Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 16, 2013
This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on August 16, 2013.

[Signature]

Vice Chair
Alabama Environmental Management Commission

Certified this 18th day of October 2013.
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Convened: 11:00 a.m.
Adjourned: 11:39 a.m.

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Transcript
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Part A
CHAIRMAN BROWN: Good morning. We'll call the meeting of the Alabama Environmental Management Commission to order and acknowledge that we have not only a quorum but all members present today.

First item on the agenda is consideration of the minutes for the meeting on June 21, 2013.

DR. MILLER: I move we approve the minutes as written.

DR. LAIER: Second.

CHAIRMAN BROWN: All in favor? (Unanimous.)

CHAIRMAN BROWN: Any opposed? (No response.)

CHAIRMAN BROWN: The minutes are approved. Second item on the agenda is the report from the director.

MR. LeFLEUR: Good morning, Commissioners, and good morning and welcome to all of you present for the final of the six scheduled meetings of the Alabama Environmental Management Commission for Fiscal Year 2013.

In today's report, I will update you on the budget, introduce a new program to track departmental performance, and close with a report on our ongoing efforts to obtain appropriate facilities for the Mobile Field Office and Coastal Program.

Budget items first. We are about to begin the final month of Fiscal Year 2013, and it is unlikely that proration of the General Fund will be required. Except for federal sequestration-related shortfalls that are being negotiated with EPA, we anticipate being able to meet all federal grant obligations.

The fee increase approved at the last Commission meeting in June has been implemented and became effective on July 30. Absent any unforeseen budget issues, we anticipate that the
new fee structure will allow the
Department to carry on at the absolute
minimum level necessary to maintain
state control over environmental
permitting.
Compliance and enforcement metrics,
which are impartial and objective
measures of performance, are important
tools for managing any regulatory
organization. Metrics are most useful
when tracked over time and when
compared to the same measures for
comparable organizations. State and
federal environmental regulatory
agencies collect tremendous amounts of
data. ADEM is a leader in managing
this data, so much so that several
other states now use many of our
e-systems. The eFile, e-complaint,
e-DMR, ALAWADR, and numerous other
applications have not only made ADEM a
leader in this arena, they have paid
financial dividends by allowing the

data in a usable format to assist with
better oversight at both federal and
state level. There have been many
bumps along the way. The IT personnel
at ADEM have been leading participants
in addressing a number of the problems.
In February of this year, EPA
announced the release of new expanded
state interactive visual compliance and
enforcement metrics, commonly referred
to as dashboards, which provide
comparative maps that afford the public
information about the performance of
state and EPA enforcement and
compliance programs across the country.
The implementation of this new
system will, when fully operational,
provide the Department with a new tool
to analyze our performance against
other states and advance our management
efforts. Additionally, the new system
will allow our citizens to not only
utilize the existing Web-based access
to in-depth Alabama data through the
ADEM system, but will provide ready
access to standard performance reports
comparing Alabama to all other states
through the federal data system.
The interactive state performance
dashboards are located on EPA's
Enforcement and Compliance History
Online, or ECHO, website at
www.epa-otis.gov/echo/stateperformance/
dashboard. You don't have to remember
to do all that. We'll have it readily
available. ECHO is an EPA tool that
allows the user to map federal and
state inspection, violation, and
enforcement information for more than
800,000 regulated facilities. Users
can customize the dashboards to view
state activity, EPA activity, or
combined activity. The site also
allows users to view national averages
and display state enforcement trends
over time. The address will be shown

Department to become an exceptionally
low-cost and high-quality provider of
environmental regulation.
An additional benefit of this data
management is that it allows individual
citizens and interested organizations
the unparalleled opportunity to find
answers to virtually any question they
may have related to Departmental
activities.
Today I'm pleased to report the
next step in this ongoing process to
better utilize data in the management
of the environment in Alabama. For
many years, the Department, like the
environmental agencies in other states,
has been providing data to the
Environmental Protection Agency, our
federal oversight agency. During the
last several years, EPA has been
working with all states to develop a
system to improve the quality of the
data, consolidate it, and present the
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1 as a link on the ADEM website to allow
2 easy reference to both the EPA
3 dashboards and the ADEM e-system. The
4 EPA dashboards will provide the big
5 picture of how the Department is
6 performing against our sister states
7 and EPA standards, and the ADEM
8 e-system will allow for a more detailed
9 analysis of such things as individual
10 enforcement actions and responses to
11 specific complaints.
12 There are three important points to
13 bear in mind regarding these compliance
14 and enforcement metrics shown in the
15 new EPA dashboards. First, the
16 comparisons are only as accurate as the
17 data entered into the system. While
18 the data provided by Alabama is
19 reliable, currently the data for other
20 states will have varying degrees of
21 reliability. Second, many states are
22 not currently free-flowing data to EPA,
23 so there is a time lag in reporting

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1 some results. And, lastly, EPA still
2 has some issues with the interface
3 between EPA’s Information Systems
4 and ECHO, which we understand they are
5 aware of and are working to resolve.
6 These points are addressed with the
7 following statement that appears on the
8 EPA website, and I quote: State
9 performance is a complex and difficult
10 matter to analyze and explain. Data
11 alone cannot provide a complete picture
12 of performance. Many states have
13 issues with data completeness and
14 accuracy, and without investigation and
15 program knowledge, data can be
16 misleading or misinterpreted. Often,
17 there is important context around data
18 that must be taken into account to
19 provide an accurate picture. For
20 example, not all activities and
21 violations may be reported. Some
22 states are not authorized to run
23 programs. Current-year data may still

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1 be in the process of being reported and
2 states may have alternative inspection
3 plans. EPA uses data like the
4 information here as a starting point
5 for assessing state performance but not
6 as the sole measure of performance.
7 More in-depth program reviews -- see
8 State Review Framework Reports -- are
9 used to identify needed state program
10 improvements. While file reviews and
11 management discussions can add to our
12 understanding, the many layers of
13 context and information make it
14 difficult to portray performance in a
15 consistent and transparent way. Close
16 quote.
17 Over time, the quality and
18 timeliness of comparison data from
19 other states can be expected to
20 improve. In spite of the current
21 shortcomings, I would like to begin
22 this process of regular analysis of
23 Departmental performance by utilizing

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1 those dashboards which we have
2 determined from our review to be the
3 most accurate representation of
4 Departmental activities.
5 Beginning with this Commission
6 meeting, I will regularly be presenting
7 the dashboard analysis on a rotating
8 basis by media. State dashboards can
9 provide an easy-to-use summary of key
10 activities to answer questions such as:
11 How many and what kind of facilities
12 are regulated? How many have been
13 inspected? How many have violations?
14 And what enforcement actions have been
15 taken? Today we will begin with the
16 Land media. Air and Water media
17 dashboards will be presented in future
18 Commission meetings.
19 The majority of the Land
20 Division -- the major activity of the
21 Land Division is administering the
22 federal Resource Conservation and
23 Recovery Act of 1996, commonly referred
1. to as RCRA, which established a  
2. regulatory structure for the management  
3. of solid and hazardous waste. This  
4. statute and its associated regulations  
5. was intended to ensure proper  
6. management and disposal of hazardous  
7. waste. Please direct your attention to  
8. the screen where I will walk you  
9. through a few of the RCRA dashboards  
10. available for analysis of those  
11. programs.  
12. This first slide shows the total  
13. number of RCRA-regulated facilities in  
14. each of the states. As you can see,  
15. Alabama, with just under 5,000  
16. regulated facilities, is somewhere in  
17. the middle of the pack for the total  
18. number of facilities in the state.  
19. Alabama's total universe of 4,941  
20. facilities is broken down into four  
21. categories: Treatment, storage, and  
22. disposal facilities, TSDFs, shown in --  
23. are shown in purple, a very small slice  

1. represent the largest potential  
2. hazardous waste risk.  
3. Here you see a comparison of the  
4. percentage of large-quantity generators  
5. inspected annually in Alabama for the  
6. period from 2009 through the first  
7. quarter of 2013 to the national  
8. standard of 20 percent established by  
9. EPA. The 2013 data is for the first  
10. quarter only, so by year end, that bar  
11. will also exceed the 20-percent  
12. standard by a significant margin. This  
13. measure of the rate of inspections is  
14. one of our grant commitments made each  
15. year to EPA. As you can see, the Land  
16. Division consistently meets or exceeds  
17. the EPA requirement for the rate of  
18. inspections. You see that the green  
19. portion and the purple portion  
20. representing the state-only inspections  
21. and the combined state inspections plus  
22. independent EPA inspections,  
23. respectively, show the same percentage  

1. there in purple; large-quantity  
2. generators, LQGs, shown in yellow;  
3. small-quantity generators, SQGs, the  
4. blue portion; and "others" represented  
5. in orange. The majority of the  
6. regulated facilities fall into the  
7. small-generator or "other" category.  
8. These 4700 facilities either  
9. temporarily store small amounts of  
10. hazardous waste or simply transport  
11. wastes that are defined as hazardous.  
12. This large number of small facilities  
13. represents a very small fraction of the  
14. total hazardous waste in Alabama and,  
15. likewise, represents a very small risk  
16. of environmental exposure. By  
17. contrast, there are fewer treatment,  
18. storage, and disposal facilities and  
19. large generators of hazardous waste,  
20. but they represent the vast majority of  
21. hazardous waste managed in the state.  
22. The following dashboards will focus on  
23. the large generators and TSDFs, which  

1. coverage. The reason for this is that  
2. all EPA inspections are done with ADEM  
3. representatives present.  
4. This dashboard shows the percentage  
5. of inspected large-quantity hazardous  
6. waste generator and treatment, storage,  
7. and disposal facilities that were found  
8. to be in significant noncompliance, or  
9. SNCs, with an applicable state or  
10. federal requirement. The percentages  
11. of these large facilities found to be  
12. in significant noncompliance in both  
13. Alabama and the nation are small,  
14. thankfully. For the past several  
15. years, ADEM inspectors have been  
16. consistent with or slightly exceeded  
17. the national average of other state  
18. inspectors in identifying SNCs during  
19. facility inspections. The ideal is for  
20. there to be no facilities in  
21. noncompliance, but also to be sure that  
22. all facilities that actually are in  
23. noncompliance are identified when those
facilities are inspected.
You see the red portion of this slide representing the percentage of sites where EPA participated with ADEM in the inspection is higher than the other percentages shown. The reason for this is that ADEM and EPA focus the joint inspections on those facilities where there is either a high probability or a history of significant noncompliance. The number of facilities jointly inspected is about eight percent of the total inspections.

The previous slides showed the number and types of facilities, the inspection rates for the largest facilities, and the percentage of those facilities inspected that were found not to be complying with permit conditions. The next step in the process of administering RCRA is the enforcement activity against those facilities found to be noncompliant.

On this slide, you see a depiction of the percentage of those facilities found to be in significant noncompliance where enforcement action is taken within 360 days, in accordance with EPA's national RCRA enforcement response guidelines. As you can see, the EPA-specified national goal is 80 percent within 360 days. The percentage shown for 2013 is one-fourth of the year and, as with the prior years, it is expected to surpass the EPA 80-percent goal by year-end. Read in conjunction with the somewhat higher rate of identifying SNCs shown in the last chart, you can see that there is substantial and timely RCRA enforcement activity within the state.

The slides I have shown you here today are a few key dashboards which we have determined give the most accurate overall representation of departmental performance. By going to the EPA website, a great deal of additional inspection, violation, and enforcement information can be displayed.

Currently, dashboards are being updated by EPA on an annual basis. At some time in the future, EPA has plans to update the data more frequently, perhaps as frequently as quarterly. As updated information becomes available, I will incorporate it in my reports to the Commission.

Earlier, I read the EPA statement regarding reliance on the information presented in the dashboard reports. In that EPA statement, there was a reference to State Review Framework Reports which provide an in-depth review of state programs. These reviews, which are similar to audits, are done approximately every three years. The Department has just completed this tri-annual review, and we expect a report of EPA's findings by Year-End 2013. When those results become available, I will present them to the Commission. Since the State Review Framework audit is performed on a three-year cycle, the dashboard analysis will be the one most frequently presented to you.

I'd like to now bring you up to date on the current state of our physical facilities in south Alabama. At the June 21, 2013, Commission meeting, I reported to you that following termination of the existing lease at the Brooklyn Aeroplex, the Coastal Program had just leased office facilities approximately nine miles further inland at an acceptable cost. It was also noted that this is a less-than-desirable situation because it does not correct the substantial
1 existing inefficiencies of having two
2 separate physical locations for
3 operating units that are under common
4 management and it does not address the
5 poor positioning to meet what are
6 projected to be dramatically-increasing
7 regulatory demands in the Mobile area.
8 Further, it does not address the
9 substandard facilities currently
10 housing the Mobile field office.
11 Nonetheless, immediate action was
12 required to deal with the first -- with
13 the fast-developing relocation
14 requirement, and options were limited.
15 Now that the FY2014 operating
16 budget issues have been addressed,
17 funding acquisition of appropriate
18 physical facilities in Mobile is the
19 top financial priority for the
20 Department. Discussions have been
21 entered into with the Governor's Office
22 to explore possible sources to provide
23 the funding for the necessary physical

1 facilities in Mobile. Preliminary cost
2 estimates for a single facility to
3 house the Coastal Program and the
4 Mobile field office, including
5 appropriate regional laboratory
6 facilities, is about $5.5 million. The
7 need for proper physical facilities in
8 the Mobile area grows each day, and I
9 will continue to report on efforts to
10 resolve this problem in the coming
11 months.
12 Once again, let me close with my
13 thanks to you for serving the state as
14 Commissioners on the Alabama
15 Environmental Management Commission and
16 for allowing me to also serve the state
17 in this capacity.
18 Are there any questions? I would
19 be pleased to try to answer them at
20 this time.
21 (No response.)
22 CHAIRMAN BROWN: Thank you.
23 MR. LEFLEUR: Thank you.

1 CHAIRMAN BROWN: Next on the
2 agenda is the report from the
3 Commission Chair. I don't have any
4 particular comments today, so we'll
5 move on to Agenda Item 4. Commission
6 will consider adoption of proposed
7 amendments to ADEM Administrative
8 Code 335-3, Air Pollution Control
9 Program Regulations. And we'll call on
10 the Department for comments.
11 MR. GORE: Good morning,
12 Mr. Chair, lady, gentlemen. As you
13 know, EPA adopts many nationally
14 applicable technology-based standards
15 for air pollution sources around the
16 country. The EPA encourages and we
17 like to adopt those standards and
18 administer those on a day-to-day basis
19 here at the state. I have the latest
20 batch for your approval, if you see so
21 fit. We had a public comment period
22 that lasted from May 27 to July 12,
23 public hearing on July 11th. There

1 were no comments except for one comment
2 from EPA. We have reconciled EPA's
3 comment in the package.
4 Unless you have any questions, we
5 would like to ask that you adopt these
6 changes.
7 MR. PHILLIPS: I move we adopt
8 the proposed amendments.
9 DR. MILLER: Second.
10 CHAIRMAN BROWN: All in favor?
11 (Unanimous.)
12 CHAIRMAN BROWN: Any opposed?
13 (No response.)
14 MR. GORE: Thank you.
15 CHAIRMAN BROWN: Next on the
16 agenda is Agenda Item 5, which is East
17 Huntsville/Madison County Civic
18 Association versus ADEM and Vulcan
19 Construction Materials. I and
20 Commissioner Richardson will be
21 recusing, so I will turn this over to
22 the Vice Chair.
23 VICE CHAIRMAN PHILLIPS: Thank
1. you, Mr. Chairman. I want to note that
2. we'll consider the Hearing Officer's
3. order/recommendation on Respondent
4. ADEM's and the Intervener Vulcan
5. Construction Material's motions to
6. strike and dismiss. The Hearing
7. Officer recommended that the motion to
8. strike and dismiss be granted.
9. I'll entertain a motion from the

11. DR. MILLER: I move we accept
12. the Hearing Officer's recommendation.
13. VICE CHAIRMAN PHILLIPS: Do I
14. have a second?
15. DR. LAIER: Second.
16. VICE CHAIRMAN PHILLIPS: I have
17. a motion and a second to accept the
18. Hearing Officer's recommendation. Just
19. a reminder that Commissioner Richardson
20. and the Chairman will be recusing
21. themselves. All in favor signify with
22. sign "aye."
23. (Unanimous.)

1. VICE CHAIRMAN PHILLIPS: All
2. opposed, same.
3. (No response.)
4. VICE CHAIRMAN PHILLIPS: Motion
5. passes. Turn it back over to the
6. chairman.

7. CHAIRMAN BROWN: Thank you.
8. Agenda Item 6, Other Business. I don't
9. know of anything. Do any of the
10. Commissioners have any items to
11. address?
12. (No response.)
13. CHAIRMAN BROWN: Agenda Item 7
14. is our future business session. I know
15. we will meet October 18, 2013, at
16. 11 a.m. in this conference room. All
17. Commissioners available on that date?
18. (No response.)
19. CHAIRMAN BROWN: Next we have
20. three requests to address the
21. Commission which were made, and we have
22. first for consideration is a request
23. from Michael Mullen of the

1. (Unanimous.)
2. CHAIRMAN BROWN: All opposed?
3. (No response.)
4. CHAIRMAN BROWN: The third
5. request is a request by Mary Schaeffer
6. and Benjamin Eaton on behalf of the
7. Black Belt Citizens Fighting for Health
8. and Justice on the subject of the
9. Arrowhead Landfill and the City of
10. Unions' Wastewater Treatment Plant.
11. The Chair has previously recommended
12. approval of this request based on the
13. fact that Ms. Schaeffer and Mr. Eaton
14. did not appear as named complainants in
15. the Title VI Complaint related to the
16. Arrowhead Landfill, but I will
17. entertain a motion.
18. DR. RICHARDSON: Motion to
19. approve the request.
20. CHAIRMAN BROWN: Is there a
21. second?
22. DR. LAIER: Second.
23. CHAIRMAN BROWN: All in favor.
1 say aye.
2 DR. RICHARDSON: Mr. Chairman,
3 I would like to have discussion,
4 please.
5 CHAIRMAN BROWN: I'm sorry.
6 Any discussion?
7 DR. RICHARDSON: I would like
8 to move to postpone the question until
9 the Commission meeting following such
10 time that the Title IX Civil Rights
11 Action has been resolved.
12 CHAIRMAN BROWN: Title VI.
13 DR. RICHARDSON: Title VI.
14 Thank you.
15 CHAIRMAN BROWN: Is there a
16 second?
17 DR. LESTER: Second.
18 CHAIRMAN BROWN: Is there any
19 further discussion?
20 (No response.)
21 CHAIRMAN BROWN: All in favor
22 of Commissioner Richardson's motion to
23 postpone the Schaeffer/Eaton Black Belt

1 Citizens' public comments until after
2 the Title VI Complaint has been
3 resolved say aye.
4 (Unanimous.)
5 CHAIRMAN BROWN: Any opposed?
6 (No response.)
7 CHAIRMAN BROWN: So be it.
8 Then Mr. Mullen. Mr. Mullen, welcome.
9 And as you know, ten minutes.
10 MR. MULLEN: Thank you. I may
11 be a little long. I'll just cut it
12 off. I just want to talk about an
13 example of the problem with ineffective
14 enforcement of construction stormwater
15 permits. Back when he was acting
16 Director, John Hagood said that the
17 enforcement on these permits is out of
18 control, and it's still out of control.
19 It's not going to work. I had a
20 whole host of videos to show. But
21 looking at -- that's what happens
22 sometimes when you put video slides in
23 the PowerPoint. For some reason -- it

1 came up earlier when we checked it out.
2 Anyway, looking at just the area around
3 Troy University in Troy as an example,
4 this aerial photograph points out
5 eleven different sites on the slide;
6 one is just off the slide. Every one
7 of these except for one has had
8 moderate to severe noncompliance
9 issues. I wish I'd be able to show you
10 the slide because it showed some of
11 those. And you've seen all this. I've
12 sent you an extended larger file.
13 But what happens in many cases is
14 no phasing is done. The whole site is
15 cleared; no phasing is done or improper
16 BMPs are put in or BMPs are not
17 monitored. In this particular site, I
18 thought this was a -- this area is
19 still bare. That slope is -- nothing's
20 been done with that slope for months
21 and months and months. It's never been
22 stabilized. That's just one example.
23 And you can see over time -- this is

1 two different projects, two different
2 phases. Month after month after month,
3 you go through a whole series of things
4 and there's an initial noncompliance on
5 these sites and we don't get a rapid
6 return to compliance.
7 This is a construction entrance on
8 a site. It was that way beginning back
9 around February or March of this year,
10 and it's -- until just recently has
11 stayed that way. You can't see it in
12 this picture. You can see it in this
13 one. There has been an unprotected
14 storm drain there the whole period of
15 the time until just recently.
16 This site has stayed largely bare
17 the whole time. Yes, it's stable now
18 because the project is over, but sites
19 are -- there's no general deterrence.
20 You know, when you have this many sites
21 that are having problems, the
22 Department's enforcement compliance
23 efforts are not creating deterrence.
1. They don't think it's important to do
cerosion and sediment control. It's not
being incorporated. It's not part of
the job. It's something I have to do
over here on the side.
6. There was finally a penalty order
proposed on this site. Big deal.
8. They're almost through. And what's a
$7,000 penalty? Site has just large
areas that were left unstabilized for a
long period of time, BMPs that are
incomplete. This occurred every major
rain we had from early -- late last
year until probably up through about
June of this year when they finally
stabilized parts of the site where
there's no active construction going on
month after month.
9. Another site. Warning letters,
eventually a consent order, offsite
pollution continued for a period of
time and still continues after the
consent order. They removed sediment
from the conveyance, but they didn't
get -- all this (indicating) is
downstream from that site.
4. This is a recent picture. This
is a recent -- I'm sorry. This is not
the recent. There is a recent picture.
7. It was in the other thing. But the
kind of sediment that was in there from
an earlier project, the kind of erosion
we had on this project because of
failure to have good erosion-sediment
control plan.
13. Again, not a -- no -- no proper
drainage plan, failed to stabilize an
area where a lot of water was going to
come over. Just poor planning. And,
again, another big pool of sediment
downstream of this site. This is an
earlier construction site going to the
same drainage. Again, large amounts of
sediment. Another side of that same
project. This is a new one. This is a
relatively minor one, but, again, we
had discharge from this that resulted
in NOV because people are not doing
enough. They don't consider it
important enough.
5. More recent facility. And this one
really points out a lot of the
problems. This occurred in late June,
early July. And I had a good
conversation with the owner of the
company doing this project. And can't
see it on here, but there were a number
of silt fences up here that were in my
videos. Wrong kind of silt fence,
Class C silt fence, weren't appropriate
for the area, weren't properly located.
I asked the gentleman, Why are you
using some of these BMPs that are
inadequate or improper? I was told,
It's what my architect told me to do.
Okay? The Department does not review
best management plans unless they're on
a priority stream, you know. We're
going to -- one suggestion is that the
Department start reviewing those plans
or have some independent party review
those plans. I have former students
that work for an engineering firm who
tell me that customers will not do a
good robust erosion settlement control
plan because they know the consequences
of failure are not that much of a risk.
Same site. Here's the
inappropriate fence poorly located.
Poor gentleman out here on the Fourth
of July trying to do something about
it. Futile. This is another project.
There haven't been any violations
observed that we've seen there yet. It
was well done. This was a successful
site. There was a cease order on this
site. The contractor on this site
sent, I think, 20 or 30 people to
erosion settlement control training at
Auburn as a result of the cease order,
was embarrassed by the cease order, but
they're falling back. Some of these
1. other sites that I've shown you
2. previously, same contractor. They're
3. falling back into the same pattern.
4. Another contractor. You know, just
5. about every site -- I've been looking
6. at construction sites in the Troy area
7. since about 1998, and I can count on
8. one hand the ones that had good erosion
9. sediment control, and I think one of
10. those was by accident. Even after --
11. in this case, even after the consent
12. order and the penalty was issued, there
13. still continued for about a month and a
14. half, two months after that to continue
15. to be preventable runoff coming off the
16. site.
17. Another project. Just on and on
18. and on. You've got the -- you've got
19. the complete slide show. It's redacted
20. to make sure we're not putting any
21. companies' names up there. This
22. particular site was interesting. If
23. you go to record, you find out EPA did

1. an inspection of it. The EPA's
2. inspection was so late in the process
3. that everything looked pretty good.
4. And one of the problems is, if you're
5. counting grapefruits and what you're
6. looking for is apples, we don't know
7. what's going on with compliance. You
8. know, if all you're counting -- I
9. worked in education, and if all you're
10. counting is how many people come to
11. your seminar and that sort of thing,
12. you're not evaluating what's happening,
13. you don't know what's going on. And
14. looking at the effectiveness of
15. enforcement, if all we're doing is
16. we're counting how many inspections,
17. how many orders, and that sort of thing
18. and we're not looking at are we
19. returning them to compliance, what
20. percentage of them are in
21. noncompliance, we've got serious
22. problems.
23. I'm not going to go through these

1. Word slides. You have them. You also
2. have a letter that I gave Mr. Brown --
3. and you should all get a copy of it --
4. indicating what we see. We would like
5. to see the Department or the Commission
6. or both put together a group of
7. stakeholders to look at effectiveness
8. and to make sure that metrics are being
9. used, examined, that will actually say,
10. Are we effective? What percentage of
11. sites are in noncompliance? How long
12. does it take a site to return to
13. compliance after there's a warning
14. letter, after there's an NOV, after
15. there's an order? How many repeat
16. violators do we have out there? Until
17. we measure those sorts of things, we're
18. spending a lot of taxpayer money to do
19. enforcement, we're pretending to do
20. enforcement, but we're not doing any
21. good enforcement.
22. I appreciate your time. And I
23. probably even ran over a little bit.

1. CHAIRMAN BROWN: That's all
2. right. Thank you, Mr. Mullen.
3. Any comments by the Department?
4. (No response.)
5. CHAIRMAN BROWN: Thank you.
6. Any questions or comments from the
7. Commission?
8. (No response.)
9. CHAIRMAN BROWN: Well, I will
10. entertain a motion to adjourn.
11. MR. PHILLIPS: I move we
12. adjourn.
13. DR. LAIER: Second.
14. CHAIRMAN BROWN: All in favor?
15. (Unanimous.)
16. CHAIRMAN BROWN: Meeting
17. adjourned.
REPORTER'S CERTIFICATE

STATE OF ALABAMA
ELMORE COUNTY

I do hereby certify that the above
and foregoing transcript was taken down
by me in stenotype, and the questions
and answers thereto were transcribed by
means of computer-aided transcription,
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true and correct transcript of the
testimony given by said witness.

I further certify that I am
neither of counsel, nor any relation to
the parties to the action, nor am I
anywise interested in the result of
said cause.

I further certify that I am
duly licensed by the Alabama Board of
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I do hereby certify that the above and foregoing transcript was taken down by me in stenotype, and the questions and answers thereto were transcribed by means of computer-aided transcription, and that the foregoing represents a true and correct transcript of the testimony given by said witness.

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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.

/Bridgette W. Mitchell
/s/ Bridgette W. Mitchell
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<td>Resolution to adopt amendments to ADEM Admin. Code Div. 335-3, Air Pollution Control Program Regulations (Agenda Item 4)</td>
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<td>Attachment 3</td>
<td>Order to adopt Hearing Officer’s Order/Recommendation on Respondent ADEM’s and Intervenor Vulcan Construction Materials, LP’s Motions to Strike and Dismiss (Agenda Item 5)</td>
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Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 16, 2013
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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<td>5. East Huntsville/Madison County Civic Association, Inc. v. ADEM, and Vulcan Construction Materials, LP, EMC Docket No. 13-01 (NPDES-Related Matter)</td>
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PUBLIC COMMENT PERIOD

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

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON JUNE 21, 2013

2. REPORT FROM THE DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

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

The Commission will consider proposed amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations, Rules 335-3-1-.02, 335-3-10-.01, 335-3-10-.02, 335-3-11-.01, 335-3-11-.06, and Appendix C. Revisions to the Division 3 Code are being proposed to incorporate by reference changes to the EPA’s New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The definition of volatile organic compounds (VOCs) in Chapter 335-3-1 is also being proposed for revision to be consistent with EPA’s revisions. Chapter 335-3-1 is considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to this Chapter are proposed to be incorporated into Alabama’s SIP. The Department held a public hearing on the proposed amendments on July 11, 2013.

5. EAST HUNTSVILLE/MADISON COUNTY CIVIC ASSOCIATION, INC. V. ADEM, AND VULCAN CONSTRUCTION MATERIALS, LP, EMC DOCKET NO. 13-01 (NPDES-RELATED MATTER)

The Commission will consider the Hearing Officer’s “Order/Recommendation” on Respondent ADEM’s and Intervenor Vulcan Construction Materials, LP’s Motions to Strike and Dismiss in this appeal/request for hearing regarding ADEM’s issuance of NPDES Permit No. AL0075507 to Vulcan Construction Materials, LP, Gurley Quarry, Madison County. This item was tabled to this meeting at the last meeting of the Commission on June 21, 2013.

6. OTHER BUSINESS

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

Request 1
Michael William Mullen, Choctawhatchee Riverkeeper
SUBJECT: Regulation of construction stormwater
(Chair Brown will recommend that the Commission approve the request.)

Request 2
David A. Ludder, Esq.
SUBJECT: Title VI Compliance at the
Alabama Department of Environmental Management
(Chair Brown will recommend that the Commission approve the request.)

Request 3
Mary Schaeffer and Benjamin Eaton,
on behalf of Black Belt Citizens Fighting for Health and Justice
SUBJECT: Arrowhead Landfill and the City of Uniontown’s Wastewater Treatment Plant
(Chair Brown will recommend that the Commission approve the request.)
H. Lanier Brown, II, Esq, Chair  
c/o Environmental Management Commission  
P.O. Box 301463  
Montgomery, AL 36130-1463

July 27, 2013

Dear Chairman Brown:

I am writing to request approval for a presentation at the August 16th AEMC meeting. The presentation will address regulation of construction stormwater (CSW). It will show examples of noncompliance by a subset of CSW permit holders in the Troy area over approximately. Note that my observation is that almost every construction site that I have patrolled has had significant compliance issues and many have had offsite pollutant transport.

A good many of these CSW permit holders have been on the receiving end of compliance actions by ADEM. Despite this, in far too many instances, noncompliance has continued largely unabated for much too long - often months.

The fact that so many sites fall into noncompliance is an indication that ADEM has not created and is not creating general deterrence sufficient to achieve good rates of compliance by CSW permit holders. The fact that it often takes so long for return to compliance and that many permit holders are serial violators, repeating violations on site after site after site is an indication that ADEM has not created and is not creating general deterrence.

The presentation will show a few samples of failure to effectively enforce permitting and compliance enforcement actions over time and images from the sites over the same time periods. The PPP that will be used in the presenta-
tion has been redacted to remove all permit numbers and permit holder names. What will be shown is part of a much larger PPP with almost 100 slides. I will be sending Ms. Thomas a separate e-mail with a link to a Dropbox file with the larger presentation so that she might share that presentation with commissioners. At this time I am attaching a few introductory slides and an example of the format the remainder of the presentation will have.

Many in the environmental community have spent considerable time and resources over the years to document ADEM’s failure to effectively enforce CSW permits and to convey that failure as well as suggestions for improvement to ADEM. To date there has been little in the way of effective response from the Department. It would almost seem that the Department does not want to effectively enforce CSW permits. This is unfortunate because the current situation does not utilize resources well as it leads to in some cases a necessity for repeated inspections and very numerous correspondence, calls and meetings.

Once again, on the afternoon of the August 16th meeting members of the environmental community will meet with the Director and staff. CSW permit compliance and effective enforcement will be one of the main topics of the meeting. There will be a request to the Department for it to begin to collect some data that will give an accurate depiction of the effectiveness of the CSW compliance enforcement efforts at the Department. Currently there does not appear to be any data captured that provides a true measurement of the effectiveness of compliance enforcement. As a result effectiveness is judged not by the degree to which compliance is occurring but rather by the number of activities—inspections, enforcement actions etc. This does not indicate what percentage of facilities are in compliance, how many repeat violations occur at sites, how many permit holders are serial violators or critically, how soon noncompliant sites are returned to compliance.

In addition some suggestions will be made both for changes to the permitting process and for compliance enforcement that very possibly could lead to increased compliance rates.

Respectfully submitted,

Michael William Mullen, CPESC
Choctawhatchee Riverkeeper
FACSIMILE TRANSMITTAL

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<th>Chair, A EMC</th>
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<td>DATE:</td>
<td>July 31, 2013</td>
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<tr>
<td>MATTER:</td>
<td>Request to Speak at Aug 16 A EMC Meeting</td>
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<tr>
<td>NO. PAGES:</td>
<td>16</td>
</tr>
<tr>
<td>SUBJECT:</td>
<td>Title VI Compliance at the Alabama Department of Environmental Management</td>
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</table>

MESSAGE:

Please allow me time to address the A EMC on the above-referenced subject matter. Attached is a draft Powerpoint presentation which I expect to be the focus of my comments.

Thank you.
BLACK BELT CITIZENS
FIGHTING FOR HEALTH AND JUSTICE
P.O. Box 523
Uniontown, AL 36786

August 1, 2013

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

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

Re: Request to Address the Environmental Management Commission
on August 16, 2013, regarding Arrowhead Landfill and
the City of Uniontown’s Wastewater Treatment Plant

Dear Chairman Brown:

Black Belt Citizens Fighting for Health and Justice is a non-profit
organization of concerned citizens in Uniontown, Alabama. On behalf
of our group, the two undersigned members hereby request to be placed
on the agenda to address the Environmental Management Commission
(EMC) at its next meeting to be held on August 16, 2013. We have two
issues that we wish to bring before the EMC.

Regarding the Arrowhead Landfill, we will present to the EMC the test
results obtained by Dr. Betsy Dobbins, Department of Biology, Samford
University, from her water sampling of both surface run-off from the
landfill and well water on Booker Gipson’s property adjacent to the
landfill. These test results reveal: a) elevated levels of conductivity, and
b) elevated levels of arsenic.

We will request ADEM’s immediate enforcement action against
Arrowhead Landfill to prevent more toxic landfill contaminants from
migrating offsite, as well as ADEM’s further testing to identify and
quantify all contaminants, damages and health risks, and ADEM’s
supervision and oversight of Arrowhead’s remediation of the situation.
Our citizens want to be kept fully informed of ADEM’s and
Arrowhead’s actions and progress in this matter.
Regarding the City of Unioitown's long-overdue and much-needed upgrades to its Wastewater Treatment Plant (WWTP), we will reiterate to the EMC our strenuous objections to the proposed location for construction of a second spray field. Mr. John Stevens, PE, Vice President of Sentell Engineering, Inc. in Tuscaloosa, Alabama, is the engineer in charge of this project. The proposed site, on the south side of Perry County Road 53 (coordinates of approximately 32-23.176N, 87-30.830W), is completely unsuitable for use as a wastewater spray field for many compelling reasons, which we will discuss in detail.

We will request ADEM's collaboration and support to facilitate finding a reasonable and appropriate alternative to resolve this issue for the long term for all the various stakeholders in the City of Unioitown's WWTP, before the grant and loan funds are mis-spent in building a new spray field that is doomed to fail.

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

Sincerely,

Mary Schaeffer
PO Box 878
Unioitown, AL 36786
Home: 334-628-8278
Cell: 334-231-5161
mlschaeffer@bellsouth.net

Benjamin Eaton
PO Box 276
Unioitown, AL 36786
Home: 334-628-3012
Cell: 334-507-8951
beneaton@bellsouth.net
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 these revisions to division 335-3 [335-3-1-.02/Definitions (Amend), 335-3-10-.01/General (Amend); 335-3-10-.02/Designated Standards of Performance (Amend); 335-3-11-.01/General (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source Categor...
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

Appendix C/EPA Regulations Reference Documents for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (Amend)] of the Department’s Air Division – Air Pollution Control Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of August 2013.

APPROVED:

Mary J. Math
James E. Penn
John Pate
Janine Brown

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 16th day of August 2013.

H. Lamar Brown, II, Chair
Environmental Management Commission
Certified this 16th day of August 2013
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: )
) )
East Huntsville/Madison County Civic )
Association, Inc., )
Petitioner, )
) )
vs. )
) ))
EMC Docket No. 13-01
Alabama Department of Environmental )
Management, )
Respondent, )
) )
and )
) )
Vulcan Construction Materials, LP, )
Intervenor. )
)
ORDER

This cause having come before the Environmental Management Commission pursuant to
the Hearing Officer’s “Order/Recommendation” on Respondent ADEM’s and Intervenor Vulcan
Construction Materials, LP’s Motions to Strike and Dismiss, the Commission hereby ORDERS,
ADJUDGES, and DECRES as follows:

1. That the Hearing Officer’s “Order/Recommendation” on Respondent ADEM’s
and Intervenor Vulcan Construction Materials, LP’s Motions to Strike and Dismiss is hereby
adopted; and

2. That pursuant to the adoption of the Hearing Officer’s “Order/Recommendation,”
Respondent ADEM’s and Intervenor Vulcan Construction Materials, LP’s Motions to Strike and
Dismiss are hereby granted and the Hearing Request filed by Mr. Binkley on behalf of the East
Huntsville/Madison County Civic Association, Inc. is hereby struck and this matter is dismissed;
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 the Order, along with a copy of the Hearing Officer’s
“Order/Recommendation,” 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 16th day of August 2013.

APPROVED:

Mary J. Bent
Commissioner

James E. Law
Commissioner

John Leitz
Commissioner

W. Scott Hurst
Commissioner

DISAPPROVED:

Commissioner

Commissioner

RECUSED:

Gary D. Richardson
Commissioner

Jamis Jm
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 16th day of August 2013.

H. Lamar Brown, II, Chair
Environmental Management Commission
Certified this 16th day of August 2013
BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

EAST HUNTSVILLE/MADISON COUNTY CIVIC ASSOCIATION, INC. 
Petitioner,

vs.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
Respondent.

DOCKET NO. 13-01

ORDER/RECOMMENDATION

This matter is before the undersigned on the Department’s and Intervenor, Vulcan Materials, LP’s (“Vulcan”) Motions to Strike and Dismiss. The primary basis for the Motions is Ala. Admin. Code r. 335-2-1-30, which prohibits a non-attorney from representing a party before the Commission. Hence, the Department and Vulcan argue that the failure of an attorney for Petitioner to sign the subject notice of appeal requires the dismissal of this matter.

Clifford H. Binkley filed a response to the Motions and states that although the notice of appeal was not signed an attorney, a typographical error existed in the notice and that he meant to bring the appeal on behalf of himself and not on behalf of the East Huntsville/Madison County Civic Association, Inc. (“Association”). However, the face of the notice clearly states the appealing party is the Association and other portions of the notice indicate the Association is the party bringing the appeal.

Based on precedent, the undersigned is bound to agree with the Department’s and Vulcan’s position. See Canaan Systems, Inc. v. Department, EMC Docket No. 09-06, 2009 WL 2634671 (August 21, 2009). Therefore, the undersigned RECOMMENDS that the Department’s and Vulcan’s
Motions to Strike and Dismiss be GRANTED.

Petitioner shall have until June 7, 2013 to file objections to this Recommendation and the Department may file any reply by June 11, 2013.

Done this 23rd day of May, 2013.

[Signature]
R. Rainer Cotter, III
Hearing Officer
PO Box 310910
Enterprise, Alabama 36331
Ph. 334-347-2626
Fax 334-393-1396
Email: rrc@enterpriselawyers.com

cc: (By U.S. Mail and Email)
Debi Thomas, Commission Secretary
PO Box 301463
Montgomery, Alabama 36130-1463
Email: aemc@adem.state.al.us

James Wright
ADEM - Office of General Counsel
Post Office Box 301463
Montgomery, Alabama 36130-1463
jlw@adem.state.al.us

Schuyler K. Espy
ADEM - Office of General Counsel
Post Office Box 301463
Montgomery, Alabama 36130-1463
sespy@adem.state.al.us

T. Michael Brown
Bradley Arant Boult Cummings, LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119
Email: mbrown@babc.com

Clifford (Bill) Binkley
The East Huntsville/Madison County
Civil Association, Inc.
207 Marlie Lane
Gurley, Alabama 35748
Email: bill.binkley1@yahoo.com