Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 17, 2012
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 17, 2012.

Chair
Environmental Management Commission

Certified this 19th day of October 2012.
Minutes
Environmental Management Commission Meeting
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1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 17, 2012

Convened:  11:00 a.m.
Adjourned: 11:45 a.m.

Part A

Transcript
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Part B

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Part A
CHAIRMAN LESTER: Can I have everybody's attention? I want to, first off, introduce Mary Merritt. She's the Governor's new appointee to the Commission. She takes Marquita Davis's position. Mary is from Enterprise. She's in the real estate business. She's a civic person. Even though you think she's handicapped, she's not handicapped. She can outrun all of us, I guarantee you. But she's a wonderful person, wonderful business person. And this was an open slot, so we needed a good businessperson in it. So I wanted you to meet her.

At this time, we'll call the meeting to order. And I acknowledge that we do have a quorum. Richardson is not here today. He had a problem and couldn't get here. We still have a quorum today.

Next item is consideration of the minutes of our June -- April 20th and

June 15th meeting. Each Commissioner has a copy.

MR. PHILLIPS: I move we adopt the minutes of both meetings.

MR. BROWN: Second.

CHAIRMAN LESTER: Motion and second. All in favor say aye.

(Unanimous.)

CHAIRMAN LESTER: All opposed?

(No response.)

CHAIRMAN LESTER: Next we'll have the report from the Director.

He's full of it today.

MR. LeFLEUR: Chairman.

CHAIRMAN LESTER: I enjoy it. He comes down to all the Commissioners before each meeting the week before and indoctrinates us on all this stuff. He's very, very thorough.

MR. LeFLEUR: Very enjoyable time, and I appreciate y'all putting up with that.

Good morning and welcome to all of
you present at this final of the six
scheduled meetings of the Alabama
Environment Management Commission for
Fiscal Year 2012. More significantly,
this is officially the last scheduled
meeting of Dr. Lester's 18-year tenure
on the Environment Management
Commission. However, should the
Governor not appoint his replacement
prior to the next meeting, we will all
look forward to seeing him here at our
October meeting, and perhaps meetings
after that. I'll take just a moment to
recognize that his lovely wife, Jane,
has joined us for today. Thank you for
joining us.

Dr. Lester, I won't try to
summarize your extraordinary
contributions to this Commission now,
but I look forward to attempting it at
our next meeting. For now, suffice it
for me to offer my heartfelt personal
thanks for your leadership and for your
friendship.

CHAIRMAN LESTER: Thank you,
sir.

MR. LEFLEUR: I'd also like the
opportunity to once again welcome
Ms. Mary Merritt. She is, as
Dr. Lester said, in the at-large
position, and she comes with more than
20 years of real estate and 35 years of
business management experience. I
welcome you to the Environment
Management Commission.

MS. MERRITT: Thank you.

MR. LEFLEUR: And on behalf of
the Department, I wish to say that
we're delighted to have you here and
look forward to working with you for
many years to come.

MS. MERRITT: Thank you.

MR. LEFLEUR: We're about to
close out the current fiscal year. I
will be brief in reporting on the
Fiscal Year 2012 budget and briefly
reiterate our plan for future years.
The bulk of this report will focus on
several important ongoing initiatives
within the Department. We're entering
a time of transition here at ADEM, and
I will offer some closing remarks to
say farewell to one of our retiring
division chiefs and introduce you to
the one who will pick up the torch and
carry it on as we move forward.

Budgets. We have six weeks
remaining in Fiscal Year 2012. There
have been no additional cuts to this
year's budget since we've last met. As
a result of implementing previously-
announced cost-cutting measures, the
Department is on target to close out
the year within the budget as it now
stands. One of the previously-
announced cost-cutting efforts is to
reduce head count through attrition.

We currently have 595 employees, down
from 610 in April of this year, and a
total -- out of a total allotted staff
of 648. We are nearing the point where
additional reductions will not be
possible without endangering our
ability to retain federally-delegated
programs. The attrition approach has
allowed us to cut our costs without
having to resort to layoffs, and we
anticipate no layoffs in the
foreseeable future.

We are continuing to move forward
in reaching out to impacted parties
regarding the anticipated 50-percent
increase in permitting fees beginning
in Fiscal Year 2014. We've met with
several organizations to present the
reasons for the increase and the
consequences of not implementing the
increase. As previously noted, I
anticipate presenting a request to the
Commission for rulemaking in June of
2013 to set the new permit fee
schedule.
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1. Moving on to some of our initiatives, let me begin with the issue of water use policy. At the request of Governor Bentley, the Alabama Water Agencies Working Group was formed and is made up of the Office of Water Resources, a division of ADECA, Alabama Department of Conservation and Natural Resources, Geological Survey of Alabama, Alabama Department of Ag and Industry, ADEM. The Working Group has completed its initial task of developing a report identifying Alabama water use policy issues. This report is available to the public on the OWR and ADEM websites or can be made available in electronic form on request to ADEM. The Working Group is now tasked by the Governor with reaching out to all interested parties who would like to have input in shaping water policy in Alabama. The water issues document is intended to generate discussion and the comments received will provide important input to the development of water policy and water regulation. We've encouraged all interested parties to be heard on this issue. All comments received will be weighed in developing a revised Water Management Issues document and a consensus for a statewide water management plan recommendation to be transmitted to the Governor's office.

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1. respective organizations in order to maximize the efficiency and the impact of their input.

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1. Also, all interested parties should be aware that there is a Permanent Joint Legislative Committee on water policy which has been holding public hearings on water policy. Attending those meetings is another way to get additional information about water policy in Alabama.

1. There are many reasons why we in Alabama would be wise to consider developing water use policy at this time. One of those reasons is the increasing frequency of water shortages caused by drought. As with much of the country, Alabama is experiencing moderate to severe drought in many areas of the state. This summer, the drought has mainly affected public drinking water systems located in the northwest and southeast areas of the state. Due to the recent rains, the immediate threat of loss of water service due to the drought has been reduced. Currently, the Department is aware of only five; and as of this morning, it's now down to four public water systems that are asking their customers to conserve water usage. As you can see, the map behind me on my -- on your left, the five systems are Harvest-Monrovia Water and Sewer Authority, which is the one that notified us this morning they are no longer under a conservation program; East Lauderdale County Water Authority; Dothan Utilities; Enterprise Water Works; and Troy Utilities.

1. All of these public water systems are asking their customers to voluntarily conserve water. The Department is not aware of any mandatory water conservations being employed by any of the state's public
water systems. These water systems are typically asking customers with even-numbered addresses to water their lawns only on even number days and customers with odd-numbered addresses to water their lawns on the odd-numbered days. At least one of the systems has also asked its customers not to water their lawns on weekends. The Department will continue to closely monitor the drought as it develops. However, if rains continue, these current measures should be sufficient to avoid any further rationing for the time being.

We do expect periodic drought-driven water shortages to continue and possibly increase, which will heighten the need to consider water-use policy. Another initiative in the arena which is worthy of note relates to a serious environmental problem in the most economically disadvantaged area of the state. The initiative involves cooperative efforts of multiple parties. From time to time in my reports to the Commission I have highlighted the importance of working with others to accomplish the mission of the Department. Recent activities involving the town of Uniontown provide a fine example of what can be done through cooperative efforts.

The citizens of Uniontown have the lowest per capita income in Alabama and one of the lowest in the nation. The wastewater treatment plant in Uniontown has been able to come into compliance with neither the minimum standards of the Clean Water Act nor its ADEM permit conditions. Years of underfunding and neglect have resulted in a plant that has been overwhelmed by both increased volume from infiltration and lack of proper maintenance.

For some time, Uniontown has experienced periodic overflows of untreated raw sewage. Odor from the improperly-treated raw sewage has been readily detectable throughout the town. Serious concerns regarding public health and the environment during April of this year prompted the Alabama Department of Public Health to issue a public health advisory and ADEM to issue a cease and desist order and to take legal action when partially-treated sewage was released from broken dams at the spray field into Freetown Creek. This release resulted in septic conditions in Freetown Creek with far-reaching impacts to downstream water bodies in neighboring counties. Even as the Department repeatedly took enforcement action against Uniontown, ADEM was spearheading efforts to find a permanent solution to the problem. Uniontown's engineering consultant estimated it would take approximately $4.5 million to reconstruct and modernize the wastewater treatment plant so waste would be properly treated and the local populace would not be subjected to future health threats and noxious odors from improperly-treated sewage and noncompliant discharges. Uniontown citizens were already paying high sewer fees and the city did not have a borrowing capacity to cover even a fraction of the cost. A coalition of partners was built to find a solution. In cooperation with federal, state, and local officials and agencies, including ADEM and Congresswoman Terry Sewell's office, the City of Uniontown has just received $4.8 million of funding from the U.S. Department of Agriculture Rural Development. Approximately $2.3 million was awarded in the form of a grant and $2.5 million in the form of a loan with unusually favorable terms.
1. Engineering plans are in place to
2. repair the wastewater treatment plant,
3. install new water meters, and
4. rehabilitate and install new pumps for
5. the city's pumping stations. In the
6. near future, overflows of raw sewage
7. will stop, the City of Unionton can
8. return to compliance, and both water
9. quality and human health will be
10. protected.
11. This is a huge win for the citizens
12. of Unionton and the State of Alabama.
13. I'm delighted to report this as another
14. example of how our mission is being
15. accomplished by working in partnership
16. with a variety of entities.
17. Moving on to some noteworthy
18. activities in our land program, the
19. Department recently announced the
20. recipients of this year's Alabama
21. Recycling Fund grants. Funding for
22. these grants is provided through the
23. one-dollar-per-ton surcharge on

1. recycling in our state, in 2011,
2. approximately $25 million was spent in
3. Alabama to dispose of readily-
4. recyclable materials that were worth
5. approximately $193 million. The ADEM
6. Recycling Grants program provides
7. recipients with funding to assist in
8. the recovery of this recyclable
9. material which is generally a more
10. affordable and environmentally sound
11. option compared to utilizing virgin raw
12. material as feedstock.
13. The Southeastern Recycling
14. Development Counsel, SERDC, reports
15. that 26 Alabama-based manufacturers
16. depend on recycled feedstock to make
17. new consumer goods and that these
18. companies collectively employ more than
19. 10,000 people and have total annual
20. sales volume exceeding $6.6 billion.
21. This same SERDC study concluded that
22. each additional 10 percent increase in
23. Alabama recycling rates would equate to

1. disposal of solid waste in Alabama. Of
2. the monies collected under this fee, 25
3. percent goes to recycling grants. This
4. competitive reimbursement grant program
5. encourages multi-governmental regional
6. partnership, recycling infrastructure
7. development, and education and outreach
8. to assist new or existing local
9. recycling programs in Alabama.
10. If you draw your attention to the
11. map to my rear on my left, your right,
12. you can see where the grants have been
13. issued. They are throughout the state.
14. Since its inception in 2009, 58 grants
15. out of 95 applications have been made,
16. totaling over $7 million. Given the
17. relatively small number of existing
18. recycling programs in our state,
19. infrastructure development is a top
20. priority for grant funding, although
21. education and outreach efforts are
22. eligible.
23. To give you an idea of the need for

1. an additional 1400 jobs, $3 million in
2. tax revenues, and $66 million in
3. personal income.
4. Alabama Recycling Grant Funds
5. program increases recycling in Alabama,
6. which is good for both our environment
7. and our economy.
8. Another noteworthy activity
9. currently underway in our Land Division
10. involves a comprehensive assessment of
11. solid waste management procedures in
12. Alabama. In its 2011 regular session,
13. the Alabama Legislature directed the
14. Department, in cooperation with the
15. Health Department, to undertake the
16. review. To afford ADEM and ADPH the
17. opportunity to conduct this assessment,
18. the Legislature imposed a 24-month
19. moratorium on the issuance of ADEM
20. permits to most new or expanding
21. landfills. Earlier this year, the
22. Legislature extended the moratorium
23. through May of 2014.
1 The Health Department agreed it
2 would be appropriate for ADEM to take
3 the lead on this assessment which will
4 address the siting and permitting
5 requirements for new public solid waste
6 landfills as well as evaluating
7 increased opportunities for recycling
8 and beneficial reuse.
9 In order to ensure an independent
10 and unbiased perspective on the current
11 State of Alabama Solid Waste program,
12 ADEM selected Auburn University to
13 oversee the study. As part of its
14 role, ADEM asked Auburn University
15 with -- tasked Auburn University with
16 conducting a series of meetings around
17 the state to gather input from the
18 general public as well as focused
19 interest groups. Auburn has
20 established a project website,
21 www.eng.auburn.edu, to provide
22 pertinent information to interested
23 parties. Given the increased use of

1 social media by the public, Auburn has
2 also established a Project Facebook
3 page that can be used by interested
4 parties to provide input or further
5 discuss issues related to the study.
6 More information on the meetings and
7 the website may be found on the display
8 board out in the lobby.
9 Once the public meetings are
10 completed later this year, the comments
11 will be compiled by Auburn into a
12 report that will be presented to ADEM
13 early next year. This final report
14 will also include a list of potential
15 solid waste program enhancements
16 identified during the study project.
17 Following review of the report and in
18 consultation with the Health
19 Department, the Department will make
20 its final recommendations to the
21 Legislature following the 2013 Regular
22 Session.
23 Before reporting on some changes

1 within the leadership of our Land
2 Division, I would like to make you
3 aware of one more environmental matter
4 that involves our Air, Land, and Water
5 Divisions in an economically-
6 disadvantaged community in the Mobile
7 area. As most of you know, the
8 Department has been overseeing the
9 assessment and remediation of a
10 significant Mercaptan release in the
11 Eight Mile area near Mobile. Mercaptan
12 is the odorant added to natural gas to
13 aid in leak detection. Our people have
14 been working with all affected parties
15 to ensure that the release is cleaned
16 up in a manner protective of the
17 environment and human health. Our work
18 is made more urgent because of the
19 pervasive odor that is also a quality-
20 of-life issue for the citizens in the
21 area.
22 In late June, the Department
23 received and published the results of

1 the April EPA air-monitoring study.
2 The study showed that monitored air
3 concentrations of Mercaptan and other
4 sulfur compounds were all below health-
5 based screening concentrations.
6 Although this is very encouraging to
7 know, there should be no long-term
8 health -- that there should be no
9 long-term health impacts associated
10 with the release, this pollution, and
11 in particular the odor from it,
12 continues to be a considerable nuisance
13 to the residents of this area and must
14 be addressed.
15 As required by an assessment and
16 remediation agreement with ADEM, Mobile
17 Gas Corporation submitted a preliminary
18 assessment of Mercaptan-impacted soil
19 and groundwater on the Gulf South
20 Pipeline property and the area near the
21 spring discharge. The preliminary
22 assessment indicates substantial
23 Mercaptan is present in the soil and
1. groundwater and that more investigative work is needed to evaluate the full lateral and vertical extent of contamination on the Gulf South Pipeline property as well as the down-gradient property toward the spring.

The Department is requiring that a comprehensive assessment plan be submitted by August 31. Based on this assessment, appropriate remediation plans will be developed and implemented to clean up the affected area.

In the meantime, ADPH, ATSDR, and the CDC will be working together to conduct a Health Study Consultation for the community so that they will be fully informed on the nature and extent of any possible personal health impacts.

It’s appropriate that we’ve highlighted a few of the significant ongoing initiatives in the Land Division as I would like to now report on changes in leadership in the Land Division. This is a time that’s truly bittersweet. Gerald, would you please join me up here at the podium? I’m going to have to read this verbatim, because there’s so much of it to read as far as some of your achievements here at the Department.

Gerald Hardy is the Chief of our Land Division, and he will retire effective at the end of this month and will retire into a private-sector position. Phil Davis, the current Chief of our Solid Waste Branch, will be promoted to Division Chief.

Although we will certainly miss Gerald, I have every confidence that we have found the right person to lead our Solid Waste Division in the future. Gerald Hardy began his career with the state in 1974, some 38 years ago, and has served in both the Air and Solid Waste programs in Alabama. Since 1998, Gerald has been the Chief of the Land Division. He’s been responsible for hazardous and nonhazardous solid waste programs including RCRA Subtitle C, CERCLA, Federal Facilities, BRAC, Brownfields, RCRA Subtitle D, Scrap Tires, Dry Cleaners, Underground Storage Tanks, and Voluntary Cleanup.

Gerald has participated in several national and regional organizations. He served as the Dialogue -- as a Dialogue Member of the Department of Defense Assembled Chemical Weapons Defense Assessment Program during its five-year existence. He has been active in the Air and Waste Management Association and previously served as Chairman of the Southern Section. Gerald has been an active member of the Association of State and Territorial Solid Waste Management Officials, ASTSWMO, since 1990, and served on the Board of Directors from 2001 through 2004,

1. representing the eight southeastern states -- Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee. He served as Vice-President of ASTSWMO from October 2005 until October 2006 and President from October 2006 to 2007.

Gerald earned his bachelor's degree in chemical engineering from Georgia Tech, one of my alma maters, and he has his Georgia Tech tie on today. He is a Certified Public Manager and also a Registered Professional Engineer in the State of Alabama.

Gerald, we will certainly miss you here, and we wish you the best as you move forward in your professional life. (Applause.)

MR. LeFLEUR: Why don’t you stand here while I read some of Phil -- Phil, come on up here. Let me read a few of his accolades, too. I want you to see the dynamic duo here.
1 Phil Davis began his career with ADEM in 1988 as an Environment Engineer in the Municipal Branch of the Water Division. In 1989, he transferred to the Industrial Branch where he was a permit engineer, compliance inspector, and enforcement officer for the industrial NPDES and pretreatment programs.

2 In 1994, Phil was named as Chief of the Industrial Minerals Section in the Department's Air Division. In this role, he was responsible for managing a staff of engineers involved in the new source review and operating permit development and compliance and enforcement activities for industrial source categories, including power plants, iron and steel facilities, the cement industry, and oil and gas refining and exploration.

3 In 2002, Phil joined the Land Division as Chief of the Industrial Hazardous Waste Branch. In that role, he was responsible for overseeing the Department's hazardous waste permitting, corrective action, compliance and enforcement programs, as well as overseeing ADEM's activities under CERCLA for industrial facilities.

4 In 2006, management of the Solid Waste and Scrap Tire programs were added to Phil's responsibilities and his branch was renamed the Waste Programs Branch.

5 In this role, Phil additionally assumed the oversight of the permitting, compliance, and enforcement activities conducted by the Department in regulating the State's permitted solid waste landfills, unauthorized solid waste dumps, and scrap tire facilities.

6 In 2008, he was primary author of the Solid Waste and Recyclable Materials Act which, by the way, made dramatic impact on the finances of the Department, which was at that -- was that year's first statewide legislation signed into law. With the passage of this law, Phil's duties were changed to focus solely on solid waste management, including the Recycling and Scrap Tire programs, and he was named Chief of the Solid Waste Branch in July 2008. He continues to serve in that role and has overseen the implementation of numerous new solid waste programs, including the Unauthorized Dump Remediation and Recycling programs.

7 A native of Kingsport, Tennessee, Phil has lived in Alabama since 1983 and graduated from Auburn University in 1988 with a Bachelor of Science Civil Engineering degree. He's a Registered Professional Engineer in Alabama and has been active in a number of professional organizations, including Alabama's Water Environment Association, the Air and Waste Management Association, the Alabama Chapter of the Solid Waste Association of North America. He has served as Chairman of both the Alabama Chapter and the Southern Section of the A&WMA and currently serves as an advisor of the Alabama SWANA Executive Board.

8 It is obvious that both Phil and Gerald have substantial credentials, and I have every confidence that Phil will be able to carry on the high standards of performance that we have come to expect out of the Land Division. I want to congratulate you both, you on your retirement and you on being named as Chief of the Land Division. Thank you very much.

9 (Applause.)

10 MR. LEFLEUR: Once again, let me close my remarks today with my thanks to you for serving the State of Alabama as Commissioners on the Alabama Environment Management Commission and for allowing me to serve the State in
1. my current capacity.
2. If there are any questions, I'll be
3. pleased to answer them.
4. MR. PHILLIPS: I have a
5. question, just one. On the water
6. policy/water issues document that you
7. talked about, you said public comment
8. was out. When is that due back to the
9. group?
10. MR. LeFLEUR: We are currently
11. coming up with the schedule.
12. Tentatively, we are looking to have all
13. comments in by October 1. That will
14. allow time for the comments to be
15. accumulated and categorized and then be
16. considered by the Working Group, which
17. will then develop a waste management
18. plan recommendation for the Governor to
19. consider. It will be a multi-step
20. process, and the final step in that
21. process will be legislation to
22. implement it for water management plan.
23. MR. PHILLIPS: Thanks.

1. CHAIRMAN LESTER: Anybody else?
2. (No response.)
3. CHAIRMAN LESTER: Thank you.
4. MR. LeFLEUR: Thank you again.
5. CHAIRMAN LESTER: One thing I
6. can say about Lance, he's got plenty of
7. folks. When one retires, we've got one
8. ready to move up and it's always in the
9. Department. We don't have to go
10. outside the Department.
11. MR. LeFLEUR: The way I put it,
12. Mr. Chairman, is we have an
13. embarrassment of wealth of riches here.
14. The difficulty is not finding a
15. qualified candidate. The difficulty is
16. motivating the well-qualified
17. candidates that weren't selected to
18. take a particular position. It's a
19. wonderful situation to be in; you're
20. right.
21. CHAIRMAN LESTER: Thank you for
22. your job. Our next meeting, we will
23. have elections of the Chairman and the
1. we adopt the proposed amendments.
2. MR. LAIER: Second.
3. CHAIRMAN LESTER: Motion and second. All in favor say aye.
4. (Unanimous.)
5. CHAIRMAN LESTER: All opposed?
6. (No response.)
7. CHAIRMAN LESTER: Thank you.
8. MR. HARRISON: Thank you.
9. CHAIRMAN LESTER: Several of these Mary said that she would abstain from voting since she hadn't been involved in all the massive stuff that we've gotten since about two weeks.
10. Now she's overwhelmed with what Debi's sending her. We're all used to it.
11. Next item is Integrated Waste Services, LLC, versus ADEM, EMC Docket No. 12-04; Waste Two Energy, LLC, versus ADEM, EMC Docket No. 12-05. I will note to the Commission that they have withdrawn their application for a stay and a notice of appeal and request

1. for hearing EMC Docket No. 12-04 and 12-05.
2. The next item is consider the
3. Recommendation of the Hearing Officer on ADEM's Motion to Dismiss, Ken Scroggin d/b/a Eager Beavers Tree Service versus ADEM, EMC Docket No. 12-03. I will entertain a motion from the Commission on this item.
4. MR. MILLER: So move.
5. CHAIRMAN LESTER: I have motion. Do I have a second?
6. MR. BROWN: Second.
7. CHAIRMAN LESTER: Motion and second. All in favor say aye.
8. (Unanimous.)
9. CHAIRMAN LESTER: All opposed?
10. (No response.)
11. CHAIRMAN LESTER: The next item is concerning the report of the hearing officer in the Otis and Johnathan Guthrie versus ADEM, EMC Docket No. 12-02. Commissioners had all this

1. information on the proceeding file and conclusion. Commissioners will note that the Hearing Officer includes factual and procedural history of the proceeding; finding of fact; conclusions of law; recommendation of the Hearing Officer, which includes recommendations A through F. Any motion from -- entertain a motion on this report.
2. MR. BROWN: Move to adopt the report of the hearing officer including the recommendations.
3. MR. PHILLIPS: Second.
4. CHAIRMAN LESTER: Motion and second. All in favor say aye.
5. (Unanimous.)
6. CHAIRMAN LESTER: All opposed?
7. (No response.)
8. CHAIRMAN LESTER: Next item of business is any other business. Any of the Commissioners have any other business they would like to bring

1. before the Commission?
2. (No response.)
3. CHAIRMAN LESTER: If not, our next Commission meeting will be October 19. Any comments?
4. MR. LAIER: I may have a conflict. I may not be able to attend.
5. CHAIRMAN LESTER: Just let Debi know what the problem is.
6. Before we adjourn, I'd like to say one thing. This is my eighteenth year, my 108th meeting. I think I've had four or five Governors, four Directors. Gerald has outlasted me. It's gentlemen like him and our Department heads and all the workers, and without Debi, without Robert, without Lance and all of the members of his office down there, without all of our Department heads and without all of our employees -- you know, we're just sort of an ADEM family and everybody looks after everybody and we look after the
1 State's business, the people's
2 business.
3 Now I entertain a motion to
4 adjourn.
5 MR. PHILLIPS: So moved.
6 CHAIRMAN LESTER: All in favor
7 say aye.
8 (Unanimous.)
9 CHAIRMAN LESTER: All opposed?
10 (No response.)
11 (The hearing proceeding
12 concluded at approximately
13 11:45 a.m.)
14
15 (The hearing proceedings
16 concluded at approximately
17 11:45 a.m.)
18
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23

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,
and that the foregoing represents a
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
Court Reporting as a Certified Court
Reporter as evidenced by the ACCR
number following my name below.

/s/ Bridgette W. Mitchell
Certified Court Reporter and
Commissioner for the State of
Alabama at Large
ACCR No. 231 - Expires 9/30/12
MY COMMISSION EXPIRES 1/14/2014
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, and that the foregoing represents a 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 Court Reporting as a Certified Court Reporter as evidenced by the ACCR number following my name below.

/s/ Bridgette W. Mitchell
Certified Court Reporter and Commissioner for the State of Alabama at Large
ACCR No. 231 - Expires 9/30/12
MY COMMISSION EXPIRES 1/14/2014

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|   | 38 (1)  
|   | 26:21  
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|   | 8:13  
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|   | 28:6,7;30:8  
|   | 2007 (1)  
|   | 95 (1)  
|   | 18:15  

Baker & Baker Reporting and Video Services  
334.262.3332 888.253.3377  
(9) 1 - 95
Part B
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Attachment 1
Amended 08/06/12

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 17, 2012
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov), under Environmental Management Commission.

** The Minutes for these meetings will be available on the ADEM website under Environmental Management Commission.
EMC Meeting Agenda – Page 2

1. CONSIDERATION OF MINUTES OF MEETINGS HELD ON APRIL 20, 2012, AND JUNE 15, 2012

2. REPORT FROM THE DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

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

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-7, Water Supply Program Regulations. The Department is proposing to amend Chapters 335-7-2; 335-7-4; 335-7-5; 335-7-6; 335-7-7; 335-7-10; 335-7-11; and 335-7-14 to make administrative and technical clarifying changes. The Department held a public hearing on the proposed amendments on May 2, 2012.

5. INTEGRATED WASTE SERVICES, LLC V. ADEM, EMC DOCKET NO. 12-04; WASTE TWO ENERGY, LLC V. ADEM, EMC DOCKET NO. 12-05

The Commission will acknowledge for the record Petitioners Integrated Waste Services, LLC and Waste Two Energy, LLC’s withdrawals of the applications for stay and the notices of appeal and requests for hearing in the above matters.

6. KEN SCROGGIN, D/B/A EAGER BEAVERS TREE SERVICE V. ADEM, EMC DOCKET NO. 12-03

The Commission will consider the Recommendation of the Hearing Officer on ADEM’s Motion to Dismiss in this appeal/request for hearing regarding ADEM Administrative Order 12-066-A issued on February 8, 2012, to Ken Scroggin, d/b/a Eager Beavers Tree Service, Madison, Madison County, Alabama.

7. OTIS AND JOHNATHAN GUTHRIE V. ADEM, EMC DOCKET NO. 12-02


8. OTHER BUSINESS

9. FUTURE BUSINESS SESSION
Attachment 2
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-7 of the Department's Water Division's Water Supply Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (as amended) and Ala. Code § 41-22-4 (as amended); and

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (as amended), and Ala. Code. § 41-22-5 (as amended), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-7 rules [335-7-2-.03/Inorganic Chemical Standards and Monitoring Requirement (Amend); 335-7-2-.04/Synthetic Organic Chemical (SOCs) Standards and Monitoring Requirements (Amend); 335-7-2-.08/Radionuclide Standards and Monitoring Requirements (Amend); 335-7-2-.09/Maximum Residual Disinfectant Levels and Monitoring Requirement (MRDLs) (Amend); 335-7-2-.12/Stage 2 Disinfection Byproducts (Amend); 335-7-2-.16/Operational Evaluation Level (Amend); 335-7-4-.03/Permitting Requirements for System Additions (Amend); 335-7-4-.04/Requirements for New Water Systems (Amend); 335-7-4-.10/Completed Project Approval (Amend); 335-7-4-.11/Consecutive Water System Requirements (Amend); 335-7-5-.13/Springs (Amend); 335-7-5-.15/Ground Water Quality (Amend); 335-7-5-.17/Disinfection Requirements (Amend); 335-7-5-.18/Filtration Requirements (Amend); 335-7-5-
.22/Ground Water Rule (Amend); 335-7-6-.03/Source Selection Report (Amend); 335-7-6-.04/Treatment Requirements (Amend); 335-7-6-.05/Surface Water Intake Structures (Amend); 335-7-6-.15/Lighting and Power Requirements (Amend); 335-7-7-.03/Distribution Facilities Design and Construction Requirements (Amend); 335-7-10-.05/Records (Amend); 335-7-10-.06/Reports (Amend); 335-7-11-.11/Action Level Non-Compliance (Amend); 335-7-11-.12/Corrosion Control Treatment Requirement (Amend); 3335-7-11-.13/Corrosion Control Study (Amend); 335-7-11-.17/Public Education Requirement (Amend); 335-7-14-Appendix A/Standard List of Primary Drinking Water Contaminants for CCR (Amend); 335-7-14-Appendix B/Regulated Contaminates (Amend)]; of the Department’s Water Supply 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 335-7- Water Supply Program Regulations

IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of August 2012.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of August 2012.

ABSTAINED:

[Signature]

John H. Lester, Chair
Environmental Management Commission
Certified this 17th day of August 2012
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: )
  )
Ken Scroggin, d/b/a Eager Beavers )
Tree Service, )
  Petitioner, )
  )
vs. )
  )
EMC Docket No. 12-03

Alabama Department of )
Environmental Management, )
  Respondent. )

ORDER

This cause having come before the Environmental Management Commission pursuant to the Hearing Officer’s Order and Recommendation on ADEM’s Motion to Dismiss; ADEM’s Motion to Strike and Dismiss; and the other documents in the record for the above-styled appeal/request for hearing and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Recommendation of the Hearing Officer on ADEM’s Motion to Dismiss is hereby adopted; and

2. That pursuant to the adoption of the Recommendation of the Hearing Officer on ADEM’s Motion to Dismiss, the Motion to Dismiss is granted and this appeal/request for hearing 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 this Order, along with a copy of the Hearing Officer’s Order and Recommendation, attached hereto and made a part hereof, shall be forthwith served up each of the parties hereto either personally, or by certified mail, return receipt requested.
Environmental Management Commission Order
Page 2

ISSUED this 17th day of August 2012.

APPROVED:

[Signatures]
Commissioner

[Signatures]
Commissioner

[Signatures]
Commissioner

[Signatures]
Commissioner

DISAPPROVED:

[Signature]
Commissioner

[Signature]
Commissioner

[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 17th day of August 2012.

John H. Lester, Chair
Environmental Management Commission
Certified this 17th day of August 2012
BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

KEN SCROGGIN D/B/A. )
EAGER BEAVERS TREE SERVICE. )
) Petitioner,
) )
) )
) vs. ) DOCKET NO. 12-03
) )
) ALABAMA DEPARTMENT OF )
) ENVIRONMENTAL MANAGEMENT. )
) )
) Respondent. )
)

ORDER AND RECOMMENDATION

This matter is before the Undersigned on the Department’s Motion to Strike and Dismiss. Said Motion is considered a Motion to Dismiss filed pursuant to Ala. Admin. Code r. 335-2-1-.21 (4). On May 8, 2012, the Undersigned issued an Order directing Petitioner to respond to the Department’s Motion within fourteen (14) days. No response was filed. Therefore, after considering said Motion, and for the reasons stated in the Motion (specifically, that the appeal was filed too late and is a legal nullity), the Undersigned recommends that the Department’s Motion to Dismiss be GRANTED and that this matter be dismissed.

Petitioner shall ten (10) days from the date of service of this Order and Recommendation to file any objections to the same. Not later than 3 days prior to the meeting of the Commission on August 17, 2012, or ten days after receipt of notice of the filing of objections, if any, by Petitioner, whichever is sooner, the Department may file and serve with the Commission a reply brief responding to arguments raised by Petitioner.

Done this 24th day of July, 2012.

R. Rainer Cotter, III
Hearing Officer
cc: BY U.S. MAIL AND EMAIL.

Debi Thomas, Commission Secretary
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Email: aemc@adem.state.al.us

S. Shawn Sibley, Esq.
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PO Box 310910
Enterprise, Alabama 36330
Ph. 334-347-2626
Fax 334-393-1396
Email: rrc@enterpriselawyers.com
Attachment 4
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: )
) )
Otis and Johnathan Guthrie, )
Petitioners, ) )
vs. ) EMC Docket No. 12-02 )
Alabama Department of )
Environmental Management, ) )
Respondent. )

ORDER

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

1. That the Report of Hearing Officer 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 Report of Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.
ISSUED this 17th day of August 2012.

APPROVED:

[Signatures]

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

[Signatures]

Commissioner

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 17th day of August 2012.

[Signature]

John H. Lester, Chair
Environmental Management Commission
Certified this 17th day of August 2012
BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION OF THE ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OTIS AND JONATHAN GUTHRIE, )
   Petitioners, )
vs. )
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, )
   Respondent. )

Docket No. 12-02

REPORT OF HEARING OFFICER

COMES NOW the undersigned duly-appointed Hearing Officer (hereinafter the “undersigned”) and respectfully submits this Report which contains findings of fact, conclusions of law and a recommendation which is submitted to the Environmental Management Commission (hereinafter “Commission”) along with the record of these proceedings including a transcript of testimony and comments received, all in accord with Rule 335-2-1-.27 of ADEM Admin Code. This report is submitted for the Commission on the date indicated below.

1. FACTUAL AND PROCEDURAL HISTORY OF THIS PROCEEDING

This case began with an investigation by the Alabama Department of Environmental Management (hereinafter “ADEM”), through its agent David Hamilton (R. 58-9), who made an inspection of the real property of the Petitioners at 712 Blackwell Road, Jasper, Alabama in Walker County (R. 59). Mr. Hamilton discovered an unauthorized dump (hereinafter “dump”) on this property (See ADEM’s Exhibit 1) and determined, through a search of Walker County records, that the property where the dump was located was owned by Otis Guthrie and Jonathan Guthrie, with the dump site being located on “both parcels” of property owned by these named Petitioners (R. 61). Petitioner Mr. Otis Guthrie submits that the dump was located only on his property and not on his son Jonathan’s (R. 20-21); however, the evidence from ADEM on this issue is more credible especially given Mr.
Jonathan Guthrie’s decision not to appear at the hearing of this matter even after adequate and proper notice (See Record p. 57 and return mail receipt signed for by Jonathan Guthrie and dated June 5, 2012). Nobody other than Mr. Hamilton for ADEM testified as to the exact location of the dump site and its position on both parcels of the property in question (R. 20-21).

As a result of Mr. Hamilton’s investigation, he gave Mr. Otis Guthrie a verbal warning on April 22, 2011 to remove or abate the dump and to do so within thirty days (R. 63; ADEM Ex. 1). No response was received by ADEM from the Petitioners, so another inspection was made of the property by Mr. Hamilton on June 10, 2011 (R. 64; ADEM Ex. 2) where Mr. Hamilton found very little change in the dump. Following the second visit, Mr. Hamilton worked to prepare, and ADEM issued, a Notice of Violation dated June 13, 2011 (delivered to the property and signed for on June 17, 2011 (R. 66-7; ADEM Ex. 3 & 4). Again no response was received from the Petitioners, so a Failure to Respond letter was issued by ADEM dated July 21, 2011 and delivered to the property on August 3, 2011 again resulting in no response (R. 69). At that point a proposed administrative order was prepared by ADEM and sent to the Petitioners at the same address on October 13, 2011. This was signed for by Mr. Otis Guthrie on October 20, 2011 and again it was ignored by the Petitioners (R. 72).

At that point public notice was given, again without comment or response from anyone including the Petitioners (even though it appears they “saw it in the newspaper” (R. 54). By January 13, 2012 (R. 73) the Order had become “final” (R. 73) and such was sent to the Petitioners. It was sent again on February 22, 2012 because the first notice was unclaimed and the record shows this notice was delivered to 710 Blackwell Road, Jasper, Alabama. At that point ADEM received a response from the Petitioners in the form of a phone call from Mrs. June Guthrie, the wife of Otis Guthrie. She stated she had receipts showing cleanup efforts and was supplied information by Mr. Hamilton regarding an appeal (R. 77). Nothing was ever received from the Petitioners as to pictures, receipts, etc. up and to the day of this hearing.

Mr. Brent Watson, another agent of ADEM, went to the property on May 10, 2012 and found the dump still present and not abated (R. 84).
The testimony of Petitioner Otis Guthrie, his witness Mrs. June Guthrie, and a review of the photographs submitted by the Petitioners and taken the morning of the hearing indicated to the undersigned that the site was substantially cleaned up by June 21, 2012 although such does not necessarily indicate compliance with the order.

II FINDINGS OF FACT

The undersigned finds, from the evidence presented, as follows:

1. Petitioners Otis Guthrie and Jonathan Guthrie are the owners of property located off of Blackwell Dairy Road near Jasper, Walker County, Alabama which is the subject of this appeal. ADEM is a duly-constituted Department of the State of Alabama and was authorized to enforce provisions of Code of Alabama, 1975, §22-27-1, et seq.

2. On April 22, 2011, David Hamilton, an inspector with ADEM's Solid Waste Division, conducted an inspection and documented the existence of an unauthorized solid waste dump located on the property of the Petitioners at 710 Blackwell Dairy Road, Jasper, Walker County, Alabama. An unauthorized dump is defined as any collection of solid wastes...dumped or placed on any...private property...without a permit. The dump consisted, in part, of household waste. Property ownership was determined by a review of Walker County records. This dump was prohibited by law Code of Alabama, 1975, §22-27-4(b).

3. Mr. Hamilton returned to the Petitioners' property on June 10, 2011 and determined that there had been little change since the previous April 22, 2011 inspection (R. 64-65; ADEM Ex. 2).

4. ADEM issued a Notice of Violation on June 13, 2011 to the Petitioners for the unauthorized dump. This notice required abatement and closure of the dump and the submission of associated documentation within fifteen days of its receipt. The evidence indicates that this notice was received by June Guthrie on June 17, 2011 (R. 66-67; ADEM Ex. 3).

5. ADEM did not receive a response to the June 13, 2011 notice (R. 67).
6. On July 21, 2011 ADEM issued a Failure to Respond letter requesting a response to the June 13, 2011 notice. It again required the Petitioners to submit documentation of the abatement of the dump, and required such within fifteen days of its receipt. The Record indicates the letter was received on August 3, 2011.


8. Due to the Petitioners’ non-compliance, on October 31, 2011 ADEM mailed a proposed administrative order to the Petitioners and requested that said Petitioners respond within ten days or the order would be issued. The proposed order required the Petitioners to abate the dump and provide supporting documentation of the abatement to ADEM and pay a $5,000 civil penalty. The cover letter to the proposed administrative order contained instructions on how to allege an inability to pay the civil penalty by submitted tax records for ADEM’s consideration. According to the Record, the proposed administrative order was received by Otis Guthrie on October 18, 2011 (R. 69-72; ADEM Ex. 5).

9. ADEM did not receive a response to the October 13, 2011 proposed administrative order letter.

10. The Administrative Order underwent a 30-day public comment period and no comments were received (R. 72-73, ADEM Ex. 6 and 7).

11. On January 13, 2012, ADEM issued Administrative Order Number 12-060-SW. An executed copy was sent by certified mail, return receipt requested, to the Petitioners requiring abatement of the dump, submission of supporting documentation of the abatement, and payment of a $5,000 civil penalty within 45 days. The postal notice was returned to ADEM as unclaimed (R. 73-74; ADEM Ex. 6).

12. On February 22, 2012, ADEM made a second attempt to serve the Administrative Order on the Petitioners by Federal Express. Federal Express records indicate the Order was delivered on February 29, 2012 at the 710 Blackwell Dairy Road address (R. 73-76, ADEM Ex. 7 and 8).
13. On March 14, 2012, Mrs. June Guthrie phoned ADEM and spoke with Mr. Hamilton. She advised Mr. Hamilton that they had been cleaning up the site and asked about the appeal process for Administrative Order Number 12-060-SW. Mr. Hamilton provided her with the requested information (R. 76-78; ADEM Ex. 9).

14. On May 10, 2012, Brent Watson, ADEM’s Chief of the Enforcement and Remediation Section of the Land Division, returned to the Petitioners’ property. He observed an unauthorized dump that contained regulated solid waste remaining at the site. He documented his observations by photographing the site (R. 81-84; ADEM Ex. 10).

15. On June 21, 2012, the hearing on this matter was held at the ADEM offices in Montgomery, Alabama. The evidence in this case came before the undersigned in the form of testimony presented by four witnesses, all under oath and subject to cross-examination. In addition, the parties presented documentary evidence that was properly marked and admitted into the record. The undersigned was able to view the witnesses, observe the demeanor of those witnesses, and assess the credibility of the witnesses.

III. CONCLUSIONS OF LAW

1. This matter is properly before the Commission by way of this Report of the undersigned hearing officer, together with the entire record including transcript of testimony, exhibits, arguments submitted, “Proposed Findings of Fact, Conclusions of Law and Recommendation” filed by ADEM, and a post-hearing submission by the Petitioners.

2. The Petitioners were properly served with Notice of the hearing, which took place at the ADEM offices at 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2059.

3. All parties were given the opportunity to respond to, and present evidence and argument on, all material issues at the hearing conducted on June 21, 2012 in accord with Rule 335-2-1-.14 of ADEM Admin Code, and the hearing was conducted in accord with ADEM rules.
4. This is a *de novo* process in which the Commission stands in ADEM's shoes and substitutes its judgment for that of ADEM on questions of law and fact related to the propriety of Administrative Order Number 12-060-SW. (ADEM Admin Code R. 335-2-1-.14(6); Marshall County Environmental Action Group, et al., AEMC Docket No. 96-21). Because the process is *de novo* and the Commission should substitute its judgment for that of ADEM, there is no right or opportunity to participate in the deliberative pre-decisional process, as such right was afforded the Petitioners to an even-larger extent in the *de novo* hearing.

5. The burden of proof lies with the Petitioners to prove their contentions by preponderating legal evidence to the undersigned's satisfaction, the same as in civil cases in this State. . (ADEM Admin Code R. 335-2-1-.27(5); Town of Loachapoka, et al., AEMC Docket Nos. 03-01 and -02; River Ridge Homeowners Association, AEMC Docket No. 99-03; Sierra Club, et al., AEMC Docket No. 91-29, *Affirmed*, Montgomery County Circuit Court, CV-92-1190).

6. Both Petitioners bore the burden of going forward with the evidence. ADEM Admin. Code R. 335-2-1-.14(6))

7. ADEM did virtually everything it could do in this case to prompt a response from the Petitioners and to cooperate with the Petitioners in order to abate this dump and solve this environmental problem. Petitioners continuously ignored the verbal warnings, written notices, failure-to-respond warnings, proposed orders and publications in the newspaper. Little, if any, response came from the Petitioners until the Order became “final” and it appears only then did ADEM get their attention. Apparently it was only the final hearing that caused the Petitioners to take real action and do substantial cleanup. It is sad (at least to the undersigned) that the Petitioners chose to ignore the efforts of ADEM, which was clearly willing to work with them throughout the process.

8. The Petitioners did satisfy the undersigned that the dump has been substantially cleaned as of June 21, 2012. That does not mean the abatement process is complete.

9. The Petitioners offered limited evidence as to their ability to pay a fine. The undersigned concludes that they have the ability to pay a fine.
10. Pursuant to Code of Alabama, 1975, §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, consideration should be given to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed $25,000 for each violation, provided however, that the total penalty assessed in an order issued by ADEM shall not exceed $250,000.

A. SERIOUSNESS OF THE VIOLATION: The Petitioners did not comply with the requirements applicable to solid waste disposal. There is no evidence of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations; nonetheless, this is a serious violation.

B. THE STANDARD OF CARE: The Petitioners failed to abide by applicable solid waste disposal requirements even after receiving notice that the operation of this dump was prohibited.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: There is no evidence that the Petitioners realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The evidence indicates that the Petitioners have attempted to mitigate any potential effects upon the environment; however, these attempts were needlessly delayed.

E. HISTORY OF PREVIOUS VIOLATIONS: There is no evidence of any previous violations of applicable solid waste disposal requirements by the Petitioners.

F. THE ABILITY TO PAY: The evidence indicates a limited ability of Otis Guthrie to pay a civil penalty. No evidence was offered regarding Jonathan Guthrie's ability to pay.

11. Upon consideration of ADEM's motion to dismiss based on the inadequacy of the Petitioners' pleading, it is the ruling of the undersigned that such motion is DENIED. The hearing in this matter is concluded.
IV. RECOMMENDATION

Based upon the entire body of evidence presented, the testimony, briefs, arguments and submissions, and observations of the witnesses, the undersigned Hearing Officer recommends to the Commission that it enter an order and finding as follows:

A. That the Petitioners cease and desist from operating any unauthorized dump.

B. That within thirty days of the Commission’s order, the Petitioners (both Otis Guthrie and Jonathan Guthrie) make contact with ADEM to arrange an inspection by ADEM with both Petitioners present so as to determine if the dump has been abated to the satisfaction of ADEM and consistent with its standards for such abatement.

C. If ADEM determines that abatement has not properly occurred, then the Petitioners shall submit, within thirty days of that determination and written notice thereof to the Petitioners, a detailed plan of abatement satisfactory to ADEM’s rules and regulations.

D. That following submission of such a plan by the Petitioners to ADEM, the Petitioners shall carry out that plan and fully abate this dump within forty-five (45) days or be subjected to additional charges, penalties and costs.

E. That not later than 30 days from the issuance of this order, the Petitioners shall pay to ADEM a civil penalty of $3,000.00 for the violations referenced herein.

F. That failing full compliance with the Order of the Commission, the Petitioners shall be subject to commencement of legal action by ADEM for the recovery of additional civil penalties, criminal fines, costs of the proceedings and other appropriate sanctions.

Done this the 3rd day of August, 2012.
Anthony Todd Carter, Esq.

Mr. Otis Guthrie
710 Blackwell Dairy Road
Jasper, AL 35504

Mr. Jonathan Guthrie
1413 Autumn Wood Dr
Hoover, AL 35216-5265