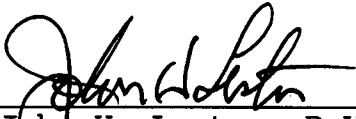


8/19/11

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 24, 2011**

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 June 24, 2011.



John H. Lester, D.V.M.

Chair

Environmental Management Commission

Certified this 19th day of August 2011.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 24, 2011

Convened: 11:00 a.m.
Adjourned: 11:30 a.m.

Part A

Transcript

Part B

Attachment Index

Attachments 1 – 4

Part A

AEMC COMMISSION MEETING - 6/24/2011

1 (Pages 1 to 4)

Page 1

ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

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

June 24, 2011 11:00 a.m.

COMMISSION MEMBERS PRESENT:
JOHN H. LESTER, D.V.M., CHAIR
MARQUITA F. DAVIS, PH.D.
JAMES E. LAIER, PH.D., P.E.
DR. SAMUEL L. MILLER, M.D.
W. SCOTT PHILLIPS
DR. TERRY D. RICHARDSON
H. LANIER BROWN, II, ESQUIRE (not present)
ALSO PRESENT:
LANCE LEFLEUR
ADEM DIRECTOR

Page 3

1 COMMISSIONER LESTER: At this time, I'll call the
2 meeting to order. There is a quorum present.
3 The first note is that we'll consider the
4 minutes of the last meeting on April the 15th.
5 COMMISSIONER PHILLIPS: So move.
6 COMMISSIONER LAIER: Second.
7 COMMISSIONER LESTER: Motion seconded. All in
8 favor, say aye.
9 (Commission members in favor of the motion so
10 indicated.)
11 COMMISSIONER LESTER: All opposed?
12 (No response.)
13 COMMISSIONER LESTER: The second matter is a report
14 from the Director. Director, we got ahead -- we got -- We got
15 to head right to you.
16 LANCE LEFLEUR: Right to me?
17 COMMISSIONER LESTER: I think you have the longest
18 part of the meeting today.
19 LANCE LEFLEUR: Is that -- Is that a compliment or a
20 warning?
21 COMMISSIONER PHILLIPS: Take it as it is.
22 LANCE LEFLEUR: Well, thank you, Chairman. It's a
23 pleasure to be here. As usual to -- to address the

Page 2

1 ROBERT TAMBLING, EMC LEGAL COUNSEL
2 DEBI THOMAS, EMC EXECUTIVE ASSISTANT
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Page 4

1 Commission, thank you for having me.
2 I'd like to cover several items with you this
3 morning. I'll begin with the legislative session that's just
4 been completed the 2011 legislative session. It's come to a
5 close, and it was a good one for ADEM in that our budget
6 suffered no additional cuts beyond those recommended by the
7 Governor, and our legislative initiative was a success.
8 In anticipation of imminent action by EPA, Act
9 258 was passed by the Alabama Legislature, amending the
10 Alabama Solid Wastes and Recyclable Materials Management Act
11 to remove an existing exemption for coal ash wastes resulting
12 from the combustion of coal and other fossil fuels at electric
13 generating plants. Those substances will now be regulated as
14 solid waste in Alabama just as they are in the rest of the
15 nation. The Department is beginning the rule-making process
16 to modify its existing rules to reflect this new statutory
17 requirement.
18 In our April Commission meeting, I spoke about
19 how important our partnerships are in accomplishing the work
20 of the Department. Today there is an -- an agenda item
21 recognizing two members of the Alabama Legislature who
22 understand the importance of our mission to assure for all
23 citizens of the state a safe, healthful, and productive

AEMC COMMISSION MEETING - 6/24/2011

2 (Pages 5 to 8)

Page 5

Page 7

1 environment. These men, Senator Del Marsh of Anniston,
2 President Pro Tem of the Senate, and Representative Greg
3 Canfield of Vestavia Hills, were instrumental in passing this
4 important piece of legislation to control coal ash in Alabama.
5 This bill has been in the works for more than two years. It's
6 appropriate and a pleasure to thank them for their efforts.
7 You have before you resolutions to do this. And with your
8 permission, I'd like to read the resolutions out loud.

9 COMMISSIONER LESTER: Go ahead.

10 LANCE LEFLEUR: Okay. Now, there are two
11 resolutions, and they're identical. One is -- is for
12 Representative Canfield and one for Senator Marsh. But I will
13 read a single one and insert the names of both of the parties.

14 The resolution reads, "Whereas Senator Del Marsh of
15 Anniston as a member and President Pro Tem of the Alabama
16 State Senate and Representative Greg Canfield of Vestavia
17 Hills as a member of the State House of Representatives
18 sponsored legislation during the 2011 regular session of the
19 Alabama State Legislature to classify coal combustion waste as
20 a solid waste, subject to regulation under the Solid Waste and
21 Recyclable Materials Management Act; and whereas this
22 legislation was passed by the House of Representatives and the
23 Senate of the State of Alabama; and whereas Alabama has been

1 Phillip Ryan is representing Del -- Senator Marsh. But I
2 would like to present them on your behalf -- one for Senator
3 Marsh and Representative Canfield. There you are right in
4 front of me here. Let me make sure I get the right one here.
5 All right. Representative Canfield, and this will be for
6 Representative -- Senator Marsh.

7 Please, we'd like to take a photo, if we may.
8 How about we take one on one. Will that be good?
9 (Photos were taken.)

10 REPRESENTATIVE CANFIELD: I'd just like to thank the
11 Chairman and the Commission for this recognition. It's not
12 often that a regulatory bill is brought before the Legislature
13 that has such widespread support. This measure actually
14 brought forward support from the environmental community, from
15 industry, and from government. And to bring those three
16 parties together in harmony over a bill that is much needed
17 with regulation and oversight, that everyone agrees is much
18 needed, is a breath of fresh air. And so I thank you, and I
19 thank ADEM for their leadership in doing really the
20 trail-blazing work to help pave the way for this bill's
21 passage. So thank you.

22 PHILLIP RYAN: I'll be brief, but I apologize for
23 the B-team having to be here instead of Senator Marsh. He's

Page 6

Page 8

1 the only state in the nation that has not regulated the
2 disposal of coal combustion waste as a solid waste; and
3 whereas previously, waste disposal companies could lawfully
4 dispose of coal combustion waste anywhere within the State of
5 Alabama with impunity; and whereas this lack of regulation has
6 piqued national interest in bringing significant quantities of
7 coal combustion waste from out-of-state for disposal in
8 Alabama due to the lack of regulation; and whereas the
9 enactment of this legislation demonstrates the commitment of
10 Senator Marsh and Representative Canfield and the Alabama
11 Legislature to the health and well-being of Alabama citizens
12 and their environment.

13 Now, therefore, be it resolved that the Alabama
14 Environmental Management Commission express gratitude to
15 Senator Marsh and Representative Canfield for their efforts in
16 promoting a better environment and an improved quality of life
17 for the citizens of the State of Alabama."

18 I read that resolution which, I believe, is before
19 you and -- and ready to be proposed. I'll defer to you for
20 action.

21 COMMISSIONER LESTER: Go ahead and present them.

22 LANCE LEFLEUR: Okay. These resolutions -- we have
23 them here. I -- we have Representative Canfield with us.

1 been on a world tour for his business, and so he issues his
2 apologies for not being here personally. But thank you for
3 the work that y'all do. Representative Canfield remarked
4 about all the state agencies. He said, we need these guys to
5 protect us from the EPA. So we appreciate all the work that
6 y'all do and glad that we can support your efforts.

7 COMMISSIONER LESTER: Representative Canfield, we
8 would like to thank you and Phillip, as you relayed to the
9 Senator, y'all's work. And we just appreciate the work that
10 y'all are doing. And I would like to say that -- and Scott
11 can verify this -- it's nice to have a Director and the people
12 that work for us and all working with the Legislature and
13 getting the proper facts and everything so that these things
14 go smooth. And Scott knows, in the past, we've had a lot of
15 problems. Some of our folks couldn't work with the
16 Legislature, and so we were left out. This is one thing that
17 shows us especially in this past session to get something like
18 this passed with all the other things that were going on. And
19 I do appreciate the Representative Canfield and Senator Marsh
20 -- We do appreciate working with our staff and our Director.
21 Thank you.

22 LANCE LEFLEUR: I have to add my thanks also and tip
23 my hat to our -- our people that work over there when the

Page 9

1 sessions and -- when the Legislature's in session; Russell
 2 Kelly and Vernon Barnett and your staff. It's just been a
 3 pleasure to work through this process with you, and I thank
 4 you very much.

5 COMMISSIONER LESTER: Thank you.

6 LANCE LEFLEUR: I know the Representative has some
 7 additional duties, so he's going to move on to those. But let
 8 me continue if I may.

9 The -- During the Legislature, we had other
 10 legislation passed that will affect ADEM, and I'd like to
 11 review a couple of these, if I may, with you.

12 Act No. 297 placed a 24-month moratorium on the
 13 issuance of permits for new public solid waste landfills of a
 14 certain size that are intended to receive waste not generated
 15 solely by the permittee. As a result of this Act, the
 16 Department will begin to review its responsibilities pursuant
 17 to the Solid Wastes and Recyclable Materials Management Act in
 18 order to recommend any necessary new legislation or make any
 19 necessary modification to the state's comprehensive solid
 20 waste management plan.

21 Another piece of legislation that passed was
 22 Act 612 which removed the mandatory minimum penalty from the
 23 ADEM enabling statutes assessing civil penalties of violations

Page 10

1 of state environmental protection laws and orders. This
 2 change now brings ADEM into line with the rest of the United
 3 States and with EPA by granting the Department full discretion
 4 over the assessment of penalties for violations. Although we
 5 do not expect to see a decline in the amount of penalties
 6 assessed overall, this will allow ADEM to work closely with
 7 municipalities and small businesses to bring them into
 8 compliance without unnecessarily forcing them into bankruptcy.

9 Since I became Director of ADEM a little more
 10 than a year ago, the state has suffered three major disasters.
 11 I don't want to make any necessary connection there, but the
 12 state has experienced three disasters in this -- less than a
 13 year. One first was an historic oil spill; second, historic
 14 budget cuts; and then, most recently, historic tornadic
 15 devastation. Any one of these events in isolation would have
 16 stretched the Department's resources and challenged our staff.
 17 The combination of all three in such a short period of time
 18 has truly tested us to our limits. Although we have been --
 19 we have been having trying times, I'm delighted to report that
 20 our staff -- especially Field Operations Division -- has risen
 21 to meet each new challenge with professionalism and true
 22 dedication. And I'd like to update you now, if I may, on
 23 these -- on these three disasters and our role in them or our

Page 11

1 response to them.

2 The Deepwater Horizon oil spill response
 3 continues. It's on-going as of -- as we speak. In excess of
 4 35,000 departmental staff hours have been expended. The
 5 Alabama response is generally entering Stage 4, which is the
 6 final stage of the response.

7 The current focus is on first ensuring the
 8 response remains coordinated with the local governments.
 9 Second, we're focused on identification and removal of
 10 submerged oil mats to the extent that safety will allow.
 11 Our third focus is having coordinated tropical weather
 12 response plans to integrate Stafford Act, which is FEMA,
 13 debris response with the Gulf Coast Incident Management Team
 14 oil spill response, in case increased tar balls and -- are
 15 encountered as a result of a storm event. Finally, fourth,
 16 we're focused on ensuring the completion of cleaning within
 17 the Bon Secour National Wildlife Refuge and the far end of --
 18 west end of Dauphin Island. At the same time, we are seeking
 19 to ensure that the beaches that have already been cleaned
 20 remain clean. So those are our areas of focus in the -- in
 21 this spill event.

22 In the budget area, as I previously mentioned, our
 23 general fund operating budget is now final, and although we

Page 12

1 suffered no additional cuts, the reduction was still an
 2 historic 28 percent of our general fund appropriations. We're
 3 prepared to meet this challenge without laying off any
 4 personnel, which means we will not be required to compromise
 5 our core mission. And that's -- that's the good news in this.
 6 The final general fund budget is down \$1.55 million, which is
 7 28 percent of the budget.

8 In response to this, we are increasing -- we will be
 9 increasing -- We're coming to you to authorize the increasing
 10 of certain fees primarily in the water area but across the
 11 board on others to a lesser extent. We will increase fees by
 12 a total of \$1.38 million or 19 percent of our total fee
 13 structure. This is in comparison to the 28 percent decline in
 14 our budget. That -- Of that 19 percent fee increase, 5
 15 percent is a previously unrecovered cost-of-living adjustment
 16 that the Department was authorized to recover but did not
 17 recover in prior years. The remaining 14 percent of that 19
 18 percent increase in fees represents a recovery of only about
 19 two-thirds of the dollars cut from the budget.

20 This will still leave Alabama with an attractive fee
 21 structure and it will be attractive to incoming businesses
 22 compared to other states, and the fees will still be below our
 23 statutory maximum. We have a statutory maximum to be able to

1 recover 100 percent of our cost of issuing permits. This will
 2 bring us to about a 60 percent recovery of the cost of issuing
 3 the permits. So we are not at our statutory maximum.
 4 The final piece to recover this cut in our budget will
 5 come from applying previously-authorized fees which have not
 6 been implemented in the past. There's some sectors where we
 7 have fees that are approved but have not been implemented.
 8 And we will be implementing those, and that will bring in
 9 about \$.15 million. So the sum total of fee increases will
 10 just about recover our cut to our overall operating budget.
 11 As I've discussed in past Commission meetings, the
 12 Water Division is one of our main areas of focus. This is
 13 especially true in budget matters. Because water programs
 14 throughout the nation are underfunded at the federal level,
 15 much more so than air programs or land programs, we -- we have
 16 to -- excuse me, the states have to supplement their water
 17 budgets from their general funds. All the previous mentioned
 18 cuts -- cuts and fee increases will apply almost totally to
 19 the Water Division. Given Alabama's extremely small general
 20 fund allocation to the Department compared to virtually all
 21 other states and given that preexisting needs in the Water
 22 Division actually require increased budget allocations, it's
 23 critical to at least recover this year's cuts to our already

1 by those entities that -- that have water discharges.
 2 We currently have about 5,000 DMRs to be moved on a
 3 monthly basis from a paper format to an electronic format.
 4 All -- We have 2,800 of those 5,000 entities that are
 5 potential holders of a general permit. Our construction
 6 stormwater general permit was just issued recently. One of
 7 the conditions of that permit, operating under that permit, is
 8 to file electronic DMRs. We believe that virtually all of the
 9 qualifying units -- these 2,800 units -- will opt to be
 10 regulated under the general permit as a -- as a means to
 11 regulate their discharges. And in doing so, they will join --
 12 They will convert over from the paper format to the electronic
 13 format, and this will bring all 2,800 of them into the
 14 electronic format. This should happen over a period of about
 15 18 months. The 2,200 remaining entities that are non -- that
 16 are likely nongeneral permit entities, of those 2,200, 880 are
 17 currently in the electronic DMR program. If not done earlier,
 18 the renewals of these permits will require them to move to
 19 electronic format; and that should happen over a period of
 20 about five years. So we'll be adding about 250 a year to
 21 that.
 22 This is an important piece of streamlining for the
 23 Department. With the -- With the 880 that we currently have

1 bare bones budget in water. The fee increases that we talked
 2 about briefly will help us do that.
 3 While I'm on Water Division, let me briefly go over
 4 -- report to you on a couple of our ongoing initiatives.
 5 We've been trying to strengthen our stormwater branch and
 6 to -- to move us forward on that, we are bringing on board a
 7 private sector engineer who has worked with ADEM over a period
 8 of about 20 years, and he will be a tremendously important
 9 addition to our stormwater program. This kind of thing
 10 doesn't happen very often, and we're very pleased to have him
 11 on board in our program. We've streamlined our stormwater
 12 inspection and enforcement by reducing the three or more
 13 inspections previously required to get us to an administrative
 14 order down to a maximum of two inspections. So we're
 15 streamlining that process. We've also consolidated all
 16 stormwater enforcement in the Field Operations Division to
 17 eliminate duplication of effort. There was some overlap
 18 between the Water Division and Field Operations Division, and
 19 we've consolidated in Field Operations to eliminate that
 20 overlap.
 21 To improve efficiency, we are increasing our
 22 electronic DMR penetration. Now, DMR for those in the
 23 audience, are the discharge monitoring reports that are filed

1 on the electronic format, we have already been able to reduce
 2 two data entry clerks and use those spots for other -- other
 3 departmental activities. With the increase of our electronic
 4 reporting system, we anticipate that we'll have significant
 5 personnel efficiencies.
 6 On the federal side of the budget, the FY 2012 cuts
 7 are still unknown, but indications that we've gotten recently
 8 are that they will be selective cuts. And these will take
 9 place probably in programs such as our 319 program where we
 10 make grants to various watersheds around the state. These
 11 cuts will, for the most part, be passed through to others. It
 12 will decrease our environmental efforts in the state if we are
 13 unable to -- to have these grants for improvements of non-
 14 point water -- non-point sources such as that. But as far as
 15 the operating budget for the Department, our operating budget,
 16 we think there may be minimal impact from the federal side.
 17 The final area that -- event that I'd like to review
 18 with you briefly is the outbreak of tornados that took place
 19 on April 27th of this year that devastated our state. With
 20 more than 240 deaths, the loss of life was horrendous.
 21 Billions of dollars of damage was done. Along with these grim
 22 statistics, it's estimated that approximately 10 million cubic
 23 yards of debris were created by the April tornados. Through

AEMC COMMISSION MEETING - 6/24/2011

5 (Pages 17 to 20)

Page 17

Page 19

1 the end of May, more than 4.3 million cubic yards of debris
2 have been removed. Although significant work remains to be
3 done, Governor Bentley is to be commended for the success of
4 the recovery efforts to date and particularly for his
5 leadership during one of the greatest natural disasters our
6 state has ever faced.

7 Within three days following the storms, ADEM was
8 able to secure and get back on line all 511 of the impacted
9 drinking water and wastewater systems in that area of the
10 state. To facilitate the clean-up and recovery process and
11 protect human health, the Department has exercised the
12 discretion provided to it by statute to allow vegetation and
13 untreated wood to be burned and has provided guidance for the
14 proper recovery and disposal of building debris in appropriate
15 landfills. We are also overseeing proper recovery and
16 disposal of electronic -- electrical transformer oil from
17 thousands of downed utility poles, displaced fuel storage
18 tanks, and fuel and oil leaking from sunken vessels. These
19 efforts will continue -- will be ongoing as long as the need
20 exists.

21 In spite of the unfortunate events that have
22 befallen our state and the devastating -- the distressing
23 reports that accompany them, I would like to close on a

1 LANCE LEFLEUR: Thank you very much.
2 COMMISSIONER LESTER: The next Item, Item 4, is on
3 Petitioner - Kids versus Global Warming, which is a fossil
4 fuel carbon dioxide emission. And we'll note for the record
5 that they -- petitioners have withdrawn this petition.

6 The next Item is the McLean Enterprises, LLC, versus
7 ADEM. This is an NPDES-related matter. And I'll note that
8 what we have -- Each of you have a report of the hearing
9 officer's recommendation, modification, or administrative
10 order issued to McLean Enterprises and recommended dismissal
11 of the appeal.

12 Do I have a motion?

13 COMMISSIONER DAVIS: So move.

14 COMMISSIONER RICHARDSON: Second.

15 COMMISSIONER LESTER: Motion seconded to adopt the
16 report of the hearing officer. All in favor, say aye.

17 (Commission members in favor of the motion so
18 indicated.)

19 COMMISSIONER LESTER: All opposed?

20 (No response.)

21 COMMISSIONER LESTER: The next order -- item is to
22 consider the report of the hearing officer's recommendation to
23 Commission to approve that administrative law order from REEF

Page 18

Page 20

1 hopeful note. The Department has responded robustly and
2 effectively to the challenges presented during this last year.
3 I can assure you that the Department is strong and moving
4 forward on numerous initiatives to better serve the citizens
5 of Alabama. I thank you, Commission members, for your service
6 to the state, and I also thank you for the opportunity to
7 allow me to serve this state. If there are any questions, I'd
8 be pleased to -- to respond to them now.

9 COMMISSIONER LESTER: Do any Commissioners have a
10 question?

11 (No response.)

12 COMMISSIONER LESTER: We'd just like to say you've
13 had an eventful year. You got a good start. And also our
14 Department -- the Department is really on the top. You know,
15 they're the top.

16 LANCE LEFLEUR: Well, it's -- picking up on your
17 comment -- The people in the Department have gone the extra
18 mile on a number of occasions. Our Field Operations people,
19 while they're still having people assigned down in the Gulf on
20 the oil spill, have to ask people to pull extra duty for the
21 tornados that are coming in the northern part of the state.
22 And they've really gone the extra mile.

23 COMMISSIONER LESTER: Thank you.

1 as issued.

2 Do I have a motion?

3 COMMISSIONER MILLER: I make a motion.

4 COMMISSIONER LESTER: I have a motion to adopt the
5 report of hearing officer. Second?

6 COMMISSIONER LAIER: Second.

7 COMMISSIONER LESTER: All in favor, say aye.

8 (Commission members in favor of the motion so
9 indicated.)

10 COMMISSIONER LESTER: All opposed?

11 (No response.)

12 COMMISSIONER LESTER: Do the Commissioners have any
13 other business?

14 (No response.)

15 COMMISSIONER LESTER: If not, our next meeting will
16 be August the 19th. Do the Commissioners have any problem
17 with this date?

18 COMMISSIONER PHILLIPS: None.

19 COMMISSIONER LESTER: If it's all right -- Scott,
20 he's -- He's in a whirl somewhere. This year he just spent
21 300 -- how many thousand?

22 COMMISSIONER PHILLIPS: 28.

23 COMMISSIONER LESTER: 328,000 miles in an airplane

1 for work. So that's some air miles. Now, I'll call for a --
2 entertain a motion to adjourn.
3 COMMISSIONER PHILLIPS: So move.
4 COMMISSIONER LESTER: Second?
5 COMMISSIONER MILLER: Second.
6 COMMISSIONER LESTER: All in favor say aye.
7 (Commission members in favor of the motion so
8 indicated.)
9 COMMISSIONER LESTER: All opposed?
10 (No response.)
11 (Meeting adjourned.)
12
13 (The foregoing AEMC Commission Meeting
14 concluded and was adjourned at approximately
15 11:30 a.m., on June 24, 2011.)
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1 *****
2 REPORTER'S CERTIFICATE
3 *****
4
5 I, Amanda Shirley, Certified Court Reporter and Notary
6 Public in and for the State of Alabama at Large, do hereby
7 certify that I reported stenographically and then reduced to
8 typewritten form by means of computer-aided transcription my
9 stenographic notes of the foregoing Alabama Environmental
10 Management Commission Meeting.
11
12 I further certify that the foregoing transcript is a true
13 and correct transcript of the proceedings contained herein.
14
15 I further certify that I am neither of kin nor of counsel
16 to the parties to said meeting, nor in any manner interested
17 in the results thereof.
18
19 Done this the 30th day of June, 2011.
20
21
22 _____
23 Amanda Shirley, ABCR #2016
Reporter and Notary Public
State of Alabama at Large

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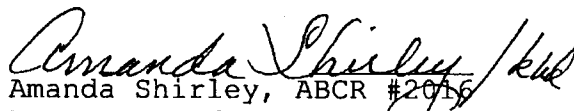
* * * * *
REPORTER'S CERTIFICATE
* * * * *

I, Amanda Shirley, Certified Court Reporter and Notary Public in and for the State of Alabama at Large, do hereby certify that I reported stenographically and then reduced to typewritten form by means of computer-aided transcription my stenographic notes of the foregoing Alabama Environmental Management Commission Meeting.

I further certify that the foregoing transcript is a true and correct transcript of the proceedings contained herein.

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

Done this the 30th day of June, 2011.


Amanda Shirley, ABCR #2016
Reporter and Notary Public
State of Alabama at Large

A	22:6,9,23 Alabama's 13:19 allocation 13:20 allocations 13:22 allow 10:6 11:10 17:12 18:7 Amanda 22:5,22 amending 4:9 amount 10:5 Anniston 5:1,15 anticipate 16:4 anticipation 4:8 apologies 8:2 apologize 7:22 appeal 19:11 apply 13:18 applying 13:5 appreciate 8:5,9 8:19,20 appropriate 5:6 17:14 appropriations 12:2 approve 19:23 approved 13:7 approximately 16:22 21:14 April 3:4 4:18 16:19,23 area 11:22 12:10 16:17 17:9 areas 11:20 13:12 ash 4:11 5:4 assessed 10:6 assessing 9:23 assessment 10:4 assigned 18:19 ASSISTANT 2:2 assure 4:22 18:3 attractive 12:20,21 audience 14:23 August 20:16 authorize 12:9 authorized 12:16	aye 3:8 19:16 20:7 21:6 a.m 1:11 21:15	B	back 17:8 balls 11:14 bankruptcy 10:8 bare 14:1 Barnett 9:2 basis 15:3 beaches 11:19 befallen 17:22 beginning 4:15 behalf 7:2 believe 6:18 15:8 Bentley 17:3 better 6:16 18:4 beyond 4:6 bill 5:5 7:12,16 Billions 16:21 bill's 7:20 board 12:11 14:6 14:11 Bon 11:17 bones 14:1 Boulevard 1:8 branch 14:5 breath 7:18 brief 7:22 briefly 14:2,3 16:18 bring 7:15 10:7 13:2,8 15:13 bringing 6:6 14:6 brings 10:2 brought 7:12,14 BROWN 1:20 budget 4:5 10:14 11:22,23 12:6,7 12:14,19 13:4,10 13:13,22 14:1 16:6,15,15 budgets 13:17 building 1:6 17:14	burned 17:13 business 8:1 20:13 businesses 10:7 12:21 B-team 7:23	C	call 3:1 21:1 Canfield 5:3,12,16 6:10,15,23 7:3,5 7:10 8:3,7,19 carbon 19:4 case 11:14 certain 9:14 12:10 CERTIFICATE 22:2 Certified 22:5 certify 22:7,12,15 CHAIR 1:14 Chairman 3:22 7:11 challenge 10:21 12:3 challenged 10:16 challenges 18:2 change 10:2 citizens 4:23 6:11 6:17 18:4 civil 9:23 classify 5:19 clean 11:20 cleaned 11:19 cleaning 11:16 clean-up 17:10 clerks 16:2 close 4:5 17:23 closely 10:6 coal 4:11,12 5:4,19 6:2,4,7 Coast 11:13 Coliseum 1:8 combination 10:17 combustion 4:12 5:19 6:2,4,7 come 4:4 13:5	coming 12:9 18:21 commended 17:3 comment 18:17 Commission 1:2 1:13 3:9 4:1,18 6:14 7:11 13:11 18:5 19:17,23 20:8 21:7,13 22:10 COMMISSION... 3:1,5,6,7,11,13 3:17,21 5:9 6:21 8:7 9:5 18:9,12 18:23 19:2,13,14 19:15,19,21 20:3 20:4,6,7,10,12,15 20:18,19,22,23 21:3,4,5,6,9 Commissioners 18:9 20:12,16 commitment 6:9 community 7:14 companies 6:3 compared 12:22 13:20 comparison 12:13 completed 4:4 completion 11:16 compliance 10:8 compliment 3:19 comprehensive 9:19 compromise 12:4 computer-aided 22:8 concluded 21:14 conditions 15:7 connection 10:11 consider 3:3 19:22 consolidated 14:15 14:19 construction 15:5 contained 22:13 continue 9:8 17:19
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continues 11:3	demonstrates 6:9	duplication 14:17	10:20 13:13	first 3:3 10:13 11:7
control 5:4	Department 1:5	duties 9:7	ESQUIRE 1:20	five 15:20
convert 15:12	4:15,20 9:16 10:3	duty 18:20	estimated 16:22	focus 11:7,11,20
coordinated 11:8	12:16 13:20	D.V.M 1:14	event 11:15,21	13:12
11:11	15:23 16:15		16:17	focused 11:9,16
core 12:5	17:11 18:1,3,14	E	eventful 18:13	folks 8:15
correct 22:13	18:14,17	E 1:16	events 10:15 17:21	following 17:7
cost 13:1,2	departmental 11:4	earlier 15:17	excess 11:3	forcing 10:8
cost-of-living	16:3	effectively 18:2	excuse 13:16	foregoing 21:13
12:15	Department's	efficiencies 16:5	EXECUTIVE 2:2	22:9,12
counsel 2:1 22:15	10:16	efficiency 14:21	exemption 4:11	form 22:8
couple 9:11 14:4	devastated 16:19	effort 14:17	exercised 17:11	format 15:3,3,12
Court 22:5	devastating 17:22	efforts 5:6 6:15 8:6	existing 4:11,16	15:13,14,19 16:1
cover 4:2	devastation 10:15	16:12 17:4,19	exists 17:20	forward 7:14 14:6
created 16:23	dioxide 19:4	electric 4:12	expect 10:5	18:4
critical 13:23	Director 1:23 3:14	electrical 17:16	expended 11:4	fossil 4:12 19:3
cubic 16:22 17:1	3:14 8:11,20 10:9	electronic 14:22	experienced 10:12	fourth 11:15
current 11:7	disasters 10:10,12	15:3,8,12,14,17	express 6:14	fresh 7:18
currently 15:2,17	10:23 17:5	15:19 16:1,3	extent 11:10 12:11	front 7:4
15:23	discharge 14:23	17:16	extra 18:17,20,22	fuel 17:17,18 19:4
cut 12:19 13:4,10	discharges 15:1,11	eliminate 14:17,19	extremely 13:19	fuels 4:12
cuts 4:6 10:14 12:1	discretion 10:3	EMC 2:1,2		full 10:3
13:18,18,23 16:6	17:12	emission 19:4	F	fund 11:23 12:2,6
16:8,11	discussed 13:11	enabling 9:23	F 1:15	13:20
D	dismissal 19:10	enactment 6:9	faced 17:6	funds 13:17
D 1:19	displaced 17:17	encountered 11:15	facilitate 17:10	further 22:12,15
damage 16:21	disposal 6:2,3,7	enforcement 14:12	facts 8:13	FY 16:6
data 16:2	17:14,16	14:16	far 11:17 16:14	
date 17:4 20:17	dispose 6:4	engineer 14:7	favor 3:8,9 19:16	G
Dauphin 11:18	distressing 17:22	ensure 11:19	19:17 20:7,8 21:6	general 11:23 12:2
DAVIS 1:15 19:13	Division 10:20	ensuring 11:7,16	21:7	12:6 13:17,19
day 22:19	13:12,19,22 14:3	entering 11:5	federal 13:14 16:6	15:5,6,10
days 17:7	14:16,18,18	Enterprises 19:6	16:16	generally 11:5
deaths 16:20	DMR 14:22,22	19:10	fee 12:12,14,20	generated 9:14
DEBI 2:2	15:17	entertain 21:2	13:9,18 14:1	generating 4:13
debris 11:13 16:23	DMRs 15:2,8	entities 15:1,4,15	fees 12:10,11,18,22	getting 8:13
17:1,14	doing 7:19 8:10	15:16	13:5,7	given 13:19,21
decline 10:5 12:13	15:11	entry 16:2	FEMA 11:12	glad 8:6
decrease 16:12	dollars 12:19	environment 5:1	Field 10:20 14:16	Global 19:3
dedication 10:22	16:21	6:12,16	14:18,19 18:18	go 5:9 6:21 8:14
Deepwater 11:2	downed 17:17	environmental 1:1	file 15:8	14:3
defer 6:19	DR 1:17,19	1:5 6:14 7:14	filed 14:23	going 8:18 9:7
Del 5:1,14 7:1	drinking 17:9	10:1 16:12 22:9	final 11:6,23 12:6	good 4:5 7:8 12:5
delighted 10:19	due 6:8	EPA 4:8 8:5 10:3	13:4 16:17	18:13
		especially 8:17	Finally 11:15	gotten 16:7

<p>government 7:15 governments 11:8 Governor 4:7 17:3 granting 10:3 grants 16:10,13 gratitude 6:14 greatest 17:5 Greg 5:2,16 grim 16:21 guidance 17:13 Gulf 11:13 18:19 guys 8:4</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 1:14,20 happen 14:10 15:14,19 harmony 7:16 hat 8:23 head 3:15 health 6:11 17:11 healthful 4:23 hearing 1:7 19:8 19:16,22 20:5 help 7:20 14:2 Hills 5:3,17 historic 10:13,13 10:14 12:2 holders 15:5 hopeful 18:1 Horizon 11:2 horrendous 16:20 hours 11:4 House 5:17,22 human 17:11</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>identical 5:11 identification 11:9 II 1:20 imminent 4:8 impact 16:16 impacted 17:8 implemented 13:6 13:7</p>	<p>implementing 13:8 importance 4:22 important 4:19 5:4 14:8 15:22 improve 14:21 improved 6:16 improvements 16:13 impunity 6:5 Incident 11:13 incoming 12:21 increase 12:11,14 12:18 16:3 increased 11:14 13:22 increases 13:9,18 14:1 increasing 12:8,9,9 14:21 indicated 3:10 19:18 20:9 21:8 indications 16:7 industry 7:15 initiative 4:7 initiatives 14:4 18:4 insert 5:13 inspection 14:12 inspections 14:13 14:14 instrumental 5:3 integrate 11:12 intended 9:14 interest 6:6 interested 22:16 Island 11:18 isolation 10:15 issuance 9:13 issued 15:6 19:10 20:1 issues 8:1 issuing 13:1,2 item 4:20 19:2,2,6 19:21</p>	<p>items 4:2</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>JAMES 1:16 JOHN 1:14 join 15:11 June 1:11 21:15 22:19</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kelly 9:2 Kids 19:3 kin 22:15 kind 14:9 know 9:6 18:14 knows 8:14</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 1:17 lack 6:5,8 LAIER 1:16 3:6 20:6 LANCE 1:22 3:16 3:19,22 5:10 6:22 8:22 9:6 18:16 19:1 land 13:15 landfills 9:13 17:15 LANIER 1:20 Large 22:6,23 law 19:23 lawfully 6:3 laws 10:1 laying 12:3 leadership 7:19 17:5 leaking 17:18 leave 12:20 LEFLEUR 1:22 3:16,19,22 5:10 6:22 8:22 9:6 18:16 19:1 left 8:16 LEGAL 2:1</p>	<p>legislation 5:4,18 5:22 6:9 9:10,18 9:21 legislative 4:3,4,7 Legislature 4:9,21 5:19 6:11 7:12 8:12,16 9:9 Legislature's 9:1 lesser 12:11 LESTER 1:14 3:1 3:7,11,13,17 5:9 6:21 8:7 9:5 18:9 18:12,23 19:2,15 19:19,21 20:4,7 20:10,12,15,19 20:23 21:4,6,9 level 13:14 life 6:16 16:20 limits 10:18 line 10:2 17:8 little 10:9 LLC 19:6 local 11:8 long 17:19 longest 3:17 loss 16:20 lot 8:14 loud 5:8</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>main 1:7 13:12 major 10:10 management 1:1,6 4:10 5:21 6:14 9:17,20 11:13 22:10 mandatory 9:22 manner 22:16 MARQUITA 1:15 Marsh 5:1,12,14 6:10,15 7:1,3,6 7:23 8:19 Materials 4:10 5:21 9:17 mats 11:10</p>	<p>matter 3:13 19:7 matters 13:13 maximum 12:23 12:23 13:3 14:14 McLean 19:6,10 means 12:4 15:10 22:8 measure 7:13 meet 10:21 12:3 meeting 1:2 3:2,4 3:18 4:18 20:15 21:11,13 22:10 22:16 meetings 13:11 member 5:15,17 members 1:13 3:9 4:21 18:5 19:17 20:8 21:7 men 5:1 mentioned 11:22 13:17 mile 18:18,22 miles 20:23 21:1 MILLER 1:17 20:3 21:5 million 12:6,12 13:9 16:22 17:1 minimal 16:16 minimum 9:22 minutes 3:4 mission 4:22 12:5 modification 9:19 19:9 modify 4:16 monitoring 14:23 Montgomery 1:9 monthly 15:3 months 15:15 moratorium 9:12 morning 4:3 motion 3:7,9 19:12 19:15,17 20:2,3,4 20:8 21:2,7 move 3:5 9:7 14:6</p>
---	--	---	---	--

<p>15:18 19:13 21:3 moved 15:2 moving 18:3 municipalities 10:7 M.D 1:17</p> <hr/> <p style="text-align: center;">N</p> <p>names 5:13 nation 4:15 6:1 13:14 national 6:6 11:17 natural 17:5 necessary 9:18,19 10:11 need 8:4 17:19 needed 7:16,18 needs 13:21 neither 22:15 new 4:16 9:13,18 10:21 news 12:5 nice 8:11 non 15:15 16:13 nongeneral 15:16 non-point 16:14 northern 18:21 Notary 22:5,22 note 3:3 18:1 19:4 19:7 notes 22:9 NPDES-related 19:7 number 18:18 numerous 18:4</p> <hr/> <p style="text-align: center;">O</p> <p>occasions 18:18 officer 19:16 20:5 officer's 19:9,22 oil 10:13 11:2,10 11:14 17:16,18 18:20 Okay 5:10 6:22 ongoing 14:4 17:19</p>	<p>on-going 11:3 operating 11:23 13:10 15:7 16:15 16:15 Operations 10:20 14:16,18,19 18:18 opportunity 18:6 opposed 3:11 19:19 20:10 21:9 opt 15:9 order 3:2 9:18 14:14 19:10,21 19:23 orders 10:1 outbreak 16:18 out-of-state 6:7 overall 10:6 13:10 overlap 14:17,20 overseeing 17:15 oversight 7:17</p> <hr/> <p style="text-align: center;">P</p> <p>paper 15:3,12 part 3:18 16:11 18:21 particularly 17:4 parties 5:13 7:16 22:16 partnerships 4:19 passage 7:21 passed 4:9 5:22 8:18 9:10,21 16:11 passing 5:3 pave 7:20 penalties 9:23 10:4 10:5 penalty 9:22 penetration 14:22 people 8:11,23 18:17,18,19,20 percent 12:2,7,12 12:13,14,15,17 12:18 13:1,2</p>	<p>period 10:17 14:7 15:14,19 permission 5:8 permit 15:5,6,7,7 15:10,16 permits 9:13 13:1 13:3 15:18 permittee 9:15 personally 8:2 personnel 12:4 16:5 petition 19:5 Petitioner 19:3 petitioners 19:5 Phillip 7:1,22 8:8 PHILLIPS 1:18 3:5,21 20:18,22 21:3 photo 7:7 Photos 7:9 PH.D 1:15,16 picking 18:16 piece 5:4 9:21 13:4 15:22 piqued 6:6 place 16:9,18 placed 9:12 plan 9:20 plans 11:12 plants 4:13 Please 7:7 pleased 14:10 18:8 pleasure 3:23 5:6 9:3 point 16:14 poles 17:17 potential 15:5 preexisting 13:21 prepared 12:3 present 1:13,20,21 3:2 6:21 7:2 presented 18:2 President 5:2,15 previous 13:17</p>	<p>previously 6:3 11:22 12:15 14:13 previously-auth... 13:5 primarily 12:10 prior 12:17 private 14:7 Pro 5:2,15 probably 16:9 problem 20:16 problems 8:15 proceedings 22:13 process 4:15 9:3 14:15 17:10 productive 4:23 professionalism 10:21 program 14:9,11 15:17 16:9 programs 13:13,15 13:15 16:9 promoting 6:16 proper 8:13 17:14 17:15 proposed 6:19 protect 8:5 17:11 protection 10:1 provided 17:12,13 public 9:13 22:6 22:22 pull 18:20 pursuant 9:16 P.E 1:16</p> <hr/> <p style="text-align: center;">Q</p> <p>qualifying 15:9 quality 6:16 quantities 6:6 question 18:10 questions 18:7 quorum 3:2</p> <hr/> <p style="text-align: center;">R</p> <p>read 5:8,13 6:18</p>	<p>reads 5:14 ready 6:19 really 7:19 18:14 18:22 receive 9:14 recognition 7:11 recognizing 4:21 recommend 9:18 recommendation 19:9,22 recommended 4:6 19:10 record 19:4 recover 12:16,17 13:1,4,10,23 recovery 12:18 13:2 17:4,10,14 17:15 Recyclable 4:10 5:21 9:17 reduce 16:1 reduced 22:7 reducing 14:12 reduction 12:1 REEF 19:23 reflect 4:16 Refuge 11:17 regular 5:18 regulate 15:11 regulated 4:13 6:1 15:10 regulation 5:20 6:5 6:8 7:17 regulatory 7:12 relayed 8:8 remain 11:20 remaining 12:17 15:15 remains 11:8 17:2 remarked 8:3 removal 11:9 remove 4:11 removed 9:22 17:2 renewals 15:18</p>
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<p>report 3:13 10:19 14:4 19:8,16,22 20:5 reported 22:7 Reporter 22:5,22 REPORTER'S 22:2 reporting 16:4 reports 14:23 17:23 Representative 5:2 5:12,16 6:10,15 6:23 7:3,5,6,10 8:3,7,19 9:6 Representatives 5:17,22 representing 7:1 represents 12:18 require 13:22 15:18 required 12:4 14:13 requirement 4:17 resolution 5:14 6:18 resolutions 5:7,8 5:11 6:22 resolved 6:13 resources 10:16 respond 18:8 responded 18:1 response 3:12 11:1 11:2,5,6,8,12,13 11:14 12:8 18:11 19:20 20:11,14 21:10 responsibilities 9:16 rest 4:14 10:2 result 9:15 11:15 resulting 4:11 results 22:17 review 9:11,16 16:17</p>	<p>RICHARDSON 1:19 19:14 right 3:15,16 7:3,4 7:5 20:19 risen 10:20 ROBERT 2:1 robustly 18:1 role 10:23 Room 1:7 rules 4:16 rule-making 4:15 Russell 9:1 Ryan 7:1,22</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe 4:23 safety 11:10 SAMUEL 1:17 Scott 1:18 8:10,14 20:19 second 3:6,13 10:13 11:9 19:14 20:5,6 21:4,5 seconded 3:7 19:15 Secour 11:17 sector 14:7 sectors 13:6 secure 17:8 see 10:5 seeking 11:18 selective 16:8 Senate 5:2,16,23 Senator 5:1,12,14 6:10,15 7:1,2,6 7:23 8:9,19 serve 18:4,7 service 18:5 session 4:3,4 5:18 8:17 9:1 sessions 9:1 Shirley 22:5,22 short 10:17 shows 8:17 side 16:6,16 significant 6:6</p>	<p>16:4 17:2 single 5:13 size 9:14 small 10:7 13:19 smooth 8:14 solely 9:15 solid 4:10,14 5:20 5:20 6:2 9:13,17 9:19 sources 16:14 speak 11:3 spent 20:20 spill 10:13 11:2,14 11:21 18:20 spite 17:21 spoke 4:18 sponsored 5:18 spots 16:2 staff 8:20 9:2 10:16,20 11:4 Stafford 11:12 stage 11:5,6 start 18:13 state 4:23 5:16,17 5:19,23 6:1,4,17 8:4 10:1,10,12 16:10,12,19 17:6 17:10,22 18:6,7 18:21 22:6,23 states 10:3 12:22 13:16,21 state's 9:19 statistics 16:22 statute 17:12 statutes 9:23 statutory 4:16 12:23,23 13:3 stenographic 22:9 stenographically 22:7 storage 17:17 storm 11:15 storms 17:7 stormwater 14:5,9</p>	<p>14:11,16 15:6 streamlined 14:11 streamlining 14:15 15:22 strengthen 14:5 stretched 10:16 strong 18:3 structure 12:13,21 subject 5:20 submerged 11:10 substances 4:13 success 4:7 17:3 suffered 4:6 10:10 12:1 sum 13:9 sunken 17:18 supplement 13:16 support 7:13,14 8:6 sure 7:4 system 16:4 systems 17:9</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 3:21 7:7,8 16:8 taken 7:9 talked 14:1 TAMBLING 2:1 tanks 17:18 tar 11:14 Team 11:13 Tem 5:2,15 TERRY 1:19 tested 10:18 thank 3:22 4:1 5:6 7:10,18,19,21 8:2 8:8,21 9:3,5 18:5 18:6,23 19:1 thanks 8:22 thereof 22:17 thing 8:16 14:9 things 8:13,18 think 3:17 16:16 third 11:11</p>	<p>THOMAS 2:2 thousand 20:21 thousands 17:17 three 7:15 10:10 10:12,17,23 14:12 17:7 time 3:1 10:17 11:18 times 10:19 tip 8:22 today 3:18 4:20 top 18:14,15 tornadic 10:14 tornados 16:18,23 18:21 total 12:12,12 13:9 totally 13:18 tour 8:1 trail-blazing 7:20 transcript 22:12 22:13 transcription 22:8 transformer 17:16 tremendously 14:8 tropical 11:11 true 10:21 13:13 22:12 truly 10:18 trying 10:19 14:5 two 4:21 5:5,10 14:14 16:2 two-thirds 12:19 typewritten 22:8</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unable 16:13 underfunded 13:14 understand 4:22 unfortunate 17:21 United 10:2 units 15:9,9 unknown 16:7 unnecessarily 10:8 unrecovered 12:15</p>
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<p>untreated 17:13 update 10:22 use 16:2 usual 3:23 utility 17:17</p> <hr/> <p style="text-align: center;">V</p> <p>various 16:10 vegetation 17:12 verify 8:11 Vernon 9:2 versus 19:3,6 vessels 17:18 Vestavia 5:3,16 violations 9:23 10:4 virtually 13:20 15:8</p> <hr/> <p style="text-align: center;">W</p> <p>W 1:18 want 10:11 Warming 19:3 warning 3:20 waste 4:14 5:19,20 5:20 6:2,2,3,4,7 9:13,14,20 wastes 4:10,11 9:17 wastewater 17:9 water 12:10 13:12 13:13,16,19,21 14:1,3,18 15:1 16:14 17:9 watersheds 16:10 way 7:20 weather 11:11 well-being 6:11 west 11:18 we'll 3:3 15:20 16:4 19:4 we're 11:9,16 12:2 12:9 14:10,14 we've 8:14 14:5,11 14:15,19 16:7</p>	<p>whirl 20:20 widespread 7:13 Wildlife 11:17 withdrawn 19:5 wood 17:13 work 4:19 7:20 8:3 8:5,9,9,12,15,23 9:3 10:6 17:2 21:1 worked 14:7 working 8:12,20 works 5:5 world 8:1</p> <hr/> <p style="text-align: center;">Y</p> <p>yards 16:23 17:1 year 10:10,13 15:20 16:19 18:2 18:13 20:20 years 5:5 12:17 14:8 15:20 year's 13:23 y'all 8:3,6,10 y'all's 8:9</p> <hr/> <p style="text-align: center;">\$</p> <p>\$1.38 12:12 \$1.55 12:6</p> <hr/> <p style="text-align: center;">#</p> <p>#2016 22:22</p> <hr/> <p style="text-align: center;">1</p> <p>10 16:22 100 13:1 11:00 1:11 11:30 21:15 14 12:17 1400 1:8 15 13:9 15th 3:4 18 15:15 19 12:12,14,17 19th 20:16</p>	<hr/> <p style="text-align: center;">2</p> <p>2,200 15:15,16 2,800 15:4,9,13 20 14:8 2011 1:11 4:4 5:18 21:15 22:19 2012 16:6 24 1:11 21:15 24-month 9:12 240 16:20 250 15:20 258 4:9 27th 16:19 28 12:2,7,13 20:22 297 9:12</p> <hr/> <p style="text-align: center;">3</p> <p>30th 22:19 300 20:21 319 16:9 328,000 20:23 35,000 11:4</p> <hr/> <p style="text-align: center;">4</p> <p>4 11:5 19:2 4.3 17:1</p> <hr/> <p style="text-align: center;">5</p> <p>5 12:14 5,000 15:2,4 511 17:8</p> <hr/> <p style="text-align: center;">6</p> <p>60 13:2 612 9:22</p> <hr/> <p style="text-align: center;">8</p> <p>880 15:16,23</p>		
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Part B

Attachment Index

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|---------------------|---|
| Attachment 1 | Agenda |
| Attachment 2 | Resolutions for Senator Del Marsh and Representative Greg Canfield

(Agenda Item 2 – Report from the Director) |
| Attachment 3 | Order adopting the Report of the Hearing Officer

(Agenda Item 5 – <u>McLean Enterprises, LLC v. ADEM,</u>
EMC Docket No. 10-07 [NPDES-Related Matter]) |
| Attachment 4 | Order adopting the Report of the Hearing Officer

(Agenda Item 6 – <u>REEF, LLC v. ADEM,</u>
EMC Docket No. 11-02 [NPDES-Related Matter]) |

Attachment 1

Amended 6/2/11

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: June 24, 2011

TIME: 11:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

<u>ITEM</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on April 15, 2011**	2
2. Report from the Director	2
3. Report from the Commission Chair	2
4. <i>Citizen Petition for Promulgation of a Rule to Regulate Fossil Fuel Carbon Dioxide Emissions and to Establish an Effective Emissions Reduction Strategy That Will Achieve a Concentration of 350 ppm Atmospheric Carbon Dioxide by 2100</i> Petitioner – Kids vs. Global Warming EMC Rulemaking Petition 11-01	2
5. <u>McLean Enterprises, LLC v. ADEM</u> EMC Docket No. 10-07 (NPDES-Related Matter)	2
6. <u>REEF, LLC v. ADEM</u> EMC Docket No. 11-02 (NPDES-Related Matter)	2
7. Other business	2
8. Future business session	2

* 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 APRIL 15, 2011
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CITIZEN PETITION FOR PROMULGATION OF A RULE TO REGULATE FOSSIL FUEL CARBON DIOXIDE EMISSIONS AND TO ESTABLISH AN EFFECTIVE EMISSIONS REDUCTION STRATEGY THAT WILL ACHIEVE A CONCENTRATION OF 350 PPM ATMOSPHERIC CARBON DIOXIDE BY 2100, PETITIONER – KIDS VS. GLOBAL WARMING, EMC RULEMAKING PETITION 11-01

The Commission will note for the record Petitioner Kids vs. Global Warming's withdrawal of the petition for rulemaking.

5. MCLEAN ENTERPRISES, LLC V. ADEM, EMC DOCKET NO. 10-07 (NPDES-RELATED MATTER)

The Commission will consider the *Report of Hearing Officer* recommending modification of ADEM Administrative Order No. 10-131-WP and dismissal of this appeal. ADEM Administrative Order No. 10-131-WP was issued on July 7, 2010, to McLean Enterprises, LLC, Copper Creek Subdivision, in Gerald, Dale County, Alabama, NPDES registration ALR16ECB9.

6. REEF, LLC V. ADEM, EMC DOCKET NO. 11-02 (NPDES-RELATED MATTER)

The Commission will consider the *Report of Hearing Officer* recommending that the Commission approve ADEM Administrative Order No. 11-009-WP as issued. ADEM Administrative Order No. 11-009-WP was issued on October 22, 2010, to REEF, LLC, in Sylacauga, Talladega County, Alabama, SID Permit IU 35-61-00014.

7. OTHER BUSINESS
8. FUTURE BUSINESS SESSION

Attachment 2

State of Alabama



Resolution

WHEREAS, Senator Del Marsh of Anniston, as a member and President Pro Tempore of the Alabama State Senate, sponsored legislation during the 2011 Regular Session of the Alabama State Legislature to classify coal combustion waste as a solid waste subject to regulation under the Solid Wastes and Recyclable Materials Management Act; and,

WHEREAS, this legislation was passed by the House of Representatives and the Senate of the State of Alabama; and,

WHEREAS, Alabama has been the only state in the nation that has not regulated the disposal coal combustion waste as a solid waste; and,

WHEREAS, previously waste disposal companies could lawfully dispose of coal combustion waste anywhere within the State of Alabama with impunity; and,

WHEREAS, this lack of regulation had piqued national interest in bringing significant quantities of coal combustion waste from out-of-state for disposal in Alabama due to the lack of regulation; and,

WHEREAS, the enactment of this legislation demonstrates the commitment of Senator Marsh and the Alabama Legislature to the health and well-being of Alabama citizens and their environment; now,

THEREFORE, be it resolved that the Alabama Environmental Management Commission express gratitude to Senator Marsh for his efforts in promoting a better environment and an improved quality of life for the citizens of the State of Alabama.

DONE this 24th day of June 2011.

John Lester

James E. Lane

Sam Mcint

W. Scott Purvis

Margaret

Larry D. Richardson

State of Alabama



Resolution

WHEREAS, Representative Greg Canfield of Vestavia Hills, as a member of the Alabama State House of Representatives, sponsored legislation during the 2011 Regular Session of the Alabama State Legislature to classify coal combustion waste as a solid waste subject to regulation under the Solid Wastes and Recyclable Materials Management Act; and,

WHEREAS, this legislation was passed by the House of Representatives and the Senate of the State of Alabama; and,

WHEREAS, Alabama has been the only state in the nation that has not regulated the disposal coal combustion waste as a solid waste; and,

WHEREAS, previously waste disposal companies could lawfully dispose of coal combustion waste anywhere within the State of Alabama with impunity; and,

WHEREAS, this lack of regulation had piqued national interest in bringing significant quantities of coal combustion waste from out-of-state for disposal in Alabama due to the lack of regulation; and,

WHEREAS, the enactment of this legislation demonstrates the commitment of Representative Canfield and the Alabama Legislature to the health and well-being of Alabama citizens and their environment; now,

THEREFORE, be it resolved that the Alabama Environmental Management Commission express gratitude to Representative Canfield for his efforts in promoting a better environment and an improved quality of life for the citizens of the State of Alabama.

DONE this 24th day of June 2011.

John Peter

James E. Law

John M. H.

Terry D. Richardson

W. Scott Purvis

Margaret R.

Attachment 3

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

In the Matter of:)	
)	
McLean Enterprises, LLC,)	
)	
Petitioner,)	
)	
vs.)	EMC Docket No. 10-07
)	
Alabama Department of)	
Environmental Management,)	
)	
Respondent.)	

ORDER

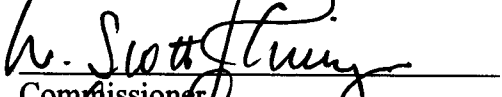
This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


1. That the Report of the Hearing Officer is hereby adopted; and
2. That pursuant to the adoption of the Report of the Hearing Officer, the recommendations of the Hearing Officer contained in said Report are adopted; and
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
4. That a copy of this Order, along with a copy of the Report of the Hearing Officer, 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 June 2011.

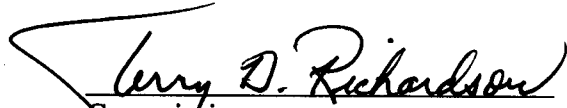
APPROVED:

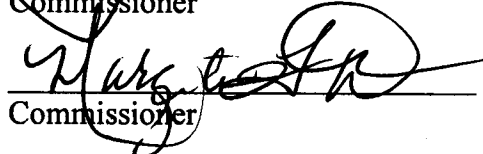

Commissioner


Commissioner


Commissioner


Commissioner


Commissioner


Commissioner

Commissioner

DISAPPROVED:

Commissioner


Commissioner

Commissioner

ABSTAINED:

RECUSED:

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 June 2011.


John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of June 2011

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

MCLEAN ENTERPRISES, LLC,

 Petitioner,

v.

THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,

 Respondent.

DOCKET No. 10-07



REPORT OF HEARING OFFICER

The parties to this cause, McLean Enterprises, LLC and the Alabama Department of Environmental Management, have proposed settlement of this matter by way of filing a Joint Motion to Modify Order and to Dismiss Appeal. The parties have indicated in the motion that they mutually agree to the following modifications of Administrative Order No. 10-131-WP:

- (1) to reduce the penalty from \$39,000 to \$20,000:


- (2) to include the following payment schedule for the civil penalty: McLean Enterprises, LLC shall pay the \$20,000 civil penalty in eleven installments. The first installment shall be in the amount of \$10,000 and the remaining ten installments shall be in the amount of \$1,000 each. Payment of the first installment shall be due within thirty days of the date of the final Order of the Alabama Environmental Management Commission, with payment of the subsequent ten installments due on the first of each month thereafter:

- (3) to require deadlines for compliance with the remaining provisions of Administrative Order No. 10-131-WP to run from the date of the final Order of the Alabama Environmental Management Commission.

The parties have further indicated in the motion that they mutually agree that, upon the Alabama Environmental Management Commission's approval of the above modifications to Administrative Order No. 10-131-WP, this matter is due to be dismissed.

THEREFORE, it is the recommendation of the undersigned Hearing Officer to the Commission that Administrative Order No. 10-131-WP be modified to include a reduced penalty of \$20,000 and the above civil penalty payment schedule, and to require compliance with the remaining provisions to run from the date of the final Order of the Alabama Environmental Management Commission. Following this, it is the recommendation of the undersigned Hearing Officer that McLean Enterprises, LLC's appeal in AEMC Docket No. 10-07 be DISMISSED.

Done this the 1st day of June, 2011.



JAMES F. HAMPTON
Hearing Officer

Schuyler K. Espy, Esq.
James L. Wright, Esq.
Robert H. Brogden, Esq.
Debra S. Thomas

Attachment 4

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

In the Matter of:)	
)	
REEF, LLC,)	
)	
Petitioner,)	
)	
vs.)	EMC Docket No. 11-02
)	
Alabama Department of)	
Environmental Management,)	
)	
Respondent.)	


ORDER

This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


1. That the Report of the Hearing Officer is hereby adopted; and
2. That pursuant to the adoption of the Report of the Hearing Officer, the Findings of Fact and Conclusions of Law and Recommendations contained in said Report are adopted; and
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
4. That a copy of this Order, along with a copy of the Report of the Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally or by certified mail.

ISSUED this 24th day of June 2011.


APPROVED:




Commissioner



Commissioner



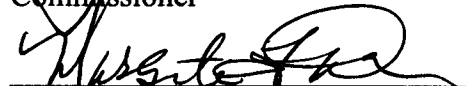
Commissioner



Commissioner



Commissioner



Commissioner

Commissioner

DISAPPROVED:

Commissioner


Commissioner

Commissioner

ABSTAINED:

RECUSED:

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 June 2011.



John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of June 2011

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

REEF, LLC,

Petitioners,

v.

THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Respondent.

DOCKET No. 11-02



REPORT OF HEARING OFFICER

The undersigned Hearing Officer, duly employed by the Environmental Management Commission to conduct the hearing and all related proceedings pertinent to this matter, offers this report which includes Findings of Fact, Conclusions of Law and Recommendations. This report is submitted pursuant to Rule 335-2-1-.27 of ADEM Admin Code and is submitted along with the entire record of these proceedings including a complete transcript of the hearing, all documents allowed into evidence, and other relevant briefs and submissions of the parties.

I. INTRODUCTION AND PROCEDURAL HISTORY OF THIS PROCEEDING

On October 22, 2010, the Alabama Department of Environmental Management (“ADEM” or “the Department”) issued Administrative Order Number 11-009-WP (“the Order”) to REEF, LLC (ADEM Exhibit B) for, among other things, violations of State Indirect Discharge (“SID”) Permit IU-35-61-00014 (ADEM Exhibit A). REEF, LLC operates a centralized wastewater treatment facility in Sylacauga, Alabama that takes

wastewaters from other facilities, treats them, and then discharges to Sylacauga, Alabama's publicly owned wastewater treatment facility pursuant to its SID Permit. (Tr. 31-32). On November 20, 2010, REEF LLC appealed the Order to the Alabama Environmental Management Commission ("The AEMC" or "the Commission"). The Commission appointed this Hearing Officer to hear the matter and to make proposed findings of fact, conclusions of law and recommendations on the question whether the Order should be modified, disapproved or approved by the Commission. *See, Ala. Code* §22-22A-7(c). On January 28, 2011, the Hearing Officer scheduled the matter for hearing on March 28, 2011, by Prehearing Order.

This matter came to be heard by this Hearing Officer on March 28, 2011, at which time REEF LLC appeared without legal representation. At that time members of REEF LLC offered into evidence a document including their responses to ADEM's Order, over ADEM's objections. That document was admitted into the record by the Hearing Officer. At the conclusion of the hearing ADEM renewed its objection to the documents not only on the original grounds that members cannot represent LLCs in legal processes, but also on the grounds that ADEM was uncertain whether the documents had been provided to ADEM as required by the prehearing Order. With the following ruling on that Motion the record closed. The Hearing Officer's findings of fact and conclusions of law follow.

II. FINDINGS OF FACT

1. REEF LLC is a limited liability company.

2. REEF LLC (“REEF”) operates, or operated, a centralized wastewater treatment facility in Sylacauga, Alabama that takes, or took, wastewaters from other facilities, treated them and then discharged them to waters of the State through the City of Sylacauga’s wastewater treatment plant.
3. REEF applied for and obtained SID Permit IU-35-61-00014 for these discharges.
4. The wastewaters taken in by REEF were collected in concrete lined ponds. These ponds were previously owned by Avondale Mills and were probably constructed 20 to thirty years ago. (Tr. 22-23)
5. Eric Sanderson, environmental engineer supervisor with the Industrial Section of the Department’s Water Division, testified ADEM observed cracks in the concrete impoundments above the water line. (Tr. 16-17, 24)
6. REEF repaired the cracks above the water line, but ADEM has concerns there might be cracks in the concrete below the water line. (Tr. 24, 34).
7. Cary Spiegel is a hydrogeologist with ADEM’s Land Division. (Tr. 38)
8. Mr. Spiegel conducted a site investigation of REEF’s facility on April 1, 2010. (Tr. 38)
9. At that time Mr. Spiegel observed, and photographed, a dark liquid in a trench adjacent to an impoundment near a manhole REEF filled with cement (Tr. 45-46, ADEM Exhibit C, photograph T)

10. Mr. Spiegel did not sample the dark liquid and could not testify as to its origin, only that the dark liquid was there in the trench adjacent to the impoundment and that it could have been from either the impoundment or a broken pipe.
(Tr. 44, 46)
11. Based upon the cracks in the concrete above the water line, and based upon the observation of the dark liquid in the trench adjacent to the impoundment, ADEM's Order requires REEF to determine whether the impoundments are cracked below the water line, which necessarily entails draining the impoundments to inspect the bottoms of the impoundments. (Tr. 25, 32, 34)
12. The Order also requires REEF to refrain from discharges to Sylacauga's wastewater treatment plant that could interfere with the operations of Sylacauga's wastewater treatment plant. (Tr. 26)
13. This provision of the Order does no more than to restate the conditions of REEF's SID permit. (Tr. 26)
14. Sylacauga decided REEF's discharges were causing interference with Sylacauga's operation and cut off service to REEF. (Tr. 26-27)
15. That decisions rests with Sylacauga, not ADEM. (Tr. 27)
16. REEF's SID Permit does not require Sylacauga to take REEF's wastewater.
(Tr. 27-28).
17. The Order does not require Sylacauga to take REEF's wastewaters. (Tr. 28)

18. The Order requires REEF to conduct a groundwater assessment to determine whether the impoundments have discharged to soils or groundwater and, if so, the horizontal and vertical extent of that contamination. (Tr. 28).
19. There is no way to determine whether groundwater is polluted without such an assessment. (Tr. 28, 44).
20. If the impoundments are not leaking the Order requires no further action from REEF with respect to the impoundments. (Tr. 25)
21. If there is no groundwater contamination, the Order requires no further action from REEF with respect to groundwater contamination. (Tr. 29)
22. If, however, the impoundments are cracked REEF must repair them. (Tr. 33)
23. If there is groundwater contamination REEF must remediate the groundwater contamination. (Tr. 29).

III. CONCLUSIONS OF LAW

A. ADEM Admin. Code r. 335-2-1-.30 states that no person shall represent a party before the Commission unless that person is licensed to practice law in the State of Alabama. The Commission's rules are consistent with the Rules of Alabama Supreme Court governing the practice of law in Alabama all judicial and quasi-judicial proceedings in the State of Alabama.

B. REEF is a limited liability company, also known as an LLC. An LLC is an artificial person, like a corporation, who can sue or be sued in its own name. Ala. Code

(1975) §10-12-4(a). REEF's members are persons legally distinct from REEF and are not, therefore, parties to this case. *See, Filo America, Inc. v. Olhoss Trading Co., LLC*, 321 F. Supp. 1266 (M. D. Ala. 2004) (LLC members not proper parties to case against LLC). Those LLC members, not being parties to this case, cannot represent REEF unless they are licensed to practice law in Alabama. *See, Ex parte Ghafary*, 738 So.2d 778, 779 (Ala. 1998) A-OK Constr. Co. v. Castle Constr. Co., 594 So.2d 53, 54 (Ala. 1992), Ala. Code (1975) §34-3-6, Stage Door Development, Inc. v. Broadcast Music, Inc., 698 So.2d 787 (Ala. Civ. App. 1997), *and Progress Industries, Inc. v. Wilson*, 2010 WL 2629068 (Ala. 2010) *citing Ghafary*, 738 So.2d at 78-81). REEF's members admit they are not lawyers. (Tr. 8)

C. Regardless whether evidence is testimonial or documentary, the proffering of evidence in an adversarial proceeding such as this is the practice of law. Ala. Code §34-3-6(b). REEF's members, who are not lawyers, may not proffer documentary evidence in this proceeding on behalf of REEF LLC. For this reason ADEM's objection to REEF's proffered document is due to be sustained and that document cannot be considered in deciding whether to approve, to modify or to disapprove the Order.

D. REEF bore the initial burden to produce evidence the Order is due to be disapproved or modified. ADEM Admin. Code r. 335-2-1-.14(6).

E. Because REEF failed its burden to produce this evidence contradicting the Order the Department bore no burden to produce evidence supporting the Order.

F. The Order could be approved as a matter of law because the Department bore no burden to produce evidence supporting the Order when REEF failed to produce evidence

contradicting the Order. *See also*, ADEM Admin. Code r. 335-2-1-.27(5) (Petitioner bears burden of proof). Though the Department bore no burden to produce evidence supporting the Order and though there is no evidence from REEF contradicting the Order, the Department produced persuasive evidence supporting the Order.

G. That the impoundments could be cracked below the water line is reasonably inferred from the cracks in the impoundment above the water line. If the impoundments are cracked below the water line that the impoundments could be leaking through those cracks is also a reasonable inference. That reasonable inference is supported by the dark liquid observed and photographed by Mr. Spiegel in the trench adjacent to the impoundment. This is not to say that liquid might not have originated from a cracked pipe, however, this is to say only that it is reasonable to infer the liquid might originate from a cracked impoundment. These reasonable inferences support the Order's requirement that REEF inspect the bottoms of the impoundments for cracks. There is no evidence of a way to inspect the bottom of the impoundments for cracks except by draining the impoundments.

H. If the impoundments are leaking through subsurface cracks, that groundwater might be contaminated thereby, too, is a reasonable inference.

I. The City of Sylacauga complained to ADEM that REEF's discharges interfered with the operation of their POTW. The Order does not require REEF to cease all discharges to Sylacauga's POTW, but rather orders REEF to cease discharges that interfere with Sylacauga's POTW. If REEF's discharges do not, in fact, interfere with the operations of Sylacauga's POTW then those discharges are permissible under the Order and under REEF's

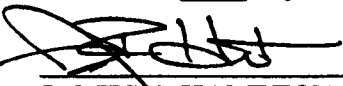
SID Permit. Whether REEF's discharges, in fact, interfere with the Operation of Sylacauga's POTW, however, is Sylacauga's decision and Sylacauga's decision is not reviewable by the AEMC in this process.

J. Furthermore, this provision of the Order does no more than to require REEF to comply with this provision of REEF's SID Permit. That SID Permit requirement to refrain from discharges that interfere with the operation of Sylacauga's POTW cannot be nullified by modifying from the Order the requirement REEF cease discharges that interfere with Sylacauga's POTW, nor can the Commission by modification or disapproval of this Order force Sylacauga to accept any wastewaters it does not want. This process cannot decide any disputes REEF might have with Sylacauga.

IV. RECOMMENDATION

Because the potential for leaks from the impoundments and the potential for groundwater contamination may be reasonably inferred from the Department's evidence, and because the Order merely reiterates the requirements of REEF's SID Permit, the undersigned Hearing Officer recommends the Commission approve Administrative Order Number 11-009-WP as issued.

Respectfully submitted this the 1st day of June, 2011.



JAMES F. HAMPTON
Hearing Officer

James L. Wright, Esq.
Schuyler K. Espy, Esq.
Mr. Kenton Hall, Managing Partner
Debra S. Thomas