Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 19, 2016
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 19, 2016.

H. Lanier Brown, II, Chair
Alabama Environmental Management Commission

Certified this 21st day of October 2016.
Minutes
Environmental Management Commission Meeting
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1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 19, 2016

Convened: 11:00 a.m.
Adjourned: 11:50 a.m.

Part A
Transcript
Word Index

Part B
Attachment Index
Attachment 1
Attachment 2
Attachment 3
Attachment 4
Attachment 5
Attachment 6
Part A
ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

August 19, 2016
11:00 a.m.

Taken by: Bridgette W. Mitchell,
ACCR 231

VICE CHAIRMAN PHILLIPS: Good morning. We will call the Alabama
Environmental Management Commission meeting to order. I will acknowledge we
have a quorum.

We'll consider the minutes of our
Commission meeting held on June 17, 2016.

I'll entertain a motion.

DR. MARTIN: So move to approve.

MS. MERRITT: Second.

VICE CHAIRMAN PHILLIPS: Have a
motion to adopt the minutes of June 17.

Any further discussion?

(No response.)

VICE CHAIRMAN PHILLIPS: No
further discussion. All in favor of the
motion signify with the sign "aye."

(Unanimous.)

VICE CHAIRMAN PHILLIPS: All
opposed?

(No response.)

VICE CHAIRMAN PHILLIPS: Motion
carries.

APPEARANCES

COMMISSION MEMBERS PRESENT:

W. Scott Phillips, Vice Chair
Samuel L. Miller, M.D.
Mary J. Merritt
Terry D. Richardson, Ph.D.
Elliott Craig Martin, D.V.M.

COMMISSION MEMBERS NOT PRESENT:

H. Lanier Brown, II, Esquire, Chair
James E. Laier, Ph.D., P.E.

ALSO PRESENT:

Robert Tambling, EMC Legal Counsel
Lance R. LeFleur, ADEM Director
Debi Thomas, EMC Executive Assistant

Agenda Item No. 2, Report from the
ADEM Director.

MR. LeFLEUR: Good morning,
Commissioners, and to others present for
the final meeting of the Commission for
fiscal year 2016. Today's report will
update you on some recent activities
dealing with the Department's funding
shortfall, which will in part be tied to
some new innovative activities, highlight
a program to help achieve a higher level
of compliance in an industry sector
chronically struggling with compliance,
and update you on the drinking water
health advisory for perfluorinated
compounds announced at the last
Commission meeting.

Previous reports have addressed
ongoing efforts to deal with the funding
challenges the Department has been facing
in recent years. It has been reported
that the FY 2017 General Fund
appropriation did not cover the badly
1 needed replacement of physical facilities
2 in Mobile for the field office and
3 coastal program; the costs for the
4 emergency response program; the costs for
5 the State-mandated financial reporting
6 system known as STAARS; the costs to
7 comply with new EPA-mandated electronic
8 reporting requirements; or sufficient
9 funding for the Concentrated Animal
10 Feeding Operations, or CAFO program. The
11 Department is using several different
12 approaches to find the needed resources
13 that were not provided by the General
14 Fund.
15 The best remaining hope for funding
16 of the replacement physical facilities
17 in Mobile is the portion of the
18 settlement money coming to the state from
19 the 2010 BP oil spill that is allocated
20 by the federal RESTORE Act to
21 environmental, infrastructure, and
22 economic development projects in the
23 Mobile and Baldwin Counties area. The

1 State-appointed council administering the
2 funds still has not set a date for the
3 awards process to begin, so we are
4 currently on hold.
5 The Department is continuing to
6 divert costs of its inadequately funded
7 emergency response program to other
8 entities. The Department submitted
9 proposed changes to the State’s master
10 emergency operations plan that will
11 require local communities rather than
12 ADEM to be the primary responders to oil
13 and hazardous materials emergencies.
14 When local communities exhaust their
15 emergency response resources, they would
16 then contact the State Emergency
17 Management Agency or ADEM for possible
18 additional resources. Clearly this
19 shifting of responsibilities will place
20 greater financial obligations on local
21 communities that experience oil and
22 hazardous waste emergencies.
23 The Department has been unable to

1 either shift the cost or locate an
2 alternate source of funding to cover the
3 approximately $100,000 annual additional
4 cost of the troubled State-mandated
5 STAARS financial reporting system. As
6 with other inadequately-funded programs,
7 the Department will seek to cover costs
8 through innovative efficiency measures
9 being attempted in other areas.
10 In the past year, EPA has adopted
11 sweeping changes to its electronic
12 reporting rules. We applaud EPA in its
13 efforts since this will greatly improve
14 efficiency for all concerned. They are
15 late to the party and have set some
16 unrealistic timelines to catch up. The
17 Department is far ahead of both EPA and
18 the rest of the nation in implementing
19 electronic reporting. However, while our
20 necessarily increased investment will be
21 significantly less than other states
22 since we began investing years ago, it
23 will nevertheless require additional

1 Departmental funding. The funding was
2 requested in the FY 2017 General Fund
3 budget, but that request was not honored.
4 Rather than lose the efficiency momentum
5 gained by being a leader in this area,
6 where possible, we will move funds from
7 other programs to make this one of the
8 last programs to be cut.
9 The Department continues to become
10 more efficient through innovation as a
11 means to better utilize available
12 resources. Electronic applications have
13 been crucial to increased operating
14 efficiency. Electronic applications have
15 required the investment of scarce
16 resources, but those investments have
17 paid dividends of increased efficiency
18 that then free up resources for other
19 uses.
20 Two recent innovative efforts
21 involving electronic applications that
22 seek to improve efficiency and allow for
23 possible diversion of funds for other
purposes are nearing completion. First
is a direct-entry inspections program
called nSPECT, which automatically links
field inspection results to our
electronic reporting systems; and second
is our Laboratory Information Management
System, or LiMS, which similarly links
our laboratory equipment directly to the
Department's numerous databases. Origins
for both of these efforts go back several
years.
The nSPECT system is scheduled to be
fully deployed for Field Operations
Division Construction Storm Water
inspections and NPDES Compliance
Evaluation and Sampling inspections in
all offices by October 1, 2016, which is
the start of the fiscal year 2017. As
noted previously, the major driver in
this effort is to increase efficiency,
which helps cope with tighter budgets.
Preliminary productivity increases are
significantly exceeding the originally
anticipated 20 percent. This innovation
not only allows us to do more inspections
with less personnel, it also reduces the
opportunity for human errors that occur
when multiple entries are required. An
additional bonus is that the public at
large benefits from the improved
transparency of having important
information in the publicly-accessible
databases, such as eFile, available more
quickly.
The Laboratory Information
Management System became operational in
2015 and is meeting expectations even
while engaging in a continuous
optimization process. The Department's
laboratories use about two dozen pieces
of analytical equipment which utilize
several different reporting platforms.
In the past, this required information
from the various types of laboratory
equipment to be manually transferred to
end-use databases for plotting.

statistical analysis, reporting, and the
like. The LiMS system converts real-time
data into consistent usable formats,
eliminating the need for multiple human
entries. As is the case with the nSPECT
system, personnel become more productive,
opportunities for errors are reduced, and
the information is available to all end
users more rapidly.
While neither of these innovations
is groundbreaking, the Department is
among the earliest of the states
deploying them.
Regarding the Concentrated Animal
Feeding Operations, or CAFO, program, the
$400,000 FY 2017 General Fund
appropriation, which is the only current
source of CAFO funding, does not cover
the cost of the program. The Department
is continuing to work with CAFO
representatives and others to explore
ways to deal with the shortfall. Two
recent activities have been to first meet
and was prompted by his ongoing efforts
to encourage the State to provide funding
in whatever form to ADEM. The Rural Caucus is a bipartisan group of more than
40 House members. Its primary function
is to educate the Legislature on issues
important to rural areas in the state.
The meeting provided CAFO interests an
opportunity to interact with legislators
and others on the focused issue of
funding the ADEM CAFO program without the
pressures present during a Legislative
session.
A follow-up meeting to which all
caucus members were invited took place
earlier this week. The caucus will take
the information presented and seek to
help the Legislature make informed budget
decisions affecting CAFOs during the next
regular session of the Legislature. ADEM
continues to consider various options if
adequate General Fund appropriations are
not forthcoming, including scaling back

the program, transferring some of the
program elements to other organizations,
and developing a formula-based fee
structure.
I would remind the Commission that
despite past and current tight budgets,
which have been the lowest in the nation,
the Department has not only met all
federal and state statutory and
regulatory obligations but, as you have
repeatedly seen in the EPA-generated
comparative analyses, has performed at a
level among the highest in the nation,
and this is due in no small part to the
exceptional efforts of Departmental
personnel at all levels.
Finally, a special session of the
Legislature to address the shortfall in
Medicaid among other issues began on
August 15. As long as the Legislature in
is in session, there is a risk that the
Department's current meager General Fund
budget may be adversely impacted.

Over the years and throughout the
country, one group of environmental permit
holders has consistently been among the
biggest challenges in achieving
compliance with permit conditions. That
group is municipal wastewater treatment
plants, in particular wastewater
treatment plants in small communities.
At the June Commission meeting, much of
my report focused on drinking water.
This portion of today's report will focus
on municipal wastewater.
Drinking water and wastewater
treatment are two of the most important
public services offered by
municipalities. There are many reasons
why municipal wastewater facilities have
difficulty meeting environmental permit
conditions. Contrasting drinking water
and wastewater services can highlight
some of the reasons why wastewater
systems present greater compliance
challenges.

First, many of the municipal
wastewater facilities built in the 1970s,
when water-quality problems drove federal
regulation to improve water quality --
excuse me -- were built in the 1970s.
Along with the legislation came federal
funding to build or upgrade wastewater
infrastructure and treatment plants. The
infrastructure and, in many cases, the
treatment systems built in the 1970s and
1980s are approaching the end of both
their physical and technological design
lives. Compared to drinking water
systems, wastewater treatment systems
generally require more treatment steps,
more costly collection system
investments, as opposed to drinking water
distribution systems, larger equipment
investments, higher maintenance costs,
greater energy usage, and other costly
operational parameters.
Expensive technology upgrades for
wastewater facilities are being driven by
increasingly tighter discharge limits,
2 particularly for compounds containing phosphorous and nitrogen, which are pervasive nutrients that can degrade water quality. Conversely, drinking water systems must monitor for more contaminants, but the contaminants are either rarely present or rarely present in concentrations that require additional treatment equipment or operations.
11 Unlike drinking water standards, which are consistent for all systems, many wastewater treatment facilities must meet tighter standards because they discharge to impaired water bodies or water bodies with limited assimilative capacity. When discharges go to an impaired or limited assimilative capacity water body, more contaminants must be removed at the plant which requires additional investments in treatment equipment and operations.
23 In the 1970s, funding to meet newly-created water-quality standards was readily available. Maintenance and replacement costs for the aging systems have increased; however, prior funding sources are no longer readily available. Since those early days, the budgetary challenges experienced by many communities have resulted in deferred maintenance and the inability to upgrade technology to meet increasingly tighter discharge limits for municipal wastewater facilities. In contrast to drinking water facilities, which are typically net revenue generators, wastewater treatment facilities, because of the higher investment and operating and maintenance costs, are typically net revenue users. Municipal leaders are faced with difficult decisions about how to allocate scarce financial resources, and often the decision is made to defer equipment replacement, defer maintenance, defer technology upgrades, and cut operating costs to the bone for their wastewater treatment plants. Decisions to defer maintenance, replacement, and upgrades and to excessively cut operating budgets eventually lead to higher levels of noncompliance.
7 Upset conditions at drinking water facilities can have an immediate direct health impact on all users while upset conditions at wastewater treatment facilities are less likely to immediately or directly impact the health of large populations. As a result, wastewater facilities are often treated as a lower-priority concern in communities with limited financial resources. Upset conditions, particularly weather-related upsets, occur more frequently at wastewater facilities than at many other types of facilities, which contributes to repeated events of noncompliance at wastewater facilities. While stopping operations of a drinking water plant for permit violations is a serious situation, there are alternatives available, including interconnecting with an alternative drinking water source, issuing a boil-water notice, or temporarily supplying bottled water. As a last resort, the drinking water can be shut off. While it is a great inconvenience to customers and -- no direct adverse health or environmental impact results from stopping the availability of drinking water by shutting down a drinking water plant.
15 By contrast, stopping operations of a wastewater treatment plant for permit violations is a much more serious event. Alternative interconnected treatment options are rarely available. Inflows to the collection system will continue regardless of whether the facility is operating and sanitary system overflows, back-ups into homes, or untreated
1. discharges to receiving water bodies will
2. necessarily occur. These are far worse
3. health and environmental options than
4. temporarily discharging inadequately-
5. treated wastewater. For these reasons,
6. unlike any other type of facility, it is
7. virtually impossible to stop a wastewater
8. treatment plant's operations regardless
9. of environmental regulatory violations.
10. Shutting down a wastewater treatment
11. plant is rarely a viable option.
12. As you can see, there are a number
13. of financial and operational factors
14. contributing to the increased occurrence
15. of failure to meet environmental permit
16. conditions by municipal wastewater
17. treatment facilities. There are also
18. limited options for dealing with those
19. failures to meet permit conditions when
20. they do occur.
21. The Department has implemented a
22. program to help address this difficult
23. set of circumstances that contribute to
24. noncompliance by wastewater treatment
25. systems. It is an energy assessment and
26. operations -- optimization program,
27. sometimes referred to as an audit, of
28. wastewater treatment facilities.
29. Wastewater treatment facilities are very
30. large users of energy to run pumps,
31. aerators, sludge-handling equipment, and
32. for other plant operations. The
33. assessment and optimization, or audit,
34. program is voluntary and does not subject
35. the facility to receiving the
36. assistant -- the assistance to any
37. increased risk of noncompliance
38. discovery. It is not enforcement-driven.
39. The facility is not obligated to
40. implement any of the recommendations made
41. as a result of the audit. For those
42. facilities electing to make changes,
43. followup with troubleshooting and
44. tracking results is provided. There is
45. no financial cost to the facility for the
46. audit or the followup.
47. The program offers financial
48. benefits to the individual water system,
49. and in turn to its customers. The
50. Department's rationale for offering this
51. service at no cost to the wastewater
52. treatment facilities is to help address
53. the single biggest contributor to
54. noncompliance in this sector, which is
55. the lack of financial resources. The
56. more efficiently wastewater facilities
57. operate, the further they can stretch
58. their limited resources.
59. This program has been underway for
60. three years and is headed up by Jim
61. Grassiano, in the Permits and Services
62. Division.
63. Jim, would you raise your hand,
64. stand up. Jim has been doing a great job
65. with this.
66. While the program has not solved
67. anywhere near all of the problems facing
68. the wastewater sector, the results to
69. date are encouraging, especially when one
70. considers that the improvements have
71. financial benefits that continue to grow
72. because energy costs savings go on year
73. after year.
74. This slide shows the location of the
75. 28 wastewater facilities that have
76. participated in the assessment and
77. optimization program during the last
78. three years. The next few slides will
79. zero in on the results achieved by five
80. of the 28 to give you some sense of the
81. results that can be achieved.
82. The five systems include ones in the
83. northern part, central, and southern
84. parts of the state. And these are
85. systems that have implemented most, if
86. not all, the recommendations made. The
87. implementation rate for systems varies
88. from full implementation to those that
89. have just begun implementation to those
90. that have not yet decided to utilize the
91. recommendations at all. Remember, the
92. program is totally voluntary.
As you can see, some systems have more improvement opportunities than others, which is reflected in the monthly energy savings figures. The reduction in energy usage per million gallons of treated wastewater takes out the effects of inflow variations. And, finally, we see the monthly cost savings. This is the funding that can be repurposed for system upgrades, deferred maintenance, and other activities that promote improved compliance with permit conditions.

Like many of our recent initiatives, this program has multiple benefits. In this case, there are direct and indirect water-quality and air-quality benefits in addition to the cost savings that make the facilities better able to afford what is needed to comply with permit conditions. Environmental benefits take the form of reduced discharges to water and air.

This slide shows those same five facilities and the river basins into which each discharges treated wastewater. Wastewater treatment facilities receive wastewater with high concentrations of the nutrient nitrogen. Releases of treated wastewater containing excessive levels of nutrients can impair the receiving water body and can cause problems such as oxygen-depleting algal blooms. A component of the energy audit involves the cycling of aerator operations in a way that allows a greater portion of the total nitrogen in the wastewater to be released as harmless elemental nitrogen into the atmosphere. As you can see, for just these five facilities, this results in reducing the amount of nitrogen released to surface waters in Alabama by more than 100 tons per year.

We hear a lot about greenhouse gases these days. The reduction in energy usage results in a reduction in greenhouse gas generation at the power plant where the energy is produced. As you can see, the energy savings from the assessment and optimization program at the five facilities provides an indirect environmental benefit of reducing the generation of greenhouse gas by more than 2100 tons per year.

Periodically, my reports to you highlight the partnerships that are often key components of Departmental programs. This assessment and optimization program is a good example of these partnerships at work.

Obviously, since this is a voluntary program, the wastewater utilities themselves are the most important partners. The utilities are accountable to their oversight officials, who are indirectly partners, and the Department assists the utilities in communicating the need for and the results of the program to the oversight officials. Likewise, rate payers are indirect partners and communication with them helps build public confidence and makes them more aware of the need for financial resources.

From the very beginning, EPA has been in lock step as a partner with the Department. Over time, new partners have been added. At the federal level, the Department of Energy, as might be expected, has recognized the potential benefits and is becoming an active supporter. Within the state of Alabama, the Alabama Department of Economic and Community Affairs, or ADECA, will be partnering on future assessments working under a contract with the Department of Energy.

And we have someone here, Mary Blackmon. Would you please be recognized? She is with ADECA and one of our new partners coming on board. Thank...
1 you.
2 This will allow us to increase the
3 number of facilities assessed.
4 Partnerships also extend beyond state
5 boundaries, which is unusual. The
6 Tennessee Department of Environment &
7 Conservation and the University of
8 Memphis will be partners in 2016.
9 To bring things back into
10 perspective, the objective of this and
11 other programs ultimately is obtaining
12 compliance with environmental permit
13 conditions. Often, environmental
14 benefits above and beyond meeting permit
15 conditions are also realized.
16 This program fits well with the
17 Department's strategy to achieve
18 compliance. Inspections, technical
19 assistance, and penalties each play a
20 role in promoting compliance. Our
21 strategy is driven by research that has
22 shown that inspections and technical
23 assistance are far and away the most

effective tools. The energy assessment
2 and optimization program has elements of
3 both nonregulatory inspections and
4 technical assistance.
5 As you may recall from an earlier
6 report, on May 19, 2016, EPA issued a
7 final nationwide health advisory for the
8 perfluorinated compounds PFOS and PFOA.
9 These compounds are manmade chemicals
10 that may be found in nonstick cookware,
11 carpet-protection products, firefighting
12 foams, and waterproof clothing.
13 The health advisory applies to those
14 who may be exposed to these chemicals in
15 low concentrations in their drinking
16 water continuously over a lifetime with
17 the exception of pregnant women and
18 nursing children who are potentially
19 affected during a shorter exposure
20 period. Several drinking water systems
21 in northwest and northeast Alabama
22 potentially have concentrations of
23 compounds that would fall within the

1 health advisory guideline.
2 Following the issuance of the EPA
3 health advisory, one water system serving
4 portions of Morgan and Lawrence Counties
5 unilaterally recommended that its
6 customers not drink or cook with the
7 water from the system. As might be
8 expected, this created panic among its
9 customers and was widely reported in news
10 media. After learning of the water
11 system's unanticipated recommendation,
12 ADEM worked with the system to restore
13 public confidence in the water supply by
14 implementing a water-blending arrangement
15 with a neighboring water system.
16 The most recent four-sample
17 averages, which are as of mid-August,
18 from potentially impacted drinking water
19 systems show that none of the systems
20 have concentrations of PFOS or PFOA that
21 exceed the levels referenced in the EPA
22 health advisory.
23 ADEM is continuing to monitor the

1 levels of PFOS and PFOA in drinking water
2 and is working closely with the Alabama
3 Department of Public Health and the
4 affected local drinking water systems to
5 address any health recommendations from
6 the Department of Health.
7 The final item in today's report is
8 to recognize an accomplishment by one of
9 our employees. You have heard repeatedly
10 that if we are to be a high-performing
11 organization in the future, we must
12 develop our employees. In fact, one of
13 the Department's operating plan
14 objectives is to promote a high-
15 performing work environment in part by
16 encouraging the ongoing development of
17 our employees.
18 Achieving the formal designation of
19 professional geologist requires extensive
20 education, on-the-job experience, and
21 rigorous testing. It's my pleasure to
22 recognize John Dean in our Land Division
23 who has recently achieved a significant
Mr. LeFleur: As I tell people who get their PE or PG, that there's a raise in your future.

With that, that will conclude today's report. I'd be pleased to answer any questions you may have.

VICE CHAIRMAN PHILLIPS: Thank you, Mr. LeFleur. Moving to Agenda Item No. 4, which is the Report from the Commission Chair. Our regular Commission Chair is not here today and has not provided any information, so I don't have anything to bring forward.

We'll move to Agenda Item No. 5.

Agenda Item No. 5 is Consideration of adoption of a resolution for posthumous recognition of former Commission Member John Howard Lester, DVM, who passed away on July 18th. Dr. Lester's wife, Jane, sends her regrets and that she and her family could not be present today. And I want to read the resolution and then note I'll entertain a motion regarding the adoption of the resolution for this recognition of Dr. Lester.

The resolution reads: Whereas, John Howard Lester, DVM, was a dedicated public servant. Among his many areas of public service was the Environmental Management Commission of the Alabama Department of Environmental Management. And whereas Dr. Lester was the longest-serving member in the history of the Commission, having served in the chemist, 21slash, veterinarian position from October 1994 until November of 2013. And whereas Dr. Lester served admirably in leadership.
1. we adopted the draft reconciliation statement and the recommendation to the full Commission. The draft reconciliation statement was included in the record provided to all the Commissioners. No changes were made to the reconciliation statement. However, changes were made to the draft guidelines for public comment, which have also been provided to the Commission. Therefore, the Commission has before it the complete record for the proposed amendments to this rule.

On June 16, 2016, a public hearing was held to receive comments from interested persons regarding the proposed revisions. Written comments were accepted any time during the public comment period, which extended from April 29, 2016 through June 16, 2016. During the comment period, the Commission received one set of written comments. At the public hearing on June 16, 2016, no written or oral statements were presented. All comments have been addressed and resolved in the reconciliation statement.

I'd like to call on Rulemaking Committee Member Richardson to present recommendations to the full Commission. Commissioner Richardson.

DR. RICHARDSON: The Rulemaking Committee recommends that the amendment to the Rule 335-3 -- 2-3-.5, Agenda, we recommend that those be adopted -- those changes be adopted.

VICE CHAIRMAN PHILLIPS: Since this is a recommendation from the Committee, it serves as a motion and second. Do I have any discussion from the Commission?

(No response.)

VICE CHAIRMAN PHILLIPS: No further discussion, I call for the question. All in favor signify with the "aye." (Unanimous.)

VICE CHAIRMAN PHILLIPS: All opposed, same sign.

(No response.)

VICE CHAIRMAN PHILLIPS: Motion carries.

While we're waiting on the signing of the resolution, I'm going to switch hats and go from Chair back to Rulemaking.

Committee Chair and thank the Committee Commissioners Mary Merritt and Terry Richardson, Robert Tambling, Debi Thomas, and the public and our stakeholders for all their efforts in getting this accomplished. It took us some time, but it really did -- we did go through it very effectively.

In addition, I'd like to express the Committee's appreciation to those who attended and participated in that work session that I mentioned held on February the 20th, 2015, and provided input during the examination of this rule.

DR. MARTIN: Mr. Vice Chairman, I have a question regarding point of order.

VICE CHAIRMAN PHILLIPS: Sure.

DR. MARTIN: When it came out of the Committee, that comes as a motion. Did you need a second?

VICE CHAIRMAN PHILLIPS: I do not.

DR. MARTIN: Okay. All right.

Just want to make sure.

VICE CHAIRMAN PHILLIPS: But thank you for the clarification.

Moving to Agenda Item No. 7, which is the Consideration of the recommendation of the Rulemaking Committee regarding draft guidelines to the application of the proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda.

I want to call on Rulemaking Committee Member Richardson to present...
1 the Rulemaking Committee's recommendation.
2 DR. RICHARDSON: Thank you,
3 Mr. Chairman. The Rulemaking Committee's recommendation is that the Commission adopt the draft guidelines for public comment.
4 VICE CHAIRMAN PHILLIPS: Okay.
5 Thank you. Recommendation from the Committee serves as the motion and the second. And I'll open it up for discussion.
6 (No response.)
7 VICE CHAIRMAN PHILLIPS: No further discussion, all in favor of the motion, signify with the sign "aye."
8 (Unanimous.)
9 VICE CHAIRMAN PHILLIPS: All opposed, same sign.
10 (No response.)
11 VICE CHAIRMAN PHILLIPS: Motion carries.
12 Agenda Item 8 is Consideration of the recommendation of the Rulemaking Committee regarding a draft form for members of the public to request to make a presentation at a Commission meeting entitled Request to Make Presentation at AEMC Meeting. In our Rulemaking Committee, we discussed this. And since it appears that it would need to go back out to Rulemaking, have really determined that we will just continue to operate under the proposed rule that we just passed. And then at some future date, if we feel that we have a need for such a form, that we'll bring it back to the Commission at that time. So there is no recommendation to come before the Commission today.
13 Agenda Item No. 9 is Consideration of the Recommendation of the Administrative Law Judge on the Department's Suggestion of Mootness. Any further discussion?
14 (No response.)
15 VICE CHAIRMAN PHILLIPS: No discussion, I'll call for the question.
16 All in favor signify with the sign "aye."
17 (Unanimous.)
18 VICE CHAIRMAN PHILLIPS: All opposed?
19 (No response.)
20 VICE CHAIRMAN PHILLIPS: Motion carries.
21 Agenda Item No. 10 is Other business. Do we have any other business to come before the Commission?
22 (No response.)
23 VICE CHAIRMAN PHILLIPS: Agenda Item 11, Future business session. The next Commission meeting is scheduled for October 21, 2016, at 11 a.m. in this conference room. Anyone have any known problems with the date?
VICE CHAIRMAN PHILLIPS: Date
will stand. And there will not be a
Rulemaking Committee at the next
Commission date of October 21st.
I'll entertain a motion to adjourn.
DR. MARTIN: I'll move.
VICE CHAIRMAN PHILLIPS: Second?
CHAIRMAN MILLER: Second.
VICE CHAIRMAN PHILLIPS: All in
favor signify with the sign "aye."
(Unanimous.)
VICE CHAIRMAN PHILLIPS: All
opposed?
(No response.)
VICE CHAIRMAN PHILLIPS: Motion
carries. We are adjourned.
(The hearing concluded at
11:50 a.m. on August 19, 2016.)

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
Bridgette W. Mitchell
Certified Court Reporter and
Commissioner for the State of
Alabama at Large
ACCR No. 231 - Expires 9/30/16
MY COMMISSION EXPIRES 12/19/17
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
Bridgette W. Mitchell
Certified Court Reporter and
Commissioner for the State of
Alabama at Large
ACCR No. 231 - Expires 9/30/16
MY COMMISSION EXPIRES 12/19/17
Department's (11)
4:8;9;10;16;14;22; 23,4:29;29;32;13; 42,21,43;7,15;44:2
deployed (1)
9:13
deploying (1) 11:13
design (1) 16:12
designation (2)
32;18;33:3
despite (1)
14:6
determined (1)
42:9
develop (1)
32:12
developing (1)
14.3
development (2)
5:22;32:16
differences (1)
12:12
different (2)
5:11;10:19
difficult (2)
18:19;21:22
difficulty (1)
15:18

direct (3)
19:8;20:10;25:16
direct-entry (1)
9:2
directly (2)
9:8;9:19:12
Director (2)
4:25;35:13
discharge (3)
17:1,5;18:11

discharges (4)
17:17;21:1;25:23; 26:3
discharging (1) 21:4
discovery (1)
22:15
discussed (1)
42:7
discussion (8)
3:13;16;38;18,22; 41:12,15;44:3,6
dismiss (1)
42:23
disposal (1)
43:3
distribution (1) 16:18
diversions (1) 8:23
divert (1) 6:6
dividends (1)
efficiencies (1)
12:4
efficiency (7)
7;8,14;8,4,14,17,22; 9:20
efficient (1)
8:10
efficiently (1) 23:10
efforts (7)
4:19;7;13;8;20,9:10; 13;1,11;14,15;39:15
eFile (1)
10:10
either (2)
7:1;17;8

electing (1)
22:19

electronic (7)
5;7,7;11,19;8;12,14, 21:9:5
elemental (1)
26:16

elements (2)
14:20;32:0
eliminating (1)
11:4

emergencies (2)
6:13,22
emergency (5)
5:4,6,7,10,15,16
employees (3)
32,9,12,17
encourage (1)
13:2
encouraging (2)
23:23;32:16

end (2)
11:8;16:11

end-use (1)
10:23

energy (13)
16:20;22:2;7,243; 25,4,5;26;11,23;27,3, 4,28;11,19;30:1

enforcement-driven (1)
22:15

engaging (1)
10:152

entertain (4)
3:8,34;9,43:12;45:6

entities (1)
6:8

entitled (1)
42:5

entries (2)
10;5,11:5

Environment (3)
29;6,32:15;35,8

Environmental (19)
3:3,5,21;15,2:18;

errors (2)
10:4;11:7

especially (1)
23:23

evaluation (1)
9:16

even (1)
10:14

event (1)
20:17

events (1)
19:21

eventually (1)
19:5

examination (1)
40:1

example (1)
27:14

exceed (1)
31:21

exceeding (1)
9:23

exception (1)
30:17

exceptional (1)
14:15

excessive (2)
12:20;26:8

excessively (1)
19:4

excuse (1)
16:5

exhaust (1)
6:14

expectations (1)
10:14

expected (2)
28:12,31:8

Expensive (1)
16:22

experience (2)
6:21;32:20

experienced (1)
18:7

explore (1)
11:21

exposed (1)
30:14

exposure (1)
30:19

express (1)
39:19

expresses (1)
35:20

extend (1)
29:4

extended (1)
37:19

extensive (1)
32:19

faced (1)
18:18

facilities (28)
5:1,16;15:17;16:2, 23;17:13;18:12,13,15;
19:8,11,14,19,20:22;
21:17;22:5,6,19;23:6,
10:24;6,25:19;26:2,4,
18,27:6;29:3

facility (5)
20:21,21:6,22:12,16,
22

facing (2)
4:20;23:21

fact (1)
32:12

factors (1)
21:13

failure (1)
21:15

failures (1)
21:19

fall (1)
30:23

family (2)
34:7,35:23

far (3)
7:17,21:2,29:23

favor (6)
3:16,36:9,38:23;
41:15,44:7,45:11

February (1)
39:22

federal (5)
5:20,14:9,16:3,6;
28:10

fee (1)
14:3

feeding (2)
5:10,11:15

feel (1)
42:13

fellow (1)
35:11

few (1)
24:9

field (3)
5:2,9,4,13

figures (1)
lack (1) 23:9
limited (5) 17:16,18,19:16; 21:18,23:12
Land (1) 32:22
limits (2) 17:1,18:11
large (3) 10:7;19:12;22:7
LIMS (2) 9:7,11:2
larger (2) 12:3;16:18
links (2) 9:3,7
Law (5) 42:20,22;43:14,18; 44:1
lives (1) 16:13
local (5) 6:11,14,20;12:13; 32:4
locate (1) 7:1
location (1) 24:5
lock (1) 28:8
long (1) 14:20
locality (1) 18:8
longest (1) 34:18
lose (1) 8:4
loss (1) 35:22
lot (1) 26:22
low (1) 30:15
lower- (1) 19:14
lowest (1) 14:7

money (1) 5:18
monitor (2) 17:6,31:23
monthly (2) 25:3,8
moot (1) 43:1
Mootness (5) 42:21;43:6,11:15; 44:3
more (17) 8:10;10:2,10;11:6,9; 13:4,16;15:16;17:6,19; 19:18;20;17;23:10; 25:2;26:20;27:8;28:5
Morgan (1) 31:4
moving (3) 2:4;3:36:23
most (5) 15:14;24:16;27:18; 29:23;31:16
motion (18) 3:8,12,17,22,34:9; 36:8,15,38:17,39:6; 40:6,41:10,16,21; 43:12,23;44:12;45:6,16
move (7) 3:9;8;6:33:23;36:2, 17:43;17:45:7
Moving (2) 33:17;40:14
much (2) 15:9;20:17
multiple (3) 10:5,11;4:25:15
municipal (7) 15:6,12,17;16:1; 18:11,18,21:16
municipalities (1) 15:16
must (4) 17:6,13,19,32:11

M
maintenance (7) 16:19;18:2;9,16;22; 19:3:25:10
major (1) 9:19
makes (1) 28:4
Management (10) 3:3;6,17:9;6;10:13; 34:16,17;35:15,19; 36:21,40:20
manmade (1) 30:9
manually (1) 10:22
many (9) 15:16,16:1,9;17:13; 18:7;19:19;25:14; 34:14;35:15
MARTIN (5) 3:9;40:2,5:10;45:7
Mary (2) 28:20;39:12
master (1) 6:9
materials (1) 6:13
may (6) 14:23;30:5,6,10,14; 33:10
meager (1) 14:22
means (2) 8:11,12:7
measures (1) 7:8
Media (1) 31:10
Medicaid (1) 14:19
meet (6) 11:23;17:14,23; 18:10;21:15,19
meetings (1) 12:5
Member (6) 34:3,19;35:3;36:4; 38:6,40:23
members (4) 12:5;13:5,15:42:3
Memphis (1) 29:8
mentioned (1) 39:22
MERRITT (3) 3:10;36:2;39:12
met (1) 14:8
mid-August (1) 31:17
might (3) 12:4;28:11;31:7
milestone (1) 33:1
MILLER (3) 36:6;43:16;45:9
million (1) 25:5
minutes (2) 3:6,12
missed (1) 35:10
Mobile (3) 5:2,17,23
modification (1) 43:9
Modified (1) 43:2
momentum (1) 8:4

N
nation (4) 7:18;14:7,13:15;2
nationwide (1) 30:7
near (1) 23:21
hearing (1) 9:1
necessarily (2) 7:20;21:2
needed (3) 5:1,12;25:20
Alabama Environmental Management Commission Meeting  
August 19, 2016

presentation (2)  
42:4,5
presented (2)  
13:17;38:2
pressures (1)  
13:12
prevention (1)  
12:19
Previous (1)  
4:18
previously (1)  
9:19
primary (2)  
6:12;13:5
prior (1)  
18:4
priority (1)  
19:15
problems (4)  
16:3;22:21;26:10;44:23
process (2)  
6:3;10:16
produced (1)  
27:3
producer (1)  
12:3
productive (1)  
11:6
productivity (1)  
9:22
products (1)  
30:11
professional (3)  
32:19;33:1;2
program (30)  
projects (5)  
7:6;8:7,8;27:12;29:11
promote (2)  
25:11;32:14
promoting (1)  
29:20
prompted (1)  
13:1
properly (1)  
12:8
proposed (6)  
6:9;36:19;37:12,16;40:18;42:11
provide (1)  
13:2
provided (7)  
provides (2)  
12:17;27:6
public (14)  
publicly-accessible (1)  
10:9
pumps (1)  
22:7
purposes (1)  
9:1
Q
quality (2)  
16:4;17:5
quickly (1)  
10:11
quorum (1)  
3:5
R
raise (2)  
23:17;33:7
rashly (1)  
11:9
rarely (4)  
17:8,8;20:19;21:11
rate (2)  
24:18;28:2
rather (2)  
6:11;8:4
rationale (1)  
23:4
read (1)  
34:8
readily (2)  
18:2,5
reads (1)  
34:12
realized (1)  
29:15
really (2)  
39:17;42:9
real-time (1)  
11:2
reasons (3)  
15:16,21:21:5
recall (1)  
30:5
receive (2)  
26:5;37:15
received (1)  
37:22
receiving (3)  
21:12;22:12;26:9
recent (6)  
4:7;21:8;20:11;23:25;14;31:16
recently (1)  
24:22
recognize (3)  
34:3;11:36:3
recognized (2)  
32:8,22
recognized (2)  
28:12,22
recommend (1)  
38:13
recommendation (12)  
31:11;37:2,38:16;40:16;41:5,9,42:1,16,19,43:13;44:1
recommendations (5)  
22:17;24:17,22,32:5;38:8
recommended (1)  
31:5
recommends (2)  
38:11;42:23
reconciliation (4)  
37:1,4,7,38:4
record (2)  
37:5,12
reduced (3)  
11:7;12:17,25:23
reduces (1)  
10:3
reducing (2)  
26:18;27:7
reduction (3)  
25:4;26:23,27:1
referred (1)  
31:21
referred (1)  
22:4
reflected (1)  
25:3
Regarding (7)  
11:14;34:9;37:16;40:3,17,42:2,43:13
regardless (2)  
20:21;21:8
regrets (1)  
34:6
regular (2)  
13:20;33:19
regulated (1)  
35:16
regulation (1)  
16:4
Regulations (2)  
36:21;40:21
regulatory (2)  
14:10;21:9
released (2)  
26:15,19
Releases (1)  
26:7
remaining (1)  
5:15
Remember (1)  
24:22
remembered (1)  
35:10
remind (1)  
14:5
removed (1)  
17:20
repeated (1)  
19:21
repeatedly (2)  
14:11;32:9
replacement (5)  
5:1;16;18:3;22;19:3
Report (8)  
4:1;6;15:10,11;30:6;32:7,33:9,18
reported (2)  
4:21;31:9
reporting (8)  
5:5;8,7;5,12,19,9:5;10:19;11:1
reports (2)  
4:18;27:10
representatives (3)  
11:21;12:1,10
repurposed (1)  
25:9
request (4)  
8:3,42;3,5,43:1
requested (1)  
8:2
require (4)  
6:11,17,23,16:15;17:9
required (3)  
8:15;10:5,20
requirements (1)  
5:8
requires (2)  
17:20;32:19
rescinding (1)  
43:8
research (1)  
29:21
resolution (6)  
34:2,8,10,12,36:3;39:9
resolved (2)  
35:18;38:3
resort (1)  
20:7
resources (11)  
5:12,6;15,18,8;12;16,18,18;20,19:16;23:9,12,28:6
respondent’s (1)  
43:10
responders (1)  
6:12
response (17)  
responsibilities (1)  
6:19
rest (1)  
7:18
RESTORE (2)  
5:20;31:12
result (2)  
19:13;22:18
resulted (1)  
18:8
results (9)  
9:4,20:11;22:21;23:22;24:10,12,26:18;27:1,23
revealed (1)  
12:11
revenue (2)  
18:14,17
revisions (1)  
37:17
revoking (1)  
43:8
Richardson (8)  
12:23;38:6,9,10;39:13;40:23;41:3;43:21
right (1)  
40:10
rigorous (1)  
32:21
risk (2)  
14:21;22:14
river (1)  
26:2
Robert (1)  
39:13
role (1)  
29:20
room (1)  
44:22
rule (7)  
12:13;36:22;37:13;38:12;40:12;41:2,11
Rulemaking (14)  
35:4;36:23;38:5,7;10:39;10:40;16,22;41:1,4;42:1,6,9,45:4
rules (7)  
1:12
run (1)  
22:7
Rural (4)  
12:6,21;13:3,7
S
same (4)  
26:1;36:13;39:4;41:19
Sampling (1)  
9:16
sanitary (1)  
20:22
Part B
Attachment Index

Attachment 1 Agenda

Attachment 2 Director’s Slides
   (Agenda Item 2)

Attachment 3 Resolution for posthumous recognition of former Commission Member
   John Howard Lester, D.V.M.
   (Agenda Item 5)

Attachment 4 Resolution to adopt amendments to ADEM Administrative Code 335-2,
   Environmental Management Commission Regulations
   (Agenda Item 6)

Attachment 5 Order to adopt motion to adopt the recommendation of the Rulemaking
   Committee and adopt the Draft Guidelines for Public Comment
   (Agenda Item 7)

Attachment 6 Order to adopt the Recommendation of the Administrative Law Judge on
   Department’s Suggestion of Mootness
   (Agenda Item 9)
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 19, 2016
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Consideration of minutes of meeting held on June 17, 2016**</td>
<td>2</td>
</tr>
<tr>
<td>2. Report from the ADEM Director</td>
<td>2</td>
</tr>
<tr>
<td>3. Report from the Rulemaking Committee Chair</td>
<td>2</td>
</tr>
<tr>
<td>4. Report from the Commission Chair</td>
<td>2</td>
</tr>
<tr>
<td>5. Consideration of adoption of a resolution for posthumous recognition of former Commission Member John Howard Lester, D.V.M.</td>
<td>2</td>
</tr>
<tr>
<td>6. Consideration of adoption of proposed amendments to ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda</td>
<td>2</td>
</tr>
<tr>
<td>7. Consideration of the recommendation of the Rulemaking Committee regarding the draft guidelines to the application of proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda</td>
<td>2</td>
</tr>
<tr>
<td>8. Consideration of the recommendation of the Rulemaking Committee regarding draft forms for Commission meetings for the public to request to make presentations and to register to make brief statements</td>
<td>2</td>
</tr>
<tr>
<td>9. Bobby Lewis and Michael Del Vecchio v. ADEM, and City of Dothan, Alabama EMC Docket No. 16-01</td>
<td>2</td>
</tr>
<tr>
<td>10. Other business</td>
<td>2</td>
</tr>
<tr>
<td>11. Future business session</td>
<td>2</td>
</tr>
</tbody>
</table>

* 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 17, 2016

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE RULEMAKING COMMITTEE CHAIR

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF ADOPTION OF A RESOLUTION FOR POSTHUMOUS RECOGNITION OF FORMER COMMISSION MEMBER JOHN HOWARD LESTER, D.V.M.

The Commission will consider adoption of a resolution to posthumously recognize former Commission Member John Howard Lester, D.V.M.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA

The Commission will consider proposed amendments to ADEM Administrative Code 335-2, Environmental Management Commission Regulations to amend Rule 335-2-3-.05, Agenda. The Commission held a public hearing on the proposed amendments on June 16, 2016.

7. CONSIDERATION OF THE RECOMMENDATION OF THE RULEMAKING COMMITTEE REGARDING THE DRAFT GUIDELINES TO THE APPLICATION OF PROPOSED AMENDED ADEM ADMINISTRATIVE CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA

The Commission will consider the recommendation of the Rulemaking Committee regarding the draft guidelines to the application of proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda.

8. CONSIDERATION OF THE RECOMMENDATION OF THE RULEMAKING COMMITTEE REGARDING DRAFT FORMS FOR COMMISSION MEETINGS FOR THE PUBLIC TO REQUEST TO MAKE PRESENTATIONS AND TO REGISTER TO MAKE BRIEF STATEMENTS

The Commission will consider the recommendation of the Rulemaking Committee regarding draft forms for Commission meetings for the public to request to make presentations and to register to make brief statements.

9. BOBBY LEWIS AND MICHAEL DEL VECCHIO V. ADEM, AND CITY OF DOTHAN, ALABAMA, EMC DOCKET NO. 16-01

The Commission will consider the Recommendation of the Administrative Law Judge on Department’s Suggestion of Mootness in this appeal concerning ADEM’s January 8, 2016, Modification of Solid Waste Disposal Facility Permit No. 35-06 issued to the City of Dothan.

10. OTHER BUSINESS

11. FUTURE BUSINESS SESSION
Attachment 2
Funding Challenges

- Mobile physical facilities
- Emergency Response
- State-mandated financial reporting system
- EPA-mandated electronic initiatives
- Increased efficiency:
  - nSPECT
  - LIMS
- Concentrated Animal Feeding Operations
Non-Compliance by Waste Water Systems

- Costly to build, operate, and maintain
- Costly system upgrade requirements
- Costly to discharge to impaired receiving waters
- Inability to self-fund investments and operations
- Impacts of non-compliance
- Impacts of closure
### Waste Water Systems Energy & $ Results

<table>
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<tr>
<th>System</th>
<th>KWhr/Mo.</th>
<th>KWhr / M Gal.</th>
<th>$ Cost Sav/ Mo.</th>
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<td>1,800</td>
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<td>350,000</td>
<td>9,700</td>
<td>9,000</td>
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<td>Wetumpka</td>
<td>230,000</td>
<td>5,100</td>
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<td>143,000</td>
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<td>System</td>
<td>Tot. N (t/yr)</td>
<td>GHG (t/yr)</td>
<td>River Basin</td>
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<td>Tennessee</td>
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<td><strong>2,139</strong></td>
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</tr>
</tbody>
</table>
Partners

- Waste water utilities
  - Communication with city managers
  - Communication with rate payers
- EPA initial partnership
- New partners
  - Dept of Energy
  - ADECA
  - Tenn DEC, Univ. Memphis
Attachment 3
RESOLUTION

WHEREAS, John Howard Lester, D.V.M. was a dedicated public servant. Among his many areas of public service was the Environmental Management Commission of the Alabama Department of Environmental Management; and

WHEREAS, Dr. Lester was the longest serving member in the history of the Commission, having served in the Chemist/Veterinarian Position from October 1994 until November 2013; and

WHEREAS, Dr. Lester served admirably in the leadership positions of Commission Chair and Vice-Chair, and Chair of the Personnel Committee and as a Member of the Personnel, Rulemaking, and Strategic Planning Committees; and

WHEREAS, Dr. Lester was conscientious about his obligations as a Commissioner to the people of Alabama and the environment; and

WHEREAS, Dr. Lester will be sorely missed and fondly remembered by his fellow Commissioners; the Commission’s legal counsel and assistant; the Director, supervisors, and staff of the Alabama Department of Environmental Management; and many within the governmental, regulated, and environmental communities; now

THEREFORE, be it resolved that the Alabama Environmental Management Commission expresses appreciation for Dr. Lester’s contributions and friendship and offers its sympathy for his loss to his family.

DONE this 19th day of August 2016.

Mary J. Merriett

C. Martin

W. Scott Phillips

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of August 2016.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016
Attachment 4
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


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

WHEREAS, the Rulemaking Committee of the Alabama Environmental Management Commission 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 the proposed rules in response to oral and written submissions, 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 Rulemaking Committee of the Alabama Environmental Management Commission.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-2 – Environmental Management Commission Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 19th day of August 2016.

APPROVED:

Mary J. Mesutt

Jerry D. Richardson

W. Scott Phillips

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 19th day of August 2016.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016

ABSTAINED:
Attachment 5
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Adopt the recommendation of the Rulemaking Committee and
Adopt the Draft Guidelines for Public Comment

ORDER

This cause coming before the Environmental Management Commission pursuant to the referenced motion, it is hereby ORDERED:

That the referenced motion is hereby adopted; and

That in accordance with the referenced motion the recommendation of the Rulemaking Committee and the Draft Guidelines for Public Comment are hereby adopted; and

That this action has been taken and this Order issued by the Commission effective August 19, 2016.

That a copy of the Draft Guidelines for Public Comment is attached hereto, and made a part hereof.
Environmental Management Commission Order
Page 2

ISSUED this 19th day of August 2016.

APPROVED:

Mary J. Merrill
Commissioner

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
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 19th day of August 2016.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016
DRAFT GUIDELINES FOR PUBLIC COMMENT

The Commission wishes to facilitate the exchange of information between the Commission and the public in a manner that will enable the Commission to better serve the people of this State and their environment. To do so, the Commission has adopted the following guidelines to the application of EMC Rule 335-2-3-.05, Agenda and Public Participation. These guidelines will serve to educate and inform the public as to how the Commission interprets and intends to apply this Rule. The Commission believes that these guidelines will lead to a fair and consistent application of the Rule which will, in turn, promote a forum that is both suitable and conducive for responsible public participation.

1. Presentations should not exceed ten minutes. Presenters are therefore encouraged to state their most important points first and should understand that when the ten minute time limit has elapsed, they will be asked to conclude their presentation.

2. The topic of any presentation made to the Commission should be related directly to the Commission's functions. The Environmental Management Act defines the Commission's functions as (a) establishing rules, regulations, and environmental standards; (b) developing statewide environmental policy; (c) hearing appeals of administrative actions; and (d) selecting the ADEM Director. Topics outside of the scope of the Commission's defined functions will not be allowed. The Commission will not allow presentations advancing political agendas or presentations promoting the political or financial interests of any specific group(s) or individual(s).

3. The presentation of current and timely information is encouraged by the Commission. Presenting repetitive, irrelevant, or outdated information is neither productive, nor a good use of Commission time. The Commission requests that speakers provide relevant, accurate, and current data and information. In addition, speakers should be prepared to provide sources for data and information presented if requested. Presentation requests that raise topics that have already been thoroughly addressed through previous presentations are likely to be denied unless new and substantive information is provided.

4. All data presented should be factual. All data and data collection methods should be referenced and should be attributable to generally accepted reliable sources. Speakers should be mindful when presenting information not to violate any professional licensure or certification requirements.

5. The Commission's time should not be spent hearing matters that most appropriately should be initially addressed by the Department. Those wishing to make presentation requests before the Commission should first pursue all reasonable opportunities made available through the Department and its Director for addressing concerns. Failure to do so may result in a denial of the presentation request.
6. The Commission requests, when at all possible, that specific names of individuals or corporations be omitted from presentations. Any specific complaints mentioning individuals or corporations should be provided to the Director of the Department.

7. In order to help the Commission prepare and better understand the topic to be addressed, the Commission may request that those wishing to address the Commission submit a well organized outline of their presentation along with copies of any supporting documents they intend to use during the presentation. If, during the presentation, the outline submitted is not adhered to and the speaker strays from the subject identified in the outline, this will be noted by the Chair and the speaker may be asked to return to the subject of the presentation as reflected in the outline. If an outline and supporting documents are not provided, then the Commission may table the presentation request until such time as an outline and supporting documents are submitted.

8. Questions and comments from Commission members during or following a presentation are allowed and should be expected. Commission members are free to ask any questions believed necessary regarding the presentation.

9. The Commission, at its discretion, may approve, deny, table, or take no official action whatsoever on a presentation request. Those requesting to make presentations should not attend a Commission meeting with the expectation that their request will be automatically granted. Presentation requests that are approved may be placed on the agenda for subsequent (generally the following) regularly scheduled meeting of the Commission. Presentation requests that are denied due to a failure to conform to the Rule may be resubmitted to the Commission provided that the nonconformity is corrected.

10. Members of the public wishing to engage the Commission should feel free to submit written comments and other materials to the Commission office or the Director of the Department in lieu of presentation requests. Written comments submitted to the Commission office will be carefully read by Commission members and will be given the same weight and consideration as the presentations made during Commission meetings.

11. Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard.
Attachment 6
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:  

Bobby Lewis and Michael Del Vecchio,  
Petitioners,  

vs.  

Alabama Department of Environmental Management,  
Respondent,  

and  

City of Dothan, Alabama,  
Intervenor.  

EMC Docket No. 16-01

ORDER

This cause having come before the Environmental Management Commission pursuant to the “Recommendation of the Administrative Law Judge on Department’s Suggestion of Mootness,” ADEM’s “Suggestion of Mootness,” and “Petitioners’ Response to Respondent’s Suggestion of Mootness” for the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the “Recommendation of the Administrative Law Judge on Department’s Suggestion of Mootness” is hereby adopted; and

2. That pursuant to the adoption of the “Recommendation of the Administrative Law Judge on Department’s Suggestion of Mootness,” the Request for Hearing contesting the June 8, 2016 Modified Solid Waste Disposal Permit No. 35-06 to the City of Dothan is dismissed and moot; 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 “Recommendation of the Administrative Law Judge on Department’s Suggestion of Mootness,” attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.
Environmental Management Commission Order
Page 2

ISSUED this 19th day of August 2016.

APPROVED:

[Signatures of Commissioners]

DISAPPROVED:

[Signatures of Commissioners]

ABSTAINED:

[Signatures of Commissioners]

RECUSED:

[Signature of 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 19th day of August 2016.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 19th day of August 2016
BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

BOBBY LEWIS and MICHAEL DEL VECCHIO,
Petitioners,
v.
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
Respondent,
CITY OF DOTHAN, ALABAMA,
Intervenor.

DOCKET NO. 16-01
SOLIDWASTE DISPOSAL FACILITY PERMIT NO. 35-06

RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE ON DEPARTMENT’S SUGGESTION OF MOOTNESS

Before the undersigned is the Department’s Suggestion of Mootness together with the Department’s letter rescinding the issuance of the modified permit that is the subject of this appeal and the Petitioners’ Response to the Department’s Suggestion of Mootness. Upon consideration of these filings; the undersigned finds that:

1. On October 21, 2013, the Alabama Department of Environmental Management issued Solid Waste Disposal Facility Permit No. 35-06 to the City of Dothan to operate a solid waste disposal facility, known as the City of Dothan Sanitary Landfill.

2. On January 8, 2016, the Alabama Department of Environmental Management issued a modification of Solid Waste Disposal Facility Permit No. 35-06 to the City of Dothan.
3. The issuance of Modification of Solid Waste Disposal Permit No. 35-06 dated January 8, 2016, was rescinded and revoked by the Alabama Department of Environmental Management, on June 10, 2016.

4. Because the administrative action contested in this Hearing is no more, this matter is now moot.

Therefore, the Administrative Law Judge does hereby recommend that the Alabama Environmental Management Commission DISMISS as MOOT, the present Request for Hearing contesting the January 8, 2016 Modified Solid Waste Disposal Permit No. 35-06 to the City of Dothan.

DONE this 20th day of June, 2016.

JAMES F. HAMPTON
Hearing Officer
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Montgomery, AL 36106
(334) 213-0213
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F. Lenton White
City Attorney
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Alabama Environmental Management Commission
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