### **Minutes**

Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 13, 2021

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 August 13, 2021.

Chair

**Alabama Environmental Management Commission** 

Certified this 8th day of October 2021.

### Minutes

# Environmental Management Commission Meeting Alabama Department of Environmental Management Building 1400 Coliseum Boulevard Montgomery, Alabama 36110-2400 August 13, 2021

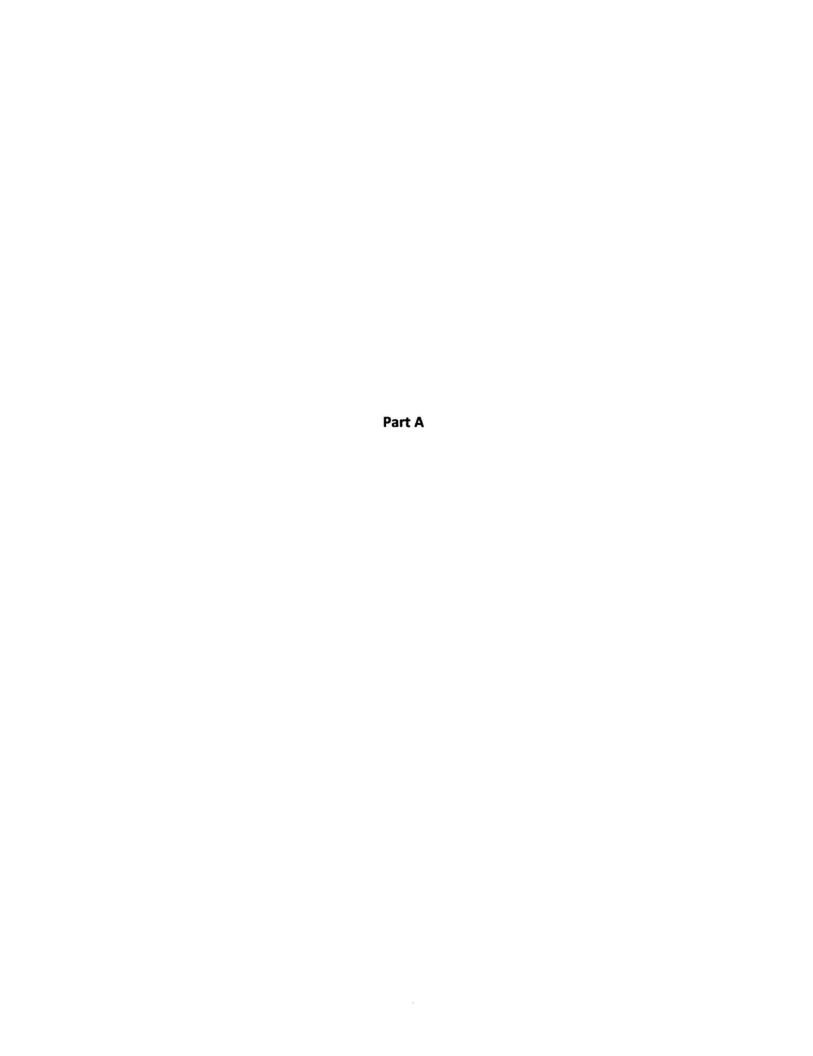
Convened: 11:00 a.m. Adjourned: 11:40 a.m.

## Part A

Transcript Word Index

## Part B

Attachment Index Attachment 1 Attachment 2 Attachment 3



# MEETING OF THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION Meeting on 08/13/2021

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3	MEETING OF THE
4	ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
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8	AUGUST 13, 2021
9	11:00 A.M.
10	ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
11	(ADEM) BUILDING
12	ALABAMA ROOM (MAIN CONFERENCE ROOM)
13	1400 COLISEUM BOULEVARD
14	MONTGOMERY, ALABAMA 36110
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22	COURT REPORTER: PATRICK R. MILLER, ACCR 631
23	* * * * * * *

# MEETING OF THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION Meeting on 08/13/2021 Pages 2...5

	1 ages 23				
1	Page 2	1	Page 4 SIMULTANEOUS SPEAKERS: Good		
2	APPEARANCES	2	morning.		
3	COMMISSION MEMBERS PRESENT:	3	DIRECTOR LEFLEUR: Welcome to all		
5		4			
	SAMUEL L. MILLER, M.D., CHAIR	5	of you present for the final meeting of the Alabama Environmental		
6	MARY J. MERRITT	6			
7		7	Management Commission for Fiscal Year		
8	THOMAS P. WALTERS, P.E., VICE CHAIR		2021. Today's report will focus on		
	KEVIN MCKINSTRY	8	the Department's Environmental Justice		
9	TOUR (TRY) II MAGTMOTTY TIT	9	and related activities. I will also		
10	JOHN (JAY) H. MASINGILL, III	10	recognize achievements of two of our		
	RUBY L. PERRY, D.V.M.	11	personnel.		
11	H. LANIER BROWN, II, ESQUIRE	12	Environmental Justice has been		
12	n. Mariba baona, 11, bogotab	13	receiving increased attention recently		
13	Nac Brosset	14	with the new federal administration.		
14	Also Present:	15	The recent attention is nothing new		
16	ROBERT TAMBLING, AEMC Legal Counsel	16	for the Commission. For many years,		
17	DEBI THOMAS, AEMC Executive Assistant	17	the Commission has expressed an		
18	Did Indian, make baccutte hibridean	18	ongoing interest in the Environmental		
19	LANCE LEFLEUR, ADEM Director	19	Justice, often referred to as EJ, and		
20	SHAWN SIBLEY, ADEM General Counsel	20	related activities of the Department.		
21		21	It's now part of our regular reporting		
22		22	routine to update you on Environmental		
		23	Justice and related activities, which		
	Page 3		Page 5		
1	* * * * * * * *	1	is the focus of today's report. It's		
2	DR. MILLER: I would like to call	2	been two years since the last report		
3	the August 13th, 2021 Environmental	3	to the Commission on this topic.		
4	Management Commission to order. We	4	The 20,000 excuse me, the 2014		
5	have a quorum present, and our first	5	and 2019 updates to the five-year		
6	item is to consideration of the	6	Unified Strategic Plan of the		
7	minutes with a meeting held on June	7	Commission and the Department have		
8	11th, 2021. These have been	8	clear objectives related to fair		
9	circulated to all the members, and I	9	treatment of and proactive outreach to		
10	will accept a motion regarding	10	all stakeholders, particularly those		
11	acceptance or rejection.	11	in minority and disadvantaged		
12	MR. BROWN: Move to approve.	12	communities. The annual operating		
13	MR. MASINGILL: Second.	13	plans of the Department implement		
14	DR. MILLER: It's been moved and	14	efforts to achieve those objectives.		
15	seconded. Any further discussion?	15	Environmental Justice is related to		
16	(No response was heard.)	16	civil rights law, diversity,		
17	DR. MILLER: All in favor, signify	17	environmental regulation, and social		
18	by raising your right hand. All	18	justice. All of these fall under the		
19	opposed, same sign.	19	heading of fair treatment.		
20	Motion passes.	20	I'll begin with some highlights of		
21	We'd like to now call on Director	21	the major milestones in our nation's		
22	LeFleur for his report.	22	journey toward fair treatment, and		
23	DIRECTOR LEFLEUR: Good morning.	23	then report on ADEM's activities to		
1					

Page 6 1 achieve our goals in this area. 1 2 Title VI of the Civil Rights Act of 2 3 1964 prohibits the recipients of 3 federal funds from engaging in the 4 4 5 discriminatory treatment of 6 individuals based on race, color, or 6 7 national origin. It is the law. ADEM 7 8 receives federal funds, and is 8 9 therefore subject to the law. 9 10 In the late 1960s, the movement 10 11 toward diversity began to take hold as 11 12 a concept and has developed over the 12 13 years to encompass the ideas of equity 13 14 and inclusion with a number of 14 15 initiatives, including at least one 15 16 presidential executive order related 16 17 to federal government executive branch 17 employment. ADEM embraces the 18 18 19 concepts of diversity, equity, and 19 20 inclusion. 20 21 On the environmental side of fair 21 treatment, in the 1970s, the Clean Air 22 22 23 Act, Clean Water Act, Safe Drinking 23 Page 7 1 Water Act, and the Resource 1 Conservation and Recovery Act became 2 2 3 laws. The State of Alabama, through 3 4 ADEM, has been delegated authority to 4 5 administer those federal environmental 5 laws under conforming state laws. 6 6 7 The formal concept of Environmental 7 8 Justice came about through a 1994 8 9 presidential executive order to 9 10 address perceived environmental 10 burdens borne by low income and 11 11

non-white population of greater than 36 percent which is 120 percent of the statewide non-white population percentage; and those census blocks with a median household income below 120 percent of the poverty level.

Page 8

EPA is currently utilizing terms such as underserved, disadvantaged, marginalized, or overburdened so the definition of Environmental Justice communities or areas may be refined in the future. Until the process is completed, we will continue to utilize non-white and low income census data.

Before going into detail on the ADEM Environmental Justice activities, I want to provide some additional perspective on the EJ programs at EPA. EJ was identified as a centerpiece for the new federal administration; however, it is currently in the process of getting organized. Until EPA develops a new plan, ADEM is

Page 9 continuing to incorporate elements of the EPA EJ 2020 Action Agenda that was developed in 2014 and updated in 2016. The ADEM EJ program incorporates

the three main goals of the EPA EJ 2020 Action Agenda. They are: First, to deepen EJ practices to improve the health and environment of overburdened communities. This includes engaging those communities in rulemaking, permitting, and compliance issues, as well as employing innovative tools to communicate with all stakeholders. In a few moments, I'll highlight some specific and innovative actions the Department is taking in this area.

The second goal is to work with various partners to expand our positive impact within overburdened communities. This involves working with our state government and local governments, federal agencies, primarily EPA, and non-governmental

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Page 10

community organizations.

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The third goal is to demonstrate progress on significant environmental justice challenges, with particular emphasis in the areas of lead disparities, drinking water quality, air quality, and hazardous waste sites. This is the area where ADEM has, for some time, been out ahead of

While ADEM's EJ program includes the major EPA EJ 2020 Action Agenda goals, ADEM goes well beyond what EPA is doing.

When considering EPA's programs to promote fair treatment for all individuals in our state, we must also 17 be aware of the backdrop of history.

Alabama's history from many years ago included discriminatory practices. Try as we might, and despite much evidence to the contrary, those less familiar with Alabama harbor

preconceived skepticism about our

2 commitments to fair treatment and

3 proactive outreach to all Alabamians.

This creates hurdles the Department 4

5 must overcome. For example, EPA has

6 audited the Department's civil rights 7 non-discrimination program more than

8 any other non-discrimination program

in the nation. I'm pleased that each 10 audit determined the program met or

11 surpassed all legal requirements.

12 Indeed, today's report will

highlight how the Department goes 13 14 beyond simply complying with the law.

15 It will show that we are going the

16 extra mile to invest in activities to

17 achieve fair treatment for all those

18 in our state.

19 Looking at the ADEM EJ program, we 20

begin by highlighting that ADEM has dedicated the necessary human

22 resources to make our EJ efforts

successful. EJ coordinators have been

Page 12 1 designated in our Air, Land, Water,

and Permits and Services Divisions.

2 Because of the importance of this 3

4 effort, the coordinators' EJ

5 activities are overseen by the Deputy

6 Director. The Deputy Director meets

7 with the coordinators regularly to

8 manage activities and to assess

9 progress.

> Personnel assigned to coordinate EJ activities receive the specialized training necessary to be effective in their work. The ongoing training often involves EPA-sponsored programs.

> Training is an important step in all that we do. In addition to training our EJ coordinators, we formally train each of our personnel in the basic concepts of fair treatment. We begin with the requirements of the law, Title VI of the Civil Rights Act of 1964. We are all required to comply with the law so

Page 11

1 each employee is trained in the

video training program.

2 requirements of the law. We utilize

an online program developed by EPA 3

that is now housed at the Department.

A formal diversity training program was implemented in 2020. The program was developed at the University of South Alabama at our request and covers the concepts of diversity, equity, and inclusion. As with the Title VI -- as with Title VI, all personnel are required to complete the

In addition to training our assigned EJ coordinators, as noted earlier, for the last ten years the Department has provided in-house formal Environmental Justice training for every member of our staff. Two years ago, the Department reached out to EPA for input on its vision and implementation of EJ concepts. EPA

had no EJ training program. Just last

Page 13

Page 14 Page 16 1 month after two years of work, EPA and 1 wastewater state revolving fund loan 2 ADEM completed development of an EPA programs, for demonstration projects 2 3 Environmental Justice training 3 in our scrap tire, recycling and other program. Every ADEM employee was programs, and extra ranking weight in 4 4 required to complete that training 5 the various grant programs 6 program. EPA will now be using that 6 administered by the Department, to 7 program as the basis for EJ training 7 name a few. 8 throughout the nation. 8 The Department has also gone beyond 9 For a number of years, the 9 activities that can be measured 10 Department has been tracking what 10 quantitatively with a number of fair 11 environmental results have actually treatment initiatives such as: 11 12 been achieved in EJ communities. In 12 Special compliance assistance to local 13 its EJ 2020 plan, EPA is now beginning 13 governments in EJ areas, enhanced 14 also to track results. It is marketing of low interest state 14 15 worthwhile to note that the 12 EJ 15 revolving fund loans to drinking water 16 program metrics ADEM tracks have 16 and wastewater systems in 17 concentrations of between 64 and 100 17 disadvantaged communities; targeted 18 health and education initiatives in EJ percent in or abutting EJ communities. 18 19 Our EJ areas have: 64 percent of 19 areas; focused brownfield 20 scrap tire cleanups, 65 percent of the 20 redevelopment in low income and 21 recipients of special compliance 21 minority areas of Alabama; increased 22 assistance for Aboveground Storage 22 community meetings and listening 23 Tanks, 70 percent of illegal dump 23 sessions in EJ areas, especially Page 15 Page 17 1 cleanups from the Department's Solid during high interest permitting 1 Waste Fund for innocent landowners, 78 2 2 activities; direct mailings to every 3 percent of the air monitoring sites, 3 household within a given radius for 4 79 percent of the fish tissue sampling 4 high interest actions in EJ 5 stations, 79 percent of the 5 communities. 6 brownfields cleaned up, 92 percent of 6 I hope it's evident the Department 7 the non-point source pollution control 7 is dedicated to fair and proactive 8 project awards, 94 percent of the 8 outreach to all stakeholders, 9 waterbodies with Total Maximum Daily especially those in minority and 9 10 Load limits, 96 percent of our water 10 disadvantaged communities. We embrace 11 quality sampling stations, 96 percent the goals set out in EPA's EJ 2020 12 of the stream miles with Total Maximum 12 Action Plan. Specific personnel are 13 Daily Load limits, 99 percent of the 13 assigned to coordinate the 14 assessed waterbodies, and 100 percent Department's EJ activities. All our 14 15 of the diesel retrofit grants. 15 employees are formally trained in the 16 In addition to formal EJ training 16 principles of fair treatment. We use 17 and tracking actual results, the 17 metrics to measure actual results. A Department also gives extra credit 18 18 hand up and tailored outreach is 19 ranking weight to EJ areas: When 19 offered to disadvantaged communities. 20 prioritizing which unauthorized dump 20 ADEM fair treatment activities are 21 sites are to be cleaned up, in 21 systematic, focused, and 22 eligibility for partial principal 22 results-oriented. These efforts are 23 forgiveness in the drinking water and 23 not mandated by statute or regulation.

Copies of a more detailed outline of ADEM's Environmental Justice and related activities, along with a reference copy of a compilation of the bepartment's broader community community Engagement, are available on the table in the lobby for review.  The booklet is a living document subject to update and input from the bepartment's website. The reason we put the document online is to provide the public a way to hold the put the document accountable for its moving on to the accomplishments of some of our personnel, our employees are our most valuable resource, and their professional development is important to our success. Professional development is compositive. Today, I am pleased to recognize two individuals who have reached that significant milestone of having earned the designation, Professional Engineer. The PE designation requires educational achievement, rigorous educational achievement, rigorous testing, and extensive on-the-job accomparatulations. We're a stronger congratulations. We're a stronger corganization because of your work.  Thank you very much for being here. With that, I will close out my with that, I, will close out my report and answer any questions you may have. With that, I, will close out my report and answer any questions you may have.  The fill close out my report and answer any questions you may have.  No response was heard.)  DRR MILLER: Anyone with a question or a comment?  (No response was heard.)  DR. MILLER: Thank you, Director.  DRR MILLER: Anyone with a question or a comment?  (No response was heard.)  DR. MILLER: Thank you, Director.  DRR MILLER: Next on our agenda is reports from the Commission Chair, and reports from the Comission Chair, and reports from the Comission Chair, a		Meeting 0	H 00/1	13/2021 Pages 1821
2 of ADDM's Environmental Justice and 3 related activities, along with a 4 reference copy of a compilation of the 5 Department's broader community 6 outreach activities, included in a 7 booklet titled, Community Engagement, are available on the table in the 9 lobby for review. 10 The booklet is a living document 11 subject to update and input from 12 interested parties. The electronic 13 version of Community Engagement is 14 available on the home page of the 15 Department's website. The reason we 16 put the document online is to provide 17 the public a way to hold the 18 Department accountable for its 19 activities to ensure fair treatment 16 for all individuals in Alabama. 10 Moving on to the accomplishments of 11 simportant to our success. 12 Professional development is 13 important to our success. 14 Today, I am pleased to recognize 15 two individuals who have reached that 16 Significant milestone of having earned 17 the designation, Professional 18 Engineer. The PE designation requires 19 experience. 19 With that, I will close out my 19 report and answer any questions you 18 may have.  DR. MILLER: Thank you. 19 DIRECTOR LERFLEUR: Thank you, Director. 20 DIRECTOR LERFLEUR: Thank you, Director. 21 Inwould like to thank pou. 22 Inwould you please stand? 23 Inwould you please stand? 24 With that, I will close out my 18 may 14 eve. 25 DR. MILLER: Anyone with a question 26 or a comment? 27 (No response was heard.) 28 DIRECTOR LERFLEUR: Thank you, Director. 29 DIRECTOR LERFLEUR: Thank you, Director. 20 DIRECTOR LERFLEUR: Thank you, Director. 20 DIRECTOR LERFLEUR: Thank you, Director. 20 DIRECTOR LERFLEUR: Thank you, Director. 21 DIRECTOR LERFLEUR: Anyou with a question or a comment? 22 (No response was heard.) 23 DIRECTOR LERFLEUR: Thank you, Director. 24 DIRECTOR LERFLEUR: Thank you, Director Lerfleur in would ike to thank head.) 25 DIRECTOR LERFLEUR: And you of a comment? 26 Our next item 4, a petition to amend Administrative Code Rule 27 Director Lerfleur in would you with the peraturent to look over his submis	1		4	Page 20 Thank you very much for being here
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8 are available on the table in the 9 lobby for review. 10 The booklet is a living document 11 subject to update and input from 12 interested parties. The electronic 13 version of Community Engagement is 14 available on the home page of the 15 Department's website. The reason we 16 put the document online is to provide 16 put the document online is to provide 17 the public a way to hold the 18 Department accountable for its 19 activities to ensure fair treatment 19 for all individuals in Alabama. 21 Moving on to the accomplishments of 22 some of our personnel, our employees 23 are our most valuable resource, and 24 important to our success. 25 Professional development is an 26 important to our success. 27 Professional development is an 28 important to our success. 29 Professional development is an 29 important to ordividuals who have reached that significant milestone of having earned 20 the designation, Professional 21 Engineer. The PE designation requires 22 testing, and extensive on-the-job 23 testing, and extensive on-the-job 24 Kel Morrissette? There you are. 25 Mould you please stand? 26 And we have Skyler Sanderson from 27 our Air Division. I want to thank you. 28 DIRECTOR LEFLEUR: Thank you. 29 DIRECTOR LEFLEUR: Thank you. 20 (An applause was heard.) 20 DIRECTOR LEFLEUR: Thank you. 21 INECTOR LEFLEUR: Thank you. 21 INECTOR LEFLEUR: Thank you. 21 INECTOR LEFLEUR: Thank you. 22 INECTOR LEFLEUR: Thank you. 24 reports from the Commission Chair, and 25 INECTOR LEFLEUR: Thank you. 26 INECTOR LEFLEUR: Thank you. 27 DIRECTOR LEFLEUR: Thank you. 28 PR. MILLER: Next on our agenda is 29 reports from the Commission Chair, and 29 INECTOR LEFLEUR: And 20 INECTOR LEFLEUR: Thank you. 20 INECTOR LEFLEUR: And 21 Our sext ten bluftlike to thank pou. 21 INECTOR LEFLEUR: And 22 congratulations We're a stronger 29 The body in the commission Chair, and 20 INECTOR LEFLEUR: And 21 DIRECTOR LEFLEUR: And 22 congratulations. We're a stronger	1			
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22 congratulations. We're a stronger 22 awesome to see that recognition, so	21			
	22	congratulations. We're a stronger	22	-
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1	Page 22 So moving on to my thing, so I did
2	get the response. I'm guessing y'all
3	read this, right? So it's a slam
4	dunk. There's no way you can fight
5	this. There's no way y'all could vote
6	against this, I mean, to be honest
7	with you, so and that's a good job
8	on his part for writing it. But it's
9	sad at the same time, so it I do
10	what I always do when I did when I
11	have to give a response to legal
12	briefings. I go through line by line,
13	and I made notes. I practice at my
14	rebuttals, whatever. And I did the
15	same thing on this, but when I got
16	done, I realized how frustrated I was
17	at it. And for three things. One is,
18	the rules for ADEM allow for the
19	public to come and voice concerns,
20	petition for change, things like that,
21	but they're designed in such a way
22	that you can't really do anything
23	about it. So even in its own
1	

I mean, it could have been a simple, Hey, you know, the EPA binds our hands; there's nothing we can do. I mean, I could have settled for that. But we went through three pages of picking it apart, at one point saying, The things that are in this is only convenient for me. So to me, that just says that they're just not open to change. And the other part of that is, they gave a slam dunk rejection of my petition without even picking up a phone, giving me a call. Hey, I would have accepted, Look, I'm going to deny your petition. Here's why. Talk about it. Have a conversation. That's it. No conversations. So to me, that just says that, you know,

the average citizen cannot come and actually petition for change and it be taken seriously.

DR. MILLER: Mr. Endsley, you do

Page 23 response, if the ADEM is requiring the 1 individual citizen, I mean, the 3 average citizen, I mean, that has very limited resources to provide all this 4 data, it's just impossible for me to 5 obtain. I mean, I would have to have 6 7 a lot of money and a staff, a team, 8 that can do all this study, research 9 state-wide, and there's no way the 10 average citizen can actually do that. 11 And on beyond that, would you want the 12 word of an average citizen that has 13 no, you know, experience in the 14 environmental management world, or do 15 you want the person that is the expert conducting that -- those surveys, 16 17 collecting that data? So there's Rule | 17 18 1. I mean, that's the first thing I 19 came across. 20 The second thing is, you know, it seems that the ADEM is not open to 21 22 change. So -- and this -- and this is evident in this slam dunk right here.

Page 25 realize that the Department can't reject your petition? They can't call you --3 4

MR. ENDSLEY: You're right.

DR. MILLER: -- and tell you that they've rejected it.

MR. ENDSLEY: I'm not referring to the Commission itself. I'm referring to the Department.

DR. MILLER: I'm referring to the Department too. They can't call you and tell you that they rejected it.

MR. ENDSLEY: I understand that, I understand that. But what I'm getting at is, if he wanted to -- if they were open to change, they were open to a real conversation, at least they would pick up the phone. Let's talk about it. This is what we got to -- these are the rules that are binding our hands. I'm not saying I won't reject you, but these are the rules that are binding our hands, you know. This is

Page 26 1 why we can't do certain things this 1 walked it many times. And of those, I 2 way. It's because of this. 2 guarantee you, only 39 of those would 3 So that would have been helpful. 3 not have been affected by those 4 It would have been understanding. So changes. 39 of 47 would not have been 5 that's all I'm getting at. 5 affected by my changes. I don't The only other thing I got on here 6 6 think -- again, I don't have any 7 was in the conclusion, it says, My 7 evidence. I cannot prove this, but I 8 one-size-fits-all approach would be a 8 do not think making any changes is 9 burden. 9 going to make that huge of an impact 10 Currently, what we have is a 10 on our environment. He said it's 11 one-size-fits-all approach. It was my going to be a financial impact. 11 12 submission that was going to open it 12 I said -- I suggested we had burn 13 up for options, not just the one 13 permits in winter months when the 14 500-foot rule; you're done. I've 14 particulates are low. Burn permits 15 walked off my land a dozen different 15 can be a fee. It's a trade-off. You 16 times, and from my neighbor's house, 16 can burn within 500 feet for a fee. 17 the furthest I can get is 400 feet. 17 There's your -- you know, there's your 18 Burning a pile of leaves at 400 feet financial burden relieved from that. 18 19 with the wind blowing the opposite 19 So, I mean, again, I mean, I've read 20 direction is not the same as burning a 20 this. There are rules, but he has the 21 pile of leaves by a house that's 15 21 right to say that EPA said, We've got 22 feet beside me in a garden. That's 22 to do this; we've got to do that. His 23 not the same. Even the fire 23 hands are tied, I guess. Y'all cannot Page 29 Page 27 1 department comes out there, and looked vote against this. All I'm saying is, 1 2 and says, This is ridiculous. 2 the way it's being done is not right, 3 I know y'all have to worry about and that's all I've got to say. So I 3 4 the particulates in the air. I get 4 thank y'all very much for at least that. I'm not -- I'm not dismissing attempting to listen to me. Y'all 5 5 6 any of that. I promise. All I'm 6 have a great day. 7 7 saying is the one-size-fits-all (Laughter was heard.) approach is what we currently have, 8 MR. ENDSLEY: Oh, I'm sorry. 8 9 9 and that is what I'm just trying to Ouestions? 10 get changed, is to have that opened 10 MR. WALTERS: We didn't just 11 up, and to have more options for that. 11 attempt to listen to you. We listened 12 You know, in the past four months, 12 to you. 13 I've now seen 47 burns -- open burns. 13 MR. ENDSLEY: Well, I appreciate 14 I'm willing to bet that none of them 14 that very much. I'm not a public 15 still have ever heard of this rule, 15 speaker, but I appreciate it. because if they had, and they've 16 DR. MILLER: Well, could we have a 16 17 gotten a citation like I've gotten, 17 response from the Department, please? 18 they wouldn't be even attempting to 18 MR. SIBLEY: Sure. Good morning, 19 burn again, because they don't want to 19 y'all. My name is Shawn Sibley. I'm risk getting a \$25,000 fine. That's 20 the general counsel here at ADEM. We 20 47 of them. And then my changes. I 21 21 did give you a real detailed response, you know, the recommendation of the 22 even looked. I'm very familiar with 22 23 how far 500 feet is now, because I've 23 Director, and we understand it is your

			13/2021 Fages 3033
1	Page 30 decision. It's not ours. And we	1	(No response was heard.)
2	understand Mr. Endsley's position. We	2	DR. MILLER: Thank you.
3	understand the dilemma he's in. But	3	MR. SIBLEY: Thank you.
4	as a state agency that has state-wide,	4	DR. MILLER: At this point, I
5	you know, authorization to administer	5	suppose the next item would be to
6	the federal Clean Air Act, we have to	6	accept a recommendation or a motion as
7	look at the big picture. And the big	7	to whether to accept or reject this
8	picture is, is this would as	8	petition. Hello?
9	proposed, would adversely affect air	9	MR. WALTERS: I move to deny the
10	pollution. In other words, it would	10	petition for rulemaking based on the
11	increase it if everybody in the state	11	views of the Director opposing the
12	was able to have, you know, open burns	12	petition, and that granting the
13	that were, you know, only 100 feet as	13	petition would negatively impact the
14	opposed now, Mr. Endsley did	14	Department's regulatory scheme.
15	propose some alternatives, but our	15	DR. MILLER: All right. We have a
16	position is, is EPA would not approve	16	motion. Is there a second?
17	those. As this rule stands now, it is	17	MR. MASINGILL: Second.
18	approved in the state implementation	18	DR. MILLER: I have a second. Any
19	plan. EPA would consider this as	19	further discussion?
20	backsliding, and it would jeopardize	20	MR. WALTERS: I guess the only
21	our approval, our authorization to	21	thing I would say is I empathize with
22	administer the federal Clean Air Act.	22	the position of Mr. Endsley. I mean,
23	We completely identify with	23	he brought up some practical points,
1	Page 31 Mr. Endsley. We understand his	1	Page 33 but the backsliding issue is kind of
2	dilemma, the size of his lot. Believe	2	like the hugest thing that bothered
3	me, we've looked at that. And you	3	me, and as a person who has an excess
4	know, just so you know, we have to go	4	of 37 years in the environmental
5	element by element when we give you a	5	that's what I did for a living I
6	recommendation, and we did that. And	6	can appreciate the position of the
7	just so you know, the Air Division did	7	Department, and almost the dilemma
8	respond to Mr. Endsley when he first	8	that they were in in that respect,
9	reached out, and we didn't go line by	9	so
10	line, but we did mention that this	10	But, you know, it's hard to make a
11	would impact federal authorization, so	11	one-size-fits-all situation for sure.
12	he knew that on the front end. And	12	But I applaud your your attempt,
13	so if I mean, I understand we	13	you know. It's not easy, and I
14	didn't call. I did send him a	14	applaud you for trying to make a
15	courtesy copy of what the Director's	15	difference, and recognize the
16	views were, but early on, he knew that	16	potential difficulty that it that's
17	there was, you know, some issues with	17	involved.
18	our authorization. And I would be	18	DR. MILLER: I echo that. I agree
19	glad to entertain any questions that	19	with you. I mean, I understand your
20	y'all have. Again, we understand the	20	frustration, but I feel like our hands
21	dilemma that he's in, so	21	are sort of tied at this point.
22	DR. MILLER: Anybody with	22	Anyway, let's vote on the motion and
23	questions, comments?	23	the second. All in favor of the
L			

Page 34 Page 36 1 motion, please signify by raising your 1 one Commission member needed to pick 2 right hands. All opposed, same sign. 2 up the phone or talk to somebody else, 3 We have a unanimous vote. 3 they could have a conversation, you 4 As far as other business, I have 4 know, without it constituting a here a copy, and I think that all the 5 5 quorum. Commissioners have received, and the 6 6 DR. MILLER: Is a quorum 66 7 comments regarding Director LeFleur's 7 percent? Is that what it is? 8 evaluation, which will be brought up 8 MR. TAMBLING: It's -- it's a 9 at our October meeting. With regard 9 majority, I believe, of --10 to that, talking with Commissioner 10 DR. MILLER: Well, suppose --Walters, it's sort of a problem with suppose we made the Chairman of the 11 11 12 the personnel committee in that they 12 Commission a member of both the 13 have three members -- and, Robert, I 13 committees? That way, could two 14 want you to comment on this -- they Commissioners talk to each other about 14 15 have three members, so they really 15 the workings of the committee without 16 can't talk to each other, because that 16 breaking the law? 17 represents a quorum. So it's sort of 17 MR. TAMBLING: That would be -- how a catch-22. They can't discuss what's many members on the committee? 18 18 happening with their work without DR. MILLER: That would be the 19 19 20 coming up here and having a formalized 20 three we have now, plus the Chairman, 21 meeting with minutes, et cetera. Do 21 which would be four. So if it's two 22 you have any ideas about that? 22 we're talking out of four, would that be --23 MR. TAMBLING: Dr. Miller, you're 23 Page 37 Page 35 1 correct. If the committee -- if 1 MR. TAMBLING: Yeah, let me -- I 2 either one of the committee members 2 would just request some time to look were to speak with each other, that 3 into that, and report back to you. 3 would -- and conduct any business 4 4 DR. MILLER: Okay. behind the scenes, that would -- that 5 5 MR. TAMBLING: I don't want to give would constitute a quorum and probably 6 you an answer right now that would not 6 7 be the correct answer. 7 a violation of the Open Meetings laws, so there really is no recourse other 8 DR. MILLER: Yeah. 8 9 9 than for them to convene a meeting, MR. TAMBLING: My recommendation you know, publicly, that is properly would be for purposes of the October 10 10 11 noticed, so that they can conduct 11 meeting just to move forward as it is, business. The only other option would 12 and then if you wanted to make any 12 13 be for, I guess, the Commission to act 13 changes in the future, to institute and abolish the personnel committee those later. 14 14 15 and just handle all personnel matters 15 DR. MILLER: Well, I think that's 16 itself. 16 fine. I just don't want the committee 17 DR. MILLER: Well, I think we 17 to be hamstrung, or scared they're 18 probably need sort of a subcommittee 18 going to be, you know, handcuffed or 19 approach. What about adding more 19 whatever. 20 Commissioners to the -- to the 20 MR. TAMBLING: I understand 21 Committee? 21 completely. 22 MR. TAMBLING: That would be an 22 DR. MILLER: Okay. Well, I just 23 think it's a problem that we need to 23 option. And that way, you know, if

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	Witching of		rages 3040
1	Page 38 try to resolve one way or the other.	1	Page 40 REPORTER'S CERTIFICATE
2	MR. TAMBLING: I understand.	2	STATE OF ALABAMA
3	DR. MILLER: All right. We'll look	3	MONTGOMERY COUNTY
4	forward to your recommendation.	4	I, Patrick Miller, Alabama Certified
5	MR. TAMBLING: Okay. I'll be glad to	5	Court Reporter No. 631, and Commissioner for the
6		6	State of Alabama at Large, hereby certify that on
7	get back to you.	7	Friday, August 13th, 2021, I reported the
	DR. MILLER: Okay. Good, good. All	8	PROCEEDINGS in the matter of the foregoing cause,
8	right. Our next meeting is scheduled	9	and that the pages herein contain a true and
9	for October the 8th. Is there any known	10	accurate transcription of said proceedings.  I further certify that I am neither kin
10	conflict with that date at this point?	12	nor of counsel to the parties to said cause, nor in
11	(No response was heard.)	13	any manner interested in the results thereof.
12	DR. MILLER: All right. We have our	14	This 30th day of August, 2021.
13	public comment period, and we have no	15	
14	one registered; is that	16	
15	MS. THOMAS: That's correct.	17	Patrick Miller
16	DR. MILLER: to speak. So I will	18	· water in fine
17	entertain a motion to adjourn.		PATRICK MILLER, ACCR-631
18	MR. BROWN: So moved.	19	Commissioner for the
19	MR. MASINGILL: Second.		State of Alabama at Large
20	DR. MILLER: All in favor, raise your	20	MY LICENSE EXPIRES: 9/30/21
21	right hand. Okay. Thank you-all for		MY COMMISSION EXPIRES: 2/08/23
22	coming.	21	
23	* * * * * * *	22	
		23	
	Page 39		
1	/M		
2	(Whereupon, the meeting		
3	concluded at 11:40 a.m.)		
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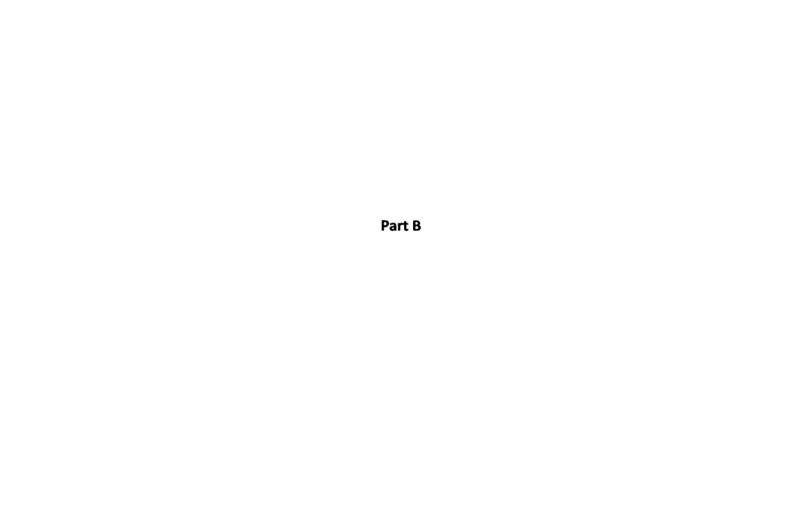
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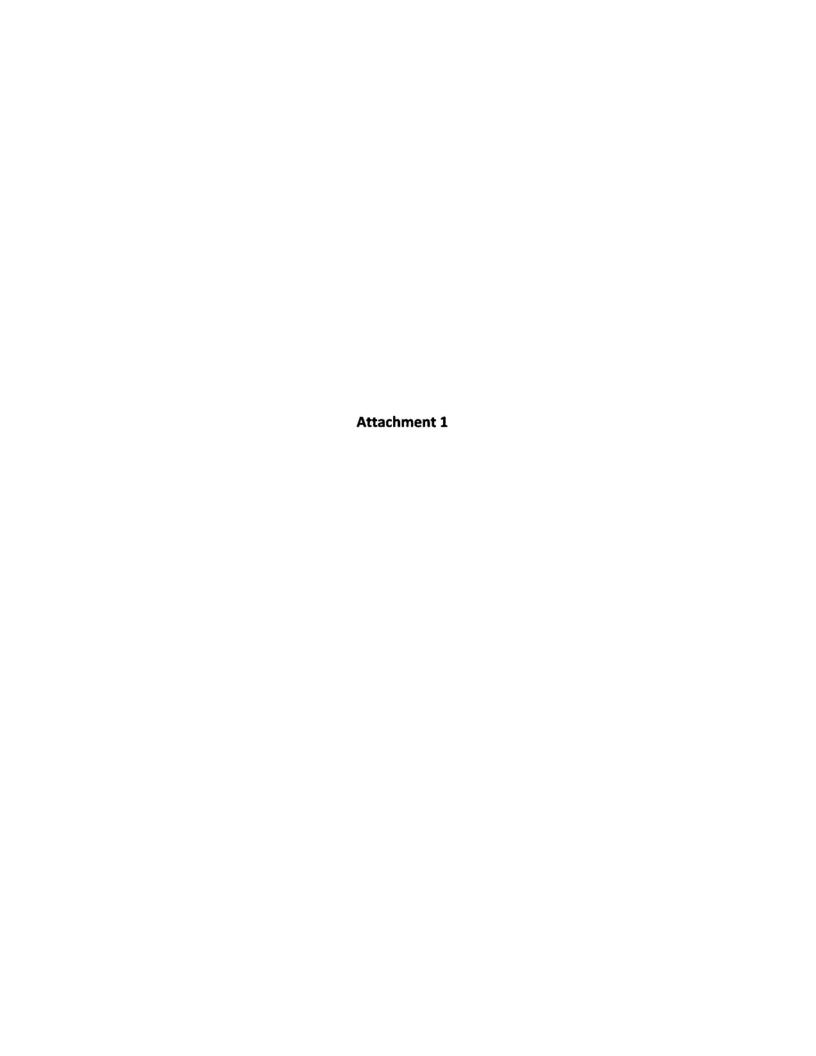


### **Attachment Index**

Attachment 1 Agenda

Attachment 2 Director's Slides (Agenda Item 3)

Attachment 3 Order adopting motion to deny the Petition for Rulemaking based on the views of the Director opposing the petition and that granting the petition would negatively impact the Department's regulatory scheme



### AGENDA\*

### **MEETING OF THE**

## ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: August 13, 2021 TIME: 11:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building

Alabama Room (Main Conference Room)

## 1400 Coliseum Boulevard

### Montgomery, Alabama 36110-2400

	<u>ITEM</u>	PAGE
1.	Consideration of minutes of meeting held on June 11, 2021**	2
2.	Report from the ADEM Director	2
3.	Report from the Commission Chair	2
4.	Petition to Amend ADEM Admin. Code Rule 335-3-301, <u>Open Burning</u> , Section 2(b), Subsection 2  EMC Rulemaking Petition 21-01  Petitioner – James R. Endsley, Moody, Alabama	2
5.	Other business	2
6.	Future business session	2
PUBLIC	C COMMENT PERIOD	2
Brief st	tatements by members of the public registered to speak	2

<sup>\*</sup> The Agenda for this meeting will be available on the ADEM website, <a href="www.adem.alabama.gov">www.adem.alabama.gov</a>, under Environmental Management Commission

<sup>\*\*</sup> The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission

- Page 2
- CONSIDERATION OF MINUTES OF MEETING HELD ON JUNE 11, 2021
- 2. REPORT FROM THE ADEM DIRECTOR
- REPORT FROM THE COMMISSION CHAIR
- 4. CONSIDERATION OF PETITION TO AMEND ADEM ADMIN. CODE RULE 335-3-3-.01, OPEN BURNING, SECTION 2(b), SUBSECTION 2, EMC RULEMAKING PETITION 21-01, PETITIONER JAMES R. ENDSLEY, MOODY, ALABAMA

The Commission will consider the Petition to Amend ADEM Admin. Code Rule 335-3-3-.01, Open Burning, Section 2(b), Subsection 2. The Petition requests that the Commission amend this rule as follows:

- (1) Reduce 500 feet to 100 feet. (This would still eliminate homes in most neighborhoods but allow for dwellings on 1+ acres to burn.) Alternative: Reduce 500 feet to 100 feet for burn piles less than 6 feet in diameter, and 200 feet for burn piles greater than 6 feet in diameter.
- (2) Allow for permits to burn yard debris no more than twice per year per household during cold weather months in low pollution areas.
- OTHER BUSINESS
- 6. FUTURE BUSINESS SESSION

### **PUBLIC COMMENT PERIOD**

### BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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

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



## **History of "Fair Treatment"**

- 1964 Civil Rights Act Title VI law
- 1968 Diversity, Equity, Inclusion initiatives
- 1970s CAA, CWA, SDWA, RCRA laws
- 1994 Presidential Environmental Justice EO

## **Alabama Department Of Environmental Management**

## **Definition of Environmental Justice Areas**

Census Blocks with >36% non-white

or

Census Blocks with median income below 120% of poverty level

## **EPA EJ 2020 Action Agenda Goals**

- Deepen EJ Practices
- · Work with Partners
- Demonstrate Progress

# Alabama Department Of Environmental Management

## **Designated ADEM Personnel to Coordinate EJ Activities**

- Department-wide EJ coordinators
- · EJ activities overseen by Deputy Director
- · Meet with Deputy Director at least twice per month
- Specialized training (e.g. EPA conferences)

## **Training ADEM Personnel**

- Title VI of the Civil Rights Act of 1964
- Diversity, Equity, Inclusion
- **Environmental Justice** 
  - In-house
  - **EPA**

# Alabama Department Of Environmental Management

## **Tracking Fair Treatment Results**

- 64% of illegal scrap tire cleanups
- 65% of special compliance assistance AST
- 70% of illegal dump cleanups from SWF
- 78% of air monitoring sites
- 79% of fish tissue sampling stations
- 79% of brownfields cleaned up

## **Tracking Fair Treatment Results**

- · 92% of non-point source project awards
- · 94% of waterbodies with TMDLs
- 96% of water quality sampling stations
- · 96% of stream miles with TMDLs
- · 99% of assessed waterbodies
- 100% of diesel retrofit grants

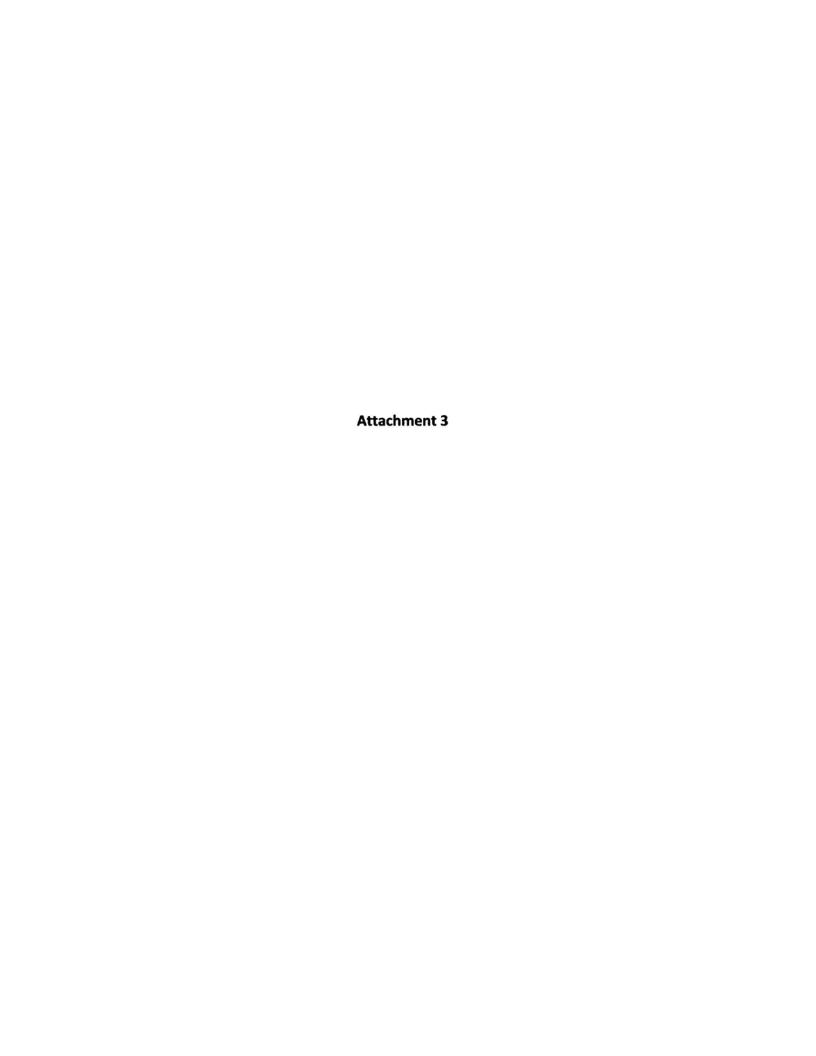
# Alabama Department Of Environmental Management

## **Increased Ranking Weight**

- Cleanup priorities
- · State Revolving Fund loan forgiveness
- Demonstration projects
- Grant programs

## **Additional ADEM EJ Initiatives**

- Local Government compliance assistance
- · Low interest Water & Sewer loans
- · Health and Education initiatives
- Brownfield redevelopment assistance
- · Increased community meetings
- · Direct mail to each household



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

In the matter of:	)	
	)	
Petition to Amend ADEM Admin. Code Rule	)	EMC Rulemaking Petition 21-01
335-3-301, Open Burning, Section 2(b),	)	
Subsection 2	)	
Petitioner – James R. Endsley, Moody, Alabama	)	

### MOTION

Move to deny the Petition for Rulemaking based on the views of the Director opposing the petition and that granting the petition would negatively impact the Department's regulatory scheme

### ORDER

This cause coming before the Environmental Management Commission pursuant to the above Petition for Rulemaking and having considered the petition and arguments supporting the petition and the views of the Director of the Alabama Department of Environmental Management opposing the petition and arguments supporting said views, it is hereby ORDERED:

- 1. That having given due consideration to the petition pursuant to ADEM Admin. Code R. 335-2-2-.05;
  - That the above motion is hereby adopted; and
- 3. That this action has been taken and this order issued by the Commission effective August 13, 2021; and
- 4. That a copy of this order shall be served upon the Petitioner and the Department either personally or by certified mail.

## Environmental Management Commission Order Page 2

ISSUED this 13th day of August 2021.

APPROVED: Commissioner	Many Dentto
Comprissioner Comprissioner	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 13th day of August 2021.

Samuel L. Miller, Chair

Environmental Management Commission Certified this 13th day of August 2021