Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 9, 2021
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 9, 2021.

Samuel L. Miller, Chair
Alabama Environmental Management Commission

Certified this 11th day of June 2021.
Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 9, 2021

Convened: 11:00 a.m.
Adjourned: 11:34 a.m.

Part A

Transcript
Word Index

Part B

Attachment Index
Attachment 1
Attachment 2
Attachment 3
Part A
ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 9, 2021
11:00 a.m.

Taken by: Victoria M. Castillo, ACCR No. 17
APPEARANCES

COMMISSION MEMBERS PRESENT:
1. H. Lanier Brown, II, Esq.
2. John (Jay) H. Masingill, III
3. Kevin McKinstry
4. Mary J. Merritt
5. Samuel L. Miller, M.D., Chair
6. Ruby L. Perry, D.V.M.
7. Thomas P. Walters, P.E., Vice Chair

ALSO PRESENT:
1. Robert Tamberlin, ADEM Legal Counsel
2. Debi Thomas, ADEM Executive Assistant
3. Lance R. LeFleur, ADEM Director

Page 2

Page 4

DR. MILLER: The minutes are approved. Our next agenda item is -- there he is -- report from Mr. LeFleur, our Director.

MR. LEFLEUR: I will remove my mask so you all can understand me.

DR. MILLER: Well, the mandate is over.

MR. LEFLEUR: The mandate is over today, and we're still working on separation but it's nice to have the mask off a little bit.

Well, good morning, all, and welcome to those of you here for the fourth meeting of the Alabama Environmental Management Commission for FY 2021. The Department uses many types of information to analyze and optimize our performance. The information must be from credible sources and must present a true representation of the facts.

Today's report will identify some of the independent objective sources of that information and go into some detail with one of those, the updated EPA compliance and enforcement metrics, as we have done for a number of years. Our analysis utilizes information from internal sources, from independent State oversight entities and from EPA as the independent Federal oversight entity.

Here are a few of the more important internal sources of information we use to analyze our performance:

- Our internal independent Office of Environmental Quality regularly evaluates various operational quality measures throughout the Department including compliance with Standard Operating Procedures. Thirty different types of assessments are performed internally.

- Another way we measure our performance is measuring how well the Department does in achieving our strategic and annual operating plans. A progress report is provided before each Commission meeting with an annual recap at the beginning of each fiscal year in my report at the October Commission meeting.

- We review objective qualitative measures of the environment in Alabama over time utilizing water and air quality data most often from the date it first became available up to the present day. We also track the cleanup of legacy soil and groundwater contamination. It is a

Page 3

(WHEREUPON, proceedings began at 11:00 a.m.)

DR. MILLER: Good morning to everyone. Welcome to the April 9th, 2021 Environmental Management Commission meeting. We have a quorum present. And our first order of business is to consider the minutes from the meeting held on February 12th, 2021. These have been circulated to all the Commission members for their review, and I will entertain a motion to accept or reject those minutes.

MR. MCKINSTRY: Move we accept the minutes.

DR. MILLER: Is there a second?

MS. MERRITT: Second.

DR. MILLER: Moved and seconded.

Any further discussion?

(No response.)

DR. MILLER: If not, all in favor please signify by raising your right hand.

(All Commissioners raise their right hand.)

DR. MILLER: All opposed, same sign.

(No response.)
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING on 04/09/2021

Page 6

1. snapshot of what the quality of the air, water and land was in the past and what it looks like today. It covers ambient air quality and water quality, impaired waterbodies, drinking water quality, and remediated contaminated land. It's a report card, if you will, on whether the environment in Alabama is actually improving.

This type of data is not generally accessible for other states, so state-to-state comparisons are not feasible. I present this "State of the Environment in Alabama" report periodically to you and anticipate the next update to be at the June Commission meeting.

Moving up to the State level, the Department regularly analyzes performance using audits and operational reviews by various State oversight bodies including the State Auditor, the Examiner of Public Accounts, the State Comptroller and the Department of Finance.

When we look at Departmental performance measures against the rest of the nation, natural questions to consider are: In the quality of our permits comparable to the rest of the nation? Are our inspections as comprehensive as other states? Are our inspectors identifying violations as they should?

Are our labs finding what they're supposed to? Are we taking appropriate enforcement actions? Are we administering the various programs properly?

In other words, who is looking over our shoulder to make sure we are not just operating a sub par organization whose results are misleading? When comparing ourselves to the rest of the states, we rely on Federal oversight of our programs and performance analyses from EPA.

EPA performs regular targeted audits and reviews of ADEM Divisions and Branches including Air programs, such as our Clean Air Act Title V, PSD and Ambosets programs. Also looking at our inspection quality and performing Technical System audits of our ambient air monitoring in Field Operations.

ADEM audits our Water program including NPDES permit quality and inspection quality, Public Drinking Water Systems supervision and enforcement, our Drinking Water internal and external laboratory certification through our Field Operations Division and, along with NOAA, the ADEM Coastal program.

EPA audits and reviews our Hazardous Waste programs, looking at our RCRA inspections and the CERCLA assessments and site investigations we do. Also, the Groundwater program and UST trust fund. It looks at our Drinking Water State Revolving Fund and Clean Water State Revolving Fund loan programs, auditing their financial activities as well as auditing for compliance with regulations.

Each year EPA and ADEM negotiate work plans tied to EPA funding of the programs delegated to the Department. Annually, EPA performs an analysis of whether the Air, Water and Hazardous Waste program grant commitments have been met. EPA periodically performs what are known as State Review Framework audits of the Department. This type of audit covers the Air Title V, NPDES, Drinking Water and Hazardous Waste programs. It provides narrative feedback on various program elements individualized for each state, so national averages and state-to-state comparisons are not typically available.

The SRF audit, the State Review

Page 7

1. Framework audit, examines data completeness, accuracy and timeliness, inspection coverage and quality, identification of violations, timely enforcement, penalty assessment, and return to compliance.

Our State Review Framework audit report is available to the public on the Department's website.

As you can see, there is extensive internal and independent external oversight of the Department's activities. Altogether, the Department has more than 70 different independent audits and reviews of its activities. Some of those are every three years, some are every year, some are twice a year. Those audits and reviews accurately tell us how we are doing. They show us where we can improve. And, with the exception of our extensive internal audit program, other states have similar independent audits and reviews so there is every reason to have confidence that the comparative metrics generated from them that we review with you are accurate and valid.

That brings us to the EPA-generated Compliance and Enforcement metrics we will be examining today. Analyzing the rates of
compliance with permits and the rate of necessary
enforcement actions for our regulated industries
in Alabama compared to the rest of the nation is
an important way we measure our performance.
This EPA-provided analysis examines
the Air, NPDES, Drinking Water and Hazardous
Waste programs. The tool uses standard
quantifiable metrics that allow for
state-to-state comparisons and the development of
national averages.
As you may recall from years past,
the format for reviewing each program's metrics
is to look at the size and composition of the
universe of regulated facilities, then to compare
the rate of inspections, informal enforcement
actions and, significant non-compliance compared
to the rest of the nation. This format was
chosen to highlight that our objective is for the
regulated facilities to comply with the
requirements of the environmental permits and
regulations issued by the Department. By looking
at non-compliance metrics, we are in effect
looking at compliance.
When we speak of compliance and
enforcement, we are referring to compliance with
permits developed by the Department in accord
with carefully developed environmental standards
and enforcement actions when conditions in those
permits are not met.

Now to the dashboard slides that
analyze compliance with, and enforcement of,
environmental permit requirements.
First, we will look at the size of
the regulated universe for each of the four
program areas.
In Alabama, two local air programs
were grandfathered as stand-alone entities when
the Clean Air Act became law in 1970. They
operate independently of the ADEM State program,
although ADEM does provide substantial technical
and other assistance to them. Recent upgrades to
the EPA database now allow us to analyze the
activities of ADEM independent of the local
program's activities.
The universe of regulated Air
facilities under the ADEM program is down from
627 to 539 between 2012 and 2020, about a 14
percent drop. The decline is primarily the
result of some major sources closing over the
years and other facilities reducing their

emissions to the point they are no longer in the
universe of federally reportable facilities.
In the Water media, you can see the
number of regulated facilities dropped between
2012 and 2013 and has been generally steady since
then at about 9,000. The decline is the result
of EPA counting the facility once when it was
subject to a permit by rule and a second time
when it transitioned to the new general permit
during 2012. This artificially inflated the 2012
number.
In Drinking Water, the universe has
been very steady at around 580 facilities. This
is a relatively small number of facilities. In
the case of drinking water, the smaller number of
facilities that are of larger size is beneficial
because larger facilities have better access to
management and other resources.
The universe of Hazardous Waste
facilities increased from about 4,900 to nearly
5,500 in the period from 2012 to 2019 and
remained stable between 2019 and 2020. The
increase through 2019 is attributable in large
part to a national enforcement settlement
agreement that caused pharmacies and other retail
facilities selling pharmaceuticals to report as
hazardous waste generators.
Next is inspections. As has often
been repeated in my reports to you, the
Department relies on inspections as the most
significant tool to obtain compliance with
environmental permits and requirements in
Alabama. Independent research supports this
concept, as will upcoming data showing our
results.
The following graphs will show
inspection rates for each of the four media. The
different programs have different names for the
inspection activities such as Full Compliance
Evaluation or Facilities Inspected or Site Visits
or Inspection Coverage due to the slightly
different terminology used in the various Federal
enabling statutes.
The graphs will use the term
"inspections" for all media. There will be one
inspection graph for each media showing the
inspection rate for all regulated facilities. A
second inspection graph will show the inspection
rate for the largest regulated facilities in the
media, except for Drinking Water. The large
facilities are the ones that typically have the
2 greatest potential for adverse impact on the
3 environment and are therefore important to look
4 at closely. Data on the inspection of the largest
5 facilities in the Drinking Water media is not
6 broken out in reports submitted to EPA so there
7 will be no second inspection graph for Drinking
8 Water.
9 Here in Alabama and throughout the
10 nation, inspections is the area most affected by
11 COVID-19. Since inspections often require close
12 interpersonal contact in the field, the number of
13 inspections declined in 2020. You will see that
14 decline in both our state numbers and national
15 averages.
16 The blue bars represent the
17 inspection rate of all facilities during the last
18 nine years for the Department’s Air program. The
19 dashed red line represents the average inspection
20 rate for the nation. The state and national
21 averages dipped in 2020. As you can see, Alabama
22 continues to have an inspection rate that is
23 about three times the national average and, with
24 the exception of 2020, shows a fairly flat trend
25 slightly over 98 percent.

Looking at just the largest
2 regulated facilities in Air, there is a similar
3 pattern of inspections in recent years, with the
4 exception of 2020, at about 100 percent, which is
5 again about three times the national average.
6 The green bars for the Water program
7 consistently show an inspection rate for all
8 facilities that is about two and a half times
9 better than the national average shown by the red
10 dashed line. As you can see, there has been a
11 favorable trend over the years.
12 For the largest regulated facilities
13 in Water, the inspection rate has been trending
14 higher in recent years and is consistently higher
15 than the national average.
16 The orange bars for the Drinking
17 Water program show an inspection rate for all
18 regulated facilities that is typically about
19 three times the national average shown by the red
20 dashed line. As noted a moment ago, Drinking
21 Water data for large facilities only is not
22 available; however, with an inspection rate of
23 nearly 100 percent of all facilities, the largest
24 systems are being inspected at a high rate also.
25 Closing out inspections, the brown

bars for the Hazardous Waste program show a rate
1 for all inspections that is two to three times
2 the national average. During 2020, the
3 inspection rate did not drop off proportionately
4 to the same degree as the rest of the nation.
5 For Treatment, Storage and Disposal,
6 abbreviated TSD, facilities and Large Quantity
7 Generators in Hazardous Waste, the inspection
8 rate has been trending higher in recent years and
9 is about twice the national average. Both the
10 Hazardous Waste inspection graphs reflect the
11 increased emphasis on inspections to address our
12 higher than desired instances of Significant
13 Non-Compliance.
14 The enforcement group of graphs
15 highlights the second most important element,
16 after inspections, in our strategy to achieve
17 compliance. It’s been our strategy to utilize
18 education, including informal enforcement, to
19 obtain a higher level of compliance. Research
20 has shown that inspections and technical
21 assistance, which is education, are the biggest
22 contributors to compliance.
23 Most violations are not intentional.
24 They are many times the result of either not

knowing what is required under the permits,
1 accidents, or mistakes. Informal enforcement is
2 one form of education that helps avoid those
3 situations. Additionally, penalties and formal
4 enforcement actions typically require five to ten
5 times the resources of informal enforcement
6 actions so utilizing a higher percentage of
7 informal actions uses resources more effectively.
8 EPA enforcement data was used to
9 create the following graphs showing the
10 relationship between informal and formal
11 enforcement actions.
12 In this Air program graph, the blue
13 columns represent the percentage of all enforcement
14 actions that are informal and the dashed red line
15 represents the average percentage for the nation.
16 As you can see, ADRM consistently has a higher
17 rate of informal enforcement. The slowly rising
18 national trend line seems to indicate the rest of
19 the nation is seeing the benefits of increased
20 informal enforcement.
21 In the Water program, the percentage
22 of informal actions is again considerably higher
23 than the national average represented by the red
24 dashed line. Both trend lines are essentially
1 flat, ours being at about 95 percent and the rest
2 of the nation being at about 80 percent.
3 The trend for our Drinking Water
4 program is increasing informal enforcement at a
5 rate above the dashed red line representing the
6 national average that is also increasing.
7 Hazardous Waste, like the other ADWM
8 programs, shows a high rate of informal
9 enforcement that yields high levels of
10 compliance. This program has employed a rate of
11 informal enforcement that is similar to that of
12 the other ADWM programs and is higher than the
13 national average. We will be applying an
14 increased emphasis on informal enforcement and
15 other forms of education that we expect will
16 further enhance the compliance rates in our
17 Hazardous Waste program.
18 This final group of slides will look
19 at the rates of Significant Non-Compliance,
20 commonly referred to as SNC. These are the ones
21 that potentially can adversely affect human
22 health or the environment. The objective of all
23 environmental programs is to have a low
24 non-compliance rate, which is synonymous with a
25 high compliance rate. This group of slides is

1 Non-Compliance, when we want to be below the
2 national average.
3 The Hazardous Waste program
4 primarily focuses on managing hazardous waste
5 handling sites, overseeing measures to prevent
6 new hazardous material releases, and remediating
7 past hazardous material releases. For decades,
8 we have had no substantial new hazardous waste
9 sites created in Alabama and many legacy sites
10 have been cleaned up. However, in the Hazardous
11 Waste program incidents of non-compliance
12 classified as significant do occur. They
13 typically involve exceeding the maximum number of
14 days a hazardous waste can be stored at a
15 location and/or repeated occurrences of minor
16 violations such as poor recordkeeping and
17 labeling.
18 At a rate of nine percent, this
19 graph represents eleven facilities in Significant
20 Non-Compliance out of a universe of 120 major
21 facilities inspected. Importantly, none of the
22 SNCs in Alabama have been found to result in harm
23 to human health or the environment. In order to
24 reduce the hazardous waste SNC rate in the
25 future, we are implementing a stepped-up,

1 targeted education program, including video
2 format instruction, on the most common violations
3 and how to avoid them. The program will also
4 involve one-on-one training sessions with the
5 Treatment, Storage and Disposal facilities, which
6 are the largest hazardous waste handlers, as well
7 as joint sessions with their downstream
8 customers that represent the next largest
9 handlers. We will continue to address all
10 violations with appropriate enforcement action.
11 Okay. To summarize, the number of
12 regulated facilities in Alabama is generally
13 steady with some variation by media. High
14 inspection rates are being implemented across all
15 programs. The Department emphasizes informal
16 enforcement, which is a form of education.
17 Alabama has low rates of Significant
18 Non-Compliance compared to the rest of the nation
19 in our Air, Water and Drinking Water programs.
20 An enhanced inspection and instructional program
21 for the facilities covered by the Hazardous Waste
22 program is being implemented to reduce the rate
23 of Significant Non-Compliance. And, overall, the
24 Department outperforms the rest of the nation in
25 compliance and enforcement with long-term trends
in key metrics that are generally favorable. These metrics are consistent with the trends in non-statistical environmental quality measures over many years highlighted in my periodic reports on the "State of the Environment in Alabama." They are also consistent with EPA, regulated industry, and independent research groups' findings that Alabama is one of the top environmental performers in the nation.

While the state overall has an enviable environmental record, there are serious environmental issues occasionally that can and do cause great concern in local communities. Typically, each year there are several. This year significant concerns with coal ash, per- and polyfluoroalkyl substances and the application of certain byproduct materials have been expressed by citizens. We address these in regulatory programs and enforcement actions and cover them in my reports to you and in news releases. Next, in keeping with the Department's commitment to encourage our personnel to continue their professional development, I am pleased to recognize Skyler Sanderson in our Air Division who has completed the rigorous process to earn the designation of Professional Engineer. He is unable to join us today. That's his picture up there. But, Skyler, we are a stronger organization because of your work. Job well done and we appreciate your work.

On a different topic, I'm pleased to report on EPA's progress in cleaning up soil contamination in the North Birmingham area. All but a very few of the more than 2,000 individual sites in the area have been tested for contamination. About one-third have shown contamination at a level warranting removal of a layer of soil. More than 80 percent of those contaminated sites have been cleaned up. The cleanup will be complete in about two years.

This is good news for the residents of the Collegeville, Paimont and Harriman Park areas near 35th Avenue in Birmingham. They now can gain the peace of mind they have sought for so long.

EPA progress confirms that the removal action is the most efficient and effective method for addressing the contaminated fill material deposited in the area many years ago in an attempt to mitigate flooding. Other approaches to addressing the contamination would have delayed the progress by years, if not decades. ADEM endorses the approach being utilized by EPA.

In closing, please note April 22nd celebrates Earth Day that was first observed in 1970. ADEM has posted a series of videos on our YouTube channel and our website and made them available to teachers throughout Alabama as a tool to educate students and others about protecting our State's wonderful environment. We also use this outreach as a recruiting tool.

But, anyway, that concludes today's report. I would be pleased to answer any questions you may have.

DR. MILLER: Any questions?

No response.

DR. MILLER: Thank you,

Mr. Director.

MR. LEPFLE: Thank you.

DR. MILLER: The Chairman's report, we have been extremely well informed by the Department -- and we appreciate Robert and Debi and the Director for keeping us that way -- but I'd also like to recognize Laura Cranage who sends us every day the media releases and keeps us up to date on appointments, etcetera. And we appreciate her hard work, too.

Next item is item 4, consideration of adoption of the Proposed Amendment to ADEM Administrative Code 335-7, Water Supply Program Regulations.

I'd like to call on the Department.

Thank you.

MR. KITCHENS: Good morning, Commissioners. I'm Jeffery Kitchens, Chief of the Water Division. For your consideration today is a proposed new chapter of the ADEM Administrative Code 335-7-13 titled Laboratory Certification. The new chapter will codify requirements for laboratories that wish to analyze drinking water in Alabama. This will formalize the procedures that have been in use by the Department for many years in order to maintain primacy from EPA for the Public Water System Supervision Program.

Notice of this rulemaking was published on January 24th, 2021, and a public
hearing was held on March 11th, 2021. No
comments were received during the public comment
period or the public hearing.
We respectfully ask for your
favorable consideration of the proposed rule.
And I would be happy to answer any questions that
you may have.

DR. MILLER: Are there any
questions from the Department?

(No response.)

DR. MILLER: All right. I will
terminate a motion to accept these rule changes
as proposed.

MR. WALTERS: I move to adopt
the proposed amendments.

DR. MILLER: Do I hear a second?

MS. MERRITT: Second.

DR. MILLER: I think I heard a
second.

Any further discussion?

(No response.)

DR. MILLER: All right. I will
call for the question. All in favor, signify by
raising your right hand.

(All Commissioners raise their
right hand.)

DR. MILLER: All opposed, same
sign.

(No response.)

Thank you.

Is there any other business which we
need to bring before the Commission today?

(No response.)

DR. MILLER: Okay. Our next
Commission meeting is June 11th, 2021. Is there
anyone who has a conflict at that point that we
need to address?

(No response.)

DR. MILLER: Looks like we're on
for June 11th then.
The public comment period, we have
received no requests for public comments for
today; and, therefore, I will entertain a motion
to adjourn.

MS. MERRITT: So moved.

DR. MILLER: And seconded?

MR. WALTERS: Seconded.

DR. MILLER: All in favor, raise
your right hand.
<table>
<thead>
<tr>
<th>Time</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>100 15:4,23</td>
<td>335-7 25:8</td>
</tr>
<tr>
<td>11:00 3:2</td>
<td>335-7-13 25:16</td>
</tr>
<tr>
<td>11:34 28:6</td>
<td>35th 23:20</td>
</tr>
<tr>
<td>11th 26:1</td>
<td>27:11,16</td>
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<td>12:5,10,21</td>
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<td>14:13,21,24</td>
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<td>95 18:1</td>
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<td>24th 25:25</td>
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**Actions:**

- **Adoption:**
  - 7:4
  - 10:2,16
  - 11:3 17:5, 7:8,12,15, 23 22:20

- **Activities:**
  - 8:9 9:10, 12 11:18, 19 13:14

**Additionally:**

- 17:4

**Address:**

- 23:25 24:3

- ADEM 7:14
  - 8:1,11
  - 11:14,15, 18,21
  - 17:17
  - 18:7,12
  - 24:5,9
  - 25:7,15

**Adjournment:**

- 27:20

**Administering:**

- 7:4

**Administrative:**

- 25:8,16

**Adopt:**

- 26:14

**Action:**

- 23:24

**Accidents:**

- 17:2

**Accord:**

- 11:1

**Accounts:**

- 6:18

**Accuracy:**

- 9:1

**Accurate:**

- 9:21

**Accurately:**

- 9:15

**Achieve:**

- 16:17

**Achieving:**

- 5:15

**Act:**

- 7:15

**Addressing:**

- 23:25 24:3
adverse 14:2 Amendment approved 4:2 9:12,14,18
adversely 18:21 April 3:4 Avenue 23:20
affect 18:21 average 14:19,23
affected 14:10 15:5,9,15,
agenda 4:2 19 16:3,10
agreement 12:25 17:16,24
air 5:22 18:6,13
analyzes 5:5 19:8,10,
7:11 15,19,22,
10:6 24 20:2
17 25:19
analyzing 5:12 8:4
9:25 Asbestos averages 8:22 10:10
analyses 7:16 14:15,21
6:15 avoidance 21:3
17
annual 5:15, 20:15 bars 14:16
17 assessment 9:4
anticipate 6:12 beat 19:22
application 22:17 began 3:1
applying 18:13 beginning 5:18 19:4
appointments 25:4 beneficial 12:16
approach 24:5 benefits 17:20
approaches 24:3 biggest 16:22
24:5 Auditor 6:17
24:3 audits 6:16
Birmingham 23:10,20
<table>
<thead>
<tr>
<th>Word</th>
<th>Page(s)</th>
</tr>
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<tbody>
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<td>11:2</td>
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<td>carries</td>
<td>27:5</td>
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<td>case</td>
<td>12:15</td>
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<td>12:25</td>
</tr>
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<td>celebrates</td>
<td>24:8</td>
</tr>
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<td>CERCLA</td>
<td>8:4</td>
</tr>
<tr>
<td>certification</td>
<td>7:24 25:17</td>
</tr>
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<td>cetera</td>
<td>25:4</td>
</tr>
<tr>
<td>Chairman's</td>
<td>24:23</td>
</tr>
<tr>
<td>codify</td>
<td>25:18</td>
</tr>
<tr>
<td>Collegeville</td>
<td>23:19</td>
</tr>
<tr>
<td>columns</td>
<td>17:14</td>
</tr>
<tr>
<td>chapter</td>
<td>25:15,17</td>
</tr>
<tr>
<td>comment</td>
<td>26:2</td>
</tr>
<tr>
<td>Chief</td>
<td>25:13</td>
</tr>
<tr>
<td>chosen</td>
<td>10:18</td>
</tr>
<tr>
<td>circulate</td>
<td>3:9</td>
</tr>
<tr>
<td>comments</td>
<td>26:2 27:18</td>
</tr>
<tr>
<td>Commission</td>
<td>3:5,9 4:15</td>
</tr>
<tr>
<td>citizens</td>
<td>22:19</td>
</tr>
<tr>
<td>completed</td>
<td>23:1</td>
</tr>
<tr>
<td>classified</td>
<td>20:12</td>
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<td>Clean</td>
<td>7:15</td>
</tr>
<tr>
<td>8:7</td>
<td>11:13</td>
</tr>
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<td>cleaned</td>
<td>20:10</td>
</tr>
<tr>
<td>23:16</td>
<td></td>
</tr>
<tr>
<td>cleaning</td>
<td>28:1</td>
</tr>
<tr>
<td>commitment</td>
<td>3:21 25:13</td>
</tr>
<tr>
<td>commitments</td>
<td>14:16:18,</td>
</tr>
<tr>
<td>common</td>
<td>21:2</td>
</tr>
<tr>
<td>comply</td>
<td>10:19</td>
</tr>
<tr>
<td>commonely</td>
<td>18:20</td>
</tr>
<tr>
<td>communities</td>
<td>22:14</td>
</tr>
<tr>
<td>comparable</td>
<td>6:23</td>
</tr>
<tr>
<td>comparative</td>
<td>9:20</td>
</tr>
<tr>
<td>compare</td>
<td>10:14</td>
</tr>
<tr>
<td>concern</td>
<td>22:14</td>
</tr>
</tbody>
</table>
concerns 22:16
concluded 28:5
concludes 24:15
conditions 11:3
conducted 19:13
confidence 9:20
confirms 23:23
conflict 27:12
consent 28:4
considerably 17:23
consideration 25:6,14 26:5
consistent 22:2,7
consistently 15:7,14 17:17 19:9
contact 14:12
contaminated 6:5 23:16, 25
contamination 5:25 23:10,13, 14 24:3
continue 21:9 22:24
continues 14:22 19:15,18
contributors 16:23
counting 12:7
cover 22:20
difference 13:16
described 21:21
department's 9:7,10 14:18 22:23
departmental 6:20
deposited 24:1
designation 23:2
desired 16:13
detail 4:22
developed 11:1,2
development 10:9 22:25
dipped 14:21
Director 4:3 24:21 25:1
discussion 3:17 26:20
Disposal 16:6 21:5
Division 7:25 23:1 25:14
database 11:17
date 5:23 25:4
day 5:24 24:8 25:3
days 20:14
Debi 25:1
decades 20:7 24:5
decade 11:23 12:6 14:14
decay 11:23 12:6 14:14
decayed 14:13
degree 16:5
delayed 24:4
deferred 8:13
delegated 8:13
Department 4:15 5:10, 14 6:15,19 8:13,18
Department's 9:7,10 14:18 22:23
departmental 6:20
deposited 24:1
designation 23:2
desired 16:13
detail 4:22
developed 11:1,2
development 10:9 22:25
dipped 14:21
Director 4:3 24:21 25:1
discussion 3:17 26:20
Disposal 16:6 21:5
Division 7:25 23:1 25:14
<table>
<thead>
<tr>
<th>Divisions</th>
<th>17:8</th>
</tr>
</thead>
<tbody>
<tr>
<td>downstream</td>
<td>23:24</td>
</tr>
<tr>
<td>drinking</td>
<td>16:16</td>
</tr>
<tr>
<td>emissions</td>
<td>8:21</td>
</tr>
<tr>
<td>emphasis</td>
<td>12:1</td>
</tr>
<tr>
<td>emphasizes</td>
<td>16:12</td>
</tr>
<tr>
<td>eleven</td>
<td>20:19</td>
</tr>
<tr>
<td>drop</td>
<td>21:15</td>
</tr>
<tr>
<td>employed</td>
<td>18:10</td>
</tr>
<tr>
<td>educate</td>
<td>13:18</td>
</tr>
<tr>
<td>education</td>
<td>22:23</td>
</tr>
<tr>
<td>effect</td>
<td>24:5</td>
</tr>
<tr>
<td>effective</td>
<td>4:23</td>
</tr>
<tr>
<td>effectively</td>
<td>7:3</td>
</tr>
</tbody>
</table>

| element      | 25  |
| elements     | 14:2 |
| enhanced     | 19:2 |
| Engineer     | 21:10,16, |
| EPA's        | 14:6  |
| EPAGENERATED | 25:22 |
| EPA-PROVIDED | 23:3  |
| essentially  | 12:7  |
| evaluates    | 22:7  |
| entity       | 24:6  |
| Evaluation   | 23:23 |
| Examiner     | 11:12 |
| enviable     | 5:2   |
| environment  | 5:3   |
| exceeding    | 11:17 |
| exception    | 20:20 |
| expressed    | 9:25  |
| extensive    | 8:14  |
| exceed        | 22:18 |
| exceedance    | 9:8,17 |

---

**Notes:**
- **efficient:** 23:4
- **enhance:** 18:16
- **enhanced:** 21:20
- **entertain:** 3:10 26:12
- **essentially:** 17:25
- **evaluates:** 5:8
- **Evaluation:** 13:15
- **examine:** 9:1
- **examination:** 10:5
- **expect:** 17:23
- **expressed:** 22:18
- **exceeding:** 20:13
- **exception:** 9:16 14:24
- **expressed:** 9:8,17
ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING on 04/09/20

instructonal 21:20
intentional 16:24
internal 4:25 5:5,7 7:24 9:9, 17
internally 5:12
interpersonal 14:12
investigations 8:5
involve 20:13 21:4
issued 10:21
issues 22:13
item 4:2
25:6
January 25:25
Jeffery 25:13
Job 23:6
join 23:3
joint 21:7
June 6:13
27:11,16

K
keeping 22:22 25:1
key 22:1
Kitchens 25:12,13
knowing 17:1

L
labeling 20:17
laboratories 25:18
laboratory 7:24 25:17
labs 7:2
land 6:2,5
large 12:23
13:25
15:21 16:7
larger 12:16,17
largest 13:24 14:4
15:1,12,23
21:6,8
Laura 25:2
law 11:13
layer 23:15
Lefleur 4:3, 4,8 24:22

legacy 5:24
managing 20:9
level 6:14
16:20
19:13
23:14
levels 18:9
lines 17:25
loan 8:8
local 11:11, 18 22:14
location 20:15
long 23:22
long-term 21:25
longer 12:1
low 18:23
21:17
lowest 19:13
made 24:10
maintain 25:22
major 11:24
20:20
make 7:7
management 3:5 4:14
12:18

M
measures 5:9,21
6:21 20:5
22:4
measuring 5:14
media 12:3
13:12,20,
21,25 14:5
21:13 25:3
meeting 3:5,
8 4:14
5:17,19
6:13 27:11
members 3:9
MERRITT 3:15
 motion 3:10  
26:12  27:5,19
 move 3:12  26:14
 moved 3:16  27:21
 Moving 6:14
 motion 3:10  
26:12  27:5,19
 move 3:12  26:14
 moved 3:16  27:21
 Moving 6:14
 Miller 3:3,  
14,16,19,  
23 4:1,6  
24:18,20,  
23 26:8,  
11,16,18,  
22 27:2,5,  
10,15,22,  
24 28:3
 mind 23:21
 minor 20:15
 minutes 3:7,  
11,13 4:1
 misleading 7:9
 mistakes 17:2
 mitigate 24:2
 moment 15:20
 monitoring 7:18
 morning 3:3  
4:12 25:12
 natural 6:22
 negotiate 8:11
 news 22:21  23:18
 nice 4:10
 NOAA 8:1  
non-compliance 10:16,22  
16:14  18:19,24  
19:6 20:1,  
11,20  21:18,23
 non-statistical 22:3
 North 23:10
 note 24:7
 noted 15:20
 Notice 25:24
 NPDES 7:21  
8:19 10:6
 number 4:24  
12:4,11,  
14,15  14:12  
20:13  21:11
 numbers 14:14
 operate 11:14
 operating 5:11,16  
7:8
 operational 5:9 6:16
 Operations 7:19,25
 opposed 3:23  27:2
 optimize 4:16

www.huseby.com
Huseby Global Litigation 800-333-2082
<table>
<thead>
<tr>
<th>Term</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
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<td>16:4</td>
</tr>
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<td>question</td>
<td>26:23</td>
</tr>
<tr>
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<td>10:11</td>
</tr>
<tr>
<td>regulated</td>
<td>10:2,14,19</td>
</tr>
<tr>
<td>received</td>
<td>26:2,27:18</td>
</tr>
<tr>
<td>recent</td>
<td>11:16</td>
</tr>
<tr>
<td>15:3,14</td>
<td>16:9</td>
</tr>
<tr>
<td>recognize</td>
<td>22:25</td>
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<td>25:2</td>
<td></td>
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<td>22:19</td>
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<td>3:11</td>
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<td>17:11</td>
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<td>releases</td>
<td>20:6,7</td>
</tr>
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<td>22:21,25:3</td>
<td></td>
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<td>relies</td>
<td>13:5</td>
</tr>
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<td>rely</td>
<td>7:10</td>
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<td>12:22</td>
</tr>
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<td>6:5</td>
</tr>
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<td>20:6</td>
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<td>23:14,24</td>
</tr>
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<td>6:22</td>
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<td>24:17,18</td>
<td></td>
</tr>
<tr>
<td>26:6,9</td>
<td></td>
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<td>24:13</td>
</tr>
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<td>3:6</td>
</tr>
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<td>provide</td>
<td>11:15</td>
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<td>R</td>
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<td>5:16</td>
</tr>
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<td>3:21</td>
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<td>26:25</td>
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<tr>
<td>27:24,28:1</td>
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<td>7:16</td>
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<td>public</td>
<td>6:18</td>
</tr>
<tr>
<td>7:22,9:6</td>
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<td>25:22,25</td>
<td></td>
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<tr>
<td>26:2,3</td>
<td></td>
</tr>
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<td>25:25</td>
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<td>10:1,15,13:22,24,14,17,20,22,15,7,13,17,22,24</td>
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<td>16:1,4,9</td>
<td>17:18,18,5,8,10,24,25,19,8,12,14,18,20,18,24</td>
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<tr>
<td>21:22</td>
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<td>rates</td>
<td>9:25</td>
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<td>13:12</td>
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</tr>
<tr>
<td>18,16,19</td>
<td></td>
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<tr>
<td>19:1</td>
<td></td>
</tr>
<tr>
<td>21:14,17</td>
<td></td>
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<tr>
<td>referred</td>
<td>18:20</td>
</tr>
<tr>
<td>referred</td>
<td>18:20</td>
</tr>
<tr>
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<td>10:25</td>
</tr>
<tr>
<td>reflect</td>
<td>16:11</td>
</tr>
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<td>regular</td>
<td>7:13</td>
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<td>regularly</td>
<td></td>
</tr>
<tr>
<td>RCRA</td>
<td>8:3</td>
</tr>
<tr>
<td>reportable 12:2</td>
<td>resources 12:18 17:6,8 respectfully 26:4</td>
</tr>
<tr>
<td>Skyler 22:25</td>
<td>state 5:1</td>
</tr>
<tr>
<td>23:5</td>
<td>6:11,14, 16,17,18</td>
</tr>
<tr>
<td></td>
<td>8:7,8,17, 22,25 9:5</td>
</tr>
<tr>
<td>slides 11:5</td>
<td></td>
</tr>
<tr>
<td>18:18,25</td>
<td>slightly 11:14</td>
</tr>
<tr>
<td></td>
<td>14:14,20</td>
</tr>
<tr>
<td></td>
<td>22:5,11</td>
</tr>
<tr>
<td>slowly 17:18</td>
<td>State's 24:13</td>
</tr>
<tr>
<td>small 12:14</td>
<td>state-to-state 6:9 8:23 10:9</td>
</tr>
<tr>
<td>smaller</td>
<td>states 6:9, 25 7:10 9:18</td>
</tr>
<tr>
<td>12:15</td>
<td>statutes 13:18</td>
</tr>
<tr>
<td>snapshot 6:1</td>
<td>steady 12:5, 13 19:10 21:13</td>
</tr>
<tr>
<td>SNC 18:20</td>
<td>15:5,8,19</td>
</tr>
<tr>
<td>19:8,12,18</td>
<td>17:6</td>
</tr>
<tr>
<td>20:24</td>
<td></td>
</tr>
<tr>
<td>SNCS 20:22</td>
<td>states 6:9</td>
</tr>
<tr>
<td>soil 5:25</td>
<td>18:24</td>
</tr>
<tr>
<td>23:9,15</td>
<td>supposed 7:2</td>
</tr>
<tr>
<td>sought 23:21</td>
<td>synonymous 18:24</td>
</tr>
<tr>
<td>sources</td>
<td></td>
</tr>
<tr>
<td>4:18,21</td>
<td>strategic 5:15</td>
</tr>
<tr>
<td>5:1,5</td>
<td>16:17,18</td>
</tr>
<tr>
<td>11:24</td>
<td>19:1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>speak 10:24</td>
<td>Storage 16:6 21:5</td>
</tr>
<tr>
<td>SRF 8:25</td>
<td>stepped-up 20:25</td>
</tr>
<tr>
<td>stable 12:22</td>
<td>stored 20:14</td>
</tr>
<tr>
<td>stand-alone</td>
<td>strategic 5:15</td>
</tr>
<tr>
<td>11:12</td>
<td>strategy 16:17,18 19:1</td>
</tr>
<tr>
<td>standard</td>
<td>stronger 23:5</td>
</tr>
<tr>
<td>5:10 10:7</td>
<td></td>
</tr>
<tr>
<td>standards</td>
<td></td>
</tr>
<tr>
<td>11:2</td>
<td></td>
</tr>
</tbody>
</table>

www.huseby.com  Huseby Global Litigation  800-333-2082
<table>
<thead>
<tr>
<th>track</th>
<th>5:24</th>
<th>28:4</th>
<th>16:24</th>
<th>waterbodies</th>
<th>6:4</th>
</tr>
</thead>
<tbody>
<tr>
<td>training</td>
<td>21:4</td>
<td>understand</td>
<td>4:5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>transitioned</td>
<td>12:9</td>
<td>universe</td>
<td>10:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treatment</td>
<td>16:6</td>
<td>11:9,20</td>
<td>12:2,12,19</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>21:5</td>
<td>20:20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>trend</td>
<td>14:24</td>
<td>upcoming</td>
<td>13:9</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>15:11</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>17:19,25</td>
<td></td>
<td></td>
<td></td>
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<td>18:3</td>
<td></td>
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<td>19:15</td>
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<td>trending</td>
<td>15:13</td>
<td>update</td>
<td>6:13</td>
<td></td>
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<td>16:9</td>
<td></td>
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<td>19:10</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>trends</td>
<td>21:25</td>
<td>updated</td>
<td>4:23</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>22:3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>true</td>
<td>4:18</td>
<td>upgrades</td>
<td>11:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>trust</td>
<td>8:6</td>
<td>UST</td>
<td>8:6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TSD</td>
<td>16:7</td>
<td>utilize</td>
<td>16:18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>type</td>
<td>6:8</td>
<td>utilized</td>
<td>24:6</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8:18</td>
<td>utilizes</td>
<td>4:25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>types</td>
<td>4:16</td>
<td>utilizing</td>
<td>5:22</td>
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<td></td>
<td>5:11</td>
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<td>17:7</td>
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<td>typically</td>
<td>8:23</td>
<td>valid</td>
<td>9:22</td>
<td></td>
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<td></td>
<td>14:1</td>
<td>variation</td>
<td>21:13</td>
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<td>15:18</td>
<td>video</td>
<td>21:1</td>
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<td></td>
<td>17:5</td>
<td>videos</td>
<td>24:9</td>
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<td></td>
<td>20:13</td>
<td>violations</td>
<td>7:1</td>
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<td>22:15</td>
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<td>unable</td>
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<td>unanimous</td>
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**ALABAMA ENVIRONMENTAL MANAGEMENT**

**COMMISSION MEETING on 04/09/2021**

**Index:** track., Youtube

www.huseby.com  Huseby Global Litigation  800-333-2082
Part B
Attachment Index

Attachment 1 Agenda

Attachment 2 Director’s Slides
   (Agenda Item 3)

Attachment 3 Resolution adopting amendments to ADEM Administrative Code 335-7, Water Supply Program Regulations, and Attachment A, Final Rules
   (Agenda Item 4)
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: April 9, 2021
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

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Consideration of minutes of meeting held on February 12, 2021**</td>
<td>2</td>
</tr>
<tr>
<td>2. Report from the ADEM Director</td>
<td>2</td>
</tr>
<tr>
<td>3. Report from the Commission Chair</td>
<td>2</td>
</tr>
<tr>
<td>4. Consideration of proposed amendments to ADEM Administrative Code Division 335-7, Water Supply Program Regulations</td>
<td>2</td>
</tr>
<tr>
<td>5. Other business</td>
<td>2</td>
</tr>
<tr>
<td>6. Future business session</td>
<td>2</td>
</tr>
</tbody>
</table>

PUBLIC COMMENT PERIOD

Brief statements by members of the public registered to speak | 2 |

* 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 12, 2021**

2. **REPORT FROM THE ADEM DIRECTOR**

3. **REPORT FROM THE COMMISSION CHAIR**

4. **CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-7, WATER SUPPLY PROGRAM REGULATIONS**

   The Commission will consider proposed amendments to ADEM Administrative Code Division 335-7, Water Supply Program Regulations. Revisions add Chapter 335-7-13, Laboratory Certifications, to establish rules for laboratories that analyze drinking water for public water systems. The Department held a public hearing on the proposed amendments on March 11, 2021.

5. **OTHER BUSINESS**

6. **FUTURE BUSINESS SESSION**

**PUBLIC COMMENT PERIOD**

**BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK**

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission’s functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.
Attachment 2
Internally-Sourced Information

- Internal audits (30) – Office of Environmental Quality
- Strategic & Operating Plans Performance
- Trends in State of Alabama Environment
  - Ambient Air Quality (NAAQS) & Water Quality
  - Impaired water bodies – CWA 303(d) list
  - Drinking Water Quality – SDWA
  - Remediated contaminated land - RCRA

State-Sourced Information

- Alabama State Auditor
- Alabama Examiner of Public Accounts
- Alabama State Comptroller
- Alabama Department of Finance
Questions

- Are permits high quality and protective?
- Are inspections comprehensive?
- Are inspectors competent?
- Are our labs functioning properly?
- Are we administering proper enforcement?
- Are programs administered properly?

Federally-Sourced Information

- EPA Air audits / reviews:
  - Title V, PSD, Asbestos programs
  - Inspection quality and lab monitoring (FOD)
- EPA Water & Drinking Water audits/reviews:
  - NPDES permit & inspection quality
  - Drinking Water Systems supervision & enforce
  - Drinking Water lab certifications (FOD)
  - Coastal program (FOD)
Federally-Sourced Information

- EPA Hazardous Waste audits & reviews:
  - RCRA inspection quality & CERCLA (PA & SI)
  - Groundwater program & UST Trust fund

- EPA Revolving Funds audits:
  - Drinking Water & Clean Water financial
  - Drinking Water & Clean Water programs compliance

Federally-Sourced Information

- EPA grant commitments analysis

- EPA State Review Framework audits:
  - Data completeness, accuracy, timeliness
  - Inspection coverage & quality
  - Identify violations, timely enforcement, penalty assessment, return to compliance
EPA Compliance and Enforcement Metrics

SIZE OF UNIVERSE
INSPECTIONS

ADEM Air Program
Inspection Rate for ALL Federally Reportable Facilities

[Graph showing inspection rates from 2012 to 2020]
INFORMAL ENFORCEMENT

ADEM Air Program
% Informal Enforcement

Year:
- 2012
- 2013
- 2014
- 2015
- 2016
- 2017
- 2018
- 2019
- 2020

Percentage:
- 0%
- 10%
- 20%
- 30%
- 40%
- 50%
- 60%
- 70%
- 80%
- 90%
- 100%
ADEM Hazardous Waste Program
% Informal Enforcement

Alabama Department Of Environmental Management

SIGNIFICANT NON-COMPLIANCE
Summary

- Regulated Universe Steady to Growing
- High Rates of Inspections
- High Rates of Informal Enforce (Education)
- Low Rates of Serious Non-Compliance for Air, Water, Drinking Water
- Program to Reduce Hazardous SNCs
- Overall Out-perform Nation & Favorable Trends
ENVIROMENTAINAL MANAGEMENT COMMISSION
RESOLUTION


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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-7 [335-7-13;Laboratory Certification (New)] of the Department’s Water Division – Water Supply Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 9th day of April 2021.

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 9th day of April 2021.

[Signature]

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 9th day of April 2021
335-7-13-.01 **Purpose.** This chapter provides the mechanism to assure the validity and quality of the data being generated to determine compliance with the requirements of this division.

**Author:** Aubrey H. White III, James M. Arnold.
**Statutory Authority:** Code of Alabama 1975, §§ 22-23-49.
**History:** Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.02 **Applicability.** This chapter applies to any laboratory performing Department-required analyses to determine the quality of drinking water.

**Author:** Aubrey H. White III, James M. Arnold.
**Statutory Authority:** Code of Alabama 1975, §§ 22-23-49.
**History:** Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.03 **Definitions.** The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meaning:

1. **Analytical Method** – “method” number assigned by EPA that describes the proper process for obtaining accurate and repeatable analyte concentration results.

2. **Certificate** – the document issued by the Department showing those drinking water parameters and the EPA-approved Drinking Water method for
which a laboratory has received certification, and the type of certification. The certificate remains the property of the Department and must be surrendered at its direction.

(3) **Certification** – a declaration by the Department that a laboratory has been evaluated under the State Drinking Water Laboratory Certification Program and found acceptable to analyze specified parameters.

(4) **Certification Authority (CA)** – the agency in a state, or EPA, which certifies drinking water laboratories. In the state of Alabama, the CA for Drinking Water laboratories is the Department.

(5) **Certified Laboratory** – a laboratory that meets the regulatory performance criteria and any other requirements for the drinking water parameters and methods listed on the certificate.

(6) **Corrective Action Plan** – report submitted by a laboratory detailing steps it must take to satisfactorily correct deficiencies either found during an audit or that caused an unsatisfactory result on a performance evaluation (PE) sample and prevents their reoccurrence.

(7) **Department** – the Alabama Department of Environmental Management.

(8) **EPA** – the United States Environmental Protection Agency.

(9) **EPA Manual for the Certification of Laboratories Analyzing Drinking Water** – the latest edition and any addendums, which describes criteria and procedures that EPA uses in evaluating laboratories for certification.

(10) **Interim Certification** – a laboratory that is granted certification when it is impossible or unnecessary to perform an on-site audit.

(11) **Not Certified** – a laboratory, which possesses deficiencies, and the Department has determined cannot consistently produce valid data.

(12) **On-site Audit** – an inspection of a drinking water laboratory that seeks to be certified or plans to continue certified status. This inspection will include an evaluation of their facility, instrumentation, sample analysis processes, quality assurance manual/system, and personnel training and capabilities.

(13) **On-site Auditor** – a person approved by the CA and/or EPA to conduct an on-site audit.

(14) **Parameter** – a drinking water analyte for which a laboratory is seeking certification.

(15) **Performance Evaluation (PE) Sample** – an annual (or more frequent if required by the method) sample received from an American National Standards Institute (ANSI)-certified PE vendor that is analyzed by the laboratory.
laboratory results are compared to the known value by the certified PE vendor, and determined to be either acceptable or unacceptable.

(16) Provisionally Certified – a laboratory that has deficiencies but demonstrates its ability to consistently produce valid data within the acceptance limits specified in the National Primary Drinking Water Regulations (NPDWR) and within the requirements of their certification authority.

(17) Reciprocity – a type of certification that is issued by the Department to out of state laboratories that hold equivalent certification issued by EPA or EPA-approved state programs.

Author: Aubrey H. White III, James M. Arnold.
History: Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.04 Parameters Requiring Certification. Certification of the laboratory is required before the Department will accept analytical data for any parameter required by this division or a Water Supply Permit issued pursuant to this division, unless specifically exempted.

Author: Aubrey H. White III, James M. Arnold.
History: Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.05 Certification Manual. Unless otherwise directed in writing by the Department, certified laboratories and laboratories seeking certification shall comply with the EPA Manual for the Certification of Laboratories Analyzing Drinking Water. If there is a conflict between the Certification Manual and the EPA method, the EPA method shall govern.

Author: Aubrey H. White III, James M. Arnold.
History: Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.06 Certification Process. A laboratory must hold a valid certification issued by the Department before analyzing parameters that require certification and submitting the results to the Department.

   (1) The certification of a laboratory is effective for one year.

   (2) In order for a laboratory located in Alabama to be certified, the laboratory must complete the following:

      (a) Submit a completed ADEM-approved application form. This form must include the parameters for which the laboratory is seeking certification.

      (b) Submit the appropriate application fee.
(c) Submit a satisfactory set of PE samples for the parameters, using the EPA-approved drinking water analytical method for which the laboratory is applying to be certified.

(d) Successfully pass an on-site audit, conducted by an on-site auditor, within the previous three years.

1. For a laboratory seeking certification for the first time, the audit will not be scheduled until after submittal of the application and fee.

2. As a result of the on-site audit, the Department may require a corrective action plan that includes the steps to be taken to satisfactorily address any deficiencies noted in the audit report. The corrective action plan must be submitted within 60 days of receipt of the audit report.

3. In order for a laboratory located outside of Alabama to be granted certification reciprocity, the laboratory must complete the following:

(a) Submit a completed ADEM-approved application form. This form must include the parameters for which the laboratory is seeking certification.

(b) Submit the appropriate certification fee.

(c) A copy of the certification package (certificate and scope of analysis) for the appropriate parameters, from the CA which issued the laboratory's original certification. This certification shall come directly from the CA and may not be submitted by the applicant.

4. A certified laboratory must notify the CA in writing within 30 days of major changes in personnel, equipment, or laboratory location.

(a) A major change in personnel is the loss or replacement of the laboratory supervisor or a situation in which a trained and experienced analyst is no longer available to analyze a particular parameter for which certification has been granted.

(b) Upon notification by the Department that the change has resulted in a deficiency, the laboratory shall correct the deficiency by the deadline established by the Department.

5. If a complete renewal application with satisfactory PE results, audit report, and fee is not received by the certification expiration date:

(a) The laboratory may apply to renew its certificate up to 30 days after expiration.

(b) After 30 days, the laboratory may submit a complete application for initial certification if it wishes to resume analyzing drinking water samples.
335-7-13-.07 Types of Certification.

(1) Certified Laboratory. A Certified Laboratory may submit to the Department analytical results for compliance purposes for those analytes for which it is certified.

(2) Provisionally Certified Laboratory.

(a) A Provisionally Certified Laboratory may analyze drinking water samples for compliance purposes for those analytes for which it is certified.

(b) The public water system shall be given written notification of the certification status.

(c) The certification status shall be noted on all applicable analyte result reports.

(d) The certification will not be issued if the Department determines the laboratory cannot perform an analysis within the acceptance limits specified by the EPA Method, by EPA regulations, or by the EPA Manual for the Certification of Laboratories Analyzing Drinking Water.

(3) Interim Certification.

(a) A laboratory may be granted Interim Certification if the laboratory has the appropriate instrumentation, is using the approved methods, has adequately trained personnel to perform the analyses, and has satisfactorily analyzed PE samples for the analytes in question.

(b) The public water system shall be given written notification of the certification status.

(c) The certification status shall be noted on all analyte results reports for which it is relevant.

(4) Not Certified. A laboratory that is not certified shall not submit analytical results to the Department for compliance purposes for the relevant parameters.
335-7-13-.08 Certification Downgrade Process.

(1) A laboratory may be downgraded to “ provisionally certified” status for a parameter or group of parameters for any of the following reasons:

(a) Failure to satisfactorily analyze a PE sample at least annually, or as directed by the Department;

(b) Failure of a certified laboratory to notify the Department within 30 days of major changes (e.g., in personnel, equipment, or laboratory location);

(c) Failure to satisfy the Department that the laboratory is maintaining the required standard of quality, based upon an on-site audit; or

(d) Failure to report compliance data to the public water system or the Department in a timely manner.

(2) If a laboratory is subject to downgrading in accordance with paragraph (1) of this rule, it shall respond to an intent to downgrade notification from the Department within 30 days. The written response shall specify the corrective actions being taken, the time frame those actions will take to complete, and any proposed actions that need the concurrence of the Department.

(3) A laboratory that fails to satisfactorily analyze a PE sample may avoid a downgrade in certification if it identifies and corrects the problem to the Department’s satisfaction within 30 days of being notified of the failure.

(a) The laboratory shall submit a second PE sample within the Department-specified timeframe from the first unsatisfactory PE sample.

(b) If the second PE sample is unsatisfactory, the laboratory may be downgraded to “ provisionally certified”.

(4) After the Department notifies a laboratory that it has been downgraded to " provisionally certified" status for procedural, administrative, equipment, or personnel deficiency, the laboratory must correct any noted issues within 90 days.

(5) If the laboratory was downgraded to " provisionally certified" status because of a failure to satisfactorily analyze a PE sample, the laboratory shall correct its deficiencies and satisfactorily analyze another PE sample within 30 days of receipt of the certification downgrade.

Author: Aubrey H. White III, James M. Arnold.
335-7-13-09 Certification Revocation Process.

(1) A laboratory may be downgraded from certified, provisionally certified, or interim certified status to "not certified" for a particular parameter analysis for any of the following reasons:

(a) Reporting PE data from another laboratory as its own;
(b) Falsification of data or other deceptive practices;
(c) Failure to use the analytical methodology specified in the regulations;
(d) For provisionally certified laboratories, failure to successfully analyze a PE sample for a particular contaminant within the acceptance limits specified;
(e) For provisionally certified laboratories, failure to satisfy the Department that the laboratory has corrected deficiencies identified during on-site evaluations;
(f) For provisionally certified laboratories, persistent failure to report compliance data to the public water system or the Department in a timely manner;
(g) Refusal to participate in an on-site audit; or,
(h) Failure to submit complete application package.

(2) A laboratory may respond to a determination to revoke its certificate up to 30 days after notification by the Department. If the Department does not receive a response by that date or, if the response does not fully resolve the deficiencies noted by the Department, the certificate is immediately revoked.

(a) The response shall include an explanation of the reasons for the challenge and shall be signed by the laboratory’s responsible authority (such as the director, owner, or president).
(b) Denial of the response by the Department results in the immediate revocation of the certificate.
(c) If the Department determines the response to be valid, the Department may suspend the revocation of certification or upgrade the certification status to “provisionally certified” or “certified”.
(d) A laboratory with a revoked certificate shall not submit analyses to the Department for compliance purposes for any analyte covered by the revocation.
335-7-13-.10 Certification Upgrade/Reinstatement Process.

(1) A laboratory shall submit a written request to the Department seeking an upgrade or reinstatement of certification.

(2) The laboratory shall demonstrate to the Department's satisfaction that any noted deficiencies which resulted in provisionally certified status or revocation have been corrected.

Author: Aubrey H. White III, James M. Arnold.
History: Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.11 Recordkeeping.

(1) A laboratory shall maintain easily accessible records for five years from the creation of a record or until the next on-site audit is complete, whichever is longer.

(2) The laboratory shall make copies of analyses, raw data, calculations, and quality control data available to the relevant client water system upon request.

Author: Aubrey H. White III, James M. Arnold.
History: Filed: April 30, 2021; Effective: June 14, 2021.

335-7-13-.12 Special Requirements.

(1) A laboratory shall notify the Department and the water system of any exceedance of a lead/copper action level or total coliform/E Coli positive result within 24 hours of completion of the analysis.

(a) The notification shall be made to the Drinking Water Branch staff by a method approved by the Department.

(b) If the analysis result is determined outside of normal business hours, the laboratory shall use a method approved by the Department to notify the Drinking Water Branch staff as soon as possible the next business day.

Author: Aubrey H. White III, James M. Arnold.
History: Filed: April 30, 2021; Effective: June 14, 2021.