

3/24/25

DRAFT

Minutes

**Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 14, 2025**

DRAFT
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 14, 2025

Convened: 11:00 a.m.
Adjourned: 11:57 a.m.

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Part A

Page 1

MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

LOCATION: ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT (ADEM) BUILDING
ALABAMA ROOM
1400 COLISEUM BOULEVARD
MONTGOMERY, ALABAMA 36110-2400
DATE: FRIDAY FEBRUARY 14, 2025
TIME: 11:00 A.M.

REPORTED BY: JEANA S. BOGGS, CCR
ABCR #7
Commissioner for the
State of Alabama at Large

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1 CHAIRMAN MCFADDEN: Good morning,
2 everyone. Welcome to the February
3 14th Valentine's Day Commission
4 meeting.
5 I'll call the meeting to
6 order and acknowledge we do have a
7 quorum. I have one member out who is
8 traveling, but we have enough for a
9 quorum.
10 So, Agenda Item Number 1 is
11 consideration of the minutes of the
12 meeting held on December the 13th,
13 2024. I note that the consideration
14 of those minutes will entertain a
15 motion regarding minutes.
16 DR. PERRY: So moved.
17 DR. TUCKER: Second.
18 CHAIRMAN MCFADDEN: A motion and a
19 second. All in favor of adopting the
20 minutes from December 13th, 2024,
21 unless there's any discussion. I'm
22 sorry. I skipped right over that.
23 Any discussion on those?

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1 APPEARANCES
2 COMMISSION MEMBERS PRESENT:
3 A. FRANK McFADDEN, P.E., CHAIR
4 KEVIN MCKINSTRY, VICE CHAIR
5 JOHN (JAY) H. MASINGILL, III
6 J. PATRICK TUCKER, M.D.
7 MARY J. MERRITT
8 RUBY L. PERRY, D.V.M.
9
10 COMMISSION MEMBERS NOT PRESENT:
11 H. LANIER BROWN, II, ESQ.
12 ALSO PRESENT:
13 ROBERT D. TAMBLING, ESQ.,
14 EMC LEGAL COUNSEL
15 LANCE LEFLEUR, ADEM DIRECTOR
16 DEBI THOMAS, EMC EXECUTIVE ASSISTANT
17
18
19
20
21
22
23

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1 (No response).
2 CHAIRMAN MCFADDEN: I know we got
3 them a little bit late, but we did
4 get them in time to circulate them.
5 So, there's no discussion on it, then
6 I'll call for the question.
7 All in favor of adopting
8 those, raise your right hand -- or
9 raise your hand.
10 (Commission Members raising
11 hands).
12 CHAIRMAN MCFADDEN: Okay. The
13 motion carries. Thank you.
14 Item Number 2 is a report
15 from the ADEM Director. I understand
16 he may rescind his resignation. Is
17 that true?
18 MR. LEFLEUR: No.
19 CHAIRMAN MCFADDEN: Okay.
20 MR. LEFLEUR: I don't know that
21 I'm -- that's in the cards at the
22 moment. But, anyhow.
23 Well, Happy Valentine's

Page 5 1 Day. My reports are a little bit 2 long. So, don't look at it as a St. 3 Valentine's Day massacre. 4 (Laughter). 5 MR. LEFLEUR: All right. Well, 6 good morning to all in the room, and 7 welcome to the third meeting of the 8 Alabama Environmental Management 9 Commission for Fiscal Year 2025. 10 It's my practice to 11 periodically report on the state of 12 the environment in Alabama to see if 13 our efforts have resulted in 14 measurable improvements to the 15 environment in our state. Today's 16 report will update you on the latest 17 information concerning the condition 18 of Alabama's environment. I'll also 19 report on the Department's American 20 Rescue Plan Act, Bipartisan 21 Infrastructure Law, the State 22 Revolving Fund activities, and 23 upgrade to drinking water and	Page 6 1 wastewater systems in Alabama and, 2 finally, on recent developments at 3 EPA. 4 All right. Let's see here. 5 What did I do wrong? Where's my -- I 6 need my -- here we go. I just 7 restarted it. No can do. I have to 8 have audio/visual or at least visual. 9 I'm the audio. 10 Brief technical interlude. 11 CHAIRMAN MCFADDEN: Such is the 12 nature of technology. 13 MR. LEFLEUR: And she is much 14 younger than me, so she is much more 15 adept at doing this sort of thing. 16 CHAIRMAN MCFADDEN: Absolutely. 17 MR. LEFLEUR: Would you like the 18 flash drive? Well, while we're 19 waiting, last Commission meeting, I 20 introduced a number of new people, 21 people in new positions for the 22 Department. And one of the people 23 that was out of state at the time is
Page 7 1 the new head of our Drinking Water 2 Branch. Emily Anderson was with EPA, 3 and here she is in person today. 4 (Applause). 5 MR. LEFLEUR: She was previously 6 in our municipal and industrial area 7 in the Water Division, and she has 8 been with the Department for 18 9 years, right? So, she's a seasoned 10 veteran here. 11 CHAIRMAN MCFADDEN: Emily, you 12 started when you were 10, right? 13 MS. ANDERSON: Yes, not quite. 14 (Laughter). 15 MR. LEFLEUR: All right. Let's 16 see what else can we do for 17 entertainment today? 18 CHAIRMAN MCFADDEN: Talk about the 19 Auburn/Alabama games tomorrow. 20 MR. LEFLEUR: Yeah. Everybody is 21 probably going to be watching that 22 one. The basketball Iron bowl, they 23 call that.	Page 8 1 CHAIRMAN MCFADDEN: It is, yeah. 2 MR. LEFLEUR: All right. I won't 3 ask for a show of hands on who's for 4 who. We have several people. 5 CHAIRMAN MCFADDEN: Probably know 6 that. It's like who's going to win. 7 Don't ask that. 8 MR. LEFLEUR: We have a couple of 9 people from Tuscaloosa, so... 10 CHAIRMAN MCFADDEN: Yeah. I'm 11 surrounded by them. 12 MR. LEFLEUR: You Auburn folks. 13 (Off the record). 14 CHAIRMAN MCFADDEN: One thing I 15 could do, Lance, I could jump ahead 16 and give the update on the Director's 17 search -- 18 MR. LEFLEUR: Oh, sure. 19 CHAIRMAN MCFADDEN: -- while that, 20 or you can go ahead and do without 21 the thing. So which ever you want -- 22 MR. LEFLEUR: Let's make use of 23 our time.

Page 9 1 CHAIRMAN MCFADDEN: Okay. All 2 right. Let's do that. 3 So, as you know, our 4 Director submitted his retirement 5 resignation effective May 1., was it? 6 The first day of May this year, and 7 so that prompted from the Department 8 to -- and the Commission to seek his 9 replacement, which I hate saying this 10 as an Auburn guy, but it's going to 11 be like filling the shoes of Nick 12 Saban. Lance has done such a great 13 job. 14 But -- so, we have that 15 posted at a number of places, 16 including the website, and 17 applications or resumes will be 18 accepted until March 14 at 5:00 p.m. 19 That's the deadline for submission. 20 At the April 11th 21 Commission meeting, we'll pare down 22 those resumes to a short list -- two, 23 three or four, something like that	Page 10 1 hopefully -- and, you know, for 2 candidates to be interviewed. And 3 so, that will happen at the June 13th 4 meeting that they'll come and, you 5 know, be at a public meeting and, you 6 know, answer questions, make 7 presentations, or whatever. 8 And so, sometime after 9 that, or possibly at that meeting in 10 executive session, we would decide 11 and come back and make the selection 12 at that meeting or later, later in 13 the month, or even potentially into 14 the August meeting, the next 15 regularly scheduled Commission 16 meeting. 17 Having said that, you know, 18 we -- you know, if we don't get 19 enough resumes that we feel are, you 20 know, qualified or, you know, mostly 21 qualified, we may extend that search 22 period some. And I've already talked 23 to our Deputy Director, Mr. Kitchens
Page 11 1 here. He can captain the ship until 2 we find someone. He's not going to 3 lose Lance's cell phone number, I'm 4 sure, unless he turns it off. He 5 said he wouldn't turn it off. He's 6 wanting to help this transition, too. 7 So, if we go through the 8 summer, it's a possibility, 9 hopefully, fingers crossed, we get 10 the right resumes and/or 11 applications, you know, by March 12 15th -- March 14th, excuse me. 13 So, that's the process, you 14 know. That information and 15 requirements and such is posted on 16 the website and other places. 17 And that's about all I was 18 going to say about that now that we 19 have the -- 20 MR. LEFLEUR: Well, we have a 21 flicker of hope. 22 CHAIRMAN MCFADDEN: The AV is 23 coming back to life.	Page 12 1 MR. LEFLEUR: Oh, no. Well, this 2 is such a cushy job. We ought to get 3 lots of good resumes for this. 4 CHAIRMAN MCFADDEN: They're 5 standing in line. 6 MR. LEFLEUR: All right. Looks 7 like we may be in business. 8 CHAIRMAN MCFADDEN: Almost. 9 MR. LEFLEUR: Were you praying? 10 MR. FORD: Yes. I was fervently. 11 MS. HURST: The power strip 12 decided to die five minutes after we 13 tested it. 14 CHAIRMAN MCFADDEN: Got power 15 back. That's a good start. There we 16 go. 17 MR. LEFLEUR: All right. 18 Excellent. 19 MR. FORD: It takes at least two 20 people to work a laptop actually. 21 MR. LEFLEUR: Well, I did my part. 22 Stood here. 23 Okay. So, to begin --

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1 where's my clicker? There's a
 2 clicker. Is this the one? Ah, good.
 3 All right. All right. We're in
 4 business. We're in business.
 5 Okay. So, as you've heard
 6 me say before, the Department seeks
 7 to measure its results in many ways.
 8 At the October 2024 Commission
 9 meeting, performance against the
 10 annual Operating Plan was analyzed.
 11 A review of the EPA generated
 12 quantitative compliance and
 13 enforcement metrics comparing all
 14 states is presented to the Commission
 15 annually. When the EPA State Review
 16 Framework audit of each of our
 17 programs is performed every five
 18 years, as it was two years ago, that
 19 information is provided. And then,
 20 periodically, we also review the
 21 latest information on the trends in
 22 environmental quality in Alabama.
 23 Today, we'll look at the

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1 Sulfur dioxide, fine particles, ozone
 2 and lead. There is also a regional
 3 haze goal. Over time, most of the
 4 standards have been revised, each
 5 time becoming more stringent. In
 6 2008, EPA set the 2018 goal for total
 7 reductions in haze.
 8 As this slide shows, one by
 9 one, Alabama has been able to attain
 10 individual air quality standards
 11 statewide even as the standards have
 12 become tighter.
 13 As this slide shows, one by
 14 one, the Carbon monoxide standard was
 15 first met in 1971. The NOx standard
 16 was met back in 1971, SO2 this 1977.
 17 The fine particle standard was first
 18 met in 2013, ozone in '14, and lead
 19 in 2015. In 2015, for the first time
 20 since the Clean Air Act was enacted
 21 in 1971, the state of Alabama reached
 22 attainment for all air quality
 23 standards.

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1 state of the environment in Alabama
 2 to see if the efforts have actually
 3 resulted in a measurably better
 4 quality environment in Alabama.
 5 The last report on the
 6 state of the environment was one year
 7 ago. The state of the environment
 8 takes the longer view and compares
 9 the quality of Alabama's environment
 10 when reliable records first became
 11 available 20 to 30 years ago versus
 12 where it is now to see if Alabama's
 13 environment is improving.
 14 The following series of
 15 slides will show a comparison of air,
 16 water, and land media. Unlike the
 17 quantitative performance metrics
 18 available from EPA, comparable
 19 environmental quality data from other
 20 states is not available.
 21 We begin with air. There
 22 are six basic air quality standards:
 23 Carbon monoxide, oxides of Nitrogen,

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1 In addition, Alabama met
 2 the 2018 regional haze goal in 2013,
 3 five years early. We are on track to
 4 meet the new 2028 regional haze goal
 5 this year and are likely to meet the
 6 2038 goal before 2028, which will be
 7 more than ten years early.
 8 This graph shows air
 9 emissions from major sources in
 10 Alabama since 1990. The red arrows
 11 correspond to the date that
 12 particular standard was achieved.
 13 The Carbon monoxide, NOx, and SO2
 14 arrows to the left reflect that those
 15 standards were achieved prior to the
 16 1990 timeline for the graph, while
 17 the three arrows to the right
 18 represent the fine particles, ozone
 19 and lead attainment dates of 2013,
 20 2014 and 2015 respectively. 2023 is
 21 the most current year available due
 22 to clean air reporting protocols.
 23 As you can see, emissions

Page 17 1 have declined materially, and this 2 next slide displaying just the last 3 five years through 2023 shows 4 improvement continues even after 5 those ever more stringent air quality 6 standards were attained. The dip in 7 2020 followed by the rise in 2021 was 8 due to the reduction in economic 9 activity during the height of COVID 10 and the subsequent economic recovery 11 in 2021. 12 Overall, the trend of 13 declining emissions, last reported on 14 the state of the environment in 15 Alabama in 2024, continues. The air 16 quality in Alabama clearly has 17 improved since 1990, and it continues 18 to improve. 19 In the water media, we'll 20 look at drinking water first because 21 of its importance in that it directly 22 impacts every individual in Alabama. 23 Potential contaminants in drinking	Page 18 1 water fall into four categories: 2 Organic chemicals, inorganic 3 chemicals, radionuclides and 4 microbes. 5 In 1982, when the 6 Department was created, there were 23 7 drinking water contaminants 8 regulated. That number is currently 9 95, an increase of six in just the 10 last year. As you see, most of the 11 increase over the years has been in 12 the organic chemicals category. The 13 increase in this past year was the 14 result of per and polyfluoroalkyl 15 substances, or PFAS, that are organic 16 chemicals. We are obviously 17 regulating more potential 18 contaminants in drinking water. With 19 more contaminants to monitor, how 20 well are the water systems doing is 21 the question. 22 In 1982, 82% of the water 23 systems in Alabama were consistently
Page 19 1 in compliance with the standards for 2 the 23 regulated contaminants. 3 Today, 98% of the water systems in 4 Alabama have been continuously in 5 compliance with the health-based 6 standards for the 95 contaminants now 7 regulated. The percentage is the 8 same as it was in 2023. As I have 9 noted in the past, only the state of 10 Hawaii has had a lower number of 11 drinking water violations than here 12 in Alabama. The people of Alabama 13 can have great confidence in the 14 quality of their drinking water. 15 Another measure of water 16 quality looks at the impairments to 17 surface waters in the state. Section 18 303(d) of the Clean Water Act calls 19 for a listing of impaired 20 waterbodies, which are those not 21 meeting federally approved water 22 quality standards for various 23 pollutants such as nutrients,	Page 20 1 pathogens, metals and suspended 2 solids. 3 This chart couples both the 4 area of impairment and the number of 5 pollutants. For example, if one mile 6 of stream or one acre of surface 7 water is impaired for nutrients and 8 pathogens, that would be counted as 9 two combination miles of impaired 10 stream or two combination acres of 11 surface water. 12 26% of the 59,000 miles of 13 perennial rivers and streams and 94% 14 of the more than 1 million acres of 15 lakes, reservoirs, ocean, and 16 estuaries in the state have now been 17 fully assessed for impairment. Over 18 the years, as more waterbodies have 19 been assessed, more impairments have 20 been identified and listed. 21 During the period between 22 1998 and 2024, more than 14,300 23 combination miles of impaired rivers

Page 21 1 and streams were identified and added 2 to the 303(d) list. 3 In 2024, there remained 4 about 5,000 combination miles of 5 impaired rivers and streams after 6 approximately 9,300 combination miles 7 have been removed from the list due 8 to improved water quality or being 9 addressed through the development of 10 a Total Maximum Daily Load, or TMDL, 11 determination. The TMDL sets strict 12 limits for the discharge of 13 pollutants into the assessed 14 waterbody that will bring that 15 waterbody into compliance with water 16 quality standards. 17 During the period from 1998 18 to 2024, more than 1.1 million 19 combination acres of impaired lakes, 20 reservoirs, ocean and estuaries were 21 added to the 303(d) list when 22 identified. 23 In 2024, there remained	Page 22 1 about 680,000 combination acres of 2 impaired lakes, reservoirs, ocean, 3 and estuaries after more than 455,000 4 combination acres have been removed 5 from the list due to improved water 6 quality or being addressed by TMDL 7 development. As with rivers and 8 streams, this shows ongoing 9 improvement. 10 Overall, impaired 11 waterbodies have seen significant 12 improvement over the years and that 13 improvement continues as more 14 waterbodies are assessed, new 15 impairments are identified, water 16 quality improvements, and the 17 development of TMDLs. 18 The 303(d) list identifies 19 impaired waterbodies. Waterbodies 20 are also tracked by an assigned 21 designation or use classification. 22 The data in this slide will go back 23 to 1982, which is a bit further back
Page 23 1 than the previous slide. 2 Looking at the three 3 highest classifications and 4 designations: Outstanding National 5 Resource Waters, Outstanding Alabama 6 Waters, and Treasured Alabama Lakes, 7 as you can see, in 1982 no State 8 waters were yet determined to have 9 met the requirements to be designated 10 in the highest categories. 11 By 2024, Alabama was 12 recognized to have a total of more 13 than 1,100 miles and more than 45,000 14 acres in those highest categories. 15 Conversely, at the other 16 end of the scale, the number of miles 17 of watercourses in the lowest use 18 classifications, which are below the 19 fish and wildlife classification and 20 suitable only for limited warm water 21 fisheries and industrial and 22 agricultural use, have declined from 23 more than 700 miles down to just over	Page 24 1 100 miles. 2 Since 1982, Alabama has 3 seen a dramatic increase in the 4 waters qualifying for the highest 5 quality designations and use 6 classifications and, likewise, a 7 dramatic decrease in those falling 8 into the lowest use classifications. 9 As measured by drinking 10 water, impaired waterbodies, 11 waterbody designations and use 12 classifications, water quality in 13 Alabama is exceptionally good and 14 continues to improve. 15 Moving on to data from the 16 land media, we begin by looking at 17 landfills and efforts to reduce the 18 amount of waste going to them. 19 Landfills are a necessary feature if 20 we are to dispose of the solid waste 21 generated by each of us in a safe, 22 efficient and effective manner. 23 In 1989, Alabama had 141

Page 25 1 unlined municipal solid waste 2 landfills. All of those have been 3 closed. Today there are 30 4 state-of-the-art lined MSW permitted 5 landfills handling municipal solid 6 waste in Alabama. 7 In addition to safely 8 disposing of solid waste, efforts 9 have been expanding to reduce the 10 total amount of solid waste in 11 Alabama by promoting recycling. 12 Significant progress has been made 13 over the years. 14 The solid waste reduction 15 rate in Alabama today is more than 16 five times what it was in 1989, and 17 it has now surpassed the 25% 18 recycling goal set back in 1991 and 19 this compares favorably with national 20 averages. 21 The total recycling volume 22 now comes to 3.6 million tons per 23 year, about the same as it was in	Page 26 1 2023. A robust recycling grant 2 program administered by ADEM since 3 2010 has provided more than \$34 4 million in grants to help achieve 5 this success. 6 That success is the reason 7 why in 2024 the Department requested 8 and the Commission approved 9 increasing the recycling goal from 10 25% to 40%. 11 Alabama, like other states, 12 has had to not only deal with 13 permitted landfills but also with 14 unauthorized solid waste dumps. 15 Since 2009, more than 2,300 16 unauthorized solid waste dumps have 17 been remediated. This is up 2.4% 18 over 2023. 19 More than 1,700 of those 20 have been remediated by action 21 against responsible parties, while 22 more than 600, representing innocent 23 landowners, have been cleaned up
Page 27 1 using funds provided by the \$1 per 2 ton fee on solid waste disposed of in 3 landfills, which was initiated in 4 2009. The responsible party number 5 is up by 2.2%, and the innocent 6 landowner number is up by 3% compared 7 to 2023. 8 Scrap tires present special 9 problems like fire hazards and 10 breeding grounds for vectors. Since 11 2006, 402 illegal scrap tire dumps 12 containing more than 11 million tires 13 have been cleaned up. The number of 14 scrap tire dumps cleaned up in this 15 year is up 4.1% over 2023. 16 Today, solid waste in 17 Alabama's environment is being dealt 18 with responsibly. 19 The Land Division also 20 deals with sites that have various 21 types of soil and groundwater 22 contamination. 23 Legacy sites, such as old	Page 28 1 abandoned industrial sites, are known 2 as brownfields. New regulatory 3 programs and technology have all but 4 halted the creation of new brownfield 5 sites. 6 The brownfield program has 7 identified 778 legacy brownfield 8 sites in Alabama. 9 Since 2001, 459 nearly 60% 10 of those sites totaling more than 11 6,600 acres have been returned to 12 productive use. That is a 2.5% 13 increase in the number of sites 14 returned to productive use and a 2.4% 15 increase in the acreage returned to 16 productive use since 2023. 17 79 of the remaining sites, 18 totaling more than 7,500 acres, are 19 actively enrolled in the brownfields 20 program. 21 Work continues to identify, 22 enroll, and clean up brownfield 23 sites. The land returned to

Page 29 1 productive use is very often in prime 2 areas for future industrial 3 development. Both the environment 4 and the economic prospects in Alabama 5 have been improved since 2001 because 6 of this voluntary program. 7 In the past, underground 8 storage tanks, typically found at gas 9 stations, have been subject to leaks 10 due to corrosion and physical damage. 11 Leaking petroleum products 12 contaminate both soil and 13 groundwater. As with brownfields, 14 new regulations and technology now 15 prevent or provide for early 16 detection of leaks from tanks 17 installed in recent years, but many 18 legacy sites exist in Alabama and 19 throughout the nation. 20 Since 1989, nearly 12,500 21 leak sites have been identified in 22 Alabama. More than 11,600 (93% which 23 is up about .3% from 2023), have been	Page 30 1 cleaned up with 817 additional sites 2 in some stage of the cleanup process. 3 Groundwater contamination from 4 underground storage tanks continues 5 to decline. 6 The Land Division also 7 works with the Federal Government to 8 clean up sites contaminated by 9 federal entities, primarily the 10 Department of Defense. The largest 11 and most complex of these is at 12 Redstone Arsenal near Huntsville, 13 Alabama. The Department assumed 14 responsibility for overseeing 15 remediation efforts in 2010. 16 This final slide shows the 17 progress since that time. On the 18 left of the graph, you see the number 19 of discrete sites being addressed. 20 The number of units identified has 21 been stable at about 350 since 2012. 22 The light blue portion, of 23 the columns, represents the units
Page 31 1 that have been remediated to the 2 point where no further action is 3 required. 4 The dark blue portion 5 represents those units that have had 6 the necessary corrective action 7 completed. 8 The red portion represents 9 those units that are either underway 10 with corrective action or are in need 11 of corrective action. 12 And the gray portion 13 represents those units in need of 14 investigation. 15 The takeaway is that 16 significant strides have been made in 17 investigating and cleaning up this 18 extremely large and complex site 19 since the Department took over 20 management of the site from EPA in 21 2010. 22 The quality of Alabama's 23 environment, as measured by declining	Page 32 1 air emissions that result in ambient 2 air quality that meets National 3 Ambient Air Quality standards, 4 meeting or beating water quality 5 standards, and the extensive 6 remediation of legacy soil 7 contamination has been improving 8 continuously over the years, and it 9 has continued that improvement since 10 we last reviewed the data. Hard data 11 shows the progress. 12 The state of the 13 environment in Alabama is much 14 improved over what it was 20 to 30 15 years ago. It has improved over what 16 it was in 2023. Our citizens breathe 17 much cleaner air, have higher quality 18 water, and can be assured that solid 19 waste management and contaminated 20 land remediation have progressed 21 significantly. The current state of 22 the environment in Alabama is very 23 good, and overall the trends are

Page 33 1 favorable. 2 Last year we looked at the 3 survey of public perceptions that we 4 do every five years to see if the 5 public's perceptions match up with 6 the actual data. The public had some 7 perceptions that were consistent with 8 what the data showed and some 9 perceptions that were not supported 10 by data. But overall, more than 86% 11 of those surveyed accurately 12 recognize that the environment in 13 Alabama is good. Any activity that 14 gets 86% of the vote is fortunate. 15 Any elected official would be pleased 16 to get 86% of the vote. 17 Our challenge is to 18 continue to improve and to further 19 educate the public by making the 20 facts known. 21 As you're aware, the 22 Department has been tasked with 23 administering Alabama Rescue Plan	Page 34 1 Act, or ARPA, and Bipartisan 2 Infrastructure Law, BIL, funds as 3 well as our normal State Revolving 4 Fund programs' funds. From 2022 5 through today, the Department has 6 committed \$1.4 billion in funding for 7 drinking water and sewer upgrades in 8 Alabama. As of today, \$364 million 9 of those funds have been expended, 10 and we are on track to see all the 11 funds expended before the relevant 12 deadlines set out in the various 13 pieces of enabling legislation. 14 On the EPA front, the 15 Senate confirmed Lee Zeldin as EPA 16 administrator on January 29, 2025. 17 David -- and I'm probably 18 slaughtering the pronunciation of his 19 name -- Fotouhi has been nominated as 20 Deputy EPA Administrator. Mr. 21 Fotouhi was lead attorney at EPA 22 during the first Trump administration 23 and has extensive knowledge in how
Page 35 1 EPA operates. Prior to his 2 nomination, he was a partner at the 3 law firm of Gibson, Dunn & Crutcher 4 LLP in the D.C. office from 2011 to 5 2017 and then again from 2020 to 6 2025. He's a 2010 Harvard Law School 7 graduate with an undergraduate degree 8 from Vanderbilt University. Mr. 9 Fotouhi's nomination is subject to 10 Senate confirmation. 11 Four of the 12 assistant 12 administrators have also been named 13 and are subject to Senate 14 confirmation. Four of the 10 15 regional administrators who are not 16 subject to Senate confirmation have 17 been named. The Region 4 18 Administrator, our EPA region, has 19 not yet been named. 20 EPA has paused many of its 21 activities, such as rulemaking, 22 litigation and, to some degree, 23 distribution of certain grants and	Page 36 1 other funding to allow the new 2 administration the opportunity to 3 fully assess its path forward. Also, 4 plans have been announced to reduce 5 EPA staff by 1,100 personnel, which 6 is about 7% of their workforce. 7 That concludes today's 8 report. I'll be pleased to answer 9 any questions you may have. 10 CHAIRMAN MCFADDEN: Does anyone 11 have anything for Director LeFleur? 12 (No response). 13 CHAIRMAN MCFADDEN: Thank you. 14 It's a good report. 15 MR. LEFLEUR: Okay. The President 16 gives State of the Union, the 17 Governor gives State of the State, 18 and we give State of the Environment. 19 CHAIRMAN MCFADDEN: Thank you very 20 much. 21 Okay. I'll continue with 22 Agenda Item 3, Report from the Chair, 23 which included the update on the

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1 replacement for Lance and the process
 2 for that and so forth. It's been
 3 two-and-a-half years since I've
 4 really gotten to know Mr. LeFleur;
 5 and having worked here right when the
 6 agency started, 1983, it had been in
 7 existence, I think, about six months.
 8 And I came to work. And a guy by the
 9 name of Joe Broadwater was the
 10 Director at that point, and a really
 11 good ag guy, and he was a lot of fun.
 12 But you've got to remember, in that
 13 time frame, the Clean Water Act was
 14 passed in 1972, and subsequent really
 15 important amendments came in 1977.
 16 So, this agency -- and I'm
 17 sure all State agencies -- were still
 18 in the midst of dealing with new
 19 Federal regulations, Federal rules,
 20 and passing State laws to match that,
 21 and all those things the lawyers do
 22 to get in compliance with that. And
 23 for industries and municipalities to,

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1 develop a thick skin. And Lance has
 2 some really -- you know, some of the
 3 best skills at dealing with EPA, as
 4 he's just talked about, and dealing
 5 with the Legislature and all of
 6 the -- was it 580 employees now?
 7 Something like that, roughly? It was
 8 250, I think, when I started here,
 9 back in those days.
 10 So, as a result of that,
 11 you know, I began to get phone calls
 12 a couple weeks ago, two or three --
 13 well, even further back than that --
 14 from a various group of folks that
 15 thought we ought to do something to
 16 honor Lance and his work here at the
 17 Department. And it really came from
 18 a lot of different sources, but I
 19 don't know if it was all in sync or
 20 what, but it was from different --
 21 you know, some of our trade groups,
 22 internal here to the Department and
 23 the Commission, the Governor's

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1 all of a sudden -- you know, you kind
 2 of have to pay more attention to what
 3 you're doing now. You have to do
 4 certain things and reduce certain
 5 pollutants and such.
 6 So, you know, it's -- it's
 7 a tough job. My point is, it's a --
 8 it's a tough job being in the
 9 Director's chair. And, you know,
 10 it's -- as my boss told me here when
 11 I first came to work here right out
 12 of -- right out of college, he said,
 13 "Well, I guess, you know, considering
 14 the environmental folks sort of stay
 15 upset with us, the industry stays
 16 upset with us, some of the
 17 municipalities stay upset with us, we
 18 must be doing a pretty good job."
 19 So, I remember that from
 20 Mac -- everybody here knows Mac
 21 McIndoe, who was Water Quality Chief
 22 where I worked.
 23 So, it is -- it's hard to

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1 Office, and everybody else.
 2 So, we -- we have
 3 circulated amongst the Commission a
 4 Resolution. That's what you do in
 5 state government, right? You can't
 6 give them a vacation to Europe, so
 7 you give them a Resolution.
 8 So, I think Mrs. LeFleur
 9 has plans for the European thing
 10 anyway. So, Lance, you'll get to go
 11 on that. Just won't be paid for by
 12 us.
 13 So, we have that Resolution
 14 that's been circulated and read. So,
 15 I would like to get a vote on that,
 16 and then I'm going to read it for the
 17 public and for the record after we
 18 vote on that.
 19 And so, I'll entertain a
 20 motion regarding that to move to
 21 adopt the Resolution as circulated
 22 previously.
 23 DR. TUCKER: I move to adopt the

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1 resolution.

2 MR. MASINGILL: I second.

3 CHAIRMAN MCFADDEN: I have a

4 motion and a second. Any discussion

5 on that?

6 (No response).

7 CHAIRMAN MCFADDEN: Hearing none,

8 all those in favor, raise your hand.

9 Commission members raising

10 hands).

11 CHAIRMAN MCFADDEN: Any opposed?

12 (No response).

13 CHAIRMAN MCFADDEN: It carries

14 100%.

15 Okay. So, do we need to

16 sign this first?

17 MS. THOMAS: Yes, please.

18 CHAIRMAN MCFADDEN: Okay. If we

19 didn't have Ms. Thomas to guide all

20 of us cats, herding cats is a tough

21 job.

22 (Commission signing

23 Resolution).

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1 sort of long, and I went to Auburn,

2 so it may take me a while.

3 (As read) "Resolution of

4 the Alabama Environmental Management

5 Commission. Whereas, Mr. Lance R.

6 LeFleur was selected to lead the

7 Alabama Department of Environmental

8 Management (ADEM) during April of

9 2010, and began serving as Director

10 on May 1, 2010.

11 Whereas, prior to leading

12 ADEM, Director LeFleur earned great

13 success in the private sector, where

14 in 1990, he founded Materials

15 Recovery Corporation to collect, sort

16 and process waste materials for

17 conversion to usable feedstock or

18 recyclable material.

19 Whereas, during his tenure

20 at ADEM, Director LeFleur oversaw

21 tremendous achievement, growth and

22 efficiency at the agency, which was

23 and is routinely the lowest funded

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1 CHAIRMAN MCFADDEN: Okay. I'll

2 ask Mr. Brooks McClendon, who's

3 Deputy Chief of Staff for the

4 Governor, Governor Ivey, to come

5 forward down here in front. Scott

6 Hughes, would you come with and come

7 by and grab that Director guy and

8 bring him.

9 MR. LEFLEUR: Wait a minute.

10 CHAIRMAN MCFADDEN: I guess we --

11 where's the best place to do this?

12 Up here?

13 MS. THOMAS: Yes, I would. I

14 would say center of that.

15 CHAIRMAN MCFADDEN: Yes.

16 MR. HUGHES: Yeah.

17 CHAIRMAN MCFADDEN: All right.

18 Let's see. You just come over here.

19 Let's, what, face this way? Is that

20 best for the -- come on the camera.

21 MR. LEFLEUR: Come on, Scott, get

22 in here.

23 CHAIRMAN MCFADDEN: Okay. It's

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1 environmental agency in the United

2 States.

3 Whereas, Director LeFleur

4 fundamentally believes in

5 transparency, the highest level of

6 agency performance, and that ADEM has

7 an obligation to keep operating costs

8 low, thereby minimizing necessitation

9 of taxpayer resources.

10 Whereas, during the tenure

11 at ADEM, Director LeFleur led the

12 agency through numerous difficult but

13 ultimately rewarding challenges,

14 including the Deepwater Horizon oil

15 spill and Alabama's largest

16 concentrated investment in public

17 clean water and wastewater

18 infrastructure.

19 Whereas, under Director

20 LeFleur's leadership, ADEM routinely

21 ranks as a top speed-of-permitting

22 state and has cultivated a reputation

23 as a fast and fair arbiter and

Page 45 1 enforcer of environmental laws and 2 regulations, thereby making the 3 agency an important asset to the 4 State's conservation, recreation and 5 public environmental safety goals, as 6 well as its economic development and 7 private investment efforts. 8 Whereas, Director LeFleur 9 identified the need and oversaw the 10 completion of a new field office in 11 Coastal Alabama to better serve the 12 coast in one of the world's most 13 biologically and ecologically diverse 14 areas, the Mobile Delta. 15 Whereas, prior to the 16 opening of the new office, ADEM staff 17 were spread across multiple 18 maintenance-neglected buildings in 19 the area. 20 And whereas, on March 28, 21 2024, ADEM opened its new 22 state-of-the-art, 15,000-square-foot 23 coastal Alabama field office.	Page 46 1 Whereas, the new field 2 office is emblematic of Director 3 LeFleur's accomplishments at ADEM, 4 enhancing efficiencies, modernizing 5 systems, empowering ADEM staff, and 6 protecting Alabama's environment. 7 Whereas, Director LeFleur 8 has announced his intent to retire as 9 Director of ADEM on May 1, 2025, 10 marking 15 years of exceptional 11 service to the citizens of the State 12 of Alabama, ADEM staff, the Alabama 13 Environmental Management 14 Commissioner, and the Governor. 15 Whereas, Governor Kay Ivey 16 and the members of the Alabama 17 Environmental Management Commission 18 believe the legacy of Director 19 LeFleur, which encompasses his 20 duration as Director, the Agency's 21 accomplishments under his direction, 22 and his attitude toward public 23 service, should be properly
Page 47 1 acknowledged, celebrated and 2 memorialized. 3 Now, therefore, be it 4 resolved, the Alabama Management 5 Commission hereby names the coastal 6 Alabama field office in Mobile the 7 Lance R. LeFleur Coastal Alabama 8 Field Office." 9 Still more. Don't take the 10 European vacation. 11 "Be it further resolved, 12 the Alabama Department of 13 Environmental Management shall 14 fulfill this resolution by erecting 15 exterior signage, including lettering 16 on the building as well as a plaque 17 commemorating Mr. LeFleur's tenure as 18 director in a publicly visible 19 location on the interior or exterior 20 of the building. 21 Be it further resolved, the 22 Alabama Department of Environmental 23 Management is directed and authorized	Page 48 1 to make and enter contracts, leases, 2 agreements, and to take any other 3 actions as may be necessary or 4 desirable to carry into effect the 5 intent of the provision of this 6 resolution. 7 Be it further resolved, the 8 Alabama Environmental Management 9 Commission ratifies any and all other 10 actions taken by the agency on behalf 11 of the Commission, which are 12 determined to be necessary, 13 appropriate, desirable or convenient 14 to achieve the intent of the 15 Commission as expressed in this 16 Resolution. Done this 14th day of 17 February, 2025." 18 And with that, Governor 19 Ivey introduced these folks. Brooks 20 McClendon is Governor Ivey's Deputy 21 Chief of Staff; Scott Hughes, our 22 Field Operations Chief. And we had a 23 letter from the Governor expressing

Page 49 1 her thoughts on this. 2 Brooks, would you like to 3 read that? 4 MR. BROOKS: Sure. 5 CHAIRMAN MCFADDEN: Put that in 6 the record. I think it's -- 7 MR. BROOKS: Mr. Chairman -- 8 CHAIRMAN MCFADDEN: -- very 9 appropriate. 10 MR. BROOKS: This letter from 11 Governor Ivey was sent to the 12 Commission. It was dated February 13 4th, 2025. 14 (As read) "Dear members of 15 the Commission: As you know, ADEM 16 Director Lance LeFleur announced his 17 retirement effective May 1st, 2025. 18 After 15 years of remarkable 19 leadership, his departure from the 20 agency will leave big shoes to fill. 21 While your task of identifying 22 Director LeFleur's successor is of 23 utmost importance to the State, I	Page 50 1 believe it is fitting and warranted 2 to properly acknowledge, celebrate, 3 and memorialize Lance's achievements 4 and service to Alabama. 5 Enclosed is a Resolution 6 authorizing and instructing the 7 Department to name its recently 8 completed Coastal Alabama Field 9 Office in honor of Director LeFleur. 10 It is my hope that you will consider 11 and adopt the Resolution during your 12 upcoming Commission meeting on 13 February 14th, 2025. 14 Thank you for your 15 attention to this important matter, 16 and thank you for your continued 17 service to the citizens and the State 18 of Alabama. I look forward to seeing 19 you at the unveiling of The Lance R. 20 LeFleur Coastal Alabama Field Office. 21 Sincerely, Kay Ivey, Governor." 22 CHAIRMAN MCFADDEN: 23 Congratulations.
Page 51 1 MR. LEFLEUR: I'd like to make a 2 comment or two. Every place where it 3 says "Director LeFleur," we need to 4 replace that with the personnel at 5 ADEM because they are the ones that 6 are responsible for whatever good 7 things have happened in the last 15 8 years. 9 And I'll also say that my 10 trip to Europe will be forgotten 11 pretty quickly by me, but these 12 documents will be hanging on my wall 13 as a permanent reminder. Thank you 14 very much. 15 CHAIRMAN MCFADDEN: You're very 16 welcome. 17 Scott, you have a new 18 building down there. 19 MR. HUGHES: So, we do, and it's a 20 very nice facility. For those of 21 y'all that weren't involved with the 22 details of the project, it was 23 literally a 10-year process that we	Page 52 1 undertook to get the funding, get the 2 building constructed, get it 3 designed, get it constructed. It was 4 certainly the Director's vision and 5 his tenacity in dealing with the 6 Alabama Gulf Coast Request Council to 7 get those funding -- those funds, to 8 deal with the Legislator and Governor 9 Ivey's office to get the funding to 10 support the funding that we got from 11 the Federal Restore Council, Alabama 12 Gulf Coast Restoration Council. 13 And it was once we got the 14 funding, got the design done, it was 15 a complete team effort from Russell 16 Kelly's group in Permits and 17 Services, my staff down in the 18 Coastal Office, Scott Brown and Chris 19 Harris and Samantha Connole. It was 20 a complete team effort. But it would 21 not have been possible without the 22 Director's vision for what he wanted 23 to see down there.

Page 53 1 MR. LEFLEUR: Absolutely. And it 2 would not have been possible if Scott 3 had not been down wrestling -- or 4 "wrassling" is the term may be 5 used -- with the contractor, the 6 architect on a weekly basis. He 7 deserves a great deal of credit on 8 that. 9 CHAIRMAN MCFADDEN: And I think, 10 if you remind me, today is the day 11 that the building is technically 12 turned over to the Department. Am I 13 saying that correctly? 14 MR. LEFLEUR: The Department of 15 Construction Management has a 16 one-year after occupancy for a final 17 sign-off. Is today -- 18 MR. HUGHES: It was today, but one 19 of the subcontractors that had to be 20 at that meeting had a conflict. So, 21 it was pushed to March, I believe, 22 12th or 13th in that time frame. 23 CHAIRMAN MCFADDEN: But in	Page 54 1 essence, it's complete. 2 MR. HUGHES: Absolutely. We have 3 been in it for almost well over a 4 year now and very, very pleased with 5 it. 6 MR. LEFLEUR: We still need a 7 bureaucratic sign-off. 8 CHAIRMAN MCFADDEN: Of course. 9 There you go. 10 MR. LEFLEUR: Well, thank you very 11 much. 12 CHAIRMAN MCFADDEN: Thank you. 13 MR. LEFLEUR: Thank you-all. 14 (Applause). 15 CHAIRMAN MCFADDEN: Okay. Moving 16 right along. It brings us to Agenda 17 Item Number 4, Astrata Contracting 18 LLC, Petitioner, versus ADEM, 19 Respondent. I note that under this 20 item, Item 4, in the appeal, Astrata 21 Contracting, LLC, the Petitioner 22 versus ADEM, Respondent, the 23 Commission has before it the Hearing
Page 55 1 Officer's Report and Recommendation 2 to the Commission. Chair notes that 3 the Hearing Officer, with supporting 4 findings of fact and conclusions of 5 law, recommends that the Commission 6 find that the Petitioner failed to 7 meet the burden of proof and that 8 ADEM's Administrative Order Number 9 23-102 SW should stand as issued. 10 The Chair notes that on 11 February 11th, 2025, the Petitioner 12 filed an Objection to Report and 13 Recommendations of the Hearing 14 Officer to the Commission with an 15 attached proposed order. Also, on 16 February 11th, 2025, the Department 17 filed a response to the Petitioner's 18 Objection to the Report and 19 Recommendation to the Commission of 20 the Hearing Officer. 21 And I note that the ADEM 22 Administrative Code Rule 23 335-2-1-.28(1), states in part: "Any	Page 56 1 party may object to the 2 recommendation of the Hearing Officer 3 by filing objections to 4 recommendation and an accompanying 5 brief with the Commission within 10 6 days after the Hearing Officer's 7 recommendation is served upon the 8 parties." 9 I note that the 10 Administrative Code Rule 11 335-2-1-.28(2) states in part: "Not 12 later than three days prior to the 13 meeting of the Commission to make its 14 final decision or 10 days after 15 receipt of notice of the filing of 16 objections to the Hearing Officer's 17 recommendation, whichever is sooner, 18 any other party may file and serve 19 with the Commission a reply brief 20 responding to arguments raised by the 21 objecting party." 22 I note that this appeal, 23 the Hearing Officer's Report and

Page 57 1 Recommendations were served on the 2 parties on January 17, 2025, and 10 3 days from that service would have, of 4 course, been January 27th, 2025. And 5 as stated before, the Petitioner's 6 Objections was filed on February 7 11th, 2025, which exceeded the 10-day 8 requirement for filing and did not 9 give the three days prior to the 10 Commission meeting for a reply 11 provided in the Rules. 12 So, you know, it just was 13 not a timely sequence of events here. 14 And we -- we have the Rules for a 15 reason, and, you know, we have to 16 stick to the Rules. 17 So, I'll entertain a motion 18 from the Commission regarding the 19 Hearing Officer's Report and 20 Recommendation to the Commission, 21 keeping in mind the rule just cited. 22 MR. MASINGILL: I move to adopt 23 the Hearing Officer's Report and	Page 58 1 Recommendations to the Commission. 2 DR. PERRY: Second. 3 CHAIRMAN MCFADDEN: I have a 4 motion and a second. Is there any 5 discussion -- further discussion 6 about this? 7 (No response). 8 CHAIRMAN MCFADDEN: If not, the 9 Chair calls for the question. All 10 those in favor of adopting the 11 Hearing Officer's Report and 12 Recommendation to the Commission, 13 raise your hand. 14 (Commission members raising 15 hands). 16 CHAIRMAN MCFADDEN: All those 17 opposed? 18 (No response). 19 CHAIRMAN MCFADDEN: The motion 20 carries. 21 Okay. Moving on to Agenda 22 Item 5, any other business to come 23 before the Commission?
Page 59 1 (No response). 2 CHAIRMAN MCFADDEN: Okay. Hearing 3 none, Agenda Item Number 6, future 4 business sessions notes the next 5 Commission meeting will be April 6 11th, 2025. Confirm that the 7 Commissioners should be available. 8 Most all of us, if we have a quorum, 9 we'll have business to attend to. 10 So, April 11th will be the next 11 meeting. 12 And with that, we have no 13 public comment. 14 MS. THOMAS: No comments. 15 CHAIRMAN MCFADDEN: Okay. So, no 16 comments from the public. 17 So, other than that, I want 18 to thank Mr. McClendon for coming, 19 representing the Governor. Give our 20 appreciation to her and all of you. 21 And thank you, Lance, for 22 getting us, in Mobile, a nice field 23 office. I go by it every day.	Page 60 1 So, with that, I have a 2 motion to adjourn. 3 MR. MASINGILL: I move to adjourn. 4 DR. TUCKER: Second. 5 CHAIRMAN MCFADDEN: I have a 6 second. Any discussion? 7 (No response). 8 CHAIRMAN MCFADDEN: Okay. All in 9 favor, raise your hand. 10 (Commission Members raising 11 hands). 12 CHAIRMAN MCFADDEN: Thank you. 13 14 15 (WHEREUPON, the Commission 16 meeting was concluded at 17 11:57 a.m.) 18 19 * * * * * 20 21 22 23

1 * * * * *

2 REPORTER'S CERTIFICATE

3 * * * * *

4 STATE OF ALABAMA

5 TALLAPOOSA COUNTY

6 I, Jeana S. Boggs, Certified Professional

7 Reporter and Notary Public in and for the State of

8 Alabama at Large, do hereby certify on Friday,

9 February 14th, 2025, that I reported the meeting in

10 the matter of:

11 MEETING OF THE

12 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

13 ALABAMA DEPARTMENT OF ENVIRONMENTAL

14 MANAGEMENT (ADEM) BUILDING

15 ALABAMA ROOM

16 1400 COLISEUM BOULEVARD

17 MONTGOMERY, ALABAMA 36110-2400

18

19 That the foregoing 60 computer-printed

20 Pages contain a true and correct transcript of the

21 meeting set out herein. I further certify that I am

22 neither of relative, employee, attorney or counsel

23 of any of the parties, nor am I a relative or

1 employee of such attorney or counsel, nor am I

2 financially interested in the results thereof. All

3 rates charged are usual and customary.

4 I further certify that I am duly licensed

5 by the Alabama Board of Court Reporting as a

6 Certified Court Reporter as evidenced by the ABCR

7 number following my name found below.

8 This 19th day of March, in the year of

9 our Lord, 2025.

10

11 Jeana S. Boggs, CCR

12 ACCR NO. 7, Exp 9/30/2025

13 Certified Court Reporter and

14 Notary Public

15 Commission expires: 8/9/2027

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three 9:23 16:17 23:2 39:12 56:12 57:9 tighter 15:12 time 1:10 4:4 6:23 8:23 15:3 15:5,19 30:17 37:13 53:22 timeline 16:16 timely 57:13 times 25:16 tire 27:11,14 tires 27:8,12 TMDL 21:10,11 22:6 TMDLs 22:17 today 7:3,17 13:23 19:3 25:3,15 27:16 34:5,8 53:10 53:17,18 today's 5:15 36:7 told 38:10 tomorrow 7:19 ton 27:2 tons 25:22 top 44:21 total 15:6 21:10 23:12 25:10,21 totaling 28:10 28:18 tough 38:7,8 41:20 track 16:3 34:10 tracked 22:20 trade 39:21 transcript 61:20 transition 11:6 transparency 44:5 traveling 3:8 Treasured 23:6 tremendous 43:21 trend 17:12 trends 13:21 32:23	trip 51:10 true 4:17 61:20 Trump 34:22 TUCKER 2:6 3:17 40:23 60:4 turn 11:5 turned 53:12 turns 11:4 Tuscaloosa 8:9 two 9:22 12:19 13:18 20:9,10 39:12 51:2 two-and-a-half 37:3 types 27:21 typically 29:8 U ultimately 44:13 unauthorized 26:14,16 undergraduate 35:7 underground 29:7 30:4 understand 4:15 undertook 52:1 underway 31:9 Union 36:16 United 44:1 units 30:20,23 31:5,9,13 University 35:8 unlined 25:1 unveiling 50:19 upcoming 50:12 update 5:16 8:16 36:23 upgrade 5:23 upgrades 34:7 upset 38:15,16 38:17 usable 43:17 use 8:22 22:21 23:17,22 24:5 24:8,11 28:12 28:14,16 29:1	usual 62:3 utmost 49:23 V vacation 40:6 47:10 Valentine's 3:3 4:23 5:3 Vanderbilt 35:8 various 19:22 27:20 34:12 39:14 vectors 27:10 versus 14:11 54:18,22 veteran 7:10 VICE 2:4 Video 62:15,16 view 14:8 violations 19:11 visible 47:18 vision 52:4,22 visual 6:8 volume 25:21 voluntary 29:6 vote 33:14,16 40:15,18 W Wait 42:9 waiting 6:19 wall 51:12 want 8:21 59:17 wanted 52:22 wanting 11:6 warm 23:20 warranted 50:1 waste 24:18,20 25:1,6,8,10,14 26:14,16 27:2 27:16 32:19 43:16 wastewater 6:1 44:17 watching 7:21 water 5:23 7:1,7 14:16 17:19,20 18:1,7,18,20	18:22 19:3,11 19:14,15,18,21 20:7,11 21:8 21:15 22:5,15 23:20 24:10,12 32:4,18 34:7 37:13 38:21 44:17 waterbodies 19:20 20:18 22:11,14,19,19 24:10 waterbody 21:14,15 24:11 watercourses 23:17 waters 19:17 23:5,6,8 24:4 way 42:19 ways 13:7 we'll 9:21 13:23 17:19 59:9 we're 6:18 13:3 13:4 website 9:16 11:16 weekly 53:6 weeks 39:12 welcome 3:2 5:7 51:16 went 43:1 weren't 51:21 whichever 56:17 wildlife 23:19 win 8:6 work 12:20 28:21 37:8 38:11 39:16 worked 37:5 38:22 workforce 36:6 works 30:7 world's 45:12 wouldn't 11:5 wrassling 53:4 wrestling 53:3 written 62:16 wrong 6:5	X Y y'all 51:21 yeah 7:20 8:1,10 42:16 year 5:9 9:6 14:6 16:5,21 18:10 18:13 25:23 27:15 33:2 54:4 62:8 years 7:9 13:18 13:18 14:11 16:3,7 17:3 18:11 20:18 22:12 25:13 29:17 32:8,15 33:4 37:3 46:10 49:18 51:8 you-all 54:13 younger 6:14 Z Zeldin 34:15 0 1 1 3:10 9:5 20:14 27:1 43:10 46:9 1,100 23:13 36:5 1,700 26:19 1.1 21:18 1.4 34:6 10 7:12 35:14 56:5,14 57:2 10-day 57:7 10-year 51:23 100 24:1 100% 41:14 11 27:12 11,600 29:22 11:00 1:10 11:57 60:17 11th 9:20 55:11 55:16 57:7
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59:6,10	2006 27:11	3% 27:6 29:23	8
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13th 3:12,20	31:21 35:6	303(d) 19:18	86% 33:10,14
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14 1:9 9:18	2011 35:4	335-2-1-.28(1)	9
15:18	2012 30:21	55:23	9,300 21:6
14,300 20:22	2013 15:18 16:2	335-2-1-.28(2)	9/30/2025 62:11
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15:21	2024 3:13,20	455,000 22:3	
1972 37:14	13:8 17:15	459 28:9	
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37:15	21:23 23:11		
1982 18:5,22	26:7 45:21	5	
22:23 23:7	2025 1:9 5:9	5 58:22	
24:2	34:16 35:6	5,000 21:4	
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1989 24:23	49:13,17 50:13	580 39:6	
25:16 29:20	55:11,16 57:2	59,000 20:12	
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1991 25:18	2028 16:4,6	6 59:3	
1998 20:22	2038 16:6	6,600 28:11	
21:17	23 18:6 19:2	60 61:19	
19th 62:8	23-102 55:9	60% 28:9	
1st 49:17	25% 25:17	600 26:22	
	26:10	680,000 22:1	
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2.5 28:12		700 23:23	
20 14:11 32:14	3	778 28:7	
2001 28:9 29:5	3 36:22	79 28:17	

Part B

Attachment Index

Attachment 1 Agenda

**Attachment 2 Director's Slides
(Agenda Item 2)**

**Attachment 3 Resolution authorizing and instructing the Department to name the
Coastal Alabama Field Office in honor of Director LeFleur
(Agenda Item 3)**

**Attachment 4 Order adopting Hearing Officer's Report and Recommendation to the
Commission, and Attachment – Hearing Officer's Report and Recommendation
to the Commission
(Agenda Item 4)**

Attachment 1

Amended 1/31/25

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 14, 2025

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

ITEM	PAGE
1. Consideration of minutes of meeting held on December 13, 2024**	2
2. Report from the ADEM Director	2
3. Report from the Commission Chair	2
4. <u>Astrata Contracting, LLC, Petitioner v. ADEM, Respondent</u> EMC Docket No. 24-01	2
5. Other business	2
6. Future business session	2
PUBLIC COMMENT PERIOD	2
Brief statements by members of the public registered to speak	2

* 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 DECEMBER 13, 2024
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. ASTRATA CONTRACTING, LLC, PETITIONER V. ADEM, RESPONDENT, EMC DOCKET NO. 24-01

The Commission will consider the Hearing Officer's Report and Recommendation to the Commission in which the Hearing Officer recommends that the Commission find that the Petitioner failed to meet the burden of proof and that ADEM's Administrative Order No. 23-102-SW should stand as issued. ADEM Administrative Order No. 23-102-SW was issued on September 11, 2023, to the Petitioner for alleged unauthorized dumping activities at 11095 Lee Road 72, Camp Hill, Lee County, Alabama.

5. OTHER BUSINESS
6. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.

Attachment 2



Alabama Department Of Environmental Management

Performance Measures

- Performance vs Annual Operating Plan
- EPA Compliance and Enforcement Metrics vs All States
- EPA State Review Framework Audit vs EPA Region 4 States
- State of the Environment in Alabama

1



Alabama Department Of Environmental Management

State of the Environment in Alabama

2

AIR DATA

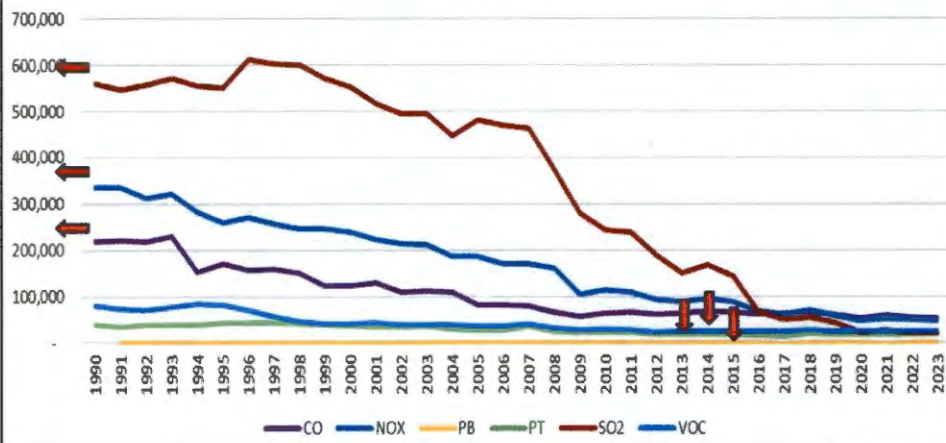
3

Statewide Attainment of Air Quality and related standards

- CO – 1971
- NO_x – 1971
- SO₂ – 1977
- PM_{2.5} – 2013
- Ozone – 2014
- Pb – 2015
- Haze – 2013

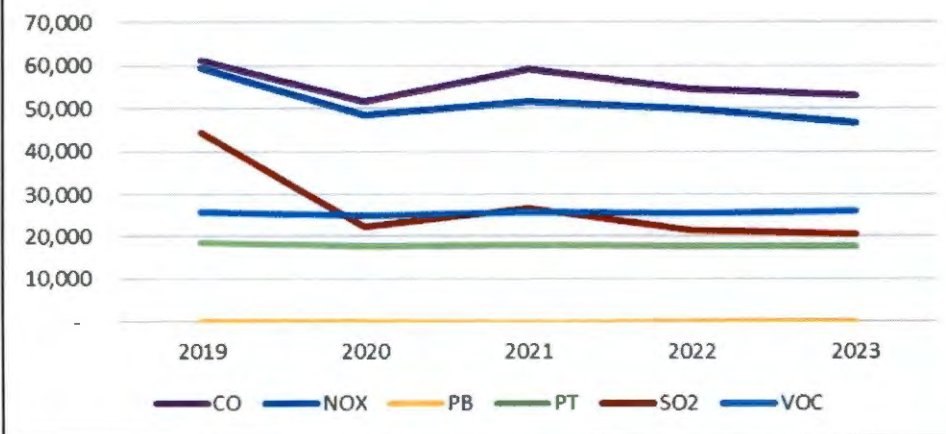
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AL Emissions from Major Sources (tons)
1990-2023



5

AL Emissions from Major Sources (tons)
2019-2023



6

WATER DATA

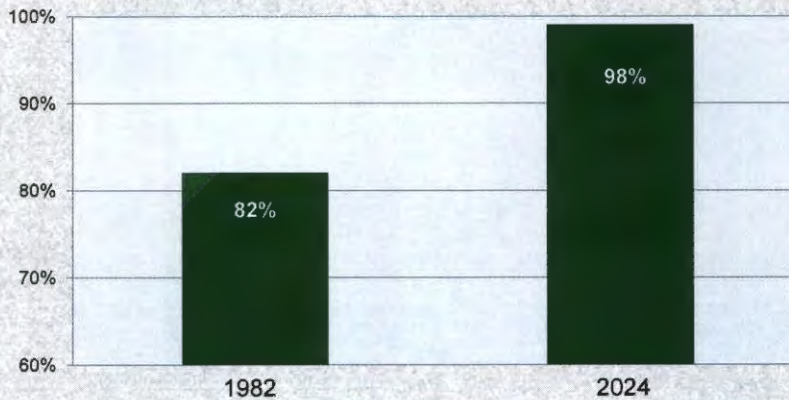
7

Number of Drinking Water Contaminants Regulated

	<u>1982</u>	<u>2024</u>
• Organic chemicals	7	61
• Inorganic chemicals	10	19
• Radionuclides	3	7
• Microbes	3	8
Total	<u>23</u>	<u>95</u>

8

Percentage of Public Water Systems in Compliance



**303(d) Impaired water body / pollutant
combinations 1998-2024**

	<u>Listed</u>	<u>Ending</u>
River/Stream (miles)	14,352	5,006
Lake/Reservoir (1000s ac)	578	223
Ocean/Estuary (1000s ac)	563	463

Water Designations & Classifications

	<u>1982</u>	<u>2024</u>
• <u>Highest Quality Waters:</u>		
— ONRW, OAW, TAL		
➤ miles	0	1,148
➤ acres	0	45,662
• <u>Lowest Use Classifications:</u>		
— Lower than Fish & Wildlife		
➤ miles	713	138

LAND DATA

Landfills & Solid waste reduction

- Improved landfills 1989 - 2024:
 - 141 unlined MSW landfills closed
 - 30 state-of-the-art lined MSW landfill permits today
- Solid waste reduction 1989 – 2024:
 - rate increased from 5% to >25%
 - rate increased from .2 million TPY to 3.6 million TPY
 - reduction goal increased to 40% in 2024

13

Unauthorized dumps & Scrap tire recycle

- 2,345 UADs remediated 2009 – 2024
 - 1,736 UADs remediated by responsible parties
 - 609 UADs innocent landowners held harmless
- Scrap tire cleanup 2006 – 2024
 - 402 illegal scrap tire dumps cleaned up
 - >11 million passenger tires cleaned up

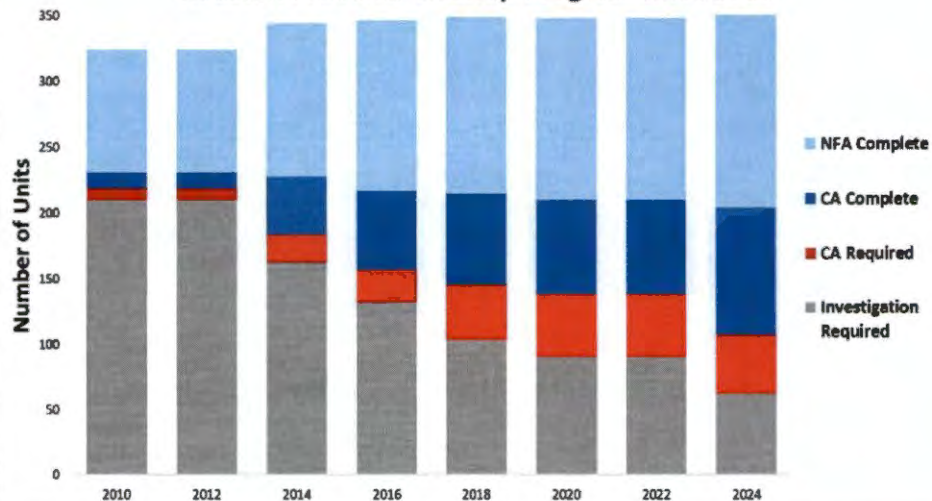
14

Brownfields & Underground Storage Tanks

- 778 BF sites identified 2001 – 2024
 - 459 BF sites returned to productive use
 - 79 BF sites currently enrolled
- 12,484 UST leak sites identified 1989 - 2024
 - 11,667 UST sites cleaned up
 - 817 UST sites currently being cleaned up

15

Redstone Arsenal Cleanup Progress since 2010



16

Attachment 3

State of Alabama



RESOLUTION OF THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

WHEREAS Mr. Lance R. LeFleur was selected to lead the Alabama Department of Environmental Management (ADEM) during April of 2010, and began serving as Director on May 1, 2010;

WHEREAS, prior to leading ADEM, Director LeFleur earned great success in the private sector, where in 1990, he founded Materials Recovery Corporation to collect, sort, and process waste materials for conversion to usable feedstock or recyclable material;

WHEREAS, during his tenure at ADEM, Director LeFleur oversaw tremendous achievement, growth, and efficiency at the agency, which was and is routinely the lowest funded environmental agency in the United States;

WHEREAS Director LeFleur fundamentally believes in transparency, the highest level of agency performance, and that ADEM has an obligation to keep operating costs low, thereby minimizing necessitation of taxpayer resources;

WHEREAS, during his tenure at ADEM, Director LeFleur led the agency through numerous difficult, but ultimately rewarding, challenges, including the Deepwater Horizon Oil Spill and Alabama's largest concentrated investment in public clean water and wastewater infrastructure;

WHEREAS, under Director LeFleur's leadership, ADEM routinely ranks as a top speed-of-permitting state and has cultivated a reputation as a fast and fair arbiter and enforcer of environmental laws and regulations, thereby making the agency an important asset to the State's conservation, recreation, and public environmental safety goals, as well as its economic development and private investment efforts;

WHEREAS Director LeFleur identified the need and oversaw the completion of a new field office in coastal Alabama to better-serve the coast and one of the world's most biologically and ecologically diverse areas, the Mobile Delta;

WHEREAS, prior to the opening of the new office, ADEM staff were spread across multiple maintenance-neglected buildings in the area;

WHEREAS, on March 28, 2024, ADEM opened its new state-of-the-art, 15,000-square-foot coastal Alabama field office;

WHEREAS the new field office is emblematic of Director LeFleur's accomplishments at ADEM, enhancing efficiencies, modernizing systems, empowering ADEM staff, and protecting Alabama's environment;

WHEREAS Director LeFleur has announced his intent to retire as Director of ADEM on May 1, 2025, marking 15 years of exceptional service to the citizens and the State of Alabama, ADEM staff, the Alabama Environmental Management Commission, and the Governor;

WHEREAS Governor Kay Ivey and the members of the Alabama Environmental Management Commission believe the legacy of Director LeFleur – which encompasses his duration as Director, the Agency's accomplishments under his direction, and his attitude toward public service – should be properly acknowledged, celebrated, and memorialized.

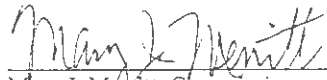
NOW THEREFORE BE IT RESOLVED, the Alabama Environmental Management Commission hereby names the coastal Alabama field office in Mobile the Lance R. LeFleur Coastal Alabama Field Office.

BE IT FURTHER RESOLVED, the Alabama Department of Environmental Management shall fulfill this resolution by erecting exterior signage, including lettering on the building, as well as a plaque commemorating Mr. LeFleur's tenure as Director in a publicly visible location on the interior or exterior of the building.

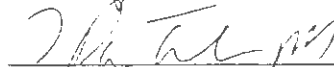
BE IT FURTHER RESOLVED, the Alabama Department of Environmental Management is directed and authorized to make and enter contracts, leases, and agreements and to take any other actions as may be necessary or desirable to carry into effect the intent of the provisions of this Resolution.

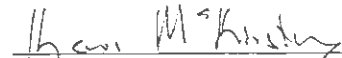
BE IT FURTHER RESOLVED, the Alabama Environmental Management Commission ratifies any and all other actions taken by the agency on behalf of the Commission, which are determined to be necessary, appropriate, desirable, or convenient to achieve the intent of the Commission as expressed in this Resolution.

DONE this 14th day of February 2025.


Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner


J. Patrick Tucker, Commissioner


Kevin McKinstry, Commissioner


John (Jay) H. Masingill, III, Commissioner


Ruby L. Perry, Commissioner


A. Frank McFadden, Commissioner

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of February 2025.


A. Frank McFadden, Chair
Environmental Management Commission
Certified this 14th day of February 2025

Attachment 4

ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ASTRATA CONTRACTING, LLC	)	
	)	
Petitioner,	)	EMC Docket No. 24-01
	)	(IN RE: ADEM Administrative Order
vs.	)	No. 23-102-SW issued on September 11,
	)	2023, to Astrata Contracting, LLC for
ALABAMA DEPARTMENT OF	)	alleged unauthorized dumping activities
ENVIRONMENTAL MANAGEMENT,	)	at 11095 Lee Road 72, Camp Hill,
	)	Lee County, Alabama)
Respondent.	)	

ORDER

Before the Commission is the Hearing Officer's Report and Recommendation to the Commission in the above matter. The Commission having considered the same, along with all the submissions that have been presented to the Commission in this matter, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That such Hearing Officer's Report and Recommendation to the Commission is hereby adopted; and
2. That pursuant to the adoption of the Hearing Officer's Report and Recommendation to the Commission, the Commission sustains the Department's findings and approves its action and Administrative Order No. 23-102-SW issued on September 11, 2023, to Astrata Contracting, LLC; 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 Report and Recommendation to the Commission attached hereto as Attachment A, and made a part hereof, shall be forthwith served upon the parties hereto either personally, or by certified mail, return receipt requested.

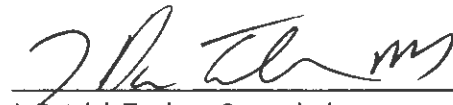
Environmental Management Commission Order
Page 2

ISSUED this 14th day of February 2025.

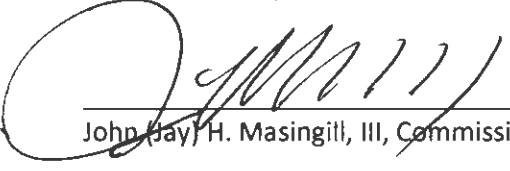
APPROVED:

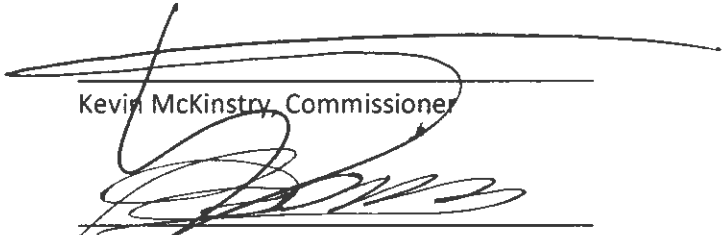

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner


J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner


John (Jay) H. Masingill, III, Commissioner


Ruby L. Perry, Commissioner


A. Frank McFadden, Commissioner

DISAPPROVED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

Environmental Management Commission Order
Page 3

ABSTAINED:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, 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 14th day of February 2025.**



**A. Frank McFadden, Chair
Environmental Management Commission
Certified this 14th day of February 2025**

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

RECEIVED

JAN 17 2025

ASTRATA CONTRACTING, LLC)

Petitioner,)

v.)

ALABAMA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)

Respondent.)

EMC DOCKET NO. 24-01

**ENV.MGMT.
COMMISSION**

REPORT AND RECOMMENDATION TO THE COMMISSION

This Report and Recommendation is submitted to the Alabama Environmental Management Commission (hereinafter "Commission") by the undersigned Hearing Officer for its consideration and adoption as it deems appropriate.

The Petitioner in this cause is Astrata Contracting, LLC (hereinafter "Astrata" or "Petitioner"), appearing through its "Managing Member," Mr. Leslie Brian Ray, (T. 16) and represented by the Honorable Zeb Vaughn and Akridge & Balch, P.C., Attorneys at Law. The Alabama Department of Environmental Management (hereinafter "ADEM" or "Department") is the Respondent which is appearing through its representative, Mr. Clethes Stallworth and represented by the Honorable Anthony Todd Carter, Attorney and General Counsel for ADEM and the Honorable Drew Phillips and the Honorable Tom Burks, Attorneys for the Department.

**PROCEDURAL HISTORY
AND SUMMARY OF EVIDENCE**

This matter involves Astrata, Brian Ray, and land owners of the property in question, namely Johnny F. Blevins and Carol S. Blevins (hereinafter "Blevins"), and came to the attention of the Department by way of an anonymous complaint or report made to the Department. The

relevant facts are entered in the "Findings of Fact" below. however, this matter initially proceeded to an investigation by Department staff member Cody Watson (hereinafter "Watson") (T. 70).

Following Watson's investigation, report and review by his superiors at the Department, a Notice of Violation (NOV) was issued by the Department to Brian Ray and Astrata (Department's Exhibit 3) on September 16, 2022 which stated the Department's finding that an unauthorized dump (UAD) was discovered at 11095 Lee Road 72 in Camp Hill, Alabama and that Astrata was the responsible party for the UAD. (Department's Exhibit 3). That NOV gave Astrata notice to cease and desist operating the UAD and also allowing Astrata thirty (30) days to remove all solid waste from this site and to do so in a lawful and proper manner. Other requirements were included in the NOV.

Subsequently, Astrata transmitted to the Department certain cleared checks and payment receipts involving Astrata and Blevins. Astrata requested a meeting between ADEM and Astrata which was held at an Astrata facility. Mr. Brian Ray was present and presented to the Department certain financial records, which he and Astrata contend, shows Astrata's inability to pay the fine now imposed by the Department.

On September 11, 2023, the Department issued Order No. 23-102-SW. That Order assessed a civil penalty, according to the parties, of \$25,000 (in total – including a \$17,500 enhancement) for the violations that took into consideration the economic benefit realized by Astrata.

Following issue of the September 11, 2023 Order, Astrata gave notice of its appeal of the Order and made a request for a hearing. That notice and request was filed with the Commission and dated October 5, 2023. It is from that notice and request of Astrata that a hearing resulted before the undersigned on September 23, 2024 at the office of the Alabama Environmental Management Commission (and Department) at 1400 Coliseum Boulevard in Montgomery, Alabama. Both parties appeared and presented evidence and argument in support of their

respective positions. Each party offered written exhibits which were entered into evidence without objection.

STANDARD OF REVIEW

ADEM Admin. Code r. 335-2-1-.27(5), which governs Hearing Officers and their responsibilities, reads as follows:

In preparing the recommendation to the Commission, the Hearing officer shall determine each matter of controversy upon a preponderance of the evidence. The burden shall rest with the petitioner to show by a preponderance of the evidence that the Department's action should be modified or disapproved. (Emphasis added.)

The regulation above establishes, that while the hearing should be conducted as a *de novo* hearing as far as the admission of evidence into the record, there is a presumption that the Department's administrative action is correct, and the Petitioner has the burden of overcoming that position. *See* ADEM Admin. Code r. 335-2-1-.14; Fort Morgan Civil Association, et al. v. ADEM, Docket Nos. 97-08 and 97-10; Four Seasons of Romar Beach v. ADEM, Docket No. 94-14, page 5; Frank J. Raue, Jr. v. ADEM, Docket No. 97-01, page 2 ("While the submission of additional evidence is in order, the burden remains with the Petitioner to prove the Agency's position incorrect."). The Commission's rules specify that, in order to prevail, a Petitioner must persuade the Commission by a "preponderance of the evidence" that the Department's action should be disapproved or modified. ADEM Admin. Code r. 335-2-1-.27(5); Bates Motel v. Env'tl Mgmt. Com'n. 596 So. 2d 924, 927 (Ala. Civ. App. 1991), cert. denied May 1, 1992.

FINDINGS OF FACT

The undersigned makes the following Findings of Fact:

1. The Blevins are the owners of the premises at issue located at 11095 Lee Road 72 in Camp Hill, Alabama (hereinafter "Premises"). ADEM is a duly constituted Department of the State of Alabama authorized to enforce provisions of § 22-27-1, et seq.
2. On July 5, 2022, Cody Watson, an inspector with ADEM's Solid Waste Division, conducted an inspection and documented the existence of an unauthorized solid waste dump located on the Premises.
3. Mr. Watson returned to the Premises on October 28, 2022, December 9, 2022, and determined there had been no change at the Property (Department's Exhibits 2, 4 and 6).
4. ADEM issued a Notice of Violation on September 16, 2022 to Astrata regarding the unauthorized dump. This notice required the abatement and closure of the unauthorized dump and submission of associated documentation. (Department's Exhibit 3).
5. Astrata provided the payment history between the Blevins and Astrata (Department's Exhibit 5).
6. Astrata provided additional documentation regarding the issue of its inability to pay or remediate the premises in an initial meeting with ADEM. Subsequently, Astrata provided additional evidence concerning ability to pay or remediate. (T. 26:1-8; Astrata Exhibit 2). Astrata's evidence consisted of unverified working papers and various communications between Astrata and the IRS. It also included the testimony of Mr. Ray.
7. ADEM utilizes certain software known as the ABEL Model, which is provided to the Department through the Environmental Protection Agency ("EPA") as one method to

determine whether an individual or entity has an inability to pay a fine assessed by the Department.

8. There were approximately 9,000 cubic yards of C&D material found at the property. There was no showing of evidence that established that anyone other than Astrata had used the illegal dump.
9. The ABLE Model requires three years' worth of federal tax returns to produce the most accurate results. (T. 98:4-8). Astrata never provided three years' worth of tax returns as had been requested and offered no evidence to establish why it did not. There is an indication in Astrata's Exhibit 2 that tax returns were filed for 2020 and 2022.
10. The ABLE Model is not the only factor to be taken into account when assessing a potential payor's inability to pay. (T. 123:9-125:16).
11. Pursuant to § 22-22A-5-18(c), Ala. Code (1975) inability to pay is a factor that is to be taken into account when determining fines to be paid.
12. The Department determined that the information and records Astrata Provided were insufficient to produce a result utilizing the ABEL Model. (T. 126:7-11).
13. Astrata no longer owns any equipment or heavy machinery which could be utilized in the remediation of the Premises, other than two pieces of equipment which are currently being sold to minimize the outstanding liabilities of the company. (T. 66:18-67:9).
14. Astrata operates as a lawncare and maintenance company for a limited number of housing developments in and around the Lake Martin area. (T. 27:11-17).
15. The Department issued ADEM Order No. 23-102-SW on September 11, 2023. The Order assessed a civil penalty of \$25,000. The Department's assessment consisted of a civil penalty of \$7,500 and enhanced said penalty by \$17,500 for the economic benefit realized by Astrata. (Adopted from Astrata's Submission).

16. The remediation of the Premises will, conservatively, cost upwards of \$200,000. (T. 100:20-101:5).
17. Astrata did not establish that it had an inability to pay this fine.
18. Astrata filed a timely appeal of the Order as of October 5, 2023.

CONCLUSIONS OF LAW

The Department properly considered Astrata's ability to pay in determining the assessed penalty.

ADEM, based on the investigation and information provided, decided that the Petitioner had the ability to pay the assessed civil penalty. The Department and the undersigned is statutorily bound by the six factors of Ala. Code § 22-22A-5(18)(c), as amended, in determining the amount of any penalty. The undersigned has given due consideration to the seriousness of the violations, 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 violations upon the environment; such person's history of previous violations; and the "ability of such person to pay such penalty." The ability to pay does not outweigh all other civil penalty factors.

Neither the Legislature nor Alabama Courts have specifically delineated a method to assess the "ability to pay" factor within in Ala. Code § 22-22A-5(18)(c), as amended. The undersigned has considered the Environmental Protection Agency (EPA) and its appeals tribunal for a method of assessing a violator's "ability to pay" a civil environmental penalty. The Department uses a financial model developed by EPA experts called ABEL that has been in use by the EPA and other agencies to assess civil environmental penalties for over three decades. Here, because

Astrata never provided three years of tax returns as requested, the ABEL model is of minimal help to the undersigned. The fact that Astrata did not provide such returns is a factor to consider. However, because the Department did not have access to three years of Astrata's tax returns, the undersigned placed no significance on testimony related to the ABEL model.

The use of the ABEL model with seemingly incomplete data does not seem appropriate to the undersigned. See supporting testimony of Mr. Stallworth at transcript page 140. Regardless, the Department considered what financial evidence it had and made its decision.

[The Petitioner, through its Managing Member Mr. Ray (T. 16), could not remember if anyone asked him to provide the tax returns and didn't know why he would not have provided the tax returns and would have "... loved to provide them ..." (T. 53), but he did not know if he provided the tax returns or not (T. 54). While Mr. Ray may not have remembered if he provided the tax returns, there are other circumstances that show he did not. Mr. Stallworth testified that (to his knowledge) the Department did not receive this three years' worth of tax returns that it needed and was seeking. (T. 122, 123).]

The Petitioner has the burden of persuasion on its alleged inability to pay, as it has control over information on its financial condition." In Re Bil-dry Corp., 9 EAD 575 (2001), 2001 WL 59296, at 27. This burden was expounded upon further in In Re: Rocking Bs Ranch, Inc., an appeal specifically related to an agency request for tax returns, when a petitioner appealed from an environmental civil penalty citing its inability to pay penalty. During informal settlement discussions, the EPA communicates to petitioner that they needed to provide three years of tax returns for the EPA properly assess the petitioner's inability to pay. The Petitioner failed to provide the tax returns.

In this appeal, testimony clearly indicates that the Department's method of determining Astrata's "ability to pay" was not arbitrary. Considering the entirety of the evidence, it is the conclusion of the undersigned that the Department made the correct determination. Mr. Ray and Astrata have made general statements about its bad financial condition and provided some financial statements. It failed to meet its burden by not providing the three years of tax returns needed to properly assess its "ability to pay" nor producing other evidence to meet that burden. Therefore, The Department was proper in finding that Astrata had the ability to pay.

The economic benefit received by Astrata for failure to dispose of their construction waste in a regulated landfill was considered by the undersigned. Here the evidence establishes that Astrata benefits from the lower cost of dumping this material at the Blevins' UAD as opposed to transporting such to a duly permitted facility.

While ADEM is not required to set forth evidence showing the manner by which a penalty is precisely calculated, the Department, nonetheless, did in fact set forth testimony and documentary evidence clearly showing that economic benefit enhancement was proportional to the economic benefit Astrata received. There is no question that Astrata received an economic benefit as Mr. Ray himself testified that it was cheaper to dispose at the Blevins' property than a regulated solid waste landfill. (T. 43). The record clearly indicates that Mr. Ray provided invoices showing Astrata dumped at least ninety-one loads on Blevins' property and paid Mr. Blevins \$5,900 for the disposal privilege. (ADEM Exhibit #5). The Department's Cody Watson testified during his inspections that he estimated that Mr. Ray dumped an estimated 9000 cubic yards of waste at the Blevins' property. (T. 72-74). Mr. Watson contacted both Stone's Throw and

Chambers County landfills ¹ and discovered the price of disposal of C&D waste was \$50 per ton at the time of the original dispute. (T. 80). By using his estimates of the amount of waste on site and the price quotes from the landfill, Mr. Watson testified that the cost to dispose of the waste dumped on the Blevins' property would have been approximately \$60,000 at a permitted facility. (T. 80-81). Mr. Ray himself testified that according to his calculations he transported between 6,370 to 7,350 yards. (T. 22-23). If the Department used Mr. Ray's estimate, the assessed economic benefit penalty enhancement of \$17,500 would be much less than cost avoided by Astrata. It's also of note that the Department's estimate of economic benefit did not consider transportation costs saved in this calculation. While not required, ADEM has demonstrated by testimony and documentary evidence that the civil penalty enhancement of \$17,500 is appropriate in light of the economic benefit received by Astrata in ADEM Administrative Order 23-102-SW (as well as other evidence presented). The Department's economic benefit penalty enhancement should not be disapproved or modified.

The Department acted properly in its consideration of the property owner's longtime maintenance of the UAD and Astrata's proportional contribution to the same.

Ala. Code § 22-27-10, as amended, states "The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article. In addition to other remedies which are available, an unauthorized dump may be enjoined through an action in the circuit court having jurisdiction over the property in which the violation occurred. In addition to any fines, penalties, and other remedies set forth herein, any person who participates in the creation or operation of an unauthorized dump, or

¹ Mr. Ray testified that during the operation of his roll-off business, he would take C&D waste to both Stone's Throw Landfill and Chambers County Landfills.

contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump”.

The Alabama Legislature was clear in its intent that the Department may first seek removal of the waste or closure of an unauthorized dump from the person that created, operated, or contributed to an unauthorized dump before seeking liability of the landowner. Mr. Ray did not provide any significant evidence, other than his own belief, that Mr. Blevins brought any regulated waste for disposal on his property. Nor did Mr. Ray provide evidence, other than his own belief, that others were dumping waste on the Blevins’ property. The Department relied on the evidence presented at the hearing of this matter to show that it was proper to deem Astrata as the responsible party within the plain meaning of the statute.

Also, as Mr. Cruise and Mr. Stallworth testified, this does not mean that the Department has not considered Mr. Blevins’ potential liability. (T. 104, 131). The Department has taken steps to prepare for this possible future contingency by sending Mr. Blevins a Notice of Enforcement to let him know that he may be liable in the future if Astrata fails to reach compliance with ADEM Administrative Order No. 23-102-SW. (T. 103).

RECOMMENDATION

Based upon all the evidence presented in this cause, the testimony of witnesses and the demeanor of those witnesses and the regulations and law presented, the undersigned recommends to the Commission that it find that the Petitioner failed to meet its burden of proof and that ADEM’s Order No. 23-102-SW should stand as issued.

Done this 17th day of July, 2025.



JAMES F. HAMPTON

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