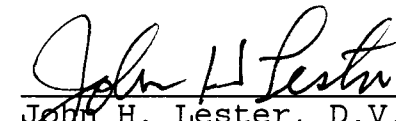


04/20/12

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 24, 2012**

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 February 24, 2012.



John H. Lester, D.V.M.
Chair

Environmental Management Commission

Certified this 20th day of April 2012.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 24, 2012

Convened: 11:00 a.m.
Adjourned: 11:42 a.m.

Part A

Transcript
Word Index

Part B

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Attachments 1 – 8

Part A

Page 1

1 ALABAMA ENVIRONMENTAL MANAGEMENT
2 COMMISSION MEETING
3
4
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7
8
9 ALABAMA DEPARTMENT OF ENVIRONMENTAL
10 MANAGEMENT
11 Alabama Room
12 1400 Coliseum Boulevard
13 Montgomery, Alabama 36110-2400
14 February 24, 2012
15 11:00 a.m.
16
17
18
19
20
21
22
23 Taken by: Victoria M. Castillo, CCR# 17

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1 (The hearing begins at 11:00 a.m.)
2
3 CHAIRMAN LESTER: If you-all
4 would turn your mics on so she can get it.
5 COURT REPORTER: Thank you.
6 CHAIRMAN LESTER: At this
7 time we will ask our director for his
8 report.
9 MR. LeFLEUR: Good morning,
10 Commissioners. Good morning to all.
11 Welcome to all of you present at this third
12 meeting of the Alabama Environmental
13 Management Commission for fiscal year
14 2012.
15 We are approaching the halfway
16 mark for the current fiscal year and one
17 item continues to eclipse all other items
18 for ADEM, as it does for every other agency
19 in state government, and that is the
20 budget.
21 We're engaged in a struggle to
22 fulfill our mission when faced with reduced
23 funding for the balance of the current

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1 A P P E A R A N C E S
2
3 COMMISSION MEMBERS PRESENT:
4 John H. Lester, D.V.M., Chair
5 Terry D. Richardson, Ph.D.
6 Samuel L. Miller, M.D.
7 W. Scott Phillips
8 James E. Laier, Ph.D., P.E.
9
10 COMMISSION MEMBERS NOT PRESENT:
11 H. Lanier Brown, II, Esquire, Vice Chair
12
13 ALSO PRESENT:
14 Robert Tambling, EMC Legal Counsel
15 Debi Thomas, EMC Executive Assistant
16 Lance R. LeFleur, ADEM Director
17
18
19
20
21
22
23

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1 fiscal year, and worse funding prospects in
2 the upcoming year. I'm aware that I've
3 been delivering this same message for the
4 last several Commission meetings, and it's
5 beginning to sound like a broken record.
6 While these are dire financial
7 times and our budget will continue to
8 dictate what this Department can achieve,
9 we are nonetheless committed to peak
10 performance with whatever resources are
11 available.
12 In today's report I first want
13 to make you aware of our financial
14 situation as best we now know it. In
15 previous reports I have focused on some of
16 the actions we are taking to become more
17 efficient and perform our duties with fewer
18 resources. These actions include increased
19 automation, streamlining enforcement, and
20 developing general permits.
21 Second, following an update of
22 the financial situation, I'd like to focus
23 on something a little different and

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1 highlight some of the more specialized but
2 important areas where we are making great
3 strides, even in these difficult times.
4 First the financial situation.
5 Although we are nearly halfway through FY
6 '12, there remain two budgetary unknowns --
7 one with our federal funding, and one with
8 our general fund allotment. As you no
9 doubt recall, departmental funding comes
10 from federal grants, departmental fees, and
11 state general funds.
12 Current indications are that
13 federal funding for our continuing
14 programs, except the 319 Nonpoint Source
15 Program, will drop back to 2010 levels;
16 however, even this is not certain because
17 our major federal grants are being funded
18 at a much slower rate than normal while
19 EPA's operating budget is undergoing a
20 second review by the Office of Management
21 and Budget.
22 As for the second unknown, our
23 FY '12 general fund allotment, we've been

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1 notified to expect a possible additional
2 cut for proration on top of the \$1.1
3 million reduction already reflected in the
4 FY '12 general fund budget. Until we know
5 for certain what additional -- what
6 additional cuts will materialize, I cannot
7 report for certain what actions the
8 Department will take to absorb them. At
9 this point we do believe that the worst of
10 the potential impact will be mitigated by
11 our previously announced 19 percent fee
12 increase.
13 We are now well into the FY 2013
14 budget process. On the federal side,
15 President Obama proposed fairly modest
16 funding cuts to EPA, although all beach
17 monitoring funding would be eliminated as
18 well as a portion of the 319 Program. For
19 ADEM, these would amount to eliminating the
20 \$260,000 previously allocated to beach
21 monitoring and \$216,000 less in the 319
22 Program. The 319 cut will further reduce
23 the number of restoration and environmental

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1 projects that we will be able to fund in
2 2013. In light of congressional concerns
3 regarding EPA activities, it's entirely
4 possible the final 2013 fiscal year
5 congressional budget will include larger
6 cuts to EPA, and thus larger cuts to ADEM.
7 In the proposed FY 2013 state
8 general fund budget that Governor Bentley
9 recently sent to the legislature, he
10 suggested a 20 percent reduction in our
11 appropriation. We are now at the point
12 where any net decrease in our general fund
13 allotment which is not somehow replaced
14 will result in the loss of federal funds
15 due to our inability to provide match
16 funds. If this recommended cut stands, the
17 compounding effect on the federal match
18 funds can dramatically reduce our overall
19 funding for FY 2013.
20 We've already been in talks with
21 the legislative leadership regarding our
22 general fund budget. They've been
23 receptive to our concerns, and we will

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1 continue to work closely with them and
2 other members of the legislature over the
3 coming months to ensure that we are
4 fiscally able to maintain operations. At
5 the same time, we will continue to evaluate
6 every part of the Department for new
7 efficiencies and for noncritical functions
8 that can be eliminated. We can expect this
9 process to result in substantial changes to
10 our programs. If at all possible, we will
11 avoid cost reductions that may result in
12 state permitting authority being rescinded
13 and turned over to EPA.
14 Let me briefly mention one new
15 cost recovery initiative that has recently
16 been implemented in our Emergency Response
17 Program. Historically, the Department has
18 not recovered emergency response costs from
19 the responsible parties, except in the
20 largest response efforts such as the BP oil
21 spill. We have now begun recovering costs
22 for spills and other environmental
23 emergencies from the responsible parties in

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1 virtually all cases where the response
2 effort requires more than one day.
3 The bottom line in budgets is
4 that we still believe the adoption of the
5 19 percent permit fee increase, along with
6 the continued streamlining of operations
7 and the newly implemented Cost Recovery
8 Program, will allow us to meet the
9 financial challenges in FY 2012 and
10 possibly in FY 2013 without compromising
11 our mission to assure for the citizens of
12 the state a safe, healthful, and productive
13 environment.
14 On a somewhat brighter note,
15 allow me to update you on a few areas where
16 we have been experiencing some success,
17 even in these difficult budget times.
18 One of the Department's most
19 successful programs has been the
20 environmental cleanup effort supported by
21 the Scrap Tire Fund. The fund was first
22 created by an act of the legislature to
23 first clean up illegal scrap tire dumps,

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1 and second to promote the beneficial reuse
2 of scrap tires to prevent the illegal dumps
3 from reappearing.
4 Over the past five years, a
5 total of 69 sites have been remediated
6 utilizing private sector contractors paid
7 primarily by the Scrap Tire Fund. Of these
8 69 sites, four were classified as large
9 sites. The smallest of these large sites
10 contained 70,000 tires, while the largest
11 contained some 4 million scrap tires. The
12 cost to remediate each of these sites
13 varies, but the largest ranged up to nearly
14 \$4 million. There are three known large
15 sites remaining to be cleaned up in the
16 state. The Scrap Tire Fund will provide
17 the means to remediate these sites.
18 The remaining 65 sites cleaned
19 up were classified as small scrap tire
20 remediation sites, meaning they contained
21 less than 25,000 scrap tires. ADEM has so
22 far identified an additional seven small
23 sites to be cleaned up utilizing the Scrap

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1 Tire Fund.
2 The Department has recently
3 enlisted the assistance of county
4 governments around the state to improve the
5 effectiveness of scrap tire cleanup by
6 entering into agreements whereby funds are
7 provided by the Scrap Tire Fund to the
8 counties for the removal of smaller volumes
9 of scrap tires from the right-of-ways
10 maintained by the local government.
11 Forty-one of the 67 counties
12 have already entered into the agreements.
13 This provides more boots on the ground to
14 fight the scrap tire problem and is an
15 extremely efficient use of scarce dollars.
16 The Department is also
17 evaluating the potential for establishing
18 scrap tire collection sites in each county,
19 with funding for the proper disposal or
20 recycling of the tires collected at these
21 sites provided by the Scrap Tire Fund.
22 The second point of attack on
23 the scrap tire problem in the state is to

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1 develop an after-market for scrap tires so
2 there is incentive not to dump them. This
3 is somewhat analogous to what has been done
4 with aluminum cans. Jump-starting the
5 beneficial reuse of scrap tires has been
6 more challenging than the remediation of
7 dump sites.
8 One significant hurdle has been
9 the inability of the private sector to find
10 an economically viable business model to
11 undertake the initial step of transporting
12 in scrap tires and reducing them to a
13 shredded form. A reliable supply of
14 prepared tire material is necessary for
15 potential end-users to consider investing
16 in further processing.
17 To overcome this problem, the
18 Department has reached out to the Alabama
19 Department of Corrections and a municipally
20 operated landfill to partner with them in
21 pilot projects to undertake this crucial
22 first step of shredding. Numerous private
23 sector entities have also been approached

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1 in an effort to build private/public sector
2 ventures. Scrap tire funds have been
3 committed to obtain heavy duty shredders to
4 facilitate undertaking this necessary
5 initial step.

6 ADEM is also working with
7 potential end-users to help build demand
8 for recycled tire material. One such
9 effort involves working with ALDOT to
10 implement the use of rubber modified
11 asphalt for paving projects and for the use
12 of processed scrap tire material in
13 engineered uses, such as road related
14 structural fill projects.

15 Stimulating both supply and
16 demand with these types of projects is what
17 was envisioned when the market development
18 monies were set aside in the Alabama Scrap
19 Tire Environmental Quality Act.

20 Moving on now to north
21 Birmingham. There has been some recent
22 activity to report on industrial pollution
23 in the north Birmingham area. As you are

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1 aware, there continues to be a great deal
2 of attention given to legacy environmental
3 issues in the north Birmingham area. This
4 area has been heavily industrialized since
5 the 19th century, and there is concern that
6 unsafe levels of substances may be present
7 in the soil.

8 Sampling has been performed in a
9 number of yards and schools around the
10 Walter Coke plant site in north Birmingham
11 which has resulted in contaminated soil
12 being removed at a few of the locations.

13 These were activities undertaken
14 by Walter Coke under the supervision of EPA
15 Region 4's RCRA Program. Recently, Region
16 4's Superfund Removal Program has taken the
17 lead regarding off-site -- that is off the
18 Walter Coke property site --
19 contamination.

20 Walter Coke has been sent what
21 is called a general notice letter which
22 identifies them as a potentially
23 responsible party. Region 4 continues its

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1 research and will likely be sending out
2 additional general notice letters to other
3 companies in the area.

4 Since the enforcement action
5 began in 1989, EPA has elected to retain
6 sole control of the north Birmingham
7 situation, so ADEM has not played a role
8 during the last 22 years.

9 Over the past several months,
10 ADEM has been approached by the industry
11 groups in the north Birmingham area, along
12 with interested environmental organizations
13 and the EPA, about officially joining in
14 this process. Because of this near
15 universal support for our participation,
16 ADEM has indicated to EPA that we will
17 partner with them in these activities.

18 We hope that by taking an active
19 role in this process, ADEM can bring this
20 action to a timely conclusion and achieve
21 an outcome that ensures a safe, healthful,
22 and productive environment in the north
23 Birmingham area.

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1 Let me move on now to the
2 landfill moratorium in effect in Alabama.
3 In the 2011 session of the Alabama
4 Legislature, legislation was adopted
5 declaring a two-year moratorium on the
6 permitting of certain new or expanded
7 landfills. That legislation also directed
8 the Department, along with the Alabama
9 Department of Public Health, to review and
10 recommend any necessary changes to
11 Alabama's statewide Solid Waste Disposal
12 Plan.

13 To accomplish this mandate, a
14 Request for Proposals was developed and
15 sent to universities around the state.
16 After reviewing the proposals submitted,
17 having presentations by the submitting
18 groups, the proposal submitted by Auburn
19 University was selected.

20 Planning for the next steps in
21 this process has already begun, and we will
22 be entering into a formal agreement with
23 Auburn in the near future. An important

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1 part of the study will involve public
2 meetings around the state to encourage
3 public input on landfill siting, recycling,
4 and other components of the statewide Solid
5 Waste Plan. We anticipate the first public
6 meetings will take place this spring.
7 Next, let me update you on
8 activities of the Underground Storage Tank
9 Program. This program began in 1988 with
10 the creation of the Alabama Underground
11 Storage Tank Trust Fund, which was designed
12 to fund cleanup of the pollution from the
13 thousands of leaking gasoline and other
14 underground storage tanks in the state.
15 The program is funded by a fee
16 applied to each gallon of fuel at the
17 wholesale level. The Alabama Underground
18 Storage Tank Trust Fund expends
19 approximately \$30 million per year to
20 investigate, monitor, and take appropriate
21 corrective action to prevent potential
22 adverse health effects from UST releases.
23 Since the beginning of the ADEM UST Program

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1 in 1988, nearly three-fourths of the 4,700
2 known release incidents have been cleaned
3 up. This leaves 1,300 still under
4 investigation and corrective action.
5 Although the number of new
6 releases from underground storage tanks has
7 declined since the Tank Regulatory Program
8 was implemented, we still have
9 approximately 100 new releases a year.
10 Alabama's program has been one
11 of the most successful in the nation;
12 however, there is much work remaining to
13 ensure that all these existing and newly
14 discovered sites are remediated and the
15 health of the surrounding communities is
16 protected.
17 I'd like to close on a high note
18 by bringing to your attention an assessment
19 of the Department's performance by an
20 impartial outside organization. The U.S.
21 Office of Inspector General released a
22 report on December 9th, 2011 analyzing
23 EPA's oversight of the state enforcement

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1 programs.
2 The air, water, and land
3 programs for each state were ranked as
4 being in one of four quartiles for their
5 overall programs, and the states were
6 ranked as being in one of the four
7 quartiles for their overall programs.
8 The Alabama Air Program was
9 listed as having the highest average
10 performance for the Clean Air Act
11 enforcement of all states. Alabama's air
12 and water programs were in the top
13 quartile. Overall, Alabama was in the top
14 quartile in the nation.
15 Impressive as this is, it is
16 even more impressive when it's recognized
17 that Alabama has among the very lowest
18 state funding levels in the nation. We
19 expect excellent performance, and I tip my
20 hat to our water, air, and land division
21 chiefs for this recognition of their work.
22 If I might, I'd like to ask that
23 you stand.

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1 (Audience applause)
2 MR. LeFLEUR: And let me
3 close by thanking you once again for your
4 service and for allowing me to serve in
5 this capacity.
6 Are there any questions?
7 MR. PHILLIPS: I have one
8 question, just relative to your budget and
9 the wonderful news you gave us this
10 morning. When do you expect from the time
11 frame to understand better how this will
12 affect us?
13 MR. LeFLEUR: The
14 legislature, in terms of our final budget,
15 as we all know, and it's -- it appears that
16 the budgeting process is going to be
17 delayed in the legislature for 2013
18 budgets. They may even have to call a
19 special session for those budgets. So we
20 will not be sure of anything as far as
21 state funding until probably May of this
22 year, is the guess that we have right now.
23 On the federal side for '13,

Page 21

1 obviously the congressional budget has not
2 been proposed yet, so we don't know what's
3 going to happen there. And that -- in the
4 last two years, we have not even had a
5 federal budget. They have had continuing
6 resolutions.
7 So the answer to your question
8 is I don't know for 2013. 2012, if
9 proration is going to be declared at the
10 state level, that would normally be
11 declared sometime either now or in the next
12 couple three months.
13 As far as federal money's
14 concerned, we have reasonable assurance,
15 but we normally have received half of our
16 funding from our federal grants by this
17 time of year, and we're down in the ten
18 percent having been received. So we're --
19 it's -- until the money's in the bank, we
20 never know what the federal government may
21 do. But right now they are very, very slow
22 in their distributions.
23 MR. PHILLIPS: Thanks.

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1 CHAIRMAN LESTER: The
2 Commission would like to thank you for all
3 your hard work and our employees who keep
4 us really informed. And the folks that
5 don't know, Lance meets with each
6 commissioner individually the week before
7 our meetings to answer any questions and
8 bring us up to date. And we'd like to
9 thank you for that.
10 MR. LeFLEUR: Well, I want
11 to thank all these people in this room that
12 are -- and the ones not here, the ones that
13 are up working -- that make me look better
14 than perhaps I would otherwise.
15 CHAIRMAN LESTER: Thank
16 you. Gisele, would you stand. We'd like
17 to thank Gisele on behalf of the Commission
18 for looking after us while Debi's been
19 out. And without her -- she's
20 double Lance's secretary and our
21 secretary. She has had a lot of work to
22 do, and we just want to tell you thank
23 you. And we have Debi today. But without

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1 you getting us all this information --
2 because people don't realize how much
3 information comes to each commissioner --
4 and accurate, I would say, information.
5 Thank you.
6 First item is consider the Joint
7 Legislative Committee on the Administrative
8 Regulation Review's proposed amendments to
9 the Commission rulemaking adopted by the
10 Commission on December 9, 2011 to repeal
11 the Clean Air Interstate Rule Regulations
12 in ADEM's Administrative Code, Chapter
13 335-2.
14 Call on the Department.
15 MR. JOHNSTON: Mr. Chairman,
16 members of the Commission, I'm Tom Johnston
17 with the Department's Office of General
18 Counsel. At your last meeting in December
19 you adopted a rulemaking package that
20 repealed certain rules from the
21 Department's air regulations that had been
22 adopted to conform with federal
23 requirements known as the Clean Air

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1 Interstate Rule, the CAIR rule.
2 The Air Division had proposed
3 repealing these rules because EPA had
4 promulgated a new rule that was scheduled
5 to replace CAIR on January 1. And we
6 wanted to get the old rules off the books
7 to maintain conformity and to avoid any
8 confusion.
9 However, on December 30th, the
10 United States Court of Appeals for the
11 District of Columbia entered an order in a
12 pending case that did two things -- first,
13 the Court stayed EPA's new rule and ordered
14 EPA to go back and continue administering
15 the old rule, the CAIR rule. So in light
16 of this court order, the repeal of the
17 state CAIR rules would have the exact
18 opposite effect of what it was intended, to
19 maintain conformity and avoid confusion.
20 Therefore, the Joint Legislative
21 Committee on Administrative Regulation
22 Review has returned the rulemaking package
23 to you with a proposed amendment that

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1 clarifies that these rules will be repealed
2 when the Department certifies to the
3 Legislative Reference Service that the
4 federal CAIR rules are no longer in effect,
5 and that way the -- we will maintain that
6 conformity and avoid that confusion.
7 The Committee's proposed
8 amendment is before you for a vote to
9 accept or reject. Should you vote to
10 accept the proposed amendment, the rules
11 would be refiled with the legislative
12 records with the amendment language and the
13 unintended consequences arising from the
14 court order can be avoided.
15 For these reasons, the
16 Department recommends that you accept the
17 proposed amendment. Thank you.
18 CHAIRMAN LESTER: Does any
19 commissioner have a question of Tom?
20 (No response)
21 CHAIRMAN LESTER: Do I have
22 a motion?
23 MR. PHILLIPS: So moved

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1 Phillips.
2 DR. LAIER: Second.
3 CHAIRMAN LESTER: A motion
4 and a second. All in favor say "aye."
5 (All respond "aye")
6 CHAIRMAN LESTER: All
7 opposed?
8 (No response)
9 CHAIRMAN LESTER: The next
10 item of business is to consider adoption of
11 the proposed amendment to ADEM
12 Administrative Code 335-2, Air Pollution
13 Control Program Regulations.
14 I call on the Department.
15 MR. GORE: Mr. Chairman,
16 gentlemen, I'm Ron Gore with the Air
17 Division, and I appreciate the irony with
18 what I'm fixing to ask you to do given the
19 action you just took. But I'm here -- I
20 and the Department are here to ask you to
21 repeal another group of Air Division
22 Regulations.
23 Ten years ago this body adopted

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1 a special gasoline quality for Jefferson
2 and Chilton Counties to help the ozone
3 situation up there. Since then, the
4 federal gasoline quality requirements have
5 supercede largely your action.
6 So what we're asking you to do
7 is to erase the regulations that require
8 special gasoline in Birmingham. The cost
9 just isn't worth the benefit anymore in
10 view of the federal quality requirements.
11 So we held a public hearing -- public
12 comment period, excuse me -- on these rule
13 changes on October 24th, December 9th, the
14 public hearing on December 7th. No
15 comments were received in writing or
16 orally.
17 Pending any questions, I'd like
18 to ask that you repeal these rules.
19 CHAIRMAN LESTER: Thank
20 you. I think I said 335-2, but it was
21 335-3.
22 Do I have a motion?
23 MR. PHILLIPS: So moved.

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1 CHAIRMAN LESTER: Second?
2 DR. RICHARDSON: Second.
3 CHAIRMAN LESTER: All in
4 favor say "aye."
5 (All respond "aye")
6 CHAIRMAN LESTER: All
7 opposed?
8 (No response)
9 MR. GORE: Thank you.
10 CHAIRMAN LESTER: The next
11 item, we will consider adoption of proposed
12 to amendment to ADEM Administrative Code
13 335-6, Water Quality Program Regulations.
14 Call on the Department.
15 MR. CROCKETT: Thank you,
16 Dr. Lester. Good morning, Commissioners.
17 I'm Chip Crockett, Chief of the Stormwater
18 Management Branch of the Water Division.
19 The Department is seeking your approval to
20 modify portions of its water quality
21 regulations that pertain to the automatic
22 expiration of NPDES permits.
23 Currently an NPDES permit will

<p style="text-align: right;">Page 29</p> <p>1 expire automatically 18 months after 2 issuance of construction of the permitted 3 facility has not begun in the time frame. 4 This automatic expiration is tolled by an 5 administrative or judicial stay of the 6 permit. 7 Now, we're seeking to modify 8 this provision in two ways. First, we 9 propose to toll the automatic expiration by 10 any request for administrative hearing, in 11 addition to an actual stay of the permit. 12 Second, we propose to clarify the automatic 13 expiration of an NPDES permit for surface 14 coal mining. 15 Surface coal mining in Alabama 16 is a highly regulated activity requiring 17 permits from not only the Department, but 18 also the Alabama Surface Mining Commission, 19 and in numerous cases the U.S. Army Corps 20 of Engineers. 21 We are continuously coordinating 22 our permitting activities with these other 23 agencies. But these efforts</p>	<p style="text-align: right;">Page 31</p> <p>1 hearing on February 3rd in which there were 2 no members of the public in attendance. 3 The Department received one set of written 4 comments during the public comment period. 5 We prepared a reconciliation statement, and 6 that's been provided to you. 7 So Mr. Chairman, we appreciate 8 your consideration of this proposal. I'm 9 happy to address any questions the 10 Commissioners have at this time. 11 CHAIRMAN LESTER: Any 12 Commissioners have a question? 13 (No response) 14 CHAIRMAN LESTER: Do I have 15 a motion? 16 MR. PHILLIPS: Move to adopt 17 the proposed amendments. 18 DR. LAIER: Second. 19 CHAIRMAN LESTER: All in 20 favor say "aye." 21 (All respond "aye") 22 CHAIRMAN LESTER: All 23 opposed?</p>
<p style="text-align: right;">Page 30</p> <p>1 notwithstanding, there are times when our 2 respective permitting activities simply 3 cannot be concurrent. 4 And in these situations, a 5 paradox can arise between the automatic 6 expiration of the NPDES permit and the 7 restrictions on the activities that the 8 mine operator can perform prior to being 9 issued a permit by the ASMC, resulting in, 10 at the very least, a reduction in the time 11 allowed for the beginning of construction. 12 Now, this was not the intent of 13 the automatic expiration rule, and the 14 Department believes that a clarification is 15 in order. 16 Our proposal is to modify the 17 rules such that under specific conditions, 18 the NPDES permit for surface coal mining 19 will automatically expire 18 months after 20 issuance of the ASMC permit if construction 21 of the permitted facility has not begun in 22 that 18-month time frame. 23 The Department held a public</p>	<p style="text-align: right;">Page 32</p> <p>1 (No response) 2 (Dr. Miller joins the Commissioners.) 3 CHAIRMAN LESTER: The next 4 item is the consideration of the adoption 5 of the proposed amendments of ADEM's 6 Administrative Code 335-8, Coastal Program 7 Regulations. 8 MR. JENKINS: Good morning, 9 Chairman Lester, members of the 10 Commission. I'm Steve Jenkins with the 11 Department's Field Operations Division. As 12 part of your package, you have the hearing 13 record and a related document for the 14 proposed modification for the ADEM 15 Administrative Code Revision 335-8, Coastal 16 Program Rules. 17 The Department is proposing to 18 modify the Division 8 regulations to make 19 them consistent with regulatory decision 20 making time lines required by NOAA 21 regulations for the federal projects and 22 federal permits. In this program NOAA is 23 the federal oversight agency.</p>

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1 Rulemaking agreements have been
2 completed. A public hearing was held on
3 January 4th, 2012, and the record remained
4 open until January 6th to receive
5 comments. No comments were received during
6 the comment period.
7 And at this time the Department
8 requests your favorable action by adopting
9 these proposed regulation changes. Be
10 happy to answer any questions.
11 CHAIRMAN LESTER: Do you
12 have a question?
13 MR. PHILLIPS: Move to adopt
14 the proposed amendments.
15 DR. LAIER: Second.
16 CHAIRMAN LESTER: Motion and
17 a second. All in favor say "aye."
18 (All respond "aye")
19 CHAIRMAN LESTER: All
20 opposed?
21 (No response)
22 MR. JENKINS: Thank you.
23 CHAIRMAN LESTER: Thank you.

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1 The next item of business is the adoption
2 of proposed New Chapter 14, Composting
3 Facility Permitting Regulation within ADEM
4 Administrative Code Division 335-13, Solid
5 Waste Program Regulations.
6 MR. HARDY: Good morning,
7 Dr. Lester and members of the Commission.
8 I'm Gerald Hardy, Chief of the Land
9 Division, and I am before you to recommend
10 that the Commission adopt amendments to the
11 Department's Division 13, Solid Waste
12 Program Regulations.
13 The Department proposes to amend
14 its regulations by creating Chapter 14
15 within its Division 13, as authorized by
16 the Solid Wastes & Recyclable Materials
17 Management Act enacted in 2008. The
18 proposed regulations would establish
19 technical and operational requirements for
20 facilities engaged in the composting of
21 solid waste.
22 Chief among the proposed
23 requirements for subject facilities would

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1 be the requirements to obtain permits from
2 the Department and to design and implement
3 certain technical control measures
4 necessary to prevent migration of solid
5 waste into the environment.
6 The proposed regulations would
7 establish the technical design and
8 operational requirements for these
9 facilities, as well as the administrative
10 permitting requirements that would be
11 applicable to new and existing facilities.
12 The proposed revision to the
13 Solid Waste Program Regulations were the
14 subject of a public comment period that ran
15 from October 23rd to December 7th, 2011. A
16 public hearing was held on December 7th.
17 No written or oral comments on these
18 regulations were received by the
19 Department; however, a typographic error
20 concerning a date was discovered following
21 the close of the comment period. This
22 error has been corrected in the version
23 presented to you today for your

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1 consideration.
2 Pending any questions you might
3 have, the Department asks that the
4 Commission adopt these changes to the Solid
5 Waste Program.
6 CHAIRMAN LESTER: Any
7 questions? Do I have a motion?
8 MR. PHILLIPS: Move to adopt
9 the new regulations.
10 DR. LAIER: Second.
11 CHAIRMAN LESTER: All
12 opposed?
13 (No response)
14 CHAIRMAN LESTER: Thank you,
15 Gerald. Next the Commission will consider
16 adoption of the proposed amendments to ADEM
17 Administrative Code 335-14, Hazardous Waste
18 Program Regulations.
19 MR. HARDY: Good morning,
20 Mr. Chairman, members of the Commission.
21 Again, I'm Gerald Hardy, Chief of the Land
22 Division. The Department is required to
23 ensure that its hazardous waste regulations

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1 remain equivalent to the U.S. Environmental
2 Protection Agency Regulations in order to
3 retain its authorization from EPA.
4 To maintain this equivalency,
5 ADEM must annually revise its regulations.
6 The revisions to Division 14 of the ADEM
7 Administrative Code, which are before you
8 for consideration, would incorporate
9 hazardous waste regulations promulgated by
10 EPA from July 1st, 2010 through June 30th,
11 2011.
12 In this rulemaking, the
13 Department is proposing to adopt federal
14 technical corrections and regulatory
15 clarifications and substantive changes made
16 by EPA to the federal rules. The
17 Department is also correcting typographical
18 errors and changes to three rules to
19 clarify their meaning.
20 Public notice of the proposed
21 changes to the hazardous waste regulations
22 began on September 25th, 2011, and a public
23 hearing was held on December 5th, 2011. No

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1 oral comments were received at the public
2 hearing. No written comments were received
3 during the comment period that ended on
4 December 5th, 2011.
5 On January 18th, 2012, the State
6 Committee of Public Health concurred with
7 the Department's recommendation to adopt
8 these rules as proposed.
9 At this time, the Department
10 requests that the Commission adopt these
11 rules as recommended, and I will be glad to
12 answer any questions.
13 CHAIRMAN LESTER: Any
14 questions from the Commission?
15 (No response)
16 CHAIRMAN LESTER: Do I have
17 a motion?
18 DR. RICHARDSON: Move to
19 adopt.
20 DR. LAIER: Second.
21 CHAIRMAN LESTER: All
22 opposed?
23 (No response)

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1 MR. HARDY: Thank you.
2 CHAIRMAN LESTER: Now you
3 see what Gisele's been doing for the last
4 three weeks.
5 The next item of business is the
6 Calhoun County et al. versus ADEM, and the
7 Black Warrior Riverkeeper, Incorporated, et
8 al., EMC Docket No. 11-05, NPDES-related
9 matter, consolidating with Business
10 Alliance for Responsible Development versus
11 ADEM, and Black Warrior Riverkeeper,
12 Incorporated, et al., Intervenors, EMC
13 Docket No. 11-06, NPDES-related matter.
14 At this time we will consider a
15 motion to consider the order recommendation
16 of the hearing officer in this consolidated
17 appeal concerning NPDES General Permit No.
18 ALR040000, Municipal Separate Storm Sewer
19 System, MS4 general permit, Phase 2 and if
20 adopted to give notice to enter an order for
21 withdrawal of their intervention.
22 Do you have questions from the
23 Committee?

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1 (No response)
2 CHAIRMAN LESTER: Do I have
3 a motion?
4 DR. MILLER: Move to adopt.
5 CHAIRMAN LESTER: Do I have
6 a second?
7 DR. LAIER: Second.
8 CHAIRMAN LESTER: All in
9 favor say "aye."
10 (All respond "aye")
11 CHAIRMAN LESTER: All
12 opposed?
13 (No response)
14 CHAIRMAN LESTER: Any other
15 business from the Commission?
16 Debi, do you have any business?
17 (No response)
18 CHAIRMAN LESTER: Gisele, do
19 you have any business?
20 (No response)
21 CHAIRMAN LESTER: Robert, do
22 you have any business?
23 MR. TAMBLING: No legal

1 stuff.
2 CHAIRMAN LESTER: The next
3 Commission meeting will be April 20th,
4 2012.
5 Any Commissioners have any
6 problem with it?
7 (No response)
8 CHAIRMAN LESTER: If not, do
9 I have a motion to adjourn?
10 DR. MILLER: So moved.
11 MR. PHILLIPS: Second.
12 CHAIRMAN LESTER: All
13 opposed?
14 (No response)
15 (The hearing concludes at 11:42 a.m.)
16 *****
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23

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2 COUNTY OF MONTGOMERY)
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4 I hereby certify that the above
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<p>16,21;35:4,13;36:4 somehow (1) 7:13 sometime (1) 21:11 somewhat (2) 9:14;12:3 sound (1) 4:5 Source (1) 5:14 special (3) 20:19;27:1,8 specialized (1) 5:1 specific (1) 30:17 spill (1) 8:21 spills (1) 8:22 spring (1) 17:6 stand (2) 19:23;22:16 stands (1) 7:16 state (18) 3:19;5:11;7:7;8:12; 9:12;10:16;11:4,23; 16:15;17:2,14;18:23; 19:3,18;20:21;21:10; 24:17;38:5 statement (1) 31:5 states (3) 19:5,11;24:10 statewide (2) 16:11;17:4 stay (2) 29:5,11 stayed (1) 24:13 step (3) 12:11,22;13:5 steps (1) 16:20 Steve (1) 32:10 still (3) 9:4;18:3,8 Stimulating (1) 13:15 Storage (5) 17:8,11,14,18;18:6 Storm (1) 39:18 Stormwater (1) 28:17 streamlining (2) 4:19;9:6 strides (1) 5:3</p>	<p>structural (1) 13:14 struggle (1) 3:21 study (1) 17:1 stuff (1) 41:1 subject (2) 34:23;35:14 submitted (2) 16:16,18 submitting (1) 16:17 substances (1) 14:6 substantial (1) 8:9 substantive (1) 37:15 success (1) 9:16 successful (2) 9:19;18:11 suggested (1) 7:10 supercede (1) 27:5 Superfund (1) 14:16 supervision (1) 14:14 supply (2) 12:13;13:15 support (1) 15:15 supported (1) 9:20 sure (1) 20:20 surface (4) 29:13,15,18;30:18 surrounding (1) 18:15 System (1) 39:19</p>	<p>thanking (1) 20:3 Thanks (1) 21:23 Therefore (1) 24:20 third (1) 3:11 thousands (1) 17:13 three (4) 10:14;21:12;37:18; 39:4 three-fourths (1) 18:1 thus (1) 7:6 timely (1) 15:20 times (4) 4:7;5:3;9:17;30:1 tip (1) 19:19 Tire (17) 9:21,23;10:7,16,19; 11:1,5,7,14,18,21,23; 12:14;13:2,8,12,19 tires (9) 10:2,10,11,21;11:9,20; 12:1,5,12 today (2) 22:23;35:23 today's (1) 4:12 toll (1) 29:9 tolled (1) 29:4 Tom (2) 23:16;25:19 took (1) 26:19 top (3) 6:2;19:12,13 total (1) 10:5 transporting (1) 12:11 Trust (2) 17:11,18 turn (1) 3:4 turned (1) 8:13 two (4) 5:6;21:4;24:12;29:8 two-year (1) 16:5 types (1) 13:16 typographic (1) 35:19 typographical (1)</p>	<p>37:17 U under (3) 14:14;18:3;30:17 undergoing (1) 5:19 Underground (5) 17:8,10,14,17;18:6 undertake (2) 12:11,21 undertaken (1) 14:13 undertaking (1) 13:4 unintended (1) 25:13 United (1) 24:10 universal (1) 15:15 universities (1) 16:15 University (1) 16:19 unknown (1) 5:22 unknowns (1) 5:6 unsafe (1) 14:6 up (9) 9:23;10:13,15,19,23; 18:3;22:8,13;27:3 upcoming (1) 4:2 update (3) 4:21;9:15;17:7 use (3) 11:15;13:10,11 uses (1) 13:13 UST (2) 17:22,23 utilizing (2) 10:6,23</p>	<p>27:10 virtually (1) 9:1 volumes (1) 11:8 vote (2) 25:8,9 W Walter (4) 14:10,14,18,20 Warrior (2) 39:7,11 Waste (12) 16:11;17:5;34:5,11, 21;35:5,13;36:5,17,23; 37:9,21 Wastes (1) 34:16 water (6) 19:2,12,20;28:13,18, 20 way (1) 25:5 ways (1) 29:8 week (1) 22:6 weeks (1) 39:4 Welcome (1) 3:11 what's (1) 21:2 whereby (1) 11:6 wholesale (1) 17:17 withdrawal (1) 39:21 within (2) 34:3,15 without (3) 9:10;22:19,23 wonderful (1) 20:9 work (5) 8:1;18:12;19:21;22:3, 21 working (3) 13:6,9;22:13 worse (1) 4:1 worst (1) 6:9 worth (1) 27:9 writing (1) 27:15 written (3) 31:3;35:17;38:2</p>
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<p>yards (1) 14:9 year (9) 3:13,16;4:1,2;7:4; 17:19;18:9;20:22;21:17 years (4) 10:4;15:8;21:4;26:23 you-all (1) 3:3</p>				

Part B

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(Agenda Item 4) |
| Attachment 3 | Resolution to adopt amendments to ADEM Admin. Code Div. 3, Air Pollution Control Program Regulations
(Agenda Item 5) |
| Attachment 4 | Resolution to adopt amendments to ADEM Admin. Code Div. 6, Water Quality Program Regulations (NPDES-Related Matter)
(Agenda Item 6) |
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Attachment 1

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 24, 2012

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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10. <u>Calhoun County, et al. v. ADEM, and Black Warrior Riverkeeper, Inc., et al., Intervenor</u> , EMC Docket No. 11-05 (NPDES-Related Matter); <i>consolidated with</i> <u>Business Alliance for Responsible Development v. ADEM, and Black Warrior Riverkeeper, Inc., et al., Intervenor</u> , EMC Docket No. 11-06 (NPDES-Related Matter)	5

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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 DECEMBER 9, 2011
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF THE JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE REGULATION REVIEW'S PROPOSED AMENDMENTS TO THE AEMC RULEMAKING TO REPEAL THE STATE CLEAN AIR INTERSTATE RULE (CAIR) REGULATIONS IN ADEM ADMIN. CODE CHAPTER 335-3

On January 13, 2012, the Joint Legislative Committee on Administrative Regulation Review disapproved and proposed amendments to the rulemaking adopted by the Commission on December 9, 2011, to repeal the state Clean Air Interstate Rule (CAIR) regulations in ADEM Admin. Code Chapter 335.3. The Committee's proposed amendments clarify that the repeal of the subject regulations "shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the corresponding federal Clean Air Interstate Rules (CAIR) are no longer in effect." The Commission will consider the Legislative Committee's proposed amendments and will vote to accept or reject them.

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

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations, Chapter 335-3-20. The proposed revisions to Chapter 335-3-20 would sunset the special gasoline quality requirement in Jefferson and Shelby Counties. Federal standards for quality of gasoline have largely superseded Alabama's standards. The Department held a public hearing on the proposed amendments on December 7, 2011.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN CODE DIVISION 335-6, WATER QUALITY PROGRAM REGULATIONS (NPDES-RELATED MATTER)

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-6, Water Quality Program Regulations, Chapters 335-6-6-.02 and 335-6-6-.05. The proposed revisions would toll the automatic, 18-month expiration of an NPDES permit by any administrative request for hearing in addition to an administrative or judicial stay. In addition, the proposed revision would modify the automatic, 18-month expiration of an NPDES permit for a surface coal mine, such that the permit will expire 18 months from the issuance of the permit if construction has not begun, unless the Permittee has not begun construction pending the issuance of a permit by the Alabama Surface Mining Commission (ASMC), in which case, the NPDES permit will expire 18 months from the issuance of the ASMC permit. The Department held a public hearing on the proposed amendments on February 3, 2012.

7. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 335-8, COASTAL PROGRAM REGULATIONS

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-8, Coastal Area Management Program Regulations. The Department proposes to modify these rules to be consistent with the existing statutory and regulatory timelines of Section 307 of the Coastal Zone Management Act (CZMA) and 15 Code of Federal Regulations (C.F.R.) part 930. The Department held a public hearing on the proposed amendments on January 4, 2012.

8. CONSIDERATION OF ADOPTION OF PROPOSED NEW CHAPTER 14, COMPOSTING FACILITY PERMITTING REGULATIONS WITHIN ADEM ADMIN. CODE DIVISION 335-13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider the adoption of a proposed new Chapter 14 within ADEM Admin. Code Division 335-13, Solid Waste Program titled Chapter 335-13-14, Composting Facility Permitting Regulations, pursuant to amendments to the Solid Wastes and Recyclable Materials Management Act enacted in 2008. The Department proposes to establish technical and operational requirements for facilities engaged in the composting of solid waste. Chief among the proposed requirements for subject facilities would be the requirements to obtain permits from the Department and to implement certain control measures necessary to prevent the mitigation of solid waste into the environment. The Department held a public hearing on the proposed new chapter on December 7, 2011.

9. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 335-14, HAZARDOUS WASTE PROGRAM REGULATIONS

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-14, Hazardous Waste Program Regulations, Chapters 335-14-1 to 335-14-8, and 335-14-17. The proposed revisions would adopt federal hazardous waste regulation additions/modifications that occurred from July 2010 to June 2011 so the Department's hazardous waste program is equivalent to the federal program. The Department held a public hearing on the proposed amendments on December 5, 2011.

10. CALHOUN COUNTY, ET AL. V. ADEM, AND BLACK WARRIOR RIVERKEEPER, INC., ET AL., INTERVENORS, EMC DOCKET NO. 11-05 (NPDES-RELATED MATTER); CONSOLIDATED WITH BUSINESS ALLIANCE FOR RESPONSIBLE DEVELOPMENT V. ADEM, AND BLACK WARRIOR RIVERKEEPER, INC., ET AL., INTERVENORS, EMC DOCKET NO. 11-06 (NPDES-RELATED MATTER)

The Commission will consider the Order/Recommendation of the Hearing Officer in this consolidated appeal concerning National Pollutant Discharge Elimination System (NPDES) General Permit No. ALR040000 (Municipal Separate Storm Sewer System (MS4) General Permit, Phase II), issued on January 31, 2011. The Commission will also notice the withdrawal of the Intervenors' Intervention.

11. OTHER BUSINESS
12. FUTURE BUSINESS SESSION

Attachment 2

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, on December 9, 2011, the Alabama Environmental Management Commission (EMC) adopted rulemaking to repeal from Alabama's air regulations certain rules (as identified in Attachment "A") that had been adopted to implement federal requirements known as the Clean Air Interstate Rule (CAIR); and

WHEREAS, on December 9, 2011, the EMC also adopted rulemaking to renumber two pre-existing rules, 335-3-8-.14 and 335-3-8-.15, as rules 335-3-8-.05 and 335-3-8-.06, respectfully, upon the repeal of the state CAIR rules; and

WHEREAS, the EMC repealed the identified rules upon notice from EPA that EPA was promulgating a new rule, the Cross State Air Pollution Rule (CSAPR), to replace the CAIR rule; and

WHEREAS, on December 30, 2011, prior to the effective date of the repeal of the state CAIR rules, the U.S. Court of Appeals for the District of Columbia entered an Order staying EPA's new CSAPR rule and directing EPA to continue to implement the CAIR rule [*EME Homer City Generation, L.P. v. Environmental Protection Agency*, (D.C. Circuit, Case No. 11-1302)(12/30/2011)]; and

WHEREAS, on January 13, 2012, pursuant to Ala. Code §41-22-23(c), the Joint Committee on Administrative Regulation Review (JCARR) disapproved the December 9, 2011, rulemaking and returned it to the agency with the following suggested amendment to each rule: *"The repeal of this rule shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the corresponding federal Clean Air Interstate Rules (CAIR) are no longer in effect;"* and

WHEREAS, on January 13, 2012, pursuant to Ala. Code §41-22-23(c), the Joint Committee on Administrative Regulation Review (JCARR) disapproved the renumbering of Rule 335-3-8-.14 as Rule 335-3-8-.05, and returned it to the agency with the following suggested amendment: *“The adoption of this rule as Rule 335-3-8-.05 shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the corresponding federal Clean Air Interstate Rules (CAIR) are no longer in effect;”* and

WHEREAS, on January 13, 2012, pursuant to Ala. Code §41-22-23(c), the Joint Committee on Administrative Regulation Review (JCARR) disapproved the renumbering of Rule 335-3-8-.15 as Rule 335-3-8-.06, and returned it to the agency with the following suggested amendment: *“The adoption of this rule as Rule 335-3-8-.06 shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the corresponding federal Clean Air Interstate Rules (CAIR) are no longer in effect;”* and

WHEREAS, pursuant to Ala. Code §41-22-23(c), in the event the agency accepts the rule as amended by JCARR, the agency may re-submit the rule as amended; and

WHEREAS, the Commission has considered the JCARR’s suggested amendments and has determined they should be accepted.

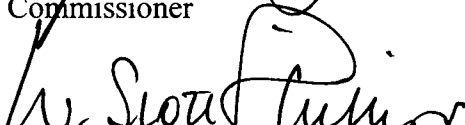
NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8, and 41-22-23(c), as duly appointed members of the Commission, we do hereby accept the rules with the amendments suggested by JCARR as set forth in Attachment “A” and instruct the Agency Secretary to resubmit the rules as amended.

IN WITNESS WHEREOF, we have affixed our signatures below on this 24th day
of February, 2012.


APPROVED:


Commissioner

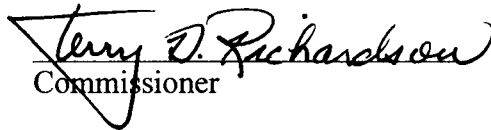
Commissioner


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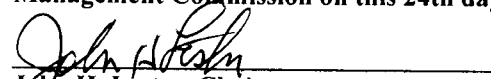
DISAPPROVED:

Commissioner

Commissioner

Commissioner

**This is to certify that this Resolution is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 24th day of February 2012.**



**John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012**

EXHIBIT "A"

The repeal of Rules 335-3-1-.14, 335-3-1-.16, 335-3-5-.06, 335-3-5-.07, 335-3-5-.08, 335-3-5-.11, 335-3-5-.12, 335-3-5-.13, 335-3-5-.14, 335-3-8-.05, 335-3-8-.06, 335-3-8-.07, 335-3-8-.08, 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, 335-3-8-.12, 335-3-8-.13, 335-3-8-.14, 335-3-8-.15, 335-3-8-.16, 335-3-8-.17, 335-3-8-.18, 335-3-8-.20, 335-3-8-.21, 335-3-8-.22, 335-3-8-.23, 335-3-8-.24, 335-3-8-.25, 335-3-8-.26, 335-3-8-.27, 335-3-8-.29, 335-3-8-.30, 335-3-8-.31, 335-3-8-.32, and 335-3-8-.33, certified to the Legislative Reference Service on December 12, 2011, is disapproved with the following suggested amendment to each rule: "The repeal of this rule shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the corresponding federal Clean Air Interstate Rules (CAIR) are no longer in effect."

=====

The adoption of new Rule 335-3-8-.05, certified to the Legislative Reference Service on December 12, 2011, is disapproved with the following suggested amendment: "The adoption of this rule as Rule 335-3-8.05 shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the federal Clean Air Interstate Rules (CAIR) are no longer in effect."

=====

The adoption of new Rule 335-3-8-.06, certified to the Legislative Reference Service on December 12, 2011, is disapproved with the following suggested amendment: "The adoption of this rule as Rule 335-3-8.06 shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the federal Clean Air Interstate Rules (CAIR) are no longer in effect."



STATE OF ALABAMA

LEGISLATIVE COUNCIL

Jerry L. Bassett
Secretary

Alabama State House, Suite 613
11 South Union Street
Montgomery, Alabama 36130-3550

Phone 334 242-7560
FAX 334 242-4358

January 31, 2012

Mr. Thomas Johnston, General Counsel
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, Alabama 36130-1463

Dear Mr. Johnston:

The committee considered the following rules of the Alabama Environmental Management Commission at a meeting of the Joint Committee on Administrative Regulation Review held on Tuesday, January 13, 2012:

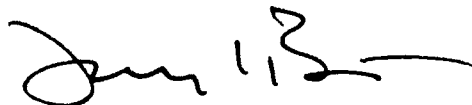
Rules 335-3-1-.14, 335-3-1-.16, 335-3-5-.06, 335-3-5-.07, 335-3-5-.08, 335-3-5-.11, 335-3-5-.12, 335-3-5-.13, 335-3-5-.14, 335-3-8-.05, 335-3-8-.06, 335-3-8-.07, 335-3-8-.08, 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, 335-3-8-.12, 335-3-8-.13, 335-3-8-.14, 335-3-8-.15, 335-3-8-.16, 335-3-8-.17, 335-3-8-.18, 335-3-8-.20, 335-3-8-.21, 335-3-8-.22, 335-3-8-.23, 335-3-8-.24, 335-3-8-.25, 335-3-8-.26, 335-3-8-.27, 335-3-8-.29, 335-3-8-.30, 335-3-8-.31, 335-3-8-.32, and 335-3-8-.33, the repeals of which were certified to the Legislative Reference Service by the Department of Environmental Management on December 12, 2011, and new Rules 335-3-8-.05 and 335-3-8-.06, the adoptions of which were certified to the Legislative Reference Service by the Department of Environmental Management on December 12, 2011.

The committee disapproved the repeal of Rules 335-3-1-.14, 335-3-1-.16, 335-3-5-.06, 335-3-5-.07, 335-3-5-.08, 335-3-5-.11, 335-3-5-.12, 335-3-5-.13, 335-3-5-.14, 335-3-8-.05, 335-3-8-.06, 335-3-8-.07, 335-3-8-.08, 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, 335-3-8-.12, 335-3-8-.13, 335-3-8-.14, 335-3-8-.15, 335-3-8-.16, 335-3-8-.17, 335-3-8-.18, 335-3-8-.20, 335-3-8-.21, 335-3-8-.22, 335-3-8-.23, 335-3-8-.24, 335-3-8-.25, 335-3-8-.26, 335-3-8-.27, 335-3-8-.29, 335-3-8-.30, 335-3-8-.31, 335-3-8-.32, and 335-3-8-.33 with the following suggested amendment to each rule: The repeal of this rule shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the corresponding federal Clean Air Interstate Rules (CAIR) are no longer in effect.

The committee disapproved the adoption of new Rule 335-3-8-.05, with the following suggested amendment: The adoption of this rule as Rule 335-3-8-.05 shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the federal Clean Air Interstate Rules (CAIR) are no longer in effect.

The committee disapproved the adoption of new Rule 335-3-8-.06, with the following suggested amendment: The adoption of this rule as Rule 335-3-8-.06 shall take effect upon certification by the Alabama Department of Environmental Management to the Legislative Reference Service that the federal Clean Air Interstate Rules (CAIR) are no longer in effect.

Very truly yours,



Jerry L. Bassett
Secretary

JLB/cj

Attachment 3

**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 did not receive any written or oral comments at the public hearing or during the public comment period.

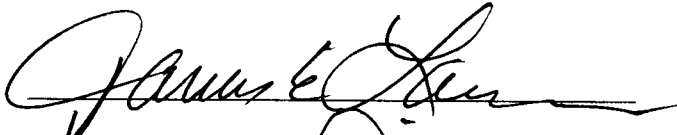
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [rule 335-3-20/Control of Fuels (Repeal)] of the Department's Air Division – Air Pollution Control Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

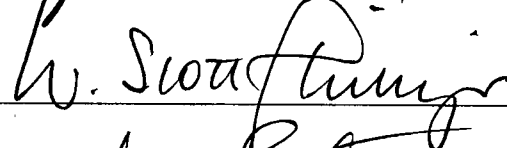
**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

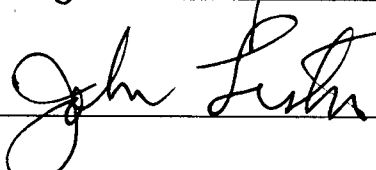
ADEM Admin. Code division 335-3 - Air Pollution Control Program

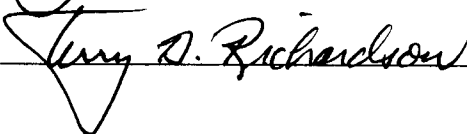
IN WITNESS WHEREOF, we have affixed our signatures below on this 24th day of February 2012.

APPROVED:










DISAPPROVED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 24th day of February 2012.

ABSTAINED:



John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012

Attachment 4

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-6 of the Department's Water 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 has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

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

NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to rules [335-6-6-.02/Definitions (Amend); 335-6-6-.05/Duration of Permits (Amend)] of the administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 24th day of February, 2012.

APPROVED:

James E. Green

W. Scott Furrer

John Lester

Terry D. Richardson

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 24th day of February 2012.

John H. Lester

John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012

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 335-8 of the Department's Coastal 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 did not receive any written or oral comments at the public hearing or during the public comment period.

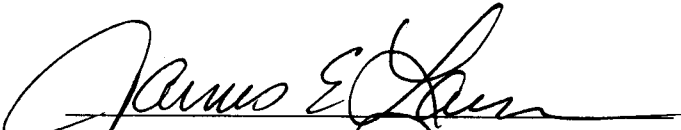
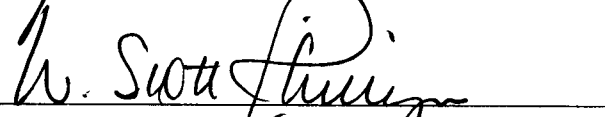
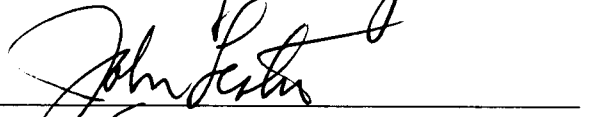

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-8 [rules 335-8-1-.09/ Review Process for Federally Regulated Activities (Amend) and 335-8-1-.10/Review Process for Federal Projects, Activities and Assistance (Amend)] of the Department's Coastal Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

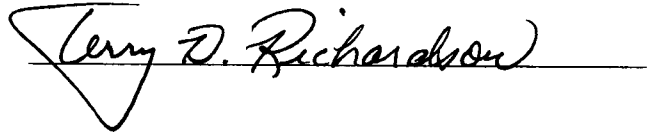
**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-8 - Coastal Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 24th day of February 2012.

APPROVED:









DISAPPROVED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 24th day of February 2012.

ABSTAINED:


John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012

Attachment 6

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-13 of the Department's Land Division – Solid Waste 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 did not receive any written or oral comments at the public hearing or during the public comment period.

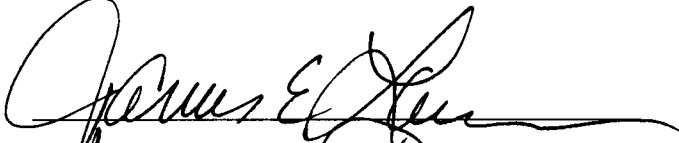
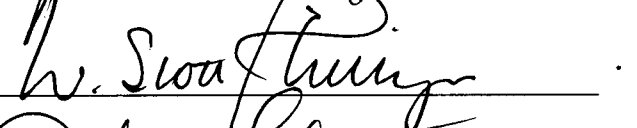
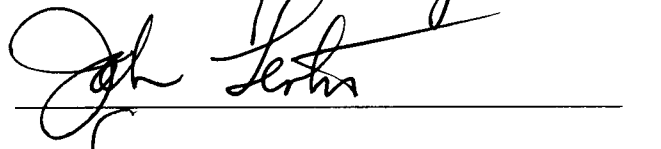
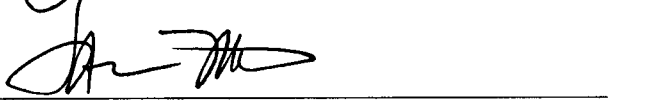
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to add to division 335-13 [rule 335-13-14/Composting Facilities (New)] of the Department's Land Division – Solid Waste Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

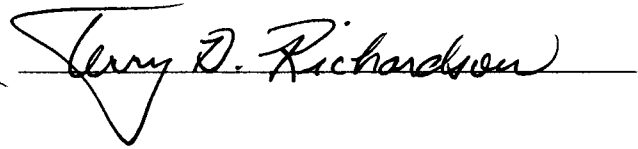
**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 24th day of February 2012.

APPROVED:









DISAPPROVED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 24th day of February 2012.

ABSTAINED:


John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012

Attachment 7

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-14 of the Department's Hazardous Waste Program Rules and Regulations in accordance with Code of Alabama 1975, §§ 22-22A-8 and 41-22-4; and

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-14 [Amendments to 335-14-1-.02/Definitions and References (Amend); 335-14-2-.01/General (Amend); 335-14-2-.04/Lists of Hazardous Waste (Amend); 335-14-2-Appendix VIII/Hazardous Constituents (Amend); 335-14-2-Appendix IX/Wastes Excluded Under 335-14-1-.03(2) (Amend); 335-14-3-.01/General (Amend); 335-14-3-.03/Pre-Transport Requirements (Amend); 335-14-3-.08/Special Requirements for Generators of Waste Destined for Disposal at Commercial Hazardous Waste Disposal Facilities Located in the State of Alabama (Amend); 335-14-3-.12/Alternative requirements for Hazardous Waste Determination and Accumulation of

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

Unwanted Material for Laboratories Owned by Eligible Academic Entities (Amend); 335-14-4-.01/General (Amend); 335-14-5-.01/General; 335-14-5-.02/General Facility Standards (Amend); 335-14-5-.04/Contingency Plan and Emergency Procedures (Amend); 335-14-5-.05/Manifest System, Recordkeeping and Reporting (Amend); 335-14-5-.06/Releases from Solid Waste Management Units (Amend); 335-14-5-.23/Drip Pads (Amend); 335-14-6-.02/General Facility Standards (Amend); 335-14-6-.05/Manifest System, Recordkeeping and Reporting (Amend); 335-14-6-.07/Closure and Post Closure (Amend); 335-14-6-.08/Financial Requirements (Amend); 335-14-6-.11/Surface Impoundments (Amend); 335-14-6-.14/Landfills (Amend); 335-14-6-.15/Incinerators (Amend); 335-14-6-.16/Thermal Treatment (Amend); 335-14-6-.23/Drip Pads (Amend); 335-14-6-.31/Hazardous Waste Munitions and Explosive Storage (Amend); 335-14-6-Appendix I/Recordkeeping Instructions (Amend); 335-14-8-.01/General Information (Amend); 335-14-8-.02/Permit Application-Treatment, Storage and Disposal Facilities (Amend); 335-14-8-.03/Permit Conditions-Treatment, Storage and Disposal Facilities (Amend); 335-14-8-.04/Changes to Permits-Treatment, Storage and Disposal Facilities (Amend); 335-14-8-.06/Special Forms of Permits-Treatment, Storage and Disposal Facilities (Amend); 335-14-8-.08/Procedures for Decision-making-Treatment, Storage and Disposal Facility Permits (Amend); 335-14-8-.09/Permit Application-Transporters (Amend); 335-14-8-.10/Permit Conditions-Transporters (Amend); 335-14-8-.15/Integration with Maximum Achievable Control Technology (MACT) Standards (Amend); 335-14-17-.02/Applicability (Amend); 335-14-17-.03/Standards for Used Oil Generators (Amend); 335-14-17-.05/Standards for Used Oil Transporter and Transfer

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

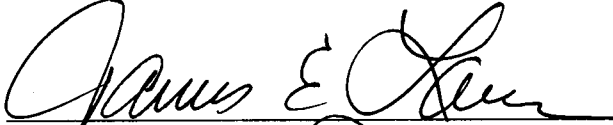
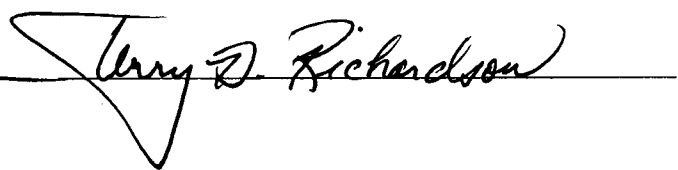
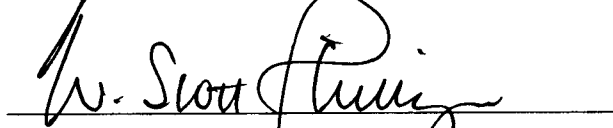
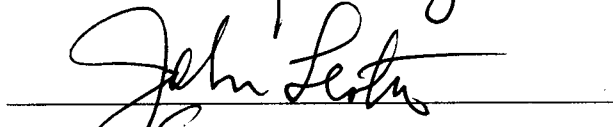

Facilities (Amend); 335-14-17-.06/Standards for Used Oil Processors and Refiners (Amend); 335-14-17-.07/Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery (Amend); 335-14-17-.09/Standards for Disposal of Used Oil (Amend)] of the Department's Land Division – Hazardous Waste Program rules, administrative code attached hereto, to become effective thirty-five days after filing, unless otherwise indicated, with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-14 – Hazardous Waste Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 24th day of February 2012.

APPROVED:

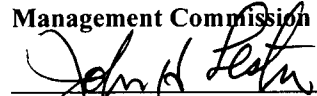
	
	
	
	

DISAPPROVED:

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<hr/>	<hr/>
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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 24th day of February 2012.

ABSTAINED:


John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012

Attachment 8

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

CALHOUN COUNTY, et al.)	
Petitioners,)	
v.)	EMC DOCKET NO. 11-05
)	
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
Respondent,)	
)	
BLACK WARRIOR RIVERKEEPER, INC., et al.,)	
Intervenors,)	CONSOLIDATED WITH
)	
BUSINESS ALLIANCE FOR)	
RESPONSIBLE DEVELOPMENT,)	
Petitioner,)	
v.)	EMC DOCKET NO. 11-06
)	
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
Respondent,)	
)	
BLACK WARRIOR RIVERKEEPER, INC., et al.,)	
Intervenors.)	

ORDER


This cause having come before the Environmental Management Commission pursuant to the Order/Recommendation of the Hearing Officer concerning National Pollutant Discharge Elimination System (NPDES) General Permit No. ALR040000 (Municipal Separate Storm Sewer System (MS4) General Permit, Phase II); the Joint Motion to Modify Permit; the Order of the Hearing Officer concerning Intervenors' Conditional Motion for Withdrawal; and Intervenors' Conditional Motion for Withdrawal for the above-referenced consolidated appeals and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Order/Recommendation of the Hearing Officer concerning National Pollutant Discharge Elimination System (NPDES) General Permit No. ALR040000 (Municipal Separate Storm Sewer System (MS4) General Permit, Phase II) is hereby adopted; and

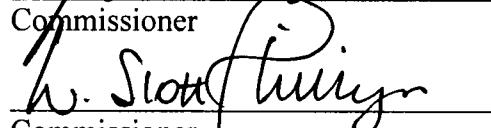
2. That pursuant to the adoption of the Order/Recommendation of the Hearing Officer concerning National Pollutant Discharge Elimination System (NPDES) General Permit No. ALR040000 (Municipal Separate Storm Sewer System (MS4) General Permit, Phase II), the Joint Motion to Modify Permit is hereby granted; and
3. That notice is taken of the Intervenor's withdrawal of their Intervention; and
4. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
5. That a copy of this Order, along with copies of the Order/Recommendation of the Hearing Officer and the Joint Motion to Modify Permit attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 24th day of February 2012.

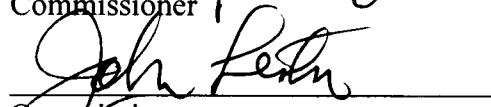
APPROVED:



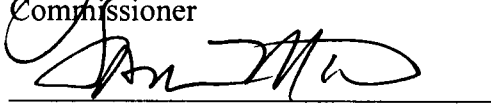
Commissioner



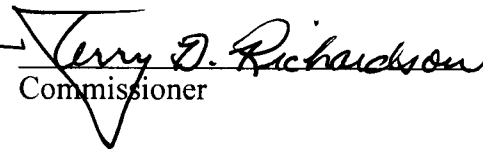
Commissioner



Commissioner



Commissioner



Commissioner

Commissioner

Commissioner

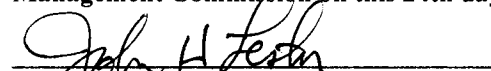
DISAPPROVED:

Commissioner

Commissioner

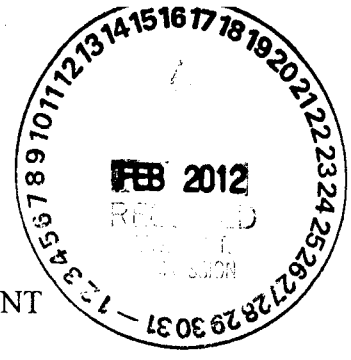
Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 24th day of February 2012.



John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of February 2012

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



 CALHOUN COUNTY, et al.,)
)
 Petitioners,)
)
 v.)
)
 THE ALABAMA DEPARTMENT OF)
 ENVIRONMENTAL MANAGEMENT,)
)
 Respondent,)
)
 BLACK WARRIOR RIVERKEEPER, INC., et al.,)
)
 Intervenors.)
)
 BUSINESS ALLIANCE FOR)
 RESPONSIBLE DEVELOPMENT,)
)
 Petitioner,)
)
 v.)
)
 THE ALABAMA DEPARTMENT OF)
 ENVIRONMENTAL MANAGEMENT,)
)
 Respondent,)
)
 BLACK WARRIOR RIVERKEEPER, INC., et al.,)
)
 Intervenors. _____)

EMC DOCKET NO. 11-05

CONSOLIDATED WITH

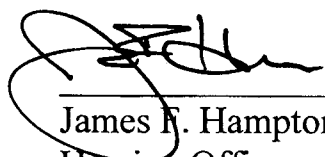
EMC DOCKET NO. 11-06

ORDER

Before the Hearing Officer is the Joint Motion to Modify the above Permit on Consolidated Appeals filed with the Hearing Officer by the remaining parties, the

Intervenor Black Warrior Riverkeeper et al having withdrawn their Intervention. In consideration of this Joint Motion, and these Intervenors' withdrawal, the Hearing Officer Recommends mends the Commission grant the remaining parities' Joint Motion, in the manner attached thereto as Exhibit A, while taking notice of these Intervenor's withdrawal of their Intervention.

Done this 16th day of February, 2012.



James F. Hampton
Hearing Officer

CERTIFICATE OF SERVICE

I, James L. Wright, hereby certify that I have served a copy of ADEM's "Proposed Order" by sending a copy of the same to each of the following in the below stated manner:

U.S. MAIL and E-MAIL

Honorable James F. Hampton
Administrative Law Judge
4265 Lomac Street
Montgomery, AL 36106
(334) 213-0213/Office (334) 213-0266/Fax
jfh@jamesfhampton.com

Charlie D. Waldrep
Leslie M. Klasing
Waldrep, Stewart & Kendrick, LLC
2323 2nd Ave. North
Birmingham, AL 35203
(205) 254-3216/Office (205) 324-3802/Fax
waldrep@wskllc.com
klasing@wskllc.com

Rob P. Fowler
Joel I. Gilbert
Thomas G. DeLawrence
Balch & Bingham LLP
1901 Sixth Avenue North
Birmingham, AL 35203
(205) 251-8100/Office (205) 226-8798/Fax
rfowler@balch.com
jgilbert@balch.com
tdelawrence@balch.com

James E. Turnbach
Turnbach, Warren, Roberts & Lloyd, PC
P.O. Box 129
Gadsden, AL 35902-0129
(256) 543-3664/Office (256) 543-3674/Fax
jturnbach@twrlpc.com

Gilbert Rogers
The Southern Environmental Law Center
127 Peachtree Street, Ste. 605
Atlanta, GA 30303-1800
(404) 521-9900/Office
grogers@selcga.org

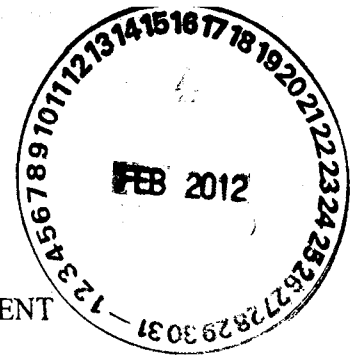
HAND DELIVERY

Debi Thomas
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36110-2059

DONE this 16th day of February, 2012.


James L. Wright

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



CALHOUN COUNTY, ET AL.,
Petitioner,
v.
THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
Respondent,

DOCKET NO. 11-05

Consolidated With


BUSINESS ALLIANCE FOR RESPONSIBLE DEVELOPMENT,
Petitioner,
v.
THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
Respondent,

DOCKET NO. 11-06

JOINT MOTION TO MODIFY PERMIT

Pursuant to ADEM Admin. Code r. 335-2-1-21(3) and as a settlement of this matter, the Petitioners, the Respondent, and the Intervenors hereby move this Hearing Officer to recommend to the Environmental Management Commission the modifications of National Pollutant Discharge Elimination System General Permit No. ALR040000 attached hereto as Exhibit A.

Respectfully submitted this the 16th day of February, 2012.



One of the Attorneys for the Business
Alliance for Responsible Development

OF COUNSEL:

Rob P. Fowler

Joel I. Gilbert

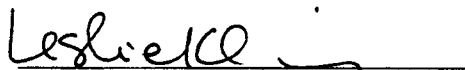
Thomas G. DeLawrence

Balch & Bingham, LLP

1901 Sixth Avenue North

Birmingham, AL 35203

Phone: (205) 251-8100



One of the Attorneys for Calhoun
County, Tuscaloosa County, City of Atalla,
City of Fultondale, City of Graysville, City
of Hokes Bluff, City of Oxford

OF COUNSEL:

Charlie D. Waldrep

Leslie M. Klasing

Waldrep, Stewart & Kendrick, LLC

2323 2nd Avenue North

Birmingham, AL 35203

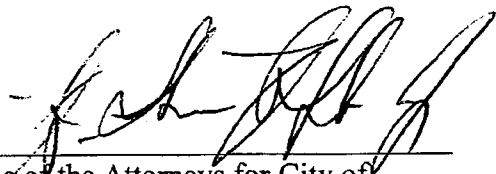
Phone: (205) 254-3216

Fax: (205) 324-3802

James E Turnbach
One of the Attorneys for Rainbow City,
Etowah County

OF COUNSEL:

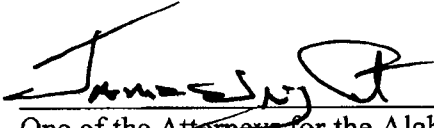
James Turnbach
Turnbach, Warren, Roberts & Lloyd, PC
200 Chestnut Street, Suite A
P.O. Box 129
Gadsden, AL 35902-0129
Phone: (256) 543-3664
Fax: (256) 543-3674



One of the Attorneys for City of
Tuscumbia

OF COUNSEL:

H. Thomas Heflin, Jr.
Law Offices of H. Thomas Heflin, Jr. LLC
105 West 2nd Street
Tuscumbia, AL 35674
Phone: (256) 383-3661
Fax: (256) 381-4612



One of the Attorneys for the Alabama
Department of Environmental
Management

OF COUNSEL:

James L. Wright

Schuyler K. Espy

Laura T. Eubank

P.O. Box 301463

Montgomery, AL 36130-1463

Phone: (334) 271-7855

Fax: (334) 394-4332

Exhibit A

- (iv) The plan to detect and address illicit discharges to your system, including discharges from illegal dumping and spills. The Permittee's plan must include, to the extent practicable, dry weather field screening for non-storm water flows and field tests of chemical parameters you selected as indicators of discharge sources. The plan must also address on-site sewage disposal systems that flow into the storm drainage system. The description must address the following, at a minimum:
 - Procedures for locating priority areas which includes areas with higher likelihood of illicit connections (e.g., areas with older sanitary sewer lines, for example) or ambient sampling to locate impacted reaches.
 - Procedures for tracing the source of an illicit discharge, including the specific techniques you will use to detect the location of the source.
 - Procedures for removing the source of the illicit discharge.
 - Procedures for program evaluation and assessment.
- (v) How the Permittee plans to inform the public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste. Include in the description how this plan will coordinate with the public education minimum measure and the pollution prevention/good housekeeping minimum measure programs.
- (vi) Who is responsible for overall management and implementation of the illicit discharge detection and elimination program and, if different, who is responsible for each of the BMPs identified for this program.
- (vii) How the Permittee will evaluate the success of this minimum measure, including how the Permittee selected the measurable goal for each minimum measure.

4. Construction Site Storm Water Runoff Control

- (a) Within 730 days from the effective date of coverage under this permit, all Permittees must develop, implement, and enforce a program to reduce, to the maximum extent practicable, pollutants in any storm water runoff to the regulated MS4 from ~~construction activities that result in a total land disturbance of greater than or equal to one acre and activities that disturb less than one acre but are part of a larger common plan of development or sale that would disturb one acre or more (hereinafter "qualifying construction sites").~~
- (b) The SWMP must include the following components for construction site storm water runoff control:
 - (i) To the extent allowable under State law, an ordinance or other regulatory mechanism to require erosion and sediment controls, sanctions to ensure compliance, and to provide all other authorities needed to implement the requirements of Part III.B.4. of this permit.
 - (ii) A training program for MS4 site inspection staff in the identification of appropriate construction best management practices (example: QCI training in accordance with ADEM Admin Code. r. 335-6-12 or the Alabama Construction Site General Permit);
 - (iii) Procedures for the periodic inspection of qualifying construction sites to verify the use of appropriate erosion and sediment control practices that are consistent with the *Alabama Handbook for Erosion Control, Sediment Control, And Stormwater Management on Construction Sites and Urban Areas* published by the Alabama Soil and Water Conservation Committee (hereinafter the "Alabama Handbook"). The frequency and prioritization of inspection activities shall be documented in the SWMP and must include a minimum inspection frequency of once each month for priority construction sites.

- (ii) Plan to ensure compliance with the erosion and sediment control regulatory mechanism, including the sanctions and enforcement mechanisms the Permittee will use to ensure compliance. Describe the procedures for when the Permittee will use certain sanctions. Possible sanctions include non-monetary penalties (such as stop work orders), fines, bonding requirements, and/or permit denials for non-compliance.
 - (iii) The requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at construction sites that may cause adverse impacts to water quality. Such waste includes discarded building materials, concrete truck washouts, chemicals, litter, and sanitary waste.
 - (iv) The procedures for plan review, including the review of pre-construction site plans, which incorporate consideration of potential water quality impacts. For construction projects that discharge the pollutant or pollutants of concern to a water body that is listed on the State of Alabama's 303(d) list or has an EPA approved or EPA developed TMDL, you must follow the requirements of Part IV.D. of this permit.
 - (v) The procedures for receipt and consideration of information submitted by the public. Consider coordinating this requirement with the public education program.
 - (vi) The procedures for site inspection and enforcement of control measures, including how the Permittee will prioritize sites for inspection.
 - (vii) Who is responsible for overall management and implementation of the Permittee's construction site storm water control program and, if different, who is responsible of each of the BMPs identified for this program.
 - (viii) Describe how the Permittee will evaluate the success of this minimum measure, including how the Permittee selected the measurable goals for each of the BMPs.
5. Post-Construction Storm water management in new Development and Redevelopment
- Post-Construction Stormwater Management refers to the activities that take place after construction occurs, and includes structural and non-structural controls to obtain permanent stormwater management over the life of the property's use. All Permittees must implement the requirements of Part III.B.5. within 730 days from the effective date of coverage.
- (a) The Permittee shall develop and implement project review, approval, and enforcement procedures for qualifying-new development and redevelopment projects that disturb ~~greater than one acre, and projects less than one acre that are part of a larger common plan of development or sale.~~ Further requirements for project review and approval are as follows:
 - (i) Develop procedures for the site-plan review and approval process and a required re-approval process when changes to post-construction controls are required.
 - (ii) Develop procedures for a post-construction process to demonstrate and document that post-construction stormwater measures have been installed per design specifications, which includes enforceable procedures for bringing noncompliant projects into compliance.
 - (b) The Permittee must develop and implement strategies which include a combination of structural and/or non-structural BMPs designed to ensure, to the maximum extent practicable, that the volume and velocity of pre-construction stormwater runoff is not significantly exceeded. A design rainfall event with an intensity up to that of a 2yr-24hr storm event shall be the basis for the design and implementation of post-construction BMPs.

7. Illicit Connection means any man-made conveyance connecting an illicit discharge directly to municipal separate storm sewer.
8. Illicit Discharge is defined at 40 CFR Part 122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.
9. Indian Country, as defined in 18 USC 1151, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.
10. MEP is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by CWA Section 402(p). A discussion of MEP as it applies to small MS4s is found at 40 CFR Part 122.34.
11. MS4 is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to either a large, medium, or small municipal separate storm sewer system. The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities.
12. Municipal Separate Storm System is defined at 40 CFR Part 122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in ADEM Admin. Code r. 335-6-6-.02(nn).
13. NOI is an acronym for "Notice of Intent" to be covered by this permit and is the mechanism used to "register" for coverage under a general permit.
14. Department means the Alabama Department of Environmental Management or an authorized representative.
15. Priority construction site means any qualifying construction site in an area where the MS4 discharges to a waterbody which is listed on the most recently approved 303(d) list of impaired waters for turbidity, siltation, or sedimentation, any waterbody for which a TMDL has been finalized or approved by EPA for turbidity, siltation, or sedimentation, any waterbody assigned the Outstanding Alabama Water use classification in accordance with ADEM Admin. Code r. 335-6-10-.09, and any waterbody assigned a special designation in accordance with 335-6-10-.10.
16. Qualifying Construction Site means any construction activity that results in a total land disturbance of one or more acres and activities that disturb less than one acre but are part of a larger common plan of development or sale that would disturb one or more acres. Qualifying construction sites do not include land disturbances conducted by entities under the jurisdiction and supervision of the Alabama Public Service Commission.
- 15-17. Qualifying New Development and Redevelopment means any site after 730 days from the effective date of permit coverage that results from the disturbance of one acre or more of land or the disturbance of less than one acre of land if part of a larger common plan of development or sale that is greater than one acre. Qualifying new development and

redevelopment does not include land disturbances conducted by entities under the jurisdiction and supervision of the Alabama Public Service Commission.

- ~~14~~-18. Small municipal separate storm sewer system is defined at 40 CFR Part 122.26(b)(16) and refers to all separate storm sewers that are owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to water of the United States, but is not defined as "large" or "medium" municipal separate storm sewer system. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
- ~~17~~-19. Storm water is defined at 40 CFR Part 122.26(b) (13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.
- ~~18~~-20. Storm Water Management Program (SWMP) refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.
- ~~19~~-21. SWMP is an acronym for "Storm Water Management Program."
- ~~20~~-22. Total Maximum Daily Load (TMDL) means the calculated maximum permissible pollutant loading to a waterbody at which water quality standards can be maintained. The sum of wasteload allocations (WLAs) and load allocations (LAs) for any given pollutant.
- ~~21~~-23. "You" and "Your" as used in this permit is intended to refer to the Permittee, the operator, or the discharger as the context indicates and that party's responsibilities (e.g., the city, the country, the flood control district, the U.S. Air Force, etc.).

CERTIFICATE OF SERVICE

I, James L. Wright, hereby certify that I have served a copy of the foregoing "Joint Motion to Modify Permit" by sending a copy of the same to each of the following in the below stated manner:

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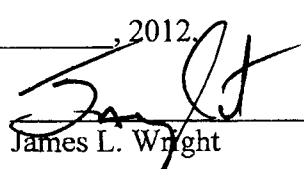
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HAND DELIVERY

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DONE this 16th day of Feb., 2012.


James L. Wright