Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 24, 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 June 24, 2011.

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

Certified this 19th day of August 2011.
Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 24, 2011

Convened: 11:00 a.m.
Adjourned: 11:30 a.m.

Part A
Transcript

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Part A
COMMISSIONER LESTER: At this time, I'll call the meeting to order. There is a quorum present.

The first note is that we'll consider the minutes of the last meeting on April the 15th.

COMMISSIONER PHILLIPS: So move.

COMMISSIONER LAIER: Second.

COMMISSIONER LESTER: Motion seconded. All in favor, say aye.

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

COMMISSIONER LESTER: All opposed?

(No response.)

COMMISSIONER LESTER: The second matter is a report from the Director. Director, we got ahead -- we got -- We got to head right to you.

LANCE LEFLEUR: Right to me?

COMMISSIONER LESTER: I think you have the longest part of the meeting today.

LANCE LEFLEUR: Is that -- Is that a compliment or a warning?

COMMISSIONER PHILLIPS: Take it as it is.

LANCE LEFLEUR: Well, thank you, Chairman. It's a pleasure to be here. As usual to -- to address the Commission, thank you for having me.

I'd like to cover several items with you this morning. I'll begin with the legislative session that's just been completed the 2011 legislative session. It's come to a close, and it was a good one for ADEM in that our budget suffered no additional cuts beyond those recommended by the Governor, and our legislative initiative was a success.

In anticipation of imminent action by EPA, Act 258 was passed by the Alabama Legislature, amending the Alabama Solid Wastes and Recyclable Materials Management Act to remove an existing exemption for coal ash wastes resulting from the combustion of coal and other fossil fuels at electric generating plants. Those substances will now be regulated as solid waste in Alabama just as they are in the rest of the nation. The Department is beginning the rule-making process to modify its existing rules to reflect this new statutory requirement.

In our April Commission meeting, I spoke about how important our partnerships are in accomplishing the work of the Department. Today there is an -- an agenda item recognizing two members of the Alabama Legislature who understand the importance of our mission to assure for all citizens of the state a safe, healthful, and productive environment.
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1 environment. These men, Senator Del Marsh of Anniston,
2 President Pro Tem of the Senate, and Representative Greg
3 Canfield of Vestavia Hills, were instrumental in passing this
4 important piece of legislation to control coal ash in Alabama.
5 This bill has been in the works for more than two years. It's
6 appropriate and a pleasure to thank them for their efforts.
7 You have before you resolutions to do this. And with your
8 permission, I'd like to read the resolutions out loud.
9 COMMISSIONER LESTER: Go ahead.
10 LANCE LEFLEUR: Okay. Now, there are two
11 resolutions, and they're identical. One is -- is for
12 Representative Canfield and one for Senator Marsh. But I will
13 read a single one and insert the names of both of the parties.
14 The resolution reads, "Whereas Senator Del Marsh of
15 Anniston as a member and President Pro Tem of the Alabama
16 State Senate and Representative Greg Canfield of Vestavia
17 Hills as a member of the State House of Representatives
18 sponsored legislation during the 2011 regular session of the
19 Alabama State Legislature to classify coal combustion waste as
20 a solid waste, subject to regulation under the Solid Waste and
21 Recyclable Materials Management Act; and whereas this
22 legislation was passed by the House of Representatives and the
23 Senate of the State of Alabama; and whereas Alabama has been

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the only state in the nation that has not regulated the
2 disposal of coal combustion waste as a solid waste; and
3 whereas previously, waste disposal companies could lawfully
4 dispose of coal combustion waste anywhere within the State of
5 Alabama with impunity; and whereas this lack of regulation has
6 piqued national interest in bringing significant quantities of
7 coal combustion waste from out-of-state for disposal in
8 Alabama due to the lack of regulation; and whereas the
9 enactment of this legislation demonstrates the commitment of
10 Senator Marsh and Representative Canfield and the Alabama
11 Legislature to the health and well-being of Alabama citizens
12 and their environment.
13 Now, therefore, be it resolved that the Alabama
14 Environmental Management Commission express gratitude to
15 Senator Marsh and Representative Canfield for their efforts in
16 promoting a better environment and an improved quality of life
17 for the citizens of the State of Alabama."
18 I read that resolution which, I believe, is before
19 you and -- and ready to be proposed. I'll defer to you for
20 action.
21 COMMISSIONER LESTER: Go ahead and present them.
22 LANCE LEFLEUR: Okay. These resolutions -- we have
23 them here. I -- we have Representative Canfield with us.

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1 Phillip Ryan is representing Del -- Senator Marsh. But I
2 would like to present them on your behalf -- one for Senator
3 Marsh and Representative Canfield. There are you right in
4 front of me here. Let me make sure I get the right one here.
5 All right. Representative Canfield, and this will be for
6 Representative -- Senator Marsh.
7 Please, we'd like to take a photo, if we may.
8 How about we take one on one. Will that be good?
9 (Photos were taken.)
10 REPRESENTATIVE CANFIELD: I'd just like to thank the
11 Chairman and the Commission for this recognition. It's not
12 often that a regulatory bill is brought before the Legislature
13 that has such widespread support. This measure actually
14 brought forward support from the environmental community, from
15 industry, and from government. And to bring those three
16 parties together in harmony over a bill that is much needed
17 with regulation and oversight, that everyone agrees is much
18 needed, is a breath of fresh air. And so I thank you, and I
19 thank ADEM for their leadership in doing really the
20 trail-blazing work to help pave the way for this bill's
21 passage. So thank you.
22 PHILLIP RYAN: I'll be brief, but I apologize for
23 the B-team having to be here instead of Senator Marsh. He's

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been on a world tour for his business, and so he issues his
2 apologies for not being here personally. But thank you for
3 the work that y'all do. Representative Canfield remarked
4 about all the state agencies. He said, we need these guys to
5 protect us from the EPA. So we appreciate all the work that
6 y'all do and glad that we can support your efforts.
7 COMMISSIONER LESTER: Representative Canfield, we
8 would like to thank you and Phillip, as you relayed to the
9 Senator, y'all's work. And we just appreciate the work that
10 y'all are doing. And I would like to say that -- and Scott
11 can verify this -- it's nice to have a Director and the people
12 that work for us and all working with the Legislature and
13 getting the proper facts and everything so that these things
14 go smooth. And Scott knows, in the past, we've had a lot of
15 problems. Some of our folks couldn't work with the
16 Legislature, and so we were left out. This is one thing that
17 shows us especially in this past session to get something like
18 this passed with all the other things that were going on. And
19 I do appreciate the Representative Canfield and Senator Marsh
20 -- We do appreciate working with our staff and our Director.
21 Thank you.
22 LANCE LEFLEUR: I have to add my thanks also and tip
23 my hat to our -- our people that work over there when the
response to them.
2 The Deepwater Horizon oil spill response continues. It's on-going as of -- as we speak. In excess of 35,000 departmental staff hours have been expended. The Alabama response is generally entering Stage 4, which is the final stage of the response.
7 The current focus is on first ensuring the response remains coordinated with the local governments.
9 Second, we're focused on identification and removal of submerged oil mats to the extent that safety will allow.
11 Our third focus is having coordinated tropical weather response plans to integrate Stafford Act, which is FEMA, debris response with the Gulf Coast Incident Management Team oil spill response, in case increased tar balls and -- are encountered as a result of a storm event. Finally, fourth, we're focused on ensuring the completion of cleaning within the Bon Secour National Wildlife Refuge and the far end of -- west end of Dauphin Island. At the same time, we are seeking to ensure that the beaches that have already been cleaned remain clean. So those are our areas of focus in the -- in this spill event.
22 In the budget area, as I previously mentioned, our general fund operating budget is now final, and although we suffered no additional cuts, the reduction was still an historic 28 percent of our general fund appropriations. We're prepared to meet this challenge without laying off any personnel, which means we will not be required to compromise our core mission. And that's -- that's the good news in this.
6 The final general fund budget is down $1.55 million, which is 28 percent of the budget.
8 In response to this, we are increasing -- we will be increasing -- We're coming to you to authorize the increasing of certain fees primarily in the water area but across the board on others to a lesser extent. We will increase fees by a total of $1.38 million or 19 percent of our total fee structure. This is in comparison to the 28 percent decline in our budget. That -- Of that 19 percent fee increase, 5 percent is a previously unrecovered cost-of-living adjustment that the Department was authorized to recover but did not recover in prior years. The remaining 14 percent of that 19 percent increase in fees represents a recovery of only about two-thirds of the dollars cut from the budget.
18 This will still leave Alabama with an attractive fee structure and it will be attractive to incoming businesses compared to other states, and the fees will still be below our statutory maximum. We have a statutory maximum to be able to
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1. recover 100 percent of our cost of issuing permits. This will
2. bring us to about a 60 percent recovery of the cost of issuing
3. the permits. So we are not at our statutory maximum.
4. The final piece to recover this cut in our budget will
5. come from applying previously-authorized fees which have not
6. been implemented in the past. There's some sectors where we
7. have fees that are approved but have not been implemented.
8. And we will be implementing those, and that will bring in
9. about $1.5 million. So the sum total of fee increases will
10. just about recover our cut to our overall operating budget.
11. As I've discussed in past Commission meetings, the
12. Water Division is one of our main areas of focus. This is
13. especially true in budget matters. Because water programs
14. throughout the nation are underfunded at the federal level,
15. much more so than air programs or land programs, we -- we have
16. to -- excuse me, the states have to supplement their water
17. budgets from their general funds. All the previous mentioned
18. cuts -- and fee increases will apply almost totally to
19. the Water Division. Given Alabama's extremely small general
20. fund allocation to the Department compared to virtually all
21. other states and given that preexisting needs in the Water
22. Division actually require increased budget allocations, it's
23. critical to at least recover this year's cuts to our already

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1. bare bones budget in water. The fee increases that we talked
2. about briefly will help us do that.
3. While I'm on Water Division, let me briefly go over
4. -- report to you on a couple of our ongoing initiatives.
5. We've been trying to strengthen our stormwater branch and
6. to -- to move us forward on that, we are bringing on board a
7. private sector engineer who has worked with ADEM over a period
8. of about 20 years, and he will be a tremendously important
9. addition to our stormwater program. This kind of thing
10. doesn't happen very often, and we're very pleased to have him
11. on board in our program. We've streamlined our stormwater
12. inspection and enforcement by reducing the three or more
13. inspections previously required to get us to an administrative
14. order down to a maximum of two inspections. So we're
15. streamlining that process. We've also consolidated all
16. stormwater enforcement in the Field Operations Division to
17. eliminate duplication of effort. There was some overlap
18. between the Water Division and Field Operations Division, and
19. we've consolidated in Field Operations to eliminate that
20. overlap.
21. To improve efficiency, we are increasing our
22. electronic DMR penetration. Now, DMR for those in the
23. audience, are the discharge monitoring reports that are filed

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1. by those entities that -- that have water discharges.
2. We currently have about 5,000 DMRs to be moved on a
3. monthly basis from a paper format to an electronic format.
4. All -- We have 2,800 of those 5,000 entities that are
5. potential holders of a general permit. Our construction
6. stormwater general permit was just issued recently. One of
7. the conditions of that permit, operating under that permit, is
8. to file electronic DMRs. We believe that virtually all of the
9. qualifying units -- these 2,800 units -- will opt to be
10. regulated under the general permit as a -- as a means to
11. regulate their discharges. And in doing so, they will join --
12. They will convert over from the paper format to the electronic
13. format, and this will bring all 2,800 of them into the
14. electronic format. This should happen over a period of about
15. 18 months. The 2,200 remaining entities that are non -- that
16. are likely nongeneral permit entities, of those 2,200, 880 are
17. currently in the electronic DMR program. If not done earlier,
18. the renewals of these permits will require them to move to
19. electronic format; and that should happen over a period of
20. about five years. So we'll be adding about 250 a year to
21. that.
22. This is an important piece of streamlining for the
23. Department. With the -- With the 880 that we currently have

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1. on the electronic format, we have already been able to reduce
2. two data entry clerks and use those spots for other -- other
3. departmental activities. With the increase of our electronic
4. reporting system, we anticipate that we'll have significant
5. personnel efficiencies.
6. On the federal side of the budget, the FY 2012 cuts
7. are still unknown, but indications that we've gotten recently
8. are that they will be selective cuts. And these will take
9. place probably in programs such as our 319 program where we
10. make grants to various watersheds around the state. These
11. cuts will, for the most part, be passed through to others. It
12. will decrease our environmental efforts in the state if we are
13. unable to -- to have these grants for improvements of non-
14. point water -- non-point sources such as that. But as far as
15. the operating budget for the Department, our operating budget,
16. we think there may be minimal impact from the federal side.
17. The final area that -- event that I'd like to review
18. with you briefly is the outbreak of tornadoes that took place
19. on April 27th of this year that devastated our state. With
20. more than 240 deaths, the loss of life was horrendous.
21. Billions of dollars of damage was done. Along with these grim
22. statistics, it's estimated that approximately 10 million cubic
23. yards of debris were created by the April tornadoes. Through
the end of May, more than 4.3 million cubic yards of debris have been removed. Although significant work remains to be done, Governor Bentley is to be commended for the success of the recovery efforts to date and particularly for his leadership during one of the greatest natural disasters our state has ever faced.

Within three days following the storms, ADEM was able to secure and get back on line all 511 of the impacted drinking water and wastewater systems in that area of the state. To facilitate the clean-up and recovery process and protect human health, the Department has exercised the discretion provided to it by statute to allow vegetation and untreated wood to be burned and has provided guidance for the proper recovery and disposal of building debris in appropriate landfills. We are also overseeing proper recovery and disposal of electronic -- electrical transformer oil from thousands of downed utility poles, displaced fuel storage tanks, and fuel and oil leaking from sunken vessels. These efforts will continue -- will be ongoing as long as the need exists.

In spite of the unfortunate events that have befallen our state and the devastating -- the distressing reports that accompany them, I would like to close on a hopeful note. The Department has responded robustly and effectively to the challenges presented during this last year. I can assure you that the Department is strong and moving forward on numerous initiatives to better serve the citizens of Alabama. I thank you, Commission members, for your service to the state, and I also thank you for the opportunity to allow me to serve this state. If there are any questions, I'd be pleased to -- to respond to them now.

COMMISSIONER LESTER: Do any Commissioners have a question?

(No response.)

COMMISSIONER LESTER: We'd just like to say you've had an eventful year. You got a good start. And also our Department -- the Department is really on the top. You know, they're the top.

LANCE LEFLEUR: Well, it's -- picking up on your comment -- The people in the Department have gone the extra mile on a number of occasions. Our Field Operations people, while they're still having people assigned down in the Gulf on the oil spill, have to ask people to pull extra duty for the tornadoes that are coming in the northern part of the state. And they've really gone the extra mile.

COMMISSIONER LESTER: Thank you.

LANCE LEFLEUR: Thank you very much.

COMMISSIONER LESTER: The next Item, Item 4, is on Petitioner - Kids versus Global Warming, which is a fossil fuel carbon dioxide emission. And we'll note for the record that they -- petitioners have withdrawn this petition.

The next Item is the McLean Enterprises, LLC, versus ADEM. This is an NPDES-related matter. And I'll note that what we have -- Each of you have a report of the hearing officer's recommendation, modification, or administrative order issued to McLean Enterprises and recommended dismissal of the appeal.

Do I have a motion?

COMMISSIONER DAVIS: So move.

COMMISSIONER RICHARDSON: Second.

COMMISSIONER LESTER: Motion seconded to adopt the report of the hearing officer. All in favor, say aye.

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

COMMISSIONER LESTER: All opposed?

(No response.)

COMMISSIONER LESTER: The next order -- item is to consider the report of the hearing officer's recommendation to Commission to approve that administrative law order from REEF as issued.

Do I have a motion?

COMMISSIONER MILLER: I make a motion.

COMMISSIONER LESTER: I have a motion to adopt the report of hearing officer. Second?

COMMISSIONER LAIER: Second.

COMMISSIONER LESTER: All in favor, say aye.

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

COMMISSIONER LESTER: All opposed?

(No response.)

COMMISSIONER LESTER: Do the Commissioners have any other business?

(No response.)

COMMISSIONER LESTER: If not, our next meeting will be August the 19th. Do the Commissioners have any problem with this date?

COMMISSIONER PHILLIPS: None.

COMMISSIONER LESTER: If it's all right -- Scott, he's -- He's in a whirl somewhere. This year he just spent 300 -- how many thousand?

COMMISSIONER PHILLIPS: 28.

COMMISSIONER LESTER: 328,000 miles in an airplane
for work. So that's some air miles. Now, I'll call for a --
entertain a motion to adjourn.

COMMISSIONER PHILLIPS: So move.
COMMISSIONER LESTER: Second?
COMMISSIONER MILLER: Second.
COMMISSIONER LESTER: All in favor say aye.
(Commission members in favor of the motion so
indicated.)
COMMISSIONER LESTER: All opposed?
(No response.)
(Meeting adjourned.)
(The foregoing AEMC Commission Meeting
concluded and was adjourned at approximately
11:30 a.m., on June 24, 2011.)

REPORTER'S CERTIFICATE

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

I further certify that the foregoing transcript is a true
and correct transcript of the proceedings contained herein.
I further certify that I am neither of kin nor of counsel
to the parties to said meeting, nor in any manner interested
in the results thereof.

Done this the 30th day of June, 2011.

Amanda Shirley, ABCR #2016
Reporter and Notary Public
State of Alabama at Large
I, Amanda Shirley, Certified Court Reporter and Notary Public in and for the State of Alabama at Large, do hereby certify that I reported stenographically and then reduced to typewritten form by means of computer-aided transcription my stenographic notes of the foregoing Alabama Environmental Management Commission Meeting.

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

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

Done this the 30th day of June, 2011.

Amanda Shirley /s/
Reporter and Notary Public
State of Alabama at Large
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Part B
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Attachment 1  Agenda

Attachment 2  Resolutions for Senator Del Marsh and Representative Greg Canfield

(Agenda Item 2 – Report from the Director)

Attachment 3  Order adopting the Report of the Hearing Officer

(Agenda Item 5 – McLean Enterprises, LLC v. ADEM, EMC Docket No. 10-07 [NPDES-Related Matter])

Attachment 4  Order adopting the Report of the Hearing Officer

(Agenda Item 6 – REEF, LLC v. ADEM, EMC Docket No. 11-02 [NPDES-Related Matter])
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: June 24, 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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* 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.
EMC Meeting Agenda
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1. CONSIDERATION OF MINUTES OF MEETING HELD ON APRIL 15, 2011

2. REPORT FROM THE DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. CITIZEN PETITION FOR PROMULGATION OF A RULE TO REGULATE FOSSIL FUEL CARBON DIoxide EMISSIONS AND TO ESTABLISH AN EFFECTIVE EMISSIONS REDUCTION STRATEGY THAT WILL ACHIEVE A CONCENTRATION OF 350 PPM ATMOSPHERIC CARBON DIoxide BY 2100, PETITIONER – KIDS VS. GLOBAL WARMING, EMC RULEMAKING PETITION 11-01

The Commission will note for the record Petitioner Kids vs. Global Warming’s withdrawal of the petition for rulemaking.

5. MCLEAN ENTERPRISES, LLC V. ADEM, EMC DOCKET NO. 10-07 (NPDES-RELATED MATTER)

The Commission will consider the Report of Hearing Officer recommending modification of ADEM Administrative Order No. 10-131-WP and dismissal of this appeal. ADEM Administrative Order No. 10-131-WP was issued on July 7, 2010, to McLean Enterprises, LLC, Copper Creek Subdivision, in Gerald, Dale County, Alabama, NPDES registration ALR16ECB9.

6. REEF, LLC V. ADEM, EMC DOCKET NO. 11-02 (NPDES-RELATED MATTER)

The Commission will consider the Report of Hearing Officer recommending that the Commission approve ADEM Administrative Order No. 11-009-WP as issued. ADEM Administrative Order No. 11-009-WP was issued on October 22, 2010, to REEF, LLC, in Sylacauga, Talladega County, Alabama, SID Permit IU 35-61-00014.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSION
Attachment 2
WHEREAS, Senator Del Marsh of Anniston, as a member and President Pro Tempore of the Alabama State Senate, sponsored legislation during the 2011 Regular Session of the Alabama State Legislature to classify coal combustion waste as a solid waste subject to regulation under the Solid Wastes and Recyclable Materials Management Act; and,

WHEREAS, this legislation was passed by the House of Representatives and the Senate of the State of Alabama; and,

WHEREAS, Alabama has been the only state in the nation that has not regulated the disposal coal combustion waste as a solid waste; and,

WHEREAS, previously waste disposal companies could lawfully dispose of coal combustion waste anywhere within the State of Alabama with impunity; and,

WHEREAS, this lack of regulation had piqued national interest in bringing significant quantities of coal combustion waste from out-of-state for disposal in Alabama due to the lack of regulation; and,

WHEREAS, the enactment of this legislation demonstrates the commitment of Senator Marsh and the Alabama Legislature to the health and well-being of Alabama citizens and their environment; now,

THEREFORE, be it resolved that the Alabama Environmental Management Commission express gratitude to Senator Marsh for his efforts in promoting a better environment and an improved quality of life for the citizens of the State of Alabama.

DONE this 24th day of June 2011.
State of Alabama

Resolution

WHEREAS, Representative Greg Canfield of Vestavia Hills, as a member of the Alabama State House of Representatives, sponsored legislation during the 2011 Regular Session of the Alabama State Legislature to classify coal combustion waste as a solid waste subject to regulation under the Solid Wastes and Recyclable Materials Management Act; and,

WHEREAS, this legislation was passed by the House of Representatives and the Senate of the State of Alabama; and,

WHEREAS, Alabama has been the only state in the nation that has not regulated the disposal of coal combustion waste as a solid waste; and,

WHEREAS, previously waste disposal companies could lawfully dispose of coal combustion waste anywhere within the State of Alabama with impunity; and,

WHEREAS, this lack of regulation had piqued national interest in bringing significant quantities of coal combustion waste from out-of-state for disposal in Alabama due to the lack of regulation; and,

WHEREAS, the enactment of this legislation demonstrates the commitment of Representative Canfield and the Alabama Legislature to the health and well-being of Alabama citizens and their environment; now,

THEREFORE, be it resolved that the Alabama Environmental Management Commission express gratitude to Representative Canfield for his efforts in promoting a better environment and an improved quality of life for the citizens of the State of Alabama.

DONE this 31st day of June 2011.

John Parker
Governor

W. Scott Finley
Lieutenant Governor

Jerry D. Richardson
Attorney General
Attachment 3
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: )
) McLean Enterprises, LLC, )
) Petitioner, )
vs. ) EMC Docket No. 10-07
) Alabama Department of Environmental Management, )
) Respondent.
)

ORDER

This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Report of the Hearing Officer is hereby adopted; and

2. That pursuant to the adoption of the Report of the Hearing Officer, the recommendations of the Hearing Officer contained in said Report are adopted; and

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

4. That a copy of this Order, along with a copy of the Report of the Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.
Environmental Management Commission Order
Page 2

ISSUED this 24th day of June 2011.

APPROVED:

[Signatures of Commissioners]

DISAPPROVED:

[Signatures of Commissioners]

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 24th day of June 2011.

John H. Lester, Chair
Environmental Management Commission
Certified this 24th day of June 2011

ABSTAINED:

[Signatures of Commissioners]

RECUSED:

[Signatures of Commissioners]
BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MCLEAN ENTERPRISES, LLC,

Petitioner,
v.
THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Respondent.

DOCKET No. 10-07

REPORT OF HEARING OFFICER

The parties to this cause, McLean Enterprises, LLC and the Alabama Department of Environmental Management, have proposed settlement of this matter by way of filing a Joint Motion to Modify Order and to Dismiss Appeal. The parties have indicated in the motion that they mutually agree to the following modifications of Administrative Order No. 10-131-WP:

(1) to reduce the penalty from $39,000 to $20,000:

(2) to include the following payment schedule for the civil penalty: McLean Enterprises, LLC shall pay the $20,000 civil penalty in eleven installments. The first installment shall be in the amount of $10,000 and the remaining ten installments shall be in the amount of $1,000 each. Payment of the first installment shall be due within thirty days of the date of the final Order of the Alabama Environmental Management Commission, with payment of the subsequent ten installments due on the first of each month thereafter:

(3) to require deadlines for compliance with the remaining provisions of Administrative Order No. 10-131-WP to run from the date of the final Order of the Alabama Environmental Management Commission.

The parties have further indicated in the motion that they mutually agree that, upon the Alabama Environmental Management Commission's approval of the above modifications to Administrative Order No. 10-131-WP, this matter is due to be dismissed.
THEREFORE, it is the recommendation of the undersigned Hearing Officer to the Commission that Administrative Order No. 10-131-WP be modified to include a reduced penalty of $20,000 and the above civil penalty payment schedule, and to require compliance with the remaining provisions to run from the date of the final Order of the Alabama Environmental Management Commission. Following this, it is the recommendation of the undersigned Hearing Officer that McLean Enterprises, LLC’s appeal in AEMC Docket No. 10-07 be DISMISSED.

Done this the ___ day of ___ , 2011.

JAMES F. HAMPTON
Hearing Officer

Schuyler K. Espy, Esq.
James L. Wright, Esq.
Robert H. Brogden, Esq.
Debra S. Thomas
Attachment 4
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:                )
)                    )
REEF, LLC,               )
) Petitioner,             )
) vs.                    ) EMC Docket No. 11-02
) Alabama Department of   )
) Environmental Management,
) Respondent.             )

ORDER

This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Report of the Hearing Officer is hereby adopted; and

2. That pursuant to the adoption of the Report of the Hearing Officer, the Findings of Fact and Conclusions of Law and Recommendations contained in said Report are adopted; and

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

4. That a copy of this Order, along with a copy of the Report of the Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally or by certified mail.
ISSUED this 24th day of June 2011.

APPROVED:

[Signatures]
Commissioner

Commissioner

Commissioner

DISAPPROVED:

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
Commissioner

ABSTAINED:

[Signature]

RECUSED:

[Signature]

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 24th day of June 2011.

John M. Lester, Chair
Environmental Management Commission
Certified this 24th day of June 2011
BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

REEF, LLC,
Petitioners,
v.
THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Respondent.

DOCKET No. 11-02

REPORT OF HEARING OFFICER

The undersigned Hearing Officer, duly employed by the Environmental Management
Commission to conduct the hearing and all related proceedings pertinent to this matter, offers
this report which includes Findings of Fact, Conclusions of Law and Recommendations.
This report is submitted pursuant to Rule 335-2-1-.27 of ADEM Admin Code and is
submitted along with the entire record of these proceedings including a complete transcript
of the hearing, all documents allowed into evidence, and other relevant briefs and
submissions of the parties.

I. INTRODUCTION AND PROCEDURAL HISTORY OF THIS PROCEEDING

On October 22, 2010, the Alabama Department of Environmental Management
(“ADEM” or “the Department”) issued Administrative Order Number 11-009-WP (“the
Order”) to REEF, LLC (ADEM Exhibit B) for, among other things, violations of State
Indirect Discharge (“SID”) Permit IU-35-61-00014 (ADEM Exhibit A). REEF, LLC
operates a centralized wastewater treatment facility in Sylacauga, Alabama that takes
wastewaters from other facilities, treats them, and then discharges to Sylacauga, Alabama’s publicly owned wastewater treatment facility pursuant to its SID Permit. (Tr. 31-32). On November 20, 2010, REEF LLC appealed the Order to the Alabama Environmental Management Commission ("The AEMC" or "the Commission"). The Commission appointed this Hearing Officer to hear the matter and to make proposed findings of fact, conclusions of law and recommendations on the question whether the Order should be modified, disapproved or approved by the Commission. See, Ala. Code §22-22A-7(c ). On January 28, 2011, the Hearing Officer scheduled the matter for hearing on March 28, 2011, by Prehearing Order.

This matter came to be heard by this Hearing Officer on March 28, 2011, at which time REEF LLC appeared without legal representation. At that time members of REEF LLC offered into evidence a document including their responses to ADEM’s Order, over ADEM’s objections. That document was admitted into the record by the Hearing Officer. At the conclusion of the hearing ADEM renewed its objection to the documents not only on the original grounds that members cannot represent LLCs in legal processes, but also on the grounds that ADEM was uncertain whether the documents had been provided to ADEM as required by the prehearing Order. With the following ruling on that Motion the record closed. The Hearing Officer’s findings of fact and conclusions of law follow.

II. FINDINGS OF FACT

1. REEF LLC is a limited liability company.
2. REEF LLC ("REEF") operates, or operated, a centralized wastewater treatment facility in Sylacauga, Alabama that takes, or took, wastewaters from other facilities, treated them and then discharged them to waters of the State through the City of Sylacauga's wastewater treatment plant.

3. REEF applied for and obtained SID Permit IU-35-61-00014 for these discharges.

4. The wastewaters taken in by REEF were collected in concrete lined ponds. These ponds were previously owned by Avondale Mills and were probably constructed 20 to thirty years ago. (Tr. 22-23)

5. Eric Sanderson, environmental engineer supervisor with the Industrial Section of the Department's Water Division, testified ADEM observed cracks in the concrete impoundments above the water line. (Tr. 16-17, 24)

6. REEF repaired the cracks above the water line, but ADEM has concerns there might be cracks in the concrete below the water line. (Tr. 24, 34).

7. Cary Spiegel is a hydrogeologist with ADEM's Land Division. (Tr. 38)

8. Mr. Spiegel conducted a site investigation of REEF's facility on April 1, 2010. (Tr. 38)

9. At that time Mr. Spiegel observed, and photographed, a dark liquid in a trench adjacent to an impoundment near a manhole REEF filled with cement (Tr. 45-46, ADEM Exhibit C, photograph T)
10. Mr. Spiegel did not sample the dark liquid and could not testify as to its origin, only that the dark liquid was there in the trench adjacent to the impoundment and that it could have been from either the impoundment or a broken pipe. (Tr. 44, 46)

11. Based upon the cracks in the concrete above the water line, and based upon the observation of the dark liquid in the trench adjacent to the impoundment, ADEM's Order requires REEF to determine whether the impoundments are cracked below the water line, which necessarily entails draining the impoundments to inspect the bottoms of the impoundments. (Tr. 25, 32, 34)

12. The Order also requires REEF to refrain from discharges to Sylacauga's wastewater treatment plant that could interfere with the operations of Sylacauga's wastewater treatment plant. (Tr. 26)

13. This provision of the Order does no more than to restate the conditions of REEF's SID permit. (Tr. 26)

14. Sylacauga decided REEF's discharges were causing interference with Sylacauga's operation and cut off service to REEF. (Tr. 26-27)

15. That decisions rests with Sylacauga, not ADEM. (Tr. 27)

16. REEF's SID Permit does not require Sylacauga to take REEF's wastewater. (Tr. 27-28).

17. The Order does not require Sylacauga to take REEF's wastewaters. (Tr. 28)
18. The Order requires REEF to conduct a groundwater assessment to determine whether the impoundments have discharged to soils or groundwater and, if so, the horizontal and vertical extent of that contamination. (Tr. 28).

19. There is no way to determine whether groundwater is polluted without such an assessment. (Tr. 28, 44).

20. If the impoundments are not leaking the Order requires no further action from REEF with respect to the impoundments. (Tr. 25)

21. If there is no groundwater contamination, the Order requires no further action from REEF with respect to groundwater contamination. (Tr. 29)

22. If, however, the impoundments are cracked REEF must repair them. (Tr. 33)

23. If there is groundwater contamination REEF must remediate the groundwater contamination. (Tr. 29).

III. CONCLUSIONS OF LAW

A. ADEM Admin. Code r. 335-2-1-.30 states that no person shall represent a party before the Commission unless that person is licensed to practice law in the State of Alabama. The Commission’s rules are consistent with the Rules of Alabama Supreme Court governing the practice of law in Alabama all judicial and quasi-judicial proceedings in the State of Alabama.

B. REEF is a limited liability company, also known as an LLC. An LLC is an artificial person, like a corporation, who can sue or be sued in its own name. Ala. Code

C. Regardless whether evidence is testimonial or documentary, the proffering of evidence in an adversarial proceeding such as this is the practice of law. Ala. Code §34-3-6(b). REEF’s members, who are not lawyers, may not proffer documentary evidence in this proceeding on behalf of REEF LLC. For this reason ADEM’s objection to REEF’s proffered document is due to be sustained and that document cannot be considered in deciding whether to approve, to modify or to disapprove the Order.

D. REEF bore the initial burden to produce evidence the Order is due to be disapproved or modified. ADEM Admin. Code r. 335-2-1-.14(6).

E. Because REEF failed its burden to produce this evidence contradicting the Order the Department bore no burden to produce evidence supporting the Order.

F. The Order could be approved as a matter of law because the Department bore no burden to produce evidence supporting the Order when REEF failed to produce evidence
contradicting the Order. See also, ADEM Admin. Code r. 335-2-1-.27(5) (Petitioner bears burden of proof). Though the Department bore no burden to produce evidence supporting the Order and though there is no evidence from REEF contradicting the Order, the Department produced persuasive evidence supporting the Order.

G. That the impoundments could be cracked below the water line is reasonably inferred from the cracks in the impoundment above the water line. If the impoundments are cracked below the water line that the impoundments could be leaking through those cracks is also a reasonable inference. That reasonable inference is supported by the dark liquid observed and photographed by Mr. Spiegel in the trench adjacent to the impoundment. This is not to say that liquid might not have originated from a cracked pipe, however, this is to say only that it is reasonable to infer the liquid might originate from a cracked impoundment. These reasonable inferences support the Order’s requirement that REEF inspect the bottoms of the impoundments for cracks. There is no evidence of a way to inspect the bottom of the impoundments for cracks except by draining the impoundments.

H. If the impoundments are leaking through subsurface cracks, that groundwater might be contaminated thereby, too, is a reasonable inference.

I. The City of Sylacauga complained to ADEM that REEF’s discharges interfered with the operation of their POTW. The Order does not require REEF to cease all discharges to Sylacauga’s POTW, but rather orders REEF to cease discharges that interfere with Sylacauga’s POTW. If REEF’s discharges do not, in fact, interfere with the operations of Sylacauga’s POTW then those discharges are permissible under the Order and under REEF’s
SID Permit. Whether REEF’s discharges, in fact, interfere with the Operation of Sylacauga’s POTW, however, is Sylacauga’s decision and Sylacauga’s decision is not reviewable by the AEMC in this process.

J. Furthermore, this provision of the Order does no more than to require REEF to comply with this provision of REEF’s SID Permit. That SID Permit requirement to refrain from discharges that interfere with the operation of Sylacauga’s POTW cannot be nullified by modifying from the Order the requirement REEF cease discharges that interfere with Sylacauga’s POTW, nor can the Commission by modification or disapproval of this Order force Sylacauga to accept any wastewaters it does not want. This process cannot decide any disputes REEF might have with Sylacauga.

IV. RECOMMENDATION

Because the potential for leaks from the impoundments and the potential for groundwater contamination may be reasonably inferred from the Department’s evidence, and because the Order merely reiterates the requirements of REEF’s SID Permit, the undersigned Hearing Officer recommends the Commission approve Administrative Order Number 11-009-WP as issued.

Respectfully submitted this the 1st day of June, 2011.

[Signature]

JAMES F. HAMPTON
Hearing Officer

James L. Wright, Esq.
Schuyler K. Espy, Esq.
Mr. Kenton Hall, Managing Partner
Debra S. Thomas