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DRAFT

Minutes

Environmental Management Commission Meeting

Alabama Department of Environmental Management Building

1400 Coliseum Boulevard

Montgomery, Alabama 36110-2400

August 19, 2016

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Convened: 11:00 a.m.
Adjourned: 11:50 a.m.

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Part A

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ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

August 19, 2016
11:00 a.m.

* * * * * * *

Taken by: Bridgette W. Mitchell,
ACCR 231

* * * * * * *

APPEARANCES

COMMISSION MEMBERS PRESENT:
W. Scott Phillips, Vice Chair
Samuel L. Miller, M.D.
Mary J. Merritt
Terry D. Richardson, Ph.D.
Elliott Craig Martin, D.V.M.

COMMISSION MEMBERS NOT PRESENT:
H. Lanier Brown, II, Esquire, Chair
James E. Laier, Ph.D., P.E.

ALSO PRESENT:
Robert Tambling, EMC Legal Counsel
Lance R. LeFleur, ADEM Director
Debi Thomas, EMC Executive Assistant

VICE CHAIRMAN PHILLIPS: Good morning. We will call the Alabama Environmental Management Commission meeting to order. I will acknowledge we have a quorum.

We'll consider the minutes of our Commission meeting held on June 17, 2016. I'll entertain a motion.

DR. MARTIN: So move to approve.

MS. MERRITT: Second.

VICE CHAIRMAN PHILLIPS: Have a motion to adopt the minutes of June 17. Any further discussion?

(No response.)

VICE CHAIRMAN PHILLIPS: No further discussion. All in favor of the motion signify with the sign "aye."

(Unanimous.)

VICE CHAIRMAN PHILLIPS: All opposed?

(No response.)

VICE CHAIRMAN PHILLIPS: Motion carries.

Agenda Item No. 2, Report from the ADEM Director.

MR. LeFLEUR: Good morning, Commissioners, and to others present for the final meeting of the Commission for fiscal year 2016. Today's report will update you on some recent activities dealing with the Department's funding shortfall, which will in part be tied to some new innovative activities, highlight a program to help achieve a higher level of compliance in an industry sector chronically struggling with compliance, and update you on the drinking water health advisory for perfluorinated compounds announced at the last Commission meeting.

Previous reports have addressed ongoing efforts to deal with the funding challenges the Department has been facing in recent years. It has been reported that the FY 2017 General Fund appropriation did not cover the badly

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needed replacement of physical facilities in Mobile for the field office and coastal program; the costs for the emergency response program; the costs for the State-mandated financial reporting system known as STAARS; the costs to comply with new EPA-mandated electronic reporting requirements; or sufficient funding for the Concentrated Animal Feeding Operations, or CAFO program. The Department is using several different approaches to find the needed resources that were not provided by the General Fund.

The best remaining hope for funding of the replacement physical facilities in Mobile is the portion of the settlement money coming to the state from the 2010 BP oil spill that is allocated by the federal RESTORE Act to environmental, infrastructure, and economic development projects in the Mobile and Baldwin Counties area. The

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State-appointed council administering the funds still has not set a date for the awards process to begin, so we are currently on hold.

The Department is continuing to divert costs of its inadequately funded emergency response program to other entities. The Department submitted proposed changes to the State's master emergency operations plan that will require local communities rather than ADEM to be the primary responders to oil and hazardous materials emergencies. When local communities exhaust their emergency response resources, they would then contact the State Emergency Management Agency or ADEM for possible additional resources. Clearly this shifting of responsibilities will place greater financial obligations on local communities that experience oil and hazardous waste emergencies.

The Department has been unable to

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either shift the cost or locate an alternate source of funding to cover the approximately $100,000 annual additional cost of the troubled State-mandated STAARS financial reporting system. As with other inadequately-funded programs, the Department will seek to cover costs through innovative efficiency measures being attempted in other areas.

In the past year, EPA has adopted sweeping changes to its electronic reporting rules. We applaud EPA in its efforts since this will greatly improve efficiency for all concerned. They are late to the party and have set some unrealistic timelines to catch up. The Department is far ahead of both EPA and the rest of the nation in implementing electronic reporting. However, while our necessarily increased investment will be significantly less than other states since we began investing years ago, it will nevertheless require additional

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Departmental funding. The funding was requested in the FY 2017 General Fund budget, but that request was not honored. Rather than lose the efficiency momentum gained by being a leader in this area, where possible, we will move funds from other programs to make this one of the last programs to be cut.

The Department continues to become more efficient through innovation as a means to better utilize available resources. Electronic applications have been crucial to increased operating efficiency. Electronic applications have required the investment of scarce resources, but those investments have paid dividends of increased efficiency that then free up resources for other uses.

Two recent innovative efforts involving electronic applications that seek to improve efficiency and allow for possible diversion of funds for other

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purposes are nearing completion. First is a direct-entry inspections program called nSPECT, which automatically links field inspection results to our electronic reporting systems; and second is our Laboratory Information Management System, or LIMS, which similarly links our laboratory equipment directly to the Department's numerous databases. Origins for both of these efforts go back several years.

The nSPECT system is scheduled to be fully deployed for Field Operations Division Construction Storm Water inspections and NPDES Compliance Evaluation and Sampling inspections in all offices by October 1, 2016, which is the start of the fiscal year 2017. As noted previously, the major driver in this effort is to increase efficiency, which helps cope with tighter budgets. Preliminary productivity increases are significantly exceeding the originally

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anticipated 20 percent. This innovation not only allows us to do more inspections with less personnel, it also reduces the opportunity for human errors that occur when multiple entries are required. An additional bonus is that the public at large benefits from the improved transparency of having important information in the publicly-accessible databases, such as eFile, available more quickly.

The Laboratory Information Management System became operational in 2015 and is meeting expectations even while engaging in a continuous optimization process. The Department's laboratories use about two dozen pieces of analytical equipment which utilize several different reporting platforms. In the past, this required information from the various types of laboratory equipment to be manually transferred to end-use databases for plotting,

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statistical analysis, reporting, and the like. The LIMS system converts real-time data into consistent usable formats, eliminating the need for multiple human entries. As is the case with the nSPECT system, personnel become more productive, opportunities for errors are reduced, and the information is available to all end users more rapidly.

While neither of these innovations is groundbreaking, the Department is among the earliest of the states deploying them.

Regarding the Concentrated Animal Feeding Operations, or CAFO, program, the $400,000 FY 2017 General Fund appropriation, which is the only current source of CAFO funding, does not cover the cost of the program. The Department is continuing to work with CAFO representatives and others to explore ways to deal with the shortfall. Two recent activities have been to first meet

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with representatives of the Georgia CAFO program, which is the only poultry producer larger than Alabama, to see what program efficiencies might be uncovered; and, second, meetings with members of the Alabama House Legislative Rural Caucus as a means to educate the Legislature on the benefits of properly funding the ADEM CAFO program.

The meeting with representatives from Georgia revealed significant differences in funding sources, state oversight, local home rule involvement, as well as the level of EPA presence. It was apparent that having the CAFO program centralized, as it is in Alabama at ADEM, provides advantages in reduced total cost, flexibility for agriculture interests, and the prevention of excessive EPA involvement.

The initial meeting with the Rural Caucus leadership was the idea of, and arranged by, Commissioner Dr. Richardson

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and was prompted by his ongoing efforts to encourage the State to provide funding in whatever form to ADEM. The Rural Caucus is a bipartisan group of more than 40 House members. Its primary function is to educate the Legislature on issues important to rural areas in the state. The meeting provided CAFO interests an opportunity to interact with legislators and others on the focused issue of funding the ADEM CAFO program without the pressures present during a Legislative session.

A follow-up meeting to which all caucus members were invited took place earlier this week. The caucus will take the information presented and seek to help the Legislature make informed budget decisions affecting CAFOs during the next regular session of the Legislature. ADEM continues to consider various options if adequate General Fund appropriations are not forthcoming, including scaling back

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the program, transferring some of the program elements to other organizations, and developing a formula-based fee structure.

I would remind the Commission that despite past and current tight budgets, which have been the lowest in the nation, the Department has not only met all federal and state statutory and regulatory obligations but, as you have repeatedly seen in the EPA-generated comparative analyses, has performed at a level among the highest in the nation, and this is due in no small part to the exceptional efforts of Departmental personnel at all levels.

Finally, a special session of the Legislature to address the shortfall in Medicaid among other issues began on August 15. As long as the Legislature in is in session, there is a risk that the Department's current meager General Fund budget may be adversely impacted.

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Over the years and throughout the nation, one group of environmental permit holders has consistently been among the biggest challenges in achieving compliance with permit conditions. That group is municipal wastewater treatment plants, in particular wastewater treatment plants in small communities. At the June Commission meeting, much of my report focused on drinking water. This portion of today's report will focus on municipal wastewater.

Drinking water and wastewater treatment are two of the most important public services offered by municipalities. There are many reasons why municipal wastewater facilities have difficulty meeting environmental permit conditions. Contrasting drinking water and wastewater services can highlight some of the reasons why wastewater systems present greater compliance challenges.

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First, many of the municipal wastewater facilities built in the 1970s, when water-quality problems drove federal regulation to improve water quality -- excuse me -- were built in the 1970s. Along with the legislation came federal funding to build or upgrade wastewater infrastructure and treatment plants. The infrastructure and, in many cases, the treatment systems built in the 1970s and 1980s are approaching the end of both their physical and technological design lives. Compared to drinking water systems, wastewater treatment systems generally require more treatment steps, more costly collection system investments, as opposed to drinking water distribution systems, larger equipment investments, higher maintenance costs, greater energy usage, and other costly operational parameters.

Expensive technology upgrades for wastewater facilities are being driven by

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increasingly tighter discharge limits, particularly for compounds containing phosphorous and nitrogen, which are pervasive nutrients that can degrade water quality. Conversely, drinking water systems must monitor for more contaminants, but the contaminants are either rarely present or rarely present in concentrations that require additional treatment equipment or operations.

Unlike drinking water standards, which are consistent for all systems, many wastewater treatment facilities must meet tighter standards because they discharge to impaired water bodies or water bodies with limited assimilative capacity. When discharges go to an impaired or limited assimilative capacity water body, more contaminants must be removed at the plant which requires additional investments in treatment equipment and operations.

In the 1970s, funding to meet newly-

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created water-quality standards was readily available. Maintenance and replacement costs for the aging systems have increased; however, prior funding sources are no longer readily available. Since those early days, the budgetary challenges experienced by many communities have resulted in deferred maintenance and the inability to upgrade technology to meet increasingly tighter discharge limits for municipal wastewater facilities. In contrast to drinking water facilities, which are typically net revenue generators, wastewater treatment facilities, because of the higher investment and operating and maintenance costs, are typically net revenue users. Municipal leaders are faced with difficult decisions about how to allocate scarce financial resources, and often the decision is made to defer equipment replacement, defer maintenance, defer technology upgrades, and cut operating

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costs to the bone for their wastewater treatment plants. Decisions to defer maintenance, replacement, and upgrades and to excessively cut operating budgets eventually lead to higher levels of noncompliance.

Upset conditions at drinking water facilities can have an immediate direct health impact on all users while upset conditions at wastewater treatment facilities are less likely to immediately or directly impact the health of large populations. As a result, wastewater facilities are often treated as a lower-priority concern in communities with limited financial resources. Upset conditions, particularly weather-related upsets, occur more frequently at wastewater facilities than at many other types of facilities, which contributes to repeated events of noncompliance at wastewater facilities.

While stopping operations of a

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drinking water plant for permit violations is a serious situation, there are alternatives available, including interconnecting with an alternative drinking water source, issuing a boil-water notice, or temporarily supplying bottled water. As a last resort, the drinking water can be shut off. While it is a great inconvenience to customers and -- no direct adverse health or environmental impact results from stopping the availability of drinking water by shutting down a drinking water plant.

By contrast, stopping operations of a wastewater treatment plant for permit violations is a much more serious event. Alternative interconnected treatment options are rarely available. Inflows to the collection system will continue regardless of whether the facility is operating and sanitary system overflows, back-ups into homes, or untreated

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discharges to receiving water bodies will necessarily occur. These are far worse health and environmental options than temporarily discharging inadequately-treated wastewater. For these reasons, unlike any other type of facility, it is virtually impossible to stop a wastewater treatment plant's operations regardless of environmental regulatory violations. Shutting down a wastewater treatment plant is rarely a viable option.

As you can see, there are a number of financial and operational factors contributing to the increased occurrence of failure to meet environmental permit conditions by municipal wastewater treatment facilities. There are also limited options for dealing with those failures to meet permit conditions when they do occur.

The Department has implemented a program to help address this difficult set of circumstances that contribute to

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noncompliance by wastewater treatment systems. It is an energy assessment and operations -- optimization program, sometimes referred to as an audit, of wastewater treatment facilities. Wastewater treatment facilities are very large users of energy to run pumps, aerators, sludge-handling equipment, and for other plant operations. The assessment and optimization, or audit, program is voluntary and does not subject the facility to receiving the assistant -- the assistance to any increased risk of noncompliance discovery. It is not enforcement-driven. The facility is not obligated to implement any of the recommendations made as a result of the audit. For those facilities electing to make changes, followup with troubleshooting and tracking results is provided. There is no financial cost to the facility for the audit or the followup.

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The program offers financial benefits to the individual water system, and in turn to its customers. The Department's rationale for offering this service at no cost to the wastewater treatment facilities is to help address the single biggest contributor to noncompliance in this sector, which is the lack of financial resources. The more efficiently wastewater facilities operate, the further they can stretch their limited resources.

This program has been underway for three years and is headed up by Jim Grassiano, in the Permits and Services Division.

Jim, would you raise your hand, stand up. Jim has been doing a great job with this.

While the program has not solved anywhere near all of the problems facing the wastewater sector, the results to date are encouraging, especially when one

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considers that the improvements have financial benefits that continue to grow because energy costs savings go on year after year.

This slide shows the location of the 28 wastewater facilities that have participated in the assessment and optimization program during the last three years. The next few slides will zero in on the results achieved by five of the 28 to give you some sense of the results that can be achieved.

The five systems include ones in the northern part, central, and southern parts of the state. And these are systems that have implemented most, if not all, the recommendations made. The implementation rate for systems varies from full implementation to those that have just begun implementation to those that have not yet decided to utilize the recommendations at all. Remember, the program is totally voluntary.

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As you can see, some systems have more improvement opportunities than others, which is reflected in the monthly energy savings figures. The reduction in energy usage per million gallons of treated wastewater takes out the effects of inflow variations. And, finally, we see the monthly cost savings. This is the funding that can be repurposed for system upgrades, deferred maintenance, and other activities that promote improved compliance with permit conditions.

Like many of our recent initiatives, this program has multiple benefits. In this case, there are direct and indirect water-quality and air-quality benefits in addition to the cost savings that make the facilities better able to afford what is needed to comply with permit conditions.

Environmental benefits take the form of reduced discharges to water and air.

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This slide shows those same five facilities and the river basins into which each discharges treated wastewater.

Wastewater treatment facilities receive wastewater with high concentrations of the nutrient nitrogen. Releases of treated wastewater containing excessive levels of nutrients can impair the receiving water body and can cause problems such as oxygen-depleting algal blooms. A component of the energy audit involves the cycling of aerator operations in a way that allows a greater portion of the total nitrogen in the wastewater to be released as harmless elemental nitrogen into the atmosphere.

As you can see, for just these five facilities, this results in reducing the amount of nitrogen released to surface waters in Alabama by more than 100 tons per year.

We hear a lot about greenhouse gases these days. The reduction in energy

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usage results in a reduction in greenhouse gas generation at the power plant where the energy is produced. As you can see, the energy savings from the assessment and optimization program at the five facilities provides an indirect environmental benefit of reducing the generation of greenhouse gas by more than 2100 tons per year.

Periodically, my reports to you highlight the partnerships that are often key components of Departmental programs. This assessment and optimization program is a good example of these partnerships at work.

Obviously, since this is a voluntary program, the wastewater utilities themselves are the most important partners. The utilities are accountable to their oversight officials, who are indirectly partners, and the Department assists the utilities in communicating the need for and the results of the

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program to the oversight officials. Likewise, rate payers are indirect partners and communication with them helps build public confidence and makes them more aware of the need for financial resources.

From the very beginning, EPA has been in lock step as a partner with the Department. Over time, new partners have been added. At the federal level, the Department of Energy, as might be expected, has recognized the potential benefits and is becoming an active supporter. Within the state of Alabama, the Alabama Department of Economic and Community Affairs, or ADECA, will be partnering on future assessments working under a contract with the Department of Energy.

And we have someone here, Mary Blackmon. Would you please be recognized? She is with ADECA and one of our new partners coming on board. Thank

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you.
This will allow us to increase the number of facilities assessed. Partnerships also extend beyond state boundaries, which is unusual. The Tennessee Department of Environment & Conservation and the University of Memphis will be partners in 2016.
To bring things back into perspective, the objective of this and other programs ultimately is obtaining compliance with environmental permit conditions. Often, environmental benefits above and beyond meeting permit conditions are also realized.
This program fits well with the Department's strategy to achieve compliance. Inspections, technical assistance, and penalties each play a role in promoting compliance. Our strategy is driven by research that has shown that inspections and technical assistance are far and away the most

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effective tools. The energy assessment and optimization program has elements of both nonregulatory inspections and technical assistance.
As you may recall from an earlier report, on May 19, 2016, EPA issued a final nationwide health advisory for the perfluorinated compounds PFOS and PFOA. These compounds are manmade chemicals that may be found in nonstick cookware, carpet-protection products, firefighting foams, and waterproof clothing.
The health advisory applies to those who may be exposed to these chemicals in low concentrations in their drinking water continuously over a lifetime with the exception of pregnant women and nursing children who are potentially affected during a shorter exposure period. Several drinking water systems in northwest and northeast Alabama potentially have concentrations of compounds that would fall within the

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health advisory guideline.
Following the issuance of the EPA health advisory, one water system serving portions of Morgan and Lawrence Counties unilaterally recommended that its customers not drink or cook with the water from the system. As might be expected, this created panic among its customers and was widely reported in news media. After learning of the water system's unanticipated recommendation, ADEM worked with the system to restore public confidence in the water supply by implementing a water-blending arrangement with a neighboring water system.
The most recent four-sample averages, which are as of mid-August, from potentially impacted drinking water systems show that none of the systems have concentrations of PFOS or PFOA that exceed the levels referenced in the EPA health advisory.
ADEM is continuing to monitor the

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levels of PFOS and PFOA in drinking water and is working closely with the Alabama Department of Public Health and the affected local drinking water systems to address any health recommendations from the Department of Health.
The final item in today's report is to recognize an accomplishment by one of our employees. You have heard repeatedly that if we are to be a high-performing organization in the future, we must develop our employees. In fact, one of the Department's operating plan objectives is to promote a high-performing work environment in part by encouraging the ongoing development of our employees.
Achieving the formal designation of professional geologist requires extensive education, on-the-job experience, and rigorous testing. It's my pleasure to recognize John Dean in our Land Division who has recently achieved a significant

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milestone in his professional life by earning his professional geologist designation.

(Applause.)

MR. LeFLEUR: As I tell people who get their PE or PG, that there's a raise in your future.

With that, that will conclude today's report. I'd be pleased to answer any questions you may have.

VICE CHAIRMAN PHILLIPS: Thank you. Are there any questions from commissioners?

(No response.)

VICE CHAIRMAN PHILLIPS: Thank you, Mr. LeFleur.

Moving to Agenda Item No. 4, which is the Report from the Commission Chair. Our regular Commission Chair is not here today and has not provided any information, so I don't have anything to bring forward.

We'll move to Agenda Item No. 5.

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Agenda Item No. 5 is Consideration of adoption of a resolution for posthumous recognition of former Commission Member John Howard Lester, DVM, who passed away on July 18th. Dr. Lester's wife, Jane, sends her regrets and -- that she and her family could not be present today. And I want to read the resolution and then note I'll entertain a motion regarding the adoption of the resolution for this recognition of Dr. Lester.

The resolution reads: Whereas, John Howard Lester, DVM, was a dedicated public servant. Among his many areas of public service was the Environmental Management Commission of the Alabama Department of Environmental Management. And whereas Dr. Lester was the longest-serving member in the history of the Commission, having served in the chemist, slash, veterinarian position from October 1994 until November of 2013. And whereas Dr. Lester served admirably in leadership

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positions of Commission Chair and Vice Chair and Chair of the Personnel Committee and as a Member of the Personnel Rulemaking and Strategic Planning Committees. And whereas Dr. Lester was conscientious about his obligations as a Commissioner to the people of Alabama and the environment. And whereas Dr. Lester will be sorely missed and fondly remembered by his fellow Commissioners, the Commission's legal counsel and assistant, the Director, supervisors, and staff of the Alabama Department of Environmental Management, and many within the governmental, regulated, and environmental communities.

Now, therefore, be it resolved that the Alabama Environmental Management Commission expresses appreciation for Dr. Lester's contributions and friendship and offers its sympathy for his loss to his family done this 19th day of August,

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2016.

MS. MERRITT: I move to adopt the resolution of the posthumous recognition of former Commission Member John Howard Lester, DVM.

CHAIRMAN MILLER: Second.

VICE CHAIRMAN PHILLIPS: I have a motion and second. Call for the question. All in favor signify with the sign "aye."

(Unanimous.)

VICE CHAIRMAN PHILLIPS: All opposed, same sign.

(No response.)

VICE CHAIRMAN PHILLIPS: Motion carries.

We'll now move to Agenda Item No. 6. Agenda Item 6 is Consideration of the adoption of proposed amendments to ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda. At our meeting this morning of the Rulemaking Committee,

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we adopted the draft reconciliation statement and the recommendation to the full Commission. The draft reconciliation statement was included in the record provided to all the Commissioners. No changes were made to the reconciliation statement. However, changes were made to the draft guidelines for public comment, which have also been provided to the Commission. Therefore, the Commission has before it the complete record for the proposed amendments to this rule.

On June 16, 2016, a public hearing was held to receive comments from interested persons regarding the proposed revisions. Written comments were accepted any time during the public comment period, which extended from April 29, 2016 through June 16, 2016. During the comment period, the Commission received one set of written comments. At the public hearing on June 16, 2016, no

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written or oral statements were presented. All comments have been addressed and resolved in the reconciliation statement.

I'd like to call on Rulemaking Committee Member Richardson to present the Rulemaking Committee's recommendations to the full Commission. Commissioner Richardson.

DR. RICHARDSON: The Rulemaking Committee recommends that the amendment to the Rule 335-3- -- 2-3-.5, Agenda, we recommend that those be adopted -- those changes be adopted.

VICE CHAIRMAN PHILLIPS: Since this is a recommendation from the Committee, it serves as a motion and second. Do I have any discussion from the Commission?

(No response.)

VICE CHAIRMAN PHILLIPS: No further discussion, I call for the question. All in favor signify with the

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sign "aye."

(Unanimous.)

VICE CHAIRMAN PHILLIPS: All opposed, same sign.

(No response.)

VICE CHAIRMAN PHILLIPS: Motion carries.

While we're waiting on the signing of the resolution, I'm going to switch hats and go from Chair back to Rulemaking Committee Chair and thank the Committee Commissioners Mary Merritt and Terry Richardson, Robert Tambling, Debi Thomas, and the public and our stakeholders for all their efforts in getting this accomplished. It took us some time, but it really did -- we did go through it very effectively.

In addition, I'd like to express the Committee's appreciation to those who attended and participated in that work session that I mentioned held on February the 20th, 2015, and provided input during

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the examination of this rule.

DR. MARTIN: Mr. Vice Chairman, I have a question regarding point of order.

VICE CHAIRMAN PHILLIPS: Sure.

DR. MARTIN: When it came out of Committee, that comes as a motion. Did you need a second?

VICE CHAIRMAN PHILLIPS: I do not.

DR. MARTIN: Okay. All right. Just want to make sure.

VICE CHAIRMAN PHILLIPS: But thank you for the clarification.

Moving to Agenda Item No. 7, which is the Consideration of the recommendation of the Rulemaking Committee regarding draft guidelines to the application of the proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda.

I want to call on Rulemaking Committee Member Richardson to present

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the Rulemaking Committee's recommendation.
DR. RICHARDSON: Thank you, Mr. Chairman. The Rulemaking Committee's recommendation is that the Commission adopt the draft guidelines for public comment.
VICE CHAIRMAN PHILLIPS: Okay. Thank you. Recommendation from the Committee serves as the motion and the second. And I'll open it up for discussion.
(No response.)
VICE CHAIRMAN PHILLIPS: No further discussion, all in favor of the motion, signify with the sign "aye."
(Unanimous.)
VICE CHAIRMAN PHILLIPS: All opposed, same sign.
(No response.)
VICE CHAIRMAN PHILLIPS: Motion carries.
Agenda Item 8 is Consideration of

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the recommendation of the Rulemaking Committee regarding a draft form for members of the public to request to make a presentation at a Commission meeting entitled Request to Make Presentation at AEMC Meeting. In our Rulemaking Committee, we discussed this. And since it appears that it would need to go back out to Rulemaking, have really determined that we will just continue to operate under the proposed rule that we just passed. And then at some future date, if we feel that we have a need for such a form, that we'll bring it back to the Commission at that time. So there is no recommendation to come before the Commission today.
Agenda Item No. 9 is Consideration of the Recommendation of the Administrative Law Judge on the Department's Suggestion of Mootness in which the Administrative Law Judge recommends that the Commission dismiss as

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moot the present request for hearing contesting the January 8th, 2016 Modified Solid Waste Disposal Permit No. 35-06 to the City of Dothan.
The Department filed the suggestion of mootness and attached a copy of the Department's June 10th, 2016 letter rescinding and revoking the issuance of permit modification. The petitioners filed a response to respondent's suggestion of mootness.
I'll entertain a motion from the Commission regarding the Recommendation of the Administrative Law Judge on the Department's Suggestion of Mootness.
CHAIRMAN MILLER: Mr. Chairman, I move that we accept the Administrative Law Judge's decision.
VICE CHAIRMAN PHILLIPS: Do I have a second?
DR. RICHARDSON: Second.
VICE CHAIRMAN PHILLIPS: I have a motion and a second to adopt the

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Recommendation of the Administrative Law Judge on the Department's Suggestion of Mootness. Any further discussion?
(No response.)
VICE CHAIRMAN PHILLIPS: No discussion, I'll call for the question. All in favor signify with the sign "aye."
(Unanimous.)
VICE CHAIRMAN PHILLIPS: All opposed?
(No response.)
VICE CHAIRMAN PHILLIPS: Motion carries.
Agenda Item No. 10 is Other business. Do we have any other business to come before the Commission?
(No response.)
VICE CHAIRMAN PHILLIPS: Agenda Item 11, Future business session. The next Commission meeting is scheduled for October 21, 2016, at 11 a.m. in this conference room. Anyone have any known problems with the date?

(No response.)
VICE CHAIRMAN PHILLIPS: Date will stand. And there will not be a Rulemaking Committee at the next Commission date of October 21st.
I'll entertain a motion to adjourn.
DR. MARTIN: I'll move.
VICE CHAIRMAN PHILLIPS: Second?
CHAIRMAN MILLER: Second.
VICE CHAIRMAN PHILLIPS: All in favor signify with the sign "aye."
(Unanimous.)
VICE CHAIRMAN PHILLIPS: All opposed?
(No response.)
VICE CHAIRMAN PHILLIPS: Motion carries. We are adjourned.

(The hearing concluded at 11:50 a.m. on August 19, 2016.)

REPORTER'S CERTIFICATE

STATE OF ALABAMA)
)
ELMORE COUNTY)

I do hereby certify that the above and foregoing transcript was taken down by me in stenotype, and the questions and answers thereto were transcribed by means of computer-aided transcription, and that the foregoing represents a true and correct transcript of the testimony given by said witness.

I further certify that I am neither of counsel, nor any relation to the parties to the action, nor am I anywise interested in the result of said cause.

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.

/s/ Bridgette W. Mitchell
Bridgette W. Mitchell
Certified Court Reporter and Commissioner for the State of Alabama at Large
ACCR No. 231 - Expires 9/30/16
MY COMMISSION EXPIRES 12/19/17

REPORTER'S CERTIFICATE

STATE OF ALABAMA)
)
ELMORE COUNTY)

I do hereby certify that the above and foregoing transcript was taken down by me in stenotype, and the questions and answers thereto were transcribed by means of computer-aided transcription, and that the foregoing represents a true and correct transcript of the testimony given by said witness.

I further certify that I am neither of counsel, nor any relation to the parties to the action, nor am I anywise interested in the result of said cause.

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.

Bridgette W. Mitchell

/s/ Bridgette W. Mitchell
Bridgette W. Mitchell
Certified Court Reporter and Commissioner for the State of Alabama at Large
ACCR No. 231 - Expires 9/30/16
MY COMMISSION EXPIRES 12/19/17

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Part B

Attachment Index

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Attachment 3 Resolution for posthumous recognition of former Commission Member John Howard Lester, D.V.M.
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Attachment 4 Resolution to adopt amendments to ADEM Administrative Code 335-2, Environmental Management Commission Regulations
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Attachment 5 Order to adopt motion to adopt the recommendation of the Rulemaking Committee and adopt the Draft Guidelines for Public Comment
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Attachment 6 Order to adopt the Recommendation of the Administrative Law Judge on Department's Suggestion of Mootness
(Agenda Item 9)

Attachment 1

Amended 8/5/16

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 19, 2016
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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7.	Consideration of the recommendation of the Rulemaking Committee regarding the draft guidelines to the application of proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda	2
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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON JUNE 17, 2016

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE RULEMAKING COMMITTEE CHAIR

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF ADOPTION OF A RESOLUTION FOR POSTHUMOUS RECOGNITION OF FORMER COMMISSION MEMBER JOHN HOWARD LESTER, D.V.M.

   The Commission will consider adoption of a resolution to posthumously recognize former Commission Member John Howard Lester, D.V.M.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA

   The Commission will consider proposed amendments to ADEM Administrative Code 335-2, Environmental Management Commission Regulations to amend Rule 335-2-3-.05, Agenda. The Commission held a public hearing on the proposed amendments on June 16, 2016.

7. CONSIDERATION OF THE RECOMMENDATION OF THE RULEMAKING COMMITTEE REGARDING THE DRAFT GUIDELINES TO THE APPLICATION OF PROPOSED AMENDED ADEM ADMINISTRATIVE CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA

   The Commission will consider the recommendation of the Rulemaking Committee regarding the draft guidelines to the application of proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda.

8. CONSIDERATION OF THE RECOMMENDATION OF THE RULEMAKING COMMITTEE REGARDING DRAFT FORMS FOR COMMISSION MEETINGS FOR THE PUBLIC TO REQUEST TO MAKE PRESENTATIONS AND TO REGISTER TO MAKE BRIEF STATEMENTS

   The Commission will consider the recommendation of the Rulemaking Committee regarding draft forms for Commission meetings for the public to request to make presentations and to register to make brief statements.

9. BOBBY LEWIS AND MICHAEL DEL VECCHIO V. ADEM, AND CITY OF DOTHAN, ALABAMA, EMC DOCKET NO. 16-01

   The Commission will consider the Recommendation of the Administrative Law Judge on Department's Suggestion of Mootness in this appeal concerning ADEM's January 8, 2016, Modification of Solid Waste Disposal Facility Permit No. 35-06 issued to the City of Dothan.

10. OTHER BUSINESS

11. FUTURE BUSINESS SESSION

Attachment 2

ADEM

Alabama Department of Environmental Management

Funding Challenges

- Mobile physical facilities
- Emergency Response
- State-mandated financial reporting system
- EPA-mandated electronic initiatives
- Increased efficiency:
  - nSPECT
  - LIMS
- Concentrated Animal Feeding Operations

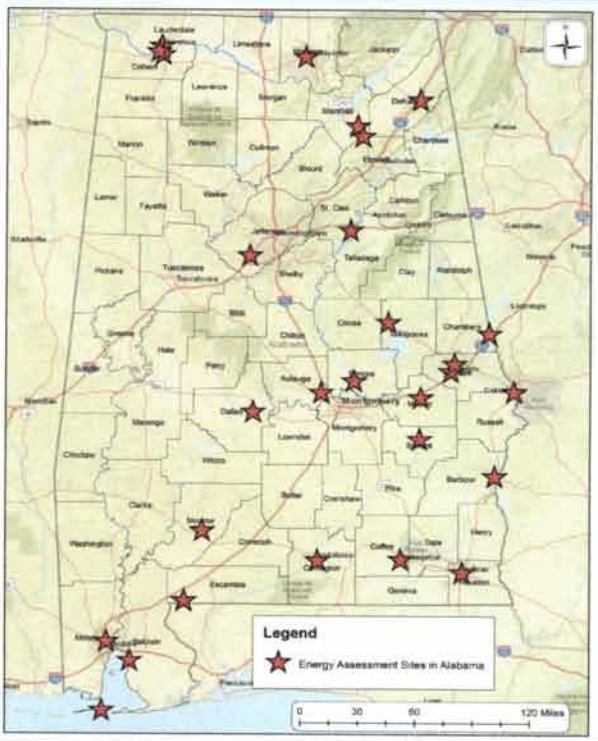
ADEM

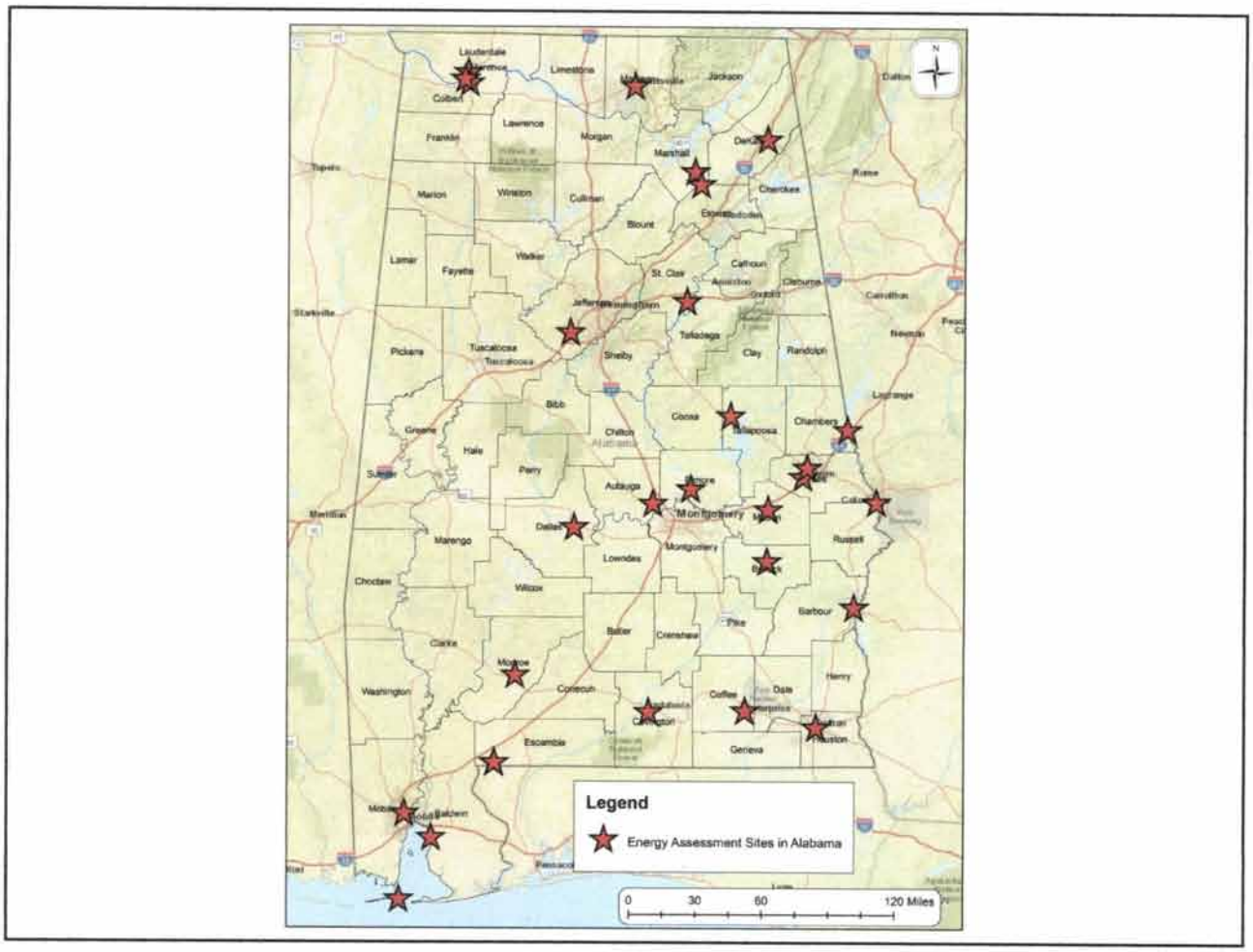
Alabama Department of Environmental Management

Non- Compliance by Waste Water Systems

- Costly to build, operate, and maintain
- Costly system upgrade requirements
- Costly to discharge to impaired receiving waters
- Inability to self-fund investments and operations
- Impacts of non-compliance
- Impacts of closure

Alabama Department of Environmental Management




Legend
Energy Assessment Sites in Alabama
0
30
60
120 Miles
N
Montgomery

ADEM Alabama Department of Environmental Management

Waste Water Systems Energy & $ Results

System	KWhr/Mo.	KWhr / M Gal.	$ Cost Sav/ Mo.
Sheffield	82,500	1,800	1,000
Alex City	350,000	9,700	9,000
Wetumpka	230,000	5,100	5,000
W. Escambia	182,000	4,700	4,000
Prichard	143,000	1,765	2,600

ADEM

Alabama Department of Environmental Management

Waste Water Systems Discharge Reductions

System	Tot. N (t/yr)	GHG (t/yr)	River Basin
Sheffield	19.3	71	Tennessee
Alex City	9.0	949	Tallapoosa
Wetumpka	12.0	390	Coosa
W. Escambia	24.0	372	Perdido-Escambia
Prichard	37.0	357	Mobile
Total	101.3	2,139	

ADEM

Alabama Department of Environmental Management

Partners

- Waste water utilities
  - Communication with city managers
  - Communication with rate payers
- EPA initial partnership
- New partners
  - Dept of Energy
  - ADECA
  - Tenn DEC, Univ. Memphis

Attachment 3

State of Alabama

RESOLUTION

WHEREAS, John Howard Lester, D.V.M. was a dedicated public servant. Among his many areas of public service was the Environmental Management Commission of the Alabama Department of Environmental Management; and

WHEREAS, Dr. Lester was the longest serving member in the history of the Commission, having served in the Chemist/Veterinarian Position from October 1994 until November 2013; and

WHEREAS, Dr. Lester served admirably in the leadership positions of Commission Chair and Vice-Chair, and Chair of the Personnel Committee and as a Member of the Personnel, Rulemaking, and Strategic Planning Committees; and

WHEREAS, Dr. Lester was conscientious about his obligations as a Commissioner to the people of Alabama and the environment; and

WHEREAS, Dr. Lester will be sorely missed and fondly remembered by his fellow Commissioners; the Commission's legal counsel and assistant; the Director, supervisors, and staff of the Alabama Department of Environmental Management; and many within the governmental, regulated, and environmental communities; now

THEREFORE, be it resolved that the Alabama Environmental Management Commission expresses appreciation for Dr. Lester's contributions and friendship and offers its sympathy for his loss to his family.

DONE this 19th day of August 2016.

Mary J. Merritt

C. Martin

W. Scott Phillips

Terry D. Richardson

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of August 2016.

W. Scott Phillips

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016

Attachment 4

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Environmental Management Commission gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-2 of the Department's Environmental Management Commission Program Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Rulemaking Committee of the Alabama Environmental Management Commission 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 the proposed rules in response to oral and written submissions, 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 Rulemaking Committee of the Alabama Environmental Management Commission.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-2 [335-2-3-.05/Agenda and Public Participation (Amend)] of the Department's Environmental Management Commission Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-2 – Environmental Management Commission Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 19th day of August 2016.

APPROVED:

Mary J. Merritt

Terry D. Richardson

W. Scott Phillips

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 19th day of August 2016.

W. Scott Phillips

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016

Attachment 5

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

MOTION

Adopt the recommendation of the Rulemaking Committee and

Adopt the Draft Guidelines for Public Comment

ORDER

This cause coming before the Environmental Management Commission pursuant to the referenced motion, it is hereby ORDERED:

That the referenced motion is hereby adopted; and

That in accordance with the referenced motion the recommendation of the Rulemaking Committee and the Draft Guidelines for Public Comment are hereby adopted; and

That this action has been taken and this Order issued by the Commission effective August 19, 2016.

That a copy of the Draft Guidelines for Public Comment is attached hereto, and made a part hereof.

ISSUED this 19th day of August 2016.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

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 19th day of August 2016.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016

DRAFT GUIDELINES FOR PUBLIC COMMENT

The Commission wishes to facilitate the exchange of information between the Commission and the public in a manner that will enable the Commission to better serve the people of this State and their environment. To do so, the Commission has adopted the following guidelines to the application of EMC Rule 335-2-3-.05, Agenda and Public Participation. These guidelines will serve to educate and inform the public as to how the Commission interprets and intends to apply this Rule. The Commission believes that these guidelines will lead to a fair and consistent application of the Rule which will, in turn, promote a forum that is both suitable and conducive for responsible public participation.

1. Presentations should not exceed ten minutes. Presenters are therefore encouraged to state their most important points first and should understand that when the ten minute time limit has elapsed, they will be asked to conclude their presentation.

2. The topic of any presentation made to the Commission should be related directly to the Commission's functions. The Environmental Management Act defines the Commission's functions as (a) establishing rules, regulations, and environmental standards; (b) developing statewide environmental policy; (c) hearing appeals of administrative actions; and (d) selecting the ADEM Director. Topics outside of the scope of the Commission's defined functions will not be allowed. The Commission will not allow presentations advancing political agendas or presentations promoting the political or financial interests of any specific group(s) or individual(s).

3. The presentation of current and timely information is encouraged by the Commission. Presenting repetitive, irrelevant, or outdated information is neither productive, nor a good use of Commission time. The Commission requests that speakers provide relevant, accurate, and current data and information. In addition, speakers should be prepared to provide sources for data and information presented if requested. Presentation requests that raise topics that have already been thoroughly addressed through previous presentations are likely to be denied unless new and substantive information is provided.

4. All data presented should be factual. All data and data collection methods should be referenced and should be attributable to generally accepted reliable sources. Speakers should be mindful when presenting information not to violate any professional licensure or certification requirements.

5. The Commission's time should not be spent hearing matters that most appropriately should be initially addressed by the Department. Those wishing to make presentation requests before the Commission should first pursue all reasonable opportunities made available through the Department and its Director for addressing concerns. Failure to do so may result in a denial of the presentation request.

6. The Commission requests, when at all possible, that specific names of individuals or corporations be omitted from presentations. Any specific complaints mentioning individuals or corporations should be provided to the Director of the Department.

7. In order to help the Commission prepare and better understand the topic to be addressed, the Commission may request that those wishing to address the Commission submit a well organized outline of their presentation along with copies of any supporting documents they intend to use during the presentation. If, during the presentation, the outline submitted is not adhered to and the speaker strays from the subject identified in the outline, this will be noted by the Chair and the speaker may be asked to return to the subject of the presentation as reflected in the outline. If an outline and supporting documents are not provided, then the Commission may table the presentation request until such time as an outline and supporting documents are submitted.

8. Questions and comments from Commission members during or following a presentation are allowed and should be expected. Commission members are free to ask any questions believed necessary regarding the presentation.

9. The Commission, at its discretion, may approve, deny, table, or take no official action whatsoever on a presentation request. Those requesting to make presentations should not attend a Commission meeting with the expectation that their request will be automatically granted. Presentation requests that are approved may be placed on the agenda for subsequent (generally the following) regularly scheduled meeting of the Commission. Presentation requests that are denied due to a failure to conform to the Rule may be resubmitted to the Commission provided that the nonconformity is corrected.

10. Members of the public wishing to engage the Commission should feel free to submit written comments and other materials to the Commission office or the Director of the Department in lieu of presentation requests. Written comments submitted to the Commission office will be carefully read by Commission members and will be given the same weight and consideration as the presentations made during Commission meetings.

11. 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.

Attachment 6

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

In the Matter of:	)	
	)	
Bobby Lewis and Michael Del Vecchio,	)	
Petitioners,	)	
	)	
vs.	)	
	)	EMC Docket No. 16-01
Alabama Department of Environmental	)	
Management,	)	
Respondent,	)	
	)	
and	)	
	)	
City of Dothan, Alabama,	)	
Intervenor.	)	

ORDER

This cause having come before the Environmental Management Commission pursuant to the "Recommendation of the Administrative Law Judge on Department's Suggestion of Mootness," ADEM's "Suggestion of Mootness," and "Petitioners' Response to Respondent's Suggestion of Mootness" for 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 Department's Suggestion of Mootness" is hereby adopted; and

2. That pursuant to the adoption of the "Recommendation of the Administrative Law Judge on Department's Suggestion of Mootness," the Request for Hearing contesting the June 8, 2016 Modified Solid Waste Disposal Permit No. 35-06 to the City of Dothan is dismissed and moot; and

3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

4. That a copy of this Order, along with a copy of the "Recommendation of the Administrative Law Judge on Department's Suggestion of Mootness," attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 19th day of August 2016.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

RECUSED:

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 19th day of August 2016.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016

ATTACHMENT

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

BOBBY LEWIS and MICHAEL DEL VECCHIO, Petitioners, v. ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, Respondent, CITY OF DOTHAN, ALABAMA, Intervenor.	)	DOCKET NO. 16-01 SOLIDWASTE DISPOSAL FACILITY PERMIT NO. 35-06

RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE ON DEPARTMENT'S SUGGESTION OF MOOTNESS

Before the undersigned is the Department's Suggestion of Mootness together with the Department's letter rescinding the issuance of the modified permit that is the subject of this appeal and the Petitioners' Response to the Department's Suggestion of Mootness. Upon consideration of these filings; the undersigned finds that:

1. On October 21, 2013, the Alabama Department of Environmental Management issued Solid Waste Disposal Facility Permit No. 35-06 to the City of Dothan to operate a solid waste disposal facility, known as the City of Dothan Sanitary Landfill.

2. On January 8, 2016, the Alabama Department of Environmental Management issued a modification of Solid Waste Disposal Facility Permit No. 35-06 to the City of Dothan.

3. The issuance of Modification of Solid Waste Disposal Permit No. 35-06 dated January 8, 2016, was rescinded and revoked by the Alabama Department of Environmental Management, on June 10, 2016.

4. Because the administrative action contested in this Hearing is no more, this matter is now moot.

Therefore, the Administrative Law Judge does hereby recommend that the Alabama Environmental Management Commission DISMISS as MOOT, the present Request for Hearing contesting the January 8, 2016 Modified Solid Waste Disposal Permit No. 35-06 to the City of Dothan.

DONE this 20th day of June, 2016.

JAMES F. HAMPTON
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