Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 25, 2010
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 25, 2010.

[Signature]
John H. Lester, Vice Chair
Environmental Management Commission

Certified this 27th day of August 2010.
Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 25, 2010

Convened: 11:00 a.m.
Adjourned: 11:35 a.m.

Part A
Transcript

Part B
Attachment Index
Attachments 1 – 6
Part A
AEMC COMMISSION MEETING - 6/25/2010

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION MEETING
Alabama Department of Environmental Management Building
Main Conference Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110
JUNE 25, 2010  11:00 A.M.

COMMISSION MEMBERS PRESENT:
DR. JOHN H. LESTER, VICE CHAIR
DR. J. CONRAD PIERCE
H. LANIER BROWN, II, ESQUIRE
SAM H. WAINWRIGHT, P.E.

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

1  COMMISSIONER LESTER: The first item, we'll note
2  that we had our regular meeting -- minutes of our regular
3  meeting on April the 16th and May 6th; each Commissioner
4  has a copy of these. Have a motion?
5  COMMISSIONER BROWN: Motion to adopt the minutes.
6  COMMISSIONER WAINWRIGHT: Second.
7  COMMISSIONER LESTER: Motion second. All in
8  favor say aye.
9  ALL: Aye.
10  COMMISSIONER LESTER: All opposed?
11  (No response.)
12  COMMISSIONER LESTER: The next item is the report
13  from our Director, and before he gets up here, I would
14  like to say that he got in it real quick. We appointed
15  him, and the next day he was down in Mobile, and I do want
16  to say, too, that we appreciate what the Governor and
17  Lance and all of our people -- I see a bunch of them right
18  here on the front row -- plus our whole unit of ADEM has
19  been doing down there. We have everybody on the ground
20  down there around the water, and the Doctor, he lives down
21  there, so he knows what we're talking about. So, Lance,
22  we do appreciate all the hard work all of you all are doing,
23  and we'll hear your report.

INDEX
AGENDA ITEM  PAGE NO.
1  No. 1  3
2  No. 2  3
3  No. 3  --
4  No. 4  16
5  No. 5  18
6  No. 6  20
7  No. 7  21
8  No. 8  22
9  No. 9  23
10  No. 10  23
11  Adjournment  24
12  Reporter's Certificate  25

MR. LEFLEUR: Thank you. I don't want to correct
you, but I was actually down there the day you appointed
me, not the day after.

As you've mentioned, the bulk of my time
during this first few months has been dealing with the
Deepwater Horizon oil spill, and I was looking back. May
the 6th was the last time that I was able to address the
Commission, and that was day seventeen of the Deepwater
Horizon oil spill, and at that time it was already the
largest environmental disaster in the U.S. history. Now
is the sixty-seventh day of that incident, and it is
continuing to grow. It's obviously the largest
environmental disaster in the history of our country and
the history of our state.

To put it in a little bit of perspective,
every four to five days it's the equivalent amount of oil
of an Exxon Valdez, so we have had fifteen Exxon Valdez
on our shores from this one incident. This is a federal
disaster, it occurred in federal waters, it involves four
states, and it's overseen by the federal agency that --
actually the U.S. Coast Guard.

ADEM is the coordinating agency for the
Alabama response, and I recall sitting next to

1 (Pages 1 to 4)

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com
AEMC COMMISSION MEETING - 6/25/2010

Page 5

1 Commissioner Pierce about three days, I guess, after this
2 occurred -- we were in the Coast Guard station down
3 there -- and there were maybe forty people, and that was
4 the entire group.
5
6 COMMISSIONER PIERCE: Yes.
7
8 MR. LEFLEUR: None of us realized what was going
9 on at the time -- nobody realized it -- but it has grown
10 into a tremendous disaster.
11
12 Since that day that we were together, we've
13 had more than fifty-six ADEM people on site rotating down
14 in Mobile with numerous others off site, mostly here in
15 Montgomery, and there have been more than four hundred
16 other people represented from Alabama agencies over
17 with -- ADEM is the coordinating agency, but the other
18 agencies represented there, environmental management --
19 excuse me -- Emergency Management, Department of Health,
20 Conservation, National Guard, the Governor's faith-based
21 organization, the Department of Public Service, Forestry,
22 Marine Police, Department of Industrial Relations,
23 Homeland Security, and other agencies that have
24 contributed from time to time. It's a gigantic
25 undertaking.
26
27 All of the ADEM areas have taken part in this

Page 6

disaster in dealing with it -- air, water, land, field
ops, permits. They've been involved in everything from
air, water and sediment sampling to developing booming
strategies to locating critical assets around the world to
working with local elected officials and being embedded
with contractors -- many, many activities in addition to
those also.

ADEM has been responsible for developing many
innovative solutions to problems that have come up. As
you can probably imagine, everybody thought that BP knew
all about what was going on, but BP was learning, just
like the rest of us. There's never been anything of this
magnitude that they've dealt with before. And we've had
problems that needed to be dealt with, such as from
it's turtle nesting season in the -- along the gulf coast,
and trying to clean beaches while we want to respect --
endangered species presents its own set of problems.
We've had people trying to figure out new ways to boom
areas that haven't been able to be boomed before, closing
in openings that allow oil to come into -- many different
problems have come up, and ADEM people have been most
helpful in dealing with those. I can't name all of the
dozens of ADEM individuals. I would like to post a list

Page 7

to recognize those that have come down there. They have
left their families for extended periods, and it speaks
very well of them.

ADEM's job is to protect some of the most
sensitive and productive estuary areas in the country and,
at the same time, to protect some of the finest
recreational areas along the gulf coast. So far we've had
minimal environmental damage due to, in large part, the
skimming activities, booming activities and the rapid
cleanup, but I -- although this is not an environmental
matter, I'm going to mention it is the most devastating
piece of this entire puzzle, and it's -- the number of
people's lives and livelihoods that have been impacted in
this area is heartbreaking. It's heartbreaking. There
are four hundred thousand people in this area, and I would
say many, if not most, have had some adverse impact on
their lives. Some of them have had their lives completely
devastated down there, and that is the real toll that
we're seeing down there today. We can clean up the
environment and we can bring things back, but these
people's lives are just a -- it's a terrible, terrible
impact for them. I can't give you a report without
mentioning that.

Page 8

An example of the impact on people's lives,
Bayou La Batre and Coden process more seafood than is
processed combined by all other processors from Key West,
Florida, to Brownsville, Texas. That industry is
completely shut down. Completely shut down. It's --
There are many examples of that. There's no longer a
charter fishing fleet down there. There are people that
run hotels, restaurants, stores, retail outlets, all sorts
of things. It's just been a tremendous impact.

Bad as it is down there, and I hate to say
this, but it's going to get worse. It's going to be at
least thirty days before that well is finally tapped, the
flow is stopped; during that thirty days, we're going to
have oil coming into the environment and we're going to
have to deal with that oil increasing in the environment
over that next thirty days, at least, if everything works
out right.

As bad as that is, it could be -- it's
possible that it could be even worse. If a hurricane or a
tropical storm comes into this area -- there's a tropical
storm out there now in the Yucatan that may curve -- some
of the models show it's curving north. If that comes in
all of a sudden, we have to abandon work at the well head;

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com
we have to abandon offshore skimming. If the winds are
correct, it can blow the entire slick onto the shoreline,
blow it over the dunes; we'd have to pull up all of the
boom. It can go into residential areas. It could be a
very bad situation, a very bad situation, and we need to
invoke the Lord's blessing that he will protect us from
that.

I can assure you that the ADEM employees will
continue to arise to the occasion, and it's been my
privilege to serve with them down there, and I want to --
my hat's off to the ADEM employees who have been down
there and those that have been working here. I want to
thank them for that.

COMMISSIONER PIERCE: Lance, I would like to say
I went over Wednesday, and George Cox showed me around,
and I was just so impressed with what ADEM is doing and I
want to thank all of the workers who have gone down there.
They still have a job up here, I understand -- They're
still having to do their job here and they're doing a job
donw there, so I really think we ought to commend them and
I would like to commend you, too. I greatly appreciate
what you've done. You stepped up to bat early in the game
and have been down there a lot. There are twelve hundred
workers in that place in Mobile. Twelve hundred. Three
states, and that's Mississippi, Alabama, Louisiana -- I
mean Alabama and Florida. Louisiana has a command post in
Houma; the major command post is in Robert.

But I've shed a few tears over this, along
with some people down there that I've been with, and this
is going to affect us for a long time.

MR. LEFLER: People who have lived in that area
all their lives to see it be threatened in this manner is
just a very emotional thing. I know.

COMMISSIONER LESTER: Sam just got back from down
there.

COMMISSIONER WAINWRIGHT: Yes, and they told me
that same kind of --

MR. LEFLER: It's referred to what's called a
Unified Command, and it's an area -- there are people out
-- a thousand people out doing everything from offshore
operations to claims to -- you name it.

COMMISSIONER PIERCE: One thing, you can't get a
hotel room in Mobile. That's the only thing -- just in
Mobile.

MR. LEFLER: The hotel rooms have been at a
premium in Mobile, that's correct.

Okay. The other matters that I would like to
report on also -- budgetary. We continue to be on track
with the 2010 budgetary management, which incorporates the
proration, which has already been declared.
The federal level, we're still operating
under the continuum resolutions to amounts -- our program
branches have not seen increases in the last four years,
and piled on top of that, we've had increasing mandates
from the federal government and an increasing number of
permittees, so we are having to implement new management
practices to try to deal with these austere times.

On the NPDES resolution -- excuse me -- the
petition to withdraw water authority, that's in the hands
of the EPA. We have responded, and we await EPA's
determination on that.

Note, Commissioner Archie's resignation
allowed for us to pull that piece of the petition out as
no longer being applicable for a potential conflict of
interest with the petition.

In the personnel area, as you know, Olivia
Rowell has retired as of June the 1st, and she has had an
extraordinary career at ADEM and she was recognized the
last time; well-warranted her recognition. She oversaw

many -- many problematic and regulatory sort of statutory
during her career -- I believe it's twenty-six
years -- I think it was her total -- and she has a lot of
credits by her name.

And this week -- This past week, I am pleased
to announce that we have been able to elevate one of our
people in the Office of General Counsel to the position of
General Counsel. I would like to introduce Tom Johnston.

He is our new general counsel. He has been with us for
twenty years and has received high accolades from, well,
all of the division chiefs, all of the people outside EPA,
Governor's Office, all of the people that are aware of
legal activities. He has gotten high marks, and I don't
want to take anything away from Tom, but we have a lot of
qualified candidates, and it's choosing between a
ninety-eight and a ninety-nine, and it was a difficult
choice for Tom. Tom is well respected and well worthy of
the position.

MR. JOHNSTON: Thank you very much.

(Applause.)

MR. LEFLER: We are able to promote from
within. We have a very strong organization at ADEM --
I've been very pleased to come to understand that -- and
**AEMC COMMISSION MEETING - 6/25/2010**

<table>
<thead>
<tr>
<th>Page 13</th>
<th>Page 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. we have a lot of depth in our bench, and once again, when 1. And, finally, we -- I had the opportunity of</td>
<td></td>
</tr>
<tr>
<td>2. we elevate one person, that leaves a place for another 2. receiving a two hundred thousand dollar check from EPA for</td>
<td></td>
</tr>
<tr>
<td>3. person, and it's just as difficult to fill that position 3. something I had nothing to do with, but many of the people</td>
<td></td>
</tr>
<tr>
<td>4. from the problem of a wealth of riches in our legal area, 4. here at ADEM did. It was the Brownfields project by the</td>
<td></td>
</tr>
<tr>
<td>5. and we've been able to promote Shawn Sibley to replace 5. Land Division. The grant was two hundred thousand</td>
<td></td>
</tr>
<tr>
<td>6. him -- Attorney Tom Johnston. 6. dollars, and this occurred -- it was announced in April</td>
<td></td>
</tr>
<tr>
<td>7. (Applause.) 7. but awarded in May, and it was to assess petroleum</td>
<td></td>
</tr>
<tr>
<td>8. MR. LEFLEUR: As far as other activities, a 8. contamination site -- contaminated sites from the -- from</td>
<td></td>
</tr>
<tr>
<td>9. note: In Prichard, I made a point that ADEM announced the 9. Montgomery to Unicountown, along the Voting Rights Trail.</td>
<td></td>
</tr>
<tr>
<td>10. second largest scrap tire remediation project, the second 10. The supplemental Brownfields Revolving Loan Grant Fund had</td>
<td></td>
</tr>
<tr>
<td>11. largest one behind Atalla. There's over a hundred and 11. a four hundred thousand dollars that was announced earlier</td>
<td></td>
</tr>
<tr>
<td>12. thirty -- excuse me -- over thirteen thousand five hundred 12. in June, which led more to the existing Brownfields</td>
<td></td>
</tr>
<tr>
<td>13. tons of tires that were removed from the site, and well in 13. Revolving Loan Fund, and the Land staff -- Land Division</td>
<td></td>
</tr>
<tr>
<td>14. excess of fifty percent of the tire materials for 14. staff working to obtain these grants include Larry Bryant,</td>
<td></td>
</tr>
<tr>
<td>15. eradication were reused. I single out for commendation on 15. Larry Norris and Dorothy Malai. I was able to</td>
<td></td>
</tr>
<tr>
<td>16. that Brent Watson and Holly Funk. They have done an 16. understand some of the history behind this, and this is an</td>
<td></td>
</tr>
<tr>
<td>17. excellent job. Are you here? 17. idea that was generated at ADEM in the ranks of our</td>
<td></td>
</tr>
<tr>
<td>18. (Applause.) 18. people, the division chief level, and it was turned down</td>
<td></td>
</tr>
<tr>
<td>19. MR. LEFLEUR: On the regulatory update, each 19. to begin with and then turned down again and then finally</td>
<td></td>
</tr>
<tr>
<td>20. year -- well, for the last three years we've had a 20. it saw some light of day and then it started breathing and</td>
<td></td>
</tr>
<tr>
<td>21. regulatory update for our stakeholders and the regulated 21. this went all the way up to EPA and it's a testament to</td>
<td></td>
</tr>
<tr>
<td>22. community, and that was held on May 13th, and you have 22. the tenacity of our people to do things that sometimes are</td>
<td></td>
</tr>
<tr>
<td>23. the materials in your package that were presented at that 23. a little different than we're seeing as doing in our</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 14</th>
<th>Page 16</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. meeting. The regulatory update was planned by the 1. regulatory hat -- wearing our regulatory hat, but it's</td>
<td></td>
</tr>
<tr>
<td>2. Non-Point Source Pollution staff with Scott Hughes, who I 2. something that tied in closely and it was an extremely</td>
<td></td>
</tr>
<tr>
<td>3. know is not here today. He's taking a couple of days off 3. worthy project, and I want to tip my hat to the folks that</td>
<td></td>
</tr>
<tr>
<td>4. after having been down in Mobile for a lot of days. But 4. worked on that so hard.</td>
<td></td>
</tr>
<tr>
<td>5. Mark Sport was coordinating all of the technology. Missy 5. If there are any questions, I'll be pleased</td>
<td></td>
</tr>
<tr>
<td>6. Millbrooks -- Middlebrooks -- excuse me -- coordinated the 6. to try to address those or have my great backup work with</td>
<td></td>
</tr>
<tr>
<td>7. exhibitors, and Patti Hurley coordinated with the 7. them.</td>
<td></td>
</tr>
<tr>
<td>8. conference site, and I want to recognize them for their 8. COMMISSIONER LESTER: We appreciate the job that</td>
<td></td>
</tr>
<tr>
<td>9. work. It's been a growing program. It's one that I think 9. you've done in the Department. That's the big thing.</td>
<td></td>
</tr>
<tr>
<td>10. when it first started there were questions as to whether 10. That's cream rises to the top with the Director.</td>
<td></td>
</tr>
<tr>
<td>11. there would be interest in it, and the interest has just 11. MR. LEFLEUR: Thank you, sir.</td>
<td></td>
</tr>
<tr>
<td>12. ballooned over the years, people trying to understand -- 12. COMMISSIONER LESTER: Thank you.</td>
<td></td>
</tr>
<tr>
<td>13. trying to understand what's happening in not only today, 13. Next item of business, we will consider the</td>
<td></td>
</tr>
<tr>
<td>14. but what to look forward in the future as far as 14. Adoption of Proposed Amendment to ADEM's Administrative</td>
<td></td>
</tr>
<tr>
<td>15. regulation is concerned, and it's been very well 15. Code 335-6, Water Quality, NPDES Regulations.</td>
<td></td>
</tr>
<tr>
<td>16. received. 16. MR. CROCKETT: Good Morning, Dr. Lester, Members</td>
<td></td>
</tr>
<tr>
<td>17. I also would like to recognize in that 17. of the Commission. My name is Chip Crockett, and I'm the</td>
<td></td>
</tr>
<tr>
<td>18. regulatory update program, Freida Thomas, Shari Ely, 18. Chief of the Stormwater Management Branch in the Water</td>
<td></td>
</tr>
<tr>
<td>20. of the registration and so forth. How many of -- there 20. The Department seeks your approval of</td>
<td></td>
</tr>
<tr>
<td>21. were like six hundred -- I believe we had six hundred 21. Proposed Amendments to Alabama's Water Quality</td>
<td></td>
</tr>
<tr>
<td>22. admissions, so it was well-attended. It was very 22. Regulations, specifically Rule 335-6-6-23, which is a</td>
<td></td>
</tr>
<tr>
<td>23. well-attended. 23. portion of our Rules administering general NPDES permits.</td>
<td></td>
</tr>
</tbody>
</table>

---

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com
To be consistent with comparable federal rules, today's proposed change will modify certain requirements for the notice of intent, which is the application document prospective permittees submit to obtain coverage under a general permit. The proposed change is purely administrative and does not modify any discharge limitations or other standards of any of the general NPDES permits that the Department currently administers.

The Department held a public hearing on June 4th of this year to receive public comments regarding these proposed changes. There was no one in attendance at the hearing and no written comments were received during the public comment period. As such, the Department asks that you adopt these changes as proposed.

I'll be happy to answer any questions you may have.

COMMISSIONER LESTER: Thank you. We now entertain a motion for this proposed amendment.

COMMISSIONER PIERCE: Move to adopt the proposed amendment.

COMMISSIONER WAINRICH: Second.

COMMISSIONER LESTER: Motion second. Any have?

Commissioner have any questions?

(No response.)

COMMISSIONER LESTER: All in favor say aye.

ALL: Aye.

COMMISSIONER LESTER: All opposed?

(No response.)

COMMISSIONER LESTER: The next item, Number 5, the Commission's consideration of Adoption of Proposed Amendment to ADEM Administrative Code Division 335-13, Solid Waste Program Regulations.

MR. HARDY: Good morning, Dr. Lester, Members of the Commission. I'm Gerald Hardy, Chief of the Land Division, and I am before you to recommend that the Commission adopt amendments to the Department's Division 13 Solid Waste Program Regulations.

The proposed regulations before the Commission today would adopt three major revisions to the existing rules. First, they would revise and add regulatory definitions to be consistent with those included in the Solid Waste and Recyclable Materials Management Act passed in 2008 by the Legislature. Secondly, the proposed regulations also revise and clarify the closure requirements for unauthorized dumps and is necessary to comply with the requirements of the Uniform Environmental Covenants Act of 2007. Finally, the proposed revisions will establish a one-time registration program for facilities engaged in the processing, storage and marketing of recyclable materials and would establish the necessary recordkeeping and reporting requirements for these to monitor the State's progress in achieving the statewide waste reduction and recycling goal adopted by the Commission in 2008.

These proposed revisions to the Division 13, Solid Waste Program Regulations were the subject of a public comment period that ran from February 14th to April the 2nd, 2010, and of a public hearing held on April 2nd. Several written comments on these regulations were received by the Department, and copies of our proposed reconciliation and suggested changes were provided to you earlier.

Pending any questions you may have, the Department asks the Commission to adopt these changes to the Solid Waste Regulations.

COMMISSIONER LESTER: Any questions from the Commissioners?

(No response.)
### AEMC COMMISSION MEETING - 6/25/2010

<table>
<thead>
<tr>
<th>Page 21</th>
<th>Page 22</th>
<th>Page 23</th>
<th>Page 24</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: All opposed?</td>
<td>-- either one of them.</td>
<td>COMMISSIONER BROWN: Second.</td>
<td>COMMISSIONER LESTER: Second. All in favor say aye.</td>
</tr>
<tr>
<td>(No response.)</td>
<td>MS. THOMAS: Do you want me to check with all of the Commissioners and see? That would be the 13th or the 27th.</td>
<td>COMMISSIONER LESTER: Second.</td>
<td>COMMISSIONER LESTER: Second. All in favor say aye.</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: Next item involves consideration of Petitioner's Motion to Withdraw/Dismiss Appeal.</td>
<td>COMMISSIONER LESTER: Why don't you just do that? It's all right with me -- either one.</td>
<td>ALL: Aye.</td>
<td>ALL: Aye.</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>(No response.)</td>
<td>MS. THOMAS: Okay. I will let you know, and we'll publicize that on the website.</td>
<td>COMMISSIONER LESTER: Second.</td>
<td>COMMISSIONER BROWN: Move to adopt the Hearing Officer's report.</td>
</tr>
<tr>
<td>4</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: Do we have a motion?</td>
<td>COMMISSIONER LESTER: Do that, and that way, we'll know. The point we're at now, we need as many Commissioners as we've got. We have two out.</td>
<td>COMMISSIONER LESTER: Motion is second. Any questions?</td>
<td>COMMISSIONER LESTER: Motion is second. Any questions?</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>COMMISSIONER PIERCE: So moved.</td>
<td>COMMISSIONER LESTER: I'll note prior to adjourning the meeting and moving to the public comment period, we'll entertain a motion regarding approval or disapproval of request to address the Commission listed in the agenda. Note that a copy of the request is attached by Mr. Mullen, and I would recommend approval of his request. We'll limit it to ten minutes.</td>
<td>ALL: Aye.</td>
<td>ALL: Aye.</td>
</tr>
<tr>
<td>6</td>
<td>7</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>COMMISSIONER WAINWRIGHT: Second.</td>
<td>I'll have a motion from the Commission to either approve or disapprove.</td>
<td>COMMISSIONER LESTER: Opposed?</td>
<td>COMMISSIONER LESTER: At this time we will adjourn this Commission meeting and move to the Public Comment Period.</td>
</tr>
<tr>
<td>7</td>
<td>8</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: Motion second. All in favor say aye.</td>
<td>COMMISSIONER LESTER: Motion second. All in favor say aye.</td>
<td>(No response.)</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
</tr>
<tr>
<td>8</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>(No response.)</td>
<td>(No response.)</td>
<td>COMMISSIONER LESTER: At this time we will adjourn this Commission meeting and move to the Public Comment Period.</td>
<td>* * * *</td>
</tr>
<tr>
<td>9</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: The next item is the consideration of the Report of the Hearing Officer. This is on the Black Warrior Riverkeeper, Incorporated, and Friends of Locust Fork River versus ADEM. You will note that the Petitioners filed objections to the Hearing Officer's recommendation, and the Department and the Intervener filed replies to the objection.</td>
<td>* * * *</td>
<td>* * * *</td>
<td>* * * *</td>
</tr>
<tr>
<td>10</td>
<td>11</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>ALL: Aye.</td>
<td>COMMISSIONER LESTER: It's time for Other Business.</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: All opposed?</td>
<td>Any Commissioners have any other business? If not, our next meeting will be August the 20th, 11:00 a.m., here at the office. Any Commissioners have any conflicts?</td>
<td>* * * *</td>
<td>* * * *</td>
</tr>
<tr>
<td>12</td>
<td>13</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>(No response.)</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
</tr>
<tr>
<td>13</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: Second.</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
<td>(Meeting adjourned at approximately 11:35 a.m.)</td>
</tr>
<tr>
<td>14</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>COMMISSIONER LESTER: It's time for Other Business.</td>
<td>Any Commissioners have any other business? If not, our next meeting will be August the 20th, 11:00 a.m., here at the office. Any Commissioners have any conflicts?</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
</tr>
<tr>
<td>15</td>
<td>16</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Any Commissioners have any other business? If not, our next meeting will be August the 20th, 11:00 a.m., here at the office. Any Commissioners have any conflicts?</td>
<td>COMMISSIONER WAINWRIGHT: I have one, Mr. Chairman.</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
</tr>
<tr>
<td>16</td>
<td>17</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>20th, 11:00 a.m., here at the office. Any Commissioners have any conflicts?</td>
<td>COMMISSIONER WAINWRIGHT: What is a date that you can fit?</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
<td>COMMISSIONER LESTER: I have one, Mr. Chairman.</td>
</tr>
<tr>
<td>17</td>
<td>18</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>18</td>
<td>19</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>19</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>20</td>
<td>21</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>21</td>
<td>22</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>22</td>
<td>23</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMMISSIONER WAINWRIGHT: Either before or after</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6 (Pages 21 to 24)

334-262-7556  Reagan Reporters, LLC  334-262-4437
www.reaganreporters.com

60c80e6-df6e-4fca-8562-d54f0b018f38
REPORTER'S CERTIFICATE
STATE OF ALABAMA
COUNTY OF ELMORE

I hereby certify that the above proceedings
were taken down by me and transcribed by me using
computer-aided transcription and that the above is a
true and correct transcript of said proceedings.
I certify that I am neither of kin nor of
counsel to any of the parties nor in any way
financially interested in the outcome of this case.
I further certify that I am duly licensed by
the Alabama Board of Court Reporting as a Certified
Court Reporter, as evidenced by the ACCR number
following my name below.
So certified on this, the 7th day of July,
2010

Anita D. Griffith, ACCR# 380
Certified Court Reporter and
Notary Public At Large
Commission Expires 8/17/2011

334-262-7556 Reagan Reporters, LLC 334-262-4437
www.reaganreporters.com
REPORTER'S CERTIFICATE

STATE OF ALABAMA
COUNTY OF ELMORE

I hereby certify that the above proceedings were taken down by me and transcribed by me using computer-aided transcription and that the above is a true and correct transcript of said proceedings.

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

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter, as evidenced by the ACCR number following my name below.

So certified on this, the 7th day of July, 2010.

Anita D. Griffith, ACCR# 380
Certified Court Reporter and Notary Public At Large
Commission Expires 8/17/2011

334-262-7556 Reagan Reporters, LLC 334-262-4437
www.reaganreporters.com
comply 19:1
computer-aided 25:5
considered 14:15
conference 1:6
consider 16:13
consideration 18:8
considerants 6:6
coordinates 5:21
coordinated 14:6,7
coordinating 4:22
5:14 14:5
copies 19:15
copy 3:4 23:17
correct 4:1 9:2
10:23 25:6
counsel 1:19 12:7,8
12:9 25:8
country 4:13 7:5
COUNTY 25:2
couple 14:3
Court 25:11,12,18
Covenants 19:2
coverage 17:5
Cox 9:15
cream 16:10
credits 12:4
critical 6:4
Crocket 16:16,17
currently 17:8
curve 8:21
curving 8:22
curving 8:22
d 25:18
damage 7:8
date 22:21
day 3:15 4:2,3,8,11
5:9 15:20 25:14
days 4:16 5:1 8:12
8:13,16 14:3,4
deal 8:15 11:11
dealing 4:5 6:1,22
dealt 6:13,14
DEBI 1:20
declared 11:4
Deepwater 4:6,8
definitions 18:19
Department 1:4
5:16,18,19 6:19
16:20 17:8,10,14
19:15,19 21:21
Department's 18:14
depth 13:1
determination 11:15
devastated 7:18
devastating 7:11
developing 6:3,8
different 6:20
15:23
difficult 12:16 13:3
Director 3:13
16:10
disapproval 23:16
disapprove 23:21
disaster 4:10,13,19
5:8 6:1
discharge 17:7
Dismiss 20:15
dismal 20:15
division 12:11 15:5
15:13,18 16:19
18:9,13,14 19:10
Docket 20:16
Doctor 3:20
document 17:4
doing 3:19,22 9:16
9:19 10:7 15:23
20:16
Dollars 15:2
dollars 15:6,11
Dorothy 15:15
doy 6:23
Dr 1:13,14 16:16
18:11
due 7:8
duly 25:10
dumps 18:23
dunes 9:3
d E 2:1
earlier 15:11 19:17
early 9:22
either 22:23 23:1,6
23:21
elected 6:5
elevate 12:6 13:2
ELMORE 25:2
Ely 14:18
embedded 6:5
EMC 1:19,20 20:16
Emergency 5:16
emotional 10:10
employees 9:8,11
endangered 6:17
engaged 19:4
entertain 17:19
21:23 23:15
entire 5:4 7:12 9:2
environment 7:20
8:14,15
environmental 1:1
1:4 4:10,13 5:15
7:8,10 19:2
EPA 11:14 12:11
15:2,21
EPA's 11:14
equivalent 4:16
eradication 13:15
ESQUIRE 1:15
establish 19:3,5
estuary 7:5
everybody 3:19
6:10
evidenced 25:12
example 8:1
examples 8:6
excellent 13:17
excess 13:14
excuse 5:16 11:12
13:12 14:6
EXECUTIVE 1:20
exhibitors 14:7
existing 15:12
18:18
Expires 25:19
extended 7:2
extraordinary 11:22
16:2
 EXTREMELY 16:2
Exxon 4:17,17
F
facilities 19:4
faith-based 5:17
families 7:2
far 7:7 13:8 14:14
favor 3:8 18:3 20:8
20:22 21:12 22:9
24:2
February 19:12
federal 4:18,19,20
11:5,9 17:1
field 6:1
fifteen 4:17
fifty 13:14
fifty-six 5:10
figure 6:18
filed 21:20,22
fill 13:3
finally 8:12 15:1,19
19:2
financially 25:9
finest 7:6
first 3:1 4:5 14:10
18:18
fishing 8:7
fit 22:22
five 4:16 13:12
fleet 8:7
Florida 8:4 10:3
flow 8:13
folks 16:3
following 25:13
Forestry 5:18
Fork 21:19
forth 14:20
forty 5:3
forward 14:14
four 4:16,19 5:12
7:15 11:7 15:11
Freida 14:18
Friends 21:19
front 3:18
Fund 15:10,13
Funk 13:16
further 25:10
future 14:14
G
game 9:22
general 12:7,8,9
16:23 17:5,8
generated 15:17
George 9:15
Gerald 18:12
gigantic 5:21
give 7:22
go 9:8
goal 19:8
going 5:6 6:11 7:11
8:11,11,13,14
10:7
Good 16:16 18:11
gotten 12:13
government 11:9
Governor 3:16
Governor's 5:17
12:12
<table>
<thead>
<tr>
<th>AEMC COMMISSION MEETING - 6/25/2010</th>
</tr>
</thead>
</table>

| Grant 15:5,10                      |
| Grants 15:14                       |
| Great 16:6                         |
| Greatly 9:21                       |
| Griffith 25:18                     |
| Ground 3:19                        |
| Group 5:4                          |
| Grow 4:12                          |
| Growing 14:9                       |
| Grown 5:7                          |
| Guard 4:21 5:2,17                  |
| Guess 5:1                          |
| Gulf 6:15 7:7                      |
| **H**                              |
| H 1:13,15,16                       |
| Hands 11:13                        |
| Happening 14:13                    |
| Happy 17:16                        |
| Hard 3:22 16:4                     |
| Hardy 18:11,12 20:12               |
| Harrison 14:19                     |
| Hat 16:1,1,3                       |
| Hate 8:10                          |
| Hat's 9:11                         |
| Head 8:23                          |
| **Health 5:16**                    |
| Hear 3:23                          |
| Hearing 17:10,13 19:13 21:17,20 22:1,3 |
| Heartbreaking 7:14 7:14            |
| Held 13:22 17:10 19:13             |
| Helpful 6:22                       |
| High 12:10,13                      |
| History 4:10,13,14 15:16           |
| Holly 13:16                        |
| Homeland 5:20                      |
| Horizon 4:6,9                      |
| Hotel 10:20,22                     |
| Hotels 8:8                         |
| **Houma 10:4**                     |
| Hughes 14:2                        |
| Hurley 14:7                        |
| Hurricane 8:19                     |
| **I**                              |
| Idea 15:17                         |
| II 1:15                            |
| Imagine 6:10                       |
| Impact 7:16,22 8:1 8:9             |
| Impacted 7:13                      |
| Implement 11:10                    |
| Impressed 9:16                     |
| Incident 4:11,18                   |
| Include 15:14                      |
| Included 18:20                     |
| Incorporate 21:18                  |
| Incorporates 11:3                  |
| Increases 11:7                     |
| Increasing 8:15 11:8,9             |
| Individuals 6:23                   |
| Industrial 5:19                    |
| Industry 8:4                       |
| Innovative 6:9                     |
| Intent 17:3                        |
| Interest 11:19                     |
| 14:11,11                           |
| Interested 25:9                    |
| Intervene 21:22                    |
| Introduce 12:8                     |
| Invoke 9:6                         |
| Involved 6:2                       |
| Involves 4:19 21:3                 |
| Item 2:2 3:1,12 16:13 18:7 20:13 21:3,16 |
| **J**                              |
| J 1:14                             |
| Job 7:4 9:18,19,19 13:17 16:8      |
| JOHNN 1:13                         |
| Johnston 12:8,19                   |
| 13:6                               |
| Judge 20:15                        |
| July 25:14                         |
| June 1:10 11:21 15:12 17:10        |
| Knows 3:21                         |
| **K**                              |
| Key 8:3                            |
| Kin 25:7                           |
| Kind 10:14                         |
| Knew 6:10                          |
| Know 10:10 11:20 14:3 23:7,10      |
| Loan 15:10,13                      |
| Local 6:5                          |
| Locating 6:4                       |
| Locust 21:19                       |
| Long 10:7                          |
| Longer 8:6 11:18                   |
| Look 14:14                         |
| Looking 4:6                        |
| Lord's 9:6                         |
| Lot 9:23 12:3,14 13:1 14:4,19      |
| Louisiana 10:2,3                   |
| **L**                              |
| La 8:2                             |
| Lance 3:17,21 9:14                 |
| Land 6:1 15:5,13,13 18:12          |
| LANIER 1:15                        |
| Large 7:8 25:19                    |
| Largest 4:10,12 13:10,11           |
| Larry 15:14,15                     |
| Law 20:14                          |
| Learning 6:11                      |
| Leaves 13:2                        |
| Led 15:12                          |
| LEFLEUR 4:1 5:6 10:8,15,22 12:21 13:8,19 16:11 |
| Left 7:2                           |
| Legal 1:19 12:13 13:4              |
| Legislature 18:21                  |
| Lester 1:13 3:1,7 3:10,12 10:11 16:8,12,16 17:18 17:23 18:3,5,7,11 |
| **M**                              |
| Magnitude 6:13                      |
| Main 1:6                           |
| Major 10:4 18:17                   |
| Malaire 15:15                      |
| Management 1:1,5 5:15,16 11:3,10 16:18 18:21 |
| Mandates 11:8                      |
| Manner 10:9                        |
| Marine 5:19                        |
| Mark 14:5                          |
| Marketing 19:5                     |
| Marks 12:13                        |
| Materials 13:14,23                 |
| 18:20 19:5                         |
| Matter 7:11                        |
| Matters 11:1                       |
| Mean 10:3                          |
| Meeting 1:2 3:2,3 14:1 22:16 23:14 24:8,12 |
| Members 1:12                       |
| 16:16 18:11                        |
| Mention 7:11                       |
| Mentioned 4:4                      |
| Mentioning 7:23                    |
| Middlebrooks 14:6                  |
| Millbrooks 14:6                    |
| Minimal 7:8                        |
| Minutes 3:2,5 23:19                |
| Mississippi 10:2                   |
| Missy 14:5                         |
| Mobile 3:15 5:11 10:1,20,21,23 14:4 |
| Models 8:22                        |
| Modify 17:2,6                      |
| Monitor 19:7                       |
| Montgomery 1:8 5:12 15:9           |
| Months 4:5                         |
| Moot 20:16                         |
| Morning 16:16 18:11                |
| Moved 20:3,17 21:9 23:14           |
| Moving 23:14                       |
| Mullen 23:18                       |

N 2:1

---

334-262-7556 Reagan Reporters, LLC 334-262-4437
www.reaganreporters.com
| 22:19,23 | worse 8:11,19 |
| want 3:15 4:1 6:16 | worthy 12:17 16:3 |
| 9:10,12,17 12:14 | written 17:13 |
| 14:8 16:3 23:2 | 19:14 |
| Warrior 21:18 | — X — |
| waste 18:10,15,20 | Y |
| 19:8,11,20 | year 13:20 17:11 |
| water 3:20 6:1,3 | years 11:7 12:3,10 |
| 11:13 16:15,18,21 | 13:20 14:12 |
| waters 4:19 | Yucatan 8:21 |
| Watson 13:16 | y'all 3:22 |
| way 15:21 23:9 | 0 |
| 25:8 | 08-01 20:16 |
| ways 6:18 | 1 |
| wealth 13:4 | 12:3 |
| wearing 16:1 | 1st 11:21 |
| website 23:8 | 10 2:12 |
| Wednesday 9:15 | 11:00 1:10 22:17 |
| week 12:5,5 | 11:35 24:12 |
| well-attended | 13 18:15 19:10 |
| 14:22,23 | 13th 13:22 23:3 |
| well-warranted | 14th 19:12 |
| 11:23 | 1400 1:7 |
| went 9:15 15:21 | 16:2 |
| West 8:3 | 16th 3:3 |
| we'll 3:1,23 23:8,10 | 18 2:7 |
| 23:15,19 | 2 |
| we're 3:21 7:19 | 2 2:4 |
| 8:13,14 11:5 | 2nd 19:13,14 |
| 15:23 23:10 | 20 2:8 |
| we've 5:9 6:13,18 | 20th 22:17 |
| winds 9:1 | 2010 1:10 11:3 |
| withdraw 11:13 | 19:13 25:15 |
| Withdraw/Dismiss | 21:2 |
| 21:4 | 22 2:10 |
| work 3:22 8:23 | 23 2:11,12 16:22 |
| 14:9,19 16:6 | 24 2:13 |
| worked 16:4 | 25 1:10 2:14 |
| workers 9:17 10:1 | 27th 23:4 |
| working 6:5 9:12 | 3 3:2,3,4,5 |
| 15:14 | 335-13 18:9 |
| works 8:16 | 335-6 16:15 |
| world 6:4 | 335-6-6 16:22 |
| 36110 1:8 | 380 25:18 |
| 42:6 | 4th 17:11 |
| 52:7 18:7 | 5 |
| 62:8 | 6th 3:3 4:7 |
| 6th 3:3 4:7 | 7 |
| 72:9 | 7th 25:14 |
| 8 2:10 | 8 |
| 8/17/2011 25:19 | 9 |
| 9 2:11 |
Part B
Attachment Index

Attachment 1  Agenda

Attachment 2  Resolution adopting the proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program (NPDES) Regulations

(Agenda Item 4 – Consideration of adoption of proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program (NPDES) Regulations (NPDES-Related Matter))

Attachment 3  Resolution adopting the proposed amendments to ADEM Administrative Code Division 335-13, Solid Waste Program Regulations

(Agenda Item 5 – Consideration of adoption of proposed amendments to ADEM Administrative Code Division 335-13, Solid Waste Program Regulations)

Attachment 4  Order adopting the Recommendation of the Administrative Law Judge on Motion to Dismiss

(Agenda Item 6 – Friends of Hurricane Creek and Alabama Rivers Alliance, Inc. v. ADEM, and Tuscaloosa Resources, Inc., EMC Docket No. 08-01 (NPDES-Related Matter))

Attachment 5  Order granting the Petitioner’s Motion to Withdraw/Dismiss Appeal

(Agenda Item 7 – Brensen Creek, LLC v. ADEM, EMC Docket No. 10-02 (NPDES-Related Matter))

Attachment 6  Order adopting the Report of the Hearing Officer

(Agenda Item 8 – Black Warrior Riverkeeper, Inc. and Friends of Locust Fork River, Inc. v. ADEM, and MC Coal Corporation, EMC Docket No. 10-04 (NPDES-Related Matter))
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: June 25, 2010
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 the regular meeting held on April 16, 2010 and the emergency meeting held on May 6, 2010**</td>
<td>2</td>
</tr>
<tr>
<td>2. Report from the Director</td>
<td>2</td>
</tr>
<tr>
<td>3. Report from the Commission Vice Chair</td>
<td>2</td>
</tr>
<tr>
<td>4. Consideration of adoption of proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program (NPDES) Regulations (NPDES-Related Matter)</td>
<td>2</td>
</tr>
<tr>
<td>5. Consideration of adoption of proposed amendments to ADEM Administrative Code Division 335-13, Solid Waste Program Regulations</td>
<td>2</td>
</tr>
<tr>
<td>6. Friends of Hurricane Creek and Alabama Rivers Alliance, Inc. v. ADEM, and Tuscaloosa Resources, Inc. EMC Docket No. 08-01 (NPDES-Related Matter)</td>
<td>2</td>
</tr>
<tr>
<td>7. Brensen Creek, LLC v. ADEM EMC Docket No. 10-02 (NPDES-Related Matter)</td>
<td>3</td>
</tr>
<tr>
<td>8. Black Warrior Riverkeeper, Inc. and Friends of Locust Fork River, Inc. v. ADEM, and MCoal Corporation EMC Docket No. 10-04 (NPDES-Related Matter)</td>
<td>3</td>
</tr>
<tr>
<td>9. Other business</td>
<td>3</td>
</tr>
<tr>
<td>10. Future business session</td>
<td>3</td>
</tr>
</tbody>
</table>

PUBLIC COMMENT PERIOD 3

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

** The Minutes for these meetings will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF THE REGULAR MEETING HELD ON APRIL 16, 2010, AND THE EMERGENCY MEETING HELD ON MAY 6, 2010

2. REPORT FROM THE DIRECTOR

3. REPORT FROM THE COMMISSION VICE CHAIR

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

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-6, Water Quality Program (NPDES) Regulations, Rule No. 335-6-6-.23, General Permits. Rule 335-6-6-.23(15) would be amended for consistency with 40 CFR 122.28. The Department held a public hearing on the proposed amendments on June 4, 2010.

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-13, Solid Waste Program Regulations. The Department proposes to amend Division 335-13 to revise various definitions pursuant to amendments to the Solid Wastes and Recyclable Materials Management Act enacted in 2008, and by clarifying certain provisions of its Solid Waste Program regulations related to the closure requirements for unauthorized solid waste dumps. The Department also proposes to establish registration requirements for facilities engaged in the receipt, storage or processing of recyclable materials at the point where these materials are initially diverted from the solid waste stream. Chief among the proposed requirements for subject facilities would be the requirement to semi-annually report quantities of recycled or re-used materials so as to monitor the progress toward achieving the previously-established statewide waste reduction and recycling goal. The Department held a public hearing on the proposed amendments on April 2, 2010.

6. FRIENDS OF HURRICANE CREEK AND ALABAMA RIVERS ALLIANCE, INC. V. ADEM, AND TUSCALOOSA RESOURCES, INC., EMC DOCKET NO. 08-01 (NPDES-RELATED MATTER)

The Commission will consider the Recommendation of the Administrative Law Judge on Motion to Dismiss recommending dismissal of EMC Docket No. 08-01 as moot in this appeal concerning ADEM's reissuance of Tuscaloosa Resources, Inc., Panther Mine No. 3, NPDES Permit No. 0074012, Tuscaloosa County, effective October 2, 2007.
7. **BRENSEN CREEK, LLC V. ADEM, EMC DOCKET NO. 10-02 (NPDES-RELATED MATTER)**

The Commission will consider the Petitioner’s *Motion to Withdraw/Dismiss Appeal* in this appeal concerning ADEM Administrative Order 10-005-WP issued on October 28, 2009, to Brensen Creek, LLC, The Woodlands Plat 4, Wetumpka, T17N, R17E, S13,14, Elmore County, Alabama, NPDES ALR16ECCV.

8. **BLACK WARRIOR RIVERKEEPER, INC. AND FRIENDS OF LOCUST FORK RIVER, INC. V. ADEM, AND MCOAL CORPORATION, EMC DOCKET NO. 10-04 (NPDES-RELATED MATTER)**

The Commission will consider the *Report of Hearing Officer* in this appeal concerning ADEM’s issuance of NPDES Permit AL0080080 to MCoal Corporation, Rosa Mine, Blount County.

9. **OTHER BUSINESS**

10. **FUTURE BUSINESS SESSION**

---

**PUBLIC COMMENT PERIOD**

(Request from the public to address the Commission is attached to the agenda.)

---

**Request**

Michael William Mullen, Choctawhatchee Riverkeeper, Inc.

SUBJECT: Need for expansion and strengthening of stormwater management
(Vice Chair Lester will recommend approval of the request.)
Acting AEMC Chairperson  
C/o Debbie Thomas  
AEMC  
P.O. Box 301463  
Montgomery, AL 36130-1463  

June 7 2010

RE: Request for Presentation to AEMC at June 25, 2010 Meeting  
Subject: Need for Expansion and Strengthening of Stormwater Management

I am writing to request time for a brief presentation to the AEMC at its June 25th meeting. The presentation will be brief and will show examples of the potential for relatively small projects to cause severe damage to stream water quality, aquatic habitats and public infrastructure when there is no stormwater management.

The presentation for include images and data for an example project or projects in the coastal plain (Troy). Some of the images are attached on the following pages.

Thank you for considering this request.

Sincerely,

Michael William Mullien  
Michael William Mullien, CPESC  
Executive Director/Riverkeeper
Attachment 2
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION
ADEM Admin. Code division 335-6- Water Quality Program Regulations
335-6-6-.23 - General Permits

IN WITNESS WHEREOF, we have affixed our signatures below on this 25th day of June 2010.

APPROVED:

__________________________________________
John Smith

__________________________________________
Scott Henderson

__________________________________________
Alma Brown

__________________________________________
J. Price

DISAPPROVED:

__________________________________________

__________________________________________

__________________________________________

__________________________________________

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 25th day of June 2010.

__________________________________________
John H. Easter, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010
Attachment 3
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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

WHEREAS, the Alabama Department of Environmental Management 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 the revisions of [335-13-1-.02/Statutory Authority (Amend); 335-13-1-.03/Definitions (Amend); 335-13-1-.04/Limitations (Amend); 335-13-1-.05/Communications (Amend); 335-13-1-.06/Penalty for Violations (Amend); 335-13-1-.07/Appeals (Amend); 335-13-1-.10/Reserved (Amend); 335-13-1-.13/Unauthorized Dumps (Amend) and 335-13-3/Processing and Recycling (New)] administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code 335-13
Solid Waste Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 25th day of June, 2010.

APPROVED:

John Lester

Sam Haines

Manier Snider

DISAPPROVED:


This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 25th day of June 2010.

John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010

Page 2 of 2
Attachment 4
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: )
Friends of Hurricane Creek and )
Alabama Rivers Alliance, Inc., )
Petitioners, )

vs. )
Alabama Department of )
Environmental Management, )
Respondent, )

and )
Tuscaloosa Resources, Inc., )
Intervenor. )

EMC Docket No. 08-01

ORDER

This cause having come before the Environmental Management Commission pursuant to the Recommendation of the Administrative Law Judge on Motion to Dismiss in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Recommendation of the Administrative Law Judge on Motion to Dismiss is hereby adopted; and

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

3. That a copy of this Order, along with a copy of the Recommendation of the Administrative Law Judge on Motion to Dismiss, 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 25th day of June 2010.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 25th day of June 2010.

John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010
RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE ON MOTION TO DIMISSS

The Administrative Law Judge, having been presented with ADEM's Suggestion of Mootness and the reissued NPDES permit (following revocation) for the Tuscaloosa County Panther Mine No. 3 (AL00774012), and after having duly considered same does hereby find that:

1. A NPDES permit for the Tuscaloosa County Panther Mine No. 3 (AL0074j012) was issued to Tuscaloosa Resources, Inc. on October 2, 2007.

2. The October 2, 2007 NPDES permit was revoked and a new permit issued, by the Alabama Department of Environmental Management, on August 28, 2008, with an effective date of August 28, 2008, and an expiration date of August 27, 2013.
3. Pursuant to Rules 335-6-6 and 335-6-6-.14(i), Administrative Code, ADEM, ADEM filed a Suggestion of Mootness on August 28, 2008, regarding the administrative appeal filed in this case relating to the October 2, 2007 revoked permit.

Therefore, the Administrative Law Judge does hereby recommend that the Alabama Environmental Management Commission dismiss the present appeal contesting the prior revoked October 2, 2007 NPDES permit to Tuscaloosa Resources, Inc. (AL0074012) pursuant to Rule 335-2-1-.21(4), Administrative Code, ADEM.

DONE this the 1st day of October, 2008.

Tori L. Adams
Administrative Law Judge
Administrative Hearings
11 South Union Street
Montgomery, AL 36130
Telephone: 334-242-7433
Fax: 334-353-9050

cc: Ms. Debi Thomas, Executive Assistant
Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-1463
Telephone: 334-271-7706
Fax: 334-279-3052
(State Hand Mail)
James L. Wright, Esquire  
Dept. of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, AL 36130-1463  
Telephone: 334-271-7855  
Fax: 334-394-4332  
(State Hand Mail)  

Robert D. Tambling, Esquire  
Office of the Attorney General  
11 South Union Street – 4th Floor  
Montgomery, AL 36130  
Telephone: 334-242-7300  
Fax: 334-242-4890  
(State Hand Mail)  

R. Edwin Lamberth, Esquire  
Cunningham, Bounds, Crowder, Brown and Breedlove, L.L.C.  
P. O. Box 66705  
Mobile, AL 36660  
Telephone: 251-471-6191  
Fax: 251-479-1031  
(First Class Mail)  

Floyd Gilliland, Esquire  
Nix, Holtsford, Gilliland, Higgins & Hitson  
P. O. Box 4128  
Montgomery, AL 36103-4128  
Telephone: 334-215-8585  
Fax: 334-215-7101  
(First Class Mail)  

J. Alan Truitt, Esquire  
D. Bart Turner, Esquire  
Chris J. Williams, Esquire  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 Regions/Herbert Plaza  
Birmingham, AL 35203-2618  
Telephone: 205-254-1000  
Fax: 205-254-1999  
(First Class Mail)
Attachment 5
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:

Brensen Creek, LLC,

Petitioner,

vs.

EMC Docket No. 10-02

Alabama Department of
Environmental Management,

Respondent,

ORDER

This cause having come before the Environmental Management Commission pursuant to the Petitioner's Motion to Withdraw/Dismiss Appeal in the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner's Motion to Withdraw/Dismiss Appeal is hereby granted; and

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

3. That a copy of this Order, along with a copy of the Petitioner's Motion to Withdraw/Dismiss Appeal, 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 25th day of June 2010.

APPROVED:

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
Commissioner

DISAPPROVED:

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
Commissioner

ABSTAINED:

[Signature]
Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 25th day of June 2010.

[Signature]
John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BRENSEN CREEK, LLC
Petitioner

v.

THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT.
Respondent

DOCKET NO. 10-02

MOTION TO WITHDRAW/DISMISS APPEAL

Come now BRENSEN CREEK, LLC, by and through its attorney, Joseph T. Scarborough, Jr., and shows unto this Honorable Court as follows:

1. That there are no matters at issue between the parties and the undersigned desires to withdraw its pending Appeal.

WHEREFORE, THE PREMISES CONSIDERED, the undersigned respectfully requests that the pending Appeal be dismissed.

Respectfully submitted this 7th day of May, 2010.

[Signature]
Joseph T. Scarborough, Jr. (SCA003)
Attorney for Petitioner
CERTIFICATE OF SERVICE

I, Joseph T. Scarborough, Jr. hereby certify that I have served a copy of the foregoing "Motion To Dismiss Appeal" by sending a copy of the same to each of the following via first class mail on May 7, 2010:

Antoinette Jones, Esq.
Attorney for Respondent
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, AL 36130-1463

Debi Thomas
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, Alabama 36130-1463

Honorable James F. Hampton
Hearing Officer
4241 Lomac Street
Montgomery, AL 36106

[Signature]

Joseph T. Scarborough, Jr.
Attachment 6
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:
Black Warrior Riverkeeper, Inc. and
Friends of the Locust Fork River, Inc.,
Petitioners,

vs.

EMC Docket No. 10-04

Alabama Department of
Environmental Management,
Respondent,

and

MCoal Corporation,
Intervenor.

ORDER

This cause having come before the Environmental Management Commission pursuant to the Report of the Hearing Officer, the objections to the Report of the Hearing Officer, and the responses to the objections 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 adopted; and

2. That pursuant to the adoption of the Report of the Hearing Officer, the Findings of Fact and Conclusions of Law and Recommendation contained in said Report are adopted, and the Commission finds in favor of ADEM on all issues in this matter and affirms the proper issuance of ADEM’s final permit in this cause; and

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

3. 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 25th day of June 2010.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 25th day of June 2010.

John H. Lester, Vice Chair
Environmental Management Commission
Certified this 25th day of June 2010
BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BLACK WARRIOR RIVERKEEPER, INC.,
and FRIENDS OF THE LOCUST FORK
RIVER, INC.,
Petitioners,

v.
THE ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
Respondent,

and
MCOAL CORPORATION,
Intervenor.

DOCKET No. 10-04

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

The Alabama Department of Environmental Management (ADEM) issued NPDES Permit No. AL0080080 to MCoal Corporation, Inc. (MCoal) on October 23, 2009. Subsequent to that date, Black Warrior Riverkeeper, Inc. (BWR) and Friends of the Locust Fork River, Inc. (FLFR), collectively referred to as Petitioners, requested a hearing in this matter to contest the issuance of this permit more accurately described as a National Pollutant Discharge Eliminations Systems permit. This permit was issued to MCoal for discharges associated with MCoal’s proposed “Rosa Mine” operation located in Blount County, Alabama. MCoal filed a motion to intervene in this matter, and that motion was granted on December 9, 2009.
Subsequently, the Petitioners, ADEM and MCoal filed motions for summary judgment on the issues before the Commission. All of those motions were denied in an order issued by this Hearing Officer.

During that process, the Alabama Coal Association filed a motion for leave to file an Amicus brief and brief in support of ADEM and MCoal’s motion for summary judgment. That motion to allow the Amicus brief was granted, and such brief is included in the record of this proceeding.

Separate motions and applications of attorneys David Pope, Catherine Wannamaker and David Hanson to be admitted pro hac vice for the purpose of this hearing before the Environmental Management Commission were approved and granted.

Petitioners’ motion to strike the affidavits of C. W. McGehee and Lynn Sisk and to bar the testimony of McGehee and Sisk were denied.

This matter proceeded from that point through to the discovery deadlines as established by the Joint Proposed Prehearing Order submitted to this Hearing Officer for signature and dated 19 February 2010. Testimony was taken over four days at the ADEM offices from February 22 through 25, 2010. Thereafter the parties were allowed time, per the above-referenced prehearing order, to submit briefs, argument and proposed findings of fact and conclusions of law to the undersigned Hearing Office for consideration. All of those documents were reviewed by the Hearing Officer and carefully considered in issuing this report.

Additionally, there was a post-hearing motion filed by the Petitioners labeled as Petitioners’ Motion for Appropriate Relief. That matter has remained pending before this Hearing Officer until this date, and both ADEM and MCoal filed responses to that motion for appropriate relief. After consideration of all submissions on that motion, it is ORDERED that the Petitioners’ Motion for Appropriate Relief is due to be denied and is denied as of this date. Ruling on said motion closes the record and concludes this hearing effective this date. ((See ADEM Admin. Code R. 335-2-1-.27 and 335-2-1-.14(17))

II. STANDARD OF REVIEW

This proceeding is clearly a de novo process, and the Environmental Management Commission essentially stands in the place of ADEM and should exercise its judgment for that of ADEM on questions of law and fact which are related to this proceeding. ((See ADEM Admin. Code R. 335-2-1-.14(6)) and the Environmental Management Commission’s order dated October 16, 2009 in Black Warrior Riverkeeper, Inc. v. ADEM and Shepherd
Bend, LLC, EMC DN 09-04) The Petitioners in this case bear the burden to prove, by a preponderance of the evidence, that ADEM's decision to issue this permit was improper. There is a presumption that ADEM's administrative action below is correct and the Petitioners have the burden of overcoming that position. That burden requires the proof of applicable standards and cannot be based on theoretical or hypothetical allegations. The ultimate decisions by the Environmental Management Commission should be consistent, and departures from established interpretations by the Commission should not be entered into lightly absent compelling reasons for such.

III. FINDINGS OF FACT

1. ADEM confirmed its receipt of a complete NPDES application by MCoal by letter dated May 5, 2009. MCoal sought, by way of that application, permission for discharges to waters at MCoal's proposed Rosa Mine in Blount County, Alabama.

2. That application, originally submitted on January 6, 2009 (in a form acceptable to ADEM), included a completed Pollution Abatement Plan (PAP) - Appendix A & B Information Checklist and a PAP Review Checklist.

3. MCoal's NPDES permit application included all information required by ADEM's Administrative Code rule 335-6-9-.03(2). This information was submitted to ADEM on ADEM's own forms approved by the Alabama Environmental Management Commission.

4. MCoal's NPDES permit application was certified by a registered professional engineer licensed to practice in Alabama. Sufficient public notice was given concerning the application in the Birmingham News.


6. On October 13, 2009, MCoal submitted to ADEM a sediment evaluation study concerning this proposed mine.

7. On October 21, 2009, ADEM released its Response to Comments received.

8. ADEM issues its final NPDES Permit No. AL0080080 to MCoal for the Rosa Mine on October 23, 2009 with an effective date of November 1, 2009.
9. On November 20, 2009, the Petitioners filed their request for a hearing to contest ADEM's issuance of NPDES permit AL0080080 (hereinafter "the Permit") for discharges from 62 outfalls at MCoal's Rosa Mine in Blount County, Alabama.

10. BWR is a nonprofit membership corporation with approximately 1900 members whose mission is to protect and restore the Black Warrior River and its tributaries. (See Hearing Transcript of February 22, 2010 at 32:8-11)

11. FLFR is a nonprofit membership corporation dedicated to preserving the Locust Fork in all of its natural beauty and keeping the river clean from pollutants. (See Petitioners' Hearing Exhibit 20, Affidavit of Sam Howell). Members of BWR and FLFR use and enjoy the Locust Fork and its tributaries in the immediate vicinity of, and downstream from, the Rosa Mine. These members' use and enjoyment is directly threatened by discharges associated with the Rosa Mine.

12. Numerous individuals testified that they are members of BWR and/or FLFR and that they regularly use, enjoy, recreate upon and conduct education seminars on the Locust Fork on a frequent, if not constant, basis. Those individuals testified that such use and enjoyment is threatened by the discharges authorized by NPDES permit AL0080080. Some of those witnesses were are property owners on the River and have a separate financial stake in the health of the water.

13. Some of the individual members of BWR and FLFR are persons who have an interest in this permit and they have been, or may be, adversely affected by MCoal's actions in exercising its right to engage in mining operations at the Rosa Mine pursuant to NPDES Permit AL0080080. Those members have such interests in their own right, and such interests are germane to these organizations' basic purpose.

14. NPDES Permit No. AL0080080 authorizes discharges of pollutants from sixty-two separate outfalls into named and unnamed tributaries of the Locust Fork but does not authorize any direct discharges to the Locust Fork. The waters receiving the discharges from MCoal's mining operations are classified as "Fish and Wildlife."

15. MCoal's planned operation is scheduled to be conducted in three phases. Phase I of that plan, pursuant to the Alabama Surface Mining Commission (ASMC) permit, includes twenty outfalls and allows for auger mining. It is expected that Phase I will be conducted over a 4½-year period.

16. The NPDES permit in question, AL0080080, contains precipitation event discharge limitations for total suspended solids, iron, lead, manganese and for silver. For these precipitation event discharge limitations to apply, the permittee must submit a written
claim for exemption to ADEM's director. MCoal's discharges for Total Dissolved Solids (TDS) sulfate, chloride and aluminum (if any) will not be at levels that would violate water quality criteria.

17. The Rosa Mine site where MCoal will conduct its mining operations under the ASMC permit is an abandoned "pre-law" surface coal mine that includes over thirty miles of highwall. Under current conditions the site experiences erosion and sediment loss which flows into the waters in question. MCoal's sediment control plan establishes that sediment runoff to the receiving streams during MCoal's mining operations and following completion of MCoal's mining operations will be lower than the current sediment runoff which exists today.

18. NPDES Permit No. AL0080080 contains generally applicable discharge limitations for lead, silver, iron, manganese, total suspended solids (TSS) and pH. The limitations for iron, manganese, TSS and pH are consistent with the EPA's effluent guidelines for surface coal mines.

19. A reasonable potential analysis determines the potential for a pollutant for which ADEM has a numeric water quality criteria to be found in drainage in concentrations at or in excess of twenty percent of the concentration prescribed by ADEM's numeric water quality criterion. Projected concentrations of less than twenty percent of a water quality criteria do not warrant a water quality limitation.

20. ADEM conducted a reasonable potential analysis for the Rosa Mine site based on data submitted by MCoal with its request for this permit, together with data submitted to the ASMC. Based on these submissions, the permit includes effluent limits for lead and silver.

21. ADEM determined that there was not a reasonable potential for total dissolved solids, sulfates, chlorides or aluminum to be found in MCoal's storm water drainage at limits that would exceed applicable water quality standards and, therefore, the permit does not include effluent limitations for those parameters.

22. MCoal's ASMC application contained additional information concerning the specific design of MCoal's pollution abatement and prevention plan which, according to ADEM officials, provided them with sufficient information to evaluate MCoal's pollution abatement plans for this particular site.

23. This NPDES permit authorizes discharges to a segment of Dry Creek. That segment of Dry Creek is listed on ADEM's 2008 Clean Water Act, §303(d) list as not meeting its use classification due to nutrients, ammonia, organic enrichment and pathogens
from pasture grazing. There is no Total Maximum Daily Load (TMDL) for any pollutant for Dry Creek.

24. A segment of the Locust Fork of the Black Warrior River is identified on ADEM’s 2008 Clean Water Act, §303(d) list as not meeting its use classification due to siltation. This siltation problem is due, in part, to erosion from abandoned surface mining operations. There is no approved TMDL for any pollutant for the Locust Fork.

25. MCoal submitted a surface mining permit application to the ASMC on March 26, 2009 for a permit for the construction and operation of MCoal’s Rosa Mine in Blount County, Alabama.

26. Public notice concerning the filing of MCoal’s surface mining permit application with ASMC was published in The Blount Countian for four consecutive weeks from June 10, 2009 to July 1, 2009.

27. The Petitioners had notice of MCoal’s surface mining application to the ASMC, participated in the public hearing and commented on that application.

28. The ASMC issued Permit No. 3931-08-14-S to MCoal for mining activities associated with the Rosa Mine on December 11, 2009. MCoal’s ASMC permit became effective on December 11, 2009.

IV. CONCLUSIONS OF LAW

I. Petitioners Are Aggrieved Parties

A. ADEM Admin. Code R. 335-2-1-.03 provides that “any person aggrieved by an administrative action of the Department shall be entitled to a hearing before the Commission or its designated Hearing Officer.”

B. Pursuant to ADEM Admin. Code R. 335-2-1-.02, “[a]ggrieved” is defined as “having suffered a threatened or actual injury in fact.”

C. The Petitioners have established more than a generalized set of grievances or complaints about the permit in questions and have established that they stand to suffer an actual injury of fact.

D. The various identified members of BWR and FLFR are aggrieved parties pursuant to ADEM Admin. Code R. 335-2-1 et seq., including but not limited to §§335-2-1-.02(b), 335-2-1-.03, and 335-2-1-.04, and pursuant to Code of Alabama, 1975, §22-2A-7.
As a result, both BWR and FLFR are found to be aggrieved parties and thus have the authority to bring and litigate this petition. ((See related discussion in Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed. 2d 610 (2000)))

II. ADEM had Before It A Pollution Abatement and Prevention Plan Sufficient to Issue NPDES Permit No. AL0080080

A. The Commission, pursuant to its order in Black Warrior Riverkeeper, Inc., EMC DN 09-04, supra, has established that an application such as this “does not require a PAP Plan.”

[Although the undersigned Hearing Officer may not agree with the finding of the Commission stated in “A” above, it is clear that such is a holding that should be followed herein. Additionally, even if there were no such established precedent on this particular issue, it appears from the evidence that ADEM had before it all relevant PAP Plan information which it needed in order to determine whether this particular permit should be issued. Such information was presented to ADEM in a “format acceptable to the Department staff” and, for this reason, MCoal met its burden in providing a sufficient PAP Plan.]

B. MCoal’s NPDES permit application included two pre-approved forms confirming MCoal’s preparation of a PAP Plan which addressed the elements required by ADEM’s regulations and detailed information concerning the contents of that plan for its proposed operations.

C. The issuance of this final permit was, at least in part, based upon a pollution abatement and prevention plan and accompanying data submitted by the applicant and, thus, ADEM’s PAP Plan regulations were satisfied.

III. Authorized Discharges By This Permit Will Not Cause or Contribute to a Violation of State Water Quality Standards

A. Dry Creek and the Locust Fork are two bodies of water that will ultimately receive discharges from MCoal’s Rosa Mine operations. Both Dry Creek and Locust Fork have been classified as “Fish and Wildlife” use by ADEM.

B. Dry Creek is listed on Alabama’s 2008 §303(d) list as not meeting its “Fish and Wildlife” use classification because of nutrients, ammonia, organic enrichment and pathogens caused by pasture grazing.
C. Locust Fork (between Little Warrior River and Blount County Road 30) is listed on the same §303(d) list as not meeting its “Fish and Wildlife” use classification due to siltation caused by agriculture and an abandoned surface mining operation.

D. Dry Creek’s listing on Alabama’s 2008 §303(d) list as not meeting its use classification is based only on nutrients, ammonia, organic enrichment and pathogens and is not listed as impaired for any other pollutants.

E. There has been no evidence presented that would establish that the Petitioners met their burden of proof in regard to this issue related to Dry Creek. No evidence supports a conclusion that MCoal’s mining operation will result in any discharges of nutrients, ammonia, organic enrichments or pathogens.

F. Without such evidence, Petitioners have failed to meet their burden of proof that MCoal’s Rosa Mine operations will result in discharges that will cause or contribute to a violation of water quality standards for Dry Creek.

G. Whether or not the Locust Fork is actually impaired for siltation, the Petitioners have not met their burden of establishing that the issue of this permit will cause or contribute to a violation of Alabama’s water quality standards.

H. MCoal’s mining operation, so long as it is conducted consistent with the ASMC permit and this NPDES permit, will not cause or contribute to any violation of the Locust Fork water quality standards.

IV. The Final Permits Discharge Limitations for Precipitation Events Will Not Cause or Contribute to a Violation of State Water Quality Standards

A. The limitations contained in this permit related to precipitation event discharges are sufficient to protect the water quality of the receiving streams in question and no evidence was presented that satisfies the Petitioners’ burden to support a decision to the contrary.

B. The construction of the sediment ponds that are proposed under the restrictions of this permit are such that, according to the evidence, are likely to significantly reduce the total pollutants discharged to the tributaries of the Locust Fork. Any evidence submitted to the contrary was not sufficient to meet the Petitioners’ burden of proof that would allow a conclusion otherwise.
C. ADEM has made a determination in this particular case that, based on the data submitted to it by MCoal, the limitations contained in the permit, including the precipitation discharge limits, “accurately reflect the requirements and intent of state regulations” and if the permit is adhered to by MCoal, then water quality standards will be met and water quality protected. No evidence was presented in this hearing that would lead the undersigned Hearing Officer to a different conclusion.

V. ADEM is Not Required To Include Discharge Limitations in Its Final Permit for Total Dissolved Solids, Sulfates, Chlorides or Aluminum.

No federal or state regulation was submitted that would require ADEM to include discharge limitations for total dissolved solids, sulfates, chlorides or aluminum in its final permit parameters. The Petitioners have failed to meet their burden and have failed to show that MCoal’s operation at the local mine site will result in total discharges of dissolved solids, sulfates, chlorides or aluminum in amounts that would cause or contribute to a violation of the state water quality standards.

V. RECOMMENDATION

Accordingly, the undersigned Hearing Officer recommends to the Commission that it enter an order and finding consistent with the documentary evidence and testimony presented, that it adopt these Findings of Fact and Conclusions of Law, and that it enter a decision in favor of ADEM on all issues and affirming the proper issuance of ADEM’s final permit in this cause.

Done this the 27th day of May, 2010.

JAMES F. HAMPTON
Hearing Officer

Robert D. Tambling, Esq.
James L. Wright, Esq.
Schuyler K. Espy, Esq.
Gilbert Rogers, Esq.
P. Stephen Gidiere III, Esq.
Thomas L. Casey III, Esq.
David R. Boyd, Esq.
Debra S. Thomas