Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 15, 2011
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 April 15, 2011.

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

Certified this 24th day of June 2011.
Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 15, 2011

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

Part A
Transcript

Part B
Attachment Index
Attachments 1 – 4
Part A
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: April 15, 2011
TIME: 11:00 a.m.

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THE FOLLOWING ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING was taken before Shannon P. Yost, Certified Court Reporter and Commissioner for the State of Alabama at Large, at the Alabama Department of Environmental Management Building, Alabama Room, 1400 Coliseum Boulevard, Montgomery, Alabama, on the 15th day of April, 2011, commencing at 11:00 a.m. CST.

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APPEARANCES:

COMMISSION MEMBERS:
JOHN H. LESTER, D.V.M., CHAIR
MARQUITA F. DAVIS, PH.D.
SAMUEL L. MILLER, M.D.
W. SCOTT PHILLIPS
H. LANIEM BROWN, II, ESQUIRE
JAMES E. LAIER, PH.D., P.E.
TERRY D. RICHARDSON, PH.D. (not present)

ALSO PRESENT:
DEBI THOMAS, AEMC EXECUTIVE ASSISTANT
ROBERT TAMBLING, AEMC LEGAL COUNSEL

1 DR. LESTER: We'll call this meeting to order and acknowledge that we have a quorum today. The first item of business is to consider the minutes from our last meeting on February 18th. Is there any corrections or additions, or do I have a motion?

2 MR. BROWN: Move to adopt.

3 DR. LAIER: Second.

4 DR. LESTER: Motion is seconded.

5 All in favor, say aye.

6 DR. DAVIS: Aye.

7 DR. MILLER: Aye.

8 MR. PHILLIPS: Aye.

9 DR. LESTER: Aye.

10 DR. BROWN: Aye.

11 DR. LAIER: Aye.

12 MR. BROWN: All opposed?

13 (No response.)

14 DR. LESTER: We didn't raise our hand. She told us last time to raise our hand.

15 Next item will be the Director's report, but before we do that, just -- I was going to make a little presentation to Dr. Richardson. He just got back. He's like Scott here. Scott just flew into Montgomery a few minutes ago from Chile. Dr. Richardson had been to Oxford, England representing the University of North Alabama, and he was asked to speak on the BP oil response and, particularly, his personal experiences of being part of the response. So we'll -- let's think about him. And I'm going to call on Lance to give his report, and he will give you the information on why Dr. Richardson's not here.

17 Lance.

18 MR. LEFLEUR: Thank you, Doctor.

19 Dr. Richardson is not here this morning. He was planning to be here. He called me last evening. His daughter, stepdaughter, was on vacation down at the gulf, and had an accident and had to have

1 (Pages 1 to 4)
emergency surgery last night, and they
are down there. And he apologized to the
Commission for missing a -- a meeting
this time, but I indicated that everybody
here would -- would certainly understand
and that our prayers would be with --
with him and his daughter.
Okay. If I may, good morning,
Commissioners. It's a pleasure to be
here with you. I'd like to focus my
comments on two areas this morning:
First on our budgets, which is an ongoing
issue; and, second, as I approach one
year of service with the Department, some
thoughts on what I've come to understand
is one of our most critical elements to
the Department's success, and that's our
partners in the projects that we work on.
On the budget front, let's see if
I -- I've got some slides here. This is
sort of unusual. On our budget fund, our
budget breaks down -- we get about
9 percent of our operating funds from the

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general fund of the state. About
34 percent of our budget comes from
federal grant funds, and the remaining
57 percent comes from fees, issuance
fees, on permits and -- and other types
of fees.
Our general fund budget, as this
slide indicates, has been essentially
flat for about the last 20 years.
There's a little blip there in 2008.
That was the startup of a new program
to -- where the State worked with ADEM,
shared in steel dust disposal fees that
are collected at Emelle, and it was a
two-year collection portion that showed
up in that year. But other than that,
its been a fairly flat budget for the
last 20 years. It's something unusual in
state budgets.
As many of you are aware, recently,
the governor declared a 15 percent
proration across the board for all
agencies, and we are included in that.

---

So our prorated budget for 2011 is shown
by this yellow bar on this graph.
Our 2012 general fund budget will be
down 31 percent, and this is represented
by the red bar on this graph, will be
down 31 percent over the -- the original
budget for FY 11 and down 19 percent from
the prorated 2011 budget. We are waiting
for the other shoe to drop as far as our
federal budget is concerned, but this is
our general fund budget.
We expect our federal budgets to be
down by at least 13 percent. That's what
the President recommended recently. And,
of course, Congress is the one that will
ultimately determine the budget, and
they're just beginning those
conversations now. We think that the --
the Congress will reduce EPA budget,
which, in turn, reduces our budget by
more than the 13 percent that the --
the -- the President has recommended.
One more item that's impacting our

---

budget this year -- well, in two fiscal
years actually, both FY 10 and FY 11 --
we have approximately $300,000 of cost in
the BP oil spill response that will not
likely be recovered and will be a direct
hit against our budget also. This
amounts to about 7 percent, an additional
7 percent, on our budget. ADEM has
worked to date -- we're still on the
site, but to date, we have about 35,000
hours in oil spill response. And that's
not reflected in -- in these charts that
I have up here.
That's the situation that we find
ourselves in budgetwise. It's a -- it's
a stringent situation, and it's not
unusual for many agencies around the --
the state and around the country.
I'd like to now talk a little bit
about how we anticipate we're going to
respond to this, how we will respond to
this.
Our -- one of our first responses is
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<td>1. going to be to require eGov participation for all those entities that are capable of responding in eGov applications. This is where we have electronic format for submitting reports rather than paper reports. It improves accuracy. It improves our -- our time usage as far as getting the data input. And we talked a little bit about that last time. But we are going to be taking more aggressive steps to require eGov application in permits and other -- other activities that we do. We'll also be implementing more general permits. And when we have a general permit, it not only saves manpower because we have -- for instance, on the MS4 permit that's out there now, the general permit, we can have 60 permittees operate under the same permit rather than writing individual permits, which is a very time-consuming process. So we can more effectively use our manpower. It also has the benefit of allowing us to raise the bar on the standards that we impose. The standards that are imposed are those that are designed to meet all circumstances, and under our individual permits, we would normally have lower standards in certain cases, varying in -- in -- on the -- the permit would vary, as far as what the standards are, depending on the local circumstances. But now we have the higher standard that will be applied to all of them. So general permits help us in two different ways. We'll also be eliminating our -- what has been in the past, our Pollution Control Grant Fund. These are funds that have been in our budget to supplement wastewater treatment systems, drinking water systems, and so forth. But in light of the current budget restrictions, we're going to be eliminating that program.</td>
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<td>1. We will reduce or eliminate some of our outreach program contracts. Now, these are contracts that have been very beneficial to us, but they are contracts that are away from our core activities. And these are -- are things like Water Watch. I know there are some Water Watch people in the room today. We'll be reducing those types of contracts. Clean Water Partnership, who has worked very closely with us, we are going to ask them to tighten their belt just like we have to tighten our belt. So we'll be reducing that outreach that we have. In the same vein, State initiatives will be pared back to make sure that we meet federal grant commitments. Each of the states has programs that they implement that's -- that are in addition to the federal programs that are implemented. These -- these are what we call our State initiatives. And right now, with the budgets being reduced, we are going to have to reduce what we do in the way of State initiatives so we can focus on getting done the federal requirements that we have. It's an unfortunate situation, but it's necessitated by these budget restrictions that we're seeing. We're also going to be raising fees. This is never a popular topic for the -- the regulated community, but we've been working to prepare them. This next slide -- if you'd look at this, let me explain it a little bit. The blue bars at the bottom are our -- represent our general fund budget, the yellow bar represents our federal budget, and the red bar represents our fee income. As you can see, our fee income has been becoming a more and more important component of our overall budget, and that's because we've been facing these declining state and funderal -- federal budgets. So we've been supplementing it.</td>
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<tr>
<td>1. with fee income.</td>
<td>1. any layoffs as a result of current budget cuts. This is not only a morale issue</td>
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<td>2. Now, the last three bars there --</td>
<td>3. that we're -- we're avoiding layoffs and a workload issue, but, also, it's a cost</td>
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<td>3. it's a little hard to see on this slide,</td>
<td>4. issue. We invest nearly two years in</td>
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<td>4. but the one -- the third one in is -- is</td>
<td>5. training our professional staff, which</td>
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<td>5. our fiscal year 11 prior to proration.</td>
<td>6. comprises about 80 percent of our</td>
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<td>6. The next bar in, the second bar in, is</td>
<td>7. personnel. And when we let the people</td>
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<td>7. the prorated budget, and then the bar at</td>
<td>8. go, we have to take that training</td>
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<td>8. the very end of the graph represents our</td>
<td>9. investment and let it go also, and when</td>
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<td>9. 2012 budgets.</td>
<td>10. we rehire down the road, we have to make</td>
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<td>10. As you can see, we've kept the fee</td>
<td>11. that investment yet again. So we are --</td>
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<td>11. income flat for each of those</td>
<td>12. we are having layoffs as our very last</td>
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<td>12. circumstances, and -- and by doing our</td>
<td>13. option for a number of different reasons.</td>
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<td>13. fee increase, we'll be increasing our</td>
<td>14. So that's our -- that's where we are</td>
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<td>14. fees, and those -- those bars will show</td>
<td>15. with our budget. A very difficult time</td>
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<td>15. an increase. But this demonstrates the</td>
<td>16. for many agencies, not just for our --</td>
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<td>16. reduced -- anticipated reduced federal</td>
<td>17. our department but for many.</td>
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<td>17. budget and the reduced general fund</td>
<td>18. Let me address a different topic</td>
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<td>18. budget.</td>
<td>19. now, if I may, and this is a topic that</td>
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<td>19. Our fees -- we -- we try to keep our</td>
<td>20. involves our partners. And this is --</td>
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<td>20. fees to as low a level as we can to fund</td>
<td>21. this is an important piece. In the year</td>
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<td>21. our programs, which -- and the purpose of</td>
<td>22. since becoming director, I've come to</td>
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<td>22. that is to help bring jobs to Alabama,</td>
<td>23.</td>
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<td>23. make us a more competitive state for --</td>
<td>23.</td>
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<td>1. for businesses to locate. We -- we have</td>
<td>1. understand a number of things about the</td>
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<td>2. been having greater and greater federal</td>
<td>2. department, and I -- I -- I have many</td>
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<td>3. mandates, and we have no option but to</td>
<td>3. more to learn, obviously. However, one</td>
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<td>4. increase those fees in the next coming</td>
<td>4. thing that has really jumped out is that</td>
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<td>5. years.</td>
<td>5. whatever ADEM can do alone is multiplied</td>
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<td>6. We have the statutory authority to</td>
<td>6. many fold when partners are involved.</td>
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<td>7. raise the fees. We are not at the limit</td>
<td>7. I'd like to illustrate how this</td>
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<td>8. as to high -- as high as we will be able</td>
<td>8. works by identifying some of our partners</td>
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<td>9. to go with our fee structure, but, like I</td>
<td>9. and highlighting a few examples to show</td>
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<td>10. say, we -- we still want to limit that --</td>
<td>10. the diversity of these relationships and</td>
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<td>11. that amount of fee increase to the bare</td>
<td>11. the statewide distribution of these</td>
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<td>12. minimum. We'll be coming to the</td>
<td>12. activities. ADEM was the lead on some of</td>
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<td>13. Commission later in the year with a</td>
<td>13. these projects that I'll be showing in</td>
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<td>14. revised fee structure.</td>
<td>14. these next slides. On some of them, we</td>
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<td>15. Another item that we'll be</td>
<td>15. were an equal partner participant. The</td>
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<td>16. undertaking to deal with these budget</td>
<td>16. slides represent some successes, and I</td>
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<td>17. times that we're -- we're seeing is we</td>
<td>17. don't mean to imply that there are -- are</td>
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<td>18. will be working to negotiate workload</td>
<td>18. not areas for improvement. Clearly, we</td>
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<td>19. adjustments in our federal grant</td>
<td>19. have some areas where we're not where we</td>
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<td>20. commitments to reflect the federal budget</td>
<td>20. need to be.</td>
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<td>21. cuts.</td>
<td>21. I've selected 15 projects. There</td>
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<td>22. The Department is currently</td>
<td>22. are many, many more. These are some of</td>
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<td>23. understaffed, and we do not anticipate</td>
<td>23. the current ones. But these include</td>
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examples from our Air Division, our Land Division, and our Water Division. There's some from the southern, central, and northern parts of the state. You'll notice that some of these are rather mundane; some are quite unique; some are experimental; and some are controversial. The main purpose of these slides is to show you some of the groups that actually participate in making successful things happen. Please pay particular note to the wide variety of the partners that are involved with this and willing to work with the Department to get results that benefit the environment.

I apologize beforehand. There are a lot of slides here, and I'll try to go through them. The print's a little bit small. But these first three projects that we'll see in these slides all relate to the BP oil spill. My first anniversary with the Department coincides with the Deepwater Horizon oil spill. I don't know how much I like that, but, nonetheless, we both have the same start date. The first project here that -- that you see the slide -- on the slide is where we were the lead agency in the BP oil spill response. This -- this response -- ADEM is currently on the scene full time, and we're working to oversee the cleanup. Like I said, we have more than 35,000 hours in this project, so we've got -- we've got a lot of relationships here that are -- that are well-worn relationships. But just some of the groups that have been involved: Local environmental groups; most notably, Baykeeper, Alabama Coastal Foundation, Mobile Bay National Estuaries Program, some very good local environmental agencies, groups. We have 11 state agencies; the US Coast Guard; BP; state, county, and local elected leaders; private citizens; and numerous federal agencies. This was a response project where we responded to the oil spill. The next one is an example of one of the protective projects that was undertaken. Katrina Cut is what it's called. This is a -- refers to a breach that was put in Dauphin Island during Hurricane Katrina in 2005, and that breach is more than a mile wide and allowed a pathway for oil to come into the Mississippi sound area, a very sensitive area. It also allows hurricane tidal surge to come through where -- what used to be a barrier island. And, finally, it allows saltwater to come in and has an economic impact on the oyster beds that are down there. Oyster drills are allowed to come in with that saltwater. So there are a number of things that -- that are problems down there by this breach existing. The project involves restoring the natural barrier that was there, and you can see the -- some of the partners that we worked with on this project, which has just completed in this past week, including EPA; the Corps of Engineers; Alabama Coastal Foundation; again, the National Estuaries Program; the City of Bayou la Batre; Dauphin Island, Dauphin Island Sea Lab, Mobile County. A lot of different diversity in that, as -- as all of these projects are.

The third one related to the oil is the Coastal Resiliency Commission and, in particular, the Environmental Resiliency Committee of that Commission. This is a -- a -- we were one of 80 participants, lead participants, in this program, and the idea behind this entire Commission was to move into the recovery phase from the oil spill. There were numerous environmental organizations involved, economic institutions, business community, Corps of Engineers, elected

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1. officials, media representatives, and 1. in this project also.
2. numerous state agencies, so a wide range 2. Coal ash legislation. This is one
3. of participants in that project also.
4. The next one we -- we have here is 3. that's going through the Legislature now.
5. the one that involves the City of Bayou 4. We anticipate the bill will pass. This
6. la Batre and their wastewater treatment 5. is a -- a unique coming together. You
7. plant. Bayou la Batre has been a 6. don't often find projects where the
8. problem -- has had a problem down there 7. environmental community, the
9. for more than 30 years. Both marine 8. coal-burning-power generators, and ADEM
10. resources and our Water Division have 9. come together and get the legislators to
11. been working with Bayou la Batre for many 10. work with them. So this is -- this is a
12. years to try to bring their wastewater 11. very interesting project. What it does
13. treatment plant into compliance. And 12. is defines coal ash to solid waste and
14. this is a -- a program that -- that got 13. allows us to begin controlling the
15. started, had a false start, and now 14. disposal.
16. we're -- we're trying to bring it to 15. State Revolving Fund. Many of you
17. closure. And our partners in this one 16. are familiar with that. Providing
18. involve, obviously, Bayou la Batre but 17. low-cost loans to various communities to
19. the USDA; Conservation; Baykeeper, once 18. upgrade their drinking water and
20. again; ADECA; private engineering 19. wastewater systems. We deal with,
21. companies; a lot of different partners, a 20. obviously, the local municipalities.
22. lot of wide-ranging groups.
23. Another project that's an

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1. interesting one involves greenhouse gas 1. engineers, and trustee banks. So a wide
2. mitigation, a sequestration research 2. range of partners in this type of
3. project, deep well injection. This is 3. project.
4. a -- a -- a research/experimental-type 4. The Selma to Montgomery Voting
5. project. There's a lot of -- a lot of 5. Rights Trail brownfield cleanup. It's
6. discussion about -- a lot of controversy 6. one that's underway, got started last
7. and discussion about global warming, but, 7. May. It's to identify, assess, and
8. nonetheless, we are working with Alabama 8. remediate underground storage tanks along
9. Power in this case, EPA, Geologic Survey 9. the -- the trail. We have a -- another
10. to test the feasibility of CO2 10. set of partners in this: US Department
11. sequestration. And it's -- it's an 11. of Justice, civil rights leaders, local
12. interesting project and one that points 12. officials, HUD, Historic Commission,
13. out some of the interesting partners that 13. ALDOT, Park Service. A lot of different
14. we deal with on these sorts of things. 14. communities there that are working
15. Another program, scrap tire 15. together.
16. recycling. We have just begun working 16. Genetta Creek, one here in the city
17. with the -- each of the counties in the 17. of Montgomery. Genetta Creek is an urban
18. state to offer them $100,000 to reimburse 18. watershed that we're working to improve.
19. them for tire pickup and recycling. 19. It's an impaired stream, a 303D stream,
20. We've dealt with each of the counties, as 20. that is now being -- having work done on
21. I say, the Association of County 21. it. It's an Environmental Justice
22. Commissioners, Scrap Tire Commission, a 22. project, a Green Infrastructure project,
23. lot of different partners in this type -- 23. and a project that affects the quality of

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Life for people in the low income and local minority community. This is an excellent project. The City of Montgomery has been the lead on that one, and we have taken an active part through our 319 program to become involved with that work with these local partners. Moving up toward the lakes in the state, we have Treasured Alabama Lakes designation, which you're going to dealing with here today. This helps us to maintain high-quality water resource, working with the Governor's Office. And, once again, this is another instance of -- of some people that don't normally come together coming together for an environmentally-sound project. Lake Watch, I see my friend from Lake Martin in -- in the audience, real estate developers in the area, power generator. This lake was formed for hydroelectric power generation. Alabama Power worked on this project with us and the local wastewater treatment plants. A nice group of people coming together for a good project. Chemical munitions demilitarization project. This was a very controversial project. Some of you Commission members today understand how -- how controversial it was. You took a -- a courageous stand to move this project forward. It's eliminating chemical contamination threat. This involved the US Army Department of Defense, EPA, local leaders. This one's now winding down. It'll close out in the next year but another project that's -- that's indicative of the wide variety kinds of projects that we work with. Jefferson and Shelby Counties have attained -- attaining their clean air standards for fine particulates. They have met the 12 -- the 24-hour standard, and they -- this year, at the end of 2010, they have met the annual standard. Fine particulate standards have been ratcheted down over the years. And we have not had a formal designation of attainment, but the data indicates that we have attainment there for the latest standards that have been set. Working with the local leaders, local health department, regional planning organizations. Once again, another group of partners in here. Little Shades Creek. Last week, you -- or last -- excuse me -- last Commission meeting, we had Beth Stewart, Executive Director, come and present a -- an award for ADEM's participation in this restoration of an impaired stream. Obviously, Cahaba River Society was -- was heavily involved in that, local electric -- elected leaders, engineering company, our -- excuse me. Our soil and water conservation districts and our clean water partnership, our Alabama Clean Water Partnership, also played a big role in this. Very positive project.

And then, finally, this one's hot off the press. This just came down yesterday. TVA voted at their board meeting yesterday to provide funds, mitigation funds, for various environmental violations. ADEM has been working for the last two years with -- along with the Attorney General's Office; TVA; EPA; our neighboring states, Kentucky, Tennessee, North Carolina. We will be working with the local communities in North Alabama to put some of these mitigation projects in place, the Sierra Club, and other national environmental groups.

Now, this is 15 projects. These are 15 projects that are -- that are in place, going on right now, as we speak. This is, by no means, by no means, all of the projects that are going on. With just these 15 projects, we have more than a dozen environmental organizations that are partnering with us, more than a dozen.

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state agencies, more than 50 private businesses, several dozen state, county, local elected officials, more than 60 other participants that have been working with us. This is on 15 projects. The point I want to -- to make here is that ADEM works with others to get projects done, to get things done that improves this -- this environment in our state, this wonderful resource that we have. And sometimes we lose -- we lose -- we lose track of that. We don't really see it happening. But that is such a key part of what we do in this state, and I want to hold those partners up and recognize the work that they do. We don't often hear much about our partners, but they are critical to our success. And if you have any questions, I'd be pleased to -- to address them. I thank you for allowing me to serve in this position. 

DR. LESTER: Congratulations on a good year.

MR. LEFLEUR: Well, we still have some things to do.

DR. LESTER: Yeah, but you -- you've really got -- I'd say you got your feet wet in a hurry on the oil spill deal.

Any questions from the Commission?

MR. BROWN: I have a couple.

MR. LEFLEUR: Yes, sir.

MR. BROWN: Being the cheap person that I am, I'm just curious about what the proposed percent increase in fees is going to be.

MR. LEFLEUR: Well, we are -- we haven't -- we haven't come up with a final number on that. We had a number before the Legislature went in session, and we're waiting to see what our budgets are going to look like to finalize that number. Your -- one of the things that figures in here is that our water program has been chronically underfunded, both at the federal level, and because our state budgets are among the smallest budgets, general fund budgets, in the country, and certainly the smallest in Region 4, our -- our Water Division has been critically underfund. And we are -- we have already had, on the books, a plan to increase our water fees to -- to try to alleviate that problem.

MR. BROWN: And my second question, if you know, was you talked about the Treasured Alabama Lakes designation. I know one lake has been -- received that; correct?

MR. LEFLEUR: Well, one lake has been proposed for it.

MR. BROWN: It's proposed for it.

And I guess my -- my question was, are there any efforts to start that process for other lakes?

MR. LEFLEUR: We have had a number of inquiries. It's been -- it's gotten a lot of attention. And one of the wonderful things about it is it gives people incentive to want to have their lake named as a treasured lake, and in doing so, it raises the awareness of high-quality water. And that's exactly what we want to have come from this. We want to have them knocking on our door to -- to get every lake in the state named as a Treasured Alabama Lake. We do have to make sure that they are -- they're meeting their use classification requirements before they're allowed to become a Treasured Alabama Lake, but we'll -- we'll help them work on that.

MR. BROWN: Thank you.

DR. LESTER: Any other questions?

(No response.)

DR. LESTER: Thank you, Mr. Director.

MR. LEFLEUR: Thank you so much.

DR. LESTER: The next item of business is a resolution we would like to present to the Commission. To be resolved is the Alabama Environmental
Management Commission recommends that the Legislature reauthorize Forever Wild funding as it is for another 20 years during this regular legislative session. I would like to say that the House passed it yesterday, and right now, it's in the Senate. I don't know if we still wanted to go ahead and do this because this has really been a helpful thing in our state.

Do I have a motion that we approve this resolution?

MR. PHILLIPS: So move, Mr. Chairman.

DR. LESTER: Motion to second?

DR. LAIER: Second.

DR. LESTER: Motion to second. All in favor, say aye and raise your hand. (All Commissioners raise their hand.)

DR. LESTER: Aye.

MR. BROWN: Aye.

DR. LAIER: Aye.

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DR. DAVIS: Aye.

DR. MILLER: Aye.

MR. PHILLIPS: Aye.

DR. LESTER: All opposed?

No response.

DR. LESTER: There's two copies, if you can sign it.

Next item is consideration of the Commission on the proposal and the adoption of proposed amendments to ADEM's Administration Code Division 335-3, Air Pollution and Control Program Regulations.

MR. GORE: Good morning, Mr. Chair, ladies, gentlemen. I'm Ron Gore with the Department's Air Division. I'm here to request that you make four changes to the Department's Air Regulations. These proposed changes went through a public comment period from December the 27th to February 11th, and a hearing was held on February the 9th. As Director LeFleur mentioned earlier, all these changes are needed to maintain primacy for the EPA programs and initiatives in the state.

First, I would like for you to adopt, by reference, the updates to EPA's rules for new source standards and for air toxics. I might mention in passing that assuming you adopt these changes, over the years, the Commission will have adopted 80 categories of new source standards and 115 categories of air toxic standards specific to different types of plants.

The second change is, if you'll recall in December, you adopted changes to our construction permitting requirements to account for greenhouse gases, and now we're asking you change our operating permit regulations to account for greenhouse gases.

Third, we have to adopt some revisions to what's called Transportation of the Conformity where we have to consider emission from automobile and truck tailpipes in planning for nonattainment areas.

And last and not least, we are making some changes to our major source, construction permitting regulations. This last change is the only area where there were any comments received. If you'll notice in your package, we reconciled those comments with some recommendations for you.

So pending any questions, I'd like to ask that you adopt these changes.

DR. LESTER: Any questions from the Commission?

MR. PHILLIPS: So moved.

DR. BROWN: Second.

DR. LESTER: Motion to second. All in favor, say aye.

MR. BROWN: Aye.

DR. LESTER: Aye.
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DR. LAIER: Aye.
DR. DAVIS: Aye.
DR. MILLER: Aye.
MR. PHILLIPS: Aye.
DR. LESTER: All opposed?
(No response.)
MR. GORE: Thank you.
DR. LESTER: Next item of business
is to consider the adoption of proposed
amendments to ADEM Administrative Code
Division 335-6, Water Quality Regulations.
MR. SISK: Good morning. Honorable
Chair and members of the Commission, I am
Lynn Sisk, and I am Chief of the Water
Quality Branch of the Water Division.
You have before you the complete
hearing record for proposed changes to
the Water Quality Program Regulations.
In January of this year, the Department
initiated the rulemaking process to add a
special designation called Treasured Alabama Lake to Chapter 335-6-10 of the

1 ADEM Regulations and to apply that
designation to Lake Martin in the Tallapoosa River basin. In addition, the
Department proposed to add the Outstanding Alabama Water Use
Classification to a segment of the Upper Tallapoosa River in the Tallapoosa River
basin in Chapter 335-6-11.
On March 15, 2011, a public hearing
was held to receive data, views, and
comments from interested persons
regarding the proposed revisions.
Written comments were accepted anytime
during the public comment period, which
extended from January 23rd through March
15, 2011.
During the comment period, the
Department received written comments from
six individuals, organizations, and at
the hearing on March 15th, 2011, six
people presented oral testimony.
All comments received were generally
supportive of the Department's proposed
changes. However, several commenters
encouraged the Department to make
additional changes beyond those proposed
in this rulemaking. Where the Department
determines new use classifications or
special designations are appropriate for
other waters not included in this
rulemaking, the Department will propose
those changes during a future rulemaking.
As discussed in the reconciliation
statement, the Department requests that
the Commission adopt the proposed
revisions.
I will be happy to address any
questions the Commission may have.
DR. LESTER: Anybody have any
questions?
MR. PHILLIPS: I move we accept
this.
DR. LESTER: Motion?
MR. BROWN: Second.
DR. LESTER: Motion is seconded.
All in favor, say aye.
MR. PHILLIPS: Sure.
DR. LEISTER: Will it have to be after that date?
MS. THOMAS: It doesn't -- just as long as you meet in June.
DR. LEISTER: Sometimes we have some of these things that we take, you know, 30 days or 60 days.
MS. THOMAS: Right. I'm not aware of any conflicts as far as any regulations.
DR. LEISTER: See what you can work with these two gentlemen.
MS. THOMAS: Okay.
MR. PHILLIPS: Debi, I can do it one week later. No problem.
MS. THOMAS: The next Friday would be the 24th. Does that suit y'all?
MR. BROWN: 50/50. The trial might not be through. It might settle or be dismissed before then.
DR. LEISTER: Let's just set it at the 24th, and then you and Debi work it out.

All in favor, say aye.
MR. BROWN: Aye.
DR. LEISTER: Aye.
DR. LAIER: Aye.
DR. DAVIS: Aye.
DR. MILLER: Aye.
MR. PHILLIPS: Aye.
DR. LEISTER: All opposed?

(No response.)
DR. LEISTER: At this time, we will ask for a motion to adjourn.
MR. PHILLIPS: I move we adjourn.
MR. BROWN: Second.
DR. LEISTER: Motion is seconded. All in favor, say aye.
Aye.
MR. BROWN: Aye.
DR. LAIER: Aye.
DR. DAVIS: Aye.
DR. MILLER: Aye.
MR. PHILLIPS: Aye.
DR. LEISTER: All opposed?

(No response.)

out.
MR. PHILLIPS: One down.
DR. LEISTER: Yeah, one down.
MR. PHILLIPS: Thank you.
DR. LEISTER: Prior to our adjourning the meeting, we'd move to the public comment period. We'll entertain a motion regarding the approval or disapproval of the requests. We have three requests to speak, and there will be a 10-minute time limit on each. And Debi will keep the time and give you a one minute before it's all over. One will be Mr. Mullen, on behalf of Choctawhatchee Riverkeeper; Ms. Dillard, on behalf of the Black Warrior Riverkeepers; and David Ludder, on behalf of the ADEM Reform Coalition.
MR. PHILLIPS: I move we allow all three.
DR. LEISTER: Motion. Do I have a second?
DR. LAIER: Second.
DR. LEISTER: Motion is seconded.

(At which time, the meeting of the Alabama Environmental Management Commission concluded and was followed by public comments at approximately 11:40 a.m. CST.)
REPORTER'S CERTIFICATE

STATE OF ALABAMA,
AUTAUGA COUNTY,

I, Shannon P. Yost, Certified Shorthand
Reporter and Commissioner for the State of
Alabama at Large, do certify that I reported
the meeting of the Alabama Environmental
Management Commission held on April 15, 2011.

The foregoing computer-printed pages
contains a true and correct transcript of the
meeting. The reading and signing of same is
hereby waived.

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

Shannon P. Yost,
Certified Shorthand Reporter
and Commissioner for the
State of Alabama at Large
ACCR #: 158
Shannon P. Yost,
Certified Shorthand Reporter
and Commissioner for the
State of Alabama at Large
ACCR #: 158
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Part B
Attachment Index

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(Agenda Item 4 – Consideration of adoption of resolution regarding the Forever Wild Program)

Attachment 3  Resolution adopting proposed amendments to ADEM Administrative Code Division 335-3, Air Pollution Control Program Regulations

(Agenda Item 5 – Consideration of adoption of proposed amendments to ADEM Administrative Code Division 335-3, Air Pollution Control Program Regulations)

Attachment 4  Resolution adopting proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program Regulations

(Agenda Item 6 – Consideration of adoption of proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program Regulations [NPDES-Related Matter])
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: April 15, 2011
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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PUBLIC COMMENT PERIOD

* 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 FEBRUARY 18, 2011

2. REPORT FROM THE DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. CONSIDERATION OF ADOPTION OF RESOLUTION REGARDING THE FOREVER WILD PROGRAM

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider the adoption of proposed amendments to ADEM Administrative Code Division 335-3, Air Pollution Control Program Regulations. The proposed revisions incorporate by reference changes promulgated by EPA to the New Source Performance Standards (NSPS) in Chapter 335-3-10, and National Emissions Standards for Hazardous Air Pollutants (NESHAPs) in Chapter 335-3-11. Revisions to Chapter 335-3-14 address revisions made to the EPA new source review regulations. Revisions to Chapter 335-3-16 address the greenhouse gas (GHG) tailoring rule with respect to operating permits for Title V sources. Chapter 335-3-17 is being proposed for revision to add revisions made by EPA to the transportation conformity and general conformity regulations. The Department held a public hearing on the proposed amendments on February 9, 2011.

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

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program Regulations, Chapters 335-6-10 and 335-6-11. The revisions to Chapter 335-6-10 would amend rule 335-6-10-.10, Special Designations, to add a second special designation to be called Treasured Alabama Lake with the accompanying description of waters to which this designation could be applied. The revisions to Chapter 335-6-11 would amend rule 335-6-11-.02(11) to add the Treasured Alabama Lake special designation of the Tallapoosa River within Lake Martin and to classify one segment of the Tallapoosa River as Outstanding Alabama Water. The Department held a public hearing on the proposed amendments on March 15, 2011.

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

Michael William Mullen, on behalf of Choctawhatchee Riverkeeper, Inc.
SUBJECT: Recent improvements on compliance enforcement and constructive suggestions for much needed immediate and longer term solutions
(Chair Lester will recommend approval of the request.)

Request 2

David A. Ludder, on behalf of the ADEM Reform Coalition
SUBJECT: Improvements in the Department’s penalty calculation methodology
(Chair Lester will recommend approval of the request.)

Request 3

Eva Dillard, on behalf of Black Warrior Riverkeeper, Inc.
SUBJECT: ADEM’s penalty and enforcement policy and deficiencies of the policy illustrated by the recent EMC decision involving Southeastern Cheese, LLC
(Chair Lester will recommend approval of the request.)
April 1, 2011

Delivered via Facsimile
Dr. John H. Lester, Chairman
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

Re: Request to Make Public Comment at April 15 Commission Meeting

Dear Dr. Lester:

This letter is written to request that I, on behalf of Choctawhatchee Riverkeeper, Inc., be granted an opportunity to address the Alabama Environmental Management Commission at its April 15 meeting concerning the following topic:

"Recent Improvements on Compliance Enforcement and Constructive Suggestions for Much Needed Immediate and Longer Term Solutions"

This topic is related to both the Department’s and the Commission’s interest in continuous improvement and also I believe will address eventual long-term cost savings.

While my presentation is not fully complete, I will address areas in which ADEM successes should be funded, point out where systemic issues that hinder or prevent needed further improvements and I will make specific recommendations on actions that could remove those barriers to improvement. Prior to the meeting date, I will provide an outline of my presentation and copies of any documents and slides I intend to use.

Thank you for your consideration of this request.

Sincerely,

Michael William Mullen
Choctawhatchee Riverkeeper

Choctawhatchee RIVERKEEPER*, INC.
P.O. Box 6734
Banks, AL 36006
334-807-1366
EMAIL RIVERKEEPER@GMAIL.COM
WEB HTTP:// ChoctawRiverkeeper googlesites.com

Choctawhatchee RIVERKEEPER*, INC. is a member of the WATERKEEPER® Alliance
April 1, 2011

Delivered via Facsimile
Dr. John H. Lester, Chairman
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

Re: Request to Make Public Comment at April 15 Commission Meeting

Dear Dr. Lester:

This letter is written to request that I, on behalf of the ADEM Reform Coalition, be granted an opportunity to address the Alabama Environmental Management Commission at its April 15 meeting concerning the following topic:

Improvements in the Department's penalty calculation methodology

This topic is germane to the Commission's statutory authority to "advise the director on environmental matters which are within the department's scope of authority" and to "develop environmental policy for the state." Ala. Code § 22-22A-6(a).

While my presentation has yet to be prepared, I anticipate that I will address the principles and purposes of penalty assessments and suggest a proposed methodology to fulfill those principles and purposes. Prior to the meeting date, I will provide an outline of my presentation and copies of any documents and slides I intend to use.

Thank you for your consideration of this request.

Sincerely,

David A. Ludder
April 1, 2011

Dr. John H. Lester, D.V.M., Chair
Environmental Management Commission
P.O. Box 301463
Montgomery, AL 36130-1463

Re: Request for Opportunity to Address the Environmental Management Commission
ADEM's Penalty Assessment Policy/Southeastern Cheese, LLC
April 15, 2011 Environmental Management Commission Meeting

Dear Dr. Lester:

Black Warrior Riverkeeper, Inc. (Riverkeeper) is a non-profit organization located in Birmingham, Alabama, whose mission is to protect and restore the Black Warrior River and its tributaries. On behalf of Riverkeeper, we would like the opportunity to address the Environmental Management Commission (EMC) on the subject of ADEM's current penalty assessment policy at your regularly scheduled meeting April 15, 2011.

We believe that the recent EMC case involving Southeastern Cheese, LLC highlights the need for a more structured penalty and enforcement policy at ADEM. As you may know, this issue has been the subject of longstanding concern by environmental stakeholders and the regulated community alike. Without a consistent, predictable and structured method of penalty calculation, ADEM program staff is at an extreme disadvantage as they work to promote compliance and assign appropriate penalties when violations occur. Refining that policy will not only enhance ADEM's enforcement of the state's environmental laws; it will also afford environmental stakeholders and the regulated community a degree of predictability, uniformity and certainty that the current policy simply does not provide. A specific presentation about how some of the deficiencies of current policy are illustrated by the Southeastern Cheese, LLC decision may offer the EMC some insight into this important issue.

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

Sincerely,

Eva Dillard
Staff Attorney
Black Warrior Riverkeeper

cc: Debi Thomas, EMC Executive Assistant
Attachment 2
RESOLUTION

WHEREAS, Forever Wild was established in 1992 by a constitutional referendum and is a program dedicated to preserving Alabama's most beautiful and environmentally sensitive land, all while expanding the recreational opportunities available to the public; and

WHEREAS, Forever Wild keeps Alabama's water and air clean; and

WHEREAS, Forever Wild has protected more than 200,000 acres of land for Nature Preserves, Wildlife Management Areas, State Parks, and Recreation areas; and

WHEREAS, over 99% of the 200,000 acres purchased by Forever Wild are available to Alabama's citizens for public use and recreation and management objectives for much of the land includes environmental education; and

WHEREAS, Forever Wild has secured thousands of acres of land that complement Alabama Department of Environmental Management's programs and policies, including the purchase of 9,746 acres of Mountain Longleaf habitat interspersed by hardwood drains within the Hatchet Creek watershed and the purchase of 35,795 acres of bottomland hardwoods, cypress and a variety of other wetland habitat types within the Mobile-Tensaw Delta, both of which have an Outstanding Alabama Water classification; and

WHEREAS, Forever Wild funding as it now exists will soon end;

THEREFORE, be it resolved that the Alabama Environmental Management Commission recommends that the Legislature reauthorize Forever Wild funding as is for an additional twenty years during the 2011 regular Legislative session.

DONE this 15th day of April 2011.

[Signatures]

John Seitz
Fred L. McCary
Hamie Brown
James E. Davis

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [335-3-10-.01/General (Amend), 335-3-10-.02/Designated Standards of Performance (Amend); 335-3-10-.03/Appendices to 40 CFR 60; (Amend); 335-3-11-.01/General (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source
Categories (Amend); 335-3-11-.07/Appendices to 40 CFR 63 (Amend); 335-3-14-.03/Standards for Granting Permits (Amend); 335-3-14-.04/Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend); 335-3-14-.05/Air Permits Authorizing Construction in or Near Nonattainment Areas (Amend); 335-3-16-.01/Definitions (Amend); 335-3-17-.01/Transportation Conformity (Amend); 335-3-17-.02/General Conformity (Amend); Appendix C/EPA Regulations Reference Documents for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (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.
ENVIROMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 15th day of April 2011.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 15th day of April 2011.

John H. Lester, Chair
Environmental Management Commission
Certified this 15th day of April 2011
Attachment 4
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

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

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

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

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

ADEM Admin. Code division 335-6- Water Quality Program Regulations
335-6-10-.10 Special Designations
335-6-11-.02 Use Classifications

IN WITNESS WHEREOF, we have affixed our signatures below on this 15th day of April 2011.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 15th day of April 2011.

John H. Lester, Chair
Environmental Management Commission
Certified this 15th day of April 2011