Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
October 16, 2009
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 October 16, 2009.

[Signature]
Anita L. Archie, Chair
Environmental Management Commission

Certified this 11th day of December 2009.
Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
October 16, 2009

Convened: 11:00 a.m.
Adjourned: 12:10 p.m.

Part A
Transcript

Part B
Attachment Index
Attachments 1 – 11
Part A
ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

Alabama Department of Environmental
Management (ADEM) Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama

October 16, 2009  11:00 a.m.

COMMISSION MEMBERS PRESENT:

MS. ANITA L. ARCHIE, CHAIR
DR. JOHN H. LESTER, VICE-CHAIR
DR. LAUREL G. GARDNER
SAM H. WAINWRIGHT, P.E.
DR. J. CONRAD PIERCE
H. LANIER BROWN, II
W. SCOTT PHILLIPS (not present)

ALSO PRESENT:

DEBI THOMAS, EXECUTIVE ASST.
ROBERT TAMBLING, LEGAL COUNSEL
## INDEX

1. Other business
2. Future business session
3. Request from the Birmingham Water Works Board
4. Alabama River Alliance to address the Commission.
5. Meeting adjourned

---

<table>
<thead>
<tr>
<th>Page 2</th>
<th>Page 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>DR. GARDNER:</strong> Good morning everybody. I'm going to call this meeting to order. I acknowledge that there is a quorum present.</td>
<td>11. <strong>DR. LESTER:</strong> So moved.</td>
</tr>
<tr>
<td>2. <strong>DR. GARDNER:</strong> Do I have a second?</td>
<td>12. <strong>DR. GARDNER:</strong> We have a motion and a second.</td>
</tr>
<tr>
<td>3. <strong>DR. PIERCE:</strong> Second.</td>
<td>13. Is there any discussion regarding the minutes?</td>
</tr>
<tr>
<td>4. <strong>DR. GARDNER:</strong> We have a motion and a second.</td>
<td>14. (No response.)</td>
</tr>
<tr>
<td>5. <strong>DR. GARDNER:</strong> All in favor, please say aye.</td>
<td>15. (Commission members in favor of the motion so indicated.)</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Page 3</th>
<th>Page 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>DR. GARDNER:</strong> All opposed same sign.</td>
<td>16. So first I'll entertain a motion from the Commission regarding the election of Chair.</td>
</tr>
<tr>
<td>2. (No response.)</td>
<td>17. <strong>DR. LESTER:</strong> For Chair?</td>
</tr>
<tr>
<td>3. <strong>DR. GARDNER:</strong> Okay. Agenda Item Number 2 is the election. We're going to consider the election of the Chair and Vice-Chair. And before we do this, I would just like to thank this Commission for making the past year very easy. This is a great group of people to work with, and whoever winds up taking over will find that out.</td>
<td>18. <strong>DR. GARDNER:</strong> Yes, sir.</td>
</tr>
<tr>
<td>4. (No response.)</td>
<td>19. <strong>DR. LESTER:</strong> First, I'd like to say thank you for your service last year as Chair. And I would like to nominate Anita Archie.</td>
</tr>
<tr>
<td>5. <strong>DR. GARDNER:</strong> Okay. Agenda Item Number 2 is the election. We're going to consider the election of the Chair and Vice-Chair. And before we do this, I would just like to thank this Commission for making the past year very easy. This is a great group of people to work with, and whoever winds up taking over will find that out.</td>
<td>20. <strong>DR. GARDNER:</strong> Yes, sir.</td>
</tr>
<tr>
<td>6. <strong>DR. LESTER:</strong> For Chair?</td>
<td>21. <strong>DR. LESTER:</strong> First, I'd like to say thank you for your service last year as Chair. And I would like to nominate Anita Archie.</td>
</tr>
<tr>
<td>7. <strong>DR. GARDNER:</strong> All in favor, please say aye.</td>
<td>22. (Commission members in favor of the motion so indicated.)</td>
</tr>
</tbody>
</table>

---

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com
<table>
<thead>
<tr>
<th>Page 6</th>
<th>Page 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 for consideration is the election of</td>
<td></td>
</tr>
<tr>
<td>2 committee chairs and members will now</td>
<td></td>
</tr>
<tr>
<td>3 be considered.</td>
<td></td>
</tr>
<tr>
<td>4 DR. GARDNER: Ms. Archie?</td>
<td></td>
</tr>
<tr>
<td>5 MS. ARCHIE: Dr. Gardner?</td>
<td></td>
</tr>
<tr>
<td>6 DR. GARDNER: I'd like to move</td>
<td></td>
</tr>
<tr>
<td>7 that we table the Committee elections</td>
<td></td>
</tr>
<tr>
<td>8 until the December meeting.</td>
<td></td>
</tr>
<tr>
<td>9 But -- but also if there</td>
<td></td>
</tr>
<tr>
<td>10 is no objection, that we allow you to</td>
<td></td>
</tr>
<tr>
<td>11 set those up and allow them to start.</td>
<td></td>
</tr>
<tr>
<td>12 MS. ARCHIE: Do I have a</td>
<td></td>
</tr>
<tr>
<td>13 second?</td>
<td></td>
</tr>
<tr>
<td>14 DR. WAINWRIGHT: I'll second.</td>
<td></td>
</tr>
<tr>
<td>15 MS. ARCHIE: Any discussion?</td>
<td></td>
</tr>
<tr>
<td>16 (No response.)</td>
<td></td>
</tr>
<tr>
<td>17 MS. ARCHIE: No discussion.</td>
<td></td>
</tr>
<tr>
<td>18 Everyone in favor of the</td>
<td></td>
</tr>
<tr>
<td>19 motion say aye.</td>
<td></td>
</tr>
<tr>
<td>20 (Commission members in favor</td>
<td></td>
</tr>
<tr>
<td>21 of the motion so indicated.)</td>
<td></td>
</tr>
<tr>
<td>22 MS. ARCHIE: Those opposed?</td>
<td></td>
</tr>
<tr>
<td>23 (No response.)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 7</th>
<th>Page 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 MR. WAINWRIGHT: I move</td>
<td></td>
</tr>
<tr>
<td>2 Dr. John Lester.</td>
<td></td>
</tr>
<tr>
<td>3 MS. ARCHIE: I second.</td>
<td></td>
</tr>
<tr>
<td>4 DR. GARDNER: Okay. I have a</td>
<td></td>
</tr>
<tr>
<td>5 motion and a second for Dr. Lester to</td>
<td></td>
</tr>
<tr>
<td>6 be Vice-Chair of the Commission.</td>
<td></td>
</tr>
<tr>
<td>7 Is there any discussion?</td>
<td></td>
</tr>
<tr>
<td>8 MR. PIERCE: I move the</td>
<td></td>
</tr>
<tr>
<td>9 nomination closed.</td>
<td></td>
</tr>
<tr>
<td>10 (No response.)</td>
<td></td>
</tr>
<tr>
<td>11 DR. GARDNER: Nominations are</td>
<td></td>
</tr>
<tr>
<td>12 now closed.</td>
<td></td>
</tr>
<tr>
<td>13 All in favor.</td>
<td></td>
</tr>
<tr>
<td>14 (Commission members in favor</td>
<td></td>
</tr>
<tr>
<td>15 of the motion so indicated.)</td>
<td></td>
</tr>
<tr>
<td>16 DR. GARDNER: All opposed same</td>
<td></td>
</tr>
<tr>
<td>17 sign.</td>
<td></td>
</tr>
<tr>
<td>18 (No response.)</td>
<td></td>
</tr>
<tr>
<td>19 DR. LESTER: That's what you</td>
<td></td>
</tr>
<tr>
<td>20 call a railroad.</td>
<td></td>
</tr>
<tr>
<td>21 MS. ARCHIE: Yeah.</td>
<td></td>
</tr>
<tr>
<td>22 DR. LESTER: All right.</td>
<td></td>
</tr>
<tr>
<td>23 MS. ARCHIE: Okay. Next item</td>
<td></td>
</tr>
</tbody>
</table>

---

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com

3 (Pages 6 to 9)
AEMC COMMISSION MEETING - 10/16/2009

1 point your attention -- did each of
2 y'all get the memo from me I believe I
3 put in there?
4 And I could have done a
5 better job by actually having them in
6 order, I think. But the -- it looks
7 like the last thing on mine, I hope
8 it's on yours, is a copy of our 2010
9 budget. And so what you have there is
10 a breakout of our major programs and
11 the anticipated budget that we have
12 for the year 2010, as well as where
13 the funds will come from to support
14 that budget. Also, just for general
15 reference, we have attached the
16 expenditures from last year, at least,
17 as of the last tally we have of
18 those right -- right now.
19 And so I hope that will
20 be of benefit to you and to all of us
21 as we continue in the direction of the
22 strategic plan and operating plan
23 regarding transparency and line of

Page 11

1 sight and making sure that y'all are
2 very clear on that. And, again, this
3 is in the memo that was given to y'all
4 not in my presentation. So if you
5 have questions, I'll certainly be
6 happy to answer them, but obviously --
7 hopefully, this will just be a
8 starting point so that you can look at
9 this and a basis for conversation as
10 we move forward.
11 In general, you'll look
12 at the budget. It is approximately
13 what it was last year. You saw a
14 minor increase. And as I believe we
15 discussed in previous meetings, the
16 2009 regular legislative session
17 brought with it some changes to
18 overhead or fringe benefits, if you
19 will, that go into our budget.
20 But all the things that
21 we discussed that are in place,
22 regarding the budget controls, if you
23 will, at a statewide level are still

Page 12

1 in place, such as hiring freezes and
2 merit raises and the like. So you
3 don't see increases necessarily
4 because of that. It is simply for the
5 retirement or insurance benefits that
6 went up there.
7 MS. ARCHIE: One second.
8 MR. GLENN: Yes, ma'am?
9 MS. ARCHIE: Any Commission
10 member have any question regarding
11 budget?
12 (No response.)
13 MS. ARCHIE: I have one
14 question.
15 MR. GLENN: Yes, ma'am.
16 MS. ARCHIE: On your budget
17 ADEM 2010 budget, could you possibly
18 give us -- I see where you're saying
19 that you got the budget -- 2010 budget
20 and 2009 expenditures.
21 Could you possibly give a
22 chart that lists out last year and --
23 last year and this year with proration

Page 13

1 consideration and -- so we can see how
2 much a decrease each one of these
3 items, if you can follow what I'm
4 saying. You have each one of these
5 programs here --
6 MR. GLENN: Yes, ma'am.
7 MS. ARCHIE: And so I'm
8 interested in the state funds that you
9 have. Not really -- federal funding
10 as well.
11 MR. GLENN: Yes, ma'am.
12 MS. ARCHIE: Just to try to
13 see what the percentage change may
14 have been from the -- this one -- the
15 fiscal year we just ended and the
16 fiscal year we will begin.
17 MR. GLENN: Yes, ma'am. I
18 believe I understand you. To restate
19 what I heard, it was could I provide
20 you with the sources of funding on
21 this chart that were used last year,
22 and the answer to that is yes. We are
23 still closing out all the books,
obviously, from last year. So it
might be -- we might have to wait
until we close all that out for all
this to come true, but absolutely we
can. We know where the monies were
spent, where monies were placed, and
we can absolutely provide you with
that.

MS. ARCHIE: Just want to see
the increases and decreases or if
everything remained the same.

MR. GLENN: Yes, ma'am. We
can do that.

MS. ARCHIE: Go ahead.
MR. GLENN: All right. Now
moving on to the next major item as
discussed at several meetings. We
want to provide you with an updated
operating plan for the fiscal year
2010. As you know, the operating plan
is designed to support the strategic
plan laid out there. It is to support
the achievement of the four goals that

were identified in the strategic plan,
which are: effective and responsive
Commission, how to form a work
environment, creditable relationships
with external state boards, and
efficient effective Department
operations. So just a quick refresher
to reorient you on what we are
attempting to do with the operating
plan. We put a little more
specificity on what that means to us
and how the support of those goals
might turn into actions that we can
all see and touch and discuss.

The 2010 Operating Plan
has four major areas of focus. And at
this time, if you will, I'd like to
again point your attention to the memo
that I gave you this morning. An
attachment to that -- looks like this
document here, the ADEM Operating
Plan. Sorry.

There was a little errant

slash sitting there that Dr. Gardner
and I had fun with earlier.
But -- and so, this is
what I'll be referring to now for the
remainder of my Director's Report if
you'll find that document.

So now getting into that,
in the area of compliance. We had a
very successful regulatory conference
this past year. I believe
Commissioner Wainwright and
Chair Archie actually were able to
participate in some of that, and I
received very positive remarks from
them. Hats off to our great staff and
all that they did to put that
together. But we obviously want to do
that again and continue to focus on
providing compliance assistance and
providing information to the entities
in which we regulate.

We feel that the more
information they have up front, the

less problems, if you will, we'll have
having to deal with compliance on the
back end. So we want to have another
conference that really focuses on some
very similar topics that we saw last
time and just build -- continue to
build on that.

The other area of
compliance is increased compliance
rate. Again, the one thing that was
very unified by each of you was a
focus on the results, which is
compliance. Our ultimate goal would
be to take no enforcement actions
because everybody is in 100 percent
compliance. As we know, we're not
there yet. But we need to have our
eyes focused on that, so we can take
the Department there and take the --
hopefully the regulated community
there.

So y'all, I know, are
still looking at the proposal of how
1. to quantify that and how to talk about that. And so once we pin that down, 2. we will then begin collecting that data and that information and follow 3. on with the plan that is exactly the same as what you saw last year as far 4. as making actionable commitments on what we're going to do to try and move 5. that needle up and make adjustments there.

6. The other area is resource utilization. I've got three major focuses there: two existing ones, one new one. The first one is the speed project. As you know, last 7. year we set goals in all of our major programs. Goals associated with the time we're going to strive to close out complaints or permitting decisions or compliance evaluations, enforcement decisions, and ultimately the execution of those enforcement decisions.

---

1. So we're going to continue to implement that. For the ones who are making their goals, we're going to reduce goals by 10 percent to try to continue to move forward on what is one of the primary purposes that we were reformed, which is speedy response to the citizens of Alabama and the regulated community of Alabama and the environment. So we're going to continue to move in that direction. We now have a baseline to do that and a conversation piece so we can discuss are those efforts being successful or not and what we might need to do differently. As you can imagine some of those things may be 100 percent in the Department's control and some of might need Commission action and some might need Legislature or EPA or others. So we're just going to continue on that path and provide you that information so we'll have the talking point -- base of the conversation in front of us.

---

1. I think as you see with project speed, we're going to work to decrease the amount of monies that we spend in taking these actions. We're going to try to reduce our cost of all of our actions. And so we will begin to take actions to equalize the cost of making a decision with the amount of money that comes in to make that decision. And the initial step there will be to capture that information and share it with you to see where we are, to benchmark it if you will, for six months just to see if we can get a good handle on that and then analyze the 17. information and come up with some ideas, prepare a report, and give it to you within a year of maybe -- of some things that we might could do to continue to move in the right direction there.

---

1. The next area is
1 information availability. You, as a
2 Commission, have done some outstanding
3 things. And through your leadership
4 we, at the Department, have taken
5 great strides to exchange information
6 more readily with folks who need that
7 information.
8 One of the shining
9 successes that our staff has
10 implemented is what used to be called
11 E-file. We didn't want to get the IRS
12 mad with us, so we call it -- we're
13 calling it eDocs now. And as far as
14 -- and that allows you from an
15 external website to view any
16 electronic file that I can view here
17 internally. It's our internal filing
18 system. That's available today. So
19 we will continue to get more
20 information electronic as it comes in
21 or either from the backlog of
22 information here. We will also
23 continue to strive to make it easier

1 programs to that as we ensure that the
2 quality of the locational data, if you
3 will, is suitable for people to look
4 at it.
5 Project transparency.
6 We're going to continue to give you
7 bimonthly reports. You have the --
8 well, we've been giving you monthly
9 reports. But what we're going to do
10 is modify that to bimonthly, if that's
11 okay, to coincide with these
12 Commission meetings for all these big
13 speed goals and everything we're
14 working on to give you the information
15 that you would, I think, need at your
16 fingertips to make informed decisions
17 about the Department and the direction
18 of the Department.
19 Project Assist
20 Commission. We're from the
21 government. We're here to help you.
22 We're ready. And we'll continue to
23 take steps to provide information to

1 to search the information and find
2 things. Of course, there's a whole
3 lot of information on the Internet,
4 but finding it sometimes is a little
5 challenging, so that's where our focus
6 is as well. Specifically, committing
7 to -- by the first part of next year,
8 outlining some custom queries for some
9 of the reports that we get a lot of
10 requests for, such as underground
11 storage tank incidents, releases that
12 have been -- that have occurred
13 somewhere, the DMR's, the discharge
14 monitoring reports, for our surface
15 water/waste water discharges, tank
16 release report, and NPDES inspection
17 reports. This has made that easier to
18 get a hold of.
19 We will also initiate a
20 special search tool, some kind of map
21 and GIS system -- for at least one of
22 our programs -- to build that backbone
23 so that we can ideally add more

1 you more proactively and continue to
2 take steps to make sure it is the
3 information that you will need to make
4 the decisions that you need to make.
5 Last thing on that, I
6 want to introduce one thing new, and I
7 have to apologize for not giving this
8 to you before. So if you will, let me
9 give you just an example of what this
10 will look like, but penalty orders.
11 We have for years been
12 taking steps to make our penalty
13 orders clearer so people could
14 understand where the numbers come
15 from; most importantly, for you to be
16 able to understand that when cases
17 come before you. You are our ultimate
18 customer in enforcement actions like
19 that. We want to make sure that is
20 clear. So we will enhance the content
21 of those penalty orders to include
22 more specific information regarding
23 the derivation of that penalty amount.
So what you should see --
and that sounds fluffy kind of, but
what you should see is a penalty
calculation worksheet, a matrix --
whatever words you might have heard
used or used -- in each order that is
initiated after this month. There are
many orders in the pipeline right now,
so I'm not asking anyone to go reach
back and redo those things. I think
that would go against our speed goals.
So -- but for any new ones, we're
going to start implementing more
information.
And if it's okay with
you, I'll give you copies of what that
one -- an example of what that will
look like. Basically, just a table
that outlines how we derive, including
a discussion of the six penalty
factors, and -- I mean, it would
support the discussion of the six
penalty factors and make that more

clear in the order. And it would --
so it would serve and compliment with
the language of the order. Just an
element. Obviously, those are some
element types of issues that our
enforcement staff deals with.
Obviously, those are water related in
front of you. So that would not be
the exact worksheet that everyone
would use, because that's not
applicable to each and every program.
But the structure of the worksheet and
how we would address the break out of
the dollars is what that is meant to
show you. And you should begin seeing
the actual orders here in the coming
weeks or months as they -- because
we've worked through that process and,
they become -- and they go out for
public notice and the like. You'll be
able to see those with the actual
numbers in there associated with an
actual enforcement case that we're

working on.
And lastly, I want to
touch on the internal management
aspects. Again, continuing more of
what we have begun there. Project
line of sight. As each of you and I
have discussed it's very critical that
there is alignment between the policy
decisions that you are making and the
actions of each and every person at
ADEM is taking; everything from an
entry level staff individual to my
position at ADEM. And so we will
continue to clarify roles and make
sure that there are opportunities to
align functions and align actions with
their -- with the policies or the
overall direction of the Commission
and the Department. And, again,
that's a furtherance of those efforts
that we started over the past year --
last year.
And lastly, quality

management system. We will continue
to implement the quality management
system, continue to do what we call --
what I call internal audits of that
system so as to identify anywhere
where we might can make some
improvements and then identify those
steps and have an action plan and make
the improvements in those programs.
And we'll start reporting that
information to you, as a Commission,
through the transparency side of the
business.
And so with that said,
that concludes my Director's Report,
because I kind of felt like that was
enough information based on the
operating plan coming before you
today. I'll be happy to answer any
questions about the information.
MS. ARCHIE: Are there any
questions from the Commission?
(No response.)
1. MR. ARCHIE: Thank you.
2. MR. GLENN: Thank you.
3. MS. ARCHIE: Agenda Item
4. Number 4 is the report from the
5. Commission Chair. I do not have a
6. report at this time, so we'll move on
7. to Agenda Item Number 5. The
8. Commission will consider the adoption
9. of proposed amendments to ADEM
10. Administrative Code Division 6, Water
11. Quality Program (Underground Storage
12. Tank) Regulations.
13. At this time, I'd like to
14. call on Chair -- I mean, on the
15. Department's Chief.
16. MR. HARDY: Good morning,
17. Madam Chair.
18. MS. ARCHIE: Good morning.
19. MR. HARDY: Congratulations.
20. MS. ARCHIE: Thank you.
21. MR. HARDY: Members of the
22. Commission, my name is Gerald Hardy,
23. and I'm Chief of the Land Division
24. here at ADEM.
25. You have information
26. provided to you -- in the information
27. provided to you proposed revisions to
28. Division 6, Chapter 335-6-15 of the
29. ADEM Administrative Code, which
30. contains technical standards and
31. requirements for regulated underground
32. storage tanks.
33. This rulemaking was
34. initiated to meet the requirements of
35. the Underground Storage Tank Operating
36. Training provisions of the Federal
37. Energy Policy Act of 2005 as well as
38. to provide re-certification
39. requirements for cathodic protection
40. testers for underground storage tanks.
41. As required by EPA
42. guidance, three classes of UST
43. operators are proposed, corresponding
44. generally to senior company managers,
45. first-line operator managers, and the
46. store clerks or station attendants.
47. Training requirements are specified in
48. the proposed regulations for each
49. classification. One person will be
50. allowed to fulfill one or more
51. operator requirements, with
52. appropriate training, as will be the
53. case in many small businesses.
54. EPA has reviewed the
55. proposed regulation revisions and has
56. indicated that the proposed
57. regulations are consistent with the
58. EPA guidance provided to the state
59. agencies for implementation of
60. Operator Training requirements.
61. During the comment
62. period, the Department received one
63. written comment, which suggested
64. specific changes to the proposed regs.
65. And at the public hearing held on
66. September the 11th of 2009, one person
67. presented oral testimony. No
68. substantive changes were made to the
69. regulations from the version which was
70. public noticed.
71. As a result of the
72. written comment, editorial changes
73. were made. These comments and their
74. resolution are discussed specifically
75. in the reconciliation of comments
76. which has been provided to you.
77. The Department recommends
78. to the Commission that the proposed
79. regulations be adopted with the minor
80. changes noted. And I'll be glad to
81. answer any questions you may have.
82. MS. ARCHIE: Do I have a
83. motion?
84. MR. BROWN: So moved.
85. MS. ARCHIE: Second?
86. MR. WAINWRIGHT: Second.
87. MS. ARCHIE: I call for aye's
88. and no's. All in favor say aye.
89. (Commission members in favor
90. of the motion so indicated.)
91. MS. ARCHIE: Any opposed?

Reagan Reporters, LLC 334-262-4437
www.reaganreporters.com
AEMC COMMISSION MEETING - 10/16/2009

1 (No response.)
2 MS. ARCHIE: The motion carries.
3 MR. HARDY: Thank you.
4 MS. ARCHIE: We move onto Number 6 -- Agenda Item Number 6 is consideration of the proposed amendment to ADEM's Administrative Code Division 6, Water Quality Program, Underground Storage Tank Regulations, Chapter 335-6-16.
5 MR. HARDY: Good morning, Madam Chair and members of the Commission. My name is Gerald Hardy, and I am Chief of the Land Division. You have in the information provided to you proposed revisions to Division 6, Chapter 335-6-16 of the ADEM Administrative Code, which contains the administrative procedures for the Alabama Underground and Aboveground Storage Tank Trust Fund.

On July the 21st, 2009, the Alabama Underground and Aboveground Storage Tank Management Board voted to recommend to the Environmental Management Commission that the trust fund charge be raised from one cent per gallon of motor fuel, to one and one-quarter cent per gallon. The trust fund charge is assessed upon the first withdrawal from bulk storage and is a voluntarily charge. In a separate vote during that same meeting, the board also voted to recommend to the Commission that the per-occurrence indemnification limit be increased from one million to 1.1 million dollars. In the rulemaking proposal you have before you, Proposed Rules 335-6-16-07 and 335-6-16-09 would implement these changes respectively. Rulemaking public notice requirements have been completed and a public hearing was held on September the 23rd, 2009. No oral or written comments were received. The Department recommends that the proposed rule revisions be adopted. I will be glad to answer any questions you may have.

DR. PIERCE: What is a voluntary charge?

MR. HARDY: It's a voluntary program. This is a -- in lieu of an insurance program, it provides coverage for storage tank owners and operators for releases to the environment for the cleanup and remediation. So we have to go through -- in order to reimburse for those costs, there's certain criteria to be covered.

DR. PIERCE: I guess voluntary was the word I was looking for. Yeah. That's fine.

MS. ARCHIE: At this time, I entertain a motion on the proposed amendment.

DR. GARDNER: So moved.

MS. ARCHIE: Do I have a second?

DR. PIERCE: Second.

MS. ARCHIE: Any discussion?

(No response.)

MS. ARCHIE: Being none, I call for ayes and no's.

All in favor say aye.

(Commission members in favor of the motion so indicated.)

MS. ARCHIE: All opposed, no.

(No response.)

MS. ARCHIE: The motion carries. Okay. Agenda Item Number 7. Consideration of Adoption of the proposed addition of Chapter 335-13-12, to ADEM Administrative Code Division 13, Solid Waste Program Regulations.
Take it away, Mr. Hardy.

MR. HARDY: Thank you.

I am again before you to recommend that the Commission adopt amendments to the Department's Solid Waste Regulations.

The proposed regulation before the Commission today would establish the requirements for a certification program for solid waste landfill operators. The establishment of this program was required by the Solid Waste and Recyclable Materials Management Act passed in 2008 by the Legislature.

The proposed regulations necessary to establish this program were the subject of a public comment period that ran from July the 12th to September the 4th, 2009, and of a public hearing held on August the 26th, 2009. No written or oral comments on these regulations were received.

Pending any questions you might have, the Department asks that the Commission adopt these changes to the Solid Waste Regulations.

MS. ARCHIE: At this time, I entertain a motion from the Commission regarding the proposed addition.

DR. GARDNER: So moved.

MS. ARCHIE: Do I have a second?

DR. PIERCE: Second.

MS. ARCHIE: Any discussion?

(No response.)

MS. ARCHIE: I call for the ayes and no's. All in favor say aye.

(Commission members in favor of the motion so indicated.)

MS. ARCHIE: Those opposed?

(No response.)

MS. ARCHIE: The motion carries.

MR. HARDY: Thank you.
AEMC COMMISSION MEETING - 10/16/2009

1 questions -- question. All in favor
2 say aye.
3 (Commission members in favor of
4 the motion so indicated.)
5 MS. ARCHIE: Those opposed?
6 (No response.)
7 MS. ARCHIE: The motion
8 carries.
9 MR. HARDY: Thank you.
10 MS. ARCHIE: Agenda Item
11 Number 9, Black Warrior Riverkeeper,
12 Incorporated, versus Alabama
13 Department of Environmental Management
14 and Shepherd Bend LLC, EMC Docket
15 No. 09-04.
16 What we have before us
17 for consideration is the
18 Administrative Law Judge's recommended
19 findings of facts and conclusion of
20 law in which the ALJ recommends that
21 the Commission grant summary judgement
22 on the grounds that the issue raised
23 by Black Warrior Riverkeeper are not

1 Petitioner's objection, and a proposed
2 order, which adopted, would return
3 this proceeding to a Hearing Officer
4 to be appointed by the Commission for
5 a hearing on the following questions:
6 Number one, whether BWR, Black Warrior
7 Riverkeeper, is aggrieved by ADEM's
8 administrative action and, two,
9 whether there is a preponderance of
10 evidence that the administrative
11 action of the Department authorizes
12 discharges for pollutants, which upon
13 discharge, would either cause or
14 contribute to a detectable
15 contravention of state water quality
16 standards.
17 Now, I will try to break
18 up that very long statement to
19 something that everybody understands.
20 At this time, I would entertain a
21 motion from the Commission regarding
22 ADEM's motion to extend time to
23 respond to the Petitioner's objections

1 ripe for appeal.
2 The Petitioner has filed
3 a request for oral argument and
4 objection to ALJ's recommendation,
5 along with alternate findings of fact
6 and conclusions of law and a proposed
7 order, which adopted, would grant the
8 Petitioner's first and second motion
9 for summary judgement and vacate
10 Shepherd Bend NPDES Permit
11 No. AL0079162.
12 The Intervenor has filed
13 a reply brief in responding to
14 Petitioner's objection. Also filed
15 were the Petitioner's motion to strike
16 portions of the Intervenor's reply
17 brief and the Intervenor's response to
18 the motion to strike.
19 The Department has filed
20 a motion to extend the time to
21 response to Petitioner's objection to
22 the ALJ's recommended findings of fact
23 and conclusions of law, a response to

1 to recommended findings of facts and
2 conclusions of law.
3 DR. GARDNER: Madam Chair, I
4 move that we grant ADEM's motion.
5 MS. ARCHIE: Do I have a
6 second?
7 DR. LESTER: Second.
8 MS. ARCHIE: Any discussion?
9 (No response.)
10 MS. ARCHIE: I call for the
11 question: All in favor say aye.
12 (Commission members in favor
13 of the motion so indicated.)
14 MS. ARCHIE: Those opposed?
15 (No response.)
16 MS. ARCHIE: That motion
17 carries.
18 I'd like to note one
19 thing for the -- one item for the
20 record. According to our rules,
21 Mr. Tambling, that that motion could
22 have been made -- that decision could
23 have been made by the Chair?

334-262-7556 Reagan Reporters, LLC 334-262-4437
www.reaganreporters.com
<table>
<thead>
<tr>
<th>Page 46</th>
<th>Page 48</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>MR. TAMBLING: The Chair can</td>
<td>distinct issues, and I understand that</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>make that decision, Madam Chair.</td>
<td>you're going to hear from ADEM, and</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>MS. ARCHIE: Thank you.</td>
<td>ADEM is requesting that part of this</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>At this time, I'll</td>
<td>case go back to the Hearing Officer.</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>entertain a motion from the Commission</td>
<td>There is one issue, however, that I</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>regarding the Petitioner's request for</td>
<td>want to talk about that we think you</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>oral arguments.</td>
<td>should reverse the Hearing Officer's</td>
</tr>
<tr>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>MR. WAINWRIGHT: Madam Chair,</td>
<td>decision on, which would invalidate</td>
</tr>
<tr>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>I move that the Petitioner's request</td>
<td>the permit outright.</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>for oral argument be granted.</td>
<td>The Hearing Officer</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>MS. ARCHIE: Do I have a</td>
<td>concluded that Shepherd Bend did not</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>second?</td>
<td>submit a Pollution Abatement Plan to</td>
</tr>
<tr>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>MR. BROWN: Second.</td>
<td>ADEM, but that this was fine; that</td>
</tr>
<tr>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>MS. ARCHIE: Any discussion?</td>
<td>that that was okay because the Alabama</td>
</tr>
<tr>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>(No response.)</td>
<td>Service Mining Commission was going to</td>
</tr>
<tr>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>MS. ARCHIE: I call for the</td>
<td>later review that plan. We disagree</td>
</tr>
<tr>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>question: All in favor say aye.</td>
<td>with that claim.</td>
</tr>
<tr>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>(Commission members in favor of</td>
<td>Alabama -- ADEM's</td>
</tr>
<tr>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>the motion so indicated.)</td>
<td>regulations couldn't be clearer, and</td>
</tr>
<tr>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>MS. ARCHIE: Those opposed?</td>
<td>we just printed these out on a big</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>(No response.)</td>
<td>board. This is from your website. I</td>
</tr>
<tr>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>MS. ARCHIE: That motion</td>
<td>want to make sure that everybody can</td>
</tr>
<tr>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>carries. After the signing of the</td>
<td>see in the audience. These are your</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 47</th>
<th>Page 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>order, we will hear from the attorneys</td>
<td>regulations on Pollution Abatement</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>from the parties.</td>
<td>Plans, which basically say, all</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Ms. Thomas, could you be</td>
<td>surface mine operators shall provide</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>our timekeeper?</td>
<td>the Department with a Pollution</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Each side will get a</td>
<td>Ablation Plan and that this plan has</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>total of 10 minutes.</td>
<td>to be reviewed by ADEM and that the</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>At this time we'll begin</td>
<td>issuance of NPDES permit shall be</td>
</tr>
<tr>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>oral arguments. Please state your</td>
<td>based on a determination by ADEM; that</td>
</tr>
<tr>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>name and present your position.</td>
<td>the Pollution Abatement Plan and</td>
</tr>
<tr>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>MS. WANNAMAKER: Good morning.</td>
<td>accompanying data are sufficient or</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>I'm Catherine Wannamaker. I'm an</td>
<td>adequate to provide for protection of</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>attorney for the Black Warrior</td>
<td>water quality. It really couldn't be</td>
</tr>
<tr>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Riverkeeper in this matter.</td>
<td>clearer.</td>
</tr>
<tr>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Thank you for our chance</td>
<td>Here, in this case, the</td>
</tr>
<tr>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>to present this case to you. This is</td>
<td>applicant certified on his application</td>
</tr>
<tr>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>actually a very important and concrete</td>
<td>to ADEM with both the certification</td>
</tr>
<tr>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>case. It involves a proposed coal</td>
<td>from a professional engineer and from</td>
</tr>
<tr>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>mine just adjacent to the drinking</td>
<td>a corporate official that they had a</td>
</tr>
<tr>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>water source for the City of</td>
<td>comprehensive Pollution Abatement and</td>
</tr>
<tr>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Birmingham. Many of the outfalls are</td>
<td>Prevention Plan and that it was going</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>800 feet from the drinking water</td>
<td>to be employed at this facility and it</td>
</tr>
<tr>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>source for the City of Birmingham.</td>
<td>had been prepared in accordance with</td>
</tr>
<tr>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>There are several</td>
<td>ADEM's regulations.</td>
</tr>
</tbody>
</table>
As it actually turns out, there was no Pollution Abatement Plan. Shepherd Bend didn't have one. And this is a document -- on top of this, is a document from Shepherd Bend's engineer saying we do not specifically have a Pollution Abatement Plan.

In the ALJ's ruling, she basically said it's undisputed that the Pollution Abatement Plan was not attached to the application, nor has one currently been submitted to ADEM.

This is not a trivial part of the application. It is basically the way that you ensure a surface coal mine meets water quality standards. And you can't make that finding, that a surface coal mine's discharges are going to meet water quality standards, without reviewing a Pollution Abatement Plan. ADEM's regs couldn't be clearer that that has to be done, yet it wasn't done here. So we think on that basis alone, the permit should be vacated and sent back, and that a Pollution Abatement Plan must be submitted to ADEM, reviewed by ADEM, and approved by ADEM before they can issue this permit.

On the second main issue in the case was water quality standards and whether the discharges from this coal mine would violate water quality standards. ADEM now is requesting that issue be remanded to the Hearing Officer, and that we are entitled to a hearing on that. We did not get a hearing on that originally, and so we are in agreement with ADEM that that is appropriate on that claim.

With that, I'm happy to take questions.

MS. ARCHIE: Any questions?

(No response.)

MS. ARCHIE: Thank you.
to determine the sufficiency of pollutant control engineering at the surface coal mines.

In other words, while ASMC regulates water pollution control impaiements within surface coal mines, which is what the PAP Plan addresses, ADEM regulates pollutant discharges to waters of the State from water pollutant control impaiements at surface coal mines. And not surprising, these functions can be a little convoluted.

As the Hearing Officer notes, ADEM and ASMC entered into a memorandum of understanding, in which ADEM agreed to suspend its requirement that a PAP Plan be filed with applications for surface coal mining NPDES permits. The PAP Plan must subsequently be submitted to ASMC as part its permitting process. The memorandum's purpose, aside from simple clarification, was to prevent duplication of regulatory functions and to promote cooperation between ADEM and ASMC, with respect to surface coal mine pollution control.

Under the memorandum ASMC recognizes ADEM's interest in surface coal mining and water pollution control just as ADEM defers to ASMC's ultimate authority over surface coal mines by prohibiting discharges pursuant to a NPDES permit until the permittee certifies to ASMC that construction of the mine is in compliance with ASMC approved plans and specifications.

Essentially, ADEM and ASMC agree that the Alabama Legislature delegated to ASMC specific statutory authority to approve or not environmental engineering at ASMC and regulated surface coal mines and therefore implicitly abrogated ADEM's more general authority over the same subject matter.

The memorandum doesn't transfer any regulatory functions to ADEM, rather ADEM retains the authority to enforce the provisions of the Alabama Water Pollution Control Act, the Clean Water Act and all NPDES regulations applicable to discharges from surface coal mine sites.

For all these reasons, the Commission should agree with the Hearing Officer and deny the Riverkeeper's claim regarding the PAP Plan. Second Riverkeeper contends that Shepherd Bend's permit authorizes the discharge of pollutants that will cause or contribute to a contravention of state water quality standards. The Hearing Officer found that ADEM performed an analysis of potential impacts of permitted discharges from mining activities, and ADEM determined that the water quality at Mulberry Fork would not be significantly affected by the permit.

No party disputes that ADEM performed the analysis. The Riverkeeper disputes ADEM's determination. The Riverkeeper objects to the Hearing Officer's conclusion that the ASMC will address Riverkeeper's water quality claims, and that Shepherd Bend's permit cannot be challenged until after the ASMC permitting process is complete.

ADEM agrees that Shepherd Bend's permit forbids discharge of pollutants pursuant to that permit until the ASMC permit issues. Meaning, that there can be neither cause nor contribution to a breech of state water quality standards until 15 (Pages 54 to 57)
the ASMC permit issues.
Nonetheless, the Alabama
Environmental Management Act and the
Commission's regulations entitle an
aggrieved person to a hearing to
contest these particular issues, not
withstanding any action by ADEM or
ASMC.
So for these reasons, the
Commission should agree with the
Hearing Officer that ADEM performed
the analysis of potential impacts, and
ADEM determined the water quality of
Mulberry Fork would not be
significantly affected.
Additionally, the
Commission should agree that under the
terms of the NPDES permit, Shepherd
Bend cannot discharge pollutants
pursuant to that permit, and thus can
neither cause nor contribute to the
contravention of state water quality
standards until the ASMC permit

issues. However, the Commission
should reject the Hearing Officer's
conclusion that ASMC will address
Riverkeeper's water quality claims,
and that Shepherd Bend's NPDES permit
cannot be challenged until after the
ASMC permitting process is complete.
In summary, the
Department respectfully requests that
this matter be returned to a Hearing
Officer upon two questions: One,
whether Riverkeeper is aggrieved by
the Department's administrative
action; and, two, whether there is
preponderating evidence that Shepherd
Bend's permit authorizes discharges of
pollutants, which upon discharge, will
either cause or contribute to a
detectable contravention of state
water quality standards.
Thank you.
MS. ARCHIE: Are there any
questions?

Oh, sorry. We got
another party.
MR. DAVIS: Madam Chairman,
Commissioners, my name is
Richard Davis, and I represent
Shepherd Bend. I don't intend to
repeat what the Department has argued
substantively, because in a vast
majority of points, we're in full
agreement with the Department. We
believe that the permit was
legitimately and appropriately issued.
I would like to call to
your attention a couple of points
though, if we can. On this appeal,
what I understand to be before the
Commission, is the issue of standing;
whether Riverkeeper can even be here
in front of you.
And at the last
Commission meeting, and I won't repeat
it because I won't do it justice. You
heard a very forceful and

commendable presentation from
the ADEM's general counsel. We would
submit that since there is no
discharge, based on this permit, that
while the permit itself may be right
not to be challenged by an injured party
because it has been issued that the
Riverkeeper nor its members have any
injury from this permit because
there's no discharge taking place.
Nevertheless, we're --
have always been and have always
focused our arguments on the merits of
the permit issuance. I would briefly
like to note for the Commission that
while there has been much talk about
the absence of a PAP Plan, that that
is kind of a word that -- when it
really comes down to it -- what's
ignored is, that while there is not a
document with a bright cover on it
that says PAP Plan, all of the things
that go into the PAP Plan were

16 (Pages 58 to 61)

334-262-7556 Reagan Reporters, LLC 334-262-4437
www.reaganreporters.com
<table>
<thead>
<tr>
<th>Page 62</th>
<th>Page 64</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  presented: design drawings,</td>
<td>1  findings of fact and conclusions of</td>
</tr>
<tr>
<td>2  engineering materials, discharge</td>
<td>2  law and the ALJ's recommendation. You</td>
</tr>
<tr>
<td>3  information. ADEM did look at all of these things very, very hard.</td>
<td>3  can either move to adopt the</td>
</tr>
<tr>
<td>4  not as if this permit were issued in a vacuum based on some boxes</td>
<td>4  Administrative Law Judge's recommended</td>
</tr>
<tr>
<td>5  being checked off a checklist. And I think that's all I have.</td>
<td>5  findings of fact and conclusions of</td>
</tr>
<tr>
<td>6  MS. ARCHIE: Thank you.</td>
<td>6  law and the Administrative Law Judge's</td>
</tr>
<tr>
<td>7  At this time I will entertain a motion from the Commission</td>
<td>7  recommendation or move to adopt the</td>
</tr>
<tr>
<td>8  regarding the Petitioner's motion to strike portions of the</td>
<td>8  Petitioner's proposed order or move to adopt ADEM's proposed order.</td>
</tr>
<tr>
<td>9  Intervenor's brief in response to Petitioner's objection to the</td>
<td>9  Do I have a motion?</td>
</tr>
<tr>
<td>10 Commission's strike portions of the Intervenor's reply brief.</td>
<td>10 DR. GARDNER: I move that the Commission adopt ADEM's proposed order.</td>
</tr>
<tr>
<td>11 I just want to remind you that the Petitioner is asking that the</td>
<td>11 MS. ARCHIE: Do I have a second?</td>
</tr>
<tr>
<td>12 Commission strike portions of the Intervenor's reply brief. They</td>
<td>12 MR. WAINWRIGHT: Second.</td>
</tr>
<tr>
<td>13 refer to an April 13th, 2009, memorandum of</td>
<td>13 MS. ARCHIE: Any discussion?</td>
</tr>
<tr>
<td>14 understanding between ADEM and the Alabama Surface Mining</td>
<td>14 (No response.)</td>
</tr>
<tr>
<td>15 Commission. The Intervenor has requested that the motion to strike</td>
<td>15 MS. ARCHIE: I will call for the question: All in favor say aye.</td>
</tr>
<tr>
<td>16 be denied. Do I have a motion to strike or deny?</td>
<td>16 (Commission members in favor of the motion so indicated.)</td>
</tr>
<tr>
<td>17 DR. GARDNER: I move to deny the Petitioner's motion to strike.</td>
<td>17 MS. ARCHIE: Those opposed?</td>
</tr>
<tr>
<td>18 MS. ARCHIE: Do I have a second?</td>
<td>18 (No response.)</td>
</tr>
<tr>
<td>19 DR. LESTER: I second.</td>
<td>19 MS. ARCHIE: So we vote on that. Everybody in favor of the</td>
</tr>
<tr>
<td>20 MS. ARCHIE: Any discussion?</td>
<td>20 meeting date say aye.</td>
</tr>
<tr>
<td>21 (No response.)</td>
<td>21 (Commission members in favor of the motion so indicated.)</td>
</tr>
<tr>
<td>22 MS. ARCHIE: I call for the question: All in favor say aye.</td>
<td>22 MS. ARCHIE: Those opposed?</td>
</tr>
<tr>
<td>23 MS. ARCHIE: The motion carries.</td>
<td>23 (No response.)</td>
</tr>
</tbody>
</table>

17 (Pages 62 to 65)
<table>
<thead>
<tr>
<th>Page 66</th>
<th>Page 67</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. note that former Chair Gardner has indicated that she will -- she will recommend it -- recommend approval of the request from the Alabama River Alliance, and that she asked Mr. Reid to limit the presentation to 10 minutes. At this time, I will entertain a motion for the Commission regarding a request from the Alabama River Alliance to address the Commission.</td>
<td>1. entertain a motion to move to approve the request to address the Commission or move to disapprove this request from the Commission.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 67</th>
<th>Page 68</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MS. ARCHIE: The motion carries. At this time we will hear from Mr. Reid. I'm sorry. Before you get started, do I have a motion to adjourn this meeting? Sorry guys.</td>
<td>1. MS. ARCHIE: Huh?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 68</th>
<th>Page 69</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td></td>
</tr>
</tbody>
</table>
REPORTER'S CERTIFICATE

I, Mihan Williamson, Certified Shorthand Reporter and Notary Public in and for the State of Alabama at Large, do hereby certify that I reported stenographically and then reduced to typewritten form by means of computer-aided transcription my stenographic notes of the foregoing Alabama Environmental Management Commission Meeting.

I further certify that the foregoing transcript is a true and correct transcript of the proceedings contained herein.

I further certify that I am neither of kin nor of counsel to the parties to said meeting, nor in any manner interested in the results thereof.

Done this, the 27th day of October, 2009.

Mihan Williamson, ACCR #417 Reporter and Notary Public State of Alabama at Large
manner interested in the results thereof.

Done this, the 27th day of October, 2009.

Mishan Williamson, ACCR #417
Reportor and Notary Public
State of Alabama at Large
aye's 33:19
a.m 1:10

back 17:3 26:10
48:4 51:3
backbone 23:22
backlog 22:21
base 26:2
based 29:17 49:8
61:4 62:6
baseline 19:12
basically 26:18
49:2 50:9,15
basis 11:9 40:15
51:1
begun 28:5
believe 10:2 11:14
13:18 16:10 60:11
benchmark 21:13
Bend 2:22 42:14
43:10 48:11 50:3
58:19 60:6
Bend's 50:5 52:15
53:1 56:18 57:14
57:18 59:5,16
benefit 10:20
benefits 11:18 12:5
better 10:5 67:13
big 24:12 48:20
bimonthly 24:7,10
Birmingham 3:3
47:20,22 67:20
Black 2:22 42:11
42:23 44:6 47:12
board 3:4 35:4,14
48:21 67:20
boards 15:5
books 13:23
Boulevard 1:7
boxes 62:6
break 27:13 44:17
breakout 10:10
breech 57:22
brief 43:13,17
62:15,22
briefly 61:14
bright 61:21
brought 11:17
BROWN 1:18
33:16 46:13 69:6
budget 9:16,17,22
10:9,11,14 11:12
11:19,22 12:11,16
12:17,19,19 20:18
build 17:6,7 23:22
Building 1:5
bulk 35:11
business 3:1,2
29:13 65:5 68:21
businesses 32:8
BWR 44:6
C
calculation 26:4
call 4:2 7:20 22:12
29:3,4 30:15
33:19 37:11 39:15
41:23 45:10 46:16
60:13 63:14 64:19
66:18 68:9
called 22:10
calling 22:13
capacity 9:9
capture 21:11
carries 6:18 9:2
34:3 37:18 39:22
42:8 45:17 46:23
63:21 65:3 67:2
68:16
case 27:23 32:8
47:15,17 48:4
49:14 51:8
cases 25:16
Catherine 47:11
catholic 31:17
cause 44:13 56:20
57:22 58:21 59:18
cent 35:7,8
certain 36:19

certainly 11:5
CERTIFICATE 70:2
certification 38:10
49:16
certified 49:15 70:5
certifies 55:14
certify 70:8,16,21
Chair 1:13 5:7,16
5:17,21 6:4,10 9:5
16:12 30:6,15,18
34:13 45:3,23
46:1,2,8 66:1
67:17
Chairman 60:3
chorus 8:2
challenged 57:15
59:6 61:6
challenging 23:5
cost 47:14
change 13:13
changed 9:18
changes 11:17
32:19,23 33:4,12
35:22 39:4 41:12
Chapter 2:1,15,16
2:19 31:6 34:11
34:18 37:20 40:3
charge 35:6,9,12
36:10
cart 12:22 13:21
checked 62:7
checklist 62:7
Chief 30:16 31:1
34:15
citizens 19:8
City 47:19,22
claim 48:17 51:18
56:15
claims 57:13 59:4
clarification 55:2
clarify 28:14
classes 31:20
classification 32:4
Clean 56:9
cleanup 36:16
clear 11:2 25:20
27:1
cleaner 25:13 48:19
49:13 50:22
clerks 32:1
close 6:7,9 14:3
18:18
closed 7:9,12
closing 13:23
coal 47:17 50:16,18
51:10 53:5,16
54:3,6,11,19 55:6
55:9,11,23 56:11
Code 2:10,13,17,20
30:11 31:7 34:9
34:20 37:21 40:4
coincide 24:11
Coliseum 1:7
collect 20:12
collecting 18:3 20:7
collection 20:4
come 10:13 14:4
20:20 21:17 25:14
25:17
comes 21:9 22:20
61:19
coming 27:16
29:18
come 32:16,18
33:4 38:18 41:4
comments 33:5,7
36:4 38:23 41:8
Commission 1:2,12
3:5 4:9,22 5:9,15
6:4,11,22 7:6,14
8:20 12:9 15:3
19:20 22:2 24:12
24:20 28:18 29:11
29:22 30:6,9,23
33:10,21 34:14
35:5,15 37:13
38:4,8 39:4,7,17
40:10 41:12,15
42:3,21 44:4,21
45:12 46:5,18
48:15 53:9,10,13
53:23 56:13 58:10
58:17 59:1 60:17
60:21 61:5 62:12
62:21 63:2,16,22
64:12,21 65:7,16
65:23 66:9,12,20
68:2,4,11,19,21
70:14
Commissioner
16:11
Commissioners 9:6
60:4
Commission's 58:4
commitments 18:7
committee 8:2,7
committing 23:6
community 17:20
19:9
company 31:22
complaints 18:19
complete 57:16
59:7
completed 36:1
compliance 16:8,19
17:2,9,9,13,16
18:20 20:11 55:16
compliment 27:2
composting 40:23
comprehensive 49:19
computer-aided
70:11
concerning 52:11
concluded 48:11
concludes 29:15
68:20
conclusion 42:19
57:12 59:3
conclusions 43:6
43:23 45:2 52:8
62:18 64:1,5
concrete 47:16
conference 16:9
one-quarter 35:8
operate 20:6
operating 9:21
10:22 14:19,20
15:9,15,21 29:18
31:13
operations 15:7
20:22
operator 31:23
32:6,15
operators 31:21
36:15 38:11 49:3
opportunities 28:15
opposed 5:1 6:13
7:16 8:22 33:23
37:15 39:19 42:5
45:14 46:20 63:18
64:23 65:18 66:22
68:13
oral 32:22 36:3
38:22 41:8 43:3
46:7,10 47:8
67:16
order 4:3 10:6 26:6
27:1,3 36:18 43:7
44:2 47:1 64:8,9
64:13
orders 25:10,13,21
26:8 27:16
originally 51:16
outfalls 47:20
outlines 26:19
outlining 9:14 23:8
outright 48:9
outstanding 22:2
overall 28:18
overhead 11:18
owners 36:14

part 23:7 48:3
50:14 52:20 54:23
participate 16:13
particular 58:6
parties 47:2 70:23
party 57:7 60:2
61:6
passed 38:14
path 19:23
penalty 25:10,12
25:21,23 26:3,20
26:23
Pending 39:2 41:10
people 5:11 24:3
25:13
percent 17:15 19:4
19:18
percentage 13:13
40:15
performed 57:1,8
58:11
period 32:17 38:19
41:4
permit 20:16 43:10
48:9 49:7 51:2,6
53:1 55:13 56:18
57:6,14,18,19,20
58:1,18,20,23
59:5,16 60:11
61:4,5,9,14 62:5
permits 54:20
permitted 57:2
permittee 55:14
permitting 18:19
20:14 52:21 54:23
57:16 59:7
person 28:10 32:4
32:21 58:5
pertaining 67:21
per-occurrence 35:16
Petitioner 43:2
62:20
Petitioner’s 43:8
43:14,15,21 44:1

PHILLIPS (not)
1:19
piece 19:13
PIERCE 1:17 4:14
7:8 36:9,21 37:7
39:12 41:17 66:14
69:5
pin 18:2
pipeline 26:8
place 11:21 12:1
61:10
placed 14:6
plan 10:22,22
14:19,20,22 15:1
15:10,15,22 18:5
20:9 29:8,18
48:12,16 49:5,5,9
49:20 50:2,7,10
50:21 51:4 52:12
52:18,19 53:2,7
54:7,18,21 56:16
61:17,22,23
plans 49:2 53:2
55:16
please 4:21 47:8
pleasure 9:8
point 10:1 11:8
15:18 20:2
pointed 20:17
points 60:9,14
policies 28:17
policy 28:8 31:15
pollutant 53:20
54:2,8,10
pollutants 44:12
56:19 57:19 58:19
59:17
pollution 48:12
49:1,4,9,19 50:2,7
50:10,21 51:3
52:11,17 53:3,4
53:15,17 54:5

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com
Attachment Index

Attachment 1  Agenda

Attachment 2  Order adopting motions to elect Anita Archie as Chair and John Lester as Vice-Chair

(Agenda Item 2 – Elections)

Attachment 3  Order adopting motion tabling Committee elections until the December Commission meeting and giving Chair Archie authority to set up the Committees and allow them to start

(Agenda Item 2 – Elections)

Attachment 4  Resolution adopting amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-15

(Agenda Item 5 – Consideration of adoption of proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-15)

Attachment 5  Resolution adopting amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-16

(Agenda Item 6 – Consideration of adoption of proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-16)

Attachment 6  Resolution adopting addition of Chapter 335-13-12 to ADEM Admin. Code Division 13, Solid Waste Program Regulations

(Agenda Item 7 – Consideration of adoption of the proposed addition of Chapter 335-13-12 to ADEM Admin. Code Division 13, Solid Waste Program Regulations)
Attachment Index

Attachment 7  Resolution adopting addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations

(Again Item 8 – Consideration of adoption of the proposed addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations)

Attachment 8  Order granting ADEM’s Motion to Extend Time to Respond to Petitioner’s Objections to Recommended Findings of Fact and Conclusions of Law

(Again Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))

Attachment 9  Order granting Petitioner’s Request for Oral Argument

(Again Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))

Attachment 10  Order denying Petitioner’s Motion to Strike

(Again Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))

Attachment 11  Order returning this proceeding to a Hearing Officer to be appointed by the Commission for a hearing on the two questions set forth in the Order

(Again Item 9 – Black Warrior Riverkeeper, Inc. v. ADEM, and Shepherd Bend, L.L.C., EMC Docket No. 09-04 (NPDES-Related Matter))
Attachment 1
AGENDA*
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING
Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
Friday, October 16, 2009
11:00 a.m.

ITEM

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Consideration of minutes of meeting held on August 21, 2009**</td>
<td>2</td>
</tr>
<tr>
<td>2. Elections</td>
<td>2</td>
</tr>
<tr>
<td>3. Report from the Director</td>
<td>2</td>
</tr>
<tr>
<td>4. Report from the Commission Chair</td>
<td>2</td>
</tr>
<tr>
<td>5. Consideration of adoption of proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-15</td>
<td>2</td>
</tr>
<tr>
<td>6. Consideration of adoption of proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-16</td>
<td>2</td>
</tr>
<tr>
<td>7. Consideration of adoption of the proposed addition of Chapter 335-13-12 to ADEM Admin. Code Division 13, Solid Waste Program Regulations</td>
<td>2</td>
</tr>
<tr>
<td>8. Consideration of adoption of the proposed addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations</td>
<td>3</td>
</tr>
<tr>
<td>10. Other business</td>
<td>3</td>
</tr>
<tr>
<td>11. Future business session</td>
<td>3</td>
</tr>
</tbody>
</table>

PUBLIC COMMENT PERIOD

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under EMC Information and Calendar of Events.

** The Minutes for this meeting will be available on the ADEM website under EMC Information.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 21, 2009

2. ELECTIONS

3. REPORT FROM THE DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 6, WATER QUALITY PROGRAM (UNDERGROUND STORAGE TANK) REGULATIONS, CHAPTER 335-6-15

The Commission will consider proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-15, “Technical Standards, Corrective Action Requirements and Financial Responsibility for Owners and Operators of Underground Storage Tanks.” The amendments are being proposed to provide updated regulations to meet the requirements for cathodic protection testers, provide for UST Operator Training Requirements, and other necessary updates. The Department held a public hearing on the proposed amendments on September 11, 2009.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 6, WATER QUALITY PROGRAM (UNDERGROUND STORAGE TANK) REGULATIONS, CHAPTER 335-6-16

The Commission will consider proposed amendments to ADEM Admin. Code Division 6, Water Quality Program (Underground Storage Tank) Regulations, Chapter 335-6-16, “Administrative Guidelines and Procedures for the Alabama Underground and Aboveground Storage Tank Trust Fund” to establish the annual Trust Fund Charge and scope of Trust Fund coverage, effective January 1, 2010. The Trust Fund Charge is proposed at $0.0125 per gallon, and the scope of Trust Fund coverage is proposed at $1.1 million per incident. The Department held a public hearing on the proposed amendments on September 23, 2009.

7. CONSIDERATION OF ADOPTION OF THE PROPOSED ADDITION OF CHAPTER 335-13-12 TO ADEM ADMIN. CODE DIVISION 13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider the proposed addition of Chapter 335-13-12 to ADEM Admin. Code Division 13, Solid Waste Program Regulations. Chapter 335-13-12 would establish the regulatory requirements necessary for the implementation of the Solid Waste landfill operator certification program. The Department held a public hearing on the proposed addition on August 26, 2009.
8. CONSIDERATION OF ADOPTION OF THE PROPOSED ADDITION OF CHAPTER 335-13-13 TO ADEM ADMIN. CODE DIVISION 13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider the proposed addition of Chapter 335-13-13 to ADEM Admin. Code Division 13, Solid Waste Program Regulations. Chapter 335-13-13 would establish a statewide solid waste reduction and recycling goal. The Department held a public hearing on the proposed addition on September 23, 2009.

9. BLACK WARRIOR RIVERKEEPER, INC. V. ADEM, AND SHEPHERD BEND, L.L.C., EMC DOCKET NO. 09-04 (NPDES-RELATED MATTER)

The Commission will consider the Administrative Law Judge’s (ALJ) “Recommended Findings of Fact and Conclusions of Law” in which the ALJ recommends to the Commission that ADEM’s and Shepherd Bend’s Motions for Summary Judgment be granted as to the issue of standing, particularly the issues expressed by Black Warrior are not ripe for appeal. The Commission will also consider the Petitioner’s Request for Oral Argument; the Petitioner’s Objections to the ALJ’s “Recommended Findings of Fact and Conclusions of Law”; the Petitioner’s Alternative Findings of Fact and Conclusions of Law; the Petitioner’s Proposed Order; the Intervenor’s Reply Brief in Response to the Petitioner’s Objections; the Petitioner’s Motion to Strike Portions of the Intervenor’s Reply Brief; the Intervenor’s Response to the Petitioner’s Motion to Strike; ADEM’s Motion to Extend Time to Respond to Petitioner’s Objections to Recommended Findings of Fact and Conclusions of Law; ADEM’s Response to Petitioner’s Objections to Recommended Findings of Fact and Conclusions of Law; and ADEM’s Proposed Order.

The ADEM administrative action appealed under Docket No. 09-04 is ADEM’s issuance of NPDES Permit AL0079162 on July 21, 2008, to Shepherd Bend, L.L.C., Shepherd Bend Mine, Walker County.

10. OTHER BUSINESS

11. FUTURE BUSINESS SESSION
PUBLIC COMMENT PERIOD

Mitchell Reid, on behalf of Alabama Rivers Alliance
SUBJECT: Presentation by Mitchell Reid (Alabama Rivers Alliance) and Matt Rota (Gulf Restoration Network) of findings from the Clean Up Your Act! Report Card for gulf water quality standards
(Chair Gardner will recommend approval of this request.)
(This request to address the Commission is attached to the agenda.)

Mac Underwood, on behalf of the Birmingham Water Works Board (BWWB)
SUBJECT: Presentation by Patrick Flannelly, P.E. (designated speaker for the BWWB) regarding the Shepherd Bend Mine permit
(Chair Gardner will recommend disapproval of this request.)
(This request to address the Commission is not attached to the agenda because it pertains to an appeal on the agenda.)
September 22, 2009

Mr. Laurel G. Gardner, D.V.M.
Chair, Environmental Management Commission
c/o Debi Thomas, Executive Assistant
1400 Coliseum Blvd.
Montgomery, Alabama 36110-2059

Dear Chair Gardner,

The Alabama Rivers Alliance requests to have a representative speak during the October 16th Environmental Management Commission meeting. On September 2nd ARA joined the Gulf Restoration Network in publishing *Clean Up Your Act*! Report Card for gulf state water quality standards. In this report Alabama, along with Florida, Mississippi, Louisiana, and Texas, received unsatisfactory grades for its failure to implement several key components of the Clean Water Act of 1972. The report grades the Gulf States on issues such as water quality standards, policies to prevent Dead Zone-causing pollution, public health protection, and facilitating public participation in the policy-making process. ARA’s Mitch Reid and GRN’s Matt Rota would like to present these findings with the Commission so that we can all work together to better meet the needs of the citizens who’s lives are affected daily by our state’s environmental policies.

Thank you for considering our request.

Sincerely,

Mitchell Reid
Program Director
Alabama Rivers Alliance

CC: Onis "Trey" Glenn, III
1400 Coliseum Blvd.
Montgomery, Alabama 36110
Attachment 2
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTIONS

Elect Anita Archie as Chair

Elect John Lester as Vice-Chair

ORDER

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

1. That the above motions are hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective
as of the date shown below.
ISSUED this 16th day of October 2009.

APPROVED:

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

Commissioner

DISAPPROVED:

Commissioner

Commissioner

ABSTAINED:

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 16th day of October 2009.

[Signature]
Chair
Environmental Management Commission
Certified this 16th day of October 2009
Attachment 3
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Table the Committee elections until the December meeting and allow Commission Chair Archie to set up the Committees and allow them to start

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 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 16th day of October 2009.

APPROVED:

[Signatures]  
Commissioner  
Commissioner  
Commissioner  
Commissioner

DISAPPROVED:

[Signatures]  
Commissioner  
Commissioner

ABSTAINED:

[Signatures]  
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 16th day of October 2009.

[Signatures]  
Chair  
Environmental Management Commission  
Certified this 16th day of October 2009
Attachment 4
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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 335-6 [335-6-15-.02/Definitions (Amend); 335-6-15-.04/Interim Prohibition for Deferred UST Systems (Amend); 335-6-15-.10/Operation and Maintenance of Corrosion Protection (Amend); 335-6-15-.13/Reporting and Recordkeeping (Amend); 335-6-15-.45 /Delivery Prohibition (Amend); 335-6-15-.46/Operator Training (Amend); 335-6-15-.47 /Severability (Amend)] of the Department’s Water Quality Program-UST rules, administrative code attached hereto, to become effective thirty-five days after filing with the Alabama Legislative Reference Service.
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-6 – Water Quality Program Rules-UST

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2009.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

Chair
Environmental Management Commission
Certified this 16th day of October 2009
ENIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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 335-6 [335-6-16-.07/Trust Fund Fee and Charge (Amend); and 335-6-16-.09/Scope of Tank Trust Fund Coverage (Amend)]; of the Department’s Water Quality Program-UST rules, administrative code attached hereto, to become effective thirty-five days after filing with the Alabama Legislative Reference Service January 1, 2010.*

*Amended per motion adopted by the Commission on December 11, 2009
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-6 – Water Quality Program Rules-UST

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2009.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

[Signature]
Chair
Environmental Management Commission
Certified this 16th day of October 2009
Attachment 6
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-13 – Solid Waste Program Rules

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2009.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

[Signature]
Chair
Environmental Management Commission
Certified this 16th day of October 2009

Page 2 of 2
Attachment 7
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-13 of the Department's Solid Waste Program Rules and Regulations in accordance with Code of Alabama 1975, §§ 22-22A-8 and 41-22-4; 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.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-13 – Solid Waste Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of October 2009.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

[Signature]
Chair
Environmental Management Commission
Certified this 16th day of October 2009
Attachment 8
ORDER

This cause having come before the Environmental Management Commission pursuant to ADEM’s Motion to Extend Time to Respond to Petitioner’s Objections to Recommended Findings of Fact and Conclusions of Law, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the ADEM’s Motion to Extend Time to Respond to Petitioner’s Objections to Recommended Findings of Fact and Conclusions of Law is hereby granted; and

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

3. That a copy of this Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.
Environmental Management Commission Order
Page 2 of 2

ISSUED this 16th day of October 2009.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

Chair
Environmental Management Commission
Certified this 16th day of October 2009
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Black Warrior Riverkeeper, Inc.,  )
      Petitioner,
      )
      )
      )
vs.                                  )
      )
      )
EMC Docket No. 09-04

Alabama Department of Environmental Management, )
      Respondent,
      )
      )
and

Shepherd Bend, L.L.C.,  )
      Intervenor.
      )

[ADEM Administrative Action:
ADEM's issuance of NPDES Permit AL0079162 on July 21, 2008, to Shepherd Bend, L.L.C., Shepherd Bend Mine, Walker County]

ORDER

This cause having come before the Environmental Management Commission pursuant to the Petitioner's Request for Oral Argument, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner's Request for Oral Argument is hereby granted; and

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

3. That a copy of this Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.
Environmental Management Commission Order
Page 2 of 2

ISSUED this 16th day of October 2009.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

Chair
Environmental Management Commission
Certified this 16th day of October 2009
Attachment 10
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Black Warrior Riverkeeper, Inc., Petitioner, )

vs. )

EMC Docket No. 09-04 )

Alabama Department of Environmental Management, Respondent, )

[ADEM Administrative Action:
ADEM’s issuance of NPDES Permit AL0079162 on July 21, 2008, to Shepherd Bend, L.L.C., Shepherd Bend Mine, Walker County]

and )

Shepherd Bend, L.L.C., Intervenor. )

ORDER

This cause having come before the Environmental Management Commission pursuant to the Petitioner’s Motion to Strike Portions of Shepherd Bend’s Reply Brief in Response to Petitioner’s Objections to the Hearing Officer’s Recommended Findings of Fact and Conclusions of Law (Motion to Strike) and the Intervenor’s Response to the Petitioner’s Motion to Strike, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner’s Motion to Strike is hereby denied; 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 shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.
Environmental Management Commission Order
Page 2 of 2

ISSUED this 16th day of October 2009.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of October 2009.

Chair
Environmental Management Commission
Certified this 16th day of October 2009
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BLACK WARRIOR RIVERKEEPER, INC.,
Petitioner,
v.
THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Respondent,
AND
SHEPHERD BEND, LLC,
Intervenor.

DOCKET NO. 09-04

ORDER

Before the Commission is the Hearing Officer’s Recommended Findings of Fact and Conclusions of Law. The Commission finds as follows:

1) The first error alleged by Black Warrior Riverkeeper’s (“BWR”) Hearing Request contends the administrative action of the Department – the issuance of National Pollutant Discharge Elimination System (“NPDES”) Permit No. AL0079162 to Shepherd Bend, LLC – is void for lack of notice of the administrative action of the Department. Because this proceeding is de novo, the Hearing Officer found and concluded that contention is due to be denied. The Commission accepts this particular recommendation of the Hearing Officer and denies this contention.
2) The second error alleged by BWR’s Hearing Request contends the administrative action of the Department is due to be disapproved because the permit application was incomplete, specifically that a Pollution Abatement and Prevention Plan ("PAP Plan") was missing from the application. The Hearing Officer found and concluded that the application upon which the administrative action of the Department was based does not require a PAP Plan. The Commission agrees and denies this contention for the reasons set forth in the Hearing Officer’s Recommendation.

3) The third and fourth errors alleged by BWR’s Hearing Request contend the administrative action of the Department authorizes the discharge of pollutants that will cause or contribute to a contravention of State water quality standards. The Hearing Officer found that the Department performed an analysis of potential impacts of permitted discharges from mining activities and determined the water quality in Mulberry Fork area of the Black Warrior River would not be significantly affected. The Commission agrees ADEM performed this analysis, and there is no dispute among the parties the Department performed this analysis, but BWR disputes the Department’s determination. The Hearing Officer concluded that BWR’s dispute is unripe because no permit for surface mining had been issued to the Intervenor by the Alabama Surface Mining Commission ("ASMC") and that the Intervenor cannot discharge pursuant to the NPDES permit until that ASMC permit is issued. The Commission agrees with the Hearing Officer that under the terms of the NPDES permit the Intervenor cannot discharge any pollutants pursuant to the NPDES permit, and thus can neither
cause nor contribute to a contravention of State water quality standards until that ASMC permit issues. However, the Commission concludes the Alabama Environmental Management Act entitles “an aggrieved person” to a hearing in which to contest these particular questions notwithstanding any action by ADEM or the ASMC and rejects this particular conclusion of law by the Hearing Officer.

For the reasons stated above, the Commission hereby ORDERS, ADJUDGES, AND DECREES as follows:

The Commission returns this proceeding to a Hearing Officer to be appointed by the Commission for a hearing upon the questions: (1) whether BWR isaggrieved by ADEM’s administrative action, and (2) whether there is preponderating evidence that the administrative action of the Department authorizes discharges of pollutants which, upon discharge, will either cause or contribute to a detectable contravention of State water quality standards.

ISSUED this the 16th day of October, 2009.

APPROVED:

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signature]
Chair
Environmental Management Commission
Certified this 16th day of October 2009
DISAPPROVED:

Commissioner

Commissioner

ABSTAINED:

Commissioner