

10/13/20

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 14, 2020**

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 14, 2020.

A handwritten signature in black ink, appearing to read 'S. L. Miller', written over a horizontal line.

Samuel L. Miller, Chair
Alabama Environmental Management Commission

Certified this 9th day of October 2020.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 14, 2020

Convened: 11:00 a.m.
Adjourned: 12:15 p.m.

Part A

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Part A

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ALABAMA ENVIRONMENTAL MANAGEMENT
COMMISSION MEETING

August 14, 2020

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THE FOLLOWING COMMISSION MEETING was taken
stenographically by Shannon P. Yost, Certified
Court Reporter and Commissioner for the State of
Alabama at Large, at the Alabama Department of
Environmental Management Building, 1400 Coliseum
Boulevard, Montgomery, Alabama, on the 14th day of
August, 2020, commencing at 11:00 a.m., Central.

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 COMMISSION MEMBERS PRESENT:</p> <p>4 Samuel L. Miller, M.D., Chair</p> <p>5 Ruby L. Perry, D.V.M.</p> <p>6 Mary Merritt</p> <p>7 H. Lanier Brown, II, Esquire, Vice Chair</p> <p>8 John (Jay) H. Masingill, III</p> <p>9 Kevin McKinstry</p> <p>10 Thomas P. Walters, P.E.</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13 Debi Thomas, AEMC Executive Assistant</p> <p>14 Robert Tambling, AEMC Legal Counsel</p> <p>15 Lance LeFleur, ADEM Director</p> <p>16 Stephen Cobb, ADEM Land Division Chief</p> <p>17 Shawn Sibley, ADEM General Counsel</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DR. MILLER: All opposed, same</p> <p>2 sign.</p> <p>3 (No response.)</p> <p>4 DR. MILLER: All right. That</p> <p>5 motion is passed.</p> <p>6 Now, our next item is a report from</p> <p>7 the ADEM Director, Mr. LeFleur.</p> <p>8 MR. LEFLEUR: With your indulgence,</p> <p>9 I have removed my mask so I can be heard</p> <p>10 and don't fog up my glasses.</p> <p>11 DR. MILLER: Well, we won't call</p> <p>12 the capitol police.</p> <p>13 MR. LEFLEUR: Thank you.</p> <p>14 Good morning, Commissioners, and</p> <p>15 welcome to all those present for the</p> <p>16 fifth and final meeting of the Alabama</p> <p>17 Environmental Management Commission for</p> <p>18 fiscal year 2020.</p> <p>19 As you know, the Department is</p> <p>20 comprised of five divisions plus our</p> <p>21 Office of General Counsel. Past reports</p> <p>22 have repeatedly addressed the activities</p> <p>23 of our Air, Water, and Land divisions.</p> <p>24 Today's report will primarily focus on</p> <p>25 our Field Operations Division.</p>
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<p>1 DR. MILLER: Okay. I'm going to</p> <p>2 call the meeting of the Environmental</p> <p>3 Management Commission August 14th</p> <p>4 meeting to order. And our first item is</p> <p>5 to consider the meeting minutes from the</p> <p>6 meeting of June 12th, 2020. These have</p> <p>7 been circulated to the other Commission</p> <p>8 members.</p> <p>9 Do I have a motion regarding the</p> <p>10 minutes?</p> <p>11 MR. MASINGILL: Move to adopt the</p> <p>12 minutes of the June 12th, 2020</p> <p>13 Commission meeting as circulated.</p> <p>14 DR. MILLER: All right. Is there a</p> <p>15 second?</p> <p>16 MS. MERRITT: Second.</p> <p>17 DR. MILLER: All right. We have a</p> <p>18 motion and a second. Any discussion?</p> <p>19 (No response.)</p> <p>20 DR. MILLER: If not, I'm going to</p> <p>21 call for the question. All in favor of</p> <p>22 accepting the minutes, signify by</p> <p>23 raising your right hand.</p> <p>24 (All Commissioners raise their</p> <p>25 right hand.)</p>	<p>1 At a future Commission meeting, I</p> <p>2 plan to focus on the remaining division,</p> <p>3 which is our Permits and Services</p> <p>4 Division. Today, we will highlight the</p> <p>5 major functions of Field Operations and</p> <p>6 update you on some of the current issues</p> <p>7 involving that organization.</p> <p>8 Field Operations is the largest</p> <p>9 division in terms of the number of</p> <p>10 personnel. This reflects both the</p> <p>11 diversity and -- of its responsibilities</p> <p>12 and the extensive support it provides to</p> <p>13 other divisions. The Field Operations</p> <p>14 Division is responsible for oversight of</p> <p>15 our field offices where most of the</p> <p>16 inspections and sampling take place,</p> <p>17 emergency response to environmental</p> <p>18 events. Field Operations operates our</p> <p>19 laboratory facilities that analyze</p> <p>20 wastewater from NPDES facilities,</p> <p>21 drinking water, and fish tissue samples.</p> <p>22 The Division oversees ambient air and</p> <p>23 water quality testing and monitoring,</p> <p>24 and Field Operations also administers</p> <p>25 the ADEM Coastal Program, as well as the</p>

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<p>1 Animal and Concentrated Animal Feeding 2 Operation program. 3 We'll cover -- we will cover each 4 of these areas of responsibility 5 beginning with field offices. 6 The Department has field offices in 7 Decatur, Birmingham, Montgomery, which 8 is next door to our main office here, 9 and in Mobile. Our Coastal Program 10 Office, as you can see here, is in 11 temporary commercial office rental space 12 about nine miles from our field office 13 in Mobile. The field offices each have 14 lab facilities with varying 15 capabilities, depending on local program 16 needs, sample hold-time requirements, 17 availability of services from sister 18 field offices, equipment redundancy, and 19 similar considerations. 20 I've been reporting for several 21 years on activities to upgrade the 22 outdated field offices in Birmingham and 23 Mobile. In Birmingham, a Phase I 24 upgrade of office area for 25 personnel 25 was completed in July of 2018. The</p>	<p>1 As has been stated on numerous 2 occasions, inspections is the most 3 important element of our strategy to 4 obtain compliance with environmental 5 permits. Field Operations is the boots 6 on the ground that does most of those 7 inspections. There are a number of 8 types of inspections of regulated 9 industries. NPDES facilities inspected 10 wastewater treatment plants, which 11 include: Industrial and mining 12 facilities, construction stormwater 13 activities, and concentrated animal 14 feeding operations. Field Office 15 personnel also inspect municipal solid 16 waste landfills, construction and 17 demolition landfills, and industrial 18 landfills. Field Office personnel also 19 inspect underground storage tanks 20 located primarily at gasoline stations. 21 Looking at the rates of inspections, 22 which, once again, is our key compliance 23 tool, the Field Operations Division 24 performs nearly 12,000 facility 25 inspections or observations per year.</p>
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<p>1 Phase II lab upgrade of our outdated 2 laboratory facilities is underway with 3 an anticipated completion this month. 4 In Mobile, we are in the midst of 5 replacing with a single new facility the 6 woefully inadequate space at two 7 separate locations housing the 33 8 personnel in our field office and the 9 coastal program. 10 The Department obtained a 11 \$5.9 million RESTORE Act grant for the 12 construction of the new facility in 13 Mobile. In June, we purchased a 14 four-acre property for the consolidated 15 operations near the geographic center of 16 our current, as well as our projected 17 future, workload. The Department 18 retained an architect/engineer 19 consortium, and design work is well 20 underway. The schedule calls for 21 construction to commence in early 2021 22 with the completion date in April of 23 '22. These upgrades will meet the 24 Department's fiscal -- physical needs 25 well into the future.</p>	<p>1 This rate is about three-and-a-half 2 times EPA work-plan requirements. In 3 the case of construction stormwater, the 4 rate of inspections is about 5 four-and-a-half times what EPA requires. 6 EPA evaluates or audits the quality 7 of the NPDES inspections performed. The 8 audits review our processes -- review 9 our processes, procedures, and 10 equipment. Since 2015, EPA has audited 11 the Montgomery, Birmingham, and Decatur 12 field offices inspection programs. All 13 three have achieved EPA's highest 14 ranking. 15 Next, we'll look at emergency 16 response activities. The types of 17 emergency response situations responded 18 to range from a railway, waterway, or 19 highway hazardous materials carrier 20 accident -- you see a train wreck in 21 this photo. Fortunately, we don't have 22 too many of those -- to chemical spills 23 or fires, to tornado and hurricane 24 destruction, to an oil spill off the 25 Alabama coast.</p>

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<p>1 Each year, approximately 50 2 emergencies with a serious environmental 3 element occur in Alabama requiring a 4 response from ADEM. Field Operations is 5 responsible for responding. In addition 6 to their other duties, there are 48 7 individuals trained in emergency 8 response distributed among our four 9 field office locations. Emergency 10 personnel and any necessary backup 11 personnel are available 24/7. 12 Moving on to laboratory and related 13 responsibilities, our laboratories 14 analyze samples taken from regulated 15 entities to determine compliance with 16 permit conditions. These include: 17 Samples collected by field personnel 18 from NPDES facilities - the municipal 19 industrial mining and construction 20 operations noted a few moments ago; and 21 samples from drinking water facilities, 22 although most are analyzed by outside 23 labs. Our labs also analyze fish tissue 24 samples collected by field personnel to 25 assist in the development of fish</p>	<p>1 therefore, sampled and tested include: 2 Pathogens; nutrients, such as nitrogen 3 and phosphorous; organic and inorganic 4 chemicals, metals; and bacteria. Here, 5 you see one of our chemists at work. 6 Field Operations labs also process 7 approximately a thousand samples per 8 year taken by our field personnel from 9 the NPDES facilities. Outside labs 10 account for the bulk of the samples 11 tested from NPDES-regulated entities. 12 Next, drinking water laboratory 13 work. The regulation of drinking water 14 falls under the Federal Safe Drinking 15 Water Act that ADEM has been delegated 16 authority to administer in Alabama. 17 ADEM is responsible for making sure the 18 water from the approximately 580 public 19 drinking water systems in Alabama is 20 safe to drink. Eighty-nine individual 21 contaminants are regulated falling into 22 the categories of organic chemicals, 23 inorganic chemicals, microbes, and 24 radionuclides. There are more than 25 100,000 analyses done annually on</p>
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<p>1 consumption advisories. Additionally, 2 the labs analyze chemical, biological, 3 and other air and water data collected 4 by field personnel to monitor ambient 5 air quality and monitor ambient water 6 quality, including the coastal area. 7 We begin with NPDES facility 8 samples analyzed. In 1972, the Federal 9 Clean Water Act created the National 10 Pollution Discharge Elimination System 11 known as NPDES. It limits the discharge 12 of pollutants into waters of the nation 13 and the state. ADEM was delegated the 14 authority to administer the NPDES 15 program in Alabama. NPDES-permitted 16 facilities must regularly sample 17 wastewater discharges to ensure they're 18 complying with the conditions in permits 19 issued by the Department. Qualified 20 outside laboratories analyze those 21 samples. The Department receives lab 22 results electronically in the form of 23 Discharge Monitoring Reports. 24 The categories of contaminants 25 subject to permit limitations and,</p>	<p>1 samples from those 580 public drinking 2 water systems. The vast majority of the 3 samples are processed outside of ADEM 4 labs with the results reported to ADEM. 5 Our labs audit all outside laboratories 6 in the state of Alabama providing 7 Alabama analysis -- providing analysis 8 of drinking water in Alabama. EPA does 9 proficiency testing of our drinking 10 water chemists and our lab, including 11 our audits of the outside laboratories. 12 Every year, each chemist must 13 correctly determine an unknown 14 concentration of more than 60 metals, 15 inorganic chemicals, organic chemicals, 16 pesticides, and herbicides. That's like 17 taking your college final exam every 18 year. 19 The drinking water lab receives a 20 comprehensive audit every three years. 21 The ADEM central lab maintains its 22 certification as the main primary state 23 drinking water laboratory for the state 24 of Alabama. 25 The Field Operations Division works</p>

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<p>1 closely with the Alabama Department of 2 Public Health to keep the public 3 informed on the safe consumption levels 4 for fish from Alabama waters. Annually, 5 the Field Operations Division obtains 6 fish tissue from water bodies around the 7 state and analyzes the tissue for 8 various contaminants. The results are 9 reported to the Alabama Department of 10 Public Health. ADPH then develops fish 11 consumption advisories, which, as the 12 name implies, recommends limits on the 13 number of meals of that fish species 14 caught in a given locale an individual 15 should consume.</p> <p>16 Contaminants our laboratories test 17 for include pesticides, herbicides, 18 metals, and other chemicals. Annually, 19 our field personnel sample and our labs 20 analyze approximately 500 fish from 46 21 sites around the state.</p> <p>22 There are a few noteworthy 23 departmental innovations in the fish 24 tissue area. Most often, mercury is the 25 reason for fish consumption advisories.</p>	<p>1 locations in Alabama. ADEM Field 2 Operations operates 34 of the monitors 3 in 17 locations. The Jefferson County 4 Health Department and the City of 5 Huntsville operate the others under 6 programs that predated the Federal Clean 7 Air Act and the creation of ADEM. EPA 8 audits confirm that ADEM air data 9 collection activities meet all 10 requirements for environmental decision 11 making, including setting permit limits. 12 The audits also confirm that there is 13 continuing progress toward becoming a 14 model program.</p> <p>15 Field Operations has begun an 16 innovative program to optimize air data 17 collection from offsite air monitors by 18 converting from analog to digital 19 communications systems. This speeds 20 data flow and requires fewer field 21 visits. As has been reported 22 previously, all parts of Alabama have 23 continued to be in attainment with 24 national ambient air quality standards 25 since 2015.</p>
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<p>1 Field Operations recently implemented a 2 procedure to take a small tissue plug 3 for mercury analysis that allows the 4 fish to be released with no permanent 5 harm and saves time and effort for Field 6 Operations personnel. Fish tissue 7 samples collected by the Field 8 Operations Division are now tested by 9 ADPH for the presence for per and 10 polyfluorinated alkyl substances, PFAS, 11 a family of unregulated chemicals of 12 emerging concern. And the Department 13 has created an interactive fish 14 consumption advisory map on our website.</p> <p>15 Field Operations carries on two 16 major environmental monitoring programs: 17 Ambient air quality monitoring and 18 ambient water quality monitoring. The 19 ambient air quality monitoring 20 activities keep tabs on the quality of 21 the air we all breathe. The 22 contaminants monitored by Field 23 Operations are ozone, SO2, fine 24 particles, PM2.5 and PM10, and lead.</p> <p>25 There are 87 air monitors at 32</p>	<p>1 The ambient water quality 2 monitoring activity obtains water 3 samples and other data to assess the 4 health of rivers, creeks, streams, and 5 other water bodies in Alabama. The 6 types of data collected and analyzed 7 include lab analysis of chemicals 8 present in water samples to assess water 9 quality and biological data that 10 includes fish community surveys, as you 11 see in this photograph; 12 macroinvertebrate surveys, that's bugs, 13 snails, crayfish, and others without 14 backbones; surveys of periphyton, which 15 is primarily algae that grows on 16 underwater surfaces. Field Operations 17 oversees the 349 ambient water quality 18 monitoring stations around Alabama. 19 Annually, the division conducts 20 approximately 2500 station visits, takes 21 more than 72,000 surface water 22 measurements, and performs approximately 23 33,000 lab analyses on approximately 24 10,000 samples collected each year. In 25 2019, EPA completed what is known as a</p>

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<p>1 critical elements evaluation of our 2 water quality monitoring program. It 3 analyzes how well water quality data is 4 linked to decision making in such things 5 as permit limits. It specifically 6 singled out our customized ALAWADR data 7 system for special recognition. Our 8 system has been adopted by numerous 9 other states.</p> <p>10 Following its evaluation, EPA 11 assigned the water quality monitoring 12 program the highest classification 13 attainable. It is one of only five 14 programs in the entire nation with that 15 classification. As a result of the 16 evaluation, three individuals from our 17 Field Operations Division are now 18 nationally recognized as certified 19 experts in species identification and 20 classification.</p> <p>21 Cal Johnson, are you here? There's 22 Cal in the back of the room.</p> <p>23 The American Fisheries Society has 24 certified Cal as a Fisheries 25 Professional. Additionally, the Alabama</p>	<p>1 (Applause.)</p> <p>2 MR. LEFLEUR: Congratulations 3 again. Thank you all very much. Thank 4 you.</p> <p>5 Alabama has approximately 60 miles 6 of coastline and 400,000 acres of 7 coastal bays and estuaries that support 8 desirable residential areas, tourism, 9 recreation, biodiversity, commercial and 10 recreational fishing, international 11 shipping, and many types of 12 manufacturing and industrial activities. 13 Maintaining a healthy, harmonious 14 relationship among such diverse 15 interests is a critically important 16 endeavor. Our Coastal Program is the 17 major player in providing the necessary 18 oversight to achieve a safe, healthful, 19 and protective balance -- productive 20 balance of the various interests.</p> <p>21 ADEM implements the comprehensive 22 Coastal Area Management Plan developed 23 in conjunction with the Alabama 24 Department of Conservation and Natural 25 Resources and NOAA. The Field</p>
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<p>1 Wildlife Federation last week named Cal 2 Fisheries Conservationist of the Year.</p> <p>3 (Applause.)</p> <p>4 MR. LEFLEUR: Congratulations. 5 Sreeletha Kumar and Alicia 6 Phillips, please -- would you please 7 stand? There they are in the back of 8 the room, also.</p> <p>9 The Society of Freshwater Sciences 10 has certified Sreeletha and Alicia as 11 Aquatic Macroinvertebrate Taxonomists -- 12 Taxonomists -- excuse me -- Taxonomists. 13 We are proud of both of you, also.</p> <p>14 (Applause.)</p> <p>15 MR. LEFLEUR: While recognizing the 16 recent accomplishments of some of our 17 personnel, I'll ask Devin Jenkins from 18 our Land Division, if you would, please 19 stand up. We announced his 20 accomplishment of earning the 21 designation of Professional Engineer in 22 the June Commission meeting, but he was 23 unable to be present. You can now see 24 him in person, all but the lower part of 25 his face.</p>	<p>1 Operations Division oversees coastal 2 development collaboratively with the 3 Department of Conservation and Natural 4 Resources, U.S. Fish and Wildlife 5 Service, the National Marine Fishery 6 Service, and the U.S. Army Corps of 7 Engineers. This past year, our Coastal 8 Program acted on more than 450 9 applications for construction, dredging, 10 and wetland fill activities. Field 11 Operations also monitors the water 12 quality of coastal beaches, which is a 13 part of the overall water quality 14 monitoring program highlighted a few 15 moments ago. Monitoring takes place at 16 25 public beach locations. Coastal 17 Program personnel take roughly 800 18 coastal water samples each year, as you 19 see in this photograph.</p> <p>20 In conjunction with the Alabama 21 Department of Public Health, samples are 22 analyzed and the public is quickly 23 informed with green, yellow, or red 24 water quality designations on our 25 website. Most often, this information</p>

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<p>1 is needed after significant rain events. 2 An important innovation noted in 3 prior Commission reports is the posting 4 of signage directing beach and other 5 water recreational users to 6 up-to-the-minute information on the ADEM 7 website regarding various types of water 8 quality information. 9 One additional item, I'm pleased to 10 report that after two years of work, EPA 11 awarded ADEM a \$500,000 competitive 12 grant for litter reduction. These 13 programs will significantly benefit the 14 coastal Alabama area. 15 Finally, the Field Operations 16 Division oversees the Concentrated 17 Animal Feeding Operations or CAFO 18 regulatory program. The CAFO program 19 began in 1999. There are approximately 20 1700 CAFOs in Alabama with about 975 21 currently active and being monitored. 22 CAFOs in Alabama are primarily poultry 23 with a few cattle feeding operations. 24 Alabama is the second largest poultry 25 producer in the nation. I'm sure you've</p>	<p>1 regulation. The Alabama State 2 Legislature has considered this 3 agriculture sector and the appropriate 4 regulation of that sector important 5 enough to provide earmarked funding for 6 the Department's CAFO program since the 7 program's inception. 8 To summarize, as you see, the Field 9 Operations Division performs a wide 10 variety of duties. Their work involves 11 an extensive field presence, emergency 12 response, a large volume of laboratory 13 work, and a significant role in 14 determining compliance with permit 15 conditions. There's a heavy 16 concentration of science, which is why 17 the majority of the Department's 18 scientists are in the Field Operations 19 Division. The Division has implemented 20 a number of innovations that help the 21 public become better informed, increase 22 efficiency, and protect the environment. 23 I hope it's also apparent that EPA has a 24 robust oversight presence that affirms 25 the work done by this division is of</p>
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<p>1 seen poultry houses similar to these 2 (indicating) as you travel around 3 Alabama. The program covers Animal 4 Feeding Operations, the smaller ones, 5 the smaller operations, and Concentrated 6 Animal Feeding Operations or CAFOs, 7 those that exceed a specified number of 8 animals. Our state program is more 9 protective than EPA's CAFO program. 10 Despite being more stringent in many 11 ways than EPA's program, the ADEM CAFO 12 program is well accepted by agricultural 13 interests in Alabama because it provides 14 fair and reasonable regulation. Since 15 it has been in place and stable for a 16 considerable period, it provides 17 certainty to the regulated community. 18 That is not the case with the federal 19 program. Complying with a strong state 20 regulatory program reduces business 21 risks for program participants from such 22 things as environmental lawsuits and 23 intrusive federal involvement that would 24 be present if the facility were subject 25 to weaker or nonexistent state</p>	<p>1 extremely high quality. 2 Scott Hughes, are you in the room? 3 There he is. Scott, stand up. 4 Scott is our Field Operations 5 Division Chief, and he has done an 6 excellent job there. They're the ones 7 behind the scenes, but they put out a 8 lot of important work, so I'd like to 9 recognize Scott. 10 (Applause.) 11 MR. LEFLEUR: Before concluding, I 12 will note for the record that the 13 Department has entered into an interim 14 consent order with 3M addressing per and 15 polyfluorinated alkyl substances, PFAS, 16 manufactured at the 3M facility in 17 Decatur, Alabama. This order is the 18 latest step in controlling the release 19 of PFAS that began with permit 20 limitations in 2007 and PFAS reduction 21 plans in 2009 and 2012. It also 22 addresses investigating and remediating 23 contaminated sites and requires a number 24 of environmental toxicity studies. The 25 interim consent order, along with</p>

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<p>1 possible questions and answers, is 2 available to interested parties on the 3 ADEM website. 4 That concludes today's report. Any 5 questions, I'd be pleased to answer 6 them. 7 DR. MILLER: Any questions or 8 comments for the director? 9 (No response.) 10 DR. MILLER: Thank you. 11 MR. LEFLEUR: Okay. Thank you very 12 much. 13 DR. MILLER: The next item is a 14 report from the Chair, and I have no 15 report from today. 16 Agenda item number four is 17 consideration of adoption of proposed 18 amendments, ADEM Administrative Code 19 335-13, Solid Waste Program regulations. 20 I'd like to call on the Department for 21 comments. 22 MR. COBB: Thank you, Mr. Chairman. 23 Good morning, Commissioners. I'm 24 Stephen Cobb, Chief of Land Division, 25 and I'm here today to recommend that the</p>	<p>1 regulations as a result of the comments 2 received, and the Department's response 3 to comments has been provided to the 4 Commission in the rulemaking packet. 5 The Department requests that the 6 Commission adopt the proposed changes to 7 the Division 13 regulations, and I'll be 8 happy to answer any questions that you 9 might have. 10 (No response.) 11 DR. MILLER: Thank you. All right. 12 Our next step would be a move -- a 13 motion to adopt the proposed amendments. 14 Do I have such a motion? 15 MS. MERRITT: I move to adopt the 16 proposed amendment. 17 DR. MILLER: Okay. Do we have a 18 second? 19 MR. McKINSTRY: Second. 20 DR. MILLER: Moved and seconded. 21 Any discussion? 22 (No response.) 23 DR. MILLER: All right. I'm going 24 to call for the question. All in favor, 25 please raise your right hand.</p>
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<p>1 Commission adopt amendments to the 2 Department's Division 13 Solid Waste 3 Program regulations. 4 These amendments propose changes to 5 Chapter 335-13-15, which is Standards 6 for the Disposal of Coal Combustion 7 Residuals in Landfills and Surface 8 Impoundments. 9 The proposed revision to the 10 chapter include updating the State CCR 11 regulations to reflect modifications and 12 clarifications that have occurred in the 13 federal CCR program since the original 14 adoption of ADEM's Chapter 15 15 regulations. 16 Due to COVID-19, the proposed 17 revisions to the Solid Waste Program 18 regulations were the subject of an 19 extended public comment period that ran 20 from March 22, 2020 to June 25, 2020 and 21 a public hearing which was held at the 22 department on June 25, 2020. Oral and 23 written comments were received during 24 the extended public comment period. No 25 changes were made to the proposed</p>	<p>1 (All Commissioners raise their 2 right hand.) 3 DR. MILLER: All opposed, same 4 thing. 5 (No response.) 6 DR. MILLER: Motion carried. 7 MR. COBB: Thank you. 8 DR. MILLER: Our next item is 9 Unison Environmental Services versus 10 ADEM. We have a recommendation from the 11 Hearing Officer, and, apparently, that 12 has been confirmed by the Petitioner's 13 counsel that this matter is moot and a 14 recommendation for dismissal is 15 appropriate. 16 Do I have a motion that we adopt 17 the Hearing Officer's recommendation for 18 dismissal? 19 MR. WALTERS: So moved. 20 MS. MERRITT: Seconded. 21 DR. MILLER: Moved and seconded. 22 Any discussion? 23 (No response.) 24 DR. MILLER: All in favor, please 25 raise your right hand.</p>

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<p>1 (All Commissioners raise their 2 right hand.) 3 DR. MILLER: All opposed, same 4 thing. 5 (No response.) 6 DR. MILLER: All right. We're 7 going to give this just a second to make 8 its way around. 9 All right. Our next is the 10 consideration of the Petition to Amend 11 Alabama Administrative Code 335-2-1-.12, 12 Subpoenas, EMC rulemaking petition 13 20-01. Petitioner is the Environmental 14 Defense Alliance. We will consider this 15 proposed petition today. I will remind 16 everyone that we either can vote yes or 17 no, but we cannot amend the petition. 18 I'd like to call on Mr. David 19 Ludder to come and give us his 20 presentation. Mr. Ludder. 21 MR. LUDDER: Thank you, 22 Mr. Chairman. With the Commissioners' 23 permission... 24 I was here two months ago -- well, 25 first, let me thank the Commission. I</p>	<p>1 subpoenas to call witnesses for the 2 hearing. The City of Dothan informed me 3 that some of the witnesses that I had 4 subpoenaed may not show up because I 5 didn't tender fees for travel or 6 attendance at the hearing. They were 7 under the impression that I was required 8 to tender those fees with the subpoena. 9 Indeed, the Commission's rules 10 essentially do require that. They do 11 require the person seeking a subpoena to 12 tender fees. However, the statute, 13 which supercedes your rules, says it's 14 the Commission's -- excuse me -- it's 15 the Department's responsibility to pay 16 fees for travel and attendance of 17 witnesses, not the person seeking the 18 subpoena. Case law in this state is 19 absolutely clear that if a rule is 20 inconsistent with the statute, the rule 21 is invalid. The rule is a nullity. And 22 the Hearing Officer agreed. I asked him 23 for clarification of what our 24 responsibility was with respect to fees. 25 I pointed out to him the statute, and he</p>
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<p>1 inquired of the Commission whether I 2 could participate in this meeting 3 remotely and the offer was made to me 4 that I could do that and I appreciate 5 that offer. 6 One of the reasons that I chose to 7 decline and to come is because two 8 months ago, I came here and I saw the 9 measures that were being taken for 10 social distancing and masking, and I was 11 impressed. Today, I'm not so impressed. 12 The people who delivered your water 13 glasses, two people were unmasked. They 14 were walking the hallways unmasked. And 15 given the Governor's order, I was 16 particularly surprised at that, but so 17 be it. That's for, I guess, the 18 Director to determine what he wants to 19 do. 20 This petition is the result of an 21 experience I recently had in the 22 prosecution of a challenge to the Dothan 23 landfill permit, which you heard and 24 decided several months ago. During that 25 proceeding, I requested and was granted</p>	<p>1 agreed it was the Department's 2 responsibility to pay those fees and 3 issued a ruling to that effect. So we 4 survived that -- that issue in that 5 case. 6 But your rule remains there, and 7 this petition seeks to amend the rule to 8 make it consistent with the statute. 9 We've tried painstakingly to make it say 10 only what the statute says. And I don't 11 think there's any question in my mind. 12 The rule is not valid as it stands, 13 needs to be amended to be consistent 14 with the statute. 15 As I pointed out in the petition, 16 this rule was adopted in 1994. At that 17 time, there was an effort by the 18 Department to shift responsibility for 19 costs of hearings to persons bringing -- 20 making the request for hearings. At 21 that time, the Department and the 22 Commission adopted the Department's 23 recommendation at that time to even 24 shift attorneys' fees to the losing 25 party, which almost always is the party</p>

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<p>1 who requested the appeal. That proposal 2 was rejected or withdrawn by the 3 Department at that time in 1994, but the 4 proposal to shift the cost for witness 5 travel and attendance fees did pass -- 6 pass the Commission and was adopted in 7 1994. And as I say, I think that is an 8 unlawful rule. It's a nullity. It 9 won't survive a legal challenge, didn't 10 survive the Hearing Officer's review, 11 and I would only ask that you would 12 grant the petition and start proceedings 13 to amend that rule to be consistent with 14 the statute.</p> <p>15 If you have any questions, I'll be 16 happy to take them.</p> <p>17 DR. MILLER: So by this, are you 18 asking that you have a west coast 19 consultant that charges X dollars per 20 hour that the Department would pay for 21 that?</p> <p>22 MR. LUDDER: No. The witness fees 23 are almost trivial. Travel fees are -- 24 I forget what their rates are for 25 travel.</p>	<p>1 no. It was -- it was -- the City of 2 Dothan sought to have those costs 3 shifted to the Petitioners in that case. 4 There's going to be other cases. 5 There's going to be other situations 6 where subpoenas are requested. As I 7 say, it is an insignificant amount, but, 8 nevertheless, it's required to be paid 9 by the Department. You just can't -- I 10 mean, you really can't leave this rule 11 on the books. You can't enforce the 12 rule, so change it to what the law says. 13 Like I say, it's an insignificant 14 amount. The amount is set by law. As 15 the Commissioner said, I think it's five 16 cents per mile, which is really 17 insignificant. And the daily fee is 18 also insignificant, but it's there. And 19 in the case of the Dothan situation, we 20 had already issued and served the 21 subpoenas without tendering fees. Now, 22 if we had been required to tender fees, 23 we may have had to go back to the 24 Hearing Officer to get a new subpoena 25 and serve it with the fees or make some</p>
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<p>1 MR. BROWN: A nickel a mile. 2 MR. LUDDER: Pardon me? 3 MR. BROWN: A nickel a mile. 4 MR. LUDDER: Yeah, that sounds 5 right. A nickel per mile, which is, you 6 know, insignificant. The other fee, I 7 think it's a per-day fee for attendance. 8 I don't recall. Do you know what that 9 is? It's, again, something very 10 insignificant.</p> <p>11 MR. BROWN: I think it's five 12 bucks, but I can't remember.</p> <p>13 MR. LUDDER: Yeah. Yeah. It's a 14 small amount. Nevertheless, those fees 15 are supposed to be paid by the 16 Department. That's what the law says, 17 and you can't do less than what the law 18 says.</p> <p>19 Any other questions?</p> <p>20 DR. MILLER: So in other words, 21 you're not asking for a professional 22 fee. You're just asking for travel and 23 a \$5 per diem? Is that being denied at 24 this time?</p> <p>25 MR. LUDDER: Not at this time, no,</p>	<p>1 other arrangement.</p> <p>2 DR. MILLER: Why wouldn't we just 3 submit the fee at the time you asked for 4 the subpoena?</p> <p>5 MR. LUDDER: Well, you would under 6 the Department's -- under the 7 Department's current rule, that's what 8 you should do, but that rule is invalid, 9 so I didn't do it. I did it according 10 to the statute. I got the Hearing 11 Officer to issue a subpoena. We had the 12 subpoena served. That's all we had to 13 do under the statute. We didn't have to 14 do more. And the Hearing Officer 15 essentially said those witnesses have to 16 honor the subpoenas even without fees 17 because it's the Department's 18 responsibility to pay the fees.</p> <p>19 Any other questions?</p> <p>20 DR. MILLER: Any other questions? 21 (No response.)</p> <p>22 MR. LUDDER: Thank you.</p> <p>23 DR. MILLER: Thank you very much. 24 We'd like to call on the 25 Department's response, please.</p>

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<p>1 MR. SIBLEY: Good morning, 2 Mr. Chair. My name is Shawn Sibley. 3 I'm General Counsel for the Agency. You 4 know, one thing that Mr. Ludder pointed 5 out and used as an example is the 6 Commission followed the law. Your 7 Hearing Officer followed the law in 8 granting the subpoenas irregardless of 9 the cost. And keep in mind that this 10 rule has been in place for 26 years. It 11 may not be consistent with the law, but 12 its application has been consistent. 13 So having said all that, you know, 14 y'all have followed the law even though 15 that there's inconsistency on the rule. 16 One thing -- you know, one thing 17 that I have concern about is this could 18 be applied, as worded, by the ADA to 19 expert witness fees, which, you know, 20 \$300 an hour. You know, Mr. Ludder says 21 that it's not, but there are other 22 parties that could interpret it that 23 way. And so, you know, the Commissioner 24 that's an attorney on the end here, he 25 aptly pointed out, you know, that it's</p>	<p>1 basis of Mr. Ludder's petition. 2 MR. SIBLEY: It is inconsistent. 3 It is inconsistent, but the application 4 of it by you guys and past Commissions 5 has been consistent with the law. 6 MR. BROWN: With the statute? 7 MR. SIBLEY: With the statute. 8 Your Hearing Officer followed the law. 9 MR. BROWN: So if it were -- and we 10 can't do this, but if, instead of for 11 attendance and travel, it said the cost 12 in Code of Alabama 12-19-131, it would 13 be appropriate? 14 MR. SIBLEY: Right. And consistent 15 with Alabama Rules of Civil Procedure 16 45, which is the hundred-mile radius 17 requirement. In other words, you don't 18 start paying until you're a hundred 19 miles out from where you have to appear. 20 So having said that, we don't like the 21 way it's worded right now, I mean, from 22 the Department's standpoint. 23 Any other questions? 24 DR. MILLER: Any other questions? 25 MR. BROWN: No. Thank you.</p>
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<p>1 nominal. It's a nickel a mile. It's a 2 \$1.50 per day on per diem. That's what 3 12-19-131 sets out. That's a code 4 section that applies to the courts. So 5 it's very nominal. The only concern we 6 have as an agency is having to pay those 7 exorbitant expert witness fees for other 8 parties. And, you know, the main flaw 9 that we see in the wording of their 10 petition to amend this rule is they 11 don't include mileage. You know, 12 Mr. Ludder struck out mileage. 13 I think whenever you talk about 14 travel costs and when the court does and 15 the Alabama Rules of Civil Procedure, 16 travel is always accompanied by mileage. 17 And so that's our concern. Just like, 18 Mr. Chair, as you pointed out, you can 19 only give it a thumbs up or a thumbs 20 down as a Commissioner. That's our only 21 concern about this rule as it's 22 proposed, is that it could open the 23 door. 24 MR. BROWN: It sounds to me that 25 you're essentially agreeing with the</p>	<p>1 DR. MILLER: All right. 2 Mr. Ludder, would you like to speak 3 again? 4 MR. LUDDER: I would. I would. 5 DR. MILLER: Sure. Come on up. 6 MR. LUDDER: It sounds like the 7 fundamental issue is the wording that 8 the Department does not like. But the 9 statute says what it says. Fees of 10 witnesses for attendance and travel 11 shall be the same as fees of witnesses 12 before the courts of record and shall be 13 paid from the funds of the Department. 14 It says nothing about mileage. It says 15 travel. 16 When I revised or suggested a 17 revision in the Department's rule, I 18 essentially mirrored this statutory 19 language. If you're going to tweak the 20 statutory language, you might make a 21 mistake. We're entitled to have a rule 22 that reflects what the statute requires. 23 The statute -- the statutory language is 24 on page 3 of the petition. You can read 25 that for yourselves. It says nothing</p>

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<p>1 about mileage. It says travel. We've 2 used the exact same words in the 3 proposed rule. So, again, I would 4 suggest that you not deviate from the 5 statutory language. It's pretty clear. 6 DR. MILLER: Mr. Sibley, do you 7 have any other -- 8 MR. SIBLEY: Yes, sir. I take 9 issue with Mr. Ludder. You, as a 10 Commission -- y'all have the authority 11 to implement and to promulgate rules to 12 implement this statute, and y'all have 13 done that earlier in that regulation as 14 to what you evaluate, as to whether or 15 not you grant subpoenas or not. It says 16 that you may grant subpoenas. You don't 17 have to. In other words, that's 18 discretionary, and it's up to y'all as a 19 Commission, through your Hearing 20 Officer, to do that. And so for 21 Mr. Ludder to say that you don't have 22 authority to refine that, I think 23 that -- I disagree with that. You do. 24 And, you know, the reason why we 25 have a concern is because there was</p>	<p>1 loser pay, but also what it did is it 2 made it consistent with the Rules of 3 Civil Procedure. It made it consistent 4 with the statute that applies with the 5 courts. And so that -- you know, so to 6 say that it's totally out of line -- 7 it's not out of line. It's consistent 8 with the Rules of Civil Procedure. The 9 statute applies to courts and costs. 10 Now, we admit that it doesn't follow the 11 letter of the law in the Alabama 12 Environmental Management Act, which, by 13 the way, was passed in 1982. The Rules 14 of Civil Procedure were later -- refined 15 later, and then the Alabama 16 Administrative Procedures Act was 17 adopted later. So you've got to 18 remember this wording precedes those 19 other laws. So to say that it was 20 purely as a result of loser pays in 1994 21 is not necessarily accurate. 22 DR. MILLER: So are you saying that 23 the '82 version was superceded by the 24 '94 version, so that is what that 25 expressed?</p>
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<p>1 another appeal that was pending that 2 y'all heard about the same time as the 3 Dothan landfill permit appeal. And 4 during that appeal, one of the attorneys 5 for that environmental organization made 6 the proposal that we pay expert witness 7 fees for their expert, and that's our 8 concern. You know, under the wording 9 right now -- now, Mr. Ludder may say, on 10 behalf of his client, that, no, that's 11 not what they mean. Well, I think there 12 may be another organization that may 13 feel different. So as far as we're 14 concerned, mileage is used consistently 15 in the Alabama Rules of Civil Procedure 16 along with travel in that code section, 17 12-19-131. And even though the APA, 18 which is the Alabama Administrative 19 Procedures Act -- even though it doesn't 20 apply, that part of the APA is carved 21 out for the Department and for the 22 Commission, but it is consistent, too. 23 So one of the things that 24 Mr. Ludder also mentioned that in 1994 25 when this rule was amended, it was a</p>	<p>1 MR. SIBLEY: Well, no. When you 2 look at the provision in the management 3 act, it says what it says, but it also 4 makes reference to what the courts do. 5 And as far as what the courts do, it's 6 changed over time. Okay? And so -- so 7 to answer your question, no, the 8 statute -- the management act says what 9 it says, but what it refers to has 10 changed over time. 11 DR. MILLER: Okay. Are there any 12 other questions for Mr. Ludder? 13 MR. WALTERS: I've got a question 14 for Mr. Ludder. I guess this mention 15 that this issue was instigated by 16 Dothan -- has this happened before? I 17 mean, I'm sure this is not the first 18 time that you've had hearings and 19 subpoenas. I mean, I've only been on 20 the Commission a short period of time, 21 but I'm certainly getting the impression 22 that you've been active in -- 23 MR. LUDDER: I'm trying to 24 recall -- 25 MR. WALTERS: Just curious.</p>

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<p>1 MR. LUDDER: Yeah. I've had a 2 number of appeals, and I believe, in at 3 least one other appeal I've secured 4 subpoenas for witnesses, I don't recall 5 this coming up. I believe in that case, 6 if my memory's right, I believe I 7 actually did tender fees with the 8 subpoenas, you know, essentially not 9 knowing or not reviewing the statute at 10 that time. I just went by the rule. 11 The issue is it's going to come up 12 again. I guarantee it. I'm going to be 13 filing more appeals on behalf of my 14 clients, and I'm sure that we're going 15 to be subpoenaing witnesses. There's no 16 point in going through this exercise. 17 Really, the essential difference -- I 18 mean, the statutory language refers to 19 the fees that are required by the 20 courts. So anyone who applies this 21 language is going to have to look to 22 what the courts do, you know, as far as 23 how much they're entitled to and what 24 they're entitled to. They're going to 25 have to look at those court</p>	<p>1 witness can be required to pay -- a 2 person can be required -- the courts can 3 require an expert witness to pay -- can 4 require a party to pay for an expert 5 witness' time in some cases for 6 depositions, certainly. This is 7 testimony. This is like trial 8 testimony. And if there's a 9 clarification that they want to make to 10 exclude expert witnesses, that's fine. 11 That's not our intention. The intention 12 here is to shift who pays. That's all. 13 That's all our intention is, shift who 14 pays. 15 In the case of Dothan, there were 16 experts that were subpoenaed. There was 17 no intention to make them recover expert 18 witness fees. I'm sure they didn't 19 invoice the Department for expert 20 witness fees. The only -- only 21 discussion at the time was how much does 22 it cost. How far do you have to travel, 23 and how much do you pay per day? Those 24 are nominal amounts. As I said, the 25 only real issue is who pays, not so</p>
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<p>1 requirements. The issue, really, here 2 is who's going to pay the fee. The 3 statute says the Department has to pay 4 it. The rule says the person seeking 5 the subpoena has to pay it, and that's 6 what the Hearing Officer said. The 7 Hearing Officer said, no, it's not the 8 person asking for the subpoena; it's the 9 Department. The Hearing Officer said 10 witnesses are going to have to comply 11 with the subpoenas, and if the witnesses 12 want, they can come back to the 13 Department later and essentially invoice 14 the Department for the fees. That's 15 really the issue. Who pays? I don't 16 think it's an issue of what's required. 17 I mean, this issue about paying experts, 18 I think, is a red herring because the 19 statute says you look to the court 20 requirements, and the court requirements 21 don't require payment of expert witness 22 fees in terms of travel and attendance. 23 I should say that perhaps -- perhaps I'm 24 misspeaking on that. I think there is 25 some -- in some situations, an expert</p>	<p>1 much -- I don't think we have a 2 disagreement about what it's to be paid 3 for, just simple mileage and simple 4 attendance fee. 5 DR. MILLER: Lanier, could I get 6 your comments on what you're thinking? 7 MR. BROWN: I get paid a lot for my 8 thoughts. I mean, it's obviously 9 inconsistent, the rule versus the 10 statute, and the statute would prevail. 11 And as I understand it, we have -- the 12 Department has followed the statute 13 except in this one instance in the 14 Dothan matter; is that correct? 15 MR. SIBLEY: Well, Your Honor -- 16 Commissioner, you, as a Commissioner -- 17 your Hearing Officer followed the law 18 when they issued the subpoenas. So, you 19 know, again, y'all have applied it 20 consistently, so they followed the law, 21 or the Hearing Officer did. So if that 22 answers your question... 23 DR. MILLER: The question I have is 24 if we amend this, what's to prevent 25 someone from California or New York or</p>

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<p>1 whatever submitting and demanding 2 payment for his expert witness fees? 3 That's very concerning to me. 4 MR. BROWN: Or first class airfare. 5 MR. SIBLEY: I'm sorry. 6 MR. BROWN: Or his first class 7 airfare. 8 MR. SIBLEY: Right. And I think 9 Mr. Ludder acknowledged that y'all could 10 probably change the rule and say no 11 expert witness fees. That would be in 12 your prerogative to do that. 13 That's just the concern that the 14 Department has. It's not so much the 15 Department is worried about paying 16 nominal witness fees, a nickel a mile, 17 \$1.50 per diem. It's the \$300 per hour. 18 That's the issue that we have. And, 19 again, that came up in another case, not 20 really related to subpoenas, but it came 21 up. And counsel for that one party was 22 like, you know, how do we invoice the 23 Department \$300 an hour for an expert 24 witness? That's our concern. 25 DR. MILLER: Any other questions or</p>	<p>1 MR. MASINGILL: Second. 2 DR. MILLER: A motion and a second. 3 Any further discussion before -- 4 MR. BROWN: Yes. Which is the 5 quicker way, assuming this is going to 6 be adopted to -- I mean, revised that 7 Mr. Ludder's proposal is going to be 8 altered to address the Department's 9 concern? Would it be quicker to deny 10 this and let Mr. Ludder refile another 11 one or to go to rulemaking? You can 12 answer. Somebody. Both of you. 13 MR. TAMBLING: Commissioner Brown, 14 I think the only option you have is to 15 approve or deny this rule. If you 16 choose to deny it, I think you can 17 encourage the Department and Mr. Ludder 18 to get together and come up with 19 something different. 20 MR. WALTERS: That's consistent 21 with my thinking. I just didn't know if 22 I could promote that. 23 MR. TAMBLING: Does that answer 24 your question? 25 MR. BROWN: Sort of. I was asking,</p>
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<p>1 comments? 2 (No response.) 3 DR. MILLER: Okay. Well, we have a 4 choice, a very clear choice. We can 5 either initiate rulemaking proceedings, 6 or we can deny the petition and state 7 why we're denying it. 8 Is there any other questions or 9 comments before we decide this question? 10 (No response.) 11 DR. MILLER: Well, I will entertain 12 a motion from the Commission to either 13 refer to rulemaking or deny the 14 petition. 15 Do I have a motion? Don't 16 everybody speak at once. 17 MR. WALTERS: I motion that we deny 18 the petition. Do I need to explain why? 19 DR. MILLER: You can if you'd like. 20 MR. WALTERS: Well, I think the 21 wording of the petition is what causes 22 me concern, and, therefore, I motion 23 that we deny the petition. 24 DR. MILLER: Okay. Do we have a 25 second to that motion?</p>	<p>1 you know, there's -- if we deny it and 2 then it was represented and brought 3 straight to the Commission, would we be 4 able to act quicker than if we sent it 5 through the rulemaking committee? 6 MR. TAMBLING: I'll let you go 7 ahead. 8 MR. LUDDER: If you were to grant 9 this petition, what you do is you 10 propose a rule. 11 MR. BROWN: Right. 12 MR. LUDDER: You don't adopt a 13 rule. You merely propose it. In that 14 proposal process, you can take suggested 15 revisions. The Department can comment 16 we suggest a different wording. Then 17 when it comes time, you adopt a rule, 18 either the rule as proposed or as 19 revised. 20 So you can grant the petition, go 21 to hearing on this proposed rule, take 22 comments to revise it, and then adopt 23 the revision. That would be the most 24 expedient way to get there. 25 DR. MILLER: Thank you. Well, we</p>

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<p>1 have a motion and a second. 2 MR. SIBLEY: I would like to 3 respond to that if I could. 4 DR. MILLER: Oh, sure. 5 MR. SIBLEY: If that's all right. 6 You know, one thing that Mr. Ludder 7 didn't mention is that it's 8 substantially changed from the way he 9 worded it -- now, which I don't expect 10 it to be but it could be -- then it 11 changes the complexion of it, and then 12 you would need to start over anyway. 13 So I would offer up that probably 14 the best thing to do is to -- you know, 15 if you deny it here and just ask the 16 Department to come up with another 17 proposal, it would go out on public 18 notice, and Mr. Ludder, as well as the 19 public, will have input into what it is. 20 And then, you know, if y'all want us to 21 get up with Mr. Ludder, we'll have it in 22 play and it will be just like we want 23 it. So I would offer up that if you 24 deny it today, you could ask the 25 Department to submit a petition for</p>	<p>1 only question we have is an up or down 2 vote. We can suggest that the 3 Department, you know, initiate some 4 talks with various parties and see if 5 they can come up with something. If so, 6 we will certainly look at that. But 7 today, our only objective is to either 8 vote, yes, please send it to rulemaking 9 or, no, deny the petition. 10 We have a motion to deny the 11 petition and a second. Are there any 12 further discussions or any further 13 motions? 14 MS. PERRY: I do have a question. 15 When it goes to rulemaking, what does 16 that mean? As far as when it goes to 17 rulemaking, that extends the process, 18 the length of time? What does it mean 19 when you say that? 20 DR. MILLER: Well, we have a 21 personnel committee, and we have a 22 rulemaking committee. So they would 23 submit it to the rulemaking committee 24 who would have hearings, have public 25 comment. And then if they decided that</p>
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<p>1 rulemaking. I think it -- you know, 2 depending on what it says, it would 3 probably be quicker to do that. 4 That's -- that's my opinion. 5 MR. TAMBLING: I think both parties 6 are correct. I think it has to be 7 whatever -- whatever you come up with 8 after -- if you were to allow this rule 9 to go through rulemaking, whatever your 10 final rule is has to be a logical 11 outgrowth of your original rule. If 12 it's substantially different, 13 Mr. Sibley's right, you have to start 14 over. So it's really up to you. 15 MR. BROWN: Yeah. I just wanted 16 days. You know, I'm just thinking about 17 time, not procedural or substance. But 18 the rule should be consistent with the 19 statute. 20 MR. WALTERS: I do like the idea of 21 what Chuck said about -- I like the idea 22 of the Department taking the lead and 23 eliminating these inconsistencies. 24 DR. MILLER: Well, unfortunately -- 25 or fortunately or unfortunately, the</p>	<p>1 a rule needed to be made, they would 2 make it, and then there's a whole list 3 of steps after that before it could 4 actually become a rule. That's sort of 5 a simplified version. Is that -- am I 6 correct in saying that? It's not just, 7 you know -- 8 MS. PERRY: Huh? 9 DR. MILLER: It's not a simple 10 concept. That's for sure. But it's not 11 unworkable either. 12 All right. Well, I'm going to call 13 for the question. All in favor of the 14 motion to deny the petition, please 15 signify by raising your right hand. 16 (All Commissioners raise their 17 right hand except Commissioner 18 Merritt and Commissioner Brown.) 19 DR. MILLER: All oppose, same 20 thing. 21 (Commissioner Merritt and 22 Commissioner Brown raise their 23 right hand.) 24 DR. MILLER: Okay. And, again, we 25 invite you-all to get together and try</p>

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<p>1 to come up with a facilitory likeness. 2 MR. BROWN: I think when I first 3 started speaking, I solved the problem. 4 So hopefully y'all can -- everybody can 5 be happy. 6 DR. MILLER: All right. Is there 7 any other business that needs to come 8 before the Commission? 9 MS. THOMAS: Chair Miller, I need 10 to get y'all to sign the order for that 11 petition. 12 DR. MILLER: Yes. We'll wait and 13 get that done. 14 MS. THOMAS: This will need a new 15 front page, and that's the signature 16 page. 17 DR. MILLER: All right. Our next 18 meeting is scheduled for October 9th, 19 2020. 20 Is there anyone that has a conflict 21 with that date that you know of at this 22 point? 23 MR. BROWN: Negative. 24 DR. MILLER: Okay. We have been -- 25 we're expecting everyone to be here on</p>	<p>1 REPORTER'S CERTIFICATE 2 3 STATE OF ALABAMA, 4 ELMORE COUNTY, 5 6 I, Shannon P. Yost, Certified Shorthand 7 Reporter and Commissioner for the State of 8 Alabama at Large, do certify that I reported 9 the Alabama Department of Environmental 10 Management Commission Meeting held on August 14, 11 2020. 12 The foregoing computer-printed pages 13 contains a true and correct transcript of 14 said meeting. The reading and signing of same 15 is hereby waived. 16 17 I further certify that I am neither of 18 kin nor of counsel to the parties to said 19 cause, nor in any manner interested in the 20 results thereof. 21 22 This 1st day of September, 2020. 23 24 25</p>
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<p>1 October the 9th. We have no one 2 registered for the public comment 3 period. So in that case, I will 4 entertain a motion to adjourn. 5 MR. BROWN: So moved. 6 DR. MILLER: Seconded? 7 MR. WALTERS: Second. 8 DR. MILLER: All in favor say aye. 9 (All Commissioners raise their 10 right hand.) 11 DR. MILLER: We're adjourned. 12 Thank you. 13 (At which time, the commission 14 meeting concluded at approximately 15 12:15 p.m., Central.) 16 17 18 19 20 21 22 23 24 25</p>	<p>1  2 Shannon P. Yost, 3 Certified Shorthand Reporter 4 and Commissioner for the 5 State of Alabama at Large 6 My Commission Expires 6/9/2021 7 ACCR #158 - Expires 9/30/2021 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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Part B

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

**Attachment 3 Resolution adopting amendments to ADEM Administrative Code 335-13,
Solid Waste Program Regulations
(Agenda Item 4)**

**Attachment 4 Order adopting the Hearing Officer's Recommendation of Dismissal
(Agenda Item 5)**

**Attachment 5 Order adopting motion to deny the petition for rulemaking
(Agenda Item 6)**

Attachment 1

7/15/20

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 14, 2020
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, 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 12, 2020
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-13, Solid Waste Program Regulations, Chapter 335-13-15, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. Revisions to the Division 13, Chapter 15 regulations are being proposed to incorporate changes to ensure consistency with federal standards and provide clarification of State requirements for the management of coal combustion residuals in landfills and surface impoundments. The Department held a public hearing on the proposed amendments on June 25, 2020.

5. UNISON ENVIRONMENTAL SERVICES, LLC V. ADEM, EMC DOCKET NO. 20-04

The Commission will consider the Hearing Officer's *Recommendation of Dismissal*. The Hearing Officer recommends dismissal based on the *Suggestion of Mootness* filed by the Department, and confirmation from Petitioner's counsel that this matter is now moot and that a recommendation of dismissal is appropriate. The subject of this appeal is ADEM administrative cease and desist order number 20-060-SW issued on April 21, 2020, to Unison Environmental Services, LLC, Cypress Creek Landfill Solid Waste Permit No. 63-18. On June 2, 2020, ADEM lifted the cease and desist order and allowed the Cypress Creek Landfill to continue regular operations. There being no cease and desist order to challenge, ADEM suggested in its filing that this appeal before the Commission is moot.

6. CONSIDERATION OF PETITION TO AMEND ALA. (ADEM) ADMINISTRATIVE CODE R. 335-2-1-.12, SUBPOENAS, EMC RULEMAKING PETITION 20-01, PETITIONER – ENVIRONMENTAL DEFENSE ALLIANCE

The Commission will consider the Petition to Amend Ala. (ADEM) Administrative Code R. 335-2-1-.12, Subpoenas. The Petition requests that the Commission amend R. 335-2-1-.12 as follows (stricken language to be deleted and underscored language to be added):

335-2-1-.12 Subpoenas

(1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Chair of the Commission or the Hearing Officer may grant a request for a subpoena upon a showing of (a) the grounds and necessity therefor, and (b) the materiality and relevance of the evidence to be adduced. Request for the production of documents shall describe the evidence sought as specifically as practicable. A subpoena may be issued by the Chair of the Commission, the Hearing Officer, or a designee.

(2) Subpoenas shall be served in accordance with the Alabama Rules of Civil Procedure.

(3) Witnesses summoned before the Hearing Officer shall be paid the same fees for attendance and ~~mileage travel~~ travel that are paid witnesses in the courts of Alabama. Fees shall be paid ~~by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Commission or Hearing Officer, fees shall be paid by~~ from funds of the Department.

7. OTHER BUSINESS

8. 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**

Field Operations Division



**Alabama Department Of
Environmental Management**

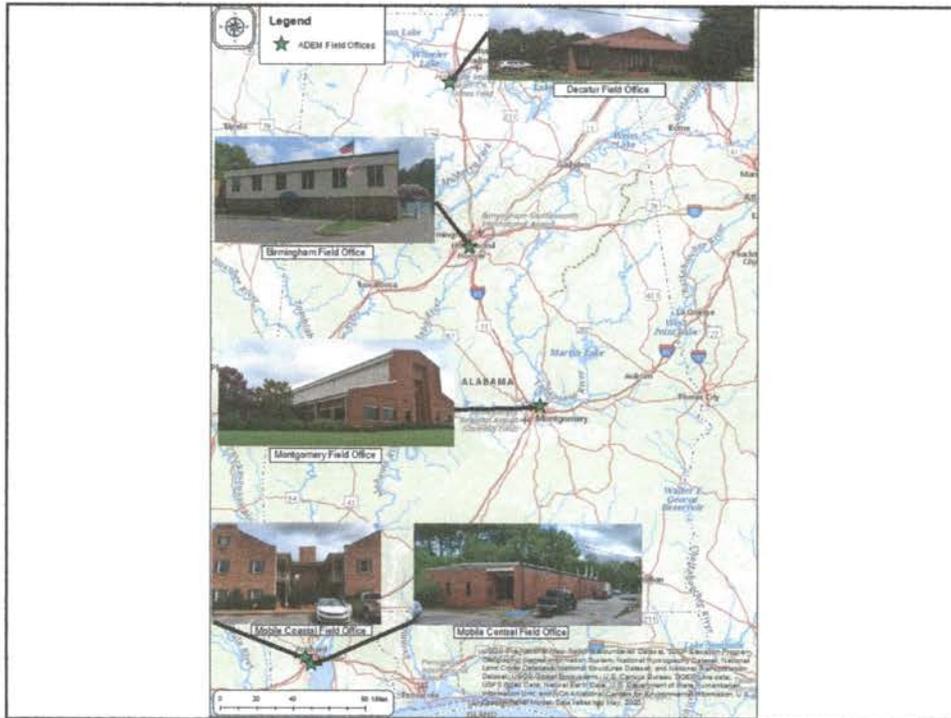
Field Operations Division

- Field Offices
- Emergency Response
- Laboratories
- Ambient Air and Water Quality Monitoring
- Coastal Program
- Concentrated Animal Feeding Operations



Alabama Department Of Environmental Management

Field Offices





Alabama Department Of Environmental Management

Field Offices

- Upgrades
 - Birmingham:
 - Phase 1 Office Space – complete
 - Phase 2 Laboratory Space – complete Aug 2020
 - New Mobile:
 - \$5.9 million RESTORE grant
 - Consolidate Field Office & Coastal Program
 - Construction complete April 2022



Alabama Department Of Environmental Management

Field Offices

- Types of Inspections:
 - NPDES Water
 - Municipal Waste Water
 - Industrial & Mining
 - Construction Storm Water
 - Concentrated Animal Feeding Operations
 - Landfills
 - Underground Storage Tanks



Alabama Department Of Environmental Management

Field Offices

- Rates of Inspections:
 - \approx 12,000 per year
 - 3+ times EPA work plan requirements
- EPA Evaluation of Inspections:
 - Audit processes, procedures, equipment
 - Since 2015 Montgomery, Birmingham, Decatur
 - Highest ranking



Alabama Department Of Environmental Management

Emergency Response



ADEM

**Alabama Department Of
Environmental Management**

Emergency Response

- Types of emergencies
 - Hazardous materials rail, waterway or highway accidents
 - Chemical spills and fires
 - Tornadoes & hurricanes
 - Oil spills
- ≈ 50 per year
- Designated emergency responders



Alabama Department Of
Environmental Management

Laboratories



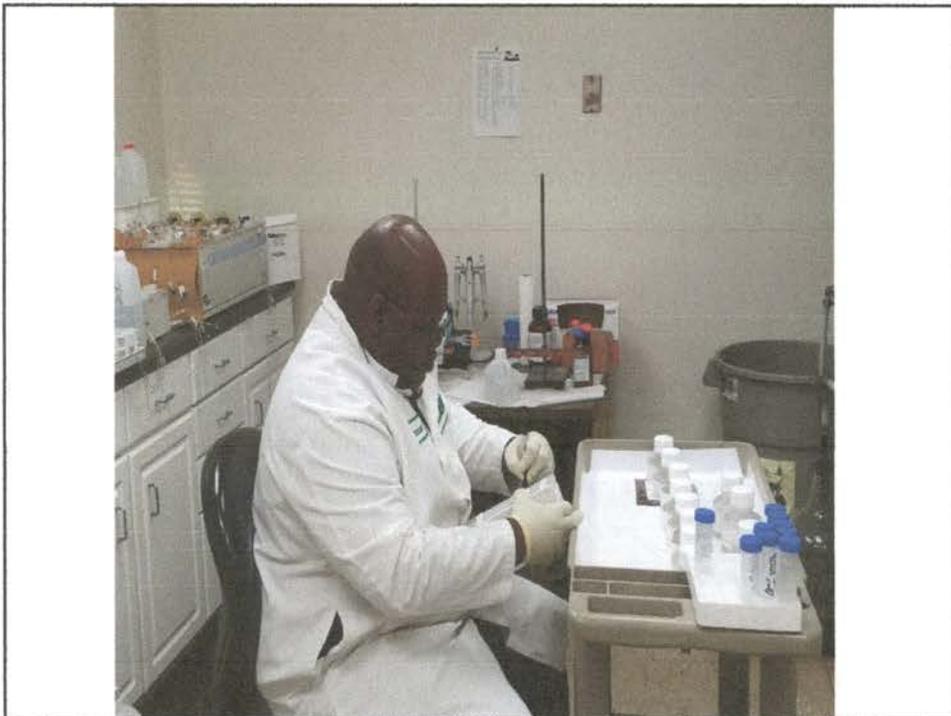
Alabama Department Of
Environmental Management

Laboratories

- Analyze:
 - NPDES wastewater discharge samples
 - Drinking water samples
 - Fish Tissue for ADPH consumption advisories
- Monitor:
 - Ambient Air Quality
 - Ambient Water Quality

Laboratories - NPDES

- Contaminants Analyzed:
 - Pathogens
 - Nutrients
 - Organic and Inorganic Chemicals
 - Metals
 - Bacteria
- Process approx. 1000 samples / year





Alabama Department Of Environmental Management

Laboratories – Drinking Water

- Drinking water
 - 580 public drinking water systems
 - 89 regulated contaminants:
 - Organic chemicals
 - Inorganic chemicals
 - Microbes
 - Radionuclides



Alabama Department Of Environmental Management

Laboratories – Drinking Water

- > 100,000 drinking water lab analyses / yr.
- ADEM audits all drinking water laboratories
- Proficiency testing by EPA
 - Chemists tested annually on 60+ substances
 - Comprehensive drinking water lab audit every three years
 - Certified as Primary State Drinking Water Laboratory for Alabama

Laboratories – Fish Tissue

- Fish Tissue
 - Contaminants tested for include:
 - Pesticides
 - Herbicides
 - Metals
 - Other chemicals
 - ≈ 500 fish from 46 sites

Laboratories – Fish Tissue

- Noteworthy innovations:
 - Plugs
 - PFAS testing
 - Fish consumption advisory map

Monitoring

Monitoring – Ambient Air Quality

- Ambient Air Quality
 - Contaminants monitored:
 - Ozone
 - SO₂
 - PM_{2.5} & PM₁₀
 - Lead

Monitoring – Ambient Air Quality

- ADEM operates 34 of 87 air monitors at 17 of 32 locations in Alabama
- EPA audit confirms program meets requirements
- Optimization activities digital flow of data
- All NAAQS being met since 2015



Monitoring – Ambient Water Quality

- Ambient Water Quality
 - Data collected:
 - Chemical data to assess water quality
 - Biological data
 - Fish community surveys
 - Macroinvertebrate surveys
 - Periphyton surveys
 - 349 monitoring stations ≈10,000 samples collected

Monitoring – Ambient Water Quality

- EPA Critical Elements evaluation:
 - Link to decision making
 - ALAWADR data system recognition
 - Level 4 classification [highest attainable] – 1 of 5 in the nation
 - Recognized three individuals as certified experts in species identification

ADEM

Alabama Department Of
Environmental Management

Coastal Program





Alabama Department Of Environmental Management

Coastal Program

- Implements Coastal Management Plan developed by ADEM, DCNR, NOAA
- Oversees coastal development
- Monitors coastal area water quality
 - 25 locations
 - 800 samples / year



Alabama Department Of Environmental Management

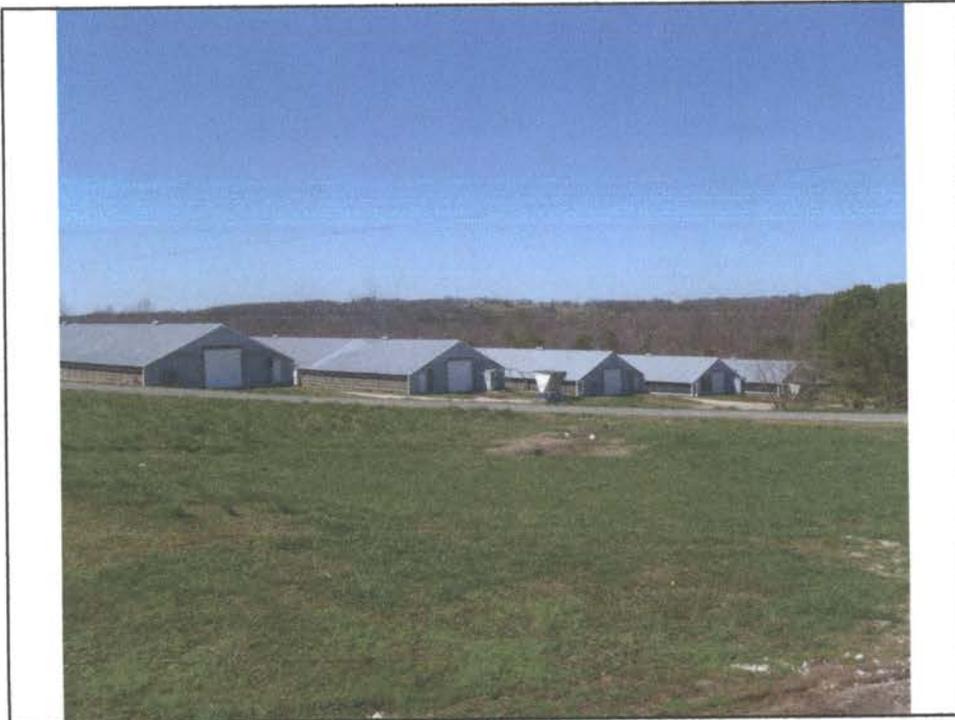
Coastal Program

- Provides public information on beach and bay water quality
- Innovation - public information
- \$500,000 competitive grant - litter reduction

ADEM

Alabama Department Of
Environmental Management

Concentrated Animal Feeding Operations





Alabama Department Of Environmental Management

Concentrated Animal Feeding Operations

- Began in 1999
- 1716 CAFOs (975 active)
- Primarily poultry - Alabama is 2nd largest
- AFOs and CAFOs
- More protective than EPA program



Alabama Department Of Environmental Management

Concentrated Animal Feeding Operations

- Well accepted:
 - reasonable regulation
 - certainty
 - reduced business risk
- Legislature funds program

Attachment 3

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-13 of the Department's Land Division – Solid Waste Program Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-13 [335-13-15-.02/Definitions (Amend); 335-13-15-.03/Location Restrictions (Amend); 335-13-15-.05/Operating Criteria (Amend); 335-13-15-.06/Groundwater Monitoring and Corrective Action (Amend); 335-13-15-.07/Closure and Post-Closure Care (Amend); 335-13-15-.08/Recordkeeping, Notification, and Posting of Information to the Internet (Amend); 335-13-

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

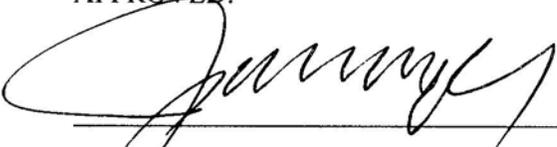
15-App IV/CCR Constituents for Assessment Monitoring (Amend)] of the Department's Land Division – Solid Waste Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-13 – Solid Waste Program

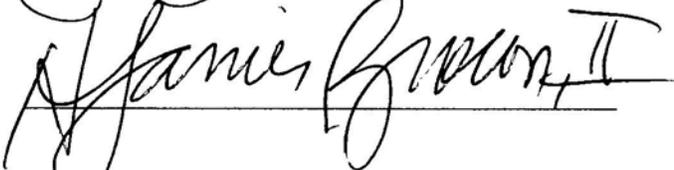
IN WITNESS WHEREOF, we have affixed our signatures below on this 14th day of August 2020.

APPROVED:



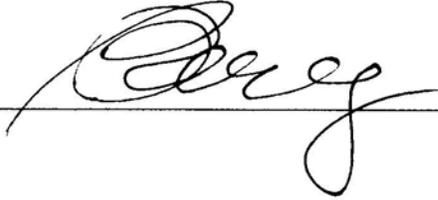












DISAPPROVED:

ABSTAINED:

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 August 2020.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of August 2020

Attachment 4

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the matter of:)	
)	
Unison Environmental Services, LLC,)	
)	
Petitioner,)	
)	
v.)	EMC Docket No. 20-04
)	ADEM Administrative Cease and
)	Desist Order No. 20-060-SW
Alabama Department of Environmental)	
Management,)	
)	
Respondent.)	

ORDER

Before the Commission in the above appeal is the Hearing Officer's *Recommendation of Dismissal*. Based upon the record in the proceeding, including ADEM's *Suggestion of Mootness*, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Hearing Officer's *Recommendation of Dismissal* is hereby adopted; and
2. That pursuant to the adoption of the Hearing Officer's *Recommendation of Dismissal*, the Commission orders that the above appeal is dismissed; and
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
4. That a copy of this Order along with a copy of the Hearing Officer's *Recommendation of Dismissal*, attached hereto as Exhibit "A," and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 14th day of August 2020.

APPROVED:



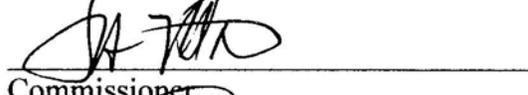
Commissioner



Commissioner



Commissioner



Commissioner



Commissioner



Commissioner



Commissioner

DISAPPROVED:

Commissioner

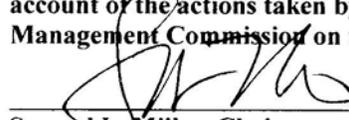
Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of August 2020.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of August 2020

BEFORE THE ALABAMA ENVIRONMENTAL
MANAGEMENT COMMISSION

UNISON ENVIRONMENTAL SERVICES, LLC)	
Petitioner,)	
)	
vs.)	EMC Docket No. 20-04
)	
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
Respondent.)	

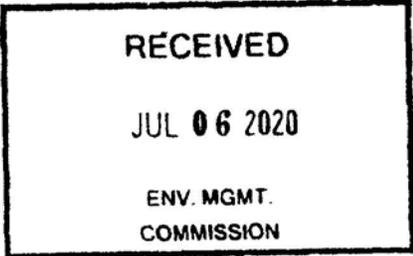
RECOMMENDATION OF DISMISSAL

Upon the Suggestion of Mootness filed by the Department, and after confirmation from Petitioner’s counsel that this matter is now moot and that a recommendation of dismissal is appropriate, the undersigned recommends to the Commission that this appeal be dismissed.

Done this 30th day of June, 2020.



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



CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following individual(s) by email and/or placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed this 30 day of June, 2020:

Michael F. Braun
5016 Centennial Blvd., Ste. 200
Nashville, TN 37209
mfb@braun-law.com

A. Todd Carter
P. Christian Sasser, Jr.
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463
atcarter@adem.alabama.gov
pcsasser@adem.alabama.gov

Debra S. Thomas, Executive Assistant
Alabama Environmental Management Commission
P. O. Box 301463
Montgomery, Alabama 36130-1463
aemc@adem.alabama.gov

/s/ R. Rainer Cotter, III
HEARING OFFICER

Attachment 5

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the matter of:)	
)	
Petition to Amend Ala. (ADEM))	EMC Rulemaking Petition 20-01
Administrative Code Rule 335-2-1-.12, Subpoenas)	
Petitioner – Environmental Defense Alliance)	

MOTION

Deny the petition

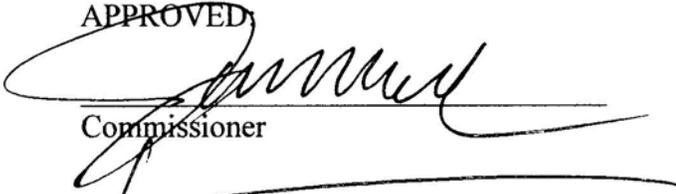
ORDER

This cause coming before the Commission pursuant to the above-referenced petition for rulemaking and arguments supporting the petition, and the position of the Alabama Department of Environmental Management having been considered, it is hereby ORDERED:

1. That the above motion is hereby adopted; and
2. That the petition for rulemaking will adversely impact the overall regularly scheme of the Department and fail to promote the underlying public policies of the statutes and rules which the Department administers [see ADEM Admin. Code Rule 335-2-2-.05(g)]; and
3. That pursuant to the adoption of the above motion and based upon the above reason and on consideration of the views of the Director of the Department [see ADEM Admin. Code Rule 335-2-2-.05(a)], the petition for rulemaking is hereby denied; and
4. That this action has been taken and this order issued by the Alabama Environmental Management Commission effective August 14, 2020; and
5. That a copy of this order shall be served upon the parties either personally or by certified mail, return receipt requested.

ISSUED this 14th day of August 2020.

APPROVED:


Commissioner

Commissioner

Commissioner

Commissioner


Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of August 2020.


Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of August 2020