Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama  36110-2400
October 18, 2013
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 18, 2013.

W. Scott Phillips  
Vice Chair  
Alabama Environmental Management Commission

Certified this 13th day of December 2013.
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Environmental Management Commission Meeting
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1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 18, 2013

Convened: 11:00 a.m.
Adjourned: 12:23 p.m.

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Part A
THE PROCEEDINGS BEGAN AT 11:00 A.M.

VICE-CHAIRMAN PHILLIPS: GOOD MORNING. WE'LL CALL THE MEETING OF THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ORDER. I WANT TO ACKNOWLEDGE THAT WE HAVE A QUORUM.

SO WE'LL MOVE TO AGENDA ITEM NO. 1 FOR THE CONSIDERATION OF THE MINUTES OF OUR COMMISSION MEETING HELD ON AUGUST THE 16TH.

I'LL ENTERTAIN A MOTION FROM THE COMMISSION REGARDING THE MINUTES.

COMMISSIONER LESTER: SO MOVED.

COMMISSIONER LAIER: SECOND.

VICE-CHAIRMAN PHILLIPS: I HAVE A MOTION TO SECONd. ANY FURTHER DISCUSSION?

(NO RESPONSE.)

VICE-CHAIRMAN PHILLIPS: NO FURTHER DISCUSSION.

ALL IN FAVOR OF THE MOTION, SIGNIFY WITH THE SIGN "AYE."

ALL: AYE.

VICE-CHAIRMAN PHILLIPS: ALL OPPOSED, SAME SIGN.

(NO RESPONSE.)

VICE-CHAIRMAN PHILLIPS: MOTION CARRIES.

AGENDA ITEM NO. 2, IT'S TIME, ONCE AGAIN, FOR THE COMMISSION TO CONSIDER THE ELECTION OF THE COMMISSION CHAIR AND VICE-CHAIR. SO I WILL ENTERTAIN A MOTION FROM THE COMMISSION FOR CHAIR.

COMMISSIONER LESTER: MR. CHAIRMAN, I MAKE A MOTION THAT WE RE-ELECT THE PRESENT CHAIRMAN AND VICE-CHAIRMAN.

COMMISSIONER MILLER: SECOND.

VICE-CHAIRMAN PHILLIPS: I HAVE A MOTION AND A SECOND TO STAY WITH THE CURRENT CHAIR, LANIER BROWN, AND CURRENT VICE-CHAIR, WHICH IS ME.

ANY DISCUSSION ON THE MOTION?
(No response.)

VICE-CHAIRMAN PHILLIPS: All in favor of the motion, signify with the sign "Aye."

ALL: Aye.

VICE-CHAIRMAN PHILLIPS: Any opposed?

(No response.)

VICE-CHAIRMAN PHILLIPS: Motion carries.

Okay. We'll move to Agenda Item No. 3 while we're signing the motion -- report from the Director.

Mr. Director?

DIRECTOR LEFLEUR: Good morning and congratulations to the Chairman and the Vice-Chairman on their election.

I would also like to recognize that Commissioner Mary Merritt has been elected as the president of the Enterprise Chamber of Commerce. That's quite an honor and congratulations.

Good morning, again,

and welcome to all of you present for the first of the six scheduled meetings of the Alabama Environmental Management Commission for Fiscal Year 2014.

In today's report, I will update you on the budget and continue the Departmental performance review begun at the last Commission meeting by presenting the water media dashboards, discussing the progress of the e-complaint system, and close by recognizing several members of the Department who have reached new milestones in their individual professional development.

Budget items first.

We are now at the beginning of Fiscal Year 2014, and except for federal sequestration-related shortfalls, we anticipate that our state-generated funds will suffice to allow the Department to carry on at the minimum level necessary to meet all federal grant obligations.

The recent federal government shutdown had negligible financial or operational impact on the Department. Normally, we do have regular interaction with EPA and that was essentially eliminated, however, it did not materially impact the Department.

In previous Commission meetings, I have shared with you that in spite of extremely low funding levels, the Department has been recognized by federal oversight agencies and the regulated community as being a high performance provider of environmental regulation. Nonetheless, regardless of where the Department is currently, we are committed to further improving performance. The bulk of my remarks today will focus on performance, performance, and performance.

Compliance and enforcement metrics, which are objective measures of performance, are important tools for managing any regulatory organization. Metrics are most useful when tracked over time and when compared to the same measures for comparable organizations. They help identify areas where improvement may be possible.

In February of this year, EPA announced the release of new state interactive visual compliance and enforcement metrics -- commonly referred to as dashboards -- that provide comparative maps that track the performance of the state and EPA compliance and enforcement programs across the nation. The launch of this new system has not been without glitches.

The implementation of this new federal system will, when fully operational, provide the Department with a new tool to analyze its performance against other states and advance our management efforts. The new federal system will also allow individual citizens access to standard performance reports.
1 comparing Alabama to other states in
2 addition to the in-depth information about
3 Alabama environmental activities, which
4 has been available for some time on the
5 ADEM website. This will allow any citizen
6 or group that wishes, to be informed.
7 The interactive
8 state performance dashboards are located
9 on EPA's Enforcement and Compliance
10 History Online, ECHO, web site. ECHO is
11 an EPA tool that allows the user to map
12 federal and state inspection, violation,
13 and enforcement information for more than
14 800,000 regulated facilities. The web
15 address is shown as a link on the ADEM
16 website, which allows easy reference to
17 both the federal dashboards and the ADEM
18 e-system. The dashboards will provide the
19 big picture, and the ADEM e-system allows
20 for a more detailed analysis.
21 Although these
22 dashboards allow a user to measure the
23 performance of the various states and EPA

This first slide shows the total number of
2 NPDES regulated facilities in each of the
3 states. As you can see on this map,
4 Alabama, with just under 10,000 regulated
5 facilities, falls into the group of states
6 with the second largest number of
7 regulated facilities.
8 This map is a good
9 illustration of one of the reasons careful
10 interpretation of the report is necessary.
11 As you can see, there are only three
12 states in the dark blue indicating that
13 they have more regulated facilities than
14 Alabama. Clearly, states such as
15 California, Georgia, Indiana, Michigan,
16 and others with larger populations and
17 industrial bases than Alabama would be
18 expected to have more regulated
19 facilities. This apparently illogical
20 situation is explained by the fact that
21 currently EPA only requires reporting for
22 so-called "majors" or large facilities,
23 and thus, some states only report those
majors; while other states, including Alabama, report all categories. In the future, all states will be required to report all categories.

This second slide represents Alabama's total universe of facilities permitted under the NPDES program and accurately reflects the State's total universe for the NPDES program is 9,669 facilities. Those facilities are classified by permit type as follows: Individual Majors, shown in blue, 189; Individual Non-Majors shown in yellow, 1,408; and General Permits shown in orange, 8,074.

As an aside, this slide also reflects our considerable efforts to promote the use of General Permits, which reduces work load, and in many cases results in more restrictive discharge limits.

Since the EPA database currently only has complete comparable data for so-called "majors" in all states, we will be using that portion of Alabama's total universe to draw comparisons against other states and EPA national standards.

In this third slide, you see a comparison of the percentage of inspections conducted at Individual Major Facilities in Alabama for the period from 2009 through the first quarter of 2013 to the national standard of 50 percent established by EPA.

The 2013 data is for the first quarter only as shown by the dark portion of that bar. By year end, this bar will also exceed the 50 percent standard by a significant margin as shown by the additional light blue portion of that bar. This measure of the rate of inspections is one of our grant commitments made each year to EPA. As you can see, the Water program consistently meets or exceeds the EPA requirement for FY13 is expected to be significantly below the national average shown in red, and this number has consistently dropped since 2009.

On this fifth slide, you see the total number of all enforcement actions taken in the Water program for the period from 2009 through the first quarter of FY2013. Formal actions are shown in blue, and the informal actions are shown in yellow.

Since informal enforcement actions do not carry monetary penalties, they must be considered comparable to regulated industry training or education.

If this slide is analyzed in conjunction with the previous two slides where the numbers of inspections is up and the percentage of facilities in significant non-compliance is down, it can reasonably be interpreted that the increased number of informal enforcement actions, which are in many
ways educational, is having the desired impact of promoting greater compliance. In closing out the Water media dashboards, I will once again remind you that the data presented must be interpreted with care because the system is not yet fully populated or fully operational. Over time, the reliability of the information presented will improve. Periodically, it has been my practice to report to you on various efforts to improve Departmental performance, and I am doing so again today. An important contributor to improved performance involves our electronic management of facility data and other information. The dashboards just presented help us manage our organization by utilizing performance measuring data or metrics to objectively compare the Department's performance against EPA's standards and our counterparts in other states. These comparison metrics can point us to areas where improvement may be possible. We also seek to manage other types of information to make our operations more efficient. As I have reported in the past, electronic facility data and other information management is an area where we have invested a substantial percentage of our resources. In addition to the metrics data, some examples of the types of other electronic information managed include eFile; eNOI, notice of intent to operate under a general permit; eDMR, discharge monitoring report; eDWR, drinking water monitoring report; eSSO, sanitary sewer overflows; ePay; and eComplaint systems. To illustrate how electronically managing this other information can improve performance, just as the metrics data management that goes into dashboards can highlight possible areas for improvement, today I would like to discuss in a bit more detail our eComplaint system. In broad terms, the Department achieves its mission to assure for all citizens of the state a safe, healthful, and productive environment by issuing permits that are protective of the environment and human health, inspecting to make sure permit conditions are met, and taking enforcement actions when permit conditions are not met. Maximum compliance with permit conditions is the goal. The Department takes a multi-pronged approach toward achieving the goal of maximum compliance with permit conditions. Enforcement, along with risk-based inspections and regulated industry training combine to build a program that achieves the compliance goal. Developed primarily to assist with the enforcement portion of our overall compliance program, the eComplaint system also has citizen involvement as an important objective. The eComplaint system has been in development for several years and has been fully operational for about 30 months. The purpose of eComplaint is three-fold: to allow citizens a convenient way to file complaints; to increase Departmental performance by focusing inspection and enforcement efforts on those facilities where there is an increased likelihood of non-compliance; and to increase Departmental efficiency by reducing the manpower necessary to enter and administer complaints. The eComplaint system allows anyone with access to a computer or smart phone to file a complaint 24/7. If they wish, the person filing the complaint can do so anonymously. Receipt of the complaint is acknowledged and a file number is
assigned, so anyone can check on the status of the complaint at any time. Once a complaint is filed, even without the file number, an individual can go to the Department website and enter the location, company name, or other information and locate the entire facility file. The file contains all actions related to the site including the specific permit, inspections, correspondence, and enforcement activities. If the individual filing the complaint provided contact information, the eComplaint system will even notify the individual when the matter has been processed.

For those without access to a computer or smart phone, a telephone call to the main telephone number for the Department or a letter will quickly begin the complaint process. If contact information is provided, the same notifications in the website-based system will be provided.

At the last two Commission meetings, there have been citizen presentations related to the Department's construction stormwater enforcement program. Many of the concerns expressed were initially brought to the attention of the Department through the eComplaint system. It is this community participation in the eComplaint system that clearly demonstrates that the system works. The Department is very pleased that the public is involved in this important activity.

As mentioned just a moment ago, the Department's ultimate goal is maximum compliance with permit conditions. Realistically, even if the state-provided budget were in the top 2 percent in the nation, rather than a budget in the bottom 2 percent where we are now, it is unlikely that 100 percent compliance 100 percent of the time is achievable any more than it is possible to assure that none of the automobiles traveling on the interstate ever exceed the 70-miles-per-hour speed limit.

The eComplaint system helps the Department utilize limited resources to focus enforcement efforts where there is an increased likelihood of non-compliance. To be sure, every complaint does not indicate an occurrence of non-compliance. For example, many of the slides recently presented to the Commission showed conditions up gradient from the designed treatment systems so settling ponds and other storm water control features that prevent silt from entering waters of the state were not depicted.

Likewise, it is widely understood in the environmental regulatory community, including EPA, that extraordinarily heavy rain events over short time periods can represent upset conditions that can overwhelm even the best control systems, as was illustrated in a number of the slides presented at the last Commission meeting. This situation is not normally considered non-compliance requiring enforcement action by regulatory agencies.

However, although some complaints do not necessarily reflect non-compliance, citizen involvement -- and in particular, the eComplaint system -- are extremely valuable in moving us toward our goal of the maximum level of compliance, not only in the construction storm water area, but in all of our enforcement efforts.

Enforcement is an important component of compliance. Although the US Office of the Inspector General deemed the Department to be one of the top ten in the nation regarding enforcement, in spite of being 49th in the nation of state-provided funding, we
cannot and will not let up on our efforts
to incorporate enforcement along with
inspections and regulated industry
training to obtain the highest possible
level of compliance.

I thank all citizens
who assist the Department by using the
eComplaint system.

Improving the
performance of the Department is an
ongoing activity, and I have reported on
several efforts. Another way we seek to
improve performance is to encourage the
professional development of our staff.

Today, I would like
to recognize members of our staff who have
achieved a milestone in their professional
development by earning either their
Professional Engineer or PE, or Certified
Public Manager, CPM, designation. As you
may be aware these designations require
rigorous study, training, and testing.

I'm glad I am not going through what they
have been through.

Please let me
introduce them to you, and after they all
stand, join me in a round of applause for
their significant accomplishment.

I don't know how
many are here today, but I will begin by
introducing those who have earned their PE
designation. Julie Ange, Latoya Hall,
Jared Kelly, Ashley Mastin, Jack Mobley,
pleas remain standing. We want to see
your smiling faces.

Those who have
earned their CPM, Certified Public Manager
designation, Gina Curvin, John Dean, Bruce
Freeman, Becky Patty, and Scott Ramsey.

Congratulations to each and every one of
you.

(Applause.)

DIRECTOR LEFLEUR: After January
we'll look into getting you a raise.

Finally, in keeping
with the water theme in the dashboards
presentation, I invite everyone present to
please take a look at the display board in
the lobby which focuses on water body
classifications, including current
proposals for upgrading several water
bodies which are out for public comment.

Once again, let me
close with my thanks to you for serving
the state of Alabama as Commissioners on
the Alabama Environmental Management
Commission and for allowing me to serve
the State in this capacity. If there are
any questions, I'd be pleased to try to
address them now.

VICE-CHAIRMAN PHILLIPS: Thank
you, Mr. Director, and congratulations to
all of our wonderful staff. Great work.

Any questions from
the Commission to the Director?

(No response.)

VICE-CHAIRMAN PHILLIPS: Okay.
Thank you.

Agenda Item No. 4 is

a report from the Commission Chair.

Considering I'm serving in that capacity
today, I don't know of anything that
Commissioner Brown had to say. So we'll
move to Agenda Item No. 5.

Agenda Item No. 5 is

that we will consider as a Commission the
adoption of proposed amendments to ADEM's
Administrative Code Division 335-6, which
is the Water Quality Program regulations
Chapter 335-6-16, Administrative
Guidelines and Procedures for the Alabama
Underground and Above-ground Storage Tank
Trust Fund.

I'll call on the
Department for comments.

MR. DAVIS: Good morning, and
thank you.

Mr. Chairman and
members of the Commission, my name is
Phillip Davis from the Department's Land
Division. You have before you a proposed
revision to Division 6 Chapter 16 of the
ADIM Administrative Code, which contains
the administrative procedures for the
Alabama Underground and Above-ground
Storage Tank Trust Fund.
Earlier this year,
the Alabama Storage Tank Trust Fund
management board voted to recommend to the
Commission that the per-occurrence
indemnification limit for fund-eligible
tank releases be increased from 1.1 to one
to $1.3 million. This amount is
periodically reviewed and adjusted and was
last increased in January 2010.
The rule-making
proposal you have before you proposed
335-6-16-09 would implement this
recommended increase. A public notice for
this rule-making was published on
July 28th, and a public hearing was held
on September 11th of this year. No
comments were received during the comment
period or at the hearing.
The Department
requests your consideration of this
revision as proposed. And I'd be glad to
answer any questions that you might have
at this time.

VICE-CHAIRMAN PHILLIPS: I'll
entertain a motion from the Commission
regarding the proposed amendments to the
Water Quality Program regulations.

COMMISSIONER RICHARDSON: I move
to adopt.

COMMISSIONER LAIER: Second.

VICE-CHAIRMAN PHILLIPS: I have
a motion and a second. Are there any
further discussion or questions for the
Department?
(NO response.)

VICE-CHAIRMAN PHILLIPS: There
were none. All in favor of the motion
signify with the sign "Aye."

ALL: Aye.

VICE-CHAIRMAN PHILLIPS: All
opposed, same sign.

(NO response.)
second. Any further discussion, which is to deny the Petitioner's request to file response to ADEM's reply?
(No response.)

VICE-CHAIRMAN PHILLIPS: No further discussion.
All in favor of the motion to deny, please signify and raise your hand by the sign "Aye."

ALL: Aye.

VICE-CHAIRMAN PHILLIPS: All opposed?
(No response.)

VICE-CHAIRMAN PHILLIPS: Motion carries.

MS. THOMAS: I will incorporate that in the order with the other, yes, sir.

VICE-CHAIRMAN PHILLIPS: So I'll note that we will entertain a motion from the Commission regarding the Petitioner's request for oral argument.

Do I have a motion?

COMMISSIONER RICHARDSON: Move to deny the Petitioner's request for oral argument.

VICE-CHAIRMAN PHILLIPS: I have a motion to deny.
Do I have a second?

COMMISSIONER LAIER: Second.

VICE-CHAIRMAN PHILLIPS: I have a motion and a second. Any further discussion on the motion?
(No response.)

VICE-CHAIRMAN PHILLIPS: No further discussion. All in favor of the motion to deny the Petitioner's request for oral argument, signify with the sign "Aye" and raise your hand.

ALL: Aye.

VICE-CHAIRMAN PHILLIPS: Motion carries.

Okay. With that, I'm going to entertain a motion from the Commission regarding the Report of the Hearing Officer.
Do I have a motion from the Commission regarding the Report of the Hearing Officer?

COMMISSIONER MILLER: I move we accept the Hearing Officer's recommendation.

VICE-CHAIRMAN PHILLIPS: I have a motion to accept. Do I have a second?

COMMISSIONER LAIER: Second.

VICE-CHAIRMAN PHILLIPS: I have a motion and a second. Any further discussion on the motion to accept the Hearing Officer's report and recommendations?

MS. THOMAS: I did want to note that in the first option there was -- in the recommendation in the hearing Officer's report, he noted that the word "role" should have been "rule," r-u-l-e versus r-o-l-e. So I did want to make that note.

VICE-CHAIRMAN PHILLIPS: That's a good point. Did everyone on the Commission understand that?

ALL: Yes.

VICE-CHAIRMAN PHILLIPS: So we have a motion to accept the Hearing Officer's proposal in connection with the recommendation, with the word "rule," r-u-l-e, in the place of the word "role," r-o-l-e.

All in favor,

signify by the sigh "Aye."

ALL: Aye.

VICE-CHAIRMAN PHILLIPS: All opposed?
(No response.)

VICE-CHAIRMAN PHILLIPS: Motion carries.

Do you have that incorporated, Debi?

MS. THOMAS: Yes, sir, I do.

VICE-CHAIRMAN PHILLIPS: We'll move to Agenda Item No. 7, which is other
business. Is there any other business
which is to come before the Commission?
(No response.)
VICE-CHAIRMAN PHILLIPS: None
coming before the Commission. We'll move
to Agenda Item No. 8, which is our next
business session. Our next session is
December 13 of this year. Start time is
still 11:00 a.m. as usual, in this
conference room.
Anyone have any
issues with that date or time?
(No response.)
VICE-CHAIRMAN PHILLIPS: Okay.
Great. Okay. As we move forward, we're
going to the public comment period. I'm
going to ask the Commission for a motion
regarding granting or denying the requests
to address the Commission. Chair Brown
has recommended granting the requests
contingent upon presentations meeting the
requirements of the Commission; including,
not having references to matters that are
subject to legal or administrative action,
and that we're asking the speakers to
limit their time to ten minutes.
The requests are:
No. 1 from Nelson Brooke of Black Warrior
Riverkeeper; the second is Barbara Evans,
a citizen; and request three is Benjamin
Eaton on behalf of Black Belt Citizens
Fighting for Health and Justice.
Do I have a motion
for granting or denying these requests?
COMMISSIONER MILLER: I move
that we grant it.
VICE-CHAIRMAN PHILLIPS: Do I
have a second?
COMMISSIONER LESTER: Second.
VICE-CHAIRMAN PHILLIPS: I have
a motion and a second. Any discussion?
(No response.)
VICE-CHAIRMAN PHILLIPS: There
will be no further discussion. All in
favor signify by saying "Aye."
ALL: Aye.

VICE-CHAIRMAN PHILLIPS: Any
opposed, same sign.
COMMISSIONER RICHARDSON: No.
VICE-CHAIRMAN PHILLIPS: Motion
carries.
Chair will call on
Mr. Brooke to come to the podium. And,
Mr. Brooke, keep your presentation to ten
minutes.
MR. BROOKE: Is there any chance
to raise that screen so people can see the
presentation a little better?
VICE-CHAIRMAN PHILLIPS: Are you
talking about the TV?
MR. BROOKE: Yes, sir.
VICE-CHAIRMAN PHILLIPS: Surely.
Mr. Director, can
you get someone to move that out of the
way?
MR. BROOKE: So I'm here today
to present about the town of UnioIntown's
Waste Water Treatment System, which has
been having considerable issues meeting
permit limits for -- at a minimum, over a
decade. And I want to bring to your
attention that this has been something
that's been known by the Department. The
earliest official notice in the file that
I've seen is back to 2002, so over a
decade ago.
The waste water
lagoon in UnioIntown, Alabama, in Perry
County has been known to be in a state of
complete failure due to hydraulic
overload, lack of adequate design and
capacity, and improper inputs by local
districts.

So pictured here is
the waste water treatment plant lagoon
system on the left-hand side, and then on
the right-hand side of the picture is an
industry known as Southeastern Cheese,
which had a permit up until very recently
to discharge its waste water into this
treatment system. The green line down the
middle of the two facilities is an unnamed
tributary to Cotton Creek which flows into Cottonwood Creek a tributary which flows out into the Black Warrior River just above Demopolis.

So for over a decade, this lagoon has illegally or in an unpermitted fashion, I would say, discharged by overflowing into this unnamed tributary of Cottonwood Creek, and that's what we will see next.

This is the lagoon overflowing its banks into this tributary without a permit to do so. The waste water received very little treatment prior to this by-pass situation, putting excrement and waste directly into this tributary. Cottonwood Creek is on the State's 303(d) list of impaired water bodies for this very reason.

COMMISSIONER MILLER: When were these taken?

MR. BROOKE: This is back from 2009. I'm not trying to paint the picture that this is currently ongoing. This is a historical overview of what has gone on out there at the facility.

So this is a photograph of the receiving water body. This contaminated water is the only water in this unnamed tributary, Cottonwood Creek, at the time of the photograph. Downstream in Cottonwood Creek and leading all the way down to Big Prairie Creek, for at least a decade this creek ran septic. Essentially, totally dead --

COMMISSIONER RICHARDSON: So all these tires and all this stuff comes from a wastewater treatment facility?

MR. BROOKE: I doubt it. A lot of what you're seeing there -- I'm standing on a bridge -- was probably dumped over the bridge. But the nasty cloudy green water, that is the same as no life, is the matter here that I'm discussing.

So fast forward to current day, about 2012, is a point in time when significant alarm was raised by downstream property, and there's farmers and timber companies. After the community in Uniontown and Perry County had been complaining about problems for many years, these property owners finally raised the bar and got interest. A lot of people live down in Big Prairie Creek downstream of all of this were very unhappy about what had been going on. A couple of events occurred: a lift station overflowed, and one of the overflows from the lagoon was reported and elevated, and also issues with the spray field came up. And, so, ADEM and the Health Department and a lot of entities got involved. Well, what I want to highlight is that for over a decade nothing adequate was done to fix this problem although it was known. According to the town's permit, whenever an overflow or an upset condition occurs outside the permit limits, they're required to make an immediate report within 24 hours to ADEM to report their problem -- this was not being done. It was actually very rarely done. So although ADEM knew there were ongoing problems, there was very little attention to the matter at hand, and very little enforcement; particularly, no meaningful enforcement, no fines.

So the Director mentioned a minute ago that we've got these dashboards. Well, the dashboards don't really show us what's happening on the ground. An informal enforcement action is not necessarily going to be successful in a case like this, and the case history here shows that. No fine is -- on the town of Uniontown, it's no push for them to get off their duff and do something about this problem to protect downstream people and local citizens and
1  wildlife.
2  So, what the
3  facility is permitted to do is discharge
4  their wastewater from the lagoon to a
5  spray field miles away. The permit is for
6  groundwater discharge. There is no permit
7  for surface water discharge. Just to the
8  left of this spray field here is a
9  tributary of that of Chilatchee Creek,
10  which flows into the Alabama River. This
11  is called Freetown Creek. You'll notice
12  the large gray-colored lake on the
13  left-hand side. This is an aerial
14  photograph.
15  The ground cannot
16  absorb all of the wastewater that's being
17  passed out through the spray field, so
18  it's pooling up in a massive lagoon. The
19  dike at the lower end of that property
20  next to the creek has been failing and
21  allowing direct discharges of improperly
22  treated wastewater to Freetown Creek for
23  an untold number of years.

Once again,
1  inadequate reporting and oversight from
2  the town and from ADEM has allowed this to
3  be an ongoing issue over the years.
4  VICE-CHAIRMAN PHILLIPS: Is that
5  a natural dike or man-made dike?
6  MR. BROOKE: It is a man-made
7  dike. It's right next to the creek; it's
8  just made of earth. It's only yeag high.
9  It's not a very impressive situation.
10  COMMISSIONER MILLER: Point to
11  the lagoon that you're talking about.
12  MR. BROOKE: Right here. So
13  These are all the spray nozzles. All the
14  wastewater is supposed to go into the
15  ground, that's what the permit says. It's
16  a groundwater discharge, but there's, in
17  fact, an ongoing surface water
18  discharge -- has been for years.
19  VICE-CHAIRMAN PHILLIPS: Has
20  anybody tested the water in the lagoon.
21  MR. BROOKE: Not in the lagoon
22  that I'm aware of, but we've sampled the
23  water coming out of it. The bacteria
24  colonies is too numerous to count. It's
25  way out of control.
26  VICE-CHAIRMAN PHILLIPS: But not
27  in the lagoon?
28  MR. BROOKE: I don't know what
29  the situation is in the lagoon, but that's
30  where the overflows are coming from. So
31  what's entering the creek is too numerous
32  to count.
33  COMMISSIONER MILLER: It's not
34  treated waste?
35  MR. BROOKE: It's supposed to
36  be, but the lagoon is in an upset
37  condition because it hasn't been
38  maintained over the years. So we've just
39  got an ongoing problem.
40  COMMISSIONER MILLER: What I'm
41  asking is: Is the water going into the
42  spray field raw sewage, or is it treated
43  sewage, or what is -- what's going out of
44  the nozzles in the spray field?
45  MR. BROOKE: I couldn't
46  technically tell you that it's untreated
47  or raw because it has gone through a
48  treatment system -- a three-cell lagoon.
49  However, being too numerous to count
50  bacteria, it's received so little adequate
51  treatment that it could be characterized
52  as pretty darn close to raw sewage.
53  VICE-CHAIRMAN PHILLIPS: That's
54  in the creek?
55  MR. BROOKE: That's what's
56  coming out of the spray field into the
57  creek. And that is current -- that is
58  going on --
59  COMMISSIONER MILLER: Do you
60  have documentation somewhere?
61  MR. BROOKE: I'm going to show
62  you here shortly.
63  So ADEM got involved
64  in 2012 after much public to-do. This was
65  the first time that I'm aware of that any
66  public notice was given to the public
67  about sewer overflows and the impact of
68  public health. The Department of Public
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<td>1. Health got involved. Part of the wastewater permits is a requirement that the facility operator notify the public, not just ADEM, but the public when there are raw sewage overflows. That isn't being done, and in 2012 was the first time that it happened. It's the Department's responsibility to ensure that these operators are notifying the public so people can be out of harm's way. That's not being done here and at most facilities around the state of Alabama, which is very unfortunate. Here you can see at the bottom end of the lagoon -- this is a more recent satellite image -- there is fresh dirt being placed down here. The town is starting to try to address the issue. However, over a year after enforcement action was brought by the Department, we still have raw sewage overflowing or partially-treated sewage feet deep to about two feet deep, filled up with sludge. The sludge is currently being pumped out of the lagoon on to a neighboring cattle farmer's field. And that sludge and the water along with it is actually running off of the field and down drainages onto neighboring property. The pipeline itself is leaking at many of its joints and putting sludge all over fields along with a -- VICE-CHAIRMAN PHILLIPS: When was that picture taken? MR. BROOKE: This one was taken on October 10th, so last week. This is where a tractor is at the other end of that pipeline miles away spraying the sludge on a local farmer's field. It is saturating the land, running off the land down drainages and off site. We understand that a local property owner has made a report to ADEM that the sludge is now entering onto her property. So we</td>
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<td>1. overflowing out of this spray field into Freetown Creek. Monies were attributed through the USDA, about $4.8 million, to fix the problem. But a year into it, we still have significant problems out there at the site, permit conditions are not being met, and the public is not being notified. And further more, the facility operators are not notifying ADEM. Each and every single day that this is overflowing it is a requirement of the permit -- they're not notifying ADEM or the public. So that's very unfortunate. So we have a timeline to get this whole process done. It seems to be going a lot slower than it should. In the mean time, you asked about the treatment -- if it's being treated. One of the lagoon cells -- two of them are being cleaned out. They went from being, as I understand it, between eight and ten</td>
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<td>1. have a problem that is being spread out into multiple areas. There's no documentation on ADEM eFile as to whether or not this is a permitted activity, if it has the blessing, or even that it's a part of the plan that I have found. So as far as the public being informed by the new eDocuments capabilities of ADEM, there are some pretty serious shortcomings when it comes to people being able to know what's going on. This is on September 11th. This is overflow from the spray field. This is Freetown Creek downstream of the overflow. This is the lagoon area -- I shouldn't say lagoon, this is the spray field. But this is the lagoon at the spray field that has formed. And this entire red area right here is upgradient of where the new dike is being repaired is suspect to failure. There are multiple overflows occurring out of this</td>
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spray field and into Freetown Creek. While there may be signs at the fence around the facility, that doesn't really help the local neighbor because the sewage is spilling through the dike and outside of that fence. There's sewage all into the woods and down into the creek, and cattle are walking in it. Like I said, multiple overflows ongoing down there at the site.

Lots of standing sewage in the woods and coming out of the dike.

This is Freetown Creek at the site of one of those overflows into it. Like I said, the bacteria is too numerous to count. The plan under the $4.8 million -- and this is my closing point -- calls for the creation of a second spray field upstream of the existing one on an unnamed tributary to Freetown Creek. It is very well established in what is going on at this

---

spray field and what's going on with the sludge spreading, that the soil and the geology in the area cannot handle land application at the volumes being described. There is no information in eFile that definitively shows studies have been done to say that an additional spray field will be an adequate measure to fix the problem out there. It appears it is just going to spread the problem to another location, further endangering and harming locals that live in the area. And so our concern is that more studies need to be done and the creation or addition of a new adequate treatment plan with all these monies is possible and should be considered.

VICE-CHAIRMAN PHILLIPS: Thank you, Mr. Brooke.

Do we have any questions from the Commission?

COMMISSIONER RICHARDSON: Just to be clear, these samples that you're talking about, they're from the spray field lagoon overflow, not from Freetown Creek?

MR. BROOKE: They are from what's coming out of the spray field before it enters into Freetown Creek.

COMMISSIONER RICHARDSON: Before it gets into the creek?

MR. BROOKE: That's right.

COMMISSIONER MILLER: When were these pictures taken?

MR. BROOKE: This photograph was taken either on September 11th or October 10th. So I can tell you there in this last month it's been an ongoing issue. And from what locals say, it's been the case for over a decade. It's just not being reported adequately by the operator. So unless there are inspectors on the ground doing what we're doing, and unless the facility operator is self-reporting, it's "Don't show me, don't tell me." But we have a serious ongoing problem.

VICE-CHAIRMAN PHILLIPS: Have you had any discussions with the Department?

MR. BROOKE: About this particular issue?

VICE-CHAIRMAN PHILLIPS: Yes.

MR. BROOKE: No, sir.

VICE-CHAIRMAN PHILLIPS: What I want to hear then is: What does the Department have to say about this, Director Lefleur?

DIRECTOR LEFLEUR: I would like to set the record straight on several matters and generally give you some background on Unicontown. Unicontown is a small impovished minority community that for many years has experienced great difficulty in providing adequate and affordable public services, such as wastewater treatment to its citizens.

As you well know, ADEM is charged with issuing permits with...
conditions that, when complied with, will be protective of the environment and public health. ADEM has no authority to dictate how the permit conditions will be met. That is up to the permittee, who in this case is Uniontown. If the permit conditions are not met, the Department does have the authority to take enforcement action.

Uniontown's most recent series of failures to meet permit conditions began in 2008, and the Department's enforcement actions have gone through the required process to the point where some 19 months ago it reached state circuit court where it is now pending. Although neither ADEM nor EPA is authorized to stipulate what actions the community must take to meet its permit conditions, for several years ADEM has worked with USDA, Congresswoman Sewell's office, the mayor, the city council, the engineering firm hired by Uniontown, the hydro-geologist hired by Uniontown, the EPA, and the court system to assist the city in finding a longterm solution to its long-standing wastewater treatment problem without financially breaking the backs of the Uniontown citizens.

As a result of years of work, funding has been obtained and necessary upgrades to the system are under way. As you can see from the presentation just made, the project is not yet complete. The presentation just made is an illustration of recent activities by this environmental advocacy group to highlight the well-known and painfully obvious problems this impoverished community has been wrestling with for many years. With the help of the individuals and organizations I just mentioned, this long-standing problem is being addressed. I would add one more item on this sludge matter. Sludge is regulated directly by EPA. The Department has no oversight, authority for the ground application of sludge. And that's why it does not appear on our website. But there are many issues with this particular situation, and there's far more than may be apparent. Do you have any questions?

VICE-CHAIRMAN PHILLIPS: Does anyone on the Commission have any questions for the Department?

COMMISSIONER RICHARDSON: Not from the Department, but I have one for Mr. Brooke.

Mr. Brooke, what are you proposing be done?

MR. BROOKE: I'm proposing that these people be listened to. They're not being well informed. It might be well known to the Department that this has been going on a long time, but locals have not adequately been notified and certainly downstream property owners have not been notified. So they're in harm's way, and they don't necessarily know it. I called some people downstream and they were not aware that it was still going on and they're using the creek. So what we're asking is, is that the Department go back and look at the current plan and make it known how the decision was arrived at and what the other alternatives are and why those were not chosen, because the current plan for a new spray field is a continuation of the problem in another location that appears to be an inadequate fix. It's not really going to fix it, it's just going to spread the problem out.

COMMISSIONER LESTER: I understand that this is enforced now?

MR. BROOKE: The enforcement action, sure. But the plan to fix the problem is already under way. There's an engineering firm out there moving ahead with the plan to add a new spray field.
COMMISSIONER LESTER: The court -- what can the court do?
MR. BROOKE: That's not my -- I have no idea.
COMMISSIONER LESTER: If it's in the court, can we hear it? They're not bringing it before us.
MR. BROOKE: The question is: Is the current plan adequate to fix the problem and adequately treat the sewage or is it just going to start the same problem in a separate location? There's nothing I've seen in the file that says that it's actually going to fix the problem. And we have other people that are going to present on this.
VICE-CHAIRMAN PHILLIPS: We get it. Thank you.
Mr. Director, I'm going to ask, as a Commissioner, that you look into the plan and if you have any questions of these production supervisor people as you hear them to please talk with them and get whatever information you need, and just let us know how that goes.
DIRECTOR LEFLEUR: Yes, sir. We have been and we will continue to do so.
VICE-CHAIRMAN PHILLIPS: Okay.
I'll call on Ms. Evans.
Ms. Evans, ten minutes, please.
MS. EVANS: It won't be that long. My name is Barbara Evans, I'm also here about the wastewater situation in Uniontown. I don't have any pictures, and I'm not an engineer, and I don't know all the fancy terms. But I know this: I know that throughout the black belt we have a lot of these same problems with small towns not reporting to ADEM things that are going on. This may be one of the most egregious situations that I've ever seen. But, you know, it's not unheard of, because sometimes our folks are not well-trained to even know what's going on.
But in this particular case, we have been to the mayor, we've been to USDA, we've been to the congresswoman, we've been everywhere trying to say -- we got this $4.8 million. We're never going to get it again. This is the big chance to fix it. And we just think it's crazy to make another spray field which borders a residential black community where people have farm animals and are raising families.
We just think it's crazy to do the same thing over again when it didn't work the first time. And it's not going to work because of the famous Selma chalk where everyone wants to bring a dump into the Black Belt because of that chalk. This is the same stuff that's underneath about ten inches of topsoil in these spray fields. That water is not going anywhere. It's going to constantly overflow and overflow.
Like I said, I'm not an engineer, this is just common sense.
I've been out there, I've seen it for myself. We don't know where to turn. You are our only hope. We have begged, we've talked to the engineer, who tried to tell me that the water was going -- the spray would evaporate in the air. And then we came here and they said, No it was supposed to go down through the ground. The people in Uniontown did not get adequate public notice in the public meetings. They don't even have a local paper in Uniontown. They put it in the Montgomery Advertiser. There might have been something in the Marion paper, but it certainly wasn't adequate notice. And even the few people that went to a public meeting never heard the word "spray field."
And that's another trick that they use in the Black Belt. When they have these public meetings, they talk in a way that nobody knows what they're talking about. It's very
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1 effective. They just did it with a public
2 housing things recently. So that's what I
3 came up here to tell you. I just wanted
4 to come right out and say we've got these
5 problems. We've got to find some
6 different way for wastewater treatment.
7 The work is already starting. They're
8 working on the sewage within the town of
9 Uniointown, but we really need to stop that
10 second spray field. It doesn't work.
11 Thank you very much.
12
13 VICE-CHAIRMAN PHILLIPS: Thank
14 you Ms. Evans.
15 Does the Commission
16 have any questions?
17 COMMISSIONER RICHARDSON: Yes, I
18 do. I understand you have met with your
19 elected officials, your city commission,
20 mayor, people who are in charge of where
21 it has. You've spoken with these people?
22
23 MS. EVANS: Over and over again

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1 now even being denied a place on the
2 agenda in Uniointown because they don't
3 want to hear us anymore. Over and over
4 again.
5
5 COMMISSIONER MILLER: The thing
6 that strikes me is: Where, and if they
7 put a spray field in, is not where ADEM
8 would be involved. ADEM, as I understand
9 it, is in charge of once the local plan is
10 put forward, and the permit conditions
11 have to be met. But I don't think ADEM
12 can say -- either the Department or us or
13 anybody can say that you can't put a spray
14 field right here. I may be wrong on that,
15 but I don't think I am.
16
17 MS. EVANS: But then who can?
18 COMMISSIONER MILLER: Your
19 elected officials.
20 MS. EVANS: But they won't. I
21 mean, it's too late. And by the time that
22 happens, the one-time $4.8 million will be
23 gone. It will be a total wreck, it will

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1 wreck. And then they'll do something
2 about it. But now we've got a chance to
3 stop problems before they start. Why
4 would we not do that?
5 Right now, as we
6 speak, ADEM inspectors are out there
7 looking at the latest breach because they
8 insisted that they go out there this
9 morning, even though we were coming here.
10 So your inspectors are on the ground in
11 Uniointown right now looking at the latest
12 breach.
13 Really, we've got to
14 do something, you know, these grants are
15 too hard to come by. This is our chance
16 to stop problems before they start. And
17 we -- certainly, with all of us working
18 together, there's got to be a way, you
19 know, to stop this problem from occurring.
20 And that's really why we're here. They're
21 moving forward, and they're moving fast.
22
23 COMMISSIONER MILLER: We all
24 hear you and we all sympathize with you.
Alabama, you know, we've got to figure out a way to stop this before it causes more problems.

COMMISSIONER MILLER: We hear you loud and clear.

MS. EVANS: Thank you.

VICE-CHAIRMAN PHILLIPS: Thank you, Ms. Evans.

Mr. Eaton?

MR. EATON: Good afternoon.

VICE-CHAIRMAN PHILLIPS: Good afternoon.

MR. EATON: My name is Benjamin Eaton, and I am a resident of Uniontown, Alabama, about 80 miles west of here. I'd like to thank you for allowing me to present this presentation on wastewater treatment upgrades. Much-needed upgrades to correct wastewater treatment plant failures that have lasted over a decade. Plan includes a new spray field to supplement spray field No. 1; to increase capacity for land applications of treated wastewater. The proposed site of the new spray field raises serious technical and environmental issues. We believe it will not operate properly, but instead, it will fail. It's no doubt it will fail.

I'm sort of piggybacking off of Mr. Brooke and Ms. Evans as a resident. Proposed new spray field site. As you can see in the yellow boundaries, that is the new spray field site. As you look closely, in the surrounding area that is a community. And the road that you see wiring off from the right, that is the main road into the city. So we're not only looking at a disaster in failure, it's embarrassing. It's just poor -- it's not a very conducive site.

VICE-CHAIRMAN PHILLIPS: Where is the spray field No. 1 on that map?

MR. EATON: I haven't gotten to it yet.

VICE-CHAIRMAN PHILLIPS: So it's not adjacent to it -- it's not next to it.

MR. EATON: No, it's not next to it. This is moving closer to the city. Spray field No. 1 is about two and a half miles outside of the city.

COMMISSIONER RICHARDSON: Pretty much south of the city, right?

MR. EATON: Yes. Citizens' objections: Site lies adjacent to and entirely too close to occupied family residences. Site receives rainwater run-on from uplands to the west. Site has Freetown Creek running from the north to south through the middle of the tract. Site consists of lowlands alongside Freetown Creek subject to ponding.

VICE-CHAIRMAN PHILLIPS: And this is actually a tributary -- it's a tributary to Freetown Creek.

MR. EATON: Yes. Residences at northwest corner. You see there are homes. Those are not the only two homes, but there are approximately 12 residences in that area. And at the lower right-hand corner, you're looking at the proposed new site.

COMMISSIONER MILLER: That's the dirt road running through it?

MR. EATON: Yes, sir.

COMMISSIONER MILLER: Now, where is the creek on here?

MR. EATON: It will be on the next one. These are some of the other residences in the lower left-hand corner of the site. The wide open area you see up above to the right, that is the host site. Proximity of homes to the proposed site. You see the little yellow line, that is the projected area for the new spray field. And as you can see down below it, you see the homes in the wooded area. It actually is less than 300 feet away from the homes -- the residences in that area.
line of trees that we see coming out of
the top right and exiting out the right
side, and then that line of trees that
joins there, those are part of those
tributaries -- the one longest one is the
tributary that you're referring to?

MR. EATON: Yes, right.

COMMISSIONER RICHARDSON: Okay.

MR. EATON: Creek running
through the middle of the proposed new
spray field site, but it's a tributary of
Freetown Creek. This site is to the left
and right of that tributary. Freetown
Creek runs south of that area. You can
see the wooded area to the right that has
been cleaned. It has been removed from
the site.

COMMISSIONER MILLER: Is this
tributary -- does it have constant running
water all of the time or is it dry?

MR. EATON: It all depends on
the rain water. When it rains, yes. It
doesn't have to rain much. But right at
the corner of the pipe at the road, it
constantly have water at all times. No
matter what the drought is, it will have
water.

Ponding water on
proposed site. You can see during their
clean off, they're cleaning the area. It
rained a couple of days before, and this
is where we are. This is -- it's going to
pond. There's no way that it cannot
pound.

Looking at the
picture, that's the new spray field of
proposed site. Here's a comparison of
what it looks like in the old spray field.
You see there, that is fresh repair dirt
where they have tried to stop the runoff.
This is not the first time. This is the
third time that they have repaired that
dike in order to stop the water from
running into the tributary of Freetown
Creek.

There's another

shot. These are close-up shots. When I
first saw it -- it's not just a dike, I
call it a pond. It's huge, you know.
That's the way it looks.
Citizens'
objections: The site consists of
Sumter-Kipling-Sucarnoochee soils -- which
is actually the worst group of soil in the
state of Alabama -- having limitations of
wetness, flooding, shrink-swell potential,
hazard of erosion, and very slow
permeability. Soils are too clayey and
percolate slowly. Soils are classified as
having severe limitations for use as
absorption fields for sanitary facilities.
Site will stay saturated and pose a
serious health threat as a breeding ground
for bacteria and mosquitoes.

Citizens objections:

Project engineer John Stevens of Sentell
Engineering, Inc. states he doesn't want
the wastewater spray to percolate; he
wants it to evaporate. Overflow from this
site will contaminate Freetown Creek and
downstream waterways. Overflow will
contaminate Wilson's catfish ponds located
to the south of Freetown Creek.

Wilson's catfish
pond on Freetown Creek, just south of
proposed spray field. If you can -- right
here in this area, that is the new
proposed spray field site. If you follow
the tributary -- Freetown Creek, it runs
right into Mr. Wilson's catfish pond.

Here's a shot of the
old spray field. As you can tell, the red
line down near the lower left-hand corner
of the ponding, that is the dike being
repaired. That's where they had it
repaired one time before spray field
number one existed.

All the surfaces
that you see to the right in the middle,
those are spray heads where they're
constantly spraying. When I say,
"Constantly spraying," I mean, 24/7. And
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<td>1. to divide the spray from that spray field 1. homes, waterways, livestock, fish ponds, 2. to the other spray field, it's just going 2. and farming operations. For a cost of 3. to spread the problem. It's not going to 3. $4.8 million a wastewater treatment system 4. work. 4. that not only functions properly and will 5. Here's a closer shot 5. not pollute the environment, but also does 6. of spray field number one operating when 6. not create a negative impact on any local 7. ground is saturated. Not only does it 7. resident. 8. operate when the grounds are saturated, if 8. We are a small, 9. it's raining it has been operating. I've 9. poor, town in the black belt area. We can 10. witnessed myself. And we know that those 10. not fight against the big money people 11. are not permitted. 11. that comes in wanting to put whatever they 12. VICE-CHAIRMAN PHILLIPS: How 12. want to in our town. They're putting our 13. many more do you have, Mr. Eaton? 13. health and environment at risk. So we 14. MR. EATON: Just a few. 14. look to you all to help us. We look to 15. Spray field number 15. ADEM, EPA, USDA, FDA, FAA, and any other 16. one ponding and overflowing above newly 16. agency that is there to help protect us 17. constructed dike. Spray field number one 17. from putting our health and environment 18. overflows to Freetown Creek. As you can 18. and making it a problem. Thank you. 19. tell, the green, that is actually the 19. VICE-CHAIRMAN PHILLIPS: Thank 20. ponding. It's spilled over the dike to 20. you, Mr. Eaton. 21. the right leaving the ground saturated. 21. Do we have any 22. That is on the outside of the berm, and it 22. questions from the Commission? 23. is flowing into Freetown Creek. Spray 23. COMMISSIONER LAIER: I have a 24.</td>
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| 1. field number one overflows to Freetown 1. question or two. 2. Creek. 2. The grant, who is 3. Our requests to 3. the recipient of the grant money? 4. ADEM: Perform a professional on-site 4. MR. EATON: The city, 5. assessment, including a soil analysis, 5. Congresswoman Terri Sewell, and USDA. 6. percolation test, and other testing by the 6. COMMISSIONER LAIER: I think 7. hydrogeologist to determine the 7. that's where you need to be starting. We 8. suitability of the site of proposed spray 8. certainly have concerns. You have painted 9. field number two; require the relocation 9. a serious picture of an unfortunate site 10. of proposed spray field number 2 to an 10. condition that needs to be addressed, but 11. appropriate alternative site -- not around 11. you're talking to the wrong entities. You 12. the people, not around the community, the 12. have to be talking to the people who are 13. neighborhood; require the city to properly 13. in charge of organizing this. We don't 14. operate and maintain spray field number 14. pay the bills for these people to do this 15. one to eliminate overflows to Freetown 15. work. We don't have any direct control 16. Creek; guarantee that the upgraded 16. over these people; your city has that 17. treatment facilities and spray fields will 17. control. They have the money; they must 18. function as intended and not put our 18. have hired these people. 19. health at risk or pollute the environment. 19. If they're not 20. Black Belt Citizens 20. satisfied with the way these people are 21. Fighting for Health and Justice, our 21. working, they need to be talking to the 22. goals: The proposed new spray field 22. contractor, to engineers to take charge of 23. relocated to a site remote from family 23. this operation. That's not our
1 responsibility.
2 MR. EATON: That's where we are
3 in between a rock and a hard spot. We
4 have spoken with Congresswoman Terri
5 Sewell, we have spoken with Nivory Gordon
6 at USDA, and none of them have actually
7 stepped up and said you need to go here
8 and you need to do this. I have
9 constantly asked for a request to be on
10 the city council agenda, and every chance
11 they get, they deny me. Everybody is
12 shutting us off. So where do we start?
13 We start with the people who have the
14 power to do so. We can't do it.
15 COMMISSIONER LAIER: I think
16 you're asking us to do what we are charged
17 to do, and that is to provide the
18 guidelines, and we've done that. These
19 people can't do the processing and
20 operation of the facility without
21 complying to our regulation. But we are
22 not responsible for paying the bills,
23 directing them on how to build it right,

1 or directing them to do all the things you
2 want us to do, that's not within our
3 purview.
4 You have to be
5 taking charge in your city. Your city
6 people can do the things you're asking us
7 to do. We certainly have concerns, we
8 certainly want to do what we can do from
9 our responsibility point of view. The
10 Director is going to look into this in
11 more depth, but I think you need to be
12 looking for others to deal with what's
13 going on.
14 We can't shut down
15 construction. If you're not satisfied
16 with the way they're building this, only
17 the people who have hired the workers can
18 stop them from doing work. We don't have
19 the authority.
20 MR. EATON: We understand that,
21 but when you fail in every lower level,
22 where do you go?
23 VICE-CHAIRMAN PHILLIPS: Any

1 other questions?
2 (No response.)
3 VICE-CHAIRMAN PHILLIPS: Thank
4 you, Mr. Eaton. And as you heard, we most
5 certainly will have the Director looking
6 into it and doing what we can do under our
7 authority.
8 MR. EATON: Thank you.
9 VICE-CHAIRMAN PHILLIPS: Thank
10 you.
11 Okay. We're at the
12 point for adjournment. Do I have a motion
13 to adjourn from the Commission?
14 COMMISSIONER MILLER: So moved.
15 COMMISSIONER LAIER: Second.
16 VICE-CHAIRMAN PHILLIPS: All in
17 favor?
18 ALL: Aye.
19 VICE-CHAIRMAN PHILLIPS: We're
20 adjourned. Thank you.
21 (The proceedings concluded at
22 approximately 12:23 p.m.)

1 STATE OF ALABAMA)
2 COUNTY OF MONTGOMERY)
3
4 I hereby certify that the above
5 proceedings were taken down by me and
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8 and accurate transcript of said proceedings
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10 I further certify that I am
11 neither of kin nor of counsel to any of the
12 parties nor in anyway financially
13 interested in the outcome of this case.
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17 evidenced by the ACCR number following my
18 name found below.
19
20 MARGARET-LEA PLATT ACCR #TL2024
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22 My Commission expires 1/16/17.
STATE OF ALABAMA
COUNTY OF MONTGOMERY

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I further certify that I am neither of kin nor of counsel to any of the parties nor in any wise financially interested in the outcome of this case.

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Alabama Environmental Management Commission Meeting

Baker & Baker Reporting and Video Services
334.262.3122 888.323.3377

(1) worst - 9,669

October 18, 2013
Part B
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<td>Order to adopt motion on election of Chair and Vice Chair (Agenda Item 2)</td>
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<td>Attachment 3</td>
<td>Resolution to adopt amendments to ADEM Admin. Code Division 335-6, Water Quality Program Regulations (Agenda Item 5)</td>
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<td>Attachment 4</td>
<td>Order to deny Petitioner’s Request to File Response to ADEM’s Reply; deny Petitioner’s Request for Oral Argument; and adopt Report of Hearing Officer with the exception that the Commission’s Finding includes a change in the Finding recommended by the Hearing Officer of the word “role” to the word “rule” (Agenda Item 6)</td>
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AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: October 18, 2013
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>6. The City of Brundidge, Alabama v. ADEM, and Brundidge Acquisitions, LLC, EMC Docket No. 13-02</td>
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<td>7. Other business</td>
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<td>8. Future business session</td>
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PUBLIC COMMENT PERIOD 3 & Attachments

* 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 16, 2013

2. ELECTIONS

   The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN, CODE DIVISION 335-6, WATER QUALITY PROGRAM REGULATIONS

   The Commission will consider proposed amendments to ADEM Admin. Code Division 335-6, Water Quality Program Regulations, Chapter 335-6-16, Administrative Guidelines and Procedures for the Alabama Underground and Aboveground Storage Tank Trust Fund, Rule 335-6-16-.09, Scope of Tank Trust Fund Coverage. Revisions to this Rule are being proposed to establish the scope of Trust Fund coverage, effective January 1, 2014. The scope of Trust Fund coverage is proposed at $1.3 million per incident. The Department held a public hearing on the proposed amendments on September 11, 2013.

6. THE CITY OF BRUNDIDGE, ALABAMA V. ADEM, AND BRUNDIDGE ACQUISITIONS, LLC, EMC DOCKET NO. 13-02

   The Commission will consider the Report of Hearing Officer in this appeal/request for hearing regarding the transfer of Solid Waste Disposal Facility Permit No. 55-07 by ADEM to Brundidge Acquisitions, LLC on March 22, 2013.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSION
PUBLIC COMMENT PERIOD
(The Requests from the public to address the Commission are attached to the agenda.)

Request 1
Nelson Brooke, Black Warrior Riverkeeper, on behalf of Black Warrior Riverkeeper, Inc.
SUBJECT: The City of Uniontown’s Wastewater Treatment Plant, Uniontown Lagoon
(Chair Brown will recommend that the Commission grant the Request contingent upon the presentation not including references to matters that are the subject of pending legal or administrative actions.)

Request 2
Barbara Evans, Citizen
SUBJECT: Wastewater Spray Field in Uniontown, Alabama
(Chair Brown will recommend that the Commission grant the Request contingent upon the presentation not including references to matters that are the subject of pending legal or administrative actions.)

Request 3
Benjamin Eaton, on behalf of Black Belt Citizens Fighting for Health and Justice
SUBJECT: Uniontown’s Wastewater Treatment Plant, Wastewater Spray Field
(Chair Brown will recommend that the Commission grant the Request contingent upon the presentation not including references to matters that are the subject of pending legal or administrative actions.)
September 13, 2013

H. Lanier Brown, II, Esq., Chairman
Environmental Management Commission
PO Box 301463
Montgomery, AL 36130-1463

Via electronic mail only

Re: Request to Address the Environmental Management Commission
October 18, 2013
The City of Uniontown's Wastewater Treatment Plant

Dear Chairman Brown:

Black Warrior Riverkeeper, Inc. (Riverkeeper) is a nonprofit organization located in
Birmingham, Alabama, whose mission is to protect and restore the Black Warrior River and its
tributaries. At this time, on behalf of Riverkeeper, Nelson Brooks and I would each like the opportunity to
address the Environmental Management Commission (EMC) on the Uniontown Lagoons, which is located
in the Black Warrior River watershed. If our request is granted, we will of course provide the EMC with
copies of our respective presentations closer to the scheduled meeting.

Please know that I appreciate your kind consideration of our request. Thank you.

Sincerely,

Eva Dillard
Staff Attorney

cc: Debi Thomas, EMC Executive Assistant
September 27, 2013

H. Lanier Brown II, Esq.
Chairman, Alabama Environmental Management Commission
P.O. Box 310463
Montgomery, Alabama 36130

Dear Chairman Brown:

This is a request for me to have 3 minutes on the agenda at the upcoming EMC meeting on October 18, 2013. My subject will be the wastewater sprayfield in Uniontown, Alabama.

I will be brief and courteous. I am not a part of any legal action involving ADEM.

I appreciate your consideration. If there are any questions or concerns, I can be contacted at (334)284-0555 or (preferred) alawatch@bellsouth.net.

Sincerely,

Barbara Evans
citizen
BLACK BELT CITIZENS
FIGHTING FOR HEALTH AND JUSTICE
P.O. Box 523
Uniontown, AL 36786

October 4, 2013

H. Lanie, Brown, II, Esq., Chairman
Environmental Management Commission
PO Box 301463
Montgomery, AL 36130-1463

Via Fax to 334-279-3052
Total of 2 pages

Re: Request to Address the Environmental Management Commission on October 18, 2013, regarding Uniontown’s Wastewater Treatment Plant

Dear Chairman Brown:

Black Belt Citizens Fighting for Health and Justice is a non-profit organization of concerned citizens in Uniontown, Alabama. On behalf of our group, the undersigned member hereby requests to be placed on the agenda to address the Environmental Management Commission (EMC) at its next meeting to be held on October 18, 2013. We have an issue that we wish to bring before the EMC.

Regarding the City of Uniontown’s upgrades to its Wastewater Treatment Plant (WWTP), we will express to the EMC our strenuous objections to the location proposed for construction of a second spray field. Mr. John Stevens, PE, Vice President of Sentell Engineering, Inc. in Tuscaloosa, Alabama, is the engineer in charge of this project.

The proposed new spray field site on the south side of Perry County Road 53 (coordinates of approximately 32-23.176N, 87-30.830W) is completely unsuitable for use as a wastewater spray field for many compelling reasons, which we will discuss in detail.

We will request ADEM’s cooperation and support to find a reasonable and appropriate alternative location to resolve this issue for the long term for all the various stakeholders in the City of Uniontown’s WWTP, before the grant and loan funds are mis-spent in building a new spray field that is doomed to fail.
H. Lanier Brown, II, Esq., Chairman

October 4, 2013

We ask that you approve this request for the undersigned member of our group to speak on behalf of the Black Belt Citizens Fighting for Health and Justice and other Uniontown citizens. We appreciate your consideration of our request. Thank you very much.

Sincerely,

Benjamin Eaton
PO Box 276
Uniontown, AL 36786
Home: 334-628-3012
Cell: 334-507-8951
beneaton@bellsouth.net
Attachment 2
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTIONS

Elect Lanier Brown as Chair and
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.
Environmental Management Commission Order

Page 2

ISSUED this 18th day of October 2013.

APPROVED:

[Signatures]

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

[Signatures]

Commissioner

Commissioner

Commissioner

Commissioner

ABSTAINED:

[Signature]

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 18th day of October 2013.

[Signature]

Vice Chair
Environmental Management Commission
Certified this 18th day of October 2013
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 335-6 [rule 335-6-16-.09/Scope of Tank Trust Fund Coverage (Amend)] of the Department’s Water Quality Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 18th day of October 2013.

APPROVED:

Mary J. Mentte

[Signature]

James E. Stooth

[Signature]

Jerry D. Richardson

[Signature]

John Lister

[Signature]

W. Scott Flinner

[Signature]

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 18th day of October 2013.

W. Scott Flinner
Vice Chair
Environmental Management Commission
Certified this 18th day of October 2013
Attachment 4
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: 

The City of Brundidge, Alabama, Petitioner,

vs. 

Alabama Department of Environmental Management, Respondent,

and

Brundidge Acquisitions, LLC, Intervenor.

EMC Docket No. 13-02

ORDER

The Commission having considered the record, including the Report of the Hearing Officer and its Proposed Findings of Fact, Conclusions of Law, and Recommendation; the Petitioner’s Objections to the Report of the Hearing Officer and Request for Oral Argument; the Petitioner’s Proposed Alternative Findings of Fact and Conclusions of Law; the Department’s Reply to Petitioner’s Objections to the Report of the Hearing Officer and Request for Oral Argument; the Petitioner’s Request to File Response to ADEM’s Reply and attached Petitioner’s Response to ADEM’s Reply; and the Intervenor’s Response to the Petitioner’s Objections to the Report of the Hearing Officer, hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner’s Request to File Response to ADEM’s Reply is hereby denied;

2. That the Petitioner’s Request for Oral Argument is hereby denied; and

3. That the Report of the Hearing Officer and its Proposed Findings of Fact, Conclusions of Law, and Recommendation are hereby adopted with the exception that the Commission finds that the transfer of Permit Number 55-07 was performed in a manner consistent with the promulgated rule of ADEM and consistent with applicable Alabama law, and no error resulted from the transfer; and
4. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

5. That a copy of the Order, along with a copy of the Report of the Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

ISSUED this 18th day of October 2013.

APPROVED:

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

Commissioner

DISAPPROVED:

[Signatures]

Commissioner

[Signatures]

Commissioner

[Signatures]

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 18th day of October 2013.

[Signature]

Vice Chair

Environmental Management Commission

Certified this 18th day of October 2013.
BEFORE THE ALABAMA
ENVIRONMENTAL MANAGEMENT COMMISSION

THE CITY OF BRUNDIDGE, )
ALABAMA )
) Petitioner,

v. )
ALABAMA DEPARTMENT OF ) EMC Docket No. 13-02
ENVIRONMENTAL MANAGEMENT, ) Solid Waste Disposal
) Facility Permit No. 55-07
) Respondent
) and
) BRUNDIDGE ACQUISITIONS, LLC,
) Intervenor.
)

REPORT OF HEARING OFFICER

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

I. FINDINGS OF FACT

The relevant history of this proceeding actually begins with the construction of a solid waste landfill in the City of Brundidge in the early 1990s. The landfill constructed at that time is the same landfill which is the subject of the present proceeding, and it is uncontroverted that the City of Brundidge provided approval of the construction of the landfill pursuant to Code of Alabama, 1975, §22-27-48(a). [P. Ex. 1] That approval also
resulted in the initial Host Government Agreement (hereinafter HGA) between the City of Brundidge and Brundidge Landfill, LLC. The City of Brundidge negotiated various provisions of the HGA that were for its economic benefit and its public interest. The opening of the landfill did not occur until several years later. The exact reasons for the delay in opening were not clear, but that fact does not play into this recommendation.

In 2003, the City of Brundidge Solid Waste Authority (hereinafter “COBSWA”) was formed and sometime thereafter, the City of Brundidge assigned the HGA to COBSWA. COBSWA, however, does not have a municipal solid waste plan approved by ADEM. [Transcript, p. 54] A new host government agreement (“the Agreement”) was executed by COBSWA and the then-current operator, Brundidge Landfill, LLC. [P.Ex. 1] The purpose of assigning the Agreement to COBSWA was to avoid the prohibitions of Code of Alabama, 1975, §41-16-57, which prevents a municipality from entering into a contract with a term longer than three years. [Transcript, P. 68] The Agreement also stated that it superseded all prior agreements including the original agreement. [P. Ex. 1, ¶43] While the City of Brundidge was not a party to the Agreement, it signed the Agreement acknowledging its terms. [at p. 19]

The Agreement contained various economic provisions that addressed such matters as cost to the City of Brundidge, its residents and Pike County for disposing of waste at the landfill and the percentage of gate fees charged by the operator that the City of Brundidge would receive. [at pp. 9-12] The Agreement also contained various provisions requiring the operator to abide by ADEM and U. S. EPA regulations and laws. [at pp. 4-6] In addition, the Agreement stated that no laws, ordinances or regulations would be enacted that would be more stringent than those implemented by ADEM and the EPA. [Id. at ¶25]

In 2012, the operator of the landfill, Brundidge Landfill, LLC and its parent company Transload America, began experiencing financial difficulty and ultimately filed for bankruptcy protection. [Tr. 45-47] As a result, Transload America and one of its creditors, Nuveen, sought to sell the landfill. The City of Brundidge, along with two other interested parties, sought to purchase the landfill but the offers were not accepted. [at pp. 45-48] Thereafter Nuveen and Transload abandoned their efforts to sell the landfill and subsequently, as part of the bankruptcy, the Bankruptcy Trustee sought to sell the landfill.

Brundidge Acquisitions, with financial backing from Coffee County, successfully bid on the landfill. [P. Ex. 2 & 3] As part of the sale, the Bankruptcy Trustee moved the
Bankruptcy Court for an order under the Bankruptcy Code rejecting the Agreement as an executory contract. [P. Ex. 5] The court entered an order conditionally, rejecting the Agreement until such time as the sale of the landfill to Brundidge Acquisitions could be consummated.

On March 19, 2013, Brundidge Acquisitions filed an application with ADEM seeking transfer of the permit from Brundidge Landfill, LLC to Brundidge Acquisitions. [P. Ex. 11] Brundidge Acquisitions did not, however, request any changes to the permit itself; i.e., it did not seek to change the capacity, the type of waste received, etc. On March 22, 2013, ADEM approved the application by Brundidge Acquisitions for the transfer of the permit and transferred the permit to Brundidge Acquisitions. [P. Ex. 12] ADEM only changed the name of the permittee to Brundidge Acquisitions but did not make any changes to the permit itself.

On March 29, 2013, the City of Brundidge filed a request for hearing with ADEM. In its request, the City alleged three errors on the part of ADEM in the transfer of the permit to Brundidge Acquisitions. First, the City of Brundidge essentially alleged that the Agreement represents host government approval as required under Code of Alabama, 1975, §22-27-48(a) and that the transfer of the permit would allow the Agreement to be rejected by the Bankruptcy Court. The City of Brundidge also claimed that without the Agreement in place, Brundidge Acquisitions would be operating the landfill without the requisite local approval. Additionally, the City of Brundidge claimed that Brundidge Acquisitions misled ADEM when it executed ADEM’s application form for the transfer of the permit. The City of Brundidge argued that Brundidge Acquisitions’ representation that it would assume responsibility for the facility and that it would abide by all permit or registration conditions was misleading because Brundidge Acquisitions has previously sought rejection of the Agreement by the Bankruptcy Trustee. The City of Brundidge further argued that ADEM erred by transferring the permit in less than thirty days, but said City of Brundidge has now abandoned this alleged error.

On April 4, 2013, the City of Brundidge filed a request to stay the transfer of the permit. On April 9, 2013, Brundidge Acquisitions intervened in the matter filed by the City of Brundidge. ADEM and Brundidge Acquisitions each filed briefs in opposition to the City of Brundidge’s request to stay. On April 19, 2013, the City of Brundidge’s request for stay was heard by AEMC. Following oral argument, AEMC denied the City of Brundidge’s request for stay.
On May 1, 2013, the City of Brundidge filed a motion to amend its request for hearing to add a new claim. The new claim essentially asserts a new legal theory regarding the application of Code of Alabama, 1975, §22-27-48(a). In essence, the City of Brundidge argues that the transfer of a permit is a modification requiring local approval. Brundidge Acquisitions filed a brief in opposition to the City of Brundidge’s motion to amend, responding that the efforts of the City of Brundidge to amend its request for hearing were improper as well as the fact that there was no legal support, statutory or otherwise, for the City of Brundidge’s new claim. This motion filed by the City of Brundidge is ruled on by separate order.

On June 6, 2013, following the close of discovery in this matter, a hearing was held on this matter at the ADEM offices in Montgomery, Alabama. The evidence in this case came before the undersigned in the form of testimony presented by four witnesses, all under oath and subject to cross-examination. In addition, the parties presented documentary evidence that was properly marked and admitted into the record. The undersigned was able to view the witnesses, observe the demeanor of those witnesses and assess the credibility of the witnesses.

On June 24, 2013, Brundidge Acquisitions closed on the purchase of the landfill and is now the owner of the landfill as well as the holder of the permit. Accordingly, pursuant to the Bankruptcy Court’s order and now that the sale of the landfill has closed, the Agreement has been formally rejected (rather than being conditionally rejected).

On July 11, 2013, ADEM filed a motion to dismiss the petition based upon its contention that the City of Brundidge lacked standing to proceed. Briefs and arguments were submitted by all parties to the undersigned on this issue.

II. CONCLUSIONS OF LAW

1. This matter is properly before AEMC by way of this Report of the undersigned, together with the entire record including transcript of testimony, exhibits, arguments submitted and all documents allowed into evidence.

2. The Petitioner was properly served with notice of the hearing, which took place at the ADEM offices located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.
3. All parties were given the opportunity to respond to, and present evidence and argument on, all material issues at the hearing conducted on June 6, 2013 in accord with Rule 335-2-1-.15 of the ADEM Admin Code, and the hearing was conducted in accord with ADEM rules.

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

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

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

7. The Petitioner in this matter, the City of Brundidge, is an aggrieved party and entitled to maintain this challenge before the AEMC and has demonstrated that it stands to suffer an injury by the transfer of Permit 55-07. Accordingly, as a part of the undersigned’s findings, ADEM’s motion to dismiss based upon the argument that the City of Brundidge lacks standing to proceed should be denied. A separate order to that effect is entered on this same date.

8. ADEM’s transfer of Permit 55-07 was done without the approval of the City of Brundidge; however, that transfer does not violate Code of Alabama, 1975, §22-27-48.
9. Approval of the landfill was given by the City of Brundidge when Permit 55-07 was originally issued and §22-27-48(a) does not require that ADEM revisit the issue of local government approval every time a permit is transferred. Only on the issuance of a new permit or a “modified” permit is the approval of local government revisited. Such was not required with the transfer that occurred here.

10. The rejection of the HGA as referenced in the hearing and in the briefs (actually labeled “Agreement,” P. Ex. 1) occurred as a result of the actions and orders of the United States Bankruptcy Court for the District of New Jersey. ADEM simply transferred Permit 55-07, and its actions were not the cause of the City of Brundidge’s loss of the contractual benefits it had received as a result of its earlier negotiations.

11. The City of Brundidge will lose some of its control and benefit of the landfill because of the rejection of the HGA as ordered by the Bankruptcy Court (conditionally done on February 19, 2013 and subsequently ordered at a time following the hearing of this matter on June 6, 2013) much like creditors lose rights and benefits every day when debtors file a petition in bankruptcy court. There is no question that people, companies and even municipalities suffer a harsh reality when they, as creditors (or in this case as a party to an executed contract), lose the benefit of their bargain because of a discharge in bankruptcy or some other actions of the Bankruptcy Court. Congress has decided that bankruptcy is an available remedy, and creditors or contractors lose as a result. That is what happened to the City of Brundidge through no fault of ADEM.

12. The application process used herein for the transfer of this permit was not misleading to ADEM and there has been no complaint by ADEM that it was misleading.

III. RECOMMENDATION

Based upon the entire body of evidence presented, the testimony, briefs, arguments and submissions, and observations of the witnesses, the undersigned Hearing Officer recommends to AEMC that it enter an order and finding as follows:
That the transfer of Permit Number 55-07 was performed in a manner consistent with the promulgated role of ADEM and consistent with applicable Alabama law, and no error resulted from that transfer.

Respectfully submitted this 24th day of September, 2013.

[Signature]

JAMES F. HAMPTON
Hearing Officer

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