Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 17, 2014
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 17, 2014.

H. Lanier Brown, II
Chair
Alabama Environmental Management Commission

Certified this 12th day of December 2014.
Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
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October 17, 2014

Convened: 10:59 a.m.
Adjourned: 11:53 a.m.

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Part A
ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 17, 2014
10:59 a.m.

Taken by: Victoria M. Castillo, CCR#17

CHAIRMAN BROWN: Good morning. Welcome to the October 17th, 2014 meeting of the Alabama Environmental Management Commission. I acknowledged that -- or the Chair acknowledges that we have a quorum and calls this meeting to order.

First item on the agenda is consideration of the minutes of the meeting held on August 15, 2014. The minutes have been circulated to all members of the Commission, and I will entertain a motion regarding that.

DR. MILLER: I move we accept the minutes as written.

DR. RICHARDSON: Second.

CHAIRMAN BROWN: The Chair will call for the question. All in favor say "aye."

(All Commission members signify "aye.")

CHAIRMAN BROWN: Any opposed?

(No response)

CHAIRMAN BROWN: Motion passes. Next item on the agenda is elections. Chair notes the Commission will consider the election of the Chair and Vice-Chair. And the Chair will first entertain a motion from the Commission regarding the election of the Chair.

DR. RICHARDSON:

Mr. Chairman, I move that we continue the executive body as it exists.

DR. MILLER: Second.

CHAIRMAN BROWN: And for clarification, that would be me as Chair and Mr. Phillips, Commissioner Phillips, as Vice-Chair?

DR. RICHARDSON: Correct.

CHAIRMAN BROWN: All in favor?

(All Commission members signify "aye.")

CHAIRMAN BROWN: Any
opposed?

CHAIRMAN BROWN: Motion passes. Next item on the agenda is the report from the ADEM director, Director LeFleur.

Good morning.

MR. LeFLEUR: Good morning and congratulations.

CHAIRMAN BROWN: Thank you, I think.

MR. LeFLEUR: Let me offer a good morning and welcome to all of you present for the first scheduled meeting of the Alabama Environmental Management Commission for fiscal year 2015. As we begin the new fiscal year, I am pleased to report that the Department met or exceeded all of its EPA grant commitments for fiscal year 2014.

A copy of the Department's fiscal year 2015 Operations Plan which incorporates the grant commitments included in the work plans the Department negotiates with the EPA each year has been provided to each Commissioner. We look forward to the challenge of meeting, and hopefully exceeding, these obligations again this fiscal year.

In today's report I will update you on the operating budget and then focus on several topics including: Highlighting a new Departmental electronic innovation now available for public use; setting out the deadlines for public comment on an unusually large number of far-reaching new environmental regulations being proposed by EPA; and, discussing some environmental misperceptions commonly held by some members of the public. I will close by recognizing several of our employees who have gone the extra mile in their service to the Department and the State.

As you know, September 30th marked the end of the fiscal year 2014 budget cycle. The Department, with our General Fund appropriation, federal grants, and other generated revenue was able to meet all of our financial obligations. After several consecutive years of significant budget cuts, both Federal and State FY 2015 budgets seem to be stabilizing, albeit at the lowest level in decades.

I regularly report to you on the Department's budget and on our performance given the limited funding available. Recently I highlighted the role of innovation and the embracing of forward leaning ideas plays in allowing the Department to achieve top performance with its limited budget.

Today I would like to highlight two examples of how the Department is seeking to supplement its budget to fund innovation. Funding to move innovative programs forward is hard to find. One of the very few opportunities to obtain any funding beyond normal State General Fund appropriations and Federal Programmatic Grants are the competitive federal grant programs where we compete with all the other states for limited, but important, funding dollars.

I have two slides that track some of these competitive grant dollars that the Department has been able to obtain for innovative programs. This first slide highlights three individual competitive Wetland Program Development grants that are currently being used to enhance the Department's surface water quality monitoring capabilities focusing on wetland systems.

These funds facilitate the development of ADEM's statewide wetland monitoring program. A considerable portion of the funds goes to coordinate efforts among various state and federal agencies and to development of sampling and assessment procedures.

The funds from these competitive
1. In the next three slides, I will
2. navigate you through the eGovernment Portal
3. and show you where the information entered
goes.
4. This slide represents a screen
5. shot of the home page of the ADEM Web site
6. with the eGovernment Portal clearly
7. identified. If the eGov Portal is
8. selected, as shown on this next slide, a
9. portion -- excuse me -- the portal main
10. page will be displayed, which has links to
11. eDischarge Monitoring Reporting, eSanitary
12. Sewer Overflow Reporting, the eDrinking
13. Water Reporting System, eNotice of Intent,
ePayment options, and ePermitting. It's a
14. little hard to read, but you will also note
15. the Coming Soon applications depicted at
16. the bottom of the page.
17. **Where applicable, the inputs to
18. these links quickly feed directly into both
19. ADEM and EPA federal databases. For
20. example, as shown in this next slide, the
21. eDMR and eSSO portal data and documents are**

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1. important source of funding for this
2. effort.
3. In a time of ever shrinking
4. budgets, the Department is successfully
5. using competitive grant dollars to fund
6. critical projects that might otherwise go
7. undone.
8. Continuing with the subject of
9. innovation in the data management area, I
10. am pleased to introduce you to a recent
11. change to the Department's Web site. The
12. Department continually strives to both make
13. compliance easier for the regulated
14. community and to provide timely access and
15. transparency to the citizens of the state.
16. With this in mind, the home page
17. on our Web site has been modified to
18. include a new icon entitled eGov Portal.
19. As the name suggests, a number of
20. eGovernment applications that were
21. previously accessible individually in
22. various other locations are now accessible
23. in one convenient location.
1. program, please take a moment to look at
2. the display board located out in the main
3. foyer.
4. Implementation of efficiencies
5. such as these has become particularly
6. important as the pace of proposed new
7. federal regulations has quickened in the
8. waning years of the current
9. administration. There are currently three
10. important new environmental initiatives
11. with public comment periods ending before
12. the close of the calendar year.
13. If anyone present has an
14. interest in any of these critical areas of
15. environmental regulation and has already --
16. has not already done so, you still have
17. time to submit your written comments before
18. the close of the public comment period.
19. These new areas include: Waters
20. of the U.S., the comment period closing on
21. November the 14th; North Birmingham
22. Proposed NPL listing, with the comment
23. period closing on November 21st; the Clean

1. important environmental issues.
2. Beginning in 1998 and
3. reoccurring every five years, the
4. Department has worked with both the
5. University of Alabama and Auburn University
6. to conduct a statewide public opinion
7. survey focused on gauging perceptions of
8. the environment. By maintaining the
9. consistency of the questions and
10. methodology over the past 15 years, we are
11. able to identify opinions and the trend of
12. opinions on environmental issues in
14. Although the latest survey
15. results identify some positive trends in
16. Alabamians' understanding of their
17. environment, the results also identify some
18. glaring misperceptions.
19. First the positives. The most
20. recent survey results document that 88
21. percent of those surveyed rate the overall
22. quality of the environment in Alabama as
23. either very good or fairly good compared to

1. Air Act Section 111(d) proposed -- or
2. proposed regulation, with the comment
3. period closing on December 1st.
4. These proposed regulations can
5. have profound impact on federal control of
6. water bodies and the health and economic
7. well-being of citizens -- of the citizens
8. and businesses in Birmingham and other
9. areas of our state.
10. In addition to these new
11. regulations that have already been
12. proposed, EPA plans to publish new ozone
13. regulations on December 1st and coal ash
14. regulations on December 19th. Although we
15. do not know the content of these new
16. regulations, we fully expect them to result
17. in many areas of the United States to be in
18. non-attainment for ozone and a
19. transformation in the way in which coal ash
20. is managed in this country.
21. Again, if you have not already
22. done so, I encourage all interested parties
23. to make their opinions known on these

1. only 76 percent in the original 1998
2. survey. In 1998, Alabamians were asked to
3. compare the quality of Alabama's water
4. resources to its quality 25 years prior.
5. Only 19 percent of those surveyed indicated
6. that water quality was either somewhat
7. cleaner or much cleaner at that time. In
8. the most recent survey, 36 percent
9. indicated that Alabama's water resources
10. were either somewhat cleaner or much
11. cleaner.
12. In 1998, Alabamians were asked
13. to compare Alabama's air quality to its air
14. quality 25 years prior. Only 18 percent
15. indicated that air quality was either
16. somewhat cleaner or much cleaner at that
17. time. In the most recent survey, 31
18. percent indicated that Alabama's air
19. quality was either somewhat cleaner or much
20. cleaner. All of these are correct
21. perceptions by virtually any objective
22. standard used to measure environmental
23. quality.
These positive trends in educating the public are a result of the diligent efforts of a number of groups including: Industry, environmental groups, state and federal agencies including ADEM, and everyday Alabamians.

On the other side of the coin, however, the most recent survey results also highlight some areas where Alabamians still have some serious misperceptions about Alabama's environment. A full 62 percent of those surveyed do not recognize that cars, trucks, and other vehicles are the biggest source of air pollution in Alabama as they are throughout the nation. Likewise, 86 percent of those surveyed do not understand that nonpoint source pollution or stormwater is the single biggest cause of water quality issues in Alabama as it is across the nation. Perhaps one of the most troubling misperceptions revealed by the survey is that only 76 percent of those surveyed either agree or strongly agree that environmental standards are protective of human health and the environment.

Although we, as regulators, understand that most environmental standards are developed at the national level to ensure the protection of all Americans, and that those environmental standards are based on extensive, rigorous scientific study and research, this reality is not being effectively communicated to the public here in Alabama.

It is important that we make every effort to ensure that all residents have confidence in the established environmental standards since they are the building blocks of our permitting, inspection, and enforcement activities.

To deal with the misperceptions, ADEM personnel are addressing these topics in their messaging when they go out and speak to citizens, elected officials, and stakeholder groups. Through these outreach efforts, we are attempting to not only correct these misperceptions, but to also highlight the significant progress that has been made to improve the environment in the 30 years since the agency was formed.

I would like to take a few minutes -- a few moments to focus on our employees. If we are to be a high-performing organization in the future, we must develop our employees. To that end, one of the Department's Operating Plan objectives is to promote a high-performing work environment in part through the ongoing development of our human resources. We aggressively encourage the development of our personnel from the most junior employees to the top levels of management.

Formalized training is an important component of employee development. I'd like to recognize a number of our employees that have reached a significant milestone in their formalized training.

The Alabama Training Institute at Auburn University of Montgomery offers the nationally-accredited Certified Public Manager or CPM training program, which provides comprehensive management training in two segments: CPM I and CPM II. Each segment is presented -- or excuse me. Each segment is presented two days per month over a nine-month period. The total time to complete the certification program is 18 months. Courses include topics such as leadership, project management, interpersonal communication, performance coaching, building and leading teams, managing public organizations, and building partnerships.

The CPM program has been a valued part of the Department's supervisory training program for many years and has been most helpful in preparing new supervisors for the rigors of their management roles. We have nine graduates...
of phase one of the CPM program. Those of
you who are present, please stand and be
recognized as I call your name.

Emily Anderson, Shelane
Bergquist, Eric Cleckler, Kelley Hartley,
Lisa Hicks, Heather Jones -- you all can
continue to stand for just a moment --
Catherine McNell, Chris Sasser, and Shawn
Sibley. Pause for my applause.

(Audience applause)

MR. LEFLEUR: Thank you.
The development of personnel can also take
the form of honing leadership skills in
state and national organizations important
to accomplishing the Department's stated
mission. Like formalized training, taking
on the added responsibility of serving in a
leadership position with state and national
organizations is totally voluntary.
There are outside service
efforts afford -- excuse me -- their
outside service affords the Department
extraordinary opportunities to participate

1 at the national level as policy is
developed that will be the basis of future
regulation. By getting in on the ground-
floor discussions, they can direct future
national regulation in such a way as to
maximize its positive impact on the
environment while minimizing any negative
impact on the states.

We are fortunate to have a
number of employees who serve as officers
in national and state organizations, and I
would now like to recognize those employees
who have gone the extra mile in their
service to the Department and the state.
Each of you please stand when I call your
name, and we will hold our applause until
the end.

Aubrey White in the Permits and
Services Division will be installed as
President of the Council of Infrastructure
and Financing Authorities, or CIFA, on
November 10th. CIFA is the national
organization of state, regional, and local
entities working for needed environmental
infrastructure funding from the
governments -- from governments and capital
markets, and for the effective use of these
financial resources.

Aubrey is the manager of the
Department's State Revolving Fund Program
which has provided Alabama communities with
$1.5 billion in funding for clean water and
safe drinking water infrastructure
improvements.

Eric Cleckler, also in the
Permits and Services Division, serves on
the National Network Technology Board which
is a subgroup of the Exchange Network
Leadership Council. In his capacity, Eric
advises the ENLC on matters related to
technology and innovation within the
Exchange Network. This has been absolutely
critical in bringing EPA up to ADEM
standards of electronic data management.

Richard Hulcher -- you guys can
stand, too. Richard Hulcher in our Field Operations Division is a member of the
Southeast Region of Certified Crop
Advisors, CCA, Governing Board whose
mission is to administer and promote the
CCA program in Alabama and Georgia
according to International Certified Crop
Advisor Guidelines.

Ruth Perez, also in the Field
Operations Division, serves as the
Secretary of the Alabama Fisheries
Association. The AFA is an organization of
individuals from various fisheries and
water resource related groups dedicated to
the development, conservation, and
management of commercial and recreational
fisheries in Alabama and the wise
utilization and protection of fisheries and
aquatic habitats.

Jack Mobley in the Water
Division serves as the Capacity
Development Coordinator of the Joint
National Capacity Development and Operator
Certification Workshop for the Association
1. Section of the Water Division in 1980.
2. In 1983, Steve was promoted to
3. section chief and, for the next six years,
4. led the effort to develop and secure EPA
5. approval of the State Nonpoint Source
6. Management Program while managing the NPDES
7. permitting and enforcement activities for
8. the mining -- for mining operations and
9. compliance activities in the nonpoint
10. source area.
11. In 1989, Steve transferred to
12. the Land Division where he became Chief of
13. the Hazardous Waste Compliance Branch. For
14. the next seven years, Steve focused his
15. efforts on completing outstanding
16. groundwater assessments at interim status
17. treatment, storage, and disposal facilities
18. so that permitting could proceed.
19. He also managed inspection and
20. compliance assurance activities at
21. hazardous waste generators. These efforts
22. have contributed to the Department
23. receiving additional program authorizations

1. Curt Johnson serves as Chairman
2. of the National Work Group on Leak
3. Detection Evaluations.
4. Stephen Cobb serves as the State
5. Co-Chair of the Department of Defense
7. And please join me in a round of
8. applause in recognition of the significant
9. commitments that these employees have
10. made.
11. (Audience applause)
12. MR. LeFLEUR: These people
13. have gone above and beyond the scope of
14. their jobs for the benefit of the
15. Department, the state, and the nation.
16. As a final personnel matter, let
17. me please -- please join me in
18. congratulating Steve Jenkins, Chief of the
19. Field Operations Division, on his pending
20. retirement on January 1st, 2015. Steve
21. graduated from the University of Tennessee
22. in 1979 and began his 34-year career with
23. ADEM in the Mining and Nonpoint Source

1. from EPA.
2. In 1996, Steve became Branch
3. Chief of the Montgomery Field Office and
4. two years later was promoted to Chief of
5. the Field Operations Division where he
6. serves to this day. Over the past 16
7. years, Steve has been responsible for
8. managing compliance sampling activities at
9. NPDES facilities, environmental emergency
10. response functions, including responses to
11. hurricanes and tornadoes, spills of oil and
12. hazardous materials, including Deepwater
13. Horizon response where he lead the state's
14. efforts in removing oil from Alabama's
15. beaches, marshes, and near-shore
16. environment.
17. In addition, he has been
18. responsible for managing ambient water
19. quality monitoring, special water quality
20. studies, ambient air monitoring, NPDES
21. compliance evaluation activities, nonpoint
22. source inspection and compliance activities
23. and the regulatory provisions of the
Alabama Coastal Program.
Since Steve has been a proponent of strong quality control and quality assurance. His efforts in this area led to the creation of the Department's Office of Environmental Quality. To say that Steve's replacement will have big shoes to fill is truly an understatement. Steve, please stand and be recognized for a long and distinguished career.

(Audience applause)

MR. LeFLEUR: In January of 2010 a group of environmental organizations calling itself the ADEM Reform Coalition filed a petition with EPA requesting that EPA withdraw ADEM's authority to issue and administer NPDES water permits for failure to meet requirements of the Federal Clean Water Act. The areas of alleged failure were in permitting quality, recordkeeping, inspections, administrative procedures, enforcement, penalty assessments, and funding.

In April of this year, I notified you that EPA had found that none of the allegations included in the petition to withdraw ADEM's authority to issue and administer NPDES water permits was worthy of withdrawal. That decision by EPA has been appealed to the 11th Circuit Court of Appeals by the group Environmental Defense Alliance, which is represented by the Law Office of David Ludder. The matter is pending before that court at this time.

With that, once again, let me close my thanks to you for serving the state as Commissioners on the Alabama Environmental Management Commission and for allowing me to serve the state in my capacity.

If there are any questions, I will be pleased to address them now.

CHAIRMAN BROWN: Thank you,
Director.

Any questions from the Commission?

(No response)

CHAIRMAN BROWN: Thank you.

MR. LeFLEUR: Thank you.

CHAIRMAN BROWN: Next item on the agenda is the report of the Commission Chair. I have no particular report today other than to comment a little bit on the next item, which is the Rulemaking Committee.

And as many of you know or have seen, we -- the Rulemaking Committee is taking a look at our rules or procedures for public comment, and it seems that some of the feedback I've been made aware of deals with concerns that we want to eliminate that.

And, as Chair, I just wanted to say that I sort of initiated or requested that the Rulemaking Committee look at that, these issues, not to kill public comment but to -- hopefully to enhance it by providing some guidance or -- as to what we would like to see. That would allow us to engage the commentators rather than -- all too often we find ourselves listening to presentations about matters that are outside our areas of prescribed responsibility or that we simply cannot do anything about and don't have much to commentary in response. And so that's why we've undertaken this review. And I just wanted to make that point clear, from the Chair's perspective.

And with that, I will move on to the next item on the agenda, which is the Rulemaking Committee's report.

VICE-CHAIR PHILLIPS: Thank you, Mr. Chairman.

The Rulemaking Committee was charged with reviewing our existing Rule 335-2-3-.05, Sections 1 through 3 regarding the Commission agenda, specifically the area of public comment.

The Rulemaking Committee requested comments from the public on our
1 existing rule and asked for comments
2 regarding improvements, changes, or
3 modifications to that rule. We received 56
4 comments by our deadline of September 15th,
5 2014 at 5 p.m. By far the majority of
6 those comments were for the Commission to
7 keep public comment as a part of the
8 Commission meetings. While we did get some
9 comments on improvements, there were not
10 many.
11 In our Rulemaking Committee
12 meeting today, Committee members agreed
13 that we needed more time to review the
14 existing rule and consider any needed
15 changes; therefore, we have set another
16 meeting of the Committee on December 12th
17 at 10 a.m. in this conference room.
18 Additionally, the Rulemaking
19 Committee today heard from Commissioner
20 Richardson, who raised in Other Business,
21 the topic of Environmental Justice Policy
22 and requested the Rulemaking Committee to
23 take this issue up after we complete our

1 work on the public comment rule.
2 That's it for the Rulemaking
3 Committee report. If there are any
4 questions, I'll be happy to answer them.
5 CHAIRMAN BROWN: Any
6 questions from the Commission?
7 (No response)
8 CHAIRMAN BROWN: Next item
9 on the agenda is consideration of adoption
10 of proposed amendments to ADEM
11 Administrative Code 335-3, Air Pollution
12 Control Program regulations.
13 MR. GORE: Good morning,
14 Mr. Chair, ladies and gentlemen, my name's
15 Ron Gore with the Department's Air
16 Division. We're here to ask that you make
17 some changes to the Air rules. If you
18 recall, several years ago EPA for the first
19 time declared that greenhouse gases are an
20 air pollutant. Soon thereafter, EPA
21 adopted rules that said that large point
22 sources of greenhouse gases have to obtain
23 both construction and operating permits

1 when they didn't have to do so before.
2 Soon thereafter, the Department
3 requested that you adopt the rules which
4 mirror the EPA's requirements and you did
5 so. And surprise, surprise, after the
6 federal rulemaking, many lawsuits ensued.
7 And recently the Supreme Court ruled that
8 only some of these large sources of
9 greenhouse gases have to obtain permits.
10 So what we're asking you to do
11 is to adopt changes to the state's rules
12 that reflect the U.S. Supreme Court's
13 ruling on which sources have to obtain
14 these greenhouse gas permits.
15 We held a public comment period
16 from July 28th through September 12th. The
17 hearing was September 10th. There were no
18 comments. And pending any questions, I
19 would ask you to adopt these changes.
20 VICE-CHAIR PHILLIPS: Move
21 we adopt the proposed changes,
22 Mr. Chairman.
23 DR. RICHARDSON: Second.
1 ADEM Administrative Code 335-7 addressing
2 new federal regulations that were
3 promulgated on February 26th, 2014.
4 Adoption of these revisions will allow the
5 Department to retain primacy for
6 implementation of federal drinking water
7 requirements for public water systems in
8 Alabama.
9 In this rulemaking, the
10 Department proposed changes to existing
11 rules to adopt the requirement of the new
12 federal revised Total Coliform Rule. These
13 proposed revisions will provide for
14 increased protection against microbial
15 pathogens in public water systems. Other
16 revisions proposed for adoption include
17 correcting clerical errors and making
18 clarifications to existing rules.
19 On September 10th, 2014, a
20 public hearing was held regarding the
21 proposed revisions. Written comments were
22 accepted any time during the public comment
23 periods, which extended from July 27th,

1 2014 to September 10th, 2014.
2 During the comment period, the
3 Department received one written comment
4 from one commentator, which was U.S. EPA
5 Region 4. EPA's comment concerned the
6 clarification of an existing rule. The EPA
7 comment has been addressed. Had the
8 hearing on September 10th, 2014. No one
9 presented oral testimony.
10 The Department requests that the
11 Commission adopt the proposed revisions
12 with changes pursuant to EPA's comment. I
13 will be happy to address any questions the
14 Commission may have.
15 VICE-CHAIR PHILLIPS: I move
16 we adopt the proposed amendments,
17 Mr. Chairman.
18 DR. LAIER: Second.
19 MR. HARRISON: Thank you
20 very much.
21 CHAIRMAN BROWN: All in
22 favor?
23 (All Commission members

1 CHAIRMAN BROWN: All in
2 favor?
3 (All Commission members
4 signify "aye.")
5 CHAIRMAN BROWN: Any
6 opposed?
7 (No response)
8 CHAIRMAN BROWN: Motion
9 carries.
10 MR. HARRISON: Thank you
11 very much.
12 CHAIRMAN BROWN: All right.
13 Next on the agenda is -- Chair will --
14 excuse me -- Commission will consider the
15 hearing officer's order and recommendation
16 recommending the Commission deny ADEM's
17 motion to strike and motion to dismiss and
18 grant ADEM's motion for summary judgment in
19 R. Nolan Williams versus ADEM, EMC Docket
20 No. 14-01.
21 Chair will entertain any motion
22 from the Commission.
23 VICE-CHAIR PHILLIPS: I move
24 we adopt the hearing officer's order of
25 recommendation.
26 DR. LAIER: Second.

1 CHAIRMAN BROWN: Moving on.
2 Chair notes that the next Commission
3 meeting will be December 12, 2014, 11 a.m.
4 in this conference room. And with that, we
5 will move to the public comment period.
6 David Ludder, on behalf of the
7 Environmental Defense Alliance, has
8 requested to address the Commission on
9 ADEM's Graduated Enforcement Response. The
10 Chair has recommended that Lawyer Ludder's
11 request to address the Commission be
12 granted, and I will entertain a motion at
13 this time.
VICE-CHAIR PHILLIPS: I move we grant the request.

DR. LAIER: Second.

CHAIRMAN BROWN: All in favor?

(All Commission members signify "aye.")

CHAIRMAN BROWN: Mr. Ludder, ten minutes, please.

MR. LUDDER: Thank you, Mr. Chairman. My name is David Ludder and I represent the Environmental Defense Alliance today. The presentation that I prepared today has to do with the Department's enforcement efforts and some concerns that we have about it. We think that the Department's Graduated Enforcement Response is intended to be a fair and expedient use of its resources to achieve compliance; however, we also think that the way it's being administered, it is resulting in delays in compliance and continued environmental degradation.

This graphic illustrates what -- what is called the Graduated Enforcement Response. These are basically the choices the Department has in going after a non-compliant facility: No action, a warning letter, a notice of violation, an administrative order, and litigation. Penalties cannot be imposed until you get to the level of administrative order. Everything before that is just informing the facility that there's a violation. The general theory of violation deter is that it is a function of a perceived risk of detection. That's the traffic cop sitting out there that you see. If you don't see them, you don't perceive a risk of getting caught. The perceived risk of certain consequences -- if a traffic cop sees you speeding but tells you don't do it next time -- maybe the perception is that you're not going to have consequences. And the perceived risk of severe consequences, that's when the traffic cop issues a ticket that costs you money.

On December 13th last year, the Director, in his report to the Commission, made the statement that's on this slide. And basically it says that, Compliance is a function of inspections, education, and penalties, and that his inclination was -- or his -- his belief was that inspections and education are far more productive in achieving compliance than penalties, although penalties should continue to be a part of the mix.

This strategy is based on a 2004 study by the Oregon Department of Environmental Quality. And important note about that study, it does not include many -- many smaller facilities. It addressed major facilities. So, for example, that study omitted all non-major NPDES facilities in the study. So there's a real question of whether those conclusions apply to smaller facilities.

In this graphic, the Oregon DEQ polled -- polled the representatives of industry and asked, What would make you comply? What has the most influence? And the three top influences here are shown. This is what they said would influence them. Training in the systems and publications was number one; increased inspections was number two; and increased penalties was number three. Now, mind you, these -- these results only apply to the larger facilities that were part of the study.

In this graphic, the Oregon DEQ measured, or attempted to measure, what are the actual company responses to enforcement activity. In other words, this was not what you -- what do you say causes you to change your behavior, this is what actually caused a change in behavior. And you'll see that, for example, the inspection group, the direct inspection meant -- means that if your facility got inspected, that
1 would have a strong influence in changing
2 your behavior. If you -- and the second
3 orange triangle says indirect inspection.
4 That means, if someone you know had an
5 inspection, that would cause you to change
6 your behavior.
7 So in this graphic, the
8 inspections were number one, technical
9 assistance was number two, and penalties
10 came up -- came way less. Again, I remind
11 you this was only for the larger
12 facilities. Frankly, I would expect larger
13 facilities to respond better than smaller
14 facilities.
15 In April of this year, the
16 Director announced that he was, in fact,
17 adjusting ADEM's approach to enforcement
18 and it was going to include more
19 inspections, more -- more rapid informal
20 enforcement, and more technical
21 assistance. And, in fact, the EPA
22 dashboards show, on the left graphic, that
23 informal enforcement is on the rise and

1 formal enforcement is on the decline. And
2 formal enforcement includes administrative
3 orders and litigation. Informal includes
4 warning letters and notices of violation.
5 Now, in this graphic on the
6 left, it shows the facilities in the NPDES
7 program. The large part of that circle,
8 the large orange part, is non-major
9 sources, and that accounts for 84 percent
10 of the total population of NPDES sources.
11 And, remember, the Oregon study did not
12 include any of those types of sources. The
13 small orange piece of the pie is
14 non-major -- non-major sources with
15 individual permits. Again, that was not
16 included in the Oregon study. And then the
17 final piece is that small sliver. Those
18 are major sources. That was included in
19 the Oregon study.
20 And on the right side, there are
21 graphics showing facilities inspected by
22 the state in 2013 and then also a breakdown
23 below that of facilities inspected

1 according to the type of source they are.
2 Now, this comment was from the
3 Oregon study. Because this study did not
4 address the smallest sources, the study
5 acknowledges that a successful regulatory
6 strategy for small companies must create
7 general deterrence by somehow increasing
8 the perception of enforcement risk or
9 increasing their level of expertise.
10 This graphic is from the EPA's
11 Alabama State Review Framework published in
12 March of this year. And you'll notice that
13 in this one -- in this graphic, it's the
14 Clean Water Act element for enforcement
15 actions promoting return to compliance.
16 The conclusion is that enforcement actions
17 here in Alabama by the Department do not
18 consistently result in violators returning
19 to compliance within a certain time frame.
20 And the data below that indicates that the
21 national goal is 100 percent and ADEM's
22 result is 57 percent.
23 Another element of the Clean

1 Water Act State Review Framework is the --
2 that timely and appropriate enforcement
3 action should be taken in accordance with
4 policy relating to specific media. They
5 conclude that significant non-compliers --
6 or non-compliance is not being addressed in
7 a timely and appropriate manner here in
8 Alabama. The national goal is 98 percent.
9 Their result of reviewing ten facilities
10 was zero percent in Alabama. And the
11 national goal for addressing significant
12 non-compliance is that 100 percent is the
13 goal, and in Alabama 25 percent achieved.
14 This excerpt is from the EPA's
15 recent decision on the petition to
16 withdraw. And again, they reiterate in the
17 highlighted portion, ADEM is still not
18 taking timely and appropriate action in
19 many cases because ADEM relies on informal
20 actions such as notices of violation and
21 warning letters. And I would remind you, I
22 think that there is an element of the
23 petition to withdraw that EPA has yet to
1 decide and that is specifically on enforcement.
2 In this graphic, I've shown you what has happened in the context of one facility, and you'll notice no flags for inspections. So in this facility -- in the case of this facility, inspections did not even influence the facility's decision to comply. There are multiple notices of violation and one warning letter and still the facility didn't comply.
3 I think the take-away lesson is that, at least in this group of facilities, or facilities like this, the risk of consequences for MOBs and warning letters is not perceived to be there and so they don't take them seriously.
4 In this next facility, there are multiple inspections and there are multiple MOBs and multiple warning letters. And finally, I think there's -- there's an administrative order in there as well and still there is non-compliance. Again, I think the risk of severe consequences is not perceived.

1 go from detection to -- to initiation of enforcement action, whether it's a warning letter or MOB? Then how many days does it take after that to -- for the Department to determine whether or not there has been compliance? And how many days does it take before the facility is back in compliance?
2 There's no way to do that today with the records that at least we can access on eFile. We continue to measure when they're -- well, I take that back. I think we can measure when there is compliance again by DMRs, or such similar reports. But we think that to make sure that the criticisms of EPA are addressed, we need some kind of a feedback loop to show us that the enforcement actions are actually achieving results, not being ignored.
3 That's all I have. Any questions?
4 (No response)
5 CHAIRMAN BROWN: Thank you.

1 Commission -- excuse me. I will entertain a motion to adjourn.
2 VICE-CHAIR PHILLIPS: So move.
3 MR. LEFLEUR: Mr. Chairman, might I respond to those comments?
4 CHAIRMAN BROWN: If you must.
5 MR. LEFLEUR: I don't want to go against the wishes of the Chairman.
6 VICE-CHAIR PHILLIPS: I move we adjourn.
7 CHAIRMAN BROWN: Second? Do I have a second?
8 DR. LAIER: Second.
9 CHAIRMAN BROWN: All in favor?
10 (All Commission members signify "aye.")
11 CHAIRMAN BROWN: We're adjourned.
12 (The meeting concluded at 11:53 a.m.)
STATE OF ALABAMA
COUNTY OF MONTGOMERY

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Attachment 2  Order to adopt motion to elect Lanier Brown as Chair and elect Scott Phillips as Vice Chair (Agenda Item 2)

Attachment 3  Resolution to adopt amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations (Agenda Item 6)

Attachment 4  Resolution to adopt amendments to ADEM Admin. Code Division 7, Water Supply Program Regulations (Agenda Item 7)

Attachment 5  Order to adopt Recommendation of Hearing Officer on ADEM’s Motion to Strike and Motion to Dismiss (Agenda Item 8)
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: October 17, 2014
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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<td>4. Report from the Commission Chair</td>
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<td>5. Report from the Rulemaking Committee</td>
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<td>6. Consideration of adoption of proposed amendments to ADEM Admin. Code 335-3, Air Pollution Control Program Regulations</td>
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<td>7. Consideration of adoption of proposed amendments to ADEM Admin. Code 335-7, Water Supply Program Regulations</td>
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PUBLIC COMMENT PERIOD 3 & Attachment

* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 15, 2014

2. ELECTIONS

The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE ADEM DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. REPORT FROM THE RULEMAKING COMMITTEE

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations, Rule 335-3-14-.04, 335-3-16-.01 and Appendix I. Revisions are being proposed to the current construction permit regulations and Major Source Operating Permit rules in Division 3 to be consistent with the recent U.S. Supreme Court decision concerning the regulation of greenhouse gases. The Court ruled that sources of greenhouse gases would not be regulated under the PSD and Title V programs based solely on their greenhouse gas emissions. Appendix I is also being proposed for amendment to be consistent with EPA’s revision of global warming potential values for certain greenhouse gases. The Department held a public hearing on the proposed amendments on September 10, 2014.

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

The Commission will consider proposed amendments to ADEM Admin. Code Division 7, Water Supply Program Regulations, chapters 335-7-1, 335-7-2, 335-7-10, 335-7-11, and 335-7-14. The proposed rulemaking would incorporate revisions made by EPA to the Total Coliform Rule (TCR). The Department held a public hearing on the proposed amendments on September 10, 2014.

8. R. NOLAN WILLIAMS V. ADEM, EMC DOCKET NO. 14-01 (NPDES-RELATED MATTER)

The Commission will consider the Hearing Officer’s Order and Recommendation in which the Hearing Officer recommended that the Commission deny ADEM’s Motion to Strike and Motion to Dismiss and grant ADEM’s Motion for Summary Judgment in this request for hearing filed by Petitioner R. Nolan Williams, an adjoining landowner, concerning ADEM’s issuance of NOR (“Notice of Registration”) Tracking Number 229580/NPDES (“National Pollutant Discharge Elimination System”) AFO (“Animal Feeding Operation”) Permit Number AL001173 to Mark A. Potts, Newton, Alabama, Sandridge Farms, Dale County.

9. OTHER BUSINESS

10. FUTURE BUSINESS SESSION
PUBLIC COMMENT PERIOD
(The Request from the public to address the Commission is attached to the agenda.)

David A. Ludder, Esq., on behalf of the Environmental Defense Alliance
SUBJECT: ADEM’s graduated enforcement response
(Chair Brown will recommend that the Commission grant the Request. The full Commission will vote on whether or not to grant the Request prior to moving to the Public Comment Period.)
Delivered via Facsimile
(334) 279-3052
H. Lanier Brown, II, Esq. (Chair)
c/o Environmental Management Commission
P.O. Box 301463
Montgomery, AL 36130-1463

Re: Request to Speak at October 17, 2014 Commission Meeting

Dear Chairman Brown:

This is to request that I be permitted to address the Commission at its October 17, 2014 meeting on behalf of the Environmental Defense Alliance on the following topic:

THE GRADUATED ENFORCEMENT RESPONSE

Intent: Fair and expedient enforcement
Reality: Delayed compliance and increased environmental degradation
Fix: Continuous evaluation and adaptation

As the topic description suggests, the Environmental Defense Alliance is concerned that ADEM’s implementation of the graduated enforcement response (included in ADEM’s Compliance and Enforcement Strategy) is causing delayed compliance and unnecessary environmental degradation. The Commission has the authority to advise the Director on his manner of implementing the graduated enforcement response and to develop environmental policy for the State, including environmental enforcement policy. I intend to include a visual presentation and will provide it to the Commission as soon as it is completed, but certainly in advance of the meeting.

Sincerely,

[Signature]
David A. Ludder
Attachment 2
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Elect Lanier Brown as Chair and

Elect Scott Phillips as Vice Chair

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.
ISSUED this 17th day of October 2014.

APPROVED:

Mary J. Merril
Commissioner

James E. Leit
Commissioner

Kim Brown
Commissioner

K. Scott Phillips
Commissioner

DISAPPROVED:

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 October 2014.

H. Lagier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of October 2014
Attachment 3
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.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code, § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [rules 335-3-14-.04/Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend); 335-3-16-.01/Definitions (Amend); 335-3-Appendix I/Greenhouse Gas Global Warming Potentials (Amend)]; of the Department’s Air Division – Air Pollution Control Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of October 2014.

APPROVED:

Mary Hertel
James G. Price
W. Scott Atchison

DISAPPROVED:


This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of October 2014.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of October 2014
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 335-7 [335-7-1-.01/Definitions (Amend), 335-7-1-.03/Variance from Regulations (Amend); 335-7-1-.04/Variance Application (Amend); 335-7-1-.05/Exemption (Amend); 335-7-2-.07/Microbiological Standards and Monitoring Requirements (Amend); 335-7-2-.12/Stage 2...
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

Disinfection Byproducts (Amend); 335-7-2-.21/Public Notification (Amend); 335-7-2-.22/Assessments (New); 335-7-10-.05/Records (Amend); 335-7-10-.06/Reports (Amend); 335-7-11-.04/Initial Monitoring to Establish Action Levels (Amend); 335-7-11-.05/Repeat Monitoring Requirements (Amend); 335-7-11-.06/Number of Lead-Copper Monitoring Sites (Amend); 335-7-11-.14/Corrosion Control Parameter Monitoring (Amend); 335-7-11-.17/Public Education Requirement (Amend); 335-7-11-.18/Reporting Requirements (Amend); 335-7-14-.04/Content of Reports (Amend); 335-7-14-.05/Additional Reporting Contents (New); 335-7-14-.06/Required Additional Health Information (Amend); 335-7-14-.07/Report Delivery and Recordkeeping (Amend); 335-7-14 Appendix B/Regulated Contaminants for CCR (Amend); 335-7-14 Appendix C/Health Affects and Required Language for Specific Contaminants (Amend)] of the Department’s Water Division – 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

IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of October 2014.

APPROVED:

Mary S. Swindell

Jerry D. Richardson

Janice Brown

W. Scott Purdy

DISAPPROVED:


This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of October 2014.

H. Lamont Brown, II, Chair
Environmental Management Commission
Certified this 17th day of October 2014
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:  
R. Nolan Williams,
   Petitioner,
vs.
Alabama Department of Environmental Management,
   Respondent.

EMC Docket No. 14-01

ORDER

The Commission having considered the record, including the Hearing Officer’s Order and Recommendation; ADEM’s Motion to Strike and Motion to Dismiss; ADEM’s Amended Motion to Strike and Motion to Dismiss; Petitioner’s Response to the Motion to Strike and Motion to Dismiss as Filed by the Department Amended Pleading; ADEM’s Motion for Summary Judgment; ADEM’s Memorandum of Law in Support of ADEM’s Motion for Summary Judgment and Exhibits A - G; and Petitioner’s Response to the Motion for Summary Judgment as Filed by the Department, hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Hearing Officer’s Order and Recommendation is hereby adopted; and

2. That pursuant to the adoption of the Hearing Officer’s Order and Recommendation, ADEM’s Motion to Strike and Motion to Dismiss is hereby denied and ADEM’s Motion for Summary Judgment is hereby granted; 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 the Order, along with a copy of the Hearing Officer’s Order and Recommendation, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.
ISSUED this 17th day of October 2014.

APPROVED:

Melvin J. Henne
Commissioner

J. Morgan Hare
Commissioner

M. Shadrack Duff
Commissioner

J. Scott Flanigan
Commissioner

DISAPPROVED:

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 October 2014.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 17th day of October 2014
BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

R. NOLAN WILLIAMS,  )
  )
  ) Petitioner,  )
  )
  vs.  ) DOCKET NO. 14-01
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,  )
  )
  ) Respondent.
  )

ORDER AND RECOMMENDATION

This matter is before the Undersigned Hearing Officer on the Department's "Motion to Strike and Motion to Dismiss," as amended, and the Department's "Motion for Summary Judgment." The evidentiary hearing previously set for September 17, 2014, was continued by the Undersigned pending resolution of the aforesaid Motions.

1. On June 26, 2014, the Department issued a Notice of Registration ("NOR")/NPDES Permit to Mark A. Potts related to an animal feeding operation (poultry farm). An adjoining landowner, R. Nolan Williams, the Petitioner in these proceedings, filed an objection and hearing request related to the NOR/NPDES Permit arguing that no notice was provided to Petitioner prior to the Department's grant of the Permit. The Department subsequently filed a "Notice of Pleading Defects" arguing that the Petitioner's request for hearing did not include a short and plain statement of error as required by ADEM Admin. Code R. 335-2-1-.04(5). In response, Petitioner filed an "Amended "Pleading" to further reiterate his grounds for appeal, to wit: That the Department granted the subject Permit without notice to him as an adjoining landowner and, therefore, the Permit was not lawful. The Department then filed a "Motion to Strike and Motion to Dismiss" and an "Amended Motion to Strike and Dismiss" arguing that the Petitioner's notice of appeal, as amended,
did not comply with ADEM's administrative code.

2. The Undersigned entered an Order on August 12, 2014, advising, among other things, that the parties could file a statement as to whether Petitioner was given notice of the Permit proceedings and whether Petitioner was required to receive any such notice. The Department then filed a "Motion for Summary Judgment."

3. For purposes of this appeal, the Undersigned assumes from a purely procedural standpoint that Petitioner's notice of appeal was proper and that the June 26, 2014, letter from the Department to Mark A. Potts regarding the NOR/NPDES Permit constituted administrative action which could be the basis of an appeal. Hence, the Undersigned recommends the denial of the Department's Motion to Strike and Motion to Dismiss. However, for the reasons stated herein, the Undersigned recommends the Department's Motion for Summary Judgment be granted.

4. The primary basis of Petitioner's appeal is the argument that he was entitled to notice of the Permit proceedings referenced in the June 26, 2014, letter. Petitioner, in essence, argues that because the permitted poultry operation would interfere with his use and enjoyment of his property, he should have received notice of the proceedings. As noted above, the Undersigned allowed the parties to present any arguments they had in support or opposition of their respective positions and held a phone conference with the parties referencing this subject. Petitioner did not present any arguments that supported his position that Department rules, regulations or other applicable law required any such notice. Conversely, the Department presented evidence indicating that no such notice was required. Moreover, and in any event, the Department presented evidence that Petitioner received actual notice of the proceedings when he met with ADEM officials prior to the June 26, 2014, letter. Since there was no law, rule or regulation submitted to the Undersigned indicating that
formal notice of the type argued by Petitioner was required, the Undersigned finds that summary judgment should be granted in favor of the Department. Whether Petitioner has any desire and grounds to commence proceedings in state court directly against the poultry farm owner related to Petitioner's assertion that the poultry farm allegedly interferes with use and enjoyment of Petitioner's property, are decisions left to Petitioner. The Undersigned is only holding that there exists no genuine issue of material fact as to the subject appeal against the Department and that the Department is entitled to judgment as a matter of law. In other words, the Undersigned finds that Petitioner does not state a proper appeal from a substantive standpoint against the Department based on the allegations in the notice of appeal.

5. Based on the foregoing, the Undersigned recommends that the Department's Motion for Summary Judgment be GRANTED. The scheduling of any evidentiary hearing before the Undersigned is deemed moot.

6. Petitioner shall have ten (10) days from the date of service of this Order and Recommendation to file any objections to the same. Not later than three (3) days prior to the meeting of the Commission on October 17, 2014, or ten (10) 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 22nd day of September, 2014.

R. Rainer Cotter, III
Hearing Officer
PO Box 310910
Enterprise, Alabama 36330
Ph. 334-347-2626
Fax 334-393-1396
Email: rrc@enterpriselawyers.com
CERTIFICATE OF SERVICE

The above-signed hereby certifies that the foregoing has been served on the following individuals by placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed this 22nd day of September, 2014:

Debi Thomas, Commission Secretary
PO Box 301463
Montgomery, Alabama 36130-1463
Email: aemc@adem.state.al.us

Anthony Todd Carter
Rebecca E. Patty
PO Box 301463
Montgomery, Alabama 36130-1463
Email: atcarter@adem.state.al.us

Mickey John Glen McDermott
PO Box 34
Montgomery, AL 36101-0034
E-mail: mcdermottattorneys@gmail.com