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DRAFT

Minutes

**Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 25, 2010**

DRAFT

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Convened: 11:00 a.m.

Adjourned: 11:35 a.m.

Part A

Transcript

Part B

Attachment Index

Attachments 1 – 6

Part A

AEMC COMMISSION MEETING - 6/25/2010

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING</p> <p style="text-align: center;">Alabama Department of Environmental Management Building Main Conference Room 1400 Coliseum Boulevard Montgomery, Alabama 36110</p> <p style="text-align: center;">JUNE 25, 2010 11:00 A.M.</p> <p>COMMISSION MEMBERS PRESENT: DR. JOHN H. LESTER, VICE CHAIR DR. J. CONRAD PIERCE H. LANIER BROWN, II, ESQUIRE SAM H. WAINWRIGHT, P.E.</p> <p>ALSO PRESENT: ROBERT TAMBLING, EMC LEGAL COUNSEL DEBI THOMAS, EMC EXECUTIVE ASSISTANT</p> <p style="text-align: center;">* * * *</p>	<p style="text-align: right;">Page 3</p> <p>1 COMMISSIONER LESTER: The first item, we'll note 2 that we had our regular meeting -- minutes of our regular 3 meeting on April the 16th and May 6th; each Commissioner 4 has a copy of these. Have a motion? 5 COMMISSIONER BROWN: Motion to adopt the minutes. 6 COMMISSIONER WAINWRIGHT: Second. 7 COMMISSIONER LESTER: Motion second. All in 8 favor say aye. 9 ALL: Aye. 10 COMMISSIONER LESTER: All opposed? 11 (No response.) 12 COMMISSIONER LESTER: The next item is the report 13 from our Director, and before he gets up here, I would 14 like to say that he got in it real quick. We appointed 15 him, and the next day he was down in Mobile, and I do want 16 to say, too, that we appreciate what the Governor and 17 Lance and all of our people -- I see a bunch of them right 18 here on the front row -- plus our whole unit of ADEM has 19 been doing down there. We have everybody on the ground 20 down there around the water, and the Doctor, he lives down 21 there, so he knows what we're talking about. So, Lance, 22 we do appreciate all the hard work all of y'all are doing, 23 and we'll hear your report.</p>																										
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">AGENDA ITEM</th> <th style="text-align: right;">PAGE NO.</th> </tr> </thead> <tbody> <tr><td>No. 1</td><td style="text-align: right;">3</td></tr> <tr><td>No. 2</td><td style="text-align: right;">3</td></tr> <tr><td>No. 3</td><td style="text-align: right;">--</td></tr> <tr><td>No. 4</td><td style="text-align: right;">16</td></tr> <tr><td>No. 5</td><td style="text-align: right;">18</td></tr> <tr><td>No. 6</td><td style="text-align: right;">20</td></tr> <tr><td>No. 7</td><td style="text-align: right;">21</td></tr> <tr><td>No. 8</td><td style="text-align: right;">22</td></tr> <tr><td>No. 9</td><td style="text-align: right;">23</td></tr> <tr><td>No. 10</td><td style="text-align: right;">23</td></tr> <tr><td>Adjournment</td><td style="text-align: right;">24</td></tr> <tr><td>Reporter's Certificate</td><td style="text-align: right;">25</td></tr> </tbody> </table> <p style="text-align: center;">* * * *</p>	AGENDA ITEM	PAGE NO.	No. 1	3	No. 2	3	No. 3	--	No. 4	16	No. 5	18	No. 6	20	No. 7	21	No. 8	22	No. 9	23	No. 10	23	Adjournment	24	Reporter's Certificate	25	<p style="text-align: right;">Page 4</p> <p>1 MR. LEFLEUR: Thank you. I don't want to correct 2 you, but I was actually down there the day you appointed 3 me, not the day after. 4 As you've mentioned, the bulk of my time 5 during this first few months has been dealing with the 6 Deepwater Horizon oil spill, and I was looking back. May 7 the 6th was the last time that I was able to address the 8 Commission, and that was day seventeen of the Deepwater 9 Horizon oil spill, and at that time it was already the 10 largest environmental disaster in the U.S. history. Now 11 is the sixty-seventh day of that incident, and it is 12 continuing to grow. It's obviously the largest 13 environmental disaster in the history of our country and 14 the history of our state. 15 To put it in a little bit of perspective, 16 every four to five days it's the equivalent amount of oil 17 of an Exxon Valdez, so we have had fifteen Exxon Valdezes 18 on our shores from this one incident. This is a federal 19 disaster, it occurred in federal waters, it involves four 20 states, and it's overseen by the federal agency that -- 21 actually the U.S. Coast Guard. 22 ADEM is the coordinating agency for the 23 Alabama response, and I recall sitting next to</p>
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<p style="text-align: right;">Page 5</p> <p>1 Commissioner Pierce about three days, I guess, after this 2 occurred -- we were in the Coast Guard station down 3 there -- and there were maybe forty people, and that was 4 the entire group. 5 COMMISSIONER PIERCE: Yes. 6 MR. LEFLEUR: None of us realized what was going 7 on at the time -- nobody realized it -- but it has grown 8 into a tremendous disaster. 9 Since that day that we were together, we've 10 had more than fifty-six ADEM people on site rotating down 11 in Mobile with numerous others off site, mostly here in 12 Montgomery, and there have been more than four hundred 13 other people represented from Alabama agencies over 14 with -- ADEM is the coordinating agency, but the other 15 agencies represented there, environmental management -- 16 excuse me -- Emergency Management, Department of Health, 17 Conservation, National Guard, the Governor's faith-based 18 organization, the Department of Public Service, Forestry, 19 Marine Police, Department of Industrial Relations, 20 Homeland Security, and other agencies that have 21 contributed from time to time. It's a gigantic 22 undertaking. 23 All of the ADEM areas have taken part in this</p>	<p style="text-align: right;">Page 7</p> <p>1 to recognize those that have come down there. They have 2 left their families for extended periods, and it speaks 3 very well of them. 4 ADEM's job is to protect some of the most 5 sensitive and productive estuary areas in the country and, 6 at the same time, to protect some of the finest 7 recreational areas along the gulf coast. So far we've had 8 minimal environmental damage due to, in large part, the 9 skimming activities, booming activities and the rapid 10 cleanup, but I -- although this is not an environmental 11 matter, I'm going to mention it is the most devastating 12 piece of this entire puzzle, and it's -- the number of 13 people's lives and livelihoods that have been impacted in 14 this area is heartbreaking. It's heartbreaking. There 15 are four hundred thousand people in this area, and I would 16 say many, if not most, have had some adverse impact on 17 their lives. Some of them have had their lives completely 18 devastated down there, and that is the real toll that 19 we're seeing down there today. We can clean up the 20 environment and we can bring things back, but these 21 people's lives are just a -- it's a terrible, terrible 22 impact for them. I can't give you a report without 23 mentioning that.</p>
<p style="text-align: right;">Page 6</p> <p>1 disaster in dealing with it -- air, water, land, field 2 ops, permits. They've been involved in everything from 3 air, water and sediment sampling to developing booming 4 strategies to locating critical assets around the world to 5 working with local elected officials and being embedded 6 with contractors -- many, many activities in addition to 7 those also. 8 ADEM has been responsible for developing many 9 innovative solutions to problems that have come up. As 10 you can probably imagine, everybody thought that BP knew 11 all about what was going on, but BP was learning, just 12 like the rest of us. There's never been anything of this 13 magnitude that they've dealt with before. And we've had 14 problems that needed to be dealt with, such as from -- 15 it's turtle nesting season in the -- along the gulf coast, 16 and trying to clean beaches while we want to respect -- 17 endangered species presents its own set of problems. 18 We've had people trying to figure out new ways to boom 19 areas that haven't been able to be boomed before, closing 20 in openings that allow oil to come into -- many different 21 problems have come up, and ADEM people have been most 22 helpful in dealing with those. I can't name all of the 23 dozens of ADEM individuals. I would like to post a list</p>	<p style="text-align: right;">Page 8</p> <p>1 An example of the impact on people's lives, 2 Bayou La Batre and Coden process more seafood than is 3 processed combined by all other processors from Key West, 4 Florida, to Brownsville, Texas. That industry is 5 completely shut down. Completely shut down. It's -- 6 There are many examples of that. There's no longer a 7 charter fishing fleet down there. There are people that 8 run hotels, restaurants, stores, retail outlets, all sorts 9 of things. It's just been a tremendous impact. 10 Bad as it is down there, and I hate to say 11 this, but it's going to get worse. It's going to be at 12 least thirty days before that well is finally tapped, the 13 flow is stopped; during that thirty days, we're going to 14 have oil coming into the environment and we're going to 15 have to deal with that oil increasing in the environment 16 over that next thirty days, at least, if everything works 17 out right. 18 As bad as that is, it could be -- it's 19 possible that it could be even worse. If a hurricane or a 20 tropical storm comes into this area -- there's a tropical 21 storm out there now in the Yucatan that may curve -- some 22 of the models show it's curving north. If that comes in 23 all of a sudden, we have to abandon work at the well head;</p>

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1 we have to abandon offshore skimming. If the winds are
2 correct, it can blow the entire slick onto the shoreline,
3 blow it over the dunes; we'd have to pull up all of the
4 boom. It can go into residential areas. It could be a
5 very bad situation, a very bad situation, and we need to
6 invoke the Lord's blessing that he will protect us from
7 that.

8 I can assure you that the ADEM employees will
9 continue to arise to the occasion, and it's been my
10 privilege to serve with them down there, and I want to --
11 my hat's off to the ADEM employees who have been down
12 there and those that have been working here. I want to
13 thank them for that.

14 COMMISSIONER PIERCE: Lance, I would like to say
15 I went over Wednesday, and George Cox showed me around,
16 and I was just so impressed with what ADEM is doing and I
17 want to thank all of the workers who have gone down there.
18 They still have a job up here, I understand -- They're
19 still having to do their job here and they're doing a job
20 down there, so I really think we ought to commend them and
21 I would like to commend you, too. I greatly appreciate
22 what you've done. You stepped up to bat early in the game
23 and have been down there a lot. There are twelve hundred

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1 workers in that place in Mobile. Twelve hundred. Three
2 states, and that's Mississippi, Alabama, Louisiana -- I
3 mean Alabama and Florida. Louisiana has a command post in
4 Houma; the major command post is in Robert.

5 But I've shed a few tears over this, along
6 with some people down there that I've been with, and this
7 is going to affect us for a long time.

8 MR. LEFLEUR: People who have lived in that area
9 all their lives to see it be threatened in this manner is
10 just a very emotional thing, I know.

11 COMMISSIONER LESTER: Sam just got back from down
12 there.

13 COMMISSIONER WAINWRIGHT: Yes, and they told me
14 that same kind of --

15 MR. LEFLEUR: It's referred to what's called a
16 Unified Command, and it's an area -- there are people out
17 -- a thousand people out doing everything from offshore
18 operations to claims to -- you name it.

19 COMMISSIONER PIERCE: One thing, you can't get a
20 hotel room in Mobile. That's the only thing -- just in
21 Mobile.

22 MR. LEFLEUR: The hotel rooms have been at a
23 premium in Mobile, that's correct.

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1 Okay. The other matters that I would like to
2 report on also -- budgetary. We continue to be on track
3 with the 2010 budgetary management, which incorporates the
4 proration, which has already been declared.

5 The federal level, we're still operating
6 under the continuum resolutions to amounts -- our program
7 branches have not seen increases in the last four years,
8 and piled on top of that, we've had increasing mandates
9 from the federal government and an increasing number of
10 permittees, so we are having to implement new management
11 practices to try to deal with these austere times.

12 On the NPDES resolution -- excuse me -- the
13 petition to withdraw water authority, that's in the hands
14 of the EPA. We have responded, and we await EPA's
15 determination on that.

16 Note, Commissioner Archie's resignation
17 allowed for us to pull that piece of the petition out as
18 no longer being applicable for a potential conflict of
19 interest with the petition.

20 In the personnel area, as you know, Olivia
21 Rowell has retired as of June the 1st, and she has had an
22 extraordinary career at ADEM and she was recognized the
23 last time; well-warranted her recognition. She oversaw

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1 many -- many problematic and regulatory sort of statutory
2 changes during her career -- I believe it's twenty-six
3 years -- I think it was her total -- and she has a lot of
4 credits by her name.

5 And this week -- This past week, I am pleased
6 to announce that we have been able to elevate one of our
7 people in the Office of General Counsel to the position of
8 General Counsel. I would like to introduce Tom Johnston.
9 He is our new general counsel. He has been with us for
10 twenty years and has received high accolades from, well,
11 all of the division chiefs, all of the people outside EPA,
12 Governor's Office, all of the people that are aware of
13 legal activities. He has gotten high marks, and I don't
14 want to take anything away from Tom, but we have a lot of
15 qualified candidates, and it's choosing between a
16 ninety-eight and a ninety-nine, and it was a difficult
17 choice for Tom. Tom is well respected and well worthy of
18 the position.

19 MR. JOHNSTON: Thank you very much.
20 (Applause.)

21 MR. LEFLEUR: We are able to promote from
22 within. We have a very strong organization at ADEM --
23 I've been very pleased to come to understand that -- and

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<p style="text-align: right;">Page 13</p> <p>1 we have a lot of depth in our bench, and once again, when 2 we elevate one person, that leaves a place for another 3 person, and it's just as difficult to fill that position 4 from the problem of a wealth of riches in our legal area, 5 and we've been able to promote Shawn Sibley to replace 6 him -- Attorney Tom Johnston. 7 (Applause.) 8 MR. LEFLEUR: As far as other activities, a 9 note: In Prichard, I made a point that ADEM announced the 10 second largest scrap tire remediation project, the second 11 largest one behind Attalla. There's over a hundred and 12 thirty -- excuse me -- over thirteen thousand five hundred 13 tons of tires that were removed from the site, and well in 14 excess of fifty percent of the tire materials for 15 eradication were reused. I single out for commendation on 16 that Brent Watson and Holly Funk. They have done an 17 excellent job. Are you here? 18 (Applause.) 19 MR. LEFLEUR: On the regulatory update, each 20 year -- well, for the last three years we've had a 21 regulatory update for our stakeholders and the regulated 22 community, and that was held on May the 13th, and you have 23 the materials in your package that were presented at that</p>	<p style="text-align: right;">Page 15</p> <p>1 And, finally, we -- I had the opportunity of 2 receiving a two hundred thousand dollar check from EPA for 3 something I had nothing to do with, but many of the people 4 here at ADEM did. It was the Brownfields project by the 5 Land Division. The grant was two hundred thousand 6 dollars, and this occurred -- it was announced in April 7 but awarded in May, and it was to assess petroleum 8 contamination site -- contaminated sites from the -- from 9 Montgomery to Uniontown, along the Voting Rights Trail. 10 The supplemental Brownfields Revolving Loan Grant Fund had 11 a four hundred thousand dollars that was announced earlier 12 in June, which led more to the existing Brownfields 13 Revolving Loan Fund, and the Land staff -- Land Division 14 staff working to obtain these grants include Larry Bryant, 15 Larry Norris and Dorothy Malaier. I was able to 16 understand some of the history behind this, and this is an 17 idea that was generated at ADEM in the ranks of our 18 people, the division chief level, and it was turned down 19 to begin with and then turned down again and then finally 20 it saw some light of day and then it started breathing and 21 this went all the way up to EPA and it's a testament to 22 the tenacity of our people to do things that sometimes are 23 a little different than we're seeing as doing in our</p>
<p style="text-align: right;">Page 14</p> <p>1 meeting. The regulatory update was planned by the 2 Non-Point Source Pollution staff with Scott Hughes, who I 3 know is not here today. He's taking a couple of days off 4 after having been down in Mobile for a lot of days. But 5 Mark Sport was coordinating all of the technology. Missy 6 Millbrooks -- Middlebrooks -- excuse me -- coordinated the 7 exhibitors, and Patti Hurley coordinated with the 8 conference site, and I want to recognize them for their 9 work. It's been a growing program. It's one that I think 10 when it first started there were questions as to whether 11 there would be interest in it, and the interest has just 12 ballooned over the years, people trying to understand -- 13 trying to understand what's happening in not only today, 14 but what to look forward to in the future as far as 15 regulation is concerned, and it's been very well 16 received. 17 I also would like to recognize in that 18 regulatory update program, Freida Thomas, Shari Ely, 19 Carolyn Overman and Ragan Harrison. They work with a lot 20 of the registration and so forth. How many of -- there 21 were like six hundred -- I believe we had six hundred 22 admissions, so it was well-attended. It was very 23 well-attended.</p>	<p style="text-align: right;">Page 16</p> <p>1 regulatory hat -- wearing our regulatory hat, but it's 2 something that tied in closely and it was an extremely 3 worthy project, and I want to tip my hat to the folks that 4 worked on that so hard. 5 If there are any questions, I'll be pleased 6 to try to address those or have my great backup work with 7 them. 8 COMMISSIONER LESTER: We appreciate the job that 9 you've done in the Department. That's the big thing. 10 That's cream rises to the top with the Director. 11 MR. LEFLEUR: Thank you, sir. 12 COMMISSIONER LESTER: Thank you. 13 Next item of business, we will consider the 14 Adoption of Proposed Amendment to ADEM's Administrative 15 Code 335-6, Water Quality, NPDES Regulations. 16 MR. CROCKETT: Good Morning, Dr. Lester, Members 17 of the Commission. My name is Chip Crockett, and I'm the 18 Chief of the Stormwater Management Branch in the Water 19 Division. 20 The Department seeks your approval of 21 Proposed Amendments to Alabama's Water Quality 22 Regulations, specifically Rule 335-6-6-.23, which is a 23 portion of our Rules administering general NPDES permits.</p>

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1 To be consistent with comparable federal
 2 rules, today's proposed change will modify certain
 3 requirements for the notice of intent, which is the
 4 application document prospective permittees submit to
 5 obtain coverage under a general permit. The proposed
 6 change is purely administrative and does not modify any
 7 discharge limitations or other standards of any of the
 8 general NPDES permits that the Department currently
 9 administers.

10 The Department held a public hearing on June
 11 4th of this year to receive public comments regarding
 12 these proposed changes. There was no one in attendance at
 13 the hearing and no written comments were received during
 14 the public comment period. As such, the Department asks
 15 that you adopt these changes as proposed.

16 I'll be happy to answer any questions you may
 17 have.

18 COMMISSIONER LESTER: Thank you. We now
 19 entertain a motion for this proposed amendment.

20 COMMISSIONER PIERCE: Move to adopt the proposed
 21 amendment.

22 COMMISSIONER WAINWRIGHT: Second.

23 COMMISSIONER LESTER: Motion second. Any

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1 Commissioner have any questions?
 2 (No response.)

3 COMMISSIONER LESTER: All in favor say aye.

4 ALL: Aye.

5 COMMISSIONER LESTER: All opposed?
 6 (No response.)

7 COMMISSIONER LESTER: The next item, Number 5,
 8 the Commission's consideration of Adoption of Proposed
 9 Amendment to ADEM Administrative Code Division 335-13,
 10 Solid Waste Program Regulations.

11 MR. HARDY: Good morning, Dr. Lester, Members of
 12 the Commission. I'm Gerald Hardy, Chief of the Land
 13 Division, and I am before you to recommend that the
 14 Commission adopt amendments to the Department's Division
 15 13 Solid Waste Program Regulations.

16 The proposed regulations before the
 17 Commission today would adopt three major revisions to the
 18 existing rules. First, they would revise and add
 19 regulatory definitions to be consistent with those
 20 included in the Solid Waste and Recyclable Materials
 21 Management Act passed in 2008 by the Legislature.
 22 Secondly, the proposed regulations also revise and clarify
 23 the closure requirements for unauthorized dumps and is

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1 necessary to comply with the requirements of the Uniform
 2 Environmental Covenants Act of 2007. Finally, the
 3 proposed revisions will establish a one-time registration
 4 program for facilities engaged in the processing, storage
 5 and marketing of recyclable materials and would establish
 6 the necessary recordkeeping and reporting requirements for
 7 these to monitor the State's progress in achieving the
 8 statewide waste reduction and recycling goal adopted by
 9 the Commission in 2008.

10 These proposed revisions to the Division 13,
 11 Solid Waste Program Regulations were the subject of a
 12 public comment period that ran from February the 14th to
 13 April the 2nd, 2010, and of a public hearing held on April
 14 the 2nd. Several written comments on these regulations
 15 were received by the Department, and copies of our
 16 proposed reconciliation and suggested changes were
 17 provided to you earlier.

18 Pending any questions you may have, the
 19 Department asks the Commission to adopt these changes to
 20 the Solid Waste Regulations.

21 COMMISSIONER LESTER: Any questions from the
 22 Commissioners?
 23 (No response.)

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1 COMMISSIONER LESTER: Thank you. I have a motion
 2 that we adopt these proposed amendments.

3 COMMISSIONER WAINWRIGHT: So moved.

4 COMMISSIONER BROWN: Second.

5 COMMISSIONER LESTER: Any other questions from
 6 the Commission?
 7 (No response.)

8 COMMISSIONER LESTER: All in favor say aye.

9 ALL: Aye.

10 COMMISSIONER LESTER: All opposed?
 11 (No response.)

12 MR. HARDY: Thank you.

13 COMMISSIONER LESTER: The next item is
 14 consideration of Recommendation of Administrative Law
 15 Judge on Motion to Dismiss, recommending the dismissal of
 16 EMC Docket Number 08-01 as moot.

17 COMMISSIONER BROWN: So moved.

18 COMMISSIONER PIERCE: Second.

19 COMMISSIONER LESTER: Second. Any Commissioner
 20 have anything to say?
 21 (No response.)

22 COMMISSIONER LESTER: All in favor say aye.

23 ALL: Aye.

5 (Pages 17 to 20)

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<p>1 COMMISSIONER LESTER: All opposed? 2 (No response.) 3 COMMISSIONER LESTER: Next item involves 4 consideration of Petitioner's Motion to Withdraw/Dismiss 5 Appeal. 6 Any questions from the Commission? 7 (No response.) 8 COMMISSIONER LESTER: Do we have a motion? 9 COMMISSIONER PIERCE: So moved. 10 COMMISSIONER WAINWRIGHT: Second. 11 COMMISSIONER LESTER: Motion second. All in 12 favor say aye. 13 ALL: Aye. 14 COMMISSIONER LESTER: All opposed? 15 (No response.) 16 COMMISSIONER LESTER: The next item is 17 consideration of the Report of the Hearing Officer. This 18 is on the Black Warrior Riverkeeper, Incorporated, and 19 Friends of Locust Fork River versus ADEM. You will note 20 that the Petitioners filed objections to the Hearing 21 Officer's recommendation, and the Department and the 22 Intervener filed replies to the objection. 23 At this point, I will entertain a motion from</p>	<p>1 -- either one of them. 2 MS. THOMAS: Do you want me to check with all of 3 the Commissioners and see? That would be the 13th or the 4 27th. 5 COMMISSIONER LESTER: Why don't you just do 6 that? It's all right with me -- either one. 7 MS. THOMAS: Okay. I will let you know, and 8 we'll publicize that on the website. 9 COMMISSIONER LESTER: Do that, and that way, 10 we'll know. The point we're at now, we need as many 11 Commissioners as we've got. We have two out. 12 MS. THOMAS: That's right. Yes, sir. 13 COMMISSIONER LESTER: I'll note prior to 14 adjourning the meeting and moving to the public comment 15 period, we'll entertain a motion regarding approval or 16 disapproval of request to address the Commission listed in 17 the agenda. Note that a copy of the request is attached 18 by Mr. Mullen, and I would recommend approval of his 19 request. We'll limit it to ten minutes. 20 I'll have a motion from the Commission to 21 either approve or disapprove. 22 COMMISSIONER PIERCE: Move for approval of the 23 request.</p>
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<p>1 the Commission regarding the Report of the Hearing 2 Officer. May I have a motion? 3 COMMISSIONER BROWN: Move to adopt the Hearing 4 Officer's report. 5 COMMISSIONER PIERCE: Second. 6 COMMISSIONER LESTER: Motion is second. Any 7 questions? 8 (No response.) 9 COMMISSIONER LESTER: All in favor say aye. 10 ALL: Aye. 11 COMMISSIONER LESTER: All opposed? 12 (No response.) 13 COMMISSIONER LESTER: It's time for Other 14 Business. 15 Any Commissioners have any other 16 business? If not, our next meeting will be August the 17 20th, 11:00 a.m., here at the office. Any Commissioners 18 have any conflicts? 19 COMMISSIONER WAINWRIGHT: I have one, 20 Mr. Chairman. 21 COMMISSIONER LESTER: What is a date that you can 22 fit? 23 COMMISSIONER WAINWRIGHT: Either before or after</p>	<p>1 COMMISSIONER BROWN: Second. 2 COMMISSIONER LESTER: Second. All in favor say 3 aye. 4 ALL: Aye. 5 COMMISSIONER LESTER: Opposed? 6 (No response.) 7 COMMISSIONER LESTER: At this time we will 8 adjourn this Commission meeting and move to the Public 9 Comment Period. 10 11 * * * * 12 (Meeting adjourned at approximately 11:35 a.m.) 13 * * * * 14 15 16 17 18 19 20 21 22 23</p>

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1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA
3 COUNTY OF ELMORE

4 I hereby certify that the above proceedings
5 were taken down by me and transcribed by me using
6 computer-aided transcription and that the above is a
7 true and correct transcript of said proceedings.

8 I certify that I am neither of kin nor of
9 counsel to any of the parties nor in any way
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11 I further certify that I am duly licensed by
12 the Alabama Board of Court Reporting as a Certified
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15 So certified on this, the 7th day of July,
16 2010

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21 Notary Public At Large
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REPORTER'S CERTIFICATE

STATE OF ALABAMA
COUNTY OF ELMORE

I hereby certify that the above proceedings were taken down by me and transcribed by me using computer-aided transcription and that the above is a true and correct transcript of said proceedings.

I certify that I am neither of kin nor of counsel to any of the parties nor in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter, as evidenced by the ACCR number following my name below.

So certified on this, the 7th day of July, 2010.

Anita D. Griffith/ca
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Notary Public At Large
Commission Expires 8/17/2011

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Part B

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- Attachment 2** **Resolution adopting the proposed amendments to
ADEM Administrative Code Division 335-6, Water Quality
Program (NPDES) Regulations**
- (Agenda Item 4 – Consideration of adoption of proposed
amendments to ADEM Administrative Code Division 335-6,
Water Quality Program (NPDES) Regulations
(NPDES-Related Matter))**
- Attachment 3** **Resolution adopting the proposed amendments to
ADEM Administrative Code Division 335-13, Solid Waste
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- (Agenda Item 5 – Consideration of adoption of proposed
amendments to ADEM Administrative Code Division 335-13,
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- Attachment 4** **Order adopting the Recommendation of the Administrative
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- (Agenda Item 6 – Friends of Hurricane Creek and Alabama
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- Attachment 5** **Order granting the Petitioner’s Motion to Withdraw/Dismiss
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- Attachment 6** **Order adopting the Report of the Hearing Officer**
- (Agenda Item 8 – Black Warrior Riverkeeper, Inc. and
Friends of Locust Fork River, Inc. v. ADEM, and
MCoal Corporation, EMC Docket No. 10-04
(NPDES-Related Matter))**

Attachment 1

Amended 6/11/10

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: June 25, 2010

TIME: 11:00 a.m.

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

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10. Future business session	3
PUBLIC COMMENT PERIOD	3

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The Minutes for these meetings will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF THE REGULAR MEETING HELD ON APRIL 16, 2010, AND THE EMERGENCY MEETING HELD ON MAY 6, 2010
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION VICE CHAIR
4. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-6, WATER QUALITY PROGRAM (NPDES) REGULATIONS (NPDES-RELATED MATTER)

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program (NPDES) Regulations, Rule No. 335-6-6-.23, General Permits. Rule 335-6-6-.23(15) would be amended for consistency with 40 CFR 122.28. The Department held a public hearing on the proposed amendments on June 4, 2010.

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-13, Solid Waste Program Regulations. The Department proposes to amend Division 335-13 to revise various definitions pursuant to amendments to the Solid Wastes and Recyclable Materials Management Act enacted in 2008, and by clarifying certain provisions of its Solid Waste Program regulations related to the closure requirements for unauthorized solid waste dumps. The Department also proposes to establish registration requirements for facilities engaged in the receipt, storage or processing of recyclable materials at the point where these materials are initially diverted from the solid waste stream. Chief among the proposed requirements for subject facilities would be the requirement to semi-annually report quantities of recycled or re-used materials so as to monitor the progress toward achieving the previously-established statewide waste reduction and recycling goal. The Department held a public hearing on the proposed amendments on April 2, 2010.

6. FRIENDS OF HURRICANE CREEK AND ALABAMA RIVERS ALLIANCE, INC. V. ADEM, AND TUSCALOOSA RESOURCES, INC., EMC DOCKET NO. 08-01 (NPDES-RELATED MATTER)

The Commission will consider the *Recommendation of the Administrative Law Judge on Motion to Dismiss* recommending dismissal of EMC Docket No. 08-01 as moot in this appeal concerning ADEM's reissuance of Tuscaloosa Resources, Inc., Panther Mine No. 3, NPDES Permit No. 0074012, Tuscaloosa County, effective October 2, 2007.

7. BRENSEN CREEK, LLC V. ADEM, EMC DOCKET NO. 10-02 (NPDES-RELATED MATTER)

The Commission will consider the Petitioner's *Motion to Withdraw/Dismiss Appeal* in this appeal concerning ADEM Administrative Order 10-005-WP issued on October 28, 2009, to Brensen Creek, LLC, The Woodlands Plat 4, Wetumpka, T17N, R17E, S13,14, Elmore County, Alabama, NPDES ALR16ECCV.

8. BLACK WARRIOR RIVERKEEPER, INC. AND FRIENDS OF LOCUST FORK RIVER, INC. V. ADEM, AND MCOAL CORPORATION, EMC DOCKET NO. 10-04 (NPDES-RELATED MATTER)

The Commission will consider the *Report of Hearing Officer* in this appeal concerning ADEM's issuance of NPDES Permit AL0080080 to MCoal Corporation, Rosa Mine, Blount County.

9. OTHER BUSINESS

10. FUTURE BUSINESS SESSION

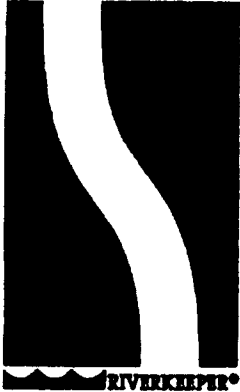
PUBLIC COMMENT PERIOD

(Request from the public to address the Commission is attached to the agenda.)

Request

Michael William Mullen, Choctawhatchee Riverkeeper, Inc.
SUBJECT: Need for expansion and strengthening of stormwater management
(Vice Chair Lester will recommend approval of the request.)

CHOCTAWHATCHEE



Acting AEMC Chairperson
C/o Debbie Thomas
AEMC
P.O. Box 301463
Montgomery, AL 36130-1463

June 7 2010

RE: Request for Presentation to AEMC at June 25, 2010 Meeting
Subject: Need for Expansion and Strengthening of Stormwater Management

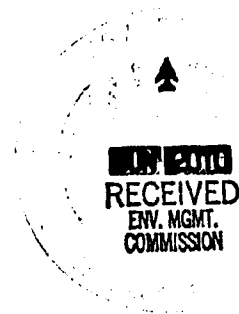
I am writing to request time for a brief presentation to the AEMC at its June 25th meeting. The presentation will be brief and will show examples of the potential for relatively small projects to cause severe damage to stream water quality, aquatic habitats and public infrastructure when there is no stormwater management.

The presentation for include images and data for an example project or projects in the coastal plain (Troy). Some of the images are attached on the following pages.

Thank you for considering this request.

Sincerely,

Michael William Mullen, CPESC
Executive Director/Riverkeeper



CHOCTAWHATCHEE RIVERKEEPER[®], INC.
P.O. BOX 6734
BANKS, AL 36005
334-807-1365
EMAIL: RIVERKEEPER@TROYCABLE.NET
WEB: [HTTP://CHOCTAWHATCHEE.RIVERKEEPER.GOOGLEPAGES.COM](http://CHOCTAWHATCHEE.RIVERKEEPER.GOOGLEPAGES.COM)



CHOCTAWHATCHEE RIVERKEEPER[®], INC. IS A MEMBER OF THE WATERKEEPER[®] ALLIANCE

Attachment 2

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

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

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

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

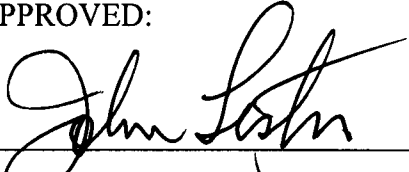
NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to rule 335-6-6-.23/General Permits, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

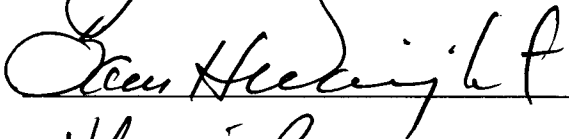
**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**


ADEM Admin. Code division 335-6- Water Quality Program Regulations
335-6-6-.23 - General Permits


IN WITNESS WHEREOF, we have affixed our signatures below on this 25th day of June
2010.

APPROVED:





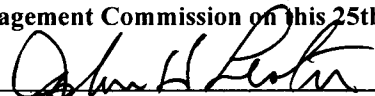




DISAPPROVED:

This is to certify that this Resolution is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 25th day of June 2010.

ABSTAINED:



John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010

Attachment 3

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-13 of the Department's Solid Waste Program regulations and in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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

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

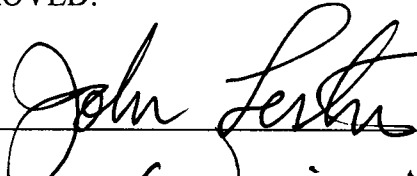
NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate the revisions of [335-13-1-.02/Statutory Authority (Amend); 335-13-1-.03/Definitions (Amend); 335-13-1-.04/Limitations (Amend); 335-13-1-.05/Communications (Amend); 335-13-1-.06/Penalty for Violations (Amend); 335-13-1-.07/Appeals (Amend); 335-13-1-.10/Reserved (Amend); 335-13-1-.13/Unauthorized Dumps (Amend) and 335-13-3/Processing and Recycling (New)] administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

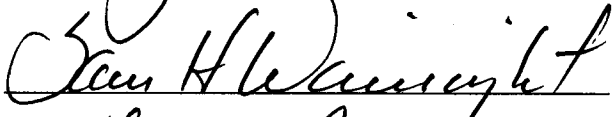
**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**


ADEM Admin. Code 335-13
Solid Waste Program

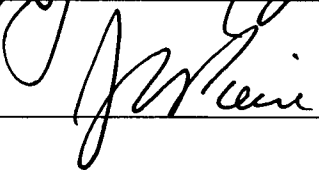
IN WITNESS WHEREOF, we have affixed our signatures below on this 25th day of June, 2010.

APPROVED:





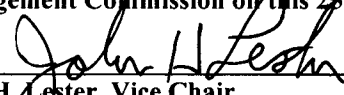




DISAPPROVED:

ABSTAINED:

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 25th day of June 2010.



John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010

Attachment 4

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

In the Matter of:)	
)	
Friends of Hurricane Creek and)	
Alabama Rivers Alliance, Inc.,)	
)	
Petitioners,)	
)	
vs.)	EMC Docket No. 08-01
)	
Alabama Department of)	
Environmental Management,)	
)	
Respondent,)	
)	
and)	
)	
Tuscaloosa Resources, Inc.,)	
)	
Intervenor.)	

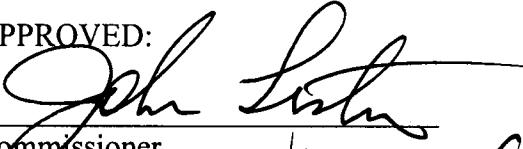
ORDER

This cause having come before the Environmental Management Commission pursuant to the Recommendation of the Administrative Law Judge on Motion to Dismiss in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Recommendation of the Administrative Law Judge on Motion to Dismiss 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; and
3. That a copy of this Order, along with a copy of the Recommendation of the Administrative Law Judge on Motion to Dismiss, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

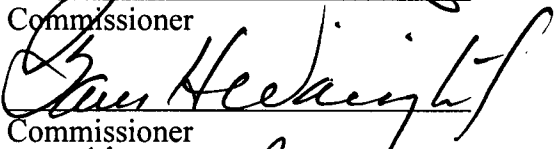
ISSUED this 25th day of June 2010.

APPROVED:



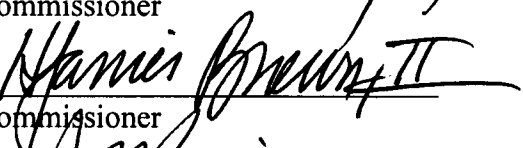
Commissioner

Commissioner



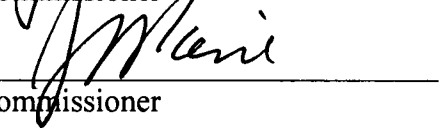
Commissioner

Commissioner



Commissioner

Commissioner



Commissioner

DISAPPROVED:

Commissioner

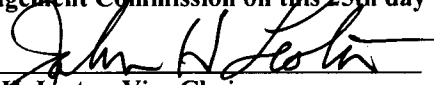
Commissioner

Commissioner

ABSTAINED:

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 25th day of June 2010.**



**John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010**

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

In the Matter of:)
)
Friends of Hurricane Creek and)
Alabama Rivers Alliance, Inc.,)
)
Petitioner)
)
vs.)
)
Alabama Department of)
Environmental Management)
)
Respondent)

EMC Docket No.
08-01 / OAH-07-471
[In the matter of ADEM's reissuance
of NPDES Permit No. AL0074012
to Tuscaloosa Resources, Inc. on
October 2, 2007



RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE ON MOTION TO DIMISS

The Administrative Law Judge, having been presented with ADEM's Suggestion of Mootness and the reissued NPDES permit (following revocation) for the Tuscaloosa County Panther Mine No. 3 (AL00774012), and after having duly considered same does hereby find that:

1. A NPDES permit for the Tuscaloosa County Panther Mine No. 3 (AL0074j012) was issued to Tuscaloosa Resources, Inc. on October 2, 2007.
2. The October 2, 2007 NPDES permit was revoked and a new permit issued, by the Alabama Department of Environmental Management, on August 28, 2008, with an effective date of August 28, 2008, and an expiration date of August 27, 2013.

3. Pursuant to Rules 335-6-6 and 335-6-6-.14(i), Administrative Code, ADEM, ADEM filed a Suggestion of Mootness on August 28, 2008, regarding the administrative appeal filed in this case relating to the October 2, 2007 revoked permit.

Therefore, the Administrative Law Judge does hereby recommend that the Alabama Environmental Management Commission dismiss the present appeal contesting the prior revoked October 2, 2007 NPDES permit to Tuscaloosa Resources, Inc. (AL0074012) pursuant to Rule 335-2-1-.21(4), Administrative Code, ADEM.

DONE this the 1st day of October, 2008.



Tori L. Adams
Administrative Law Judge
Administrative Hearings
11 South Union Street
Montgomery, AL 36130
Telephone: 334-242-7433
Fax: 334-353-9050

cc: Ms. Debi Thomas, Executive Assistant
Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-1463
Telephone: 334-271-7706
Fax: 334-279-3052
(State Hand Mail)

James L. Wright, Esquire
Dept. of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36130-1463
Telephone: 334-271-7855
Fax: 334-394-4332
(State Hand Mail)

Robert D. Tambling, Esquire
Office of the Attorney General
11 South Union Street – 4th Floor
Montgomery, AL 36130
Telephone: 334-242-7300
Fax: 334-242-4890
(State Hand Mail)

R. Edwin Lamberth, Esquire
Cunningham, Bounds, Crowder,
Brown and Breedlove, L.L.C.
P. O. Box 66705
Mobile, AL 36660
Telephone: 251-471-6191
Fax: 251-479-1031
(First Class Mail)

Floyd Gilliland, Esquire
Nix, Holtsford, Gilliland, Higgins & Hitson
P. O. Box 4128
Montgomery, AL 36103-4128
Telephone: 334-215-8585
Fax: 334-215-7101
(First Class Mail)

J. Alan Truitt, Esquire
D. Bart Turner, Esquire
Chris J. Williams, Esquire
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203-2618
Telephone: 205-254-1000
Fax: 205-254-1999
(First Class Mail)

Attachment 5

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

In the Matter of:)	
)	
Brensen Creek, LLC,)	
)	
Petitioner,)	
)	
vs.)	EMC Docket No. 10-02
)	
Alabama Department of)	
Environmental Management,)	
)	
Respondent,)	

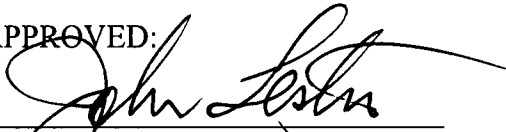
ORDER

This cause having come before the Environmental Management Commission pursuant to the Petitioner's Motion to Withdraw/Dismiss Appeal in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


1. That the Petitioner's Motion to Withdraw/Dismiss Appeal is hereby granted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
3. That a copy of this Order, along with a copy of the Petitioner's Motion to Withdraw/Dismiss Appeal, 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 25th day of June 2010.


APPROVED:




Commissioner



Commissioner



Commissioner



Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

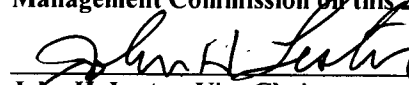
Commissioner

Commissioner

ABSTAINED:

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 25th day of June 2010.



John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010

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

BRENSSEN CREEK, LLC

Petitioner

v.

THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT.

Respondent

)
)
)
)
) DOCKET NO. 10-02
)
)
)
)
)
)
)
)



MOTION TO WITHDRAW/DISMISS APPEAL

Come now BRENSSEN CREEK, LLC, by and through its attorney, Joseph T. Scarborough, Jr., and shows unto this Honorable Court as follows:

1. That there are no matters at issue between the parties and the undersigned desires to withdraw its pending Appeal.

WHEREFORE, THE PREMISES CONSIDERED, the undersigned respectfully requests that the pending Appeal be dismissed.

Respectfully submitted this 7th day of May, 2010.



Joseph T. Scarborough, Jr. (SCA003)
Attorney for Petitioner

OF COUNSEL:
Scarborough & Weldon, L.L.C.
Attorneys at Law
P. O. Box 780452
Tallasse, Alabama 36078
Telephone (334) 283-2893
Fax (334) 283-8364

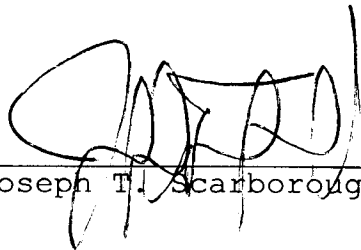
CERTIFICATE OF SERVICE

I, Joseph T. Scarborough, Jr. hereby certify that I have served a copy of the foregoing "Motion To Dismiss Appeal" by sending a copy of the same to each of the following via first class mail on May 7, 2010:

Antoinette Jones, Esq.
Attorney for Respondent
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, AL 36130-1463

Debi Thomas
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, Alabama 36130-1463

Honorable James F. Hampton
Hearing Officer
4241 Lomac Street
Montgomery, AL 36106



Joseph T. Scarborough, Jr.

Attachment 6

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

In the Matter of:)	
)	
Black Warrior Riverkeeper, Inc. and)	
Friends of the Locust Fork River, Inc.,)	
Petitioners,)	
)	
vs.)	EMC Docket No. 10-04
)	
Alabama Department of)	
Environmental Management,)	
Respondent,)	
)	
and)	
)	
MCoal Corporation,)	
Intervenor.)	


ORDER

This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer, the objections to the Report of the Hearing Officer, and the responses to the objections 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 adopted; and
2. That pursuant to the adoption of the Report of the Hearing Officer, the Findings of Fact and Conclusions of Law and Recommendation contained in said Report are adopted, and the Commission finds in favor of ADEM on all issues in this matter and affirms the proper issuance of ADEM's final permit in this cause; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
3. 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 25th day of June 2010.

APPROVED:



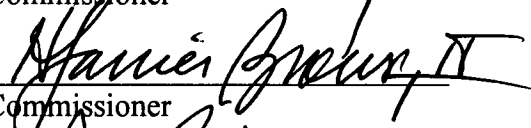
Commissioner

Commissioner



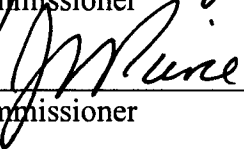
Commissioner

Commissioner



Commissioner

Commissioner



Commissioner

DISAPPROVED:

Commissioner

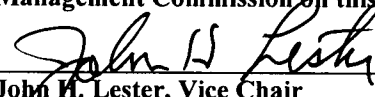
Commissioner

Commissioner

ABSTAINED:

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 25th day of June 2010.



John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010

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

BLACK WARRIOR RIVERKEEPER, INC.,
and FRIENDS OF THE LOCUST FORK
RIVER, INC.,
Petitioners,

v.
THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Respondent,

and
MCOAL CORPORATION,

Intervenor.

DOCKET No. 10-04



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

The Alabama Department of Environmental Management (ADEM) issued NPDES Permit No. AL0080080 to MCoal Corporation, Inc. (MCoal) on October 23, 2009. Subsequent to that date, Black Warrior Riverkeeper, Inc. (BWR) and Friends of the Locust Fork River, Inc. (FLFR), collectively referred to as Petitioners, requested a hearing in this matter to contest the issuance of this permit more accurately described as a National Pollutant Discharge Eliminations Systems permit. This permit was issued to MCoal for discharges associated with MCoal's proposed "Rosa Mine" operation located in Blount County, Alabama. MCoal filed a motion to intervene in this matter, and that motion was granted on December 9, 2009.

Subsequently, the Petitioners, ADEM and MCoal filed motions for summary judgment on the issues before the Commission. All of those motions were denied in an order issued by this Hearing Officer.

During that process, the Alabama Coal Association filed a motion for leave to file an Amicus brief and brief in support of ADEM and MCoal's motion for summary judgment. That motion to allow the Amicus brief was granted, and such brief is included in the record of this proceeding.

Separate motions and applications of attorneys David Pope, Catherine Wannamaker and David Hanson to be admitted pro hac vice for the purpose of this hearing before the Environmental Management Commission were approved and granted.

Petitioners' motion to strike the affidavits of C. W. McGehee and Lynn Sisk and to bar the testimony of McGehee and Sisk were denied.

This matter proceeded from that point through to the discovery deadlines as established by the Joint Proposed Prehearing Order submitted to this Hearing Officer for signature and dated 19 February 2010. Testimony was taken over four days at the ADEM offices from February 22 through 25, 2010. Thereafter the parties were allowed time, per the above-referenced prehearing order, to submit briefs, argument and proposed findings of fact and conclusions of law to the undersigned Hearing Office for consideration. All of those documents were reviewed by the Hearing Officer and carefully considered in issuing this report.

Additionally, there was a post-hearing motion filed by the Petitioners labeled as Petitioners' Motion for Appropriate Relief. That matter has remained pending before this Hearing Officer until this date, and both ADEM and MCoal filed responses to that motion for appropriate relief. After consideration of all submissions on that motion, it is ORDERED that the Petitioners' Motion for Appropriate Relief is due to be denied and is denied as of this date. Ruling on said motion closes the record and concludes this hearing effective this date. ((See ADEM Admin. Code R. 335-2-1-.27 and 335-2-1-.14(17))

II. STANDARD OF REVIEW

This proceeding is clearly a de novo process, and the Environmental Management Commission essentially stands in the place of ADEM and should exercise its judgment for that of ADEM on questions of law and fact which are related to this proceeding. ((See ADEM Admin. Code R. 335-2-1-.14(6)) and the Environmental Management Commission's order dated October 16, 2009 in *Black Warrior Riverkeeper, Inc. v. ADEM and Shepherd*

Bend, LLC, EMC DN 09-04) The Petitioners in this case bear the burden to prove, by a preponderance of the evidence, that ADEM's decision to issue this permit was improper. There is a presumption that ADEM's administrative action below is correct and the Petitioners have the burden of overcoming that position. That burden requires the proof of applicable standards and cannot be based on theoretical or hypothetical allegations. The ultimate decisions by the Environmental Management Commission should be consistent, and departures from established interpretations by the Commission should not be entered into lightly absent compelling reasons for such.

III. FINDINGS OF FACT

1. ADEM confirmed its receipt of a complete NPDES application by MCoal by letter dated May 5, 2009. MCoal sought, by way of that application, permission for discharges to waters at MCoal's proposed Rosa Mine in Blount County, Alabama.
2. That application, originally submitted on January 6, 2009 (in a form acceptable to ADEM), included a completed Pollution Abatement Plan (PAP) - Appendix A & B Information Checklist and a PAP Review Checklist.
3. MCoal's NPDES permit application included all information required by ADEM's Administrative Code rule 335-6-9-.03(2). This information was submitted to ADEM on ADEM's own forms approved by the Alabama Environmental Management Commission.
4. MCoal's NPDES permit application was certified by a registered professional engineer licensed to practice in Alabama. Sufficient public notice was given concerning the application in the Birmingham News.
5. On July 27, 2009, Black Warrior Riverkeeper, Inc. (BWR) submitted a comment letter to ADEM concerning ADEM's draft permit No. AL0080080. On July 27, 2009, Friends of the Locust Fork River, Inc. (FLFR) also submitted a comment letter to ADEM concerning ADEM's draft permit No. AL0080080.
6. On October 13, 2009, MCoal submitted to ADEM a sediment evaluation study concerning this proposed mine.
7. On October 21, 2009, ADEM released its Response to Comments received.
8. ADEM issues its final NPDES Permit No. AL0080080 to MCoal for the Rosa Mine on October 23, 2009 with an effective date of November 1, 2009.

9. On November 20, 2009, the Petitioners filed their request for a hearing to contest ADEM's issuance of NPDES permit AL0080080 (hereinafter "the Permit") for discharges from 62 outfalls at MCoal's Rosa Mine in Blount County, Alabama.

10. BWR is a nonprofit membership corporation with approximately 1900 members whose mission is to protect and restore the Black Warrior River and its tributaries. (See Hearing Transcript of February 22, 2010 at 32:8-11)

11. FLFR is a nonprofit membership corporation dedicated to preserving the Locust Fork in all of its natural beauty and keeping the river clean from pollutants. (See Petitioners' Hearing Exhibit 20, Affidavit of Sam Howell). Members of BWR and FLFR use and enjoy the Locust Fork and its tributaries in the immediate vicinity of, and downstream from, the Rosa Mine. These members' use and enjoyment is directly threatened by discharges associated with the Rosa Mine.

12. Numerous individuals testified that they are members of BWR and/or FLFR and that they regularly use, enjoy, recreate upon and conduct education seminars on the Locust Fork on a frequent, if not constant, basis. Those individuals testified that such use and enjoyment is threatened by the discharges authorized by NPDES permit AL0080080. Some of those witnesses were/are property owners on the River and have a separate financial stake in the health of the water.

13. Some of the individual members of BWR and FLFR are persons who have an interest in this permit and they have been, or may be, adversely affected by MCoal's actions in exercising its right to engage in mining operations at the Rosa Mine pursuant to NPDES Permit AL0080080. Those members have such interests in their own right, and such interests are germane to these organizations' basic purpose.

14. NPDES Permit No. AL0080080 authorizes discharges of pollutants from sixty-two separate outfalls into named and unnamed tributaries of the Locust Fork but does not authorize any direct discharges to the Locust Fork. The waters receiving the discharges from MCoal's mining operations are classified as "Fish and Wildlife."

15. MCoal's planned operation is scheduled to be conducted in three phases. Phase I of that plan, pursuant to the Alabama Surface Mining Commission (ASMC) permit, includes twenty outfalls and allows for auger mining. It is expected that Phase I will be conducted over a 4½-year period.

16. The NPDES permit in question, AL0080080, contains precipitation event discharge limitations for total suspended solids, iron, lead, manganese and for silver. For these precipitation event discharge limitations to apply, the permittee must submit a written

claim for exemption to ADEM's director. MCoal's discharges for Total Dissolved Solids (TDS) sulfate, chloride and aluminum (if any) will not be at levels that would violate water quality criteria.

17. The Rosa Mine site where MCoal will conduct its mining operations under the ASMC permit is an abandoned "pre-law" surface coal mine that includes over thirty miles of highwall. Under current conditions the site experiences erosion and sediment loss which flows into the waters in question. MCoal's sediment control plan establishes that sediment runoff to the receiving streams during MCoal's mining operations and following completion of MCoal's mining operations will be lower than the current sediment runoff which exists today.

18. NPDES Permit No. AL0080080 contains generally applicable discharge limitations for lead, silver, iron, manganese, total suspended solids (TSS) and pH. The limitations for iron, manganese, TSS and pH are consistent with the EPA's effluent guidelines for surface coal mines.

19. A reasonable potential analysis determines the potential for a pollutant for which ADEM has a numeric water quality criteria to be found in drainage in concentrations at or in excess of twenty percent of the concentration prescribed by ADEM's numeric water quality criterion. Projected concentrations of less than twenty percent of a water quality criteria do not warrant a water quality limitation.

20. ADEM conducted a reasonable potential analysis for the Rosa Mine site based on data submitted by MCoal with its request for this permit, together with data submitted to the ASMC. Based on these submissions, the permit includes effluent limits for lead and silver.

21. ADEM determined that there was not a reasonable potential for total dissolved solids, sulfates, chlorides or aluminum to be found in MCoal's storm water drainage at limits that would exceed applicable water quality standards and, therefore, the permit does not include effluent limitations for those parameters.

22. MCoal's ASMC application contained additional information concerning the specific design of MCoal's pollution abatement and prevention plan which, according to ADEM officials, provided them with sufficient information to evaluate MCoal's pollution abatement plans for this particular site.

23. This NPDES permit authorizes discharges to a segment of Dry Creek. That segment of Dry Creek is listed on ADEM's 2008 Clean Water Act, §303(d) list as not meeting its use classification due to nutrients, ammonia, organic enrichment and pathogens

from pasture grazing. There is no Total Maximum Daily Load (TMDL) for any pollutant for Dry Creek.

24. A segment of the Locust Fork of the Black Warrior River is identified on ADEM's 2008 Clean Water Act, §303(d) list as not meeting its use classification due to siltation. This siltation problem is due, in part, to erosion from abandoned surface mining operations. There is no approved TMDL for any pollutant for the Locust Fork.

25. MCoal submitted a surface mining permit application to the ASMC on March 26, 2009 for a permit for the construction and operation of MCoal's Rosa Mine in Blount County, Alabama.

26. Public notice concerning the filing of MCoal's surface mining permit application with ASMC was published in *The Blount Countian* for four consecutive weeks from June 10, 2009 to July 1, 2009.

27. The Petitioners had notice of MCoal's surface mining application to the ASMC, participated in the public hearing and commented on that application.

28. The ASMC issued Permit No. 3931-08-14-S to MCoal for mining activities associated with the Rosa Mine on December 11, 2009. MCoal's ASMC permit became effective on December 11, 2009.

IV. CONCLUSIONS OF LAW

I. Petitioners Are Aggrieved Parties

A. ADEM Admin. Code R. 335-2-1-.03 provides that "any person aggrieved by an administrative action of the Department shall be entitled to a hearing before the Commission or its designated Hearing Officer."

B. Pursuant to ADEM Admin. Code R. 335-2-1-.02, "[a]ggrieved" is defined as "having suffered a threatened or actual injury in fact."

C. The Petitioners have established more than a generalized set of grievances or complaints about the permit in questions and have established that they stand to suffer an actual injury of fact.

D. The various identified members of BWR and FLFR are aggrieved parties pursuant to ADEM Admin. Code R. 335-2-1 et seq., including but not limited to §§335-2-1-.02(b), 335-2-1-.03, and 335-2-1-.04, and pursuant to *Code of Alabama, 1975*, §22-2A-7.

As a result, both BWR and FLFR are found to be aggrieved parties and thus have the authority to bring and litigate this petition. ((See related discussion in *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed. 2d 610 (2000))

II. ADEM had Before It A Pollution Abatement and Prevention Plan Sufficient to Issue NPDES Permit No. AL0080080

A. The Commission, pursuant to its order in *Black Warrior Riverkeeper, Inc.*, EMC DN 09-04, supra, has established that an application such as this “does not require a PAP Plan.”

[Although the undersigned Hearing Officer may not agree with the finding of the Commission stated in “A” above, it is clear that such is a holding that should be followed herein. Additionally, even if there were no such established precedent on this particular issue, it appears from the evidence that ADEM had before it all relevant PAP Plan information which it needed in order to determine whether this particular permit should be issued. Such information was presented to ADEM in a “format acceptable to the Department staff” and, for this reason, MCoal met its burden in providing a sufficient PAP Plan.]

B. MCoal’s NPDES permit application included two pre-approved forms confirming MCoal’s preparation of a PAP Plan which addressed the elements required by ADEM’s regulations and detailed information concerning the contents of that plan for its proposed operations.

C. The issuance of this final permit was, at least in part, based upon a pollution abatement and prevention plan and accompanying data submitted by the applicant and, thus, ADEM’s PAP Plan regulations were satisfied.

III. Authorized Discharges By This Permit Will Not Cause or Contribute to a Violation of State Water Quality Standards

A. Dry Creek and the Locust Fork are two bodies of water that will ultimately receive discharges from MCoal’s Rosa Mine operations. Both Dry Creek and Locust Fork have been classified as “Fish and Wildlife” use by ADEM.

B. Dry Creek is listed on Alabama’s 2008 §303(d) list as not meeting its “Fish and Wildlife” use classification because of nutrients, ammonia, organic enrichment and pathogens caused by pasture grazing.

C. Locust Fork (between Little Warrior River and Blount County Road 30) is listed on the same §303(d) list as not meeting its “Fish and Wildlife” use classification due to siltation caused by agriculture and an abandoned surface mining operation.

D. Dry Creek’s listing on Alabama’s 2008 §303(d) list as not meeting its use classification is based only on nutrients, ammonia, organic enrichment and pathogens and is not listed as impaired for any other pollutants.

E. There has been no evidence presented that would establish that the Petitioners met their burden of proof in regard to this issue related to Dry Creek. No evidence supports a conclusion that MCoal’s mining operation will result in any discharges of nutrients, ammonia, organic enrichments or pathogens.

F. Without such evidence, Petitioners have failed to meet their burden of proof that MCoal’s Rosa Mine operations will result in discharges that will cause or contribute to a violation of water quality standards for Dry Creek.

G. Whether or not the Locust Fork is actually impaired for siltation, the Petitioners have not met their burden of establishing that the issue of this permit will cause or contribute to a violation of Alabama’s water quality standards.

H. MCoal’s mining operation, so long as it is conducted consistent with the ASMC permit and this NPDES permit, will not cause or contribute to any violation of the Locust Fork water quality standards.

IV. The Final Permits Discharge Limitations for Precipitation Events Will Not Cause or Contribute to a Violation of State Water Quality Standards

A. The limitations contained in this permit related to precipitation event discharges are sufficient to protect the water quality of the receiving streams in question and no evidence was presented that satisfies the Petitioners’ burden to support a decision to the contrary.

B. The construction of the sediment ponds that are proposed under the restrictions of this permit are such that, according to the evidence, are likely to significantly reduce the total pollutants discharged to the tributaries of the Locust Fork. Any evidence submitted to the contrary was not sufficient to meet the Petitioners’ burden of proof that would allow a conclusion otherwise.

C. ADEM has made a determination in this particular case that, based on the data submitted to it by MCoal, the limitations contained in the permit, including the precipitation discharge limits, “accurately reflect the requirements and intent of state regulations” and if the permit is adhered to by MCoal, then water quality standards will be met and water quality protected. No evidence was presented in this hearing that would lead the undersigned Hearing Officer to a different conclusion.

V. ADEM is Not Required To Include Discharge Limitations in Its Final Permit for Total Dissolved Solids, Sulfates, Chlorides or Aluminum.

No federal or state regulation was submitted that would require ADEM to include discharge limitations for total dissolved solids, sulfates, chlorides or aluminum in its final permit parameters. The Petitioners have failed to meet their burden and have failed to show that MCoal’s operation at the local mine site will result in total discharges of dissolved solids, sulfates, chlorides or aluminum in amounts that would cause or contribute to a violation of the state water quality standards.

V. RECOMMENDATION

Accordingly, the undersigned Hearing Officer recommends to the Commission that it enter an order and finding consistent with the documentary evidence and testimony presented, that it adopt these Findings of Fact and Conclusions of Law, and that it enter a decision in favor of ADEM on all issues and affirming the proper issuance of ADEM’s final permit in this cause.

Done this the 27th day of May, 2010.



JAMES F. HAMPTON
Hearing Officer

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