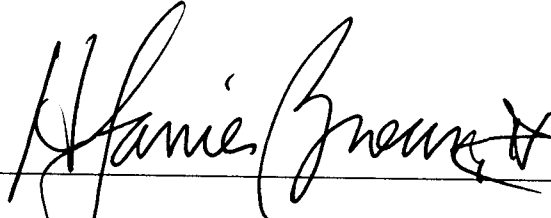


10/19/12

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 17, 2012**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on August 17, 2012.

A handwritten signature in black ink, appearing to read "Jamie Brown", written over a horizontal line.

Chair
Environmental Management Commission

Certified this 19th day of October 2012.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 17, 2012

Convened: 11:00 a.m.
Adjourned: 11:45 a.m.

Part A

Transcript
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Part B

Attachments 1 - 4

Part A

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1 * * * * *

2

3

4 ALABAMA ENVIRONMENTAL MANAGEMENT

5 COMMISSION MEETING

6

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8 ALABAMA DEPARTMENT OF ENVIRONMENTAL

9 MANAGEMENT

10 Alabama Room

11 1400 Coliseum Boulevard

12 Montgomery, Alabama 36110-2400

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20 Taken by: Bridgette W. Mitchell,

21 ACCR 231

22

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Page 3

1 CHAIRMAN LESTER: Can I have

2 everybody's attention? I want to,

3 first off, introduce Mary Merritt.

4 She's the Governor's new appointee to

5 the Commission. She takes Marquita

6 Davis's position. Mary is from

7 Enterprise. She's in the real estate

8 business. She's a civic person. Even

9 though you think she's handicapped,

10 she's not handicapped. She can outrun

11 all of us, I guarantee you. But she's

12 a wonderful person, wonderful business

13 person. And this was an open slot, so

14 we needed a good businessperson in it.

15 So I wanted you to meet her.

16 At this time, we'll call the

17 meeting to order. And I acknowledge

18 that we do have a quorum. Richardson

19 is not here today. He had a problem

20 and couldn't get here. We still have a

21 quorum today.

22 Next item is consideration of the

23 minutes of our June -- April 20th and

Page 2

1 * * * * *

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3

4 APPEARANCES

5

6 COMMISSION MEMBERS PRESENT:

7 John H. Lester, D.V.M., Chair

8 H. Lanier Brown, II, Esquire, Vice

9 Chair

10 Samuel L. Miller, M.D.

11 W. Scott Phillips

12 James E. Laier, Ph.D., P.E.

13 Mary J. Merritt

14

15 COMMISSION MEMBER NOT PRESENT:

16 Terry D. Richardson, Ph.D.

17

18 ALSO PRESENT:

19 Robert Tambling, EMC Legal Counsel

20 Lance R. LeFleur, ADEM Director

21 Dennis Harrison, Chief Water

22 Division

23 Debi Thomas, EMC Executive

Assistant

Page 4

1 June 15th meeting. Each Commissioner

2 has a copy.

3 MR. PHILLIPS: I move we adopt

4 the minutes of both meetings.

5 MR. BROWN: Second.

6 CHAIRMAN LESTER: Motion and

7 second. All in favor say aye.

8 (Unanimous.)

9 CHAIRMAN LESTER: All opposed?

10 (No response.)

11 CHAIRMAN LESTER: Next we'll

12 have the report from the Director.

13 He's full of it today.

14 MR. LeFLEUR: Chairman.

15 CHAIRMAN LESTER: I enjoy it.

16 He comes down to all the Commissioners

17 before each meeting the week before and

18 indoctrinates us on all this stuff.

19 He's very, very thorough.

20 MR. LeFLEUR: Very enjoyable

21 time, and I appreciate y'all putting up

22 with that.

23 Good morning and welcome to all of

<p style="text-align: right;">Page 5</p> <p>1 you present at this final of the six 2 scheduled meetings of the Alabama 3 Environment Management Commission for 4 Fiscal Year 2012. More significantly, 5 this is officially the last scheduled 6 meeting of Dr. Lester's 18-year tenure 7 on the Environment Management 8 Commission. However, should the 9 Governor not appoint his replacement 10 prior to the next meeting, we will all 11 look forward to seeing him here at our 12 October meeting, and perhaps meetings 13 after that. I'll take just a moment to 14 recognize that his lovely wife, Jane, 15 has joined us for today. Thank you for 16 joining us. 17 Dr. Lester, I won't try to 18 summarize your extraordinary 19 contributions to this Commission now, 20 but I look forward to attempting it at 21 our next meeting. For now, suffice it 22 for me to offer my heartfelt personal 23 thanks for your leadership and for your</p>	<p style="text-align: right;">Page 7</p> <p>1 reiterate our plan for future years. 2 The bulk of this report will focus on 3 several important ongoing initiatives 4 within the Department. We're entering 5 a time of transition here at ADEM, and 6 I will offer some closing remarks to 7 say farewell to one of our retiring 8 division chiefs and introduce you to 9 the one who will pick up the torch and 10 carry it on as we move forward. 11 Budgets. We have six weeks 12 remaining in Fiscal Year 2012. There 13 have been no additional cuts to this 14 year's budget since we've last met. As 15 a result of implementing previously- 16 announced cost-cutting measures, the 17 Department is on target to close out 18 the year within the budget as it now 19 stands. One of the previously- 20 announced cost-cutting efforts is to 21 reduce head count through attrition. 22 We currently have 595 employees, down 23 from 610 in April of this year, and a</p>
<p style="text-align: right;">Page 6</p> <p>1 friendship. 2 CHAIRMAN LESTER: Thank you, 3 sir. 4 MR. LeFLEUR: I'd also like the 5 opportunity to once again welcome 6 Ms. Mary Merritt. She is, as 7 Dr. Lester said, in the at-large 8 position, and she comes with more than 9 20 years of real estate and 35 years of 10 business management experience. I 11 welcome you to the Environment 12 Management Commission. 13 MS. MERRITT: Thank you. 14 MR. LeFLEUR: And on behalf of 15 the Department, I wish to say that 16 we're delighted to have you here and 17 look forward to working with you for 18 many years to come. 19 MS. MERRITT: Thank you. 20 MR. LeFLEUR: We're about to 21 close out the current fiscal year. I 22 will be brief in reporting on the 23 Fiscal Year 2012 budget and briefly</p>	<p style="text-align: right;">Page 8</p> <p>1 total -- out of a total allotted staff 2 of 648. We are nearing the point where 3 additional reductions will not be 4 possible without endangering our 5 ability to retain federally-delegated 6 programs. The attrition approach has 7 allowed us to cut our costs without 8 having to resort to layoffs, and we 9 anticipate no layoffs in the 10 foreseeable future. 11 We are continuing to move forward 12 in reaching out to impacted parties 13 regarding the anticipated 50-percent 14 increase in permitting fees beginning 15 in Fiscal Year 2014. We've met with 16 several organizations to present the 17 reasons for the increase and the 18 consequences of not implementing the 19 increase. As previously noted, I 20 anticipate presenting a request to the 21 Commission for rulemaking in June of 22 2013 to set the new permit fee 23 schedule.</p>

<p style="text-align: right;">Page 9</p> <p>1 Moving on to some of our 2 initiatives, let me begin with the 3 issue of water use policy. At the 4 request of Governor Bentley, the 5 Alabama Water Agencies Working Group 6 was formed and is made up of the Office 7 of Water Resources, a division of 8 ADECA, Alabama Department of 9 Conservation and Natural Resources, 10 Geological Survey of Alabama, Alabama 11 Department of Ag and Industry, and 12 ADEM. The Working Group has completed 13 its initial task of developing a report 14 identifying Alabama water use policy 15 issues. This report is available to 16 the public on the OWR and ADEM websites 17 or can be made available in electronic 18 form on request to ADEM. 19 The Working Group is now tasked by 20 the Governor with reaching out to all 21 interested parties who would like to 22 have input in shaping water policy in 23 Alabama. The water issues document is</p>	<p style="text-align: right;">Page 11</p> <p>1 respective organizations in order to 2 maximize the efficiency and the impact 3 of their input. 4 Also, all interested parties should 5 be aware that there is a Permanent 6 Joint Legislative Committee on water 7 policy which has been holding public 8 hearings on water policy. Attending 9 those meetings is another way to get 10 additional information about water 11 policy in Alabama. 12 There are many reasons why we in 13 Alabama would be wise to consider 14 developing water use policy at this 15 time. One of those reasons is the 16 increasing frequency of water shortages 17 caused by drought. As with much of the 18 country, Alabama is experiencing 19 moderate to severe drought in many 20 areas of the state. This summer, the 21 drought has mainly affected public 22 drinking water systems located in the 23 northwest and southeast areas of the</p>
<p style="text-align: right;">Page 10</p> <p>1 intended to generate discussion and the 2 comments received will provide 3 important input to the development of 4 water policy and water regulation. 5 We've encouraged all interested parties 6 to be heard on this issue. All 7 comments received will be weighed in 8 developing a revised Water Management 9 Issues document and a consensus for 10 statewide water management plan 11 recommendation to be transmitted to the 12 Governor's office. 13 Specific comments on the "Water 14 Management Issues in Alabama" document 15 can be provided by letter, e-mail, or 16 in person to any member of the Alabama 17 Water Agencies Working Group. Working 18 Group member agencies are also 19 available to meet with stakeholder 20 groups to discuss the report and 21 receive any input. We have suggested 22 that members of stakeholder groups 23 develop consensus within their</p>	<p style="text-align: right;">Page 12</p> <p>1 state. Due to the recent rains, the 2 immediate threat of loss of water 3 service due to the drought has been 4 reduced. Currently, the Department is 5 aware of only five; and as of this 6 morning, it's now down to four public 7 water systems that are asking their 8 customers to conserve water usage. As 9 you can see, the map behind me on my -- 10 on your left, the five systems are 11 Harvest-Monrovia Water and Sewer 12 Authority, which is the one that 13 notified us this morning they are no 14 longer under a conservation program; 15 East Lauderdale County Water Authority; 16 Dothan Utilities; Enterprise Water 17 Works; and Troy Utilities. 18 All of these public water systems 19 are asking their customers to 20 voluntarily conserve water. The 21 Department is not aware of any 22 mandatory water conservations being 23 employed by any of the state's public</p>

<p style="text-align: right;">Page 13</p> <p>1 water systems. These water systems are 2 typically asking customers with even- 3 numbered addresses to water their lawns 4 only on even number days and customers 5 with odd-numbered addresses to water 6 their lawns on the odd-numbered days. 7 At least one of the systems has also 8 asked its customers not to water their 9 lawns on weekends. The Department 10 will continue to closely monitor the 11 drought as it develops. However, if 12 rains continue, these current measures 13 should be sufficient to avoid any 14 further rationing for the time being. 15 We do expect periodic drought-driven 16 water shortages to continue and 17 possibly increase, which will heighten 18 the need to consider water-use policy. 19 Another initiative in the water 20 arena which is worthy of note relates 21 to a serious environmental problem in 22 the most economically disadvantaged 23 area of the state. The initiative</p>	<p style="text-align: right;">Page 15</p> <p>1 untreated raw sewage. Odor from the 2 improperly-treated raw sewage has been 3 readily detectable throughout the town. 4 Serious concerns regarding public 5 health and the environment during April 6 of this year prompted the Alabama 7 Department of Public Health to issue a 8 public health advisory and ADEM to 9 issue a cease and desist order and to 10 take legal action when partially- 11 treated sewage was released from broken 12 dams at the spray field into Freetown 13 Creek. This release resulted in septic 14 conditions in Freetown Creek with 15 far-reaching impacts to downstream 16 water bodies in neighboring counties. 17 Even as the Department repeatedly 18 took enforcement action against 19 Uniontown, ADEM was spearheading 20 efforts to find a permanent solution to 21 the problem. Uniontown's engineering 22 consultant estimated it would take 23 approximately \$4.5 million to</p>
<p style="text-align: right;">Page 14</p> <p>1 involves cooperative efforts of 2 multiple parties. From time to time in 3 my reports to the Commission I have 4 highlighted the importance of working 5 with others to accomplish the mission 6 of the Department. Recent activities 7 involving the town of Uniontown provide 8 a fine example of what can be done 9 through cooperative efforts. 10 The citizens of Uniontown have the 11 lowest per capita income in Alabama and 12 one of the lowest in the nation. The 13 wastewater treatment plant in Uniontown 14 has been able to come into compliance 15 with neither the minimum standards of 16 the Clean Water Act nor its ADEM permit 17 conditions. Years of underfunding and 18 neglect have resulted in a plant that 19 has been overwhelmed by both increased 20 volume from infiltration and lack of 21 proper maintenance. 22 For some time, Uniontown has 23 experienced periodic overflows of</p>	<p style="text-align: right;">Page 16</p> <p>1 reconstruct and modernize the 2 wastewater treatment plant so waste 3 would be properly treated and the local 4 populace would not be subjected to 5 future health threats and noxious odors 6 from improperly-treated sewage and 7 noncompliant discharges. Uniontown 8 citizens were already paying high sewer 9 fees and the city did not have a 10 borrowing capacity to cover even a 11 fraction of the cost. 12 A coalition of partners was built 13 to find a solution. In cooperation 14 with federal, state, and local 15 officials and agencies, including ADEM 16 and Congresswoman Terry Sewell's 17 office, the City of Uniontown has just 18 received \$4.8 million of funding from 19 the U.S. Department of Agriculture 20 Rural Development. Approximately \$2.3 21 million was awarded in the form of a 22 grant and \$2.5 million in the form of a 23 loan with unusually favorable terms.</p>

<p style="text-align: right;">Page 17</p> <p>1 Engineering plans are in place to 2 repair the wastewater treatment plant, 3 install new water meters, and 4 rehabilitate and install new pumps for 5 the city's pumping stations. In the 6 near future, overflows of raw sewage 7 will stop, the City of Uniontown can 8 return to compliance, and both water 9 quality and human health will be 10 protected. 11 This is a huge win for the citizens 12 of Uniontown and the State of Alabama. 13 I'm delighted to report this as another 14 example of how our mission is being 15 accomplished by working in partnership 16 with a variety of entities. 17 Moving on to some noteworthy 18 activities in our land program, the 19 Department recently announced the 20 recipients of this year's Alabama 21 Recycling Fund grants. Funding for 22 these grants is provided through the 23 one-dollar-per-ton surcharge on</p>	<p style="text-align: right;">Page 19</p> <p>1 recycling in our state, in 2011, 2 approximately \$25 million was spent in 3 Alabama to dispose of readily- 4 recyclable materials that were worth 5 approximately \$193 million. The ADEM 6 Recycling Grants program provides 7 recipients with funding to assist in 8 the recovery of this recyclable 9 material which is generally a more 10 affordable and environmentally sound 11 option compared to utilizing virgin raw 12 material as feedstock. 13 The Southeastern Recycling 14 Development Counsel, SERDC, reports 15 that 26 Alabama-based manufacturers 16 depend on recycled feedstock to make 17 new consumer goods and that these 18 companies collectively employ more than 19 10,000 people and have total annual 20 sales volume exceeding \$6.6 billion. 21 This same SERDC study concluded that 22 each additional 10 percent increase in 23 Alabama recycling rates would equate to</p>
<p style="text-align: right;">Page 18</p> <p>1 disposal of solid waste in Alabama. Of 2 the monies collected under this fee, 25 3 percent goes to recycling grants. This 4 competitive reimbursement grant program 5 encourages multi-governmental regional 6 partnership, recycling infrastructure 7 development, and education and outreach 8 to assist new or existing local 9 recycling programs in Alabama. 10 If you draw your attention to the 11 map to my rear on my left, your right, 12 you can see where the grants have been 13 issued. They are throughout the state. 14 Since its inception in 2009, 58 grants 15 out of 95 applications have been made, 16 totaling over \$7 million. Given the 17 relatively small number of existing 18 recycling programs in our state, 19 infrastructure development is a top 20 priority for grant funding, although 21 education and outreach efforts are 22 eligible. 23 To give you an idea of the need for</p>	<p style="text-align: right;">Page 20</p> <p>1 an additional 1400 jobs, \$3 million in 2 tax revenues, and \$66 million in 3 personal income. 4 Alabama Recycling Grant Funds 5 program increases recycling in Alabama, 6 which is good for both our environment 7 and our economy. 8 Another noteworthy activity 9 currently underway in our Land Division 10 involves a comprehensive assessment of 11 solid waste management procedures in 12 Alabama. In its 2011 regular session, 13 the Alabama Legislature directed the 14 Department, in cooperation with the 15 Health Department, to undertake the 16 review. To afford ADEM and ADPH the 17 opportunity to conduct this assessment, 18 the Legislature imposed a 24-month 19 moratorium on the issuance of ADEM 20 permits to most new or expanding 21 landfills. Earlier this year, the 22 Legislature extended the moratorium 23 through May of 2014.</p>

<p style="text-align: right;">Page 21</p> <p>1 The Health Department agreed it 2 would be appropriate for ADEM to take 3 the lead on this assessment which will 4 address the siting and permitting 5 requirements for new public solid waste 6 landfills as well as evaluating 7 increased opportunities for recycling 8 and beneficial reuse.</p> <p>9 In order to ensure an independent 10 and unbiased perspective on the current 11 State of Alabama Solid Waste program, 12 ADEM selected Auburn University to 13 oversee the study. As part of its 14 role, ADEM asked Auburn University 15 with -- tasked Auburn University with 16 conducting a series of meetings around 17 the state to gather input from the 18 general public as well as focused 19 interest groups. Auburn has 20 established a project website, 21 www.eng.auburn.edu, to provide 22 pertinent information to interested 23 parties. Given the increased use of</p>	<p style="text-align: right;">Page 23</p> <p>1 within the leadership of our Land 2 Division, I would like to make you 3 aware of one more environmental matter 4 that involves our Air, Land, and Water 5 Divisions in an economically- 6 disadvantaged community in the Mobile 7 area. As most of you know, the 8 Department has been overseeing the 9 assessment and remediation of a 10 significant Mercaptan release in the 11 Eight Mile area near Mobile. Mercaptan 12 is the odorant added to natural gas to 13 aid in leak detection. Our people have 14 been working with all affected parties 15 to ensure that the release is cleaned 16 up in a manner protective of the 17 environment and human health. Our work 18 is made more urgent because of the 19 pervasive odor that is also a quality- 20 of-life issue for the citizens in the 21 area.</p> <p>22 In late June, the Department 23 received and published the results of</p>
<p style="text-align: right;">Page 22</p> <p>1 social media by the public, Auburn has 2 also established a Project Facebook 3 page that can be used by interested 4 parties to provide input or further 5 discuss issues related to the study.</p> <p>6 More information on the meetings and 7 the website may be found on the display 8 board out in the lobby.</p> <p>9 Once the public meetings are 10 completed later this year, the comments 11 will be compiled by Auburn into a 12 report that will be presented to ADEM 13 early next year. This final report 14 will also include a list of potential 15 solid waste program enhancements 16 identified during the study project.</p> <p>17 Following review of the report and in 18 consultation with the Health 19 Department, the Department will make 20 its final recommendations to the 21 Legislature following the 2013 Regular 22 Session.</p> <p>23 Before reporting on some changes</p>	<p style="text-align: right;">Page 24</p> <p>1 the April EPA air-monitoring study. 2 The study showed that monitored air 3 concentrations of Mercaptan and other 4 sulfur compounds were all below health- 5 based screening concentrations.</p> <p>6 Although this is very encouraging to 7 know, there should be no long-term 8 health -- that there should be no 9 long-term health impacts associated 10 with the release, this pollution, and 11 in particular the odor from it, 12 continues to be a considerable nuisance 13 to the residents of this area and must 14 be addressed.</p> <p>15 As required by an assessment and 16 remediation agreement with ADEM, Mobile 17 Gas Corporation submitted a preliminary 18 assessment of Mercaptan-impacted soil 19 and groundwater on the Gulf South 20 Pipeline property and the area near the 21 spring discharge. The preliminary 22 assessment indicates substantial 23 Mercaptan is present in the soil and</p>

<p style="text-align: right;">Page 25</p> <p>1 groundwater and that more investigative 2 work is needed to evaluate the full 3 lateral and vertical extent of 4 contamination on the Gulf South 5 Pipeline property as well as the down- 6 gradient property toward the spring. 7 The Department is requiring that a 8 comprehensive assessment plan be 9 submitted by August 31. Based on this 10 assessment, appropriate remediation 11 plans will be developed and implemented 12 to clean up the affected area. 13 In the meantime, ADPH, ATSDR, and 14 the CDC will be working together to 15 conduct a Health Study Consultation for 16 the community so that they will be 17 fully informed on the nature and extent 18 of any possible personal health 19 impacts. 20 It's appropriate that we've 21 highlighted a few of the significant 22 ongoing initiatives in the Land 23 Division as I would like to now report</p>	<p style="text-align: right;">Page 27</p> <p>1 1998, Gerald has been the Chief of the 2 Land Division. He's been responsible 3 for hazardous and nonhazardous solid 4 waste programs including RCRA 5 Subtitle C, CERCLA, Federal Facilities, 6 BRAC, Brownfields, RCRA Subtitle D, 7 Scrap Tires, Dry Cleaners, Underground 8 Storage Tanks, and Voluntary Cleanup. 9 Gerald has participated in several 10 national and regional organizations. 11 He served as the Dialogue -- as a 12 Dialogue Member of the Department of 13 Defense Assembled Chemical Weapons 14 Assessment Program during its five-year 15 existence. He has been active in the 16 Air and Waste Management Association 17 and previously served as Chairman of 18 the Southern Section. Gerald has been 19 an active member of the Association of 20 State and Territorial Solid Waste 21 Management Officials, ASTSWMO, since 22 1990, and served on the Board of 23 Directors from 2001 through 2004,</p>
<p style="text-align: right;">Page 26</p> <p>1 on changes in leadership in the Land 2 Division. This is a time that's truly 3 bittersweet. Gerald, would you please 4 join me up here at the podium? I'm 5 going to have to read this verbatim, 6 because there's so much of it to read 7 as far as some of your achievements 8 here at the Department. 9 Gerald Hardy is the Chief of our 10 Land Division, and he will retire 11 effective at the end of this month and 12 will retire into a private-sector 13 position. Phil Davis, the current 14 Chief of our Solid Waste Branch, will 15 be promoted to Division Chief. 16 Although we will certainly miss Gerald, 17 I have every confidence that we have 18 found the right person to lead our 19 Solid Waste Division in the future. 20 Gerald Hardy began his career with 21 the state in 1974, some 38 years ago, 22 and has served in both the Air and 23 Solid Waste programs in Alabama. Since</p>	<p style="text-align: right;">Page 28</p> <p>1 representing the eight southeastern 2 states -- Alabama, Florida, Georgia, 3 Kentucky, Mississippi, North Carolina, 4 South Carolina, Tennessee. He served 5 as Vice-President of ASTSWMO from 6 October 2005 until October 2006 and 7 President from October 2006 to 2007. 8 Gerald earned his bachelor's degree 9 in chemical engineering from Georgia 10 Tech, one of my alma maters, and he has 11 his Georgia Tech tie on today. He is a 12 Certified Public Manager and also a 13 Registered Professional Engineer in the 14 State of Alabama. 15 Gerald, we will certainly miss you 16 here, and we wish you the best as you 17 move forward in your professional life. 18 (Applause.) 19 MR. LeFLEUR: Why don't you 20 stand here while I read some of Phil -- 21 Phil, come on up here. Let me read a 22 few of his accolades, too. I want you 23 to see the dynamic duo here.</p>

<p style="text-align: right;">Page 29</p> <p>1 Phil Davis began his career with 2 ADEM in 1988 as an Environment Engineer 3 in the Municipal Branch of the Water 4 Division. In 1989, he transferred to 5 the Industrial Branch where he was a 6 permit engineer, compliance inspector, 7 and enforcement officer for the 8 industrial NPDES and pretreatment 9 programs. 10 In 1994, Phil was named as Chief of 11 the Industrial Minerals Section in the 12 Department's Air Division. In this 13 role, he was responsible for managing a 14 staff of engineers involved in the new 15 source review and operating permit 16 development and compliance and 17 enforcement activities for industrial 18 source categories, including power 19 plants, iron and steel facilities, the 20 cement industry, and oil and gas 21 refining and exploration. 22 In 2002, Phil joined the Land 23 Division as Chief of the Industrial</p>	<p style="text-align: right;">Page 31</p> <p>1 that year's first statewide legislation 2 signed into law. With the passage of 3 this law, Phil's duties were changed to 4 focus solely on solid waste management, 5 including the Recycling and Scrap Tire 6 programs, and he was named Chief of the 7 Solid Waste Branch in July 2008. He 8 continues to serve in that role and has 9 overseen the implementation of numerous 10 new solid waste programs, including the 11 Unauthorized Dump Remediation and 12 Recycling programs. 13 A native of Kingsport, Tennessee, 14 Phil has lived in Alabama since 1983 15 and graduated from Auburn University in 16 1988 with a Bachelor of Science Civil 17 Engineering degree. He's a Registered 18 Professional Engineer in Alabama and 19 has been active in a number of 20 professional organizations, including 21 Alabama's Water Environment 22 Association, the Air and Waste 23 Management Association, the Alabama</p>
<p style="text-align: right;">Page 30</p> <p>1 Hazardous Waste Branch. In that role, 2 he was responsible for overseeing the 3 Department's hazardous waste 4 permitting, corrective action, 5 compliance and enforcement programs, as 6 well as overseeing ADEM's activities 7 under CERCLA for industrial facilities. 8 In 2006, management of the Solid Waste 9 and Scrap Tire programs were added to 10 Phil's responsibilities and his branch 11 was renamed the Waste Programs Branch. 12 In this role, Phil additionally assumed 13 the oversight of the permitting, 14 compliance, and enforcement activities 15 conducted by the Department in 16 regulating the State's permitted solid 17 waste landfills, unauthorized solid 18 waste dumps, and scrap tire facilities. 19 In 2008, he was primary author of 20 the Solid Waste and Recyclable 21 Materials Act which, by the way, made 22 dramatic impact on the finances of the 23 Department, which was at that -- was</p>	<p style="text-align: right;">Page 32</p> <p>1 Chapter of the Solid Waste Association 2 of North America. He has served as 3 Chairman of both the Alabama Chapter 4 and the Southern Section of the A&WMA 5 and currently serves as an advisor of 6 the Alabama SWANA Executive Board. 7 It is obvious that both Phil and 8 Gerald have substantial credentials, 9 and I have every confidence that Phil 10 will be able to carry on the high 11 standards of performance that we have 12 come to expect out of the Land 13 Division. I want to congratulate you 14 both, you on your retirement and you on 15 being named as Chief of the Land 16 Division. Thank you very much. 17 (Applause.) 18 MR. LeFLEUR: Once again, let 19 me close my remarks today with my 20 thanks to you for serving the State of 21 Alabama as Commissioners on the Alabama 22 Environment Management Commission and 23 for allowing me to serve the State in</p>

<p style="text-align: right;">Page 33</p> <p>1 my current capacity. 2 If there are any questions, I'll be 3 pleased to answer them. 4 MR. PHILLIPS: I have a 5 question, just one. On the water 6 policy/water issues document that you 7 talked about, you said public comment 8 was out. When is that due back to the 9 group? 10 MR. LeFLEUR: We are currently 11 coming up with the schedule. 12 Tentatively, we are looking to have all 13 comments in by October 1. That will 14 allow time for the comments to be 15 accumulated and categorized and then be 16 considered by the Working Group, which 17 will then develop a waste management 18 plan recommendation for the Governor to 19 consider. It will be a multi-step 20 process, and the final step in that 21 process will be legislation to 22 implement it for water management plan. 23 MR. PHILLIPS: Thanks.</p>	<p style="text-align: right;">Page 35</p> <p>1 Vice Chairman of ADEM and then -- 2 that's in the October meeting. In the 3 December meeting, the Committee 4 Chairman will be elected and members 5 will be appointed to it. 6 Now we will consider the adoption 7 of proposed amendments to the ADEM 8 Administrative Code Division 335-7, 9 Water Supply Program Regulation. 10 MR. HARRISON: Mr. Chairman and 11 members of the Commission, I am Dennis 12 Harrison and I am Chief of the Drinking 13 Water Branch of the Water Division. 14 You have before you the complete 15 hearing record for proposed changes to 16 the Public Water Supply Program 17 Regulations. Administrative and 18 technical changes were proposed in 19 eight chapters, as noted in the summary 20 of reasons supporting the adoption of 21 these proposed amendments. On May 2, 22 2012, a public hearing was held to 23 receive data, views, and comments from</p>
<p style="text-align: right;">Page 34</p> <p>1 CHAIRMAN LESTER: Anybody else? 2 (No response.) 3 CHAIRMAN LESTER: Thank you. 4 MR. LeFLEUR: Thank you again. 5 CHAIRMAN LESTER: One thing I 6 can say about Lance, he's got plenty of 7 folks. When one retires, we've got one 8 ready to move up and it's always in the 9 Department. We don't have to go 10 outside the Department. 11 MR. LeFLEUR: The way I put it, 12 Mr. Chairman, is we have an 13 embarrassment of wealth of riches here. 14 The difficulty is not finding a 15 qualified candidate. The difficulty is 16 motivating the well-qualified 17 candidates that weren't selected to 18 take a particular position. It's a 19 wonderful situation to be in; you're 20 right. 21 CHAIRMAN LESTER: Thank you for 22 your job. Our next meeting, we will 23 have elections of the Chairman and the</p>	<p style="text-align: right;">Page 36</p> <p>1 interested persons regarding the 2 proposed revisions. Written comments 3 were accepted any time during the 4 public comment period which extended 5 from March 18 through May 4, 2012. 6 During the comment period, the 7 Department received written comments 8 from two individuals and two 9 committees. At the hearing on May 2, 10 2012, no one presented oral testimony. 11 All comments received have been 12 addressed in the reconciliation 13 statement that is included in the 14 hearing record and related documents 15 provided to you earlier. 16 The Department requests that the 17 Commission adopt the proposed 18 revisions. I will be happy to address 19 any questions the Commission may have. 20 CHAIRMAN LESTER: Any 21 questions? 22 (No response.) 23 MR. PHILLIPS: I'd like to move</p>

<p style="text-align: right;">Page 37</p> <p>1 we adopt the proposed amendments. 2 MR. LAIER: Second. 3 CHAIRMAN LESTER: Motion and 4 second. All in favor say aye. 5 (Unanimous.) 6 CHAIRMAN LESTER: All opposed? 7 (No response.) 8 CHAIRMAN LESTER: Thank you. 9 MR. HARRISON: Thank you. 10 CHAIRMAN LESTER: Several of 11 these Mary said that she would abstain 12 from voting since she hadn't been 13 involved in all the massive stuff that 14 we've gotten since about two weeks. 15 Now she's overwhelmed with what Debi's 16 sending her. We're all used to it. 17 Next item is Integrated Waste 18 Services, LLC, versus ADEM, EMC Docket 19 No. 12-04; Waste Two Energy, LLC, 20 versus ADEM, EMC Docket No. 12-05. I 21 will note to the Commission that they 22 have withdrawn their application for a 23 stay and a notice of appeal and request</p>	<p style="text-align: right;">Page 39</p> <p>1 information on the proceeding file and 2 conclusion. Commissioners will note 3 that the Hearing Officer includes 4 factual and procedural history of the 5 proceeding; finding of fact; 6 conclusions of law; recommendation of 7 the Hearing Officer, which includes 8 recommendations A through F. Any 9 motion from -- entertain a motion on 10 this report. 11 MR. BROWN: Move to adopt the 12 report of the hearing officer including 13 the recommendations. 14 MR. PHILLIPS: Second. 15 CHAIRMAN LESTER: Motion and 16 second. All in favor say aye. 17 (Unanimous.) 18 CHAIRMAN LESTER: All opposed? 19 (No response.) 20 CHAIRMAN LESTER: Next item of 21 business is any other business. Any of 22 the Commissioners have any other 23 business they would like to bring</p>
<p style="text-align: right;">Page 38</p> <p>1 for hearing EMC Docket No. 12-04 and 2 12-05. 3 The next item is consider the 4 Recommendation of the Hearing Officer 5 on ADEM's Motion to Dismiss, Ken 6 Scroggin d/b/a Eager Beavers Tree 7 Service versus ADEM, EMC Docket 8 No. 12-03. I will entertain a motion 9 from the Commission on this item. 10 MR. MILLER: So move. 11 CHAIRMAN LESTER: I have 12 motion. Do I have a second? 13 MR. BROWN: Second. 14 CHAIRMAN LESTER: Motion and 15 second. All in favor say aye. 16 (Unanimous.) 17 CHAIRMAN LESTER: All opposed? 18 (No response.) 19 CHAIRMAN LESTER: The next item 20 is concerning the report of the hearing 21 officer in the Otis and Johnathan 22 Guthrie versus ADEM, EMC Docket 23 No. 12-02. Commissioners had all this</p>	<p style="text-align: right;">Page 40</p> <p>1 before the Commission? 2 (No response.) 3 CHAIRMAN LESTER: If not, our 4 next Commission meeting will be 5 October 19. Any comments? 6 MR. LAIER: I may have a 7 conflict. I may not be able to attend. 8 CHAIRMAN LESTER: Just let Debi 9 know what the problem is. 10 Before we adjourn, I'd like to say 11 one thing. This is my eighteenth year, 12 my 108th meeting. I think I've had 13 four or five Governors, four Directors. 14 Gerald has outlasted me. It's 15 gentlemen like him and our Department 16 heads and all the workers, and without 17 Debi, without Robert, without Lance and 18 all of the members of his office down 19 there, without all of our Department 20 heads and without all of our 21 employees -- you know, we're just sort 22 of an ADEM family and everybody looks 23 after everybody and we look after the</p>

1 State's business, the people's
2 business.
3 Now I entertain a motion to
4 adjourn.
5 MR. PHILLIPS: So moved.
6 CHAIRMAN LESTER: All in favor
7 say aye.
8 (Unanimous.)
9 CHAIRMAN LESTER: All opposed?
10 (No response.)
11 (The hearing proceeding
12 concluded at approximately
13 11:45 a.m.)
14
15 (The hearing proceedings
16 concluded at approximately
17 11:45 a.m.)
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1 REPORTER'S CERTIFICATE
2
3 STATE OF ALABAMA)
4 ELMORE COUNTY)
5
6 I do hereby certify that the above
7 and foregoing transcript was taken down
8 by me in stenotype, and the questions
9 and answers thereto were transcribed by
10 means of computer-aided transcription,
11 and that the foregoing represents a
12 true and correct transcript of the
13 testimony given by said witness.
14
15 I further certify that I am
16 neither of counsel, nor any relation to
17 the parties to the action, nor am I
18 anyway interested in the result of
19 said cause.
20
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Certified Court Reporter and
Commissioner for the State of
Alabama at Large
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3)
4 ELMORE COUNTY)5
6 I do hereby certify that the above
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18 anywise interested in the result of
19 said cause.20 I further certify that I am
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23 Reporter as evidenced by the ACCR
 number following my name below.24
25 *Bridgette W. Mitchell*
26 /s/ Bridgette W. Mitchell
27 Certified Court Reporter and
28 Commissioner for the State of
29 Alabama at Large
30 ACCR No. 231 - Expires 9/30/12
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				B
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Part B

Attachment Index

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(Agenda Item 4) |
| Attachment 3 | Order to adopt Recommendation of the Hearing Officer on ADEM's Motion to Dismiss
(Agenda Item 6) |
| Attachment 4 | Order to adopt Report of Hearing Officer
(Agenda Item 7) |

Attachment 1

Amended 08/06/12

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: August 17, 2012

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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5. <u>Integrated Waste Services, LLC v ADEM</u> , EMC Docket No. 12-04; <u>Waste Two Energy, LLC v. ADEM</u> , EMC Docket No. 12-05	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 these meetings will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETINGS HELD ON APRIL 20, 2012, AND JUNE 15, 2012
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 335-7, WATER SUPPLY PROGRAM REGULATIONS

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-7, Water Supply Program Regulations. The Department is proposing to amend Chapters 335-7-2; 335-7-4; 335-7-5; 335-7-6; 335-7-7; 335-7-10; 335-7-11; and 335-7-14 to make administrative and technical clarifying changes. The Department held a public hearing on the proposed amendments on May 2, 2012.

5. INTEGRATED WASTE SERVICES, LLC V. ADEM, EMC DOCKET NO. 12-04; WASTE TWO ENERGY, LLC V. ADEM, EMC DOCKET NO. 12-05

The Commission will acknowledge for the record Petitioners Integrated Waste Services, LLC and Waste Two Energy, LLC's withdrawals of the applications for stay and the notices of appeal and requests for hearing in the above matters.

6. KEN SCROGGIN, D/B/A EAGER BEAVERS TREE SERVICE V. ADEM, EMC DOCKET NO. 12-03

The Commission will consider the Recommendation of the Hearing Officer on ADEM's Motion to Dismiss in this appeal/request for hearing regarding ADEM Administrative Order 12-066-A issued on February 8, 2012, to Ken Scroggin, d/b/a Eager Beavers Tree Service, Madison, Madison County, Alabama.

7. OTIS AND JOHNATHAN GUTHRIE V. ADEM, EMC DOCKET NO. 12-02

The Commission will consider the Report of the Hearing Officer in this appeal/request for hearing regarding ADEM Administrative Order 12-060-SW issued on January 13, 2012, to Otis and Johnathan Guthrie, Blackwell Dairy Road UAD, Jasper, Alabama, Walker County.

8. OTHER BUSINESS
9. FUTURE BUSINESS SESSION

Attachment 2

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-7 of the Department's Water Division's Water Supply 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 335-7 rules [335-7-2-.03/Inorganic Chemical Standards and Monitoring Requirement (Amend); 335-7-2-.04/Synthetic Organic Chemical (SOCs) Standards and Monitoring Requirements (Amend); 335-7-2-.08/Radionuclide Standards and Monitoring Requirements (Amend); 335-7-2-.09/Maximum Residual Disinfectant Levels and Monitoring Requirement (MRDLs) (Amend); 335-7-2-.12/Stage 2 Disinfection Byproducts (Amend); 335-7-2-.16/Operational Evaluation Level (Amend); 335-7-4-.03/Permitting Requirements for System Additions (Amend); 335-7-4-.04/Requirements for New Water Systems (Amend); 335-7-4-.10/Completed Project Approval (Amend); 335-7-4-.11/Consecutive Water System Requirements (Amend); 335-7-5-.13/Springs (Amend); 335-7-5-.15/Ground Water Quality (Amend); 335-7-5-.17/Disinfection Requirements (Amend); 335-7-5-.18/Filtration Requirements (Amend); 335-7-5-

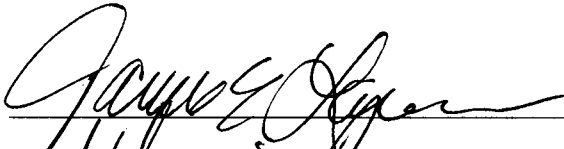
.22/Ground Water Rule (Amend); 335-7-6-.03/Source Selection Report (Amend); 335-7-6-.04/Treatment Requirements (Amend); 335-7-6-.05/Surface Water Intake Structures (Amend); 335-7-6-.15/Lighting and Power Requirements (Amend); 335-7-7-.03/Distribution Facilities Design and Construction Requirements (Amend); 335-7-10-.05/Records (Amend); 335-7-10-.06/Reports (Amend); 335-7-11-.11/Action Level Non-Compliance (Amend); 335-7-11-.12/Corrosion Control Treatment Requirement (Amend); 335-7-11-.13/Corrosion Control Study (Amend); 335-7-11-.17/Public Education Requirement (Amend); 335-7-14-Appendix A/Standard List of Primary Drinking Water Contaminants for CCR (Amend); 335-7-14-Appendix B/Regulated Contaminates (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.

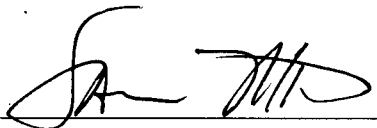
**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

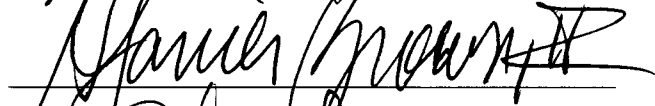
ADEM Admin. Code division 335-7- Water Supply Program Regulations

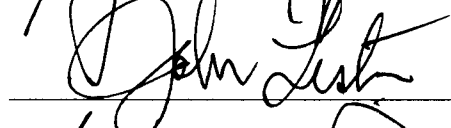
IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of August 2012.

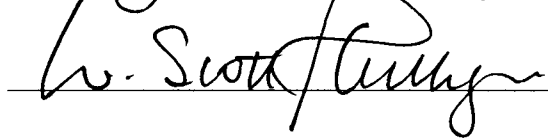
APPROVED:





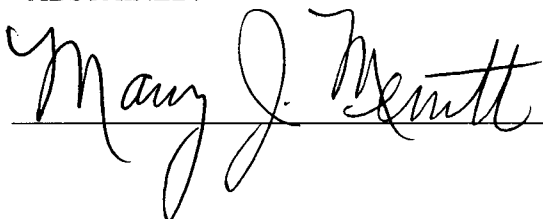




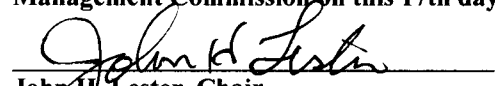


DISAPPROVED:

ABSTAINED:



This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2012.


John H. Lester, Chair
Environmental Management Commission
Certified this 17th day of August 2012

Attachment 3

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

In the Matter of:)	
)	
Ken Scroggin, d/b/a Eager Beavers)	
Tree Service,)	
Petitioner,)	
)	
vs.)	EMC Docket No. 12-03
)	
Alabama Department of)	
Environmental Management,)	
Respondent.)	

ORDER

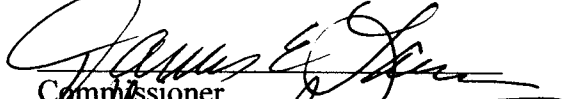
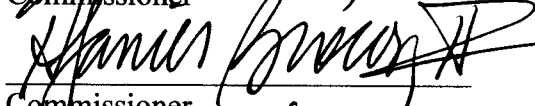

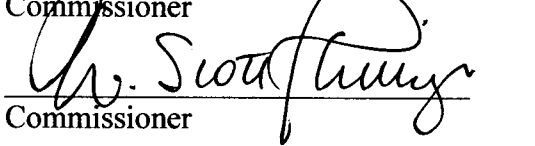
This cause having come before the Environmental Management Commission pursuant to the Hearing Officer's Order and Recommendation on ADEM's Motion to Dismiss; ADEM's Motion to Strike and Dismiss; and the other documents in the record for the above-styled appeal/request for hearing and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


1. That the Recommendation of the Hearing Officer on ADEM's Motion to Dismiss is hereby adopted; and
2. That pursuant to the adoption of the Recommendation of the Hearing Officer on ADEM's Motion to Dismiss, the Motion to Dismiss is granted and this appeal/request for hearing is dismissed; 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 Hearing Officer's Order and Recommendation, attached hereto and made a part hereof, shall be forthwith served up each of the parties hereto either personally, or by certified mail, return receipt requested.

Environmental Management Commission Order
Page 2

ISSUED this 17th day of August 2012.

APPROVED:


Commissioner

Commissioner

Commissioner

Commissioner


Commissioner

Commissioner

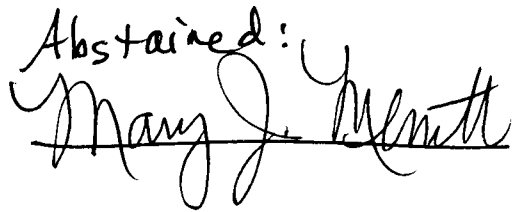
Commissioner

DISAPPROVED:


Commissioner

Commissioner

Commissioner

Abstained:


This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2012.



John H. Lester, Chair
Environmental Management Commission
Certified this 17th day of August 2012

BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

KEN SCROGGIN D/B/A,)	
EAGER BEAVERS TREE SERVICE.)	
)	
Petitioner,)	
)	
vs.)	
)	DOCKET NO. 12-03
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT.)	
)	
Respondent.)	

ORDER AND RECOMMENDATION

This matter is before the Undersigned on the Department’s Motion to Strike and Dismiss. Said Motion is considered a Motion to Dismiss filed pursuant to Ala. Admin. Code r. 335-2-1-.21 (4). On May 8, 2012, the Undersigned issued an Order directing Petitioner to respond to the Department’s Motion within fourteen (14) days. No response was filed. Therefore, after considering said Motion, and for the reasons stated in the Motion (specifically, that the appeal was filed too late and is a legal nullity), the Undersigned recommends that the Department’s Motion to Dismiss be GRANTED and that this matter be dismissed.

Petitioner shall ten (10) days from the date of service of this Order and Recommendation to file any objections to the same. Not later than 3 days prior to the meeting of the Commission on August 17, 2012, or ten days after receipt of notice of the filing of objections, if any, by Petitioner, whichever is sooner, the Department may file and serve with the Commission a reply brief responding to arguments raised by Petitioner.

Done this 24th day of July, 2012.



R. Rainer Cotter, III

 R. Rainer Cotter, III
 Hearing Officer

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Email: rre@enterpriselawyers.com

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Ken Scroggin
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Email: krscroggin@aol.com

Attachment 4

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

In the Matter of:)	
)	
Otis and Johnathan Guthrie,)	
Petitioners,)	
vs.)	EMC Docket No. 12-02
)	
Alabama Department of)	
Environmental Management,)	
Respondent.)	


ORDER

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

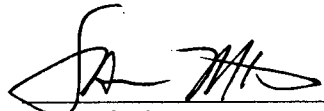
1. That the Report of Hearing Officer is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
3. That a copy of this Order, along with a copy of the Report of Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 17th day of August 2012.

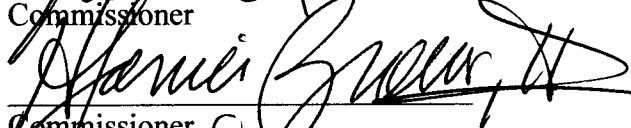
APPROVED:



Commissioner

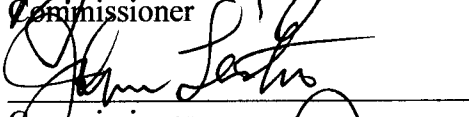


Commissioner



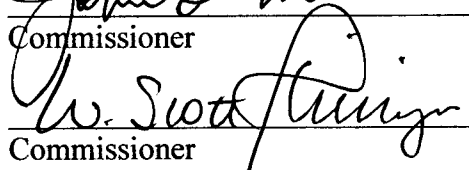
Commissioner

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Commissioner

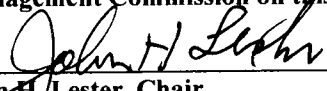
DISAPPROVED:

Commissioner

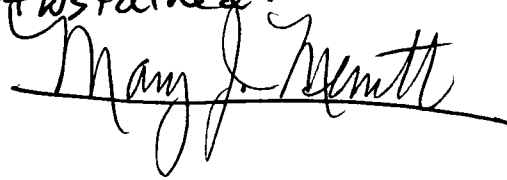
Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2012.



John H. Lester, Chair
Environmental Management Commission
Certified this 17th day of August 2012

Abstained:


Mary J. Remitt

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

OTIS AND JONATHAN GUTHRIE,)
)
 Petitioners,)
)
 vs.)
)
 ALABAMA DEPARTMENT OF)
 ENVIRONMENTAL MANAGEMENT,)
)
 Respondent.)
 _____)

Docket No. 12-02



REPORT OF HEARING OFFICER

COMES NOW the undersigned duly-appointed Hearing Officer (hereinafter the “undersigned”) and respectfully submits this Report which contains findings of fact, conclusions of law and a recommendation which is submitted to the Environmental Management Commission (hereinafter “Commission”) along with the record of these proceedings including a transcript of testimony and comments received, all in accord with Rule 335-2-1-.27 of ADEM Admin Code. This report is submitted for the Commission on the date indicated below.

I. FACTUAL AND PROCEDURAL HISTORY OF THIS PROCEEDING

This case began with an investigation by the Alabama Department of Environmental Management (hereinafter “ADEM”), through its agent David Hamilton (R. 58-9), who made an inspection of the real property of the Petitioners at 712 Blackwell Road, Jasper, Alabama in Walker County (R. 59). Mr. Hamilton discovered an unauthorized dump (hereinafter “dump”) on this property (See ADEM’s Exhibit 1) and determined, through a search of Walker County records, that the property where the dump was located was owned by Otis Guthrie and Jonathan Guthrie, with the dump site being located on “both parcels” of property owned by these named Petitioners (R. 61). Petitioner Mr. Otis Guthrie submits that the dump was located only on his property and not on his son Jonathan’s (R. 20-21); however, the evidence from ADEM on this issue is more credible especially given Mr.

Jonathan Guthrie's decision not to appear at the hearing of this matter even after adequate and proper notice (See Record p. 57 and return mail receipt signed for by Jonathan Guthrie and dated June 5, 2012). Nobody other than Mr. Hamilton for ADEM testified as to the exact location of the dump site and its position on both parcels of the property in question (R. 20-21).

As a result of Mr. Hamilton's investigation, he gave Mr. Otis Guthrie a verbal warning on April 22, 2011 to remove or abate the dump and to do so within thirty days (R. 63; ADEM Ex. 1). No response was received by ADEM from the Petitioners, so another inspection was made of the property by Mr. Hamilton on June 10, 2011 (R. 64; ADEM Ex. 2) where Mr. Hamilton found very little change in the dump. Following the second visit, Mr. Hamilton worked to prepare, and ADEM issued, a Notice of Violation dated June 13, 2011 (delivered to the property and signed for on June 17, 2011 (R. 66-7; ADEM Ex. 3 & 4). Again no response was received from the Petitioners, so a Failure to Respond letter was issued by ADEM dated July 21, 2011 and delivered to the property on August 3, 2011 again resulting in no response (R. 69). At that point a proposed administrative order was prepared by ADEM and sent to the Petitioners at the same address on October 13, 2011. This was signed for by Mr. Otis Guthrie on October 20, 2011 and again it was ignored by the Petitioners (R. 72).

At that point public notice was given, again without comment or response from anyone including the Petitioners (even though it appears they "saw it in the newspaper" (R. 54). By January 13, 2012 (R. 73) the Order had become "final" (R. 73) and such was sent to the Petitioners. It was sent again on February 22, 2012 because the first notice was unclaimed and the record shows this notice was delivered to 710 Blackwell Road, Jasper, Alabama. At that point ADEM received a response from the Petitioners in the form of a phone call from Mrs. June Guthrie, the wife of Otis Guthrie. She stated she had receipts showing cleanup efforts and was supplied information by Mr. Hamilton regarding an appeal (R. 77). Nothing was ever received from the Petitioners as to pictures, receipts, etc. up and to the day of this hearing.

Mr. Brent Watson, another agent of ADEM, went to the property on May 10, 2012 and found the dump still present and not abated (R. 84).

The testimony of Petitioner Otis Guthrie, his witness Mrs. June Guthrie, and a review of the photographs submitted by the Petitioners and taken the morning of the hearing indicated to the undersigned that the site was substantially cleaned up by June 21, 2012 although such does not necessarily indicate compliance with the order.

II FINDINGS OF FACT

The undersigned finds, from the evidence presented, as follows:

1. Petitioners Otis Guthrie and Jonathan Guthrie are the owners of property located off of Blackwell Dairy Road near Jasper, Walker County, Alabama which is the subject of this appeal. ADEM is a duly-constituted Department of the State of Alabama and was authorized to enforce provisions of *Code of Alabama, 1975, §22-27-1, et seq.*

2. On April 22, 2011, David Hamilton, an inspector with ADEM's Solid Waste Division, conducted an inspection and documented the existence of an unauthorized solid waste dump located on the property of the Petitioners at 710 Blackwell Dairy Road, Jasper, Walker County, Alabama. An unauthorized dump is defined as any collection of solid wastes....dumped or placed on any....private property....without a permit. The dump consisted, in part, of household waste. Property ownership was determined by a review of Walker County records. This dump was prohibited by law *Code of Alabama, 1975, §22-27-4(b).*

3. Mr. Hamilton returned to the Petitioners' property on June 10, 2011 and determined that there had been little change since the previous April 22, 2011 inspection (R. 64-65; ADEM Ex. 2).

4. ADEM issued a Notice of Violation on June 13, 2011 to the Petitioners for the unauthorized dump. This notice required abatement and closure of the dump and the submission of associated documentation within fifteen days of its receipt. The evidence indicates that this notice was received by June Guthrie on June 17, 2011 (R. 66-67; ADEM Ex. 3).

5. ADEM did not receive a response to the June 13, 2011 notice (R. 67).

6. On July 21, 2011 ADEM issued a Failure to Respond letter requesting a response to the June 13, 2011 notice. It again required the Petitioners to submit documentation of the abatement of the dump, and required such within fifteen days of its receipt. The Record indicates the letter was received on August 3, 2011.

7. ADEM did not receive a response to the July 21, 2011 letter (R. 68-69).

8. Due to the Petitioners' non-compliance, on October 31, 2011 ADEM mailed a proposed administrative order to the Petitioners and requested that said Petitioners respond within ten days or the order would be issued. The proposed order required the Petitioners to abate the dump and provide supporting documentation of the abatement to ADEM and pay a \$5,000 civil penalty. The cover letter to the proposed administrative order contained instructions on how to allege an inability to pay the civil penalty by submitted tax records for ADEM's consideration. According to the Record, the proposed administrative order was received by Otis Guthrie on October 18, 2011 (R. 69-72; ADEM Ex. 5).

9. ADEM did not receive a response to the October 13, 2011 proposed administrative order letter.

10. The Administrative Order underwent a 30-day public comment period and no comments were received (R. 72-73, ADEM Ex. 6 and 7).

11. On January 13, 2012, ADEM issued Administrative Order Number 12-060-SW. An executed copy was sent by certified mail, return receipt requested, to the Petitioners requiring abatement of the dump, submission of supporting documentation of the abatement, and payment of a \$5,000 civil penalty within 45 days. The postal notice was returned to ADEM as unclaimed (R. 73-74; ADEM Ex. 6).

12. On February 22, 2012, ADEM made a second attempt to serve the Administrative Order on the Petitioners by Federal Express. Federal Express records indicate the Order was delivered on February 29, 2012 at the 710 Blackwell Dairy Road address (R. 73-76, ADEM Ex. 7 and 8).

13. On March 14, 2012, Mrs. June Guthrie phoned ADEM and spoke with Mr. Hamilton. She advised Mr. Hamilton that they had been cleaning up the site and asked about the appeal process for Administrative Order Number 12-060-SW. Mr. Hamilton provided her with the requested information (R. 76-78; ADEM Ex. 9).

14. On May 10, 2012, Brent Watson, ADEM's Chief of the Enforcement and Remediation Section of the Land Division, returned to the Petitioners' property. He observed an unauthorized dump that contained regulated solid waste remaining at the site. He documented his observations by photographing the site (R. 81-84; ADEM Ex. 10).

15. On June 21, 2012, the hearing on this matter was held at the ADEM offices in Montgomery, Alabama. The evidence in this case came before the undersigned in the form of testimony presented by four witnesses, all under oath and subject to cross-examination. In addition, the parties presented documentary evidence that was properly marked and admitted into the record. The undersigned was able to view the witnesses, observe the demeanor of those witnesses, and assess the credibility of the witnesses.

III. CONCLUSIONS OF LAW

1. This matter is properly before the Commission by way of this Report of the undersigned hearing officer, together with the entire record including transcript of testimony, exhibits, arguments submitted, "Proposed Findings of Fact, Conclusions of Law and Recommendation" filed by ADEM, and a post-hearing submission by the Petitioners.

2. The Petitioners were properly served with Notice of the hearing, which took place at the ADEM offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2059.

3. All parties were given the opportunity to respond to, and present evidence and argument on, all material issues at the hearing conducted on June 21, 2012 in accord with Rule 335-2-1-.14 of ADEM Admin Code, and the hearing was conducted in accord with ADEM rules.

4. This is a *de novo* process in which the Commission stands in ADEM's shoes and substitutes its judgment for that of ADEM on questions of law and fact related to the propriety of Administrative Order Number 12-060-SW. (ADEM Admin Code R. 335-2-1-.14(6); Marshall County Environmental Action Group, et al., AEMC Docket No. 96-21). Because the process is *de novo* and the Commission should substitute its judgment for that of ADEM, there is no right or opportunity to participate in the deliberative pre-decisional process, as such right was afforded the Petitioners to an even-larger extent in the *de novo* hearing.

5. The burden of proof lies with the Petitioners to prove their contentions by preponderating legal evidence to the undersigned's satisfaction, the same as in civil cases in this State. . (ADEM Admin Code R. 335-2-1-.27(5); Town of Loachapoka, et al., AEMC Docket Nos. 03-01 and -02; River Ridge Homeowners Association, AEMC Docket No. 99-03; Sierra Club, et al., AEMC Docket No. 91-29, *Affirmed*, Montgomery County Circuit Court, CV-92-1190).

6. Both Petitioners bore the burden of going forward with the evidence. ADEM Admin. Code R. 335-2-1-.14(6))

7. ADEM did virtually everything it could do in this case to prompt a response from the Petitioners and to cooperate with the Petitioners in order to abate this dump and solve this environmental problem. Petitioners continuously ignored the verbal warnings, written notices, failure-to-respond warnings, proposed orders and publications in the newspaper. Little, if any, response came from the Petitioners until the Order became "final" and it appears only then did ADEM get their attention. Apparently it was only the final hearing that caused the Petitioners to take real action and do substantial cleanup. It is sad (at least to the undersigned) that the Petitioners chose to ignore the efforts of ADEM, which was clearly willing to work with them throughout the process.

8. The Petitioners did satisfy the undersigned that the dump has been substantially cleaned as of June 21, 2012. That does not mean the abatement process is complete.

9. The Petitioners offered limited evidence as to their ability to pay a fine. The undersigned concludes that they have the ability to pay a fine.

10. Pursuant to *Code of Alabama, 1975, §22-22A-5(18)c.* (2006 Rplc. Vol.), in determining the amount of any penalty, consideration should be given to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by ADEM shall not exceed \$250,000.

A. **SERIOUSNESS OF THE VIOLATION:** The Petitioners did not comply with the requirements applicable to solid waste disposal. There is no evidence of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations; nonetheless, this is a serious violation.

B. **THE STANDARD OF CARE:** The Petitioners failed to abide by applicable solid waste disposal requirements even after receiving notice that the operation of this dump was prohibited.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** There is no evidence that the Petitioners realized a significant economic benefit as a result of the violations noted.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The evidence indicates that the Petitioners have attempted to mitigate any potential effects upon the environment; however, these attempts were needlessly delayed.

E. **HISTORY OF PREVIOUS VIOLATIONS:** There is no evidence of any previous violations of applicable solid waste disposal requirements by the Petitioners.

F. **THE ABILITY TO PAY:** The evidence indicates a limited ability of Otis Guthrie to pay a civil penalty. No evidence was offered regarding Jonathan Guthrie's ability to pay.

11. Upon consideration of ADEM's motion to dismiss based on the inadequacy of the Petitioners' pleading, it is the ruling of the undersigned that such motion is DENIED. The hearing in this matter is concluded.

IV. RECOMMENDATION

Based upon the entire body of evidence presented, the testimony, briefs, arguments and submissions, and observations of the witnesses, the undersigned Hearing Officer recommends to the Commission that it enter an order and finding as follows:

A. That the Petitioners cease and desist from operating any unauthorized dump.

B. That within thirty days of the Commission's order, the Petitioners (both Otis Guthrie and Jonathan Guthrie) make contact with ADEM to arrange an inspection by ADEM with both Petitioners present so as to determine if the dump has been abated to the satisfaction of ADEM and consistent with its standards for such abatement.

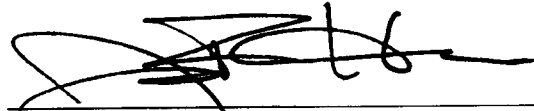
C. If ADEM determines that abatement has not properly occurred, then the Petitioners shall submit, within thirty days of that determination and written notice thereof to the Petitioners, a detailed plan of abatement satisfactory to ADEM's rules and regulations.

D. That following submission of such a plan by the Petitioners to ADEM, the Petitioners shall carry out that plan and fully abate this dump within forty-five (45) days or be subjected to additional charges, penalties and costs.

E. That not later than 30 days from the issuance of this order, the Petitioners shall pay to ADEM a civil penalty of \$3,000.00 for the violations referenced herein.

F. That failing full compliance with the Order of the Commission, the Petitioners shall be subject to commencement of legal action by ADEM for the recovery of additional civil penalties, criminal fines, costs of the proceedings and other appropriate sanctions.

Done this the 3rd day of August, 2012.



JAMES F. HAMPTON
Hearing Officer

Anthony Todd Carter, Esq.

Mr. Otis Guthrie
710 Blackwell Dairy Road
Jasper, AL 35504

Mr. Jonathan Guthrie
1413 Autumn Wood Dr
Hoover, AL 35216-5265