

10 several of our personnel who have achieved

11 a milestone in their professional

12 development.

13 We begin with the Department's

14 FY 2025 budget. ADEM has three sources of

15 funding: Fees from regulated industries,

16 54% of our budget. The regulated industry

17 fee schedule has been the same since 2016.

18 Federal funding through EPA, 40% of our

19 budget. Federal funding has been roughly

20 the same since 2010. And the Alabama

21 general fund, 6% of our budget. The

22 Department has received a general fund

23 appropriation of \$4 million per year for

Page 7

1 source to supplement the funding from EPA

2 and existing permit fees.

3 In the past, where allowable,

4 the Department has reallocated some of the

5 funding from the Air and Land programs to

6 the Water program to help keep it afloat,

7 but inflation driven cost increases for

8 Air and Land in FY 2025 will make that no

9 longer practical.

10 In FY 2025, there will be at

11 least a \$6 million shortfall in the Water

12 program. The Water program funding

13 shortfall raises several concerns for the

14 regulated community and others.

15 Potentially unstable or reduced

16 ability to provide acceptable water

17 regulatory oversight is a concern.

18 That leads to the prospect of an

19 increased presence of less responsive

20 federal involvement through EPA if the

21 Department is unable to meet Water program

22 performance standards.

23 A funding shortfall also

Page 6

1 four years, and \$5 million for FY 2024.

2 Aside from the \$1 million

3 increase general fund appropriation for FY

4 2024 to partially cover the state

5 government-wide cost-of-living salary

6 adjustments, the Department has had no

7 increased funding for five years.

8 Our total annual operating

9 budget is approximately \$65 million. And

10 in 2020, the year of the last material

11 funding increase, ADEM funding was ranked

12 last in the nation on a per capita basis.

13 Applying inflation for the last five years

14 would result in an additional \$14 million

15 to maintain constant purchasing power.

16 The \$14 million does not include any

17 funding for increased mandates for such

18 things as PFAS regulation.

19 For FY 2025, the Department as a

20 whole has a funding shortfall, and it is

21 most pronounced in the Water program

22 because, unlike the Land and Air programs,

23 water does not have a statutory funding

Page 8

1 increases the possibility of increased

2 capital and operating costs to industry

3 for tighter water permits -- permit limits

4 due to potentially declining water

5 quality.

6 Several options are under

7 consideration to address the Water program

8 funding shortfall: One is a modest

9 monthly fee on drinking water utilities

10 based on the number of customers. This

11 option which would require legislation was

12 proposed in 2023 -- in the 2023

13 Legislative session but failed to garner

14 the necessary support to be successful.

15 A second option is to increase

16 water permit fees. To achieve the \$6

17 million increase needed by the Water

18 program, it would require the Commission

19 to increase water permit fees by 70% to

20 80%.

21 The final option being

22 considered is to seek a \$6 million

23 increase in the Department's FY 2025

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1 General Fund appropriation. Various
 2 groups, including those representing local
 3 governments, business, and industry are
 4 supporting this option.
 5 We are still early in the
 6 process, and I will keep the Commission
 7 informed of our progress.
 8 Now to our Mobile Field Office
 9 and Lab. As you're well aware, the
 10 existing physical plant facilities in
 11 Mobile have been in deplorable condition
 12 for many years.
 13 In 2010, shortly after the
 14 Deepwater Horizon oil spill we began a
 15 concerted effort to replace the two
 16 facilities, one owned and one leased,
 17 housing the Mobile Field Office, Lab and
 18 Coastal program with a single modern
 19 facility. After more than a dozen years
 20 of planning, obtaining funding, an
 21 extensive design process and construction,
 22 we are now down to the final construction
 23 punch list items.

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1 remind one of the natural movements of
 2 sun, clouds, and rain in the Hydrologic
 3 Cycle on display in the region of the
 4 state that will be served by the facility.
 5 The design incorporates elements
 6 such as Rubber Modified Asphalt, using
 7 scrap tire material in paved areas, storm
 8 water infiltration, and other features
 9 that help us practice what we preach in
 10 environmental responsibility.
 11 A formal ribbon cutting is
 12 scheduled for January 2024. More on that
 13 in the next few weeks.
 14 Okay. I have a brief drone
 15 video of the exterior of the building to
 16 play for you now, and I will see if I can
 17 keep up with it. This is coming in from
 18 the western point. It's -- The roadway is
 19 our fronting road coming into the
 20 facility.
 21 This is a closeup of the front
 22 of the building with a curved wall, moving
 23 down the north side of the building.

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1 Substantial completion, which
 2 will allow occupancy, is scheduled to
 3 occur by year-end.
 4 Furniture and most of the
 5 equipment are in place and move-in has
 6 begun.
 7 The closing of the two existing
 8 offices will occur when the move-in is
 9 complete.
 10 A bidding process will begin
 11 shortly for the sale of the old owned
 12 location on Perimeter Road in Mobile.
 13 The building is designed to be
 14 functional with little unused space for
 15 such things as atriums. Although the
 16 building is highly functional, it is
 17 designed to make abundant use of natural
 18 light and to be an aesthetically pleasing
 19 contemporary institutional building that
 20 will stand the test of time.
 21 The distinctive curve fronting
 22 walls highlight changing shadows
 23 throughout the day and the seasons to

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1 Those windows are in the offices on the
 2 north side of the building. This is a
 3 shot from distance on the eastern side.
 4 You can see the boat shed in the back.
 5 That's Mobile Bay in the background. And
 6 coming forward, the boat shed, and we see
 7 the building from the Broad Street side
 8 with the curved front there.
 9 Coming again down the north side
 10 of the offices, you see the light coming
 11 into the offices. We have the electric
 12 vehicle charging stations.
 13 Here are some folks doing some
 14 last-minute work on the boat shed and an
 15 overhead view where you see the parking
 16 area on the right and the pavement that
 17 goes all the way around coming to the
 18 front of the building.
 19 This is on the south side. The
 20 curved smaller wall there is the beginning
 21 of the lab, and the other windows show the
 22 southern offices in the building on the
 23 other side.

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1 And once again, we finish up
 2 here with the signage in the front, and
 3 you can see it reflects the same curvature
 4 and design of the front of the building.
 5 And so, it's a quick drone view.
 6 I also have several slides
 7 showing the interior of the building.
 8 This first one shows the reception area
 9 with the front door on the right. You
 10 can't quite see the front door in this
 11 particular slide. As you see, final
 12 cleanup is under way. You see the signage
 13 for the dedication of the building.
 14 This next slide is a view of one
 15 of the two interior hallways. The north
 16 side windowed offices are on the left, and
 17 the interior offices are on the right. A
 18 similar hallway is on the south side of
 19 the building.
 20 Finally, here is a view of the
 21 Lab benches. The vent hoods and various
 22 work stations for instruments such as ion
 23 and mercury analyzers, ICP Mass

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1 State rule was at least as protective as
 2 the Federal rule so the State could be
 3 delegated the sole authority to oversee
 4 the regulation of CCR units in Alabama.
 5 In December of 2021, the
 6 Department submitted the final application
 7 to EPA for approval of the ADEM program to
 8 close CCR units in Alabama. EPA was
 9 required to act on the application within
 10 180 days. EPA did not act on the
 11 application; and after more than 400 days,
 12 the Department petitioned the DC Circuit
 13 of the United States Court of Appeals to
 14 compel EPA to act.
 15 In September of this year, more
 16 than 600 days after the application was
 17 submitted, EPA proposed to deny the
 18 application based not on the ADEM CCR
 19 rule, but on the claim that State permits
 20 issued for the closure of CCR units did
 21 not comport with EPA's new interpretation
 22 of the Federal and State rules.
 23 The Department and numerous

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1 Spectrometer, PC Titration, and
 2 Spectrophotometer are out of view to the
 3 right foreground. Final punch list items
 4 and cleanup are underway here, also.
 5 Moving on now to two legal
 6 matters involving the Department and EPA.
 7 In 2015, the EPA federal rule regarding
 8 the regulation of Coal Combustion
 9 Residuals (CCR), sometimes called "coal
 10 ash," impoundments became final.
 11 In 2018, the Alabama
 12 Environmental Management Commission
 13 adopted a State rule for the -- to
 14 regulate CCR units in Alabama. The State
 15 rule was patterned after the Federal rule,
 16 with the additional provision not in the
 17 Federal rule for the issuance of permits
 18 for the operation and closure of CCR
 19 units, which are the subject of the
 20 Federal and State rules.
 21 In cooperation with the EPA
 22 during the next two years, the initial
 23 State rule was updated to affirm that the

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1 other parties strongly disagree with the
 2 EPA's novel new interpretations that are
 3 inconsistent with longstanding and widely
 4 accepted practice.
 5 The essence of the objections to
 6 the new interpretations include: EPA
 7 added the approval of permits as a
 8 requirement for program approval, which is
 9 not part of the Federal rule.
 10 EPA has no standards for CCR
 11 permits and has no CCR permitting program
 12 of its own to compare to State permits.
 13 EPA had ample opportunity to
 14 raise its alleged concerns during
 15 extensive communication with ADEM and
 16 during the comment period for each permit,
 17 but it did not do so.
 18 EPA has created more stringent
 19 requirements for managing CCR than for
 20 managing hazardous waste, even though EPA
 21 has determined CCR is not hazardous.
 22 EPA arbitrarily changed the
 23 definition of free liquids and

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1 infiltration when closing CCR units from
 2 the longstanding definitions used in the
 3 Federal and State CRR rules and in all
 4 other areas of EPA regulation.
 5 EPA did not go through the
 6 required rulemaking process to authorize
 7 these and other new interpretations
 8 applied to the ADEM CCR permits.
 9 Additionally, EPA did not
 10 consider the environmental, economic,
 11 practical and potentially adverse impacts
 12 on disadvantaged communities of requiring
 13 the only other method to address CCR
 14 impoundment closure.
 15 EPA told the DC Circuit Court
 16 that it planned to act by December 31,
 17 2023. It has not acted to finally deny or
 18 approve the ADEM CCR program as of today.
 19 If EPA finalizes the proposed denial, the
 20 Department plans to appeal that decision.
 21 A second matter where the
 22 Department is in conflict with EPA is the
 23 EPA denial of the Alabama Ozone Transport

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1 State Implementation plan, or SIP. Ozone
 2 is created when combustion from sources
 3 such as gasoline powered automobiles and
 4 electric generating utilities create
 5 oxides of nitrogen which are precursors of
 6 ozone. Ozone can be harmful to
 7 individuals, especially those with
 8 respiratory problems. EPA's "Good
 9 Neighbor Plan," as it is known, requires
 10 states to further control ozone precursors
 11 emitted in their state if ozone generated
 12 in the state has a significant impact on a
 13 downwind state.
 14 Based on EPA modeling in 2015,
 15 Alabama was determined not to have
 16 significant impact on any downwind state.
 17 ADEM, therefore, submitted a State
 18 Implementation Plan that did not include
 19 any additional restrictions on existing
 20 emissions on Nitrogen oxides in Alabama.
 21 EPA proposed approval of the
 22 Alabama Ozone Transport SIP, but later EPA
 23 delayed the formal approval citing the

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1 COVID-19 pandemic. In the spring of 2022
 2 EPA denied Alabama and 18 other State
 3 Implementation Plans. The Department,
 4 like other states, is appealing that
 5 denial.
 6 The reasons for ADEM's appeal
 7 include: In 2020, EPA revised its ozone
 8 transport modeling without consulting the
 9 states or allowing the states to revise
 10 their State Implementation Plans. EPA
 11 also, without going through necessary
 12 rulemaking, arbitrarily reduced the
 13 threshold of what it considers significant
 14 impact which led to the supposed
 15 significant impacts from Alabama ozone
 16 transport to the Houston/Galveston, Texas,
 17 area.
 18 As a result, the 19 states
 19 including Alabama had their Ozone
 20 Transport State Implementation Plans
 21 denied, which meant those states would be
 22 required to operate under a Federal
 23 Implementation Plan over which the states

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1 would have no say.
 2 The status of the appeal of
 3 EPA's action is being challenged in the
 4 4th, 5th, 6th, 7th, 8th and DC Circuits of
 5 the U.S. Court of Appeals in addition to
 6 our appeal in the 11th Circuit Court.
 7 As of today, the 11th Circuit
 8 has ruled that the appeal filed by
 9 electric generating utilities in Alabama
 10 can be consolidated with the ADEM appeal
 11 in a single action, and the Federal
 12 Implementation Plan is stayed.
 13 The Court has not yet acted on
 14 maintaining venue in the 11th circuit nor
 15 on the merits of the case.
 16 The Department has never before
 17 filed suit against EPA. These two legal
 18 actions are both based on EPA changing
 19 rules and interpretations without going
 20 through the required notice, comment and,
 21 if necessary, appeal process. The Alabama
 22 Attorney General has concurred in both
 23 actions. Final resolution may require

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1 many months.
 2 At the October Commission
 3 meeting, the Unified Strategic Plan Ad Hoc
 4 Committee presented a proposed 2024 update
 5 to the 2019 5-year Unified Strategic Plan.
 6 Each member of the Commission received a
 7 copy of the proposed updated plan with
 8 changes highlighted in red. Commissioners
 9 were asked to suggest any additional
 10 changes they wished to make. The copy in
 11 your folders is the final version that
 12 incorporates all changes from the
 13 Department and members of the Commission.
 14 Later in the agenda, the
 15 Commission will vote on whether to approve
 16 the 2024 update to the 5-year Unified
 17 Strategic Plan. If the Commission
 18 approves the new plan, it will be posted
 19 on the ADEM website and made available to
 20 any interested party.
 21 Several objectives in the
 22 Unified Strategic Plan and the
 23 Department's Annual Operating Plans

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1 Operations Division. She's not with us
 2 today.
 3 These are the folks completing
 4 the CPM I Program. Please keep standing.
 5 Keep standing.
 6 And those completing the CPM II
 7 Program: Beth Bielen. I don't see Beth.
 8 Okay. Mishka Cornaro, there she
 9 is. Mishka, in our Field Operation
 10 Division in the Laboratory.
 11 James French, not here today,
 12 but Permit and Services Division.
 13 And Crystal Thompson in Permits
 14 and Services Division.
 15 Y'all, thank you, and
 16 congratulations on your work.
 17 (Applause).
 18 MR. LEFLEUR: Y'all are our
 19 leaders of tomorrow, and it's important what
 20 you have been doing.
 21 I'm also pleased to introduce
 22 you to Caitin Washington in our Water
 23 Division, who through extensive formal

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1 relating to encouraging our personnel to
 2 undertake professional development and,
 3 when they reach significant milestones, to
 4 recognize their achievements. I have the
 5 pleasure of introducing you to nine
 6 individuals who are helping to achieve the
 7 objective of professional development.
 8 Completing the Certified Public
 9 Manager I (CPM I) and the Advanced
 10 Certified Public Manager II (CPM II)
 11 programs prepare our professional staff to
 12 become future leaders. And when I call
 13 your name, please stand and remain
 14 standing. I don't know if everybody is in
 15 the room today.
 16 Crystal Collins in our Land
 17 Division. Crystal.
 18 Devon Jenkins in our Water
 19 Division. Devon.
 20 William McClimans in our Water
 21 Division.
 22 Kristin Stram -- Christina
 23 Stram -- I'm sorry -- in our Field

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1 education, on-job-experience, and
 2 rigorous, rigorous testing has earned the
 3 highly prized accreditation of
 4 Professional Engineer. Caitin, please
 5 stand and accept your well-earned
 6 congratulations.
 7 (Applause).
 8 MR. LEFLEUR: Finally, I am
 9 pleased to introduce you to Todd Carter, our
 10 new General Counsel.
 11 MR. CARTER: Good morning.
 12 MR. LEFLEUR: We have seven
 13 attorneys in our Office of General Counsel.
 14 On previous occasions, you have seen Todd at
 15 Commission meetings from time to time. Our
 16 previous General Counsel has moved over to
 17 the Attorney General's Office. So, Todd has
 18 been moved up into our management position
 19 and General Counsel and is our lead counsel.
 20 He has extensive experience in the legal
 21 area. He's been with the Department for 15
 22 years, right?
 23 MR. CARTER: That is correct.

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1 MR. LEFLEUR: Okay. And the
 2 transition has been virtually seamless, so
 3 far. Welcome aboard.
 4 MR. CARTER: Thank you.
 5 (Applause).
 6 MR. LEFLEUR: Well, that concludes
 7 today's report. If there are any questions
 8 I'll be pleased to address them.
 9 MR. MCFADDEN: I will just make
 10 one comment about modeling. This comes from
 11 a guy named Steve Coons. So, I plagiarized
 12 this; he's a modeler. Talking about air
 13 model, Ron and Jeff, water models even to,
 14 all models are wrong, but some are useful.
 15 So, it's --
 16 MR. LEFLEUR: They make
 17 assumptions.
 18 MR. MCFADDEN: They make
 19 assumptions. You have to. But we have got
 20 some good folks here. I can attest to that,
 21 that handle that part of it.
 22 MR. LEFLEUR: I agree with that.
 23 MR. MCFADDEN: Okay. I will hold

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1 regarding adoption of the recommendations
 2 of the Strategic Plan by the Ad Hoc
 3 Committee and approval of such.
 4 MR. BROWN: Move to adopt.
 5 DR. TUCKER: Second.
 6 MR. MCFADDEN: Okay.
 7 MS. THOMAS: Chair, do you want to
 8 clarify that doing approval of the plan in
 9 your motion?
 10 MR. MCFADDEN: Yes. So, the
 11 motion needs to read where we have stated
 12 approval.
 13 MR. BROWN: Move to approve the
 14 Unified Strategic Plan, the 2024.
 15 MR. MCFADDEN: Lindsay, Debi, will
 16 that handle that?
 17 (Affirmative response).
 18 MR. MCFADDEN: Okay. I have got
 19 to get the wording right. So, we know the
 20 intent is there.
 21 Okay. We have a motion and a
 22 second. Any discussion on this?
 23 (No response).

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1 a report or more comments until the end from
 2 item -- agenda Item Number 3. A report from
 3 the Commission Chair, so I will have a few
 4 things to say at the very end.
 5 Item -- Agenda Item 4 is
 6 consideration of adoption of the Draft
 7 2024 AEMC-ADEM Unified Strategic Plan.
 8 And the Chair states that the Agenda Item
 9 4 should have said: Consideration of
 10 approval of the Draft 2024 AEMC-ADEM
 11 Unified Strategic Plan. So, if you have
 12 an early version of the agenda, it
 13 probably is going to say that, but that's
 14 been corrected.
 15 So, the Chair notes that Agenda
 16 Item 4 is consideration of the
 17 recommendation of the Strategic Planing Ad
 18 Hoc Committee and approval of the Draft
 19 2024 AEMC-ADEM Unified Strategic Plan.
 20 And I note that the Committee recommends
 21 that the Commission approve the Strategic
 22 Plan.
 23 So, I will entertain a motion

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1 MR. MCFADDEN: Hearing none, I
 2 will call for the question. All those in
 3 favor raise your hand.
 4 (Commission Members raising
 5 hands).
 6 MR. MCFADDEN: Any opposed.
 7 (No response).
 8 MR. MCFADDEN: It passes
 9 unanimously.
 10 While we are getting that
 11 signed, I hate to hear our Water Division
 12 is so underfunded. So, I -- Jeff maybe
 13 y'all can apply for a BIL Grant or some --
 14 or for money maybe. Would that work,
 15 Lance? Hopefully we get that straight in
 16 years to come.
 17 Okay. On to Agenda Item 5,
 18 Consideration of proposed amendments to
 19 ADEM Administrative Code Division 335-3,
 20 Air Pollution Control Program Regulations.
 21 I note that the agenda Item 5 is
 22 consideration of these amendments, the Air
 23 Pollution Control Program, and call for

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1 the Department's comments and such. Ron?
 2 MR. GORE: Good morning,
 3 Mr. Chair, ladies and Gentlemen. I am Ron
 4 Gore with the Department's Air Division.
 5 I'm here to ask you to make some changes to
 6 the Air Regulations.
 7 The proposed changes lie in four
 8 broad areas. One is kind of like a
 9 catch-up to a bunch of EPA rules that we
 10 adopt by reference and enforce on behalf
 11 of EPA like most of the programs do.
 12 The second is some routine
 13 numbering, typographical error changes.
 14 Third is an elimination of
 15 startup, shutdown, and malfunction from
 16 the Air rules as being possible to be
 17 exempted from regulation. We are
 18 proposing to take that off the books at
 19 the insistence of EPA.
 20 And last, to make some changes
 21 to something called Transportation
 22 Conformity, which means that state, local,
 23 and county officials and federal officials

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1 have to collaborate in making
 2 transportation plans for Jefferson County
 3 building new highway lanes, new
 4 overpasses, and so on.
 5 So, we had a public comment
 6 period that lasted from August the 24th
 7 through the -- through October the 13th.
 8 There were no verbal comments at the
 9 public hearing. We received comments from
 10 two parties in writing afterwards. Those
 11 comments have been reconciled in your
 12 record. And given all that, pending any
 13 questions, I ask that you adopt these
 14 rules on behalf of the Department.
 15 MR. MCFADDEN: Okay. Okay. Do I
 16 hear a motion to adopt the rules for the Air
 17 Pollution Control Program regs?
 18 MR. MASINGILL: I move to adopt.
 19 DR. PERRY: Second.
 20 MR. MCFADDEN: All right. A
 21 motion and a second. Any discussion?
 22 (No response).
 23 MR. MCFADDEN: Hearing none, I

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1 call for the question. All in favor raise
 2 your hand.
 3 (Commission Members raising
 4 hands).
 5 MR. MCFADDEN: All opposed?
 6 (No response).
 7 MR. MCFADDEN: It passes
 8 unanimously.
 9 MR. GORE: Thank you.
 10 MR. MCFADDEN: Thank you, Ron.
 11 We should have some Christmas
 12 music playing in the background while we
 13 are doing this.
 14 Okay. Moving on to Agenda Item
 15 6, Consideration of proposed amendments to
 16 ADEM Administrative Code Division 335-5,
 17 Uniform Environmental Covenants Program.
 18 And have comments from the Department.
 19 So, Steve.
 20 MR. COBB: Thank you, Mr.
 21 Chairman, and good morning, Commissioners.
 22 I am Steven Cobb, Chief of the Land
 23 Division.

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1 I'm here today to recommend that
 2 the Commission adopt amendments to the
 3 Department's Division 5,
 4 Uniform Environmental Covenants Program
 5 regulations.
 6 Revisions to this division are
 7 being proposed to comply with updated
 8 State law from the recent Legislative
 9 sessions. Changes to Chapter One include
 10 updating the definition of Environmental
 11 Response Projects, and to exclude
 12 underground storage tank sites covered
 13 under 335-6-15 and 335-6-16 regulations.
 14 In addition, Chapter Two amended
 15 the requirements for environmental
 16 covenant contents to include a provision
 17 for the release of grantors from future
 18 claims by grantees and their successors.
 19 The proposed revisions were the
 20 subject of a public comment period which
 21 ran from August 27th, 2023, to
 22 October 12th of this year. A public
 23 hearing was held at the Department on

<p style="text-align: right;">Page 33</p> <p>1 October 12th. No oral comments were 2 received during the hearing, and no 3 written comments were received during the 4 comment period. 5 The revised regulations are 6 presented to you today for your 7 consideration. The Department asks that 8 the Commission adopt these changes to the 9 Division 5 Uniform Environmental Covenants 10 Program, and I am happy to answer any 11 questions that you might have. 12 MR. MCFADDEN: It sounds like 13 everybody understands all that. So, I will 14 call for the question for a motion from the 15 Commission regarding the proposed amendments 16 to the Uniform Environmental Covenants 17 Program Regs. 18 DR. PERRY: I move to adopt the 19 proposed amendments. 20 MR. MCFADDEN: All right. 21 MS. MERRITT: Second. 22 MR. MCFADDEN: I hear a second. 23 Any discussion?</p>	<p style="text-align: right;">Page 34</p> <p>1 (No response). 2 MR. MCFADDEN: All right. Call 3 for the question. All in favor raise your 4 hand? 5 (Commission Members raising 6 hands). 7 MR. MCFADDEN: Any opposed? 8 (No response). 9 MR. MCFADDEN: It passes. 10 We'll move on to Agenda Item 7, 11 Consideration of Proposed Amendments to 12 ADEM Administrative Code Division 335-6, 13 Volume II, Water Quality Program 14 Regulations related to UST. Steve? 15 MR. COBB: Yes, sir. Thank you. 16 I am also here today to recommend that the 17 Commission adopt amendments to the 18 Department's Division 6, Volume II, Chapter 19 16, Administrative Guidelines and Procedures 20 for the Alabama Underground and Aboveground 21 Storage Tank Trust Fund Regulations. 22 Revisions to the Division 335-6 23 are being proposed to make changes to the</p>
<p style="text-align: right;">Page 35</p> <p>1 Trust Fund fee and charge, the per 2 occurrence indemnification limits and the 3 certification statement and signature 4 requirements in the applications to reduce 5 the administrative burden of owners and 6 operators seeking reimbursement of 7 eligible Trust Fund costs. These changes 8 were previously recommended and approved 9 by the Alabama Underground and Aboveground 10 Storage Tank Trust Fund Management Board 11 on July 18th, 2023. 12 The proposed revisions were the 13 subject of public comment period, which 14 ran from August 27, 2023, to October 17, 15 2023. Public hearing was held at the 16 Department on October 17th. 17 No oral comments were received 18 during the hearing, and no written 19 comments were received during the public 20 comment period. Again, the revised 21 regulations are presented to you today for 22 your consideration. We ask that the 23 Commission adopt the proposed changes to</p>	<p style="text-align: right;">Page 36</p> <p>1 Division 6, Chapter 16, Administrative 2 Guidelines and Procedures for the Alabama 3 Underground and Aboveground Storage Tank 4 Trust Fund, and I'm happy to answer any 5 questions that you might have on these. 6 MR. MCFADDEN: I have one or two. 7 Maybe I don't mean to put you on the spot, 8 Steve, if this is something that's down in 9 the weeds. But the fees are based on what? 10 Is it gallonage or sites or... 11 MR. COBB: The Trust Fund fee and 12 charge is based on the gallons of fuel that 13 are removed from the storage facilities to 14 go to the tanks. And that charge was 15 reduced by the Trust Fund -- the Tank Trust 16 Fund Board from .012 cents per gallon to .01 17 cents per gallon based on their routine 18 evaluation of what the funding level for the 19 Trust Fund is and where that fee needs to be 20 adjusted. 21 MR. MCFADDEN: Okay. And the 22 indemnification limits, what it -- what 23 happened with that?</p>

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1 MR. COBB: Yes. The
 2 indemnification limits previously have been
 3 \$1.75 million per occurrence allowable, and
 4 that was raised to \$2 million per
 5 occurrence.
 6 MR. MCFADDEN: Okay. Things
 7 aren't going down, are they?
 8 MR. COBB: No.
 9 MR. MCFADDEN: Okay. Does anyone
 10 else have any questions or anything for
 11 Mr. Cobb?
 12 (No response).
 13 MR. MCFADDEN: All right. I'm
 14 going to entertain a motion from the
 15 Commission regarding the proposed amendments
 16 to Division 335-6, Volume II, Water Quality
 17 Program related to USTs.
 18 MS. MERRITT: I move to adopt.
 19 DR. TUCKER: Second.
 20 MR. MCFADDEN: A motion and a
 21 second. Any additional discussion?
 22 (No response).
 23 MR. MCFADDEN: If not, I'll call

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1 are scheduled for here, as far as you know?
 2 MR. LEFLEUR: We are working on
 3 plans to see if we might be able to have a
 4 meeting down in Mobile at the new Mobile
 5 Field Office, but that one is still --
 6 MR. MCFADDEN: Pending.
 7 MR. LEFLEUR: -- in the process of
 8 planning.
 9 MR. MCFADDEN: Okay. All right.
 10 Good.
 11 MR. LEFLEUR: But we will get back
 12 to the Commission and see if that fits in
 13 with the schedule.
 14 MR. MCFADDEN: It's a beautiful
 15 building. I would like everyone to see
 16 that. It's done a nice job on it.
 17 All right. So, I'll entertain a
 18 motion from the Commission regarding
 19 adoption of these meeting dates, time, and
 20 location.
 21 MS. MERRITT: I move to adopt the
 22 proposed meeting dates, time, and the
 23 location.

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1 for the question. All in favor raise your
 2 hand.
 3 (Commission Members raising
 4 hands).
 5 MR. MCFADDEN: Opposed?
 6 (No response).
 7 MR. MCFADDEN: All right. Motion
 8 carries.
 9 MR. COBB: Thank you.
 10 MR. MCFADDEN: Thank you, Steve.
 11 Okay. Item Number 8, any other
 12 business to come before the Commission?
 13 (No response).
 14 MR. MCFADDEN: Okay. Not hearing
 15 any. Agenda Item Number 9 is Future
 16 Business Sessions. We will meet at the same
 17 time, 11:00 o'clock, same place here, on the
 18 dates given of February -- for the coming
 19 year for February 9th, April 12th, June
 20 14th, August 9th, October 11th, and
 21 December 13th. All of these meetings are
 22 going to be here. I know there was some
 23 talk of maybe one being elsewhere, or -- all

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1 MR. MCFADDEN: Okay. Do I hear a
 2 second?
 3 DR. PERRY: Be second.
 4 MR. MCFADDEN: All right. Any
 5 more is discussion?
 6 (No response).
 7 MR. MCFADDEN: All right. All
 8 those in favor raise your right hand.
 9 (Commission Members raising
 10 hands).
 11 MR. MCFADDEN: Any opposed?
 12 (No response).
 13 MR. MCFADDEN: It passes.
 14 Okay. Going to the Public
 15 Comment period. I don't believe we had
 16 any folks registered to speak.
 17 MS. THOMAS: Right.
 18 MR. MCFADDEN: They are all out
 19 Christmas shopping, I am assuming. All
 20 right. And --
 21 MR. BROWN: I move to adjourn.
 22 MR. MCFADDEN: You know that
 23 motion takes precedence over any other, my

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1 lawyer friend here.
 2 Yeah. If I could hold that
 3 motion for a second. Nobody seconded it
 4 anyway.
 5 I just want to say, I, too,
 6 formally want to welcome Dr. Tucker on the
 7 Commission.
 8 DR. TUCKER: Thank you.
 9 MR. MCFADDEN: And a great asset
 10 and kind of unique. He's from North
 11 Alabama, Scottsboro area, but went to
 12 medical school at USA in Mobile and has kids
 13 and family down there. So, you know, he
 14 gets to understand all the coastal issues,
 15 as well as the mountain issues.
 16 So, a great asset to us and
 17 looking forward to working with him. So,
 18 thank you for doing this.
 19 And that's really all -- you
 20 know, we have a time of year that they
 21 call it, you know, peace on earth and
 22 goodwill towards others, and unfortunately
 23 in Israel, Christmas this year is not

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1 MR. MASINGILL: Second.
 2 MR. MCFADDEN: All right. I have
 3 a second. Nobody is going to discuss it I'm
 4 sure, but if you do have at it.
 5 (No response).
 6 MR. MCFADDEN: All right. All in
 7 favor raise your hand.
 8 (Commission Members raising
 9 hands).
 10 MR. MCFADDEN: Any opposed?
 11 (No response).
 12 MR. MCFADDEN: So, we stand
 13 adjourned. Thank y'all.
 14
 15
 16 (Hearing concluded at
 17 approximately 11:43 a.m.)
 18 * * * * *
 19
 20
 21
 22
 23

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1 going to be anything like the first
 2 Christmas. And so, keep those peoples in
 3 your prayers, and Ukraine and other
 4 places. And it kind of puts in
 5 perspective what we do. It's very
 6 important that we, you know, attend to the
 7 natural resources and environment of our
 8 state, and we couldn't have a better
 9 department that does that. I don't say
 10 that because they are sitting out here,
 11 but I have worked with other states from
 12 California to Massachusetts, and we have
 13 an A-Team. I can tell you here.
 14 So, thank y'all, Lance and
 15 Marilyn, and all you-all in the audience
 16 here and streaming.
 17 So, with that said, do have a
 18 Merry Christmas and Happy Holidays. And
 19 now I'll entertain a motion to adjourn.
 20 MR. BROWN: Very well said. I
 21 renew my motion to adjourn.
 22 MR. MCFADDEN: Does anybody want
 23 to second that?

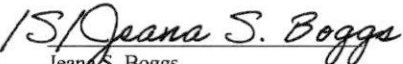
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1 * * * * *
 2 REPORTER'S CERTIFICATE
 3 * * * * *
 4
 5 STATE OF ALABAMA
 6 TALLAPOOSA COUNTY
 7
 8 I, Jeana S. Boggs, Certified Professional
 9 Reporter and Notary Public in and for the State of
 10 Alabama at Large, do hereby certify on Tuesday,
 11 December 8, 2023, that I reported the hearing in the
 12 matter of:
 13 MEETING OF THE
 14 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
 15 ALABAMA DEPARTMENT OF ENVIRONMENTAL
 16 MANAGEMENT (ADEM) BUILDING
 17 ALABAMA ROOM
 18 1400 COLISEUM BOULEVARD
 19 MONTGOMERY, ALABAMA 36110-2400
 20
 21 That the foregoing 43 computer-printed pages
 22 contain a true and correct transcript of the
 23 meeting set out herein.

1 I further certify that I am neither of
2 relative, employee, attorney or counsel of any of
3 the parties, nor am I a relative or employee of such
4 attorney or counsel, nor am I financially interested
5 in the results thereof. All rates charged are usual
6 and customary.

7 I further certify that I am duly licensed
8 by the Alabama Board of Court Reporting as a
9 Certified Court Reporter as evidenced by the ABCR
10 number following my name found below.

11 This 18th day of January, in the year of
12 our Lord, 2024.

13 
14 Jeana S. Boggs
15 ACCR NO. 7, Exp 9/30/2024
16 Certified Court Reporter and
17 Notary Public
18 Commission expires: 8/9/2027

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Part B

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Attachment 1 Agenda

**Attachment 2 Director's Slides
(Agenda Item 2)**

**Attachment 3 Order adopting recommendation of the Strategic Planning Ad Hoc Committee and adopting the Draft 2024 AEMC-ADEM Unified Strategic Plan, and Exhibit A, Draft 2024 AEMC and ADEM Unified Strategic Plan
(Agenda Item 4)**

**Attachment 4 Resolution adopting amendments to ADEM Administrative Code Division 335-3, Air Pollution Control Program Regulations, and Attachment A, Final Proposed Rules
(Agenda Item 5)**

**Attachment 5 Resolution adopting amendments to ADEM Administrative Code Division 335-5, Uniform Environmental Covenants Program Regulations, and Attachment A, Final Proposed Rules
(Agenda Item 6)**

**Attachment 6 Resolution adopting amendments to ADEM Administrative Code Division 335-6, Vol. II, Water Quality Program Regulations (UST), and Attachment A, Final Proposed Rules
(Agenda Item 7)**

Attachment 1

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: December 8, 2023

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

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* The Agenda for this meeting will be available on the ADEM website, 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 13, 2023
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF ADOPTION OF THE DRAFT 2024 AEMC-ADEM UNIFIED STRATEGIC PLAN

The Commission will consider the recommendation of the Strategic Planning Ad Hoc Committee and adoption of the Draft 2024 AEMC-ADEM Unified Strategic Plan. The Committee recommends that the Commission adopt the Draft Plan.

5. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-3, Air Regulations. Revisions to the Division 3 Code are being proposed to incorporate by reference changes to the EPA's New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The definition of volatile organic compounds (VOCs) in Chapter 335-3-1 is also being proposed for revision to be consistent with EPA's revisions. Chapters 335-3-3, 335-3-5, and 335-3-8 are being proposed for revision to correct administrative errors. Chapter 335-3-14 is being proposed for revision to correct administrative errors, remove outdated information and remove provisions relating to exceedance of emission limits during start-up, shut-down and malfunctions. Chapter 335-3-15 is also being proposed for revision to remove provisions relating to exceedance of emission limits during start-up, shut-down, and malfunctions of equipment. Chapter 335-3-17 is being proposed for revision to correct numbering errors. Appendix C is being proposed for revision to reflect changes to Chapters 335-3-10 and 335-3-11. Appendix G is being proposed for revision to reflect EPA's updated list of Hazardous Air Pollutants. Several of these changes are considered part of the federally-enforceable State Implementation Plan (SIP) and are proposed to be incorporated into Alabama's SIP.

The Department held a public hearing on the proposed amendments on October 11, 2023.

6. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-5, UNIFORM ENVIRONMENTAL COVENANTS PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-5, Uniform Environmental Covenants Program Regulations. The revisions are being proposed to comply with updated/revised state law through Act 2012-317 of the 2012 Alabama Legislative Session and Act 2023-378 and Act 2023-390 from the 2023 Alabama Legislative Session. The Department held a public hearing on the proposed amendments on October 12, 2023.

7. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-6, VOLUME II, WATER QUALITY PROGRAM REGULATIONS (UST)

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-6, Volume II, Water Quality Program Regulations (UST). The proposed revisions to the ADEM Administrative Code Division 335-6-16 are being proposed to make changes to the Trust Fund Charge Fee and indemnification limit and to revise the requirements for the applications for payments. The Department held a public hearing on the proposed amendments on October 17, 2023.

8. OTHER BUSINESS

9. FUTURE BUSINESS SESSIONS

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

Attachment 2

ADEM Budget

1

ADEM Budget

- 54% fees - last fee increase 2016
- 40 % Federal - last increase 2010
- 6% General Fund
 - FY 2020 – 2023 GF = \$4 mil / yr
 - FY 2024 GF = \$4.75 mil

2

ADEM Budget

- Operating budget \$65 million / yr
- Lowest per capita in nation following last increase in 2020
- Applied inflation since 2020 = \$14 million
- Additional mandates since 2020
- Funding shortfall in water program

3

ADEM Water Program Funding

- ADEM Water program funding previously supplemented by Air and Land programs.
- Water program funding shortfall >\$6million
- Water program funding shortfall concerns:
 - Unstable water regulatory oversight
 - Increased EPA presence in Alabama
 - Increased costs for regulated community if WQ down

4



Alabama Department Of Environmental Management

ADEM Water Program Funding

- 2024 Options currently under consideration:
 - Modest monthly fee on drinking water utilities
 - Water Permit Fee Increase of 70-80%
 - Increased General Fund Appropriation

5



Alabama Department Of Environmental Management

Mobile Field Office & Lab

6

Mobile Field Office and Lab

- Plan initiated in 2010
- Occupancy Year-end 2023
- Move-in has begun
- Closing two old facilities
- Old owned facility out to bid

7

Mobile Field Office and Lab

- Highly functional
- Aesthetically pleasing, contemporary, institutional
- Reflects regional depiction of Hydrologic Cycle
- Practice what we preach
- Ribbon cutting January 2024

8



9



10



11

ADEM

**Alabama Department Of
Environmental Management**

**EPA Proposed Denial of ADEM CCR
Program**

- Improperly required approval of permits for program approval.
- EPA has no permit standards.
- Did not raise concerns during comment period.
- New standards for CCR more stringent than hazardous waste.

12

**EPA Proposed Denial of ADEM CCR
Program**

- Arbitrarily changed longstanding definitions & interpretations.
- Did not go through required rulemaking.
- Did not consider environmental, economic, practical, potentially adverse impacts to disadvantaged communities of new definitions & interpretations.

13

**EPA Denial of ADEM Ozone Transport
State Implementation Plan**

- Arbitrarily changed modeling w/o allowing SIP modifications.
- Arbitrarily changed definition of significant impact.
- Sought to subject 19 states to a Federal Implementation Plan.

14

**EPA Denial of ADEM Ozone Transport
State Implementation Plan**

- EPA action challenged in 4th, 5th, 6th, 7th, 8th, 11th, and DC Circuits.
- 11th Circuit consolidated appeals by ADEM and Alabama electric utilities and stayed Federal Implementation Plan.
- Venue and merits determination pending in 11th Circuit.

Attachment 3

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

MOTION

Adopt the recommendation of the Strategic Planning Ad Hoc Committee and
approve the Draft 2024 AEMC-ADEM Unified Strategic Plan

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
DECREEES as follows:

1. The Commission hereby adopts the recommendation of the Strategic Planning Ad Hoc
Committee and approves the Draft 2024 AEMC-ADEM Unified Strategic Plan; and
2. That a copy of the Draft 2024 AEMC and ADEM Unified Strategic Plan is attached hereto
as Exhibit A 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 8th day of December 2023.


APPROVED:




Commissioner



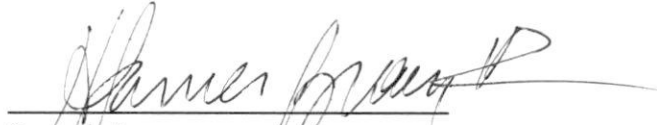
Commissioner



Commissioner



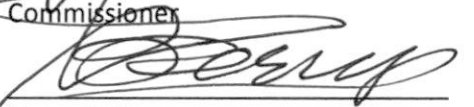
Commissioner



Commissioner



Commissioner



Commissioner


DISAPPROVED:

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 8th day of December 2023.



A. Frank McFadden, Chair
Environmental Management Commission
Certified this 8th day of December 2023

Alabama Environmental Management Commission
and Alabama Department of Environmental
Management

Unified Strategic Plan

1/2024

DRAFT

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I Purpose

This Unified Strategic Plan links the strategy for the AEMC (Commission) and the ADEM (Department). It is a unified, multi-year strategic plan to accomplish significant results in the fulfillment of both the Commission's and Department's mission as set out in the Code of Alabama, 1975, Section 22-22A-2.

II Mission, Values, Operating Guidelines

The joint **Mission** of the Commission and Department is to...

Assure for all citizens of the state a safe, healthful and productive environment.

Both the Department and Commission have identified the following **values** that are important to the fulfillment of their mission and which will **guide the operation** of the Commission and Department.

1. **Clear, Science-Based Decisions and Policies to Protect Human Health and the Environment** - *We seek clarity, consistency and certainty in our regulations, methods and actions, ensuring they are based on objective, peer-reviewed scientific standards and that they provide protection and fair treatment for all citizens.*
2. **Respect each other's Roles** - *We will respect the roles of the Commission as a body, the Department as an organization, with the Director as the Chief Executive Officer.*
3. **Seek Transparent Communication** - *We will seek open and transparent communication within the Commission, the Department, and between the Commission and Department.*
4. **Use Resources Wisely** - *We respect the wise, productive, and efficient use of resources, prioritizing actions to gain the greatest environmental return on the investment of our limited resources, and relying on innovation and efficiency to multiply the resources we have.*
5. **Act on Agreed upon Goals** – *The Commission will seek agreement on goals and plans to achieve the most meaningful results to effectively execute our mission, of assuring a safe, healthful and productive environment. The Commission will act on those goals and plans only when agreed upon.*

III Roles of the Commission and Department

In the fulfillment of its mission, the Commission and the Department have cooperative but different roles and responsibilities.

AEMC	ADEM
<p>The Commission's role is to set policy by:</p> <ol style="list-style-type: none"> (1) Promulgating rules, (2) Hearing appeals (3) Managing the Director of the Department. 	<p>The Department's role is to implement policy by:</p> <ol style="list-style-type: none"> (1) Providing timely quality information to the Commission to help them in policy setting decisions. (2) Developing science-based standards and managing permitting, compliance determinations, and enforcement actions in compliance with standards to implement the Commission's set policy.
<p>To fulfill its role, the Commission needs:</p> <p>Comprehensive, clear, and unbiased information for policy decision making.</p> <p>To convey any proposed new objectives, policies or initiatives to the Director.</p>	<p>To fulfill its role the Department needs:</p> <p>Clear direction from the AEMC</p> <p>Resources</p>
<p>The Commission depends on systems and procedures as follows:</p> <p>Defined processes to set policy, deal with emerging issues, adopt regulations, and interact with public.</p> <p>Defined processes to obtain comprehensive, clear, and unbiased information from the Department.</p> <p>Operating guidelines to enable open, efficient, and collaborative decision making.</p>	<p>The Department relies on systems and procedures as follows:</p> <p>Budget management to manage financial resources.</p> <p>Operations management to manage the permitting, compliance determination, and enforcement operations of the organization.</p> <p>Operational procedures to manage administrative functions, information system and personnel.</p> <p>Performance and Quality management to lead the Department's professionals to seek high levels of performance and quality.</p>

IV Vision for Achieving the Most Meaningful Results for the Environment

The Commission and Department share a joint vision to achieve the most meaningful results for a safe, healthful and productive environment. Areas of accomplishment include, but are not limited to the following:

- **Air Media** - the achievement of ambient air quality at or above standards set by EPA
- **Land Media** – the safe and responsible management and disposal of solid and hazardous wastes, the control, remediation, and redevelopment of contaminated soil and/or groundwater sites, and the diversion of recyclable materials from the solid waste disposal stream
- **Water Media** - the attainment of water quality standards and all use classifications and minimizing the effects of stormwater runoff(including utilization of State Revolving Fund Programs to improve infrastructure)

V Key Goals for AEMC/ADEM

1. **Effective and Responsive Commission** - An effective and responsive commission is:
 - a. getting an open flow of information from all major stakeholders
 - b. collaborating within the Commission on decisions and reasons for them
 - c. setting and following operational guidelines that promote meaningful results
 - d. addressing issues in a timely manner
 - e. receiving comprehensive and unbiased information from the Department
2. **High Performing Work Environment** - The AEMC and the ADEM need a work environment that promotes productivity and is fulfilling for the organization and its people. A reflection of a high performing work environment is:
 - a. adequate financial and physical resources to meet goals
 - b. develop resources for optimizing sustainability and innovation
 - c. high caliber personnel
 - d. high caliber data support systems
 - e. setting high standards of performance and accountability
 - f. the accomplishment of goals
 - g. a clear line-of-sight between our mission, goals, and strategies to accomplish goals and individual employee work activities
 - h. high employee morale
 - i. fair treatment of all
3. **Credible Relationships with External Stakeholders** – Having a credible relationship with stakeholders (including residents, the regulated community, and all branches and levels of government) is:
 - a. engaging in proactive outreach
 - b. making relevant commitments and keeping those commitments
 - c. having an open, efficient flow of information to and from stakeholders about their expectations
 - d. treating stakeholders fairly
 - e. providing equal access and consideration for all parties/stakeholders

- f. provide technical and educational resources to communities in need
- g. demonstrating to stakeholders that resources are being used efficiently
- h. providing timely information
- i. providing technical support to the regulated community
- j. addressing climate issues in a manner consistent with state executive and legislative branches.

4. Efficient and Effective Departmental Operations – Efficient and effective operations is:

- a. implementing a robust quality management system
- b. managing program operations to specific key performance metrics
- c. effectively managing our operational budget and individual program budgets
- d. making decisions, including both regulatory assistance and administrative deterrence, to promote progress toward 100% compliance
- e. consistently achieving timeliness standards in our actions
- f. measuring environmental improvements over time
- g. plan and prepare personnel, organization structure, physical facilities, systems, and funding for the long term, and
- h. Team with relevant state and federal agencies and the Governor to address new environmental concerns and strategies.

VI Strategies to Achieve Mission, Vision, and Key Goals

There are factors that are critical to the success of efforts by the Commission and the Department to achieve their shared mission, vision, and goals. Those factors are reflected in following specific strategies which are implemented by the Commission and/or the Department:

- A. Practice Effective Communication Between the Commission and the Department –**
Establish and promote practices to obtain comprehensive, clear, and unbiased information necessary to fulfill responsibilities.

Intent

- Provide quality timely information to the Commission for decision making
- Promote transparency in communication between the Commission and Department

Strategies

- i. **Information Gathering Process for the Commission** – Maintain a process for the Commission to obtain information from the Department and other sources necessary to make rulemaking and policy decisions.
- ii. **Communications** –To be effective, the Commission and the Department need transparent, effective and positive communication. Collaboration and joint decision making require effective communication among the Commissioners, and between the Commission and external stakeholders and the Department. Commissioners should avail themselves of opportunities to openly and clearly talk about issues, opportunities, and decisions and do so in compliance with the Open Meetings Act.
- iii. **Managing the Director** – A Representative of the AEMC, shall meet with the Director for a formal review of performance at least annually.

B. Effectively address Emerging Issues, Regulations, and Interaction with the Public –
Utilize processes to effectively deal with emerging issues, adopting regulations and interacting with the public.

Intent

Provide for efficient and effective Commission operations by...

- standardizing practices for critical Commission activities such as public comment at meetings, public input on director's performance etc. and
- increasing and improving stakeholder involvement

Strategies

- i. **Emerging Issues –**
 - a. The Director will periodically update the Commission on emerging issues
 - b. and will investigate and report back to the Commission on any emerging issues identified by the Commission
 - c. team with state and federal partners to address new environmental concerns.
- ii. **Public Input –** Evaluate and improve, as necessary, the AEMC process for receiving input from stakeholders.
- iii. **Department Initiated Regulations –** Assure that the AEMC is informed on all issues related to Department initiated proposed regulations.

C. Departmental Support for AEMC – Provide robust departmental support to the AEMC.

Intent

- Provide the Commission with comprehensive, unbiased and clear information with which to make decisions.

Strategies

- i. **Information Support for Decision Making** – Maintain a structured format for efficiently providing support to the Commission to meet their information needs by having the Director:
 - a. Proactively inform Commission on current issues
 - b. Reactively respond to issues raised by Commission
 - c. Report to the Commission regarding stakeholder raised issues
 - d. Provide basis for Department proposed rules and Department input on non-Department proposed rules
- ii. **Department Performance Reporting** – Provide internal and external operational (program), financial and performance information to the Commission on a regular basis.

D. Goal Focus – Focus ADEM staff around department and program goals.

Intent

Implement a performance management system to...

- Hold staff accountable for individual performance
- Center employee rewards around high performance
- Focus management on program metrics
- Improve employee satisfaction/morale
- Create clarity and alignment (employee line-of-sight) on departmental goals
- Enhance internal communications about performance expectations
- Improve quality through continuous process improvement

Strategies

- i. **Mission** – Communicate and align all staff with the Department's mission.
- ii. **Program Outputs and Performance Metrics** – Evaluate program and staff performance based on performance utilizing Departmental Operating Plan metrics, EPA grant commitments, and EPA State Review Framework audit elements.
- iii. **Performance Management** – Use performance metrics to communicate and reward high performance and to address and change poor performance.
- iv. **Staff Alignment** – Engage all staff in aligning work expectations with program goals. Gain staff input in setting program goals.
- v. **Celebrate Successes** – Identify key successes and find ways to celebrate them with employees, Commissioners and other involved stakeholders.

E. **Quality Operations** – Ensure that the Department is managing quality in operations.

Intent

Successfully manage the Department's operations by...

- Providing clarity and accountability for funding and resource allocation
- Create a clear picture of funding sufficiency
- Gain greater efficiency in operations
- More effectively meet customer needs and expectations
- Speed up the ability to accept and use new technologies
- Create clarity and accountability for operational performance
- Gain consistency across operations
- Develop a system that rewards employees for high performance
- Encourage and provide opportunities for employees to showcase capabilities
- Instill greater trust in the Department by the Commission, and external stakeholders

Strategies

- i. **Quality Assurance Measures** – Utilize agreed upon quality assurance measures, such as SOP's, within permitting, compliance evaluation, enforcement and other pertinent support processes and functions.
- ii. **Audit Quality Performance** – Audit quality assurance measures and performance.
- iii. **Evaluate Program Performance based on Output Metrics** - Identify primary program products and evaluate performance by the key metrics for those products.
- iv. **Budgeting and Permitting Cost Justification** – Maintain standard budgeting and permitting cost justification methods across all programs.
- v. **Support of Department** – Ensure Department financial, IT, personnel, laboratory, physical facilities and other resource support is adequate to successfully meet defined program requirements.
- vi. **Continuous Process Improvement** – Maintain a Department-wide continuous process improvement strategy.

F. Compliance – Implement operational changes, policy changes, and a multi-pronged approach to encourage 100% compliance among all regulated entities.

Intent

Encourage and support 100% compliance by...

- Reinforcing a normal expectation of compliance among all regulated sources
- Providing appropriate, measured, and focused compliance assistance where needed
- Assuring fair and consistent enforcement among all regulated entities
- Increasing the speed of compliance determinations and enforcement actions
- Providing departmental and commission focus on programs needing assistance with non-compliance rates
- Identifying and implementing solutions for achieving high compliance rates

Strategies

- i. Remove internal Obstacles to Compliance:**
 - a. Program level operational changes to increase compliance
 - b. Department level operational changes which are outside program's direct control to increase compliance
 - c. Policy and related regulation changes that increase compliance

- ii. Emphasize Multi-pronged Approach to Achieve Compliance:**
 - a. Inspections
 - b. Informal enforcement, including technical assistance as a training opportunity
 - c. Formal enforcement activity to include penalties and cease & desist orders
 - i. Graduated enforcement
 - ii. Informal enforcement when possible to conserve resources

VII Plan Adoption and Implementation

As set forth in Section 335-1-1.03 (4) through (6) of the ADEM Administrative Code the Unified Strategic Plan is to be adopted by the Commission. The Department will utilize the Unified Strategic Plan to guide its actions and will develop Departmental action plans consistent with the Unified Strategic Plan.

Agreement on Unified Strategic Plan – The Commission and the Department agree that the Unified Strategic Plan as set forth in this document represents the plan that will guide the actions of the Commission and the Department until a new plan is developed.

Annual Departmental Operating Plan – Execution of the Unified Strategic Plan will require the annual development and implementation of measurable actions coupled with a review of performance from the previous year. The identified measurable actions will be included in an Annual Departmental Operating Plan.

Day-to-Day Performance – The Unified Strategic Plan as well as Annual Departmental Operating Plans are intended to inform the Commission and guide the Department in the execution of the Department's mission.

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 335-3 of the Department's Air Division – Air Pollution Control 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. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (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 335-3 [rules Appendix C/EPA Regulations Reference Documents for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (Amend); Appendix G/ List of Hazardous Air Pollutants (Amend); 335-3-1-.02/ Definitions (Amend); 335-3-3-.05/ Incineration of Commercial and Industrial Solid Waste (Amend); 335-3-5-.10/ TR SO2 Trading Program – Computation of Time (Amend); 335-3-5-.11/ Administrative Appeal Procedures (Amend); 335-3-5-.14/ Authorization of Designated Representative and Alternate Designated Representative (Amend); 335-3-5-.15/ Responsibilities of Designated Representative and Alternate Designated Representative (Amend); 335-3-5-.16/ Changing Designated

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (Amend); 335-3-5-.17/ Certificate of Representation (Amend); 335-3-5-.19/ Delegation by Designated Representative and Alternate Designated Representative (Amend); 335-3-5-.22/ Recordation of TR SO₂ Allowance Allocations and Auction Results (Amend); 335-3-5-.23/ Submission of TR SO₂ Allowance Transfers (Amend); 335-3-5-.24/ Recordation of TR SO₂ Allowance Transfers (Amend); 335-3-5-.25/ Compliance with TR SO₂ Emissions Limitation (Amend); 335-3-5-.26/ Compliance with TR SO₂ Assurance Provisions (Amend); 335-3-5-.28/ Account Error (Amend); 335-3-5-.29/ Administrator's Action on Submissions (Amend); 335-3-5-.33/ Monitoring System Out-of-Control Periods (Amend); 335-3-5-.34/ Notifications Concerning Monitoring (Amend); 335-3-5-.35/ Recordkeeping and Reporting (Amend); 335-3-5-.36/ Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (Amend); 335-3-8-.11/ TR NO_x Annual Trading Program – Computation of Time (Amend); 335-3-8-.12/ Administrative Appeal Procedures (Amend); 335-3-8-.16/ Authorization of Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.17/ Responsibilities of Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.18/ Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (Amend); 335-3-8-.19/ Certificate of Representation (Amend); 335-3-8-.21/ Delegation by Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.24/ Recordation of TR NO_x Annual Allowance Allocations and Auction Results (Amend); 335-3-8-.25/ Submission of TR NO_x Annual Allowance Transfers (Amend); 335-3-8-.26/ Recordation of TR NO_x Annual Allowance Transfers (Amend); 335-3-8-.27/ Compliance with TR NO_x Annual Emissions Limitation (Amend); 335-3-8-.28/ Compliance with TR NO_x Annual Assurance Provisions (Amend); 335-3-8-.30/ Account Error (Amend); 335-3-8-.31/ Administrator's Action on Submissions (Amend); 335-3-8-.35/ Monitoring System Out-of-Control Periods (Amend); 335-3-8-.36/ Notifications Concerning Monitoring (Amend); 335-3-8-.37/ Recordkeeping and Reporting (Amend); 335-3-8-.38/ Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (Amend); 335-3-8-.43/ TR NO_x Ozone Season Group 2 Trading Program – Computation of Time (Amend); 335-3-8-.44/ Administrative Appeal Procedures (Amend); 335-3-8-.48/ Authorization of Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.49/ Responsibilities of Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.50/ Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (Amend); 335-3-8-.51/ Certificate of Representation (Amend); 335-3-8-.53/ Delegation by Designated Representative and Alternate Designated Representative (Amend); 335-3-8-.56/ Recordation of TR NO_x Ozone Season Group 2 Allowance Allocations and Auction Results (Amend); 335-3-8-.57/ Submission of TR NO_x Ozone Season Group 2 Allowance Transfers (Amend); 335-3-8-.58/ Recordation of TR NO_x Ozone Season Group 2 Allowance Transfers (Amend); 335-3-8-.59/ Compliance with TR NO_x Ozone Season Group 2 Emissions Limitation (Amend); 335-3-8-.60/ Compliance with TR NO_x Ozone Season Group 2 Assurance Provisions (Amend); 335-3-8-.62/ TR NO_x Ozone Season Group 2 Trading Program – Account Error (Amend); 335-3-8-.63/ TR NO_x Ozone Season

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

Group 2 Trading Program – Administrator’s Action on Submissions (Amend); 335-3-8-.67/ Monitoring System Out-of-Control Periods (Amend); 335-3-8-.68/ Notifications Concerning Monitoring (Amend); 335-3-8-.69/ Recordkeeping and Reporting (Amend); 335-3-8-.70/ Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (Amend); 335-3-8-.71/ NOx Budget Program (Amend); 335-3-10-.01/ General (Amend); 335-3-10-.02/ Designated Standards of Performance (Amend); 335-3-10-.03/ Appendices to 40 CFR 60 (Amend); 335-3-11-.01/ General (Amend); 335-3-11-.06/ National Emission Standards for Hazardous Air Pollutants for Source Categories (Amend); 335-3-14-.03/ Standards for Granting Permits (Amend); 335-3-14-.04/ Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend); 335-3-14-.05/ Air Permits Authorizing Construction in or Near Non-Attainment Areas (Amend); 335-3-15-.04/ Synthetic Minor Operating Permit Requirements (Amend); 335-3-17-.01/ Transportation Conformity (Amend); 335-3-17-.02/ General Conformity (Amend)] of the Department’s Air Division – Air Pollution Control Program Rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-3 – Air Pollution Control Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 8th day of December 2023.

APPROVED:

Mary Menitt
[Signature]
[Signature]
A. Frank McFadden

Harvie Brown, II
[Signature]
[Signature]

DISAPPROVED:

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 8th day of December 2023.

A. Frank McFadden
A. Frank McFadden, Chair
Environmental Management Commission
Certified this 8th day of December 2023

335-3-14-.03

Standards For Granting Permits.

(1) General Standards.

(a) The Director shall deny a permit if the applicant does not show that every article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants, is so designed, controlled, or equipped with such air pollution control equipment, that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of these rules and regulations.

(b) The Director shall deny a permit if the applicant does not present, in writing, a plan whereby the emission of air contaminants by every article, machine, equipment, or other contrivance described in the permit application, will be reduced during periods of an Air Pollution Alert, Air Pollution Warning, and Air Pollution Emergency in accordance with the provisions of Chapter 335-3-2, where such a plan is required.

(c) Before an Air Permit is granted, the Director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment, or other contrivance described in the Air Permit. In the event of such a requirement, the Director shall notify the applicant in writing of the required size, number, and location of the sampling platform; the access to the sampling platform; and the utilities for operating and sampling and testing equipment.

(d) The Director may also require the applicant to install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures as may be specified; and provide such information as the Director may require.

(e) Before acting on an application for an Air Permit, the Director may require the applicant to furnish further information or further plans or specifications.

(f) If the Director finds that the article, machine, or other contrivance has been constructed not in accordance with the Air Permit, and if the changes noted are of a

substantial nature in that the amount of air contaminants emitted by the article, machine, equipment, or other contrivance may be increased, or in that the effect is unknown, then he shall revoke the Air Permit. The Director shall not accept any further application for an Air Permit until the article, machine, equipment, or other contrivance has been reconstructed in accordance with said Air Permit or until the applicant has proven to the satisfaction of the Director that the change will not cause an increase in the emission of air contaminants.

(g) The Director shall deny an Air Permit where he determines that the construction and operation of such source will interfere with attaining or maintaining any primary or secondary standard established by Rule 335-3-1-.03(1). A new source or modification will be considered to interfere with attaining or maintaining a standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the NAAQS:

Pollutant	Annual	24 hours	8 hours	3 hours	1 hour
SO ₂	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
PM ₁₀	1.0 µg/m ³	5 µg/m ³			
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			0.5 mg/m ³		2 mg/m ³

1. A proposed major source or major modification subject to this Paragraph may reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact where this impact would otherwise cause or contribute to a violation of any national ambient air quality standard or exceed the significance levels of subparagraph (g). of this paragraph above. In the absence of such emission reductions, the Director shall deny the proposed construction.

2. The requirements of subparagraph (g) of this paragraph shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the federal Clean Air Act.

(h) ~~Reserved~~ Exceptions to violations of emissions limits.

1. The Director may, in the Air Permit, exempt on a case by case basis any exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change.

2. Emergency provision.

(i) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility, including acts of God, which situation require immediate corrective action to restore normal operation, and that causes the facility to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(ii) Exceedances of emission limitations during emergencies (as defined above) at a facility may be exempted as being violations provided that:

(I) the permittee can identify the cause(s) of the emergency;

(II) the permitted facility was at the time being properly operated;

(III) during the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements of the permit;

(IV) the permittee submitted notice of the emergency to the Department within 2 working days of the time when the emissions limitations were exceeded due to the emergency; and

(V) the permittee immediately documented the emergency exceedance in an "Emergency Log", which shall be maintained for 5 years in a form suitable for inspection upon request by a representative of the Department.

(iii) The Director shall be the sole determiner of whether an emergency has occurred.

(iv) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

3. ADEM Admin. Code r. 335-3-14-.03(1)(h)1. and 2. are repealed effective upon the EPA's final approval of this provision.

(i) A determination may be made by the Director to deny a permit application if the applicant operates other permitted facilities or sources within the state which are in substantial noncompliance as determined by the Director, until such noncompliance is corrected or if the Director determines that a permit that results in compliance with applicable air pollution control standards could not be issued, or if issued, could not be complied with.

(2) Stack Heights.

(a) Definitions. For purposes of this paragraph, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Emission limitation" and "emission standard" mean a requirement, established by ADEM or the EPA Administrator, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

2. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

3. "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

4. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source-process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(iv) The preceding sentence does not include:

(I) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(II) The merging of exhaust gas streams where:

I. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams:

II. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

III. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering

reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source:

(III) Smoke management in agricultural or silvicultural prescribed burning programs:

(IV) Episodic restrictions on residential woodburning and open burning; or

(V) Techniques under subparagraph (a)4.(iii) of this paragraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

5. "Good engineering practice" (GEP) stack height means the greater of:

(i) 65 meters measured from the ground-level elevation at the base of the stack:

(ii) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

$$H_g = 2.5H$$

(I) For all other stacks,

$$H_g = H + 1.5L$$

where:

H_g = good engineering practice stack height measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width of nearby structure(s), provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(iii) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.

6. "Nearby" as used in subparagraph (a)5. of this paragraph is defined for a specific structure or terrain feature and

(i) for purposes of applying the formulas provided in subparagraph (a)5.(ii) of this paragraph means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km ($\frac{1}{2}$ mile); and

(ii) for conducting demonstrations under subparagraph (a)5.(iii) of this paragraph means not greater than 0.8 km ($\frac{1}{2}$ mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (ht) of the feature, not to exceed 2 miles if such feature achieves a height (ht) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formula provided in subparagraph (a)5.(ii)(I) of this paragraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

7. "Excessive concentration" is defined for the purpose of determining GEP stack height under subparagraph (a)5. (iii) of this paragraph and means:

(i) for sources seeking credit for stack height exceeding that established under subparagraph (a)5. (ii) of this paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a NAAQS. For sources subject to the PSD program (Rule 335-3-14-.04), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emissions rate to be used in making demonstrations under this Rule shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(ii) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subparagraph (a)5. (ii) of this paragraph, either:

(I) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in subparagraph (a)7. (i) of this paragraph, except that the emission rate specified elsewhere in these regulations (or, in the absence of such a limit, the actual emission rate) shall be used, or

(II) the actual presence of a local nuisance caused by the existing stack, as determined by the Director; and

(iii) for sources seeking credit after January 12, 1979, for a stack height determined under subparagraph (a)5.(ii) of this paragraph where the Director requires that use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subparagraph (a)5.(ii) of this paragraph, a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(b) Before acting on any Air Permit, the Director shall require that the degree of emission limitation required of any source for control of any air pollutants shall not be affected by so much of any source's stack height that exceeds GEP or by any other dispersion technique, except as provided in subparagraph (c) of this paragraph below.

(c) The provisions of subparagraph (b) above shall not apply to stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed or for which major modifications, as defined pursuant to Rules 335-3-14-.05(2)(d) and 335-3-14-.04(2)(b), were carried out after December 31, 1970.

(d) If any existing source, after appropriate application of the preceding limitations and provisions, is found to exceed or potentially exceed a NAAQS or PSD increment, when operating within previously established emission limitations, the emissions limitations applicable to that source shall be modified so as to eliminate and prevent the exceedance.

(e) If any new source or source modification, after appropriate application of the preceding limitations and provisions, is predicted to exceed a NAAQS or PSD increment

when evaluated under emission limitations consistent with other applicable rules and regulations, the emission limitations considered shall be deemed inadequate and different emission limits, based on air quality considerations, shall be made applicable.

(f) If any source provides a field study or fluid modeling demonstration proposing a GEP stack height greater than that allowed by subparagraphs (a)5.(i) and (a)5.(ii) of this paragraph, then the public will be notified of the availability of the study and provided the opportunity for a public hearing before any new or revised emission limitation or permit is approved.

(g) The actual stack height used or proposed by a source shall not be restricted in any manner by requirements of this paragraph.

Author: James W. Cooper, John E. Daniel, Ronald Gore

Statutory Authority: Code of Ala. 1975, §§22-28-14, 22-22A-5, 22-22A-6, 22-22A-8.

History: Effective January 18, 1972. **Amended:** April 3, 1979; February 13, 1980; March 24, 1981; March 23, 1982; February 13, 1985; November 13, 1985; September 18, 1986; June 9, 1987; May 4, 1988; September 21, 1989; November 1, 1990; October 30, 1992.

Amended: Filed November 23, 1993; effective December 28, 1993.

Amended: Filed October 17, 1996; effective November 21, 1996.

Amended: Filed August 3, 2000; effective September 7, 2000.

Amended: Filed June 6, 2006; effective July 11, 2006. **Amended:** Filed April 18, 2011; effective May 23, 2011.

(1) General Provisions.

(a) The Synthetic Minor Operating Permit shall include specific conditions that restrict the facility's potential to emit and that are federally enforceable.

(b) Any Stationary Source requesting a Synthetic Minor Operating Permit must undergo the public participation procedures prescribed in Rule 335-3-15-.05.

(c) A Potential Major Source that does not obtain a Synthetic Minor Operating Permit shall apply for an Operating Permit.

(d) The Department shall act, within a reasonable time, on an application for a Synthetic Minor Operating Permit and shall notify the applicant in writing of its approval, conditional approval, or denial.

(e) In the event of a denial of a Synthetic Minor Operating Permit, the Department shall notify the applicant in writing of the reason therefore. Service of this notification may be made in person or by mail, and such service may be proved by the written acknowledgment of the persons served or affidavit of the person making the service. The Department shall not accept a further application unless the applicant has complied with the objections specified by the Department as its reasons for denial of the Synthetic Minor Operating Permit.

(f) The facility shall obtain a Synthetic Minor Operating Permit prior to beginning operation of the new or modified Stationary Source and shall notify the Department at least ten (10) days prior to beginning such operation.

(g) Any Stationary Source applying for a Synthetic Minor Operating Permit shall submit applications for a Synthetic Minor Operating Permit at least 10 days prior to construction except as specified in subparagraph (3)(c) of this Rule.

(h) The holder of a Synthetic Minor Operating Permit shall comply with all conditions contained in such permit, as well as all applicable provisions of this Administrative Code. Such conditions shall be permanent, quantifiable and otherwise enforceable as a practical matter. Synthetic Minor Operating Permits which do not conform to the provision in this Chapter and the requirements of EPA's underlying

regulations may be deemed not "federally enforceable" by EPA.

(2) Existing Potential Major Sources.

(a) Any facility that would request a Synthetic Minor Operating Permit shall apply to the Department within one year after approval by EPA of the Operating Permit regulations in Chapter 335-3-16.

(b) Any facility possessing an Operating Permit or whose potential emissions require it to obtain an Operating Permit may, at any time, accept federally enforceable permit restrictions which would allow it to obtain a Synthetic Minor Operating Permit.

(3) New Potential Major Sources.

(a) Any new Potential Major Source which commences construction after November 15, 1995, may apply to the Department for a Synthetic Minor Operating Permit. This application shall be accurately completed and submitted to the Department prior to such construction.

(b) A Synthetic Minor Operating Permit for a new Potential Major Source shall expire and the application shall be canceled two years from the date of issuance of the Synthetic Minor Operating Permit if construction has not begun.

(c) Any new Stationary Source applying for a Synthetic Minor Operating Permit at a greenfield site shall not initiate construction until the Synthetic Minor Operating Permit has been issued. "Greenfield site" shall have the same meaning as defined in Rule 335-3-14-.01(7)(a)1.(i).

(4) Modifications to Synthetic Minor Sources.

(a) Any Stationary Source subject to the regulations in this Chapter that is modified so that it becomes a major source as defined in Rule 335-3-16-.01(15) shall apply for an Operating Permit within twelve (12) months of beginning operation.

(b) Any modification which would require a change to existing permit conditions that restrict the facility's potential to emit or require new conditions that restrict the facility's potential to emit, as required in subparagraph (1)(a) of this Rule, must undergo the public participation procedures prescribed in Rule 335-3-15-.05.

(5) ~~Reserved~~ Exceptions to Violations of Emission Limits.

(a) The Director may, in the Synthetic Minor Operating Permit, exempt on a case by case basis any exceedances of emission limits or permit conditions which cannot reasonably be avoided, such as during periods of start-up and shut-down or load change.

(b) The Director may exempt on a case by case basis exceedances of emission limits and permit conditions which cannot reasonably be avoided as a result of an "emergency" situation.

1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility, including acts of God. These are situations that require immediate corrective action(s) to restore normal operation, and that cause the facility to exceed a technology based emission limitation set by the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include exceedances of the permit emission limitations caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

2. Exceedances of emissions limitations during emergencies at a facility may be exempted as being violations provided that:

(i) the permittee identifies the cause(s) of the emergency;

(ii) the permitted facility was being properly operated until such a time as the emergency occurred;

(iii) during the period of which the emergency occurred, the permittee took all reasonable steps to minimize levels of emissions that exceeded the standards, or other requirements of the permit; and

(iv) the permittee submitted notice of the emergency to the Department within two (2) working days of the time when the emissions limitations were exceeded as a result of the emergency. Such notice shall include those deviations attributable to upset conditions as defined in the permit, the probable cause of said deviations, and any corrective actions or preventive measures that were taken. Within 5 working days of the emergency, a written documentation of what was reported in the notice of the emergency shall be submitted to the Department.

3. The Director shall be the sole determiner of whether an emergency has occurred.

4. This provision is in addition to any emergency or upset provision contained in any applicable requirement of the permit or the regulations.

(c) ADEM Admin. Code r. 335-3-15-.04(5)(a) and (b) are repealed effective upon the EPA's final approval of this provision.

Author: Richard E. Grusnick

Statutory Authority: Code of Ala. 1975, §§22-22A-4, 22-22A-5, 22-22A-6, and 22-22A-8.

History: New Rule: Filed November 23, 1993; effective December 28, 1993. **Amended:** October 17, 1996; effective November 21, 1996.

Attachment 5

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-5 of the Department's Land Division's Uniform Environmental Covenants Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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

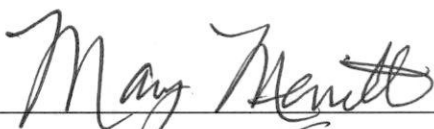
NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate the Uniform Environmental Covenants Program [335-5-1-.02/Applicability (Amend); 335-5-1-.03/ Definitions (Amend); 335-5-1-.06/ Fees (Amend); 335-5-1-.07/ Process for Entering a Covenant (Amend); 335-5-2-.01/ Covenant Contents (Amend); 335-5-2-.03/ Relationship to Other Land Use Law (Amend)], of the Department's Land Division - Uniform Environmental Covenants Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.


**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION
DRAFT**


ADEM Admin. Code division 335-5 – Uniform Environmental Covenants Program


IN WITNESS WHEREOF, we have affixed our signatures below on this 8th day of December 2023.


APPROVED:










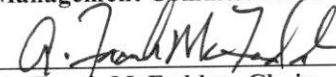




DISAPPROVED:

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 8th day of December 2023.



A. Frank McFadden, Chair
Environmental Management Commission
Certified this 8th day of December 2023

335-5-1-.02 Applicability.

(1) These regulations apply to a property or site undergoing a response action that does not return the property to unrestricted use.

(a) An environmental covenant is required for a site if the approved environmental response project plan places a land use control on the site because it is not being remediated to unrestricted use, unless exempt in 335-5-1-.02(3).

(b) The Department, when considering the environmental response project plan for a site, may require the owner or operator or other responsible person to enter into an environmental covenant with the owner of the off-site parcels or properties to ensure that the remedy approved in the plan is protective of human health and the environment.

(c) An owner or operator or other responsible person whose environmental response project plan includes other off-site parcels or properties may voluntarily include the off-site parcels or properties in an environmental covenant.

(d) Failure to enter into an environmental covenant with an off-site property owner, for any reason, does not release or absolve the site owner or operator or other responsible person from any obligation to perform required remediation activities addressing on-site or off-site contamination, including land use controls. Lack of an environmental covenant may require the owner or operator or other responsible person to perform additional activities in the approved environmental response project plan to ensure effectiveness of the response action and the protection of human health and the environment for current and future uses of the on-site and/or off-site property.

(2) These regulations apply to environmental covenants arising from environmental response projects conducted under any of the following ADEM programs:

(a) Scrap tire remediation sites subject to 335-4.

(b) Soil and groundwater remediation sites subject to 335-6-8, ~~335-6-15 and 335-6-16~~.

(c) Solid waste disposal sites subject to 335-13.

(d) Hazardous waste disposal sites subject to 335-14.

(e) Voluntary cleanup program sites subject to 335-15.

(f) Dry cleaner remediation sites subject to 335-16.

(g) Sites subject to the Alabama Hazardous Substance Cleanup Fund Act, Code of Alabama 1975, §§22-30A-1 to 22-30A-11, and

(h) Sites being remediated by potentially responsible parties or the United States Environmental Protection Agency which are subject to the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq).

(3) For properties or sites owned by the federal government which are legally unable to execute an environmental covenant during the period of federal ownership, the following requirements shall apply:

(a) During the period of federal ownership.

(1) In lieu of an environmental covenant, a Notice of Environmental Use Restriction for properties or sites owned by the federal government shall be prepared and submitted to ADEM for approval that gives notice of the current and future use of the federal property. The Notice shall:

(i) Contain a provision that an environmental covenant shall be executed with ADEM and appropriately filed at such time the property is transferred to a non-federal owner.

(ii) Contain a provision that the Notice does not convey a property interest.

(iii) Contain a provision that, if the property is transferred to another federal agency, the environmental use restrictions shall remain in effect and be binding upon the recipient federal agency.

(iv) Be incorporated into the installation master plan or facility property management plan and shall be recorded into the land records of the property in compliance with 335-5-3-.02.

(v) Contain a provision that all cleanup plans, decision documents, permits and other instruments relying upon or referencing the Notice shall include appropriate conditions requiring that the Notice remain in place for the duration of federal ownership, and that a covenant shall be executed and filed at such time as the property is transferred to an owner that is not the federal government, and conditioning the continued approval of any selected remedies relying upon or referencing the Notice or covenant upon the timely execution and filing of a covenant at the time the property is transferred to an owner that is not the federal government.

(vi) Contain a provision that all other regulations applying to an environmental covenant shall apply to the Notice.

(b) At the time of transfer of property subject to 335-5-1-.02(3)(a) to non-federal ownership, an environmental covenant pursuant to this Division shall be executed.

(4) These regulations apply to interests in real property which are in existence at the time an environmental covenant is created or amended.

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person owning the interest subordinates that interest to the covenant.

(b) A person owning a prior interest is not required to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the subordination agreement may be signed by any person authorized by the governing board of the owners' association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not automatically impose any affirmative obligation on the person with respect to the environmental covenant.

Authors: James L. Bryant; Lawrence A. Norris; [R. Blake Schmidt](#); [Pamela W. Luckie](#)

Statutory Authority: [Code of Alabama](#) 1975, §35-19-13.

History: May 26, 2009; March 26, 2013; [Proposed: August 21, 2023.](#)

335-5-1-.03 Definitions. For the purpose of this Division, the following words and phrases, unless the context of 335-5 plainly indicates otherwise, shall have the following meanings:

(a) Activity and Use Limitations - Restrictions or obligations created under this Act with respect to real property.

(b) ADEM or Department - The Alabama Department of Environmental Management.

(c) Alabama Uniform Environmental Covenants Act or "Act" - Code of Alabama 1975, §§ 35-19-1 to 35-19-14.

(d) Common Interest Community - A condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(e) Director - The Director of the Alabama Department of Environmental Management or his or her designated representative.

(f) Environmental Covenant - A servitude arising under an environmental response project that imposes activity and use limitations.

(g) Environmental Response Project - A plan or work performed for environmental remediation of real property and conducted under any of the following programs or situations:

(i) A federal or state program governing environmental remediation of real property as listed in 335-5-1-.02(2);

(ii) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency;

(iii) Under a state voluntary cleanup program pursuant to 335-15.

(h) Holder - The grantee of an environmental covenant that meets the requirements of 335-5-2-.01.

(i) Land Use Controls - Any restriction or control that serves to protect human health and the environment by limiting the use of or exposure to any portion of a property or site, including water resources. These controls include, but are not limited to:

1. Engineering controls for remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater conveyance systems, slurry walls, liner systems, caps, leachate collection systems, pump-

and-treat systems, and groundwater recovery systems. Engineering controls are classified as:

(i) Class 1, which includes s multi-layer caps or liner systems, soil vapor extraction systems, groundwater pump-and-treat systems, leachate and groundwater recovery systems, stormwater conveyance systems, slurry walls and active ventilation of closed spaces.

(ii) Class 2, which includes s clay or soil caps or liner systems, sub-structural vapor barriers, and passive ventilation of closed spaces.

(iii) Class 3, which includes s asphalt caps and fencing systems.

(iv) For other engineering controls not listed, ADEM shall determine the classification of the engineering control upon the request of an owner or operator or other responsible person.

2. Institutional controls that are legal or contractual restrictions on property use ~~which~~ that remain effective after remediation is completed and are used to meet an approved environmental response project plan or proposal. These include, but are not limited to, deed notations, deed restrictions, groundwater use restrictions, restrictive covenants, conservation easements, and limited development rights. Institutional controls are classified as:

(i) Class 1, which includes any water use restriction.

(ii) Class 2, which includes s restrictive covenants for industrial or commercial use only or no schools or daycares, and imposition of conservation easements or limited developmental rights.

(iii) Class 3, which includes s restrictive covenants for no excavations, for use as greenspace only, and no hunting or fishing.

(iv) For other institutional controls not listed, ADEM shall determine the classification of the institutional control upon the request of an owner or operator or other responsible person.

(j) Owner or Operator - Includes the following:

1. In the case of a property or site, any person owning or operating that property or site.

2. Any person who owned, operated, or otherwise controlled activities at a property or site immediately prior to conveyance of title of that property or site to a unit of state or local government or loss of control of that property or site due to bankruptcy, foreclosure, tax delinquency, or abandonment.

3. The definition does not include the following:

(i) A person acting solely in a fiduciary capacity who can show evidence of ownership and who did not actively participate in the management, disposal,

or release of hazardous wastes, hazardous constituents, hazardous substances or petroleum products from the property or site.

(ii) A unit of a state or local government ~~which~~ that acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or any other circumstance where the government involuntarily acquires title by virtue of its function as sovereign. This exclusion shall not apply to any state or local government that has caused or contributed to the release of hazardous wastes, hazardous constituents, or hazardous substances from the property or site.

(k) Person - An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(l) Property or Site - A parcel of land defined by boundaries of a legal description where a hazardous waste, hazardous constituent, hazardous substance or petroleum product has been or is suspected to have been deposited, discharged, stored, disposed of, placed, or otherwise come to be located.

(m) Record - Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) Response Action - Action taken in the event of a release or threatened release of a hazardous waste, hazardous substance, petroleum product, or other pollutant into the environment to remove or to prevent or minimize the threat to public health or the environment.

(o) Responsible Person - Any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent or hazardous substance at a property. This term includes any person who has contributed or is contributing to a release of petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. This term includes persons described in §§107(a)(1) through 107(a)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Section 9601, et seq. (CERCLA). This term excludes persons described in §107(b) of CERCLA.

(p) Restricted Use - Any use of a property or site other than unrestricted use.

(q) State - The State of Alabama.

(r) Unrestricted Use - The designation of acceptable future use at a property or site where the remediation levels, based on either background or standard exposure factors, shall have been attained in all media to allow the property or site to be used for any purpose.

Authors: James L. Bryant; Lawrence A. Norris; [R. Blake Schmidt, Pamela W. Luckie](#).

Statutory Authority: [Code of Alabama](#). 1975, §§35-19-2; 35-19-13.

History: May 26, 2009; March 26, 2013; [Proposed: August 21, 2023](#).

335-5-1-.06 Fees. The Department may assess fees to implement the provisions of the Act.

(1) A Processing and Review Fee shall be required to cover the cost of processing the covenant application and for reviewing the draft and final covenants. For sites utilizing both institutional controls and engineering controls, the processing and review fees shall be the greater of the applicable fees.

(2) A Registry Recording Fee shall be required to cover cost of establishing and maintaining the ADEM Registry of Environmental Covenants, for entering the site in this Registry, and for performing routine inspections at the site to determine compliance with the covenant restrictions. For sites with more than one classification of institutional or engineering control, the Registry Recording Fee shall be the greater of the applicable fees.

(3) An owner or operator or other responsible person desiring to enter an environmental covenant shall submit a draft environmental covenant and all required fees.

(4) Fees required pursuant to this section are included in 335-1-6-.04, Schedule J.

(5) Exemptions. The following sites are exempt from paying fees in 335-1-6-.04, Fee Schedule J and in 335-5-1-.06, as specified below. These sites will be entered in the ADEM Registry of Environmental Covenants.

(a.) A site that is enrolled in the ADEM Voluntary Cleanup Program pursuant to 335-15 is exempt from paying processing and review fees in Fee Schedule J.

(b.) A site regulated under the programs listed in 335-5-1-.02(2) that has a provision for a post-closure permit which is renewable by payment of a permit fee and a provision for routine inspection by the Department or other environmental regulatory agency is exempt from paying all fees in Fee Schedule J.

(c.) A site regulated under the programs listed in 335-5-1-.02(2) that has a provision for cost reimbursement to the Department as contained in a cooperative agreement, a memorandum of agreement or an administrative order is exempt from paying the Processing and Review Fees in Fee Schedule J, to the extent such costs are reimbursable under these agreements.

(6) An owner or operator or other responsible person desiring to enter an environmental covenant for an environmental response project containing multiple individually deeded parcels off-site of the property or site which are subject to the environmental response project plan may submit an alternative fee schedule to the Department as part of its formal submittal of the environmental covenant in lieu of fees required in 335-1-6-.04, Fee Schedule J.

(a.) If submitting an alternative fee schedule, the owner or operator or other responsible person shall be required to pay the applicable processing and review fees found in 335-1-6-.04, Fee Schedule J for each individually worded covenant for an off-site property that is different from land use controls or restrictions found in other covenants utilized for other individually deeded parcels off-site of the property or site subject to the environmental response project plan.

(b.) If submitting an alternative fee schedule, the owner or operator or other responsible person shall propose how to reimburse the Department for the registry recording fee which covers its cost to inspect each individually deeded off-site parcel to determine compliance with the covenant. The method to reimburse the Department shall be included in an order or agreement executed between the owner or operator or other responsible person and the Department. The length of time in years over which inspections will be conducted by the Department shall be negotiable and included in the covenant.

Authors: James L. Bryant; Lawrence A. Norris; Sonja B. Favors, and Pamela W. Luckie.

Statutory Authority: Code of Alabama 1975, §35-19-13.

History: Amended: Effective: May 26, 2009; **Amended:** Effective: March 26, 2013; **Amended:** Filed: August 20, 2019; Effective: October 4, 2019; Proposed: August 21, 2023.

335-5-1-.07 Process for Entering a Covenant.

(1) The owner or operator, the other responsible person or the person conducting an environmental response project may use land use control in lieu of remediating the property to a level supporting unrestricted use. The ADEM organizational unit under which the response action is being conducted shall approve the environmental response project plan which proposes a land use control.

(2) For properties not remediated to a level supporting unrestricted use, an environmental covenant is required in accordance with 335-5-1-.02. To enter an environmental covenant, the owner or operator, the other responsible person or the person conducting an environmental response project shall submit the following to the ADEM organizational unit under which the response action is being conducted:

- (a) A draft of the proposed environmental covenant.
- (b) The applicable fees in Fee Schedule J of 335-1-6 and 335-5-1-.06.
- (c) All pertinent information required in 335-5-2-.01(1).

(3) ADEM shall review and approve the draft covenant or request modifications. If requesting modifications to the draft covenant, ADEM shall provide the applicant with its reasons for requesting change. Upon submittal by the applicant of acceptable modifications, ADEM shall approve the draft covenant.

(4) Within 30 days of ADEM's approval of the draft covenant, the applicant shall submit one copy of the final covenant signed by the Grantee, which complies with 335-5-2 for execution by the Director or his designee. Upon execution by the Department, the signed copy shall be returned to the applicant.

(5) Upon receiving the executed copy of the covenant from ADEM, the applicant shall have the covenant or an ADEM--approved recording instrument, as described in 335-5-3-.02(3), recorded in the land records of the county where the site is located, in compliance with 335-5-3-.02.

(6) Documentation of the recorded covenant or the ADEM--approved recording instrument shall be submitted to ADEM within 30 days of recording in compliance with 335-5-3-.02

Authors: James L. Bryant; Lawrence A. Norris; Sonja B. Favors, Lynn T. Roper, and Pamela W. Luckie.

Statutory Authority: Code of Alabama 1975, §§35-19-3; 35-19-13.

History: Amended: Effective: May 26, 2009; **Amended:** Effective: March 26, 2013; **Amended:** Filed: August 20, 2019; Effective: October 4, 2019; **Proposed:** August 21, 2023.

335-5-2-.01 Covenant Contents.

(1) An environmental covenant is not effective unless it includes all of the following information:

(a) A statement that the instrument is an environmental covenant executed pursuant to the Act.

(b) A legally sufficient description of the real property subject to the covenant.

(c) A description of the activity and use limitations on the real property.

(d) Identification of every holder.

(e) The signatures of the Director, every holder, and unless waived by the Department in writing, every owner of the fee simple of the real property subject to the covenant.

(f) The name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(2) The covenant may also contain any other information, restrictions, and requirements, including but not limited to any of the following:

(a) Requirements for notice following the transfer of a specified interest in the property subject to the covenant.

(b) Requirements for notice concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant.

(c) Requirements for periodic reports of compliance with the covenant.

(d) Rights of access to the property which are granted in connection with implementation or enforcement of the covenant.

(e) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.

(f) An exculpatory provision that releases the grantor from future claims by the grantee or the grantee's successor in title that is consistent and enforceable under the laws of this State.

~~(g)~~ Limitations on amendment or termination of the covenant in addition to those provided in 335-5-4-.02.

(hg) Rights of the holder in addition to the holder's right to enforce the covenant pursuant to 335-5-5-.01.

(ih) The name of the person who shall submit the environmental covenant to ADEM for listing in the registry required in 335-5-1-.05.

Authors: James L. Bryant; Lawrence A. Norris; [R. Blake Schmidt](#); [Pamela W. Luckie](#).

Statutory Authority: Code of Alabama 1975, §§35-19-4; 35-19-13.

History: May 26, 2009; [Proposed: August 21, 2023](#).

335-5-2-.03 Relationship to Other Land Use Law. Neither the Act nor 335-5 authorizes [the](#) use of real property which is otherwise prohibited by zoning, by other law which regulates the use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict a use of real property which is authorized by zoning or by law other than the Act.

Authors: James L. Bryant; Lawrence A. Norris, [and Pamela W. Luckie](#).

Statutory Authority: [Code of Alabama](#) 1975, §§35-19-6; 35-19-13.

History: May 26, 2009; [Proposed: August 21, 2023](#).

Attachment 6

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

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

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

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

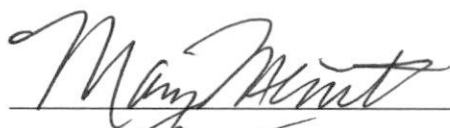






NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [**335-6-16-.07/ Trust Fund Fee and Charge (Amend); 335-6-16-.09/ Scope of Tank Trust Fund Coverage (Amend); 335-6-.16-.14/ Applications for Payment (Amend);**] of the Department's Water Quality Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 8th day of December 2023.

APPROVED:

 _____	 _____
 _____	 _____
 _____	 _____
 _____	

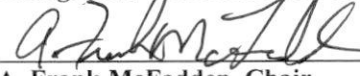
DISAPPROVED:

_____	_____
_____	_____
_____	_____

ABSTAINED:

_____	_____
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This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 8th day of December 2023.



A. Frank McFadden, Chair
Environmental Management Commission
Certified this 8th day of December 2023

ATTACHMENT A

335-6-16-.07 Trust Fund Fee and Charge.

(1) In order to participate in the liability limitations and reimbursement benefits of the Tank Trust Fund, an UST and/or AST owner or operator shall pay an annual Tank Trust Fund Fee, if any. The Commission may set annual fees the total of which shall not exceed \$150 per regulated tank.

(2) Each year UST and/or AST owners or operators will be notified by the Department of the amount of the required Tank Trust Fund Fee, if any, which will be due within thirty (30) days of the invoice date. For underground storage tanks and/or aboveground storage tanks brought into service on or after October 1 of each year the Tank Trust Fund fee is due with the registration of the tank(s) with the Department.

(3) To protect the financial integrity of the fund, the Commission may make special assessments of Tank Trust Fund Fees. However, the total fee, if any, shall not exceed \$150 per regulated tank per year. Special assessment fees will be due within thirty (30) days of the invoice date.

(4) The failure to pay Tank Trust Fund Fees, if any, within the time prescribed by the Department shall make the owner or operator of an UST and/or AST liable for a late charge penalty in an amount not to exceed \$100 per tank for each day such payment is delinquent and will result in the loss of Trust Fund eligibility. The Department, for good cause shown, may abate all or part of said late charge penalty.

(5) The Trust Fund Fee is set at \$0.00 per tank.

(6) The Trust Fund Charge is set at ~~\$0.012~~ \$0.01 per gallon.

Author: Sonja Massey, James Stevens, Gregory Stephens, James Thrash, [Vernon H. Crockett](#).

Statutory Authority: Code of Alabama 1975, §§ 22-35-5.

History: June 1, 1989. **Amended:** Effective: June 1, 1994; **Amended:** Effective: October 1, 2004; **Amended:** Effective: January 1, 2010; **Amended:** Effective: January 16, 2012; **Amended:** Filed: December 31, 2020; Effective: February 15, 2021; **Proposed:** [August 21, 2023](#).

335-6-16-.09 Scope of Tank Trust Fund Coverage.

(1) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions and for compensation of third parties for bodily injury and property damage resulting from accidental releases arising from the operation of an UST or AST which stores motor fuels.

(2) The financial responsibility requirements for eligible UST owners or operators will be \$5,000 for UST owners or operators per occurrence and \$10,000 per occurrence for AST owners or operators for taking response actions and compensation of third parties, unless another amount is established by the Commission.

(3) The monies expended from the Tank Trust Fund to eligible UST owners or operators for response actions may be disbursed only up to such sum as will cause the Resource Conservation and Recovery Act, Subtitle I, the Superfund Amendments and Reauthorization Act of 1986, and other federal laws governing disbursements of federal funds for clean up and/or third party claims to come into effect.

(4) "Per Occurrence Indemnification Limit." The total amount of reimbursement available from the fund as a result of a release from underground or aboveground storage tanks shall not exceed under any circumstance the per occurrence indemnification limit established under this rule, which shall be determined by the commission upon recommendation of the Trust Fund Management Board, on an annual basis. In no event shall combined claims against the fund for payment of response actions and third-party claims exceed the per occurrence indemnification limit.

(a) If the per occurrence indemnification limit is increased, such increased limit shall be available for response actions costs and/or third party claims as to those existing sites that are eligible for trust fund benefits, but such increased limits shall not be available to existing sites where the Department, as of the effective date of such increase, has issued a No Further Action Letter.

(b) ~~Beginning December 7, 2018, t~~The per occurrence indemnification limit is set at ~~one million, seven hundred fifty thousand dollars (\$1,750,000)~~ two million dollars (\$2,000,000), less the applicable deductible.

(5) The indemnification limit of the Tank Trust Fund with respect to satisfaction of third party claims shall be in the following amounts:

(a) For owners and operators of motor fuels underground and aboveground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of motor fuels per month based on annual throughput for the previous calendar year; \$1 million per occurrence,

(b) For all other owners and operators of motor fuels underground and aboveground storage tanks; \$500,000 per occurrence;

(c) For owners and operators of 1 to 100 motor fuels underground and aboveground storage tanks, \$1 million annual aggregate; and

(d) For owners and operators of more than 101 motor fuels underground and aboveground storage tanks, \$2 million annual aggregate.

(6) The Tank Trust Fund will provide to eligible UST or AST owners or operators coverage for the reasonable cost of response actions required by the Department, where that owner or operator's UST or AST system was found not to be the source of the release which prompted the Department's requirement for the response action.

(7) The financial responsibility requirements for eligible UST or AST owners as described in paragraph (2) above of this Rule, shall upon approval by the Commission, be waived.

Author: Sonja Massey, James Stevens, ~~and~~ Gregory Stephens, and Vernon H. Crockett.

Statutory Authority: Code of Alabama 1975, §§ 22-35-4, 22-35-5, 22-35-7.

Effective: June 1, 1989. **Amended:** Effective: June 1, 1994; **Amended:** Effective: January 1, 2010; **Amended:** Effective: November 26, 2013; **Amended:** Effective: January 1, 2014; **Amended:** Effective: October 1, 2015; **Amended:** Effective: December 7, 2018; **Amended:** Filed: December 31, 2020; Effective: February 15, 2021; Proposed: August 21, 2023.

335-6-16-.14 Applications for Payment.

(1) Applications for reimbursement for costs of response actions shall be submitted on a form established by the Department which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the Department, or which the applicant may wish to provide. Documentation of charges to include actual invoices must be submitted as part of the application, as required by the Department.

(2) The application shall contain the following statement which shall be signed by the owner, ~~or operator,~~ and or the project manager of the contracting firm responsible for performance of response actions where applicable:

I certify to the best of my knowledge and belief: that the costs presented herein represent actual costs incurred in the performance of response actions related to this site during the period of time indicated on this application; and that no charges are presented as part of this application that did not result from the performance of response actions which were necessary due to the release of motor fuels at this site. I have personally examined and am familiar with the information submitted in this payment request and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in this payment request, I certify that the information is true, accurate, and complete, and that this payment request does not duplicate any request for payment for any charge previously submitted to the Department.

~~(3) The application shall contain the following statement which shall be signed by the owner or operator:~~

~~I certify that an unintentional release has occurred from a motor fuel underground storage tank system or aboveground storage tank system at the site~~ Reserved.

(4) Applications for payments may be submitted following acceptance by the Department of completed response actions. Such response actions may include but are not limited to the following:

(a) Completion of site stabilization activities which were authorized by the Department.

(b) Completion and submittal of a report for a Preliminary Investigation.

(c) Implementation of a Free Product Removal System.

(d) Completion and submittal of a report for a Secondary Investigation and Development of a Corrective Action Plan.

(e) Implementation of a Corrective Action Plan.

(f) Provision of an alternate water supply.

(g) Completion and submittal of Risk Assessment.

(5) Applications for payments for the implementation of corrective action may be submitted ninety (90) days following initiation of work to implement the corrective action plan and at ninety (90) day intervals thereafter until completion of the authorized activities. Upon request, the Department may approve interim payments at more frequent intervals.

(6) All payments shall be subject to approval by the Department. Should a site inspection, review of documentation or other information available to the Department reveal a discrepancy between the work performed and the work addressed by a payment application, the Department may deny payment or may require the Tank Trust Fund to be reimbursed.

(7) An application for payment must be received within eighteen (18) months from the date of the approval of the associated cost proposal in order to be eligible for payments from the Tank Trust Fund.

(8) Except as provided for in rules 335-6-16-.12(c)(1), payments shall not be made for response actions performed at a site until the Department has reviewed and approved a cost proposal for that work and until funds have been obligated from the Tank Trust Fund for completion of that particular stage of work.

(9) For payment of third party claims the UST or AST owner or operator must submit an application to the Department attaching the original or a certified copy of a final judgment, enforceable in this state with proof of payment of the first \$5,000 for a UST or \$10,000 for a AST, as the case may be no later than thirty (30) days after notification of judgment.

(10) Payments for response actions, the cost of which exceed the scope or amount of the approved cost proposal for that action, are subject to approval by the Department.

Author: Sonja Massey, James Stevens , Gregory Stephens, Dorothy Malaier, ~~and~~ James Thrash, and Vernon H. Crockett

Statutory Authority: Code of Alabama 1975, §§ 22-35-5.

History: June 1, 1989. **Amended:** Effective: June 1, 1994; **Amended:** Filed: December 31, 2020; Effective: February 15, 2021; Proposed: August 21, 2023.