Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 16, 2015
This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on October 16, 2015.

H. Lanier Brown, II
Chair
Alabama Environmental Management Commission

Certified this 18th day of December 2015.
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1400 Coliseum Boulevard
Montgomery, Alabama  36110-2400
October 16, 2015

Convened:  11:01 a.m.
Adjourned:  12:14 p.m.

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Part A
VICE-CHAIR PHILLIPS: Good morning. Could everyone pay attention.
Thank you. I'd like to call to order the October 16th, 2015, Alabama Environmental Management Commission Meeting. I'd like to acknowledge we have a quorum.
Agenda Item 1 is consideration of minutes of the meeting held on August 21st, 2015.
I will entertain a motion from the Commission regarding the minutes.
DR. MILLER: I move we accept them as written.
DR. RICHARDSON: Second.
VICE-CHAIR PHILLIPS: I have a motion and a second.
Any discussion regarding the motion?
(No response)
VICE-CHAIR PHILLIPS: Being no further discussion, I will call for the question.
All in favor, signify with the sign "aye."
All Commission members signify "aye."
VICE-CHAIR PHILLIPS: All opposed, same sign.
(No response)
VICE-CHAIR PHILLIPS: Motion carries. Thank you.
Agenda Item 2: The Commission will consider the election of the Commission Chair and Vice-Chair.
I will entertain a motion from the Commission regarding the election.
DR. MARTIN: Mr. Chairman, I'd like to make a motion that we accept the present Commission Chair and Vice-Chair as their present position. In other words, keep you as the Vice-Chair and Lanier as the Commission Chair.
VICE-CHAIR PHILLIPS: I have a motion to accept the existing Chair and Vice-Chair.
DR. LAIER: Second.
VICE-CHAIR PHILLIPS: I have a motion and a second. Any further discussion on the motion?

(No response)

VICE-CHAIR PHILLIPS: All in favor, signify with the sign "aye."

(All Commission members signify "aye.")

VICE-CHAIR PHILLIPS: All opposed, same sign.

(No response)

VICE-CHAIR PHILLIPS: Motion carries. Thank you.

Report from the Director.

Mr. Director.

MR. LeFLEUR: Good morning.

VICE-CHAIR PHILLIPS: Good morning.

MR. LeFLEUR: During the last five years, the Department has faced a challenge on top of challenge, the likes of which the Department has not experienced in its 33 years of existence. From the manmade disaster of the 2010 BP oil spill that added a workload of more than 65,000 employee work hours, or 30 work years, with no additional compensation to an already heavily burdened staff; to the natural disaster of the 2011 tornado outbreak that killed more than 240 people in Alabama and required ADEM, among other duties, to play the pivotal role in securing and, within three days, bringing back on-line all of the 511 drinking water and wastewater treatment systems put out of commission; to an unprecedented proliferation of unfunded federal regulations and mandates that were all too often driven by a political agenda; to a vigorous, but thus far unsuccessful, effort by several focused environmental groups to have EPA withdraw the State's authority to administer the NPDES water program; to repeated budget cuts, it's the repeated budget cuts, the implication of the cuts, and the necessary actions to be taken as a result of the cuts that will take up the bulk of today's report.

The balance of today's report will briefly update you on the Department's FY 2015 and 2016 Operating Plans and finally recognize significant accomplishments by a number of our personnel that have helped the Department deal with its challenges.

At the last Commission meeting, it was anticipated that RCRA Hazardous Waste dashboards would be presented at this meeting. That presentation will be postponed to the December meeting to allow a more in-depth report on the FY 2016 budget.

Now to the budget. First, a brief summary of the FY 2016 budget process.

In November of 2014, the Department requested a total of $2.5 million in General Fund appropriations for FY 2016, an increase of $1 million over and above the Department's 2015 appropriation. The additional funding was intended to cover our emergency response program, new State comptroller service charges, and the added costs of statewide accounting system upgrades.

As reported at the June Commission meeting, the Legislature, in its regular session, passed a General Fund budget that was subsequently vetoed by the Governor. Although that budget was vetoed, it was anticipated to be the starting point for budget considerations in the then anticipated special session of the Legislature.

That budget called for zero funding of ADEM operations and a transfer of $7.7 million of Departmental funding supplied by environmental cleanup fees to the General Operating Fund of the State. The Commission was informed that in order to retain the Department's water program...
authority, it would be necessary to raise
permit fees by the amount of any reduction
in funding of the Department’s General Fund
operating appropriation. The amount of the
necessary increase was estimated at 15 to
20 percent.
In the August Commission
meeting, it was reported that the first
special session concluded on August 11th
with no General Fund budget being sent to
the Governor, thus requiring a second
special session. The budgets proposed by
the House and Senate during the first
special session again called for zero
funding of ADEM operations and again called
for a transfer from environmental cleanup
fees to the General Fund.
The House version of the budget
set the amount of the transfer at $4
million, while the Senate version called
for a $7.4 million transfer. These budgets
also both contained a new ominous provision
stipulating that the Department could not
take any of the mandated transfers from the
Underground Storage Tank Trust Fund. The
UST Trust Fund is the largest fund
available for the transfer and the one from
which the transfer would cause the least
harm to critical cleanup programs in the
state; nevertheless, it was exempted from
contributing its fair share of the transfer
to the General Fund.
As you may be aware, currently
one cent per gallon is added to the cost of
fuel to fund the cleanup of leaking
underground storage tanks in Alabama. That
one cent per gallon is passed along to
consumers, who pay the fee at the pump when
they purchase fuel. Owners of the tanks,
typically the petroleum marketers, that
comply with requirements for leak and spill
prevention and detection procedures in the
future, are relieved of their individual
liability for the cost of cleaning up both
past and future contamination caused by
their past and future leaking tanks.

While participation in the UST
Trust Fund is voluntary for the tank
owners, virtually all participate since it
is the consumers who are the ones required
to pay the one cent per gallon at the pump,
and the tank owners are thus relieved of
their liability at essentially no cost to
themselves.
This exclusion of the UST Trust
Fund as a source of the mandated transfer
raised the specter that permit fees to
regulated industries could be required to
be increased by an additional 100 percent
to make up for the UST Trust Fund exemption
and to avoid collapsing the Scrap Tire and
Solid Waste Funds.
The second -- that was the first
special session. The second special
session was convened on September 8th,
2015, and closed on September 16th. A
final 2016 State General Fund budget passed
and was signed by the Governor. The FY
2016 budget calls for the Department to
receive a General Fund appropriation of
$280,000, earmarked to support the
Concentrated Animal Feeding Operation, or
CAFO, program, and also calls for ADEM to
transfer $1.2 million out of other
Departmental funds to the General Fund.
Let me repeat that last part.
ADEM is required to send $1.2 million from
other sources to the General Fund. The
$280,000 CAFO appropriation will not
adequately fund the CAFO program. The
other Department funds from which the $1.2
million is to be transferred are permit
fees, the Scrap Tire Fund, and the Solid Waste
Fund. The budget specifically stipulates
that not a penny of the $1.2 million to be
transferred to the General Fund can come
from the Underground Storage Tank Trust
Fund; and, therefore, the money can only
come from those three remaining sources.
Several members of the
Commission, as well as numerous other
parties, have expressed deep concern that
not only has the State virtually eliminated 
any funding to support environmental 
management activities in Alabama, it has 
taken the extraordinary step of diverting 
fees expressly instituted to clean up 
existing pollution to instead fund General 
Fund expenditures of the State. 
As a result, with the notable 
exception of fees going to the Underground 
Storage Tank Trust Fund, environmental fees 
are now a revenue stream to support general 
state expenditures, rather than the 
environmental cleanups for which they were 
created. This undermines the mission of 
ADEM. The Department strenuously objects 
to this action and sees it as a breach 
of the public trust. 
As you are aware, in January 
2010, a number of environmental groups 
filed a petition with EPA seeking to have 
EPA withdraw the State's authority to 
administer the NPDES water program for 26 
alleged failures to meet requirements of 

the Clean Water Act. In an interim 
decision, EPA essentially dismissed all the 
allegations, with the exception of those 
related to state-provided funding of the 
Department. 
Several environmental 
organizations appealed EPA's interim 
decision, and EPA is now in the 11th U.S. 
Circuit Court of Appeals defending its 
interim decision not to begin proceedings 
to withdraw ADEM's authority to administer 
the NPDES program. EPA withheld a final 
decision on the funding issue until it 
could determine the impact of the FY 2014 
funding cuts. According to a statement 
made by EPA's attorney at the 11th U.S. 
Circuit Court of Appeals, EPA anticipates 
making its final decision on withdrawal for 
in sufficient funding by year-end 2016. 
EPA appears to be well aware of 
the recent budget action by the Legislature 
in that two days after the FY 2016 budget 
was signed, the Director of the Water 

funding to the Department, on September 21, 
I directed the Department to initiate the 
formal rulemaking process to increase 
permit fees, excluding Clean Air Act Title 
V fees, which are regulated by federal 
statute, by 20 percent. This will replace 
the Department's lost General Fund 
appropriation and the pro rata portion of 
the $1.2 million transfer to the General 
Fund attributable to permit fees. 
The proposed 20 percent 
across-the-board permit fee increase is 
scheduled to come before you for action at 
your December 18th, 2015, Commission 
meeting, with an anticipated effective date 
36 days later on January 23rd, 2016. 
The next few slides will give 
you a visual presentation of the 
Department's budget situation and the 
reason for the proposed 20 percent fee 
increase. On this first slide, you see the 
Department's actual General Fund budget 
appropriations between 2008 and 2016 as
1. It should be noted that in April of 2014, EPA stated it was scrutinizing funding for FY 2014 as potentially being insufficient for Alabama to maintain the NPDES water program.
2. While we are hopeful that maintaining the trend line for total state-sourced funding nearly constant with FY 2014 will be acceptable to EPA, there is absolutely no assurance that the proposed 20 percent permit fee increase will be sufficient to keep EPA from seeking to take the NPDES water program due to insufficient funding.
3. The Legislature has acted. EPA has said it would act on or before December 31, 2016. Action on the proposed fee increase at the December Commission meeting may very well be the last opportunity to shore up Departmental funding before EPA acts. The day of reckoning is nearly upon us.
4. With just cause, regulated industries are very unhappy with the proposed increase. Twice before in the last four years regulated industries have responded when the Legislature has elected to place the Department on the brink of financial disaster. Regulated industries have accepted significant permit fee increases to avoid the very real possibility of an EPA takeover of the NPDES water program.
5. We are, once again, asking regulated industries to do what the Legislature has not, and that is to responsibly fund the Department. I believe they understand the dire consequences of not implementing the increase and will ultimately step up and support this initiative.
6. I have also taken the extraordinary step of directing that the Concentrated Animal Feeding Operation fees, as set forth in the ADEM Administrative Code, be collected in full beginning at the

1. shown in red. The 2016 operating budget cut will bring the Department's cut in annual funding for operations to more than 96 percent. The cuts have varied year to year, so a trend line is provided which represents a normalized graph of the cuts.
2. Regulated industries in Alabama have already borne the burden of the 83 percent in cuts to ADEM's annual General Fund appropriation between 2010 and 2015, as shown by the solid green columns on this next slide.
3. Estimated total permit fees, including the proposed 20 percent -- excuse me -- 20 percent permit fee increase to replace the operating funds lost in the FY 2016 budget are shown in the green cross-striped column at the far right. Once again, a trend line is provided to show a normalized graph of the increases, including the FY 2016 proposed increase. The trend line smooths out the effects of such things as permit renewal cycles and other typical year-to-year variations. The trend lines show that as General Fund appropriations have gone down, permit fees have gone up.
4. The total state-sourced funding for the Department is the sum of the General Fund budget appropriations and the permit fees, as shown by orange columns on this slide. The estimated total state-sourced funding for FY 2016 is shown in the orange cross-striped column at the far right. I mentioned on a previous slide that the Department's annual General Fund appropriation has now declined by more than 96 percent. Previous permit fee increases, along with the proposed 20 percent permit fee increase, are anticipated to offset that 96 percent loss, as evidenced by the fact that the orange trend line for total state-sourced funding, with only a slight downward trend, is close to the target of constant state-sourced funding in recent years.
1. earliest feasible date. In years past, 2. these fees have been suspended by the 3. Department because the Legislature provided 4. an adequate earmarked General Fund 5. appropriation subsidy to fund a substantial 6. portion of the operation of the CAFO 7. program. The reduced FY 2016 appropriation 8. no longer provides an adequate subsidy to 9. the CAFO program. And from this point 10. forward, it will be funded by fees paid by 11. that program's regulated universe. 12. As with other regulated 13. industries, it should be anticipated that 14. agricultural interests will be very unhappy 15. about initiating the collection of permit 16. registration fees, heretofore covered by a 17. General Fund appropriation. 18. Stepping back and looking at the 19. budget situation, I believe all would agree 20. the public is entitled to expect that State 21. agencies run lean operations and at the 22. same time provide effective results. 23. Without question, over the years ADEM has

1. shown it is such an organization. The 2. Department is now at a point where any 3. reduction in state-sourced funding takes it 4. past being a lean operation and puts it at 5. the brink of financial disaster. That, in 6. turn, puts Alabama at the brink of disaster 7. in providing job opportunities for its 8. citizens. As mentioned earlier, this is 9. not the first time the Department has been 10. put in this situation. In fact, this is 11. the third time in the last four years. 12. In my experience, this exercise 13. of constantly being on the edge of 14. financial disaster is no way to run an 15. organization. It creates inefficiency. It 16. creates unnecessary risk. It diverts 17. efforts from more productive endeavors. It 18. hurts morale. And it undermines public 19. confidence. 20. Such a financial situation is 21. akin to paying the rent just before being 22. evicted or paying the electricity bill when 23. the power company arrives to shut off the

1. power. A critical state agency should not 2. be required to continually operate under 3. these conditions. 4. If there is anything beneficial 5. to come out of this exercise, it is that, 6. painful as it is to convert funding from 7. General Fund appropriations to permit fees 8. paid by regulated industries, it does 9. provide the Department a more dependable 10. funding mechanism. If the Legislature does 11. not continue or expand this year's taking 12. of dedicated environmental cleanup revenues 13. to fund other activities of state 14. government, the Department will at least be 15. on a more stable financial footing provided 16. by permit fee revenue, albeit, as I have 17. said before, at a subsistence level. 18. The Department is committed to 19. continue to effectively utilize whatever 20. funding is available. The new funding 21. level will certainly not improve our 22. funding rank above the current level of 23. 49th in the nation. I also believe that

1. without additional funding cuts or takings, 2. there is a reasonable chance the Department 3. can continue to be one of the top rated 4. programs in the nation. 5. I strongly encourage the 6. Commission to favorably consider the 20 7. percent permit fee increase when it comes 8. up for a vote at your December 18th, 2015, 9. meeting. 10. As you are aware, in 2014 the 11. five-year update to the consolidated 12. strategic plan for the Commission and the 13. Department was completed. Each fiscal 14. year, the Department updates its Operating 15. Plan, which addresses the same goals 16. reflected in the strategic plan. The goals 17. are: Effective and responsive Commission; 18. High-Performing Work Environment; Credible 19. Relationships with External Stakeholders; 20. and, Efficient and Effective Departmental 21. Operations. 22. Prior to each Commission 23. meeting, it has been my practice to send
Our organization is made up of scientists, engineers and attorneys with professional training, skills and continuing education in their chosen fields; however, with nearly 600 personnel, our organization requires people with management training and skills also.

Today, I am pleased to recognize 14 Departmental personnel who have achieved important developmental milestones. Five of these individuals have successfully completed the first year of rigorous study, training and testing to be awarded the designation of the Associate Certified Public Manager, and nine have completed the additional work necessary to be awarded the advanced designation of Certified Public Manager. The complete two-year program involves more than 250 hours of classroom work, plus untold out-of-class hours. These individuals have taken the time to become even more valuable members of our organization by dedicating the time.
MR. LeFLEUR: I believe that I would have to answer that yes, sir.

DR. RICHARDSON: Okay. And I asked that just to drive home a point, because my way of thinking about what's going on here is: Nothing adds up, you know. That's just the way my brain works on this.

But this 20 percent fee increase, if we don't -- if we don't have it and EPA does nothing, everything stays pretty much the same, where are you?

MR. LeFLEUR: We will be reducing services.

DR. RICHARDSON: In what areas? Do you know yet? Have you thought along those lines?

MR. LeFLEUR: Well, this is a $1.2 million decrease in operating funds, and it's also a $1.2 million decrease in dedicated cleanup services. So we would have cuts in both of those areas, both the operating portions of what we do and the cleanups that these funds normally would go toward.

DR. RICHARDSON: For example, obviously Scrap Tire would take a hit.

MR. LeFLEUR: Scrap Tire. The funding that's provided with these dedicated funds includes such things as promoting recycling around the state. It funds, in part, our inspection of landfills, our permitting activities for landfills; scrap tires that are picked up throughout the state by counties. We work with the counties to do that.

DR. RICHARDSON: I guess one of the things that's bothering me here is that we're being asked to shift the burden of the people to the permit holders again, with no guarantee at all that it's going to stave off EPA. We may have the fee increase and EPA still takes over. So then our permit holders are left with dealing not only with 20 percent increases in fees, but also dealing with EPA.

MR. LeFLEUR: That's correct.

DR. RICHARDSON: So there really is no -- no guarantee that that -- I mean, I do appreciate that by having the increase it might make it less likely EPA will come in. But as you correctly pointed out, they're already talking about this at previous funding that you're just trying to get us back to, you know.

What do other states look like when comparing their sister agency's operating budget where their money comes from, their proportion that comes from fees versus from state appropriations?

MR. LeFLEUR: Well, that's -- that's a perfectly valid question. It's a bit difficult to give you a complete answer for it. Our permit fees are currently competitive -- even with the 20 percent increase are competitive with the permit fees that are paid from other states, to the degree that we can determine that.

Other states typically do supplement their environmental programs with General Fund appropriations. We are ranked by -- according to the most recent data available, we are ranked 49th in the nation on a per capita basis from the combined total of both General Fund and permit fees.

We have anecdotal evidence that our fees are considerably below others, but if -- if a state receives considerable General Fund appropriations, they can afford to have a lower level of fees. And that's what the case was in Alabama previously. The General Fund, if you will, subsidized the permit fees that were paid by regulated industries.

Is that giving you an answer to what you're --

DR. RICHARDSON: I guess,
close. I mean, because what I'm seeing, 1
2 I'm seeing an agency, whose primary
3 function is to manage the environment for
4 the people of this state, more and more and
5 more being funded by the people we're
6 managing or protecting this environment
7 from. I don't see that as a real good
8 situation to get into.
9 Where your very funding, it
10 almost seems that it makes us more and more
11 beholden to these industries and these
12 permit holders. And, you know, it's not
13 uncommon for people to get into situations
14 like that and not be willing to bite the
15 hand that feeds them, you know. And I
16 just -- I don't see this as a good
17 direction.
18 To me, if the people of this
19 state are looking towards this Department
20 to manage this environment and these
21 permits for them, they need to have a stake
22 in this. And what I see is that they are
23 less and less and less and less having a

1 presented this summer, when there was
2 basically about a $7.7 million take from
3 fees and stuff that ADEM generates, I think
4 you mentioned -- and I may have my numbers
5 wrong, but I think you mentioned that they
6 would require a 15 to 20 percent increase
7 in fees to offset that.
8
9 MR. LeFLEUR: That was the
10 estimate for the operating portion of the
11 General Fund appropriation. That was the
12 estimated increase.
13
14 DR. RICHARDSON: I'm -- I
15 guess I'm not following.
16
17 MR. LeFLEUR: Our General
18 Fund appropriation is funds that are coming
19 to the Department.
20
21 DR. RICHARDSON: Right,
22 right.
23
24 MR. LeFLEUR: The $7.7
25 million transfer was coming from the
26 Department to the General Fund.
27
28 DR. RICHARDSON: From the
29 Department, right. And you'd have to

1 increase fees 15 to 20 percent to make up
2 for that loss?
3
4 MR. LeFLEUR: For the loss
5 of the operating portion that's coming to
6 us and to fund the $7.7 million that was
7 going to go to the General Fund --
8
9 DR. RICHARDSON: Right.
10
11 MR. LeFLEUR: -- would
12 require an additional increase in permit
13 fees. That was the only source that was
14 available at the time.
15
16 DR. RICHARDSON: I guess I'm
17 having trouble reconciling the fact that
18 then -- and, again, I just may have all of
19 this down wrong. But then I hear you talk
20 later then about the next one that was
21 four -- depending on the House or Senate --
22 to four to $7.4 million transfer, and that
23 was 100 percent increase. And now we're to
24 the point that we're getting $280,000 per
25 capita, but we're losing $1.2 million in
26 fees, but that's going to require a 20
27 percent fee increase.
I don't see how on the one hand we can be losing $7.7 million and that requires a 20 percent fee increase, and on the other hand we're losing $1.2 million and that requires a 20 percent fee increase.

MR. LeFLEUR: I can appreciate the confusion there. The transfer was not allowed to come out of earmarked funds; that is, the Scrap Tire Fund, the Solid Waste Fund, UST Fund, until the Legislature adopted a statute after that initial $7.7 million transfer that allowed for unearmarking of those, which meant that they were then in play to be a source of the funds to be transferred to the General Fund.

DR. RICHARDSON: Uh-huh.

MR. LeFLEUR: So the unearmarking of those was another means that allowed that to happen.

DR. RICHARDSON:

Mr. Chairman, I have no further comments.

VICE-CHAIR PHILLIPS: Thank you, Commissioner Richardson. Any other Commissioners have questions?

(No response)

VICE-CHAIR PHILLIPS: Then I do. Mr. Director, I mean, you've painted a picture for us that is not pretty at all. It's very ugly, so I have a few questions that I've asked you before and I'm going to ask you again on the record.

You know, at one time you've made the statement that zeroing out the budget for ADEM did, as you said today, put us on a much more stable foundation, which took away the volatility, as I recall the word. But we've seemed to have -- so that strategy would get us to zero anyway to the General Fund, but the more disturbing thing now is we're starting to send money back to the General Fund, which is extremely concerning.

I'm also concerned that, by that I feel any differently than I did at the last meeting when I said I'm going to have to be convinced that a 20 percent increase in permit fees is the right thing to do.

So in order to do that, I'm going to need more information, more study and understanding, of exactly what it is that we find ourselves in and are there other alternatives.

And so I guess I would ask one question is: Have we looked at other alternatives in the Department? Are there any other alternatives beyond just the 20 percent increase to permit holders?

MR. LeFLEUR: We have looked at a number of alternatives. We are limited as to our alternatives. The 20 percent fee increase is designed to support a level of operations that will meet EPA requirements; that is, numbers of inspections, numbers of permits that need to be written and those sorts of things.
EPA has indicated that it believes the level of fundings from state sources that was present in 2014 was a level that concerned them -- and they stated so -- that it concerned them and that they were not going to act on the petition, the withdrawal petition, until they could determine whether the 2014 level of funding made it so that the Department would be unable to support the NPDES program. And that's -- that's in the record. All of that.

We do not know what EPA ultimately will do. But they have sent clear signals that the 2014 level of state-sourced funding was of concern to them. So to reduce that state-sourced funding, which is the sum of the General Fund and the permit fees, to reduce that logically says EPA will become more concerned about it.

Now, whether that concern will rise to the level of EPA commencing withdrawal proceedings, that's not something that we're privy to at this time.

But EPA has definitely sent that signal. EPA has also been under increasing pressure from a number of environmental groups to begin those proceedings. And in my comments, I hope I was able to outline the level of pressure that's being put on them.

The Department can cut our activities. We can reduce our activities, but that reduction in activities is what EPA ultimately is getting at.

VICE-CHAIR PHILLIPS: Well, I want to applaud you on painting the picture very well. When I hear brink of financial disaster and subsistence levels, there is no confusion on my part about where you believe we stand.

I just am concerned that I'm hearing one automatic response to that, and it's the same one we've heard, as you pointed out, several times in the last four years.

MR. LeFLEUR: Well, the basis for that is our funding level is at the bottom of the barrel in the nation. Our performance levels are at the top in the nation, among the top ten in the nation, as -- not by our judgment, but by the judgment of people like the Office of the Inspector General, using EPA data.

If you are a low-cost provider and a high-quality supplier, the opportunity for increased efficiency in the operation is limited. We are among -- we are arguably the most efficient in the nation, lowest funded, highest performance.

To suggest that there is -- there's always room for improvement and efficiency, obviously. But to say that the budget can be made up for, the budget cut can be made up for by increasing efficiency is -- I don't believe is realistic.

VICE-CHAIR PHILLIPS: I apologize for my lack of communication, because I don't think I ever used the word efficiency.

MR. LeFLEUR: I know you didn't.

VICE-CHAIR PHILLIPS: My question is: Are there alternative methods for raising revenue? For instance, there are states that charge for emissions testing of automobiles. Much better use of getting the citizens of the state of Alabama to buy into the environment, at least from generating revenue for the Department. Is that something that's been looked at? Are there other things such as that that's been looked at?

And before you answer, I want to echo what Commissioner Richardson said, but I want to echo it in a different way. He's pointing toward becoming beholden to people who pay permit fees. You didn't show us the graph of EPA funds. We get a substantial amount of money from the federal government.
So it concerns me equally, if not more so, Commissioner Richardson, that we have to depend on that source of funds. And then at the same time, be able to push back when we don't agree with what they're doing.

DR. RICHARDSON: I agree.

VICE-CHAIR PHILLIPS: So now you can answer. The frustration is growing.

MR. LeFLEUR: Well, as far as federal funds, there is a tightrope to walk.

VICE-CHAIR PHILLIPS: Yes.

MR. LeFLEUR: We do take issue with EPA and have taken issue with them on a number of issues that EPA's agenda is not the same as the state of Alabama's agenda. And where those differ, we owe allegiance to the protection of human health and the environment. But to the degree that it goes beyond that, we are with Alabama's concerns as opposed to the federal government's concerns, whether it's that area.

Now, EPA does provide for --

VICE-CHAIR PHILLIPS: Thank you for -- thank you for saying that.

MR. LeFLEUR: We -- EPA does provide a substantial portion of our funding. The amount of funding has been flat to declining. The mandates from EPA have been clearly increasing without the additional funding, which puts additional pressure on our finances within the Department.

Other states do charge fees for a number of different things, and we have looked at that. Fees are fees, whether they're in the form of permit fees or whether you reduce that permit fee increase and start instituting fees for inspections or fees for reports or fees for other different things, they are fees. By any other name, they're a fee.

This is similar to the State's situation where the State does not want to raise tax revenues; however, they take funding from the Department, and the Department then is left with finding that funding some other place and that becomes, in effect, a tax that is laid onto the regulated community, plain and simple.

VICE-CHAIR PHILLIPS: You're singing to the choir.

MR. LeFLEUR: Right. But the point being that the total funding for the Department needs to be at some level to allow us to perform. Without funding, we have to reduce the amount that we -- the amount of people that we put out in the field to do that.

And that reduction in activity of the Department is what EPA is getting at when they say the funding level may be insufficient. Now, our argument, our counter-argument to EPA -- and this is the one that we drive home to EPA -- is our funding is sufficient as long as we're a top performer. And that's a strong argument with EPA. You cannot come in and take a program that's performing.

EPA, on the other hand, can say, You're performing now, but you don't have the number of personnel to do the inspections that are in your work plan. So we see you as not being a performer.

VICE-CHAIR PHILLIPS: I hear you.

MR. LeFLEUR: I would like to find other options.

VICE-CHAIR PHILLIPS: And I appreciate that. I think probably more so the reason I'm saying that is if there were ever a time that this Commission needs to honestly think about what we're responsible for, which is establishing environmental policy, promulgating the rules, one of the very ones that you're proposing, it's now, if there ever was a day.

And I'm just going to encourage all my members, and I will -- we need to
1 ask hard questions. We need to look for 
2 new options. We do not need to default to 
3 the same old, Here's how we'll raise our 
4 money, and we'll do it this one way. I've 
5 watched it a long time, and I've seen it 
6 happen more in the last four years than 
7 I've ever seen it. 
8 And I think it's irresponsible 
9 for us as a Commission to accept that 
10 that's the only way we can raise revenue to 
11 fund the Department. And it disturbs me to 
12 think that we're being asked to do that 
13 with a 20 percent permit fee increase and 
14 still hit subsistence levels, to still not 
15 feel like we're at the level where we 
16 really can fulfill a mission for the 
17 citizens of the State of Alabama. 
18 MR. LeFLEUR: Well, we 
19 are -- we are looking for options. We 
20 clearly are looking for options. 
21 VICE-CHAIR PHILLIPS: I will 
22 end by just saying, once again, I don't -- 
23 I don't envy the position you find

1 yourselves in. But at the same time, I 
2 don't envy the position that we should feel 
3 like we're in. Because, quite honestly, 
4 balancing things like attracting new 
5 industries and creating jobs in this state, 
6 while at the same time protecting the 
7 environment, doesn't come without a cost. 
8 And that cost needs to be borne by 
9 everybody, not just the people that hold 
10 permits. 
11 MR. LeFLEUR: The 
12 Legislature -- 
13 VICE-CHAIR PHILLIPS: And I 
14 will leave it alone. 
15 MR. LeFLEUR: The 
16 Legislature has decided that they would 
17 prefer -- 
18 VICE-CHAIR PHILLIPS: I hear 
19 you. 
20 Commissioner Richardson? 
21 DR. RICHARDSON: Just a 
22 couple more comments. One comment I want 
23 to make is related to my question as: Are 

1 we a critical state agency? 
2 My comment simply is that it 
3 doesn't seem like it in the eyes of our 
4 legislative colleagues over on the Hill. 
5 But I am curious, just as all of this is 
6 playing out. I am curious as to of the 
7 regulated community, the ones who are going 
8 to be shouldering this 20 percent increase, 
9 how many, if any, of them did you see in 
10 the aisles lobbying for ADEM budget 
11 increase or stability? 
12 MR. LeFLEUR: Well, some of 
13 them are in this room right now, and -- 
14 DR. RICHARDSON: Precisely 
15 my reason for asking. 
16 MR. LeFLEUR: Okay. This 
17 situation is no surprise to anybody. This 
18 situation has been on the table since the 
19 Legislature came into session in February 
20 of this year. Regulated industries, I can 
21 attest to, have been doing -- I will -- I 
22 hesitate to say their best, but they have 
23 been doing yeomen's work on the 

1 Legislature. They have lobbied for this, 
2 to have the Legislature fund the Department 
3 appropriately. 
4 You saw the trend line in what's 
5 been happening in the Legislature with our 
6 General Fund budget. The Legislature has 
7 come to the thought of either, They've -- 
8 they've done so much with so little for so 
9 long, they're capable of doing anything 
10 with nothing. But they may also have said, 
11 Look, there is an opportunity for ADEM to 
12 solve the problem by increasing permit fees 
13 because the Commission has statutory 
14 authority to change those fee -- that fee 
15 structure. And they have decided to allow 
16 you all the pleasure of taking the heat for 
17 increased permit fees. 
18 VICE-CHAIR PHILLIPS: With 
19 the assumption -- 
20 DR. RICHARDSON: Or not. 
21 MR. LeFLEUR: Pardon? 
22 VICE-CHAIR PHILLIPS: 
23 Assuming we would.
DR. RICHARDSON: It's yet to be determined.

MR. LeFLEUR: Assuming you would -- it's an option to not do that.

DR. RICHARDSON: Or assume that if we do not elect to raise the fees, which will be equally -- equally will be horrific for the regulated industry. I mean, I know this from personal experience. I'm -- I'm currently working on cases in other states where EPA has the NPDES permitting authority, and everyone feels like they're being held captive. And a lot of industry are closing their doors because of that.

MR. LeFLEUR: My way of expressing that is sometimes you just have to let the kids touch the hot stove, and this may be a situation where the State has decided, it's time to see if that stove's really hot.

DR. RICHARDSON:

Unfortunately, you may be right.

VICE-CHAIR PHILLIPS: Any other comments from the Commission?

(No response)

VICE-CHAIR PHILLIPS: The last -- I will end then by saying, number one, the Department shouldn't take my frustration as focused at you. It's focused at those that don't understand. And I will just reiterate to this Commission that this dire situation we find ourselves in necessitates us being careful, considerate and reflective on what it is we're being asked, but make sure we're informed.

And I'm going to ask the Director that as we try to wrestle with this before the December meeting that you please help us get the information that all the Commissioners may need to make this decision.

MR. LeFLEUR: I will be happy to do that and look forward to any ideas that help us deal with this --

this --

VICE-CHAIR PHILLIPS: Well, I have a few, so I will be happy to share them with you.

MR. LeFLEUR: Excellent, thank you.

DR. MILLER: Are you going to share with us industry's reaction or the permittees' reaction to the proposed fee increase?

MR. LeFLEUR: Well, my anticipation is that you will be getting telephone calls and visits and e-mails regarding this permit fee increase. The response that I've gotten so far -- and I can't say this is by any means a statistically significant sample. But the response that I have received so far has been that nobody is happy, but that I have never heard any of them say that they would do anything other than support the 20 percent fee increase.

VICE-CHAIR PHILLIPS:

Relative to that, you're also in public comment at the moment.

So I'm assuming we will be getting public comments, correct?

MR. LeFLEUR: I am very interested --

VICE-CHAIR PHILLIPS: I would encourage anyone in the room who would like to make a public comment to please so do so. So that this Commission understands the views, not only of the regulated community, but of the environmental groups.

Any other questions for the Director?

(No response)

VICE-CHAIR PHILLIPS: Well, in a gloomy note, thank you for presenting it as best as you could. We appreciate you, and thank you, the Department, for what you do.

MR. LeFLEUR: Thank you for your work.
VICE-CHAIR PHILLIPS: Thank you, Mr. Director.

Report from the Commission Chair is Agenda Item No. 4, on a cheery note.
All I have is the Chair, who is at a camp with his daughter for three days and would love to be here -- but has to be there and wants to be there -- did ask that I make sure that the Commissioners know that he had sent a letter to all Commissioners that he received this week, and I think to you, Mr. Director. And I think he intends when he comes back to get to you to try to see if there's anything to do. I think the name of it was Get Smart, whatever that is. So that's all he wanted me to mention. So if you would, check your e-mails.

I don't know if he had you send it out Debi, or he sent it?

MS. THOMAS: He sent it.

VICE-CHAIR PHILLIPS: He sent it. And if he didn't send it to the Director, please make sure the Director gets it. So that when he gets back, you'll know what he's talking about. So that's all. And he asked if any of the Commissioners had any thoughts, please share it with them. Okay.

Agenda Item No. 5: A report on the recommendations from the Personnel Committee on the ADEM Director job performance evaluation for Commission consideration.

I will call on the Personnel Committee Chair Dr. Laier for the report and recommendations from the Personnel Committee.

DR. LAIER: Thank you.

VICE-CHAIR PHILLIPS: You're welcome.

DR. LAIER: As directed by Board Chair Brown, on July 19th, 2015, the Personnel Committee has completed their assessment of our Director's performance evaluation, according to the guidelines, and has determined that his performance is of high quality.

As a consequence of our hard work, we are recommending several items to be considered today by the Board.

Item No. 1: The recommending that the Committee adopt a salary advance for Director LeFleur of two steps, step 17, pay grade 90, per-year salary of $164,440.

MS. THOMAS: Excuse me, 160 -- $160,000.

DR. LAIER: I am sorry -- 160 -- 1-6-0, that is -- I'm sorry if I was misstating that.

Item No. 2: Recommend -- our Committee recommends that Commission authorize the present Committee Chair to meet with Director LeFleur regarding the summary of the written comments presented to the entity of ADEM regarding his performance and evaluation, and recommendations of the Personnel Committee adopted today at our general meeting and session, and to execute the Verification of

Understanding between the Commission and the Director regarding the results of our performance evaluation.

We would like the Board to consider these two items today.

VICE-CHAIR PHILLIPS: Okay.

Thank you, Chair.

Do I have a second?

DR. MILLER: Second.

VICE-CHAIR PHILLIPS: I have a motion and a second.

Discussion?

Do I have any discussion?

DR. MARTIN: Is this discussion on both the salary and raise and --

VICE-CHAIR PHILLIPS: On both --

DR. MARTIN: Okay.

VICE-CHAIR PHILLIPS: You've offered those as two motions, or one motion?

DR. LAIER: One motion,
VICE-CHAIR PHILLIPS: One motion.

DR. MARTIN: I also serve on the Personnel Committee, and we all were in agreement that the job performance of the Director is excellent, and as further reviews that were sent in. And I had a differing opinion on the raise just due to the times of austerity to which we live, and it was solely based on that. You know, due to the financial state of ADEM and the State of Alabama, I didn't know that it was -- I don't think it's responsible to give a pay raise at this time.

VICE-CHAIR PHILLIPS: Do I have any other discussion?

DR. RICHARDSON: Yes, Mr. Chairman. I am of the mind set that these two recommendations compiled into one motion should be separated. For example, I don't think the consideration of a salary increase and the approval or denial of that increase should affect whether or not the Chair of the Personnel Committee sits down and goes over the evaluation with the Director. I think the Director's entitled to receive the evaluation and discuss that input with the Personnel Director Chair one way or the other.

VICE-CHAIR PHILLIPS: Are you offering a substitute motion?

DR. RICHARDSON: I am offering to amend the motion as presented, striking recommendation two from that motion.

VICE-CHAIR PHILLIPS: Clarify that, the motion as it would be -- as it would stand with your amendment. Just restate the motion as you would present it.

DR. RICHARDSON: I move that the Commission approve a salary advance for Director LeFleur of two steps to step 17 in pay grade 90, a per-year salary of $160,440. End of motion.

VICE-CHAIR PHILLIPS: So you're just amending it to remove the second portion of his motion?

DR. RICHARDSON: As stated, that's correct.

VICE-CHAIR PHILLIPS: Okay.

Do I have a second on that or approval for the --

DR. LAIER: You have approval from me, yes.

VICE-CHAIR PHILLIPS: Okay.

So if I'm not correct -- and I just want to clarify -- we're in essence saying we're separating item one and item two and making them two motions instead of one; is that correct?

DR. MILLER: He just made one motion. We will have to do a second motion.

VICE-CHAIR PHILLIPS: So the first motion is to approve the salary advance?
1 justify an increase at this point, given
2 all of the things that we have just gone
3 over and discussed in detail.
4 VICE-CHAIR PHILLIPS: Okay.
5 Any other discussion?
6 (No response)
7 VICE-CHAIR PHILLIPS: There
8 being no other discussion, all in favor
9 with the motion signify with the sign "aye"
10 and raise your hand.
11 (Dr. Miller and
12 Dr. Laier signify
13 with "aye.")
14 VICE-CHAIR PHILLIPS: All
15 opposed, signify with the sign "nay" and
16 raise your hand.
17 (Dr. Martin and
18 Dr. Richardson signify with
19 "nay.")
20 VICE-CHAIR PHILLIPS: And I
21 break the tie, so nay. Motion is defeated.
22 Do I have another motion for the
23 second portion of the item?

1 DR. LAIER: So moved.
2 VICE-CHAIR PHILLIPS: I have
3 a second to authorize the Committee Chair
4 to meet with the Director and to execute a
5 Verification of Understanding of
6 Performance.
7 Do I have a second?
8 DR. RICHARDSON: Second.
9 VICE-CHAIR PHILLIPS: Okay.
10 Any discussion on that motion?
11 (No response)
12 VICE-CHAIR PHILLIPS: All in
13 favor, signify with the sign "aye."
14 (All Commission members
15 signify "aye.")
16 VICE-CHAIR PHILLIPS: Motion
17 carries.
18 We will wait to -- do you have
19 those?
20 MS. THOMAS: Let me let you
21 sign two signature pages, and then I can
22 get the front page --
23 VICE-CHAIR PHILLIPS: Thank

1 that's coming to conclusion. I think we're
2 really, really close, and we hope that at
3 the next meeting, that is the December 18th
4 meeting, that we're going to be able to --
5 of the Committee, that we're going to be
6 able to complete this and wrap it up and
7 then offer it as a recommendation to the
8 full Commission at the December 18th
9 meeting. And that's the end of the report.
10 VICE-CHAIR PHILLIPS: Thank
11 you, Commissioner Richardson.
12 Any questions for Commissioner
13 Richardson on the Committee report?
14 (No response)
15 VICE-CHAIR PHILLIPS: Thank
16 you again.
17 Agenda Item No. 7:
18 Consideration of the adoption of proposed
19 amendments to ADEM Administrative Code
20 335-3, Air Pollution Control Program
21 Regulations.
22 I will call on the Department
23 for comments.
1 MR. GORE: Good morning,
2 Mr. Chairman, Gentlemen. My name is Ron
3 Gore. I'm with the Department's Air
4 Division. I'm here to ask you to make
5 three changes to the Department's air
6 pollution regulations.
7 The first change is to --
8 VICE-CHAIR PHILLIPS:
9 Mr. Gore, could I ask your indulgence for a
10 moment --
11 MR. GORE: Okay.
12 VICE-CHAIR PHILLIPS: -- and
13 let us get this passed through so that we
14 don't distract you or not listen to you
15 well?
16 MR. GORE: Okay.
17 VICE-CHAIR PHILLIPS:
18 Mr. Gore?
19 MR. GORE: Thank you. The
20 Department's asking you to make three
21 changes to the -- to the Department's air
22 pollution regulations. The first is our
23 periodic catch-up of EPA rules that we

1 adopt by reference in order to maintain
2 privacy for administering those rules.
3 The second is a major rule which
4 changes our Nitrogen Oxide/Sulphur Dioxide
5 Trading Program from what used to be
6 called the Clean Air Interstate Rule to the
7 Cross-State Air Pollution Rule, and that
8 was mandated by some federal court action.
9 And last and least is the
10 definition of VOC to allow one organic
11 compound not to be considered to be an
12 ozone precursor.
13 We held a public comment period
14 from July 27th through September 11th, a
15 hearing on September 9th. We did get
16 written comments from the EPA, but they
17 were only clarifying comments, and we
18 received one pro-comment on adopting the
19 VOC rule. The reconciliation of those
20 comments is in your package.
21 And pending any questions, I ask
22 that you approve these three changes.
23 VICE-CHAIR PHILLIPS: Thank

1 you, Mr. Gore.
2 Any questions for Mr. Gore
3 before making the motion?
4 (No response)
5 VICE-CHAIR PHILLIPS: Do I
6 have a motion?
7 DR. MILLER: I move we
8 accept his report and recommendation.
9 VICE-CHAIR PHILLIPS: Do I
10 have a motion to accept?
11 DR. LAIER: Second.
12 DR. MARTIN: Second.
13 VICE-CHAIR PHILLIPS: Any
14 further discussion?
15 (No response)
16 VICE-CHAIR PHILLIPS: All in
17 favor, signify with the sign "aye."
18 (All Commission members
19 signify "aye.")
20 VICE-CHAIR PHILLIPS: All
21 opposed?
22 (No response)
23 VICE-CHAIR PHILLIPS: Motion

1 carries. Thank you, Mr. Gore.
2 MR. GORE: Thank you.
3 VICE-CHAIR PHILLIPS:
4 Agenda Item No. 8: Other business. Is
5 there any other business to come before the
6 Commission?
7 (No response)
8 VICE-CHAIR PHILLIPS: There
9 being no other business, we will move to
10 Agenda Item 9, which is our future business
11 session. Our next Commission meeting is on
12 December 18, 2015, just to confirm that
13 everyone will be there. As far as you know
14 at the moment. Okay. If not please, let
15 Debi know.
16 Moving to the next agenda item,
17 which is public comment period, I will
18 entertain a motion regarding the granting
19 or denying of the request from David Ludder
20 on the ineffective enforcement by the
21 Alabama Department of Environmental
22 Management and the need for the Commission
23 to develop environmental policy for the
1 state and/or to advise the Director, as
2 authorized by Alabama Code §22-22A-6a, to
3 ensure effective enforcement.
4 Do I have a motion to grant the
5 request or deny the request? Anyone?
6 (No response)
7 VICE-CHAIR PHILLIPS: There
8 not being a motion to bring forward, it
9 dies for lack of a motion.
10 Moving to adjournment, I will
11 entertain a motion to adjourn.
12 DR. LAIER: So moved.
13 VICE-CHAIR PHILLIPS:
14 Second?
15 DR. RICHARDSON: Second.
16 VICE-CHAIR PHILLIPS: All in
17 favor?
18 (All Commission members
19 signify "aye.")
20 VICE-CHAIR PHILLIPS: Thank
21 you.
22 (The meeting concluded at
23 12:14 p.m.)

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2 COUNTY OF MONTGOMERY)
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Part B
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Attachment 1 Agenda

Attachment 2 Order to adopt motion to accept Lanier Brown as Chair and Scott Phillips as Vice Chair
   (Agenda Item 2)

Attachment 3 Director’s Slides
   (Agenda Item 3)

Attachment 4 Order on motion to approve a two step salary advance for Director LeFleur
   (Motion not adopted)
   (Agenda Item 5)

Attachment 5 Order to authorize the Personnel Committee Chair to meet with Director LeFleur and to execute a verification of understanding of the performance evaluation
   (Agenda Item 5)

Attachment 6 Resolution to adopt amendments to ADEM Admin. Code 335-3, Air Pollution Control Program Regulations
   (The amended regulations are on file with the Commission meeting records.)
   (Agenda Item 7)
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: October 16, 2015
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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PUBLIC COMMENT PERIOD 3 & Attachment

* 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.
AEMC Meeting Agenda – Page 2

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 21, 2015

2. ELECTIONS

The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. REPORT AND RECOMMENDATIONS FROM THE PERSONNEL COMMITTEE ON THE ADEM DIRECTOR JOB PERFORMANCE EVALUATION FOR COMMISSION CONSIDERATION

The Personnel Committee will report on the ADEM Director Job Performance Evaluation and present the Committee’s recommendations to the Commission for consideration.

6. REPORT FROM THE RULEMAKING COMMITTEE ON ADEM ADMIN. CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS

The Rulemaking Committee will report on the Committee’s re-examination and study of ADEM Admin. Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3).

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

The Commission will consider proposed amendments to ADEM Admin. Code 335-3, Air Pollution Control Program Regulations. The Alabama Department of Environmental Management proposes to amend ADEM Admin. Code Rules 335-3-1-.02, 335-3-10-.01, 335-3-10-.02, 335-3-10-.03, 335-3-11-.01, 335-3-11-.02, 335-3-11-.03, 335-3-11-.06, 335-3-11-.07, 335-3-11A-.01, 335-3-11A-.02, and Appendix C, and the addition of rules 335-3-5-.06 through 335-3-5-.36, and rules 335-3-8-.07 through 335-3-8-.70. Revisions to the Division 3 Code are being proposed to incorporate by reference changes to the EPA’s New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The definition of volatile organic compounds (VOCs) in Chapter 335-3-1 is also being proposed for revision to be consistent with EPA’s revisions. Revisions to chapters 335-3-5 and 335-3-8 include new regulations to implement EPA’s Cross State Air Pollution Rules (CSAPR), which requires states to reduce power plant emissions that contribute to ozone and/or fine particle pollution in other states. Chapters 335-3-1, 5, and 8 are considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to these Chapters are proposed to be incorporated into Alabama’s SIP. Also, Alabama’s Regional Haze SIP is being proposed for revision to replace reliance on the Clean Air Interstate Rule (CAIR) with reliance on CSAPR. The Department held a public hearing on the proposed amendments on September 9, 2015.

8. OTHER BUSINESS

9. FUTURE BUSINESS SESSION
PUBLIC COMMENT PERIOD
(The Request from the public to address the Commission is attached to the agenda.)

David A. Ludder, Esq., on behalf of the Environmental Defense Alliance
SUBJECT: “Ineffective Enforcement by the Alabama Department of Environmental Management”
and the need for the Commission to “develop environmental policy for the State” and/or to
“advise the Director” as authorized by the Ala. Code § 22-22A-6(a) to ensure effective enforcement
(The full Commission will vote on whether or not to grant the Request
prior to moving to the Public Comment Period.)
Delivered Via Facsimile
H. Lanier Brown, II, Chair
Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

October 16
Re: Request to Speak at April-17 AEMC Meeting

Dear Chair Brown:

On behalf of the Environmental Defense Alliance, I request the opportunity to address the Environmental Management Commission on the topic of “Ineffective Enforcement by the Alabama Department of Environmental Management” and the need for the Commission to “develop environmental policy for the State” and/or to “advise the Director” as authorized by Ala. Code § 22-22A-6(a) to ensure effective enforcement. The history of enforcement against a single unnamed facility will be used to illustrate the ineffective enforcement. A copy of written materials to be presented is attached.

Sincerely,

David A. Ludder
The following policies should prevent a repetition of the failures experienced in the case:

(1) ADEM should promptly issue a Notice of Violation or Administrative Order to any permittee that has violated permit conditions during three consecutive months; *provided however*, that if the permittee has been issued a Notice of Violation for the same type of violation during the previous twelve months, the enforcement action shall be an Administrative Order or Judicial Action;

(2) ADEM should promptly issue an Administrative Order (consent or unilateral) to, or commence a Judicial Action against, any permittee that has violated permit conditions during any six of the preceding twelve months; *provided however*, that if the permittee has been issued an Administrative Order for the same type of violation during the previous twelve months, the enforcement action shall be a Judicial Action;

(3) All Administrative Orders issued by ADEM (consent and unilateral) should require compliance with permit conditions as expeditiously as possible and by a date certain;

(4) All Administrative Orders issued by ADEM (consent and unilateral) that include schedules for the completion of interim tasks should include the assessment of prospective administrative penalties in a sufficient amount to ensure that permittees will meet the schedules;

(5) If a permittee is in violation of an Administrative Order (consent or unilateral), ADEM should seek compliance by filing suit to enforce the Order or by assessment of an administrative penalty in a sufficient amount to ensure a prompt return to compliance;

(6) ADEM should oppose the entry of any Consent Decree that does not include a date after which the violator must achieve and maintain compliance with permit conditions;

(7) Negotiations of Judicial Consent Decrees should be concluded promptly (less than 12 months).

Implementation of these policies may require revisions in *Memorandum #105, Compliance and Enforcement Strategy* (eff. Jan. 1, 2008) and *NPDES and Pretreatment Permit Program, Compliance/Enforcement Management Strategy (CMS/EMS)* (Jan. 28, 2011).
Attachment 2
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Accept Lanier Brown as Chair and
Scott Phillips as Vice Chair

ORDER

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

1. That the above motion is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.
Environmental Management Commission Order
Page 2

ISSUED this 16th day of October 2015.

APPROVED:

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 16th day of October 2015.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 16th day of October 2015
Attachment 3
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Approve a salary advance for Director LeFleur of two steps
to Step 17 in Pay Grade 90, a per-year salary of $160,440

ORDER

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

1. That the above motion is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of
the date shown below.
IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2015.

APPROVED:

__________________________
Commissioner

__________________________
Commissioner

__________________________
Commissioner

__________________________
Commissioner

__________________________
Commissioner

DISAPPROVED:

__________________________
Commissioner

__________________________
Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2015.

__________________________
W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 16th day of October 2015
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Authorize the Personnel Committee Chair to meet with Director LeFleur
and to execute a verification of understanding of the performance evaluation

ORDER

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

1. That the above motion is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of
the date shown below.
IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2015.

APPROVED:

[Signatures]

Commissioner

Commissioner

W. Scott Phillips

Commissioner

DISAPPROVED:

[Signature]

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2015.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 16th day of October 2015
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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

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

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

NOW THEREFORE, pursuant to Ala. Code, §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code, § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [rules 335-3-1-.02/Definitions (Amend); 335-3-5-.06/TR SO₂ Trading Program-Purpose and Definitions (New); 335-3-5-.07/TR SO₂ Trading Program-Applicability (New); 335-3-5-.08/TR SO₂ Trading Program-Retired Unit Exemption (New); 335-3-5-.09/TR SO₂ Trading Program-Standard Requirements (New); 335-3-5-.10/ TR SO₂ Trading Program-Computation of Time (New); 335-3-5-
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

.11/Administrative Appeal Procedures (New); 335-3-5-.12/ TR SO₂ Trading Budgets and Variability Limits (New); 335-3-5-.13/ TR SO₂ Allowance Allocations (New); 335-3-5-.14/Authorization of Designated Representative and Alternate Designated Representative (New); 335-3-5-.15/Responsibilities of Designated Representative and Alternate Designated Representative (New); 335-3-5-.16/Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (New); 335-3-5-.17/Certificate of Representation (New); 335-3-5-.18/Objections Concerning Designated Representative and Alternate Designated Representative (New); 335-3-5-.19/Delegation by Designated Representative and Alternate Designated Representative (New); 335-3-5-.20/Reserved (New); 335-3-5-.21/Establishment of Compliance Accounts, Assurance Accounts, and General Accounts (New); 335-3-5-.22/Recordation of TR SO₂ Allowance Allocations and Auction Results (New); 335-3-5-.23/Submission of TR SO₂ Allowance Transfers (New); 335-3-5-.24/Recordation of TR SO₂ Allowance Transfers (New); 335-3-5-.25/Compliance with TR SO₂ Emissions Limitation (New); 335-3-5-.26/Compliance with TR SO₂ Assurance Provisions (New); 335-3-5-.27/Banking (New); 335-3-5-.28/Account Error (New); 335-3-5-.29/Administrator’s Action on Submissions (New); 335-3-5-.30/Reserved (New); 335-3-5-.31/General Monitoring, Recordkeeping, and Reporting Requirements (New); 335-3-5-.32/Initial Monitoring System Certification and Recertification Procedures (New); 335-3-5-.33/Monitoring System Out-of-Control Periods (New); 335-3-5-.34/Notifications Concerning Monitoring (New); 335-3-5-.35/Recordkeeping and Reporting (New); 335-3-5-.36/Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (New); 335-3-8-.07/TR NOₓ Annual Trading Program-Purpose and Definitions (New); 335-3-8-.08/ TR NOₓ Annual Trading Program-Applicability (New); 335-3-8-.09/ TR NOₓ Annual Trading Program-Retired Unit Exemption (New); 335-3-8-.10/ TR NOₓ Annual Trading Program-Standard Requirements (New); 335-3-8-.11/ TR NOₓ Annual Trading Program-Computation of Time (New); 335-3-8-.12/Administrative Appeal Procedures (New); 335-3-8-.13/NOₓ Annual Trading Budgets and Variability Limits (New); 335-3-8-.14/ TR NOₓ Annual Allowance Allocations (New); 335-3-8-.16/Authorization of Designated Representative and Alternate Designated Representative (New); 335-3-8-.17/Responsibilities of Designated Representative and Alternate Designated Representative (New); 335-3-8-.18/Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (New); 335-3-8-.19/Certificate of Representation (New); 335-3-8-.20/Objections Concerning Designated Representative and Alternate Designated Representative (New);
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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 16th day of October 2015.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2015.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 16th day of October 2015