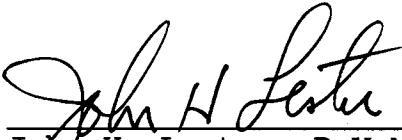


**2/18/11**

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
December 10, 2010**



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 December 10, 2010.



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John H. Lester, D.V.M.  
Chair  
Environmental Management Commission

Certified this 18th day of February 2011.



**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**December 10, 2010**

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

**Part A**

**Transcript**

**Part B**

**Attachment Index**

**Attachments 1 – 7**



**Part A**





AEMC COMMISSION MEETING - 12/10/2010

<p align="right">Page 1</p> <p align="center">ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING</p> <p>Alabama Department of Environmental Management Building Alabama Room (Main Hearing Room) 1400 Coliseum Boulevard Montgomery, Alabama 36110</p> <p>December 10, 2010                      11:00 a.m.</p>	<p align="right">Page 3</p> <p>1            COMMISSIONER LESTER: We 2 call this meeting to order. 3            The first agenda item is 4 consideration of minutes of our 5 October 15th meeting. Do I have 6 a motion regarding the minutes? 7            COMMISSIONER RICHARDSON: So 8 moved. 9            COMMISSIONER BROWN: Second. 10           COMMISSIONER LESTER: Motion 11 second. All in favor say aye. 12           ALL: Aye. 13           COMMISSIONER LESTER: All 14 opposed? 15           (No response) 16           COMMISSIONER LESTER: The 17 next item is Commission will 18 consider the election of the 19 Chair and the members of the 20 Personnel Committee and the 21 Rulemaking Committee for -- each 22 Commissioner has received a copy 23 of all this. Nominations are</p>
<p align="right">Page 2</p> <p>1 2            APPEARANCES 3 4            COMMISSIONER MEMBERS: 5            JOHN H. LESTER, D.V.M., CHAIR 6            H. LANIER BROWN, II, ESQUIRE, VICE CHAIR 7            TERRY D. RICHARDSON, Ph.D. 8            SAMUEL L. MILLER, M.D. 9            W. SCOTT PHILLIPS 10           JAMES E. LAIER, Ph.D., P.E. 11           MARQUITA F. DAVIS, Ph.D. (not present) 12           ALSO PRESENT: 13           ROBERT TAMBLING, AEMC LEGAL COUNSEL 14           DEBI THOMAS, AEMC EXECUTIVE ASSISTANT 15 16 17 18           *   *   *   * 19 20 21 22 23</p>	<p align="right">Page 4</p> <p>1           for Personnel Committee, Lanier 2 Brown as Chairman; Jim Laier and 3 Sam Miller as members. 4           Rulemaking Committee, Scott 5 Phillips, Chair; Marquita Davis 6 and Terry Richardson as 7 members. 8           Do we have a motion to 9 adopt the Committees and 10 Chairs? 11           COMMISSIONER MILLER: Moved. 12           COMMISSIONER RICHARDSON: 13 Second. 14           COMMISSIONER LESTER: Motion 15 second. All in favor say aye. 16           ALL: Aye. 17           COMMISSIONER LESTER: All 18 opposed? 19           (No response) 20           COMMISSIONER LESTER: At 21 this time, we'll have the 22 Director's report. 23           MR. LEFLEUR: Good morning,</p>

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Page 5	<p>1 Commissioners. It's a pleasure 2 to be here with you this 3 morning. 4 You should have received 5 two memos from me recently on 6 rulemaking and contracts, and if 7 there are any questions that 8 come up regarding those, please 9 address those. 10 We are two months into 11 our fiscal year 2011 budget. 12 The Department is on track in 13 both revenues and expenditures. 14 ADEM has been able to manage in 15 these austere times in part 16 because of sound and efficient 17 practices but, also, in part, 18 because of prior actions to 19 shore up programs. An example 20 of this is in 2008, the passage 21 of the Solid Wastes and 22 Recyclable Materials Management 23 Act put the Solid Waste Division</p>	Page 7	<p>1 significant challenges. It is 2 now and it will be in the 3 future. The stimulus money that 4 Alabama has used to shore up 5 budgets in the past couple of 6 years is scheduled to run out in 7 the spring of 2011, so the 8 situation is going to become 9 even more difficult. Needless 10 to say, maintaining an adequate 11 budget for ADEM in the 2012 12 fiscal year is going to be a 13 real challenge for us also. 14 As you are aware, there 15 are a number of new faces in the 16 legislature, and since we do 17 depend on those funds from the 18 General Fund, we will be working 19 closely with them to help these 20 new people understand the 21 important mission that ADEM has, 22 and we'll be doing that over the 23 next weeks and months to come.</p>
Page 6	<p>1 on stronger financial footing 2 when it was sorely in need of 3 financial upgrade. Today, our 4 Water Division has -- today and 5 for some time, has been in need 6 of improved funding. The Water 7 Division depends on funding 8 support that ultimately comes 9 from the Alabama General Fund to 10 supplement inadequate federal 11 funding. This inadequate 12 federal funding is a nationwide 13 problem; it occurs in the water 14 programs throughout the country, 15 and the method to shore up that 16 weak program on the federal 17 level is to have state general 18 funds appropriated for that 19 purpose. We are all well aware 20 of the difficulties our general 21 fund in Alabama is having. 22 Funding in the Water Division is 23 going to be one of our most</p>	Page 8	<p>1 As we do before each 2 meeting, I also sent you a memo 3 outlining some of the issues 4 we've been dealing with since 5 our last meeting. You'll notice 6 that a number of these are 7 repeat issues. They stay on 8 there for a good while, and 9 that's the nature of the work 10 that you do; a lot of it is long 11 term. And I welcome any 12 questions that you may have on 13 that, also. 14 As we close out the 15 calendar year 2010, I would like 16 to highlight some significant 17 comments from the past year, and 18 I'll do this by the divisions. 19 First Air. Air quality in 20 Birmingham continues to improve, 21 as it has over the past thirty 22 years or so, and although the 23 standards are as tight as</p>

2 (Pages 5 to 8)

AEMC COMMISSION MEETING - 12/10/2010

<p style="text-align: right;">Page 9</p> <p>1 they've ever been during the  2 past year, the Birmingham area  3 has attained the 24-hour fine  4 particle standard. They have  5 been out of attainment for some  6 time, and they have reached that  7 attainment level. We will have  8 a request -- We have already  9 requested that EPA redesignate  10 the Birmingham area to reflect  11 that achievement. We hope to  12 receive that re-designation  13 before the end of 2011.  14 It also appears that  15 when all the data is in from the  16 2010 calendar year, the  17 Birmingham area will also attain  18 the annual standard for fine  19 particulates as well, so that's  20 a -- that's a real success story  21 in the Air Division in the  22 Birmingham area.  23 In the Water Division --</p>	<p style="text-align: right;">Page 11</p> <p>1 several months, and this will be  2 for the larger metropolitan  3 areas.  4 Additionally, we've  5 issued a public notice for the  6 General Storm Water permit,  7 which we began on November the  8 16th. This is not the municipal  9 side, but the remaining storm  10 water areas.  11 As you may remember,  12 ADEM has developed a general  13 permit for storm water that  14 incorporates the current permit  15 by rule. We expect that this  16 will make the program more  17 efficient and effective, while  18 bringing the program in line  19 with EPA's expectations of that  20 program.  21 ADEM this year has also  22 significantly reduced backlog  23 permits that existed in the</p>
<p style="text-align: right;">Page 10</p> <p>1 In spite of our funding  2 challenges, over the course of  3 the past few months, the Water  4 Division has made some  5 significant strides in improving  6 the Storm Water Program. We're  7 on the verge of issuing the  8 Phase II Municipal Separate  9 Storm Water Sewer System, or  10 MS4, storm water permit. This  11 effort has involved a number of  12 ADEM staff and numerous meetings  13 with EPA and stakeholder  14 groups. Its implementation will  15 greatly improve the  16 effectiveness of the storm water  17 programs in the cities and  18 counties around the state. Now,  19 this is the Phase II, which  20 deals with the smaller  21 communities around the state.  22 The Phase I will be up for  23 consideration here in the next</p>	<p style="text-align: right;">Page 12</p> <p>1 mining and MS4 areas. We expect  2 mining permits on hold for as  3 long as six years and MS4  4 permits on hold for as long as  5 two years will be cleared in the  6 next few months, and that will  7 be quite a significant help in  8 the storm water areas to have  9 that log jam broken.  10 Finally, the number of  11 major facilities which remained  12 on the Water Division's  13 significant noncompliance list  14 for two consecutive quarters has  15 been reduced from over 90 down  16 to 52, so we're making some  17 headway in the Water Division in  18 spite of the funding problems.  19 Over in Permits and  20 Services Division, there are  21 ongoing efforts to -- involving  22 coordination between Permits and  23 Services and the Water Division</p>

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<p style="text-align: right;">Page 13</p> <p>1 to increase participation in our 2 electronic Daily Monitoring 3 Report, or e-DMR program. We've 4 made some significant progress. 5 We now have over 725 permittees 6 participating. And in 7 connection with this effort, 8 during the past year, ADEM held 9 a series of 15 e-DMR training 10 sessions across the State. 11 These sessions were very well 12 attended and resulted in more 13 than 200 new and, according to 14 those who were taking part in 15 this, eager e-DMR participants. 16 The increasing e-DMR 17 participation is increasing the 18 accuracy and the efficiency 19 while saving us resources 20 required to report using the old 21 paper and ink method. 22 As you're aware, Alabama 23 is one of only three states</p>	<p style="text-align: right;">Page 15</p> <p>1 in less than a year from signing 2 the loan agreements, SRF has 3 actually disbursed 81% of the 4 clean water funds and 62% of the 5 drinking water funds. These are 6 remarkable numbers, considering 7 the complicated nature of these 8 -- of some of these programs, 9 and ADEM is pleased to be able 10 to contribute to the building of 11 infrastructure in this State, 12 which was the intent of a lot of 13 those funds that we would at 14 least be able to do that. 15 In Field Operations 16 Division, during the course of 17 the past year, Field Operations 18 has also realized significant 19 accomplishments. Early in the 20 year we saw the Field Operations 21 and the ADEM laboratory receive 22 its drinking water certification 23 from EPA. This highlights the</p>
<p style="text-align: right;">Page 14</p> <p>1 nationally to electronically 2 flow this data to EPA using the 3 Exchange Network, and this is 4 one of those areas where we are 5 doing more with less. With 6 tight budget times, the e-DMR 7 program significantly helps us 8 reduce workload, while giving us 9 more accurate and more timely 10 information, so this is one of 11 those things that's born out of 12 necessity but is a very 13 significant achievement for the 14 Permit and Services Division and 15 the Water Division. 16 The State Revolving Fund 17 Program, or SRF, within the 18 Permits and Services Division 19 earlier this year managed to 20 allocate its entire stimulus 21 funding roughly a month before 22 the deadline. Now, of those 23 funds that have been allocated,</p>	<p style="text-align: right;">Page 16</p> <p>1 high level of technical 2 competency and quality control 3 ADEM has within its laboratory 4 operations. Much of Field 5 Operations' time has been spent 6 on the Deepwater Horizon Oil 7 Spill response. Field 8 Operations' personnel worked 9 over 60,000 man hours to 10 successfully protect and clean 11 up Alabama's shoreline from the 12 largest natural disaster of its 13 kind in the history of our 14 nation. 15 ADEM has also managed to 16 significantly increase its field 17 presence in construction storm 18 water during the last year. 19 Having people on the ground to 20 recognize problems before they 21 become big, has helped us reduce 22 inspection and enforcement 23 delays and, thus, has helped us</p>

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Page 17	<p>1 with improving compliance. We                  2 expect to see further                  3 improvement in this area. This                  4 is one of those areas that's                  5 been a long-standing problem for                  6 us -- well, several years in                  7 standing since our                  8 reorganization in 2008, and we                  9 feel like we're making hedgerows                  10 on recovering from that and                  11 getting up to where we need to                  12 be.                  13 The Land Division, 2010                  14 was another successful year for                  15 the Waste and Remediation                  16 Programs within the Land                  17 Division. At least 15 different                  18 communities benefited from                  19 recycling grants to enhance                  20 their recycling efforts. A                  21 total of nearly \$3 million has                  22 been awarded over the past two                  23 years, and over those two years,</p>	Page 19	<p>1 Hazardous Waste Branch in the                  2 Land Division still managed to                  3 make significant progress this                  4 year in the destruction of the                  5 last group of chemical weapons,                  6 the mustards munitions, in                  7 Anniston. This will put                  8 completion -- the completion                  9 date somewhere in the fall of                  10 2011, which will be almost a                  11 year ahead of schedule. That                  12 program, I think I mentioned it                  13 at our last Commission meeting.                  14 That program has been a very                  15 successful program, an exemplary                  16 program, one that had a lot of                  17 controversy at the front end,                  18 but it has turned out to be a                  19 most successful project.                  20 The last trainload of                  21 coal ash remediation waste                  22 arrived at the Arrowhead                  23 Landfill in Perry County this</p>
Page 18	<p>1 approximately \$2.8 million of                  2 the Solid Waste Fund has been                  3 committed to 83 remediation                  4 projects consisting of 143                  5 separate sites. Of those 83                  6 remediation projects, 21 were                  7 conducted by local government                  8 entities, with funding provided                  9 through inner agency cooperative                  10 agreements. The remaining                  11 remediation projects were                  12 conducted by private contractors                  13 utilizing competitive bid                  14 process.                  15 On the scrap tire side,                  16 the Scrap Tire Program completed                  17 the cleanup of the second larger                  18 site, in Prichard, and work has                  19 begun on the third site in                  20 Geneva.                  21 Focusing on safety and                  22 speed, safety first and speed                  23 second, the Governmental</p>	Page 20	<p>1 past weekend, marking the end of                  2 a successful and environmentally                  3 sound disposal of waste directed                  4 to Perry County by TVA and EPA                  5 in the ash spill that we're all                  6 well aware of up in Tennessee.                  7 The Brownfields Program made                  8 significant strides in the Land                  9 Division this year in assessing                  10 and remediating numerous sites                  11 along the Highway 80 Voting                  12 Rights Trail. This group, in                  13 conjunction with the Groundwater                  14 Branch, has worked diligently to                  15 implement a grant to remediate                  16 abandoned underground storage                  17 tank, UST, sites from Montgomery                  18 to Uniontown. The \$200,000.00                  19 grant allows ADEM to complete                  20 the UST site assessments and the                  21 largely minority areas of the                  22 Black Belt west of Montgomery,                  23 and this is one example of what</p>

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<p>1 is becoming an increasing effort 2 in the Environmental Justice 3 area, and we applaud the work 4 that's been done by those people 5 in the Land Division. 6 And that's my report for 7 today. I have one more thing 8 that I would like to report to 9 you, and that's that John 10 Hagood, who has been with the 11 Commission six years? John, is 12 it? 13 MR. HAGOOD: Close. 14 MR. LEFLEUR: John has come 15 in during -- came to ADEM during 16 a time there were a lot of 17 changes taking place and he 18 served the Department well and 19 he served me well during my 20 short time here. And, John, I 21 bring all this up because he's 22 leaving us. He is -- has 23 another opportunity that's been</p>	<p>1 professional people, each and 2 every one of whom I will miss. 3 Especially, Ms. Marilyn Elliott, 4 who has held my hand through a 5 number of difficult 6 circumstances. She's not too 7 shy about telling me when I'm 8 barking up the wrong tree, and 9 I've always appreciated that and 10 I've tried to keep her as close 11 as I could to me, but she's does 12 so many things, it's kind of 13 like guarding Cam Newton. 14 Sometimes you get away from me, 15 and that's when you miss her the 16 most. 17 The Division Chiefs, 18 especially during the months 19 when I was in the interim, were 20 tremendous to me, and I really 21 gained a new appreciation for 22 what they do and how they do it 23 here.</p>
Page 22	Page 24
<p>1 presented to him and we will 2 sorely miss him and hate for him 3 to leave us, but his career path 4 will be enhanced by what he's 5 about to do, and I think he has 6 a few words he would like to say 7 as he comes up here. Those of 8 you that don't know John, he's a 9 colorful character. I think 10 he's got some color to present 11 to some of the people here 12 today. 13 Thank you very much. If 14 there are no questions, I'll 15 turn it over to my colleague. 16 MR. HAGOOD: I appreciate 17 it, Lance, for serving here, and 18 I've enjoyed working with him. 19 Some of the most fulfilling days 20 of my life have been serving 21 here at ADEM and especially you 22 entrusted me with the leadership 23 of this fine group of</p>	<p>1 But a big part of my job 2 has been dealing with external 3 relations here, and when you do 4 that job correctly, you get to 5 know the people involved and not 6 just the issues, and you come to 7 be friends with them, get to 8 know their families, and you 9 really appreciate the job that 10 they do, but that's not going to 11 stop me from giving them the 12 needle today. You have 13 basically two groups you break 14 down: The industry advocates 15 and the environmental 16 advocates. And if you're a 17 really good industry advocate, 18 then there is nothing better 19 than the status quo. You are as 20 passionate and fervent about 21 maintaining the status quo as 22 you are about anything. And to 23 me, what springs to my mind are</p>

6 (Pages 21 to 24)

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Page 25	<p>1 the hear no evil, see no evil,                  2 speak no evil monkeys, and so I                  3 would like to recognize as my                  4 Hall of Fame Industry Advocates,                  5 Roy McAuley, David Roberson, and                  6 he's not here, but the                  7 representative of Alfa is here,                  8 Ron Harden, but I think Mitt                  9 will pick up his for him. Since                  10 Ron is not here, I can show you                  11 the example of what they're                  12 getting.                  13 (Laughter)                  14 MR. HAGOOD: But on the                  15 other side, you have the                  16 environmental advocates, and                  17 environmental advocates, if you                  18 admit, with all candor what's                  19 going on, they are usually the                  20 agents of change. They're the                  21 ones that bring to your                  22 attention things that need to be                  23 changed, and usually, in the</p>	Page 27	<p>1 COMMISSIONER LESTER: John,                  2 the first of this year, I don't                  3 know if all of you remember it                  4 or not, but when Trey Glenn                  5 resigned and all, during his                  6 interim, which we worked through                  7 and got Lance as our Director,                  8 John was our Director. We were                  9 going to make him acting                  10 director, and the folks downtown                  11 said we can't make him acting                  12 director. So he served us as                  13 director during that period of                  14 time. And talking about the                  15 horse's ass, I'm a veterinarian,                  16 so I've been his doctor now for                  17 six years.                  18 We're going to miss him                  19 because of all his levity and                  20 all. He's a good guy from                  21 Eufaula, Alabama, which is where                  22 they all come from, anyway.                  23 Our next item of</p>
Page 26	<p>1 progression, you work with them                  2 to help make it better. To be                  3 an effective environmental                  4 advocate, you need to be just as                  5 passionate and just as fervent,                  6 but you're a little more shrill,                  7 and quite often, you have to                  8 show your rear end a little bit,                  9 so my two that are getting these                  10 awards are Mike Mullen and my                  11 friend John Wathen. Mike's not                  12 here, so I can show you his                  13 award as an example. Come over                  14 here, John.                  15 MR. WATHEN: I've never been                  16 called a horse's ass by a nicer                  17 guy.                  18 MR. HAGOOD: Anyway, I                  19 appreciate the time I've had                  20 working with y'all. I'm going                  21 to miss you. Thank you again,                  22 and thank you everybody.                  23 (Applause)</p>	Page 28	<p>1 business is to consider the                  2 adoption of proposed amendments                  3 to ADEM Administrative Code                  4 335-3, Air Pollution Control                  5 Program Regulation Rule                  6 335-3-14-.01. Call on the                  7 Department.                  8 MR. GORE: Mr. Chair,                  9 gentlemen, as y'all may know,                  10 some time ago EPA undertook some                  11 rulemakings to start treating                  12 greenhouse gases as regulated                  13 air pollutants, whereas they                  14 have not been before, and EPA                  15 has completed the process of                  16 adopting federal rules that                  17 require pre-construction permits                  18 for large, new and modified                  19 sources of greenhouse gases. In                  20 order for ADEM to maintain                  21 primacy of the -- for the                  22 Construction Permit Program, we                  23 need to have rules that are</p>

7 (Pages 25 to 28)

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Page 29	<p>1 equivalent to EPA's. ADEM has                  2 drafted such rules, put those                  3 rules out for public comment                  4 beginning August 23rd and ending                  5 October the 6th, held a public                  6 hearing on October the 6th. We                  7 received five comments on those                  8 rules, all positive. Three of                  9 those commenters asked that ADEM                  10 recommend to you that an                  11 addendum be added to the draft                  12 rules that the Department used                  13 as a purpose, so we have not                  14 proposed any changes to the                  15 draft rules.                  16 Pending any questions                  17 from y'all, I'd like to request                  18 that y'all adopt these changes.                  19 COMMISSIONER RICHARDSON: So                  20 moved.                  21 COMMISSIONER BROWN: Second.                  22 COMMISSIONER LESTER: Motion                  23 second. All in favor, say aye.</p>	Page 31	<p>1 the Water Quality Branch of the                  2 Water Division.                  3 You have before you the                  4 complete hearing record,                  5 proposed changes to the Water                  6 Quality Program regulations.                  7 In August of this year,                  8 the Department initiated the                  9 rulemaking process to numeric                  10 nutrient criteria to eight                  11 reservoirs. In addition, the                  12 Department proposed use                  13 classifications in the                  14 Choctawhatchee and Tennessee                  15 River basins. Other changes                  16 were minor and administrative in                  17 nature.                  18 On October 6th, 2010, a                  19 public hearing was held to                  20 receive data, views and comments                  21 and interested persons regarding                  22 the proposed revisions. Written                  23 comments were accepted any time</p>
Page 30	<p>1 ALL: Aye.                  2 COMMISSIONER LESTER:                  3 Approved.                  4 MR. GORE: Thank you.                  5 COMMISSIONER LESTER: Get                  6 this paperwork signed.                  7 Today, Item 6 and Item                  8 11, NPDES-related matters,                  9 Commissioner Laier has filed a                  10 recusal form, so he cannot vote                  11 on these items. The numbers are                  12 6 and Number 11. This will be                  13 Number 6.                  14 We move to consider the                  15 adoption of the proposed                  16 amendments to ADEM                  17 Administrative Code Division,                  18 Water, 335-6, for Regulation                  19 Rule 335-6-10-.09.                  20 Offer the Department.                  21 MR. SISK: Honorable Chair,                  22 Members of the Commission, I am                  23 Lynn Sisk, and I am the Chief of</p>	Page 32	<p>1 during the public comment                  2 period, which extended from                  3 August 18th through October 6th,                  4 2010.                  5 During the comment                  6 period, the Department received                  7 written comments from three                  8 organizations at the hearing on                  9 October 6, 2010. One person                  10 presented oral testimony.                  11 All comments received                  12 were supportive of the                  13 Department's proposed changes.                  14 However, each organization                  15 encouraged the Department to                  16 make additional changes beyond                  17 those proposed in this rule-                  18 making. Where the Department                  19 determines new use                  20 classifications are appropriate                  21 for other waters not included in                  22 this rulemaking, the Department                  23 will propose those uses during a</p>

8 (Pages 29 to 32)



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<p>1 future rulemaking.                  2 As discussed in the                  3 reconciliation statement, the                  4 Department requests that the                  5 Commission adopt the proposed                  6 revisions with minor changes                  7 pursuant to comments.                  8 And I would be happy to                  9 address any questions you would                  10 have.                  11 COMMISSIONER PHILLIPS: So                  12 moved.                  13 COMMISSIONER BROWN: Second.                  14 COMMISSIONER LESTER: Voted                  15 and second. All in favor say                  16 aye.                  17 COMMISSIONER MILLER: Aye.                  18 COMMISSIONER BROWN: Aye.                  19 COMMISSIONER PHILLIPS: Aye.                  20 COMMISSIONER RICHARDSON: Aye.                  21 COMMISSIONER LAIER: Aye.                  22 COMMISSIONER LESTER: Aye.                  23 COMMISSIONER LESTER: All Opposed?</p>	<p>1 2010, a public hearing was held                  2 to receive data, views and                  3 comments from interested persons                  4 regarding the proposed                  5 revisions. Written comments                  6 were accepted any time during                  7 the public comment hearing,                  8 which extended from September                  9 the 20th through November the                  10 4th, 2010. During the comment                  11 period, the Department received                  12 no written comment. At the                  13 hearing on November 4th, 2010,                  14 no one presented oral                  15 testimony.                  16 The Department requests                  17 that the Commission adopt the                  18 proposed revisions. I'll be                  19 happy to address any questions                  20 the Commission may have.                  21 COMMISSIONER PHILLIPS: Move                  22 to adopt.                  23 COMMISSIONER BROWN: Second.</p>
Page 34	Page 36
<p>1 (No response)                  2 COMMISSIONER LESTER: Next                  3 item is to consider the                  4 Administrative Code Division                  5 335-7, Water Supply Program                  6 Regulations. Call on the                  7 Department.                  8 MR. HARRISON: Mr. Chair and                  9 Members of the Commission, I am                  10 Dennis Harrison and I am the                  11 Chief of the Drinking Water                  12 Branch of the Water Division.                  13 You have before you the                  14 hearing record for proposed                  15 changes to the Department's                  16 Public Water Supply Program                  17 Regulations.                  18 Administrative and                  19 technical changes were proposed                  20 in six chapters, as noted in the                  21 summary of reasons supporting                  22 the adoption of these proposed                  23 amendments. On November 4th,</p>	<p>1 COMMISSIONER LESTER: Voted                  2 and second. All in favor say                  3 aye.                  4 COMMISSIONER RICHARDSON:                  5 Aye.                  6 COMMISSIONER BROWN: Aye.                  7 COMMISSIONER MILLER: Aye.                  8 COMMISSIONER PHILLIPS: Aye.                  9 COMMISSIONER LESTER: Aye.                  10 COMMISSIONER LESTER: All Opposed?                  11 (No response)                  12 COMMISSIONER LESTER: Next                  13 item is consider adoption of the                  14 proposed amendments to                  15 Administrative Code Division                  16 335-1, General Administrative                  17 Regulations. Call on the                  18 Department.                  19 MR. WHITE: Mr. Chairman,                  20 Honorable Members of the                  21 Commission, I am Aubrey White,                  22 of the Permits and Services                  23 Division of ADEM.</p>

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<p>1 Before you today is 2 consideration of proposed 3 revisions to Administrative Code 4 Rule 335-1-1-.07, Departmental 5 Forms, Instructions and 6 Procedures. 7 The Department proposes 8 to delete one form, add five 9 new forms and modify six 10 existing forms. The changes are 11 needed to comply with the state 12 and federal law. No comments 13 were received on the proposed 14 revisions. 15 We respectfully ask for 16 your favorable consideration of 17 the proposed rule, and I will be 18 happy to answer any questions. 19 COMMISSIONER PHILLIPS: So 20 moved. 21 COMMISSIONER BROWN: Second. 22 COMMISSIONER LESTER: All in 23 favor say aye.</p>	<p>1 consideration of the report of 2 the Hearing Officer and that no 3 objections have been filed from 4 either side to the report of the 5 Hearing Officer. None have been 6 filed. 7 I'll entertain a 8 motion. 9 COMMISSIONER BROWN: Move to 10 adopt. 11 COMMISSIONER MILLER: 12 Second. 13 COMMISSIONER LESTER: Motion 14 second. All in favor say aye. 15 COMMISSIONER RICHARDSON: 16 Aye. 17 COMMISSIONER PHILLIPS: Aye. 18 COMMISSIONER BROWN: Aye. 19 COMMISSIONER MILLER: Aye. 20 COMMISSIONER LESTER: Aye. 21 COMMISSIONER LESTER: All 22 opposed? 23 (No response)</p>
Page 38	Page 40
<p>1 COMMISSIONER RICHARDSON: 2 Aye. 3 COMMISSIONER MILLER: Aye. 4 COMMISSIONER BROWN: Aye. 5 COMMISSIONER PHILLIPS: Aye. 6 COMMISSIONER LAIER: Aye. 7 COMMISSIONER LESTER: Aye. 8 COMMISSIONER LESTER: All 9 opposed? 10 (No response) 11 COMMISSIONER LESTER: Next 12 item is acknowledge Petitioner 13 John T. Davis Oil Company, 14 Incorporated, withdrawal of 15 their request for a hearing. 16 Item 10, we will also 17 acknowledge that -- Lenton G. 18 Williams' withdrawal of their 19 request for a hearing. 20 Item 11, the Chair will 21 -- This is on the Southeastern 22 Cheese matter, and I would like 23 to note that the Commission's</p>	<p>1 COMMISSIONER LESTER: Do any 2 of the Commissioners have any 3 other business? 4 (No response) 5 COMMISSIONER LESTER: If 6 not, we'd like to note that our 7 next meetings will be February 8 the 18th, April the 15th, June 9 the 17th, August the 19th, 10 October the 21st, December the 11 9th at 11:00 here at this 12 building. 13 If it's all right with 14 y'all, I'll entertain a motion 15 to stop. 16 COMMISSIONER PHILLIPS: 17 Motion. 18 COMMISSIONER LESTER: I have 19 a motion. Do I have a second? 20 COMMISSIONER BROWN: Second. 21 COMMISSIONER LANIER: 22 Second. 23 COMMISSIONER LESTER: All in</p>

10 (Pages 37 to 40)

AEMC COMMISSION MEETING - 12/10/2010

1 favor say aye.  
2 ALL: Aye.  
3 COMMISSIONER LESTER: Before  
4 our motion for adjournment, I  
5 would like to say that you have  
6 to remember the next -- this  
7 coming Friday, day week, is  
8 Debi's birthday. Debi looks  
9 after us, so we don't want to  
10 forget her. Thank you for all  
11 you do for us. A lot of this  
12 paper she sends us and, of  
13 course, the Department, too. We  
14 just couldn't do without her.  
15 MS. THOMAS: Thank you.  
16 COMMISSIONER LESTER: We're  
17 going to miss John, but Lance  
18 will keep everything going for  
19 you, John. No other business,  
20 this meeting is adjourned.  
21 \* \* \* \* \*  
22 (Meeting concluded at 11:40 p.m.)  
23 \* \* \* \* \*

1 REPORTER'S CERTIFICATE  
2 STATE OF ALABAMA  
3 ELMORE COUNTY  
4 I, Anita D. Griffith, Certified Court  
5 Reporter and Commissioner for the State of  
6 Alabama at Large, hereby certify that on  
7 December 10, 2010, I reported the  
8 foregoing AEMC Commission meeting, and that  
9 pages 3 through 41 contain a true and  
10 accurate transcription of the examination  
11 of said witness by counsel for the parties  
12 set out herein.  
13 I certify that I am duly licensed by  
14 the Alabama Board of Court Reporting, as  
15 evidenced below.  
16 I further certify that I am neither of  
17 kin nor of counsel to any of the parties  
18 to said cause, nor in any manner  
19 interested in the results thereof.  
20 /s/Anita D. Griffith  
21 Commissioner for the  
22 State of Alabama at Large  
23 ABCR #380, Expires 9/30/2011  
  
Commission Expires: 8/17/2011



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**Part B**



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- Attachment 3**            **Resolution adopting proposed amendments to ADEM Administrative Code Division 335-3, Air Pollution Control Program Regulations**  
  
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- Attachment 4**            **Resolution adopting proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program Regulations**  
  
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- Attachment 7**            **Order adopting the Report of the Hearing Officer**  
  
**(Agenda Item 11 – Southeastern Cheese, LLC v. ADEM, EMC Docket No. 10-06 [NPDES-Related Matter])**





**Attachment 1**



Amended 12/03/2010

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
DATE: December 10, 2010      TIME: 11:00 a.m.  
LOCATION: Alabama Department of Environmental Management (ADEM) Building  
Alabama Room (Main Conference Room)  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400

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\* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov), under Environmental Management Commission.

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

\*\*\* Commissioner Laier has filed an NPDES General Recusal form.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON OCTOBER 15, 2010
2. ELECTIONS
3. REPORT FROM THE DIRECTOR
4. REPORT FROM THE COMMISSION CHAIR
5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-3, Air Pollution Control Program Regulations, Rule 335-3-14-.04, Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)], including the addition of Appendix I, Greenhouse Gas Global Warming Potentials. The proposed amendments address the greenhouse gas (GHG) tailoring rule, which was finalized by EPA on May 13, 2010. The tailoring rule establishes thresholds for GHG emissions that define when permits under the new source review and Title V Programs are required for new or existing point sources. The Department held a public hearing on the proposed amendments on October 6, 2010.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-6, WATER QUALITY PROGRAM REGULATIONS (NPDES-RELATED MATTER\*\*\*)

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program Regulations, Rule 335-6-10-.09, Specific Water Quality Criteria; Rule 335-6-10-.11, Water Quality Criteria Applicable to Specific Lakes; Rule 335-6-10-.12, Implementation of the Antidegradation Policy; and Rule 335-6-11-.02, Use Classifications. The Department held a public hearing on the proposed amendments on October 6, 2010.

7. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-7, WATER SUPPLY PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-7, Water Supply Program Regulations, Chapters 335-7-2; 335-7-4; 335-7-5; 335-7-6; 335-7-7; and 335-7-11, to make administrative and technical clarifying changes. The Department held a public hearing on the proposed amendments on November 4, 2010.

8. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-1, GENERAL ADMINISTRATION REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-1, General Administration Regulations, Rule 335-1-1-.07, Departmental Forms, Instructions, and Procedures. The Department held a public hearing on the proposed amendments on November 4, 2010.

9. JOHN T. DAVIS OIL COMPANY, INC. V. ADEM, EMC DOCKET NO. 10-08

The Commission will acknowledge Petitioner John T. Davis Oil Company, Inc.'s withdrawal of the request for hearing in this appeal concerning ADEM Administrative Order 10-148-UST issued on July 15, 2010, to John T. Davis Oil Company, Inc., Cubberd No. 33, UST Facility ID No. 10208-015-006790, UST Release Incident No. UST98-07-02, Oxford, Calhoun County, Alabama.

10. LENTON G. WILLIAMS V. ADEM, AND VEOLIA ES CEDAR HILL LANDFILL, INC., EMC DOCKET NO. 07-03

The Commission will acknowledge Petitioner Lenton G. Williams' withdrawal of the request for hearing in this appeal concerning Solid Waste Disposal Facility Permit No. 58-01 issued on December 29, 2006, to Veolia ES Cedar Hill Landfill, Inc., St. Clair County.

11. SOUTHEASTERN CHEESE, LLC V. ADEM, EMC DOCKET NO. 10-06 (NPDES-RELATED MATTER\*\*\*)

The Commission will consider the Report of the Hearing Officer in this appeal concerning ADEM Administrative Order 10-112-WP issued on May 18, 2010, to Southeastern Cheese, LLC, Uniontown, Perry County, State Indirect Discharge (SID) Permit IU 39-53-00113. The Commission appeal hearing in this matter was held on September 22, 2010.

12. OTHER BUSINESS

13. FUTURE BUSINESS SESSIONS



**Attachment 2**





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

MOTION

Adopt the Committee Chairs and Members

ORDER

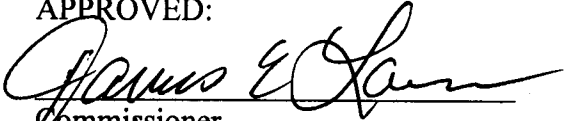
This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


1. That the above motion is hereby adopted; and
2. That a copy of the list of Committee Chairs and Members is attached and made a part hereof; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

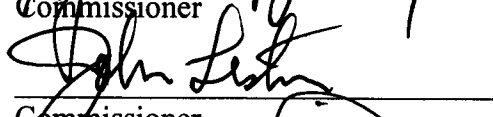
Environmental Management Commission Order  
Page 2

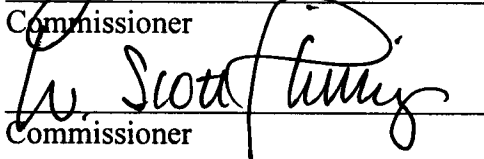
ISSUED this 10th day of December 2010.

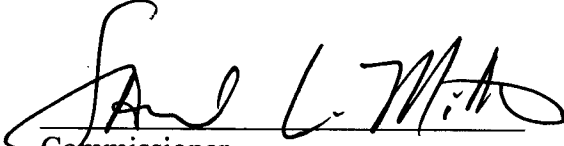
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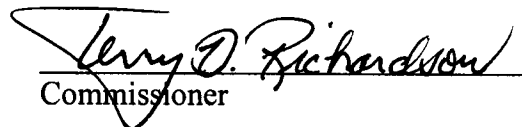
  
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DISAPPROVED:

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Commissioner

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Commissioner

ABSTAINED:

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Commissioner

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Commissioner

12/10/10

## Alabama Environmental Management Commission 2011 Committees

### Personnel Committee

Chair: Lanier Brown

Members: Jim Laier  
Sam Miller

### Rulemaking Committee

Chair: Scott Phillips

Members: Marquita Davis  
Terry Richardson



**Attachment 3**



**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-3 of the Department's Air Division – Air Pollution Control 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 Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [335-3-14-.04/Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend); Appendix I/Greenhouse Gas Global Warming Potentials (New) of the Department's Air Division – Air Pollution Control

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.



**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-3 - Air Pollution Control Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 10th day of  
December 2010.

APPROVED:

*James E. Ogan*      *Earl L. White*  
*Francis Brown, II*      *Larry D. Richardson*  
*John Lester*  
*W. Scott Furling*

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 10th day of December 2010.

*John H. Lester*  
\_\_\_\_\_  
John H. Lester, Chair  
Environmental Management Commission  
Certified this 10th day of December 2010



**Attachment 4**



**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (as amended), and Ala. Code. § 41-22-5 (as amended), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [rules 335-6-10-.09/Specific Water Quality Criteria (Amend); 335-6-10-.11/Water Quality Criteria Applicable to Specific Lakes (Amend); 335-6-10-.12/Implementation of the Antidegradation Policy (Amend); and, 335-6-11-.02/Use Classifications (Amend)]; of the Department's Water Quality Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

- |              |   |
|--------------|---|
| 335-6-10-.09 | Specific Water Quality Criteria                     |
| 335-6-10-.11 | Water Quality Criteria Applicable to Specific Lakes |
| 335-6-10-.12 | Implementation of the Antidegradation Policy        |
| 335-6-11-.02 | Use Classifications                                 |

IN WITNESS WHEREOF, we have affixed our signatures below on this 10<sup>th</sup> day of December 2010.

APPROVED:

*Yamier Brown*  
\_\_\_\_\_  
*John Lester*  
\_\_\_\_\_  
*R. Scott Fanning*  
\_\_\_\_\_

*Paul L. M. H.*  
\_\_\_\_\_  
*Larry D. Richardson*  
\_\_\_\_\_  
\_\_\_\_\_

DISAPPROVED:

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This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 10th day of December 2010.

*John H. Lester*  
\_\_\_\_\_  
John H. Lester, Chair  
Environmental Management Commission  
Certified this 10th day of December 2010

ABSTAINED or RECUSED (circle one):

*James E. Lan*  
\_\_\_\_\_  
 Recused

Abstained

Abstained

Recused

**Attachment 5**





**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-7 of the Department's Water Division's Water Supply Program Regulations in accordance with Ala. Code § 22-22A-8 (as amended) and Ala. Code § 41-22-4 (as amended); and

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (as amended), and Ala. Code. § 41-22-5 (as amended), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-7 [rules 335-7-2-.11/ Stage 1 Disinfection Byproducts (Amend); 335-7-2-.17/ *Cryptosporidium* Monitoring and Compliance (Amend); 335-7-4-.03/ Permitting Requirements for System Additions (Amend); 335-7-4-.08/ Revocation of a Water Supply Permit (Amend); 335-7-4-.10/ Completed Project Approval (Amend); 335-7-5-.09/ Capacity Test (Amend); 335-7-5-.23/ New Groundwater Facilities (New); 335-7-6-.07/ Alternative Treatment Processes (Amend); 335-7-6-.15/ Lighting and Power Requirements (Amend); 335-7-7-.02/ Permit Requirements (Amend); and, 335-7-11-.12/ Corrosion Control Treatment Requirement (Amend)]; of the Department's Water Supply Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-7- Water Supply Program Regulations

- |          |                                    |
|----------|------------------------------------|
| 335-7-2  | Primary Drinking Water Standards   |
| 335-7-4  | Permit Requirements and Procedures |
| 335-7-5  | Groundwater Sources and Treatment  |
| 335-7-6  | Surface Water and Treatment        |
| 335-7-7  | Distribution of Drinking Water     |
| 335-7-11 | Control of Lead and Copper         |

IN WITNESS WHEREOF, we have affixed our signatures below on this 10<sup>th</sup> day of December 2010.

APPROVED:


DISAPPROVED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 10th day of December 2010.

\_\_\_\_\_  
John H. Lester, Chair  
Environmental Management Commission  
Certified this 10th day of December 2010

ABSTAINED:

\_\_\_\_\_

**Attachment 6**



**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-1 of the Department's General Administration Division 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 Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

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

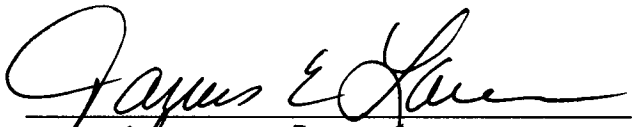
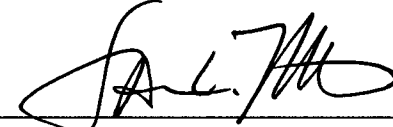
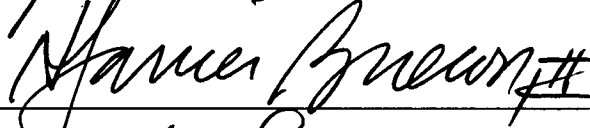
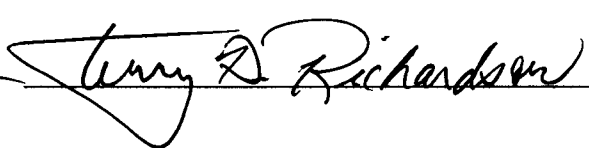
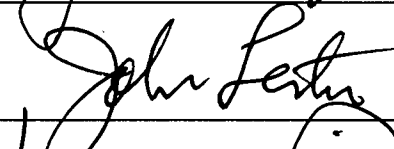
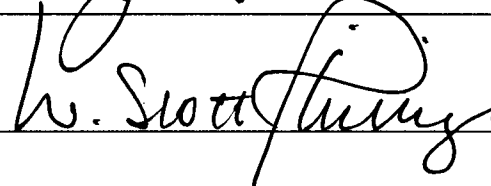
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [335-1-1-.07/Departmental Forms, Instructions, and Procedures (Amend)] of the Department's General Administration Division Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-1 – General Administration Division Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 10th day of  
December 2010.

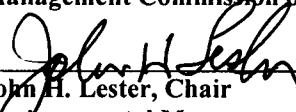
APPROVED:

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DISAPPROVED:

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\_\_\_\_\_  
\_\_\_\_\_

This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 10th day of December 2010.

  
\_\_\_\_\_  
John H. Lester, Chair  
Environmental Management Commission  
Certified this 10th day of December 2010

\_\_\_\_\_  
\_\_\_\_\_

ABSTAINED:

\_\_\_\_\_

\_\_\_\_\_

**Attachment 7**





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

In the Matter of:	)	
	)	
Southeastern Cheese, LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	EMC Docket No. 10-06
	)	
Alabama Department of	)	
Environmental Management,	)	
Respondent,	)	

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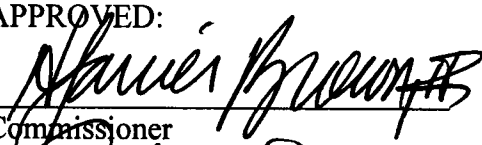
ORDER

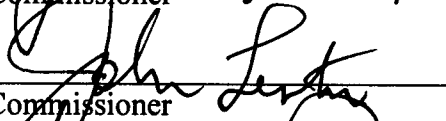
This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


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

ISSUED this 10<sup>th</sup> day of December 2010.

APPROVED:

  
Commissioner

  
Commissioner

  
Commissioner

\_\_\_\_\_  
Commissioner

DISAPPROVED:

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Commissioner

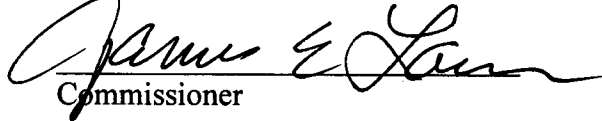
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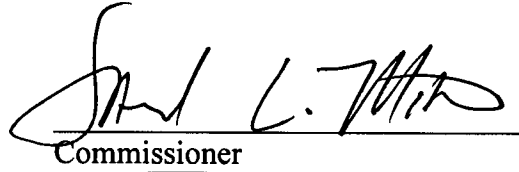
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Commissioner

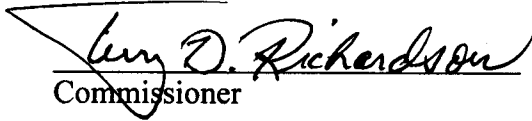
ABSTAINED:

\_\_\_\_\_  
Commissioner

RECUSED:


  
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 10th day of December 2010.

  
John H. Lester, Chair  
Environmental Management Commission  
Certified this 10th day of December 2010



This matter was set for a scheduling conference on July 22, 2010 and, by agreement, this matter was heard before the undersigned on September 22, 2010 in the Hearing Room of the Commission in Montgomery, Alabama. A jointly-proposed prehearing order was submitted by agreement of the parties and entered by the undersigned on August 30, 2010. All discovery, exhibit exchange and prehearing procedure was conducted pursuant to that prehearing order, and this case was tried and conducted pursuant to that order.

Testimony was taken in this matter, as scheduled, on September 22, 2010 and the parties presented evidence in the form of testimony and documents, all of which is made a part of this proceeding and the record in this case. At the conclusion of the evidence and after the opportunity for closing statements, the parties agreed to suspend the Rules so as to allow the undersigned and the Commission flexibility in the timing of the issuance of this report and the Commission's order. Such agreement is reflected in the order of the undersigned dated October 8, 2010. Additionally, ADEM made an oral motion (R. 311) to reconsider a ruling by the undersigned concerning the admission of ADEM's Exhibit "C." A written motion to that effect was filed by ADEM on October 5, 2010 and remains pending to this date.

The transcript of these proceedings having now been prepared and transmitted to the undersigned together with all exhibits offered and admitted into evidence (along with the above-referenced ADEM's Exhibit "C" included in its offer of proof), the undersigned has reviewed all such matters and is issuing this report.

## **II. STANDARD OF REVIEW**

This proceeding is a de novo one, and the Environmental Management Commission essentially stands in the place of ADEM and should exercise its judgment for that of ADEM on questions of law and fact which are related to this proceeding. (See ADEM Admin. Code R. 335-2-1-.14(6)), the Joint Proposed Pre-Hearing Order entered in this cause on August 30, 2010 (the "Pretrial Order"), and Bates Motel v. Alabama Department of Management, 596 So.2d 924 (Ala.Civ.App. 1991). The Petitioner has the burden of proof to show by a preponderance of the evidence that ADEM's actions should be modified.

## **III. ISSUES FOR REVIEW**

The parties have agreed that the primary issue in this matter is the amount of civil penalties, if any, due to be paid by the Petitioner pursuant to *Code of Alabama, 1975*, §22-22A-5. Also at issue is the length of time for compliance as "contemplated by the Unilateral Order." (See Pretrial Order, Section III, page 8)

#### IV. FINDINGS OF FACT

1. The Petitioner operates a plant in Uniontown, Alabama in Perry County which produces cheddar cheese by the barrel.

2. ADEM, the duly constituted department of the State of Alabama (pursuant to *Code of Alabama, 1975, §22-22A-16*), as a part of its responsibilities in enforcement of water pollution control regulations, is authorized to administer and enforce the provisions of the Alabama Water Pollution Control, *Code of Alabama, 1975, §22-22-1, et seq.*

3. ADEM issued a State Indirect Discharge (“SID”), Permit No. IU39-53-0013 (“the Permit”), to the Petitioner on August 31, 2004. That Permit established limits on discharge of pollutants from a point source designated as Outfall DSN001 from the Petitioner’s facility. This outfall was to the City of Uniontown’s wastewater treatment facility, which is a publicly-owned treatment works. This Permit required the Petitioner to monitor its discharges and submit periodic discharge monitoring reports (“DMRs”) to ADEM describing the results of the monitoring. The Permit also required that the Petitioner maintain in good working order all systems used by the Petitioner to achieve compliance with the terms and conditions of the Permit.

4. The Petitioner operates its facility for the production of barrel cheese under the name of Southeastern Cheese, LLC, and it includes an operation wherein milk is processed into cheese. This plant also includes a wastewater treatment facility as a part of its operation, and the discharge from the wastewater treatment facility is sent to Uniontown’s wastewater treatment facility pursuant to the Permit issued by ADEM referenced above. In this production, a byproduct of this process is whey. That whey, when combined with other fluids from the plant, becomes a product which needs to be treated before it can be discharged into the environment.

5. On or about March 8, 2008, the record reflects that a tornado or some other unusual force of wind hit Uniontown and the Petitioner’s facility including its wastewater treatment plant and damaged a cover to one of the facility’s ponds. This pond was an anaerobic pond and the cover over it was ripped, allowing it to be exposed to oxygen in the air.

6. The DMRs submitted to ADEM by the Petitioner for the months of February through June of 2009 established that the Petitioner discharged pollutants in violation of the Permit.

7. On May 18, 2010, ADEM issued Administrative Order 10-112-WP to the Petitioner which assessed a civil penalty in the amount of \$120,000 and required the Petitioner to come into compliance within 485 days from the receipt of ADEM’s order (the Findings).

8. In order to properly treat this discharge, the Petitioner designed and built an on-site wastewater treatment facility that consisted of three cell ponds and an overflow system. The evidence established that this was a complex design that was built in such a way that 90 percent of the organic compounds could be removed before discharge.

9. It was established through the testimony of Chip Crockett, who was an employee of ADEM at the time the findings were entered by the Department, that he was “the only person responsible for formulating the penalties contained in.....” these orders. (R. 24) In addition, it was established that Mr. Crockett based the decision concerning the amount of the civil penalties on his professional judgment and the “six penalty factors.”

10. In regard to Mr. Crockett’s professional judgment, it was established by the evidence that Mr. Crockett also relied on his experience with ADEM. Mr. Crockett was shown to be an Auburn University graduate of 1993 with a degree in agricultural engineering. Upon completion of that degree, Mr. Crockett worked for the Alabama Extension Service researching animal waste. Subsequent to that, he was employed by ADEM, working in the land division until 1999 when he left to work with a consulting group in Montgomery. None of this work involved NPDES permits or SID permits. He was subsequently re-employed with ADEM and was again assigned to the land division. However, in 2008 Mr. Crockett was assigned as chief of the NPDES enforcement branch and served in that capacity when the findings in question were made. At the time these findings were made, he had been working with NPDES permits for a period of one year, and had been in the water division for one year. (R. 28)

11. Mr. Crockett established that “harm to the environment” is the most significant consideration that is determined when making compliance and enforcement decisions. (R. 31)

12. It was established that Mr. Crockett never visited the site of the Petitioner’s plant in making a determination as to the size of the civil penalty. (R. 34) In addition, he never considered any compliance assistance review documents in his input concerning the assessment of a civil penalty.

13. There is no evidence of any environmental effects associated with the violations in question. (R. 39)

14. This civil penalty in the amount of \$120,000 was assessed based on 170 violations (R. 40), and was determined based upon Mr. Crockett’s professional judgment and the “six factors.” (See an enumeration of those factors in the above-referenced Findings of ADEM dated May 18, 2010 and *Code of Alabama, 1975, §22-22A-5(18)c.*) Mr. Crockett did not use a mathematical formula in computing this assessment, and he did not compare the violations by the Petitioner with any other violations in calculating this penalty. Similarly, Mr. Crockett did not use any type of calculation worksheet; however, he did start with the statutory minimum of \$100 per day. (R. 42-43)

15. Mr. Crockett indicated that he did consider the severity of the violations that occurred in that they ranged between one and 130 times the Permit limit, and he considered the fact that these were monthly averages. He also looked at the compliance history of the Petitioner and found that there had been violations. Mr. Crockett established that “we are assessing one penalty that addresses all of the violations collectively.” (R. 45)

16. Mr. Crockett testified that he believes the Petitioner failed to exhibit an appropriate standard of care in this case, but admitted that a Petitioner can, at times, exercise an appropriate standard of care but still exceed permit limits. He also established that other violations were removed from early proposed orders because of the tornado and that the assessed penalty was based on violations that occurred between February and June of 2009.

17. The evidence established that the Petitioner has spent approximately \$426,100 in an attempt to bring the facility back into compliance. Mr. Crockett testified that he was "aware of no evidence at this point suggesting that the efforts (by the Petitioner) were inappropriate." (R. 54) Mr. Crockett's conclusion was that these efforts were simply efforts that did not work.

18. It was ADEM's conclusion that the violations that occurred after February of 2009 were violations that were not connected to, or related to, the tornado.

19. The Petitioner's operation in the production of this cheese is seasonal and generally runs during cold weather from approximately January through July although the exact months of operation vary. ADEM did not consider the seasonal nature of the Petitioner's operation. (R. 58)

20. ADEM considered the Petitioner's discharges, which began with its normal production cycle in 2009, as ceasing to be a "direct or residual effect of the tornado." ADEM did not seek enforcement actions for the violations that occurred in the 2008 time frame because of the tornado. (R. 60)

21. Mr. Crockett established that the Petitioner reported to ADEM that it had spent \$426,100 as of October 2009 in efforts to correct the problems and that fact was considered by ADEM in assessing the civil penalty.

22. Mr. Crockett established that ADEM, in exercising its enforcement discretion, and in consultation between Mr. Crockett and the administration, established the civil penalty at \$120,000.

23. Mr. Crockett's testimony established that ADEM considered the history of violations by the Petitioner and further established that ADEM considered the Petitioner's ability to pay, and it was concluded that such was not a factor in this case.

24. Mr. Crockett established that he was aware of no penalty arising from a violation of an SID permit which was assessed higher than \$120,000. He was not aware of any other such civil penalties as high as \$40,000.

25. Mr. Crockett's testimony established that the Petitioner has had violations in the past. Mr. Crockett established the fact that the 485 days contained in the Findings was something he approved but was a calculation made by his staff at ADEM. (R. 107)

26. The Petitioner established, through the testimony of Pat Rankin (the owner of Southeastern Cheese, LLC), that it had spent approximately 2.5 million dollars in designing and building the onsite treatment facility that was in place in March of 2008 when the tornado-like wind conditions hit. It was at that time that the cover over Pond 2 was damaged and the contents exposed to oxygen, killing the bacteria needed for treatment. Following that damage, the Petitioner dealt with its insurance adjuster in attempting to file a claim based on the wind storm. In the interim, it was established that the Petitioner avoided discharge to the Uniontown wastewater treatment plant by recirculating within the system to eliminate the discharges. The torn cover to Pond 2 was repaired by July of 2008 (R. 120), and it appears it was not until February of 2009 (R. 121) that the Petitioner began discharging to the Uniontown wastewater treatment plant.

27. It was during that interim time that the Petitioner looked at a number of alternatives to attempt to solve the wastewater problem including increasing the size of the wetlands, the employment of an outside entity called Chemtech which manufactures “bugs” or biological material used to convert wastewater into water that could be discharged to Uniontown, and other alternatives.

28. The evidence established that Chemtech was hired by the Petitioner and gave the Petitioner a guarantee that the “bugs” introduced into the system would solve the problem; however, that guarantee was never honored.

29. The Petitioner presented as one of its witnesses Jonathan Bonner, who is a consulting engineer for the Petitioner and had been working with the Petitioner since 2003 and, in fact, was the engineer who designed the Petitioner’s wastewater treatment plant. He testified that because of the tornado, the system itself encountered numerous problems which the Petitioner has endeavored to solve. Mr. Bonner explained in detail the complications and the difficulties involved in bringing the Petitioner’s operation back into compliance. He testified that they took certain corrective actions to prevent further violations by taking steps to correct the PH imbalance, augmentation in Pond 2 of anaerobic bacteria (R. 172), by investigating the possibility of enlarging the system, and by increasing the size of the overland flow system. It was Mr. Bonner’s testimony that the violations that occurred from February until June of 2009 were a “chronic effect” (R. 174) of the tornado-like wind conditions. He also testified that he had never seen an SID permit holder penalized by a civil penalty this large in his 25 years of working in this area.

30. Mr. Bonner testified that his engineering firm would need approximately four months to do the engineering study and then about a year to do the construction and another year to bring the facility into compliance.

31. Mr. Bonner admitted, under examination by the undersigned Hearing Officer, that had the Petitioner been so inclined, the engineering aspect of this component could have been conducted while this case was pending.

32. Jonathan Goode, an employee of the Petitioner, testified that the Petitioner has not employed Jonathan Bonner to begin the engineering study because it was waiting to see the result of this hearing and indicated that a \$120,000 “fine” might “literally.....put us out of business.”



33. The Petitioner also called Mr. Charles Horn, who is retired from ADEM and has been for ten years. Mr. Horn indicated he does some consulting work and has been engaged by the Petitioner to testify in this case following his assessment of the problems incurred by the Petitioner in compliance. Mr. Horn is an Auburn University graduate with a master's degree from Georgia Tech. He came back to ADEM upon completion of that master's degree in the Industrial Permit and Compliance Program. In that capacity he served in the Compliance and Enforcement Division for NPDES and SID permits (R. 236) for 14 years. Subsequently he acted as the chief of the water division for approximately 20 months and then became chief of the water division and served for 16 years. He testified that in all of this time he was involved in the formulating and assessment of civil penalties regarding NPDES and SID permits (R. 237), sometimes in his role of performing that actual assessment and sometimes in his role of an arbitrator for the final decisions on assessment.

34. Based on Mr. Horn's review of the matters pertinent to this civil penalty, his visiting of the site and review of the operation conducted by the Petitioner, he reached an opinion concerning the civil assessment in this matter and concluded that the assessed penalty against the Petitioner is out of line with previous penalties. In coming to this determination, he reviewed the "six factors" and testified that he did not see any significant consideration in the "severity" of the violations. He noted that some of the violations cited were actually within the potential margins of error. He also noted, in relation to severity, that there were no toxic substances whatsoever involved in these violations. In regard to the standard of care, Mr. Horn established that under these circumstances the Petitioner did all that it could reasonably do. Mr. Horn also testified that he felt the Petitioner had done what it could to mitigate the problems associated with these occurrences.

35. Based on all of his considerations, Mr. Horn's opinion was that the fine in this case was not proper and that it was out of line with fines assessed against other SID permit holders.

36. Mr. Horn testified that in all of his years working with ADEM, and in all of the years since his retirement, he was aware of civil penalties being assessed in the \$15,000 to \$20,000 range. He could recall nothing in the \$40,000 or \$50,000 range. Mr. Horn also noted there was no adverse environmental impact resulting from the Permit violations by the Petitioner. (R. 250) Mr. Horn also testified that the seasonal nature of the Petitioner's business should have been a consideration.

37. Mr. Horn testified that in all of the assessments in which he participated at ADEM, he always used a mathematical calculation to establish a penalty and he did so 100 percent of the time. He also indicated he would use a worksheet to indicate how that calculation was made and to show where one might deviate or reduce the penalty for some given reason. (R. 261) He indicated that while such was not done in this particular case, it was always his course of conduct so that he could maintain consistency with other penalties and be able to defend his calculations if such was ever necessary.

38. At the conclusion of the Petitioner's case, ADEM called its one witness and, in doing so, again put on the witness stand Mr. Chip Crockett from ADEM. Mr. Crockett established that a consent decree had been entered between ADEM and the City of Uniontown in response to a lawsuit filed by ADEM for violations by Uniontown of its permit. That consent decree established that the City of Uniontown had agreed to come into compliance within 1,185 days from execution of the agreement to that effect and such would put them in compliance some time around the latter part of 2011. It was further Mr. Crockett's testimony that if the Petitioner does not come into compliance with its Permit by that time, then ADEM "believes that the City of Uniontown will not be able to meet the compliance date in its decree." Mr. Crockett testified that the Petitioner's violations are making it more difficult for Uniontown to be in compliance. However, Mr. Crockett admitted that he did not consider Uniontown's problems in assessing the civil penalties against the Petitioner.

39. ADEM offered into evidence its Exhibit "C," which is a noncompliance report that the Town of Uniontown submitted to ADEM dated June 25, 2010. (That document was initially not allowed into evidence by the undersigned but, upon reconsideration, that document is admitted.) That document indicates that as of today, it appears ADEM has found that Uniontown is out of compliance because of the Petitioner.

40. Upon questioning by the undersigned, Mr. Crockett indicated that ADEM established the compliance period of 485 days simply because that is "pretty routine" and, based on their professional judgment, that is reasonable in this particular case. Mr. Crockett did admit, however, that the actions the Petitioner would have to take in this particular case are not routine.

## V. CONCLUSIONS OF LAW

### I. Pending Motions

A. The undersigned has under consideration an oral motion of ADEM (and a subsequent written motion to the same effect) to reconsider an evidentiary ruling made during the hearing which denied admission into evidence ADEM's Exhibit "C" which is a part of the record pursuant to ADEM's offer of proof. (R. 286-7)

B. Upon further consideration by the undersigned, that ruling is reversed and the objection of the Petitioner as to the admission of ADEM's Exhibit "C" is overruled. Exhibit "C" has been considered by the undersigned in making this report, and the Commission should consider such exhibit along with all other evidence before it.

### II. Proceedings Properly Conducted

A. These proceedings have been properly conducted pursuant to the Rules and Regulations of the Alabama Department of Environmental Management, the Environmental Management Commission and Alabama law.

B. The parties have properly participated in these proceedings, being represented by legal counsel, and the parties have been afforded the opportunity to present all relevant evidence related to the issues presented.

### III. Amount of Civil Penalty Assessed

A. After consideration of the "six factors" as enumerated in *Code of Alabama, 1975*, §22-22A-5(18)c and the application of these factors to the evidence submitted, it is the conclusion of the undersigned that:

(1) The Petitioner committed 170 violations during the period in question, and these violations are serious in nature, but there was no irreparable harm to the environment nor was there any threat to the health and safety of the public as a result of those violations.

(2) The Petitioner met the standard of care in the operation of its production plant before damage to the pond cover; however, its operation during the period in question has not met the standard of care.

(3) The Petitioner has gained some economic benefit by its continued operation of the plant in February of 2009 when the charged violations occurred. No evidence was submitted that would establish the amount of such benefit.

(4) The Petitioner made more-than-reasonable efforts to minimize and mitigate the effects of the violations on the environment, and took reasonable steps to solve its complicated and complex problem which resulted from wind damage to its system. The Petitioner continues in that effort; however, it continues to operate (seasonally) even though it is out of compliance.

(5) The Petitioner has a history of violations, but the extent, severity and frequency were not established in the record.

(6) There is little evidence as to the Petitioner's ability to pay.

B. Based upon the above considerations and the hearing of this matter de novo, the undersigned finds that the penalty assessed by ADEM is excessive and in error. It is the finding of the undersigned that the Petitioner should be assessed a civil penalty in the amount of \$35,000 for the violations charged in these proceedings. Payment of this penalty should be made to ADEM within 45 days from the final decision of the Commission, and payment should be made by certified or cashier's check and remitted to the Office of the General Counsel, Post Office Box 301463, Montgomery, AL 36130-1463.

IV. Time for Compliance

The Petitioner has had ample time to conduct its engineering study which it argues it will need in order to correct the deficiencies and come in compliance. The 485 days allowed by ADEM in its Findings for the Petitioner to comply is reasonable and should not be modified.

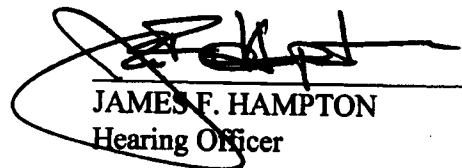
V. Related Conclusions

The Petitioner should comply with all other provisions of ADEM's Findings (Order No. 10-112-WP) dated May 18, 2010 including the provisions of the "Order" section of those Findings (unless modified by the Commission) to include the provisions under subparagraphs C, D, E, F, H, I, J and K of those Findings. All times imposed upon the Petitioner by those provisions should begin to run from the date of the Commission's final decision in this cause.

**VI. RECOMMENDATION**

The undersigned Hearing Officer recommends to the Commission that it enter an order and finding consistent with the evidence presented, that it adopt these Findings of Fact and Conclusions of Law, and that it enter a decision accordingly.

Done this the 17th day of November, 2010.

  
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JAMES F. HAMPTON  
Hearing Officer

Robert D. Tambling, Esq.  
Antoinette Jones, Esq.  
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