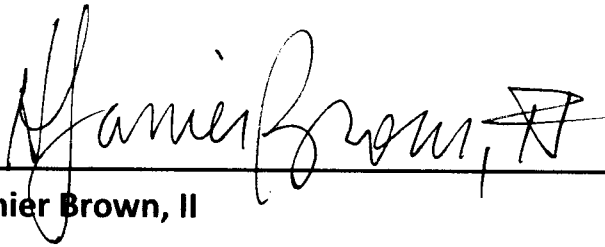


**12/15/14**

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
October 17, 2014**

**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 October 17, 2014.**

A handwritten signature in black ink, reading "H. Lanier Brown, II", written over a horizontal line. The signature is cursive and includes a stylized flourish at the end.

**H. Lanier Brown, II  
Chair**

**Alabama Environmental Management Commission**

**Certified this 12th day of December 2014.**

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**October 17, 2014**

**Convened: 10:59 a.m.**

**Adjourned: 11:53 a.m.**

**Part A**

**Transcript**  
**Word Index**

**Part B**

**Attachment Index**

**Attachment 1**

**Attachment 2**

**Attachment 3**

**Attachment 4**

**Attachment 5**

## Part A

Page 1

1 ALABAMA ENVIRONMENTAL MANAGEMENT  
2 COMMISSION MEETING  
3  
4  
5  
6  
7  
8  
9 ALABAMA DEPARTMENT OF ENVIRONMENTAL  
10 MANAGEMENT  
11 Alabama Room  
12 1400 Coliseum Boulevard  
13 Montgomery, Alabama 36110-2400  
14 October 17, 2014  
15 10:59 a.m.  
16  
17  
18  
19  
20  
21  
22  
23 Taken by: Victoria M. Castillo, CCR#17

Page 3

1 CHAIRMAN BROWN: Good  
2 morning. Welcome to the October 17th, 2014  
3 meeting of the Alabama Environmental  
4 Management Commission. I acknowledged  
5 that -- or the Chair acknowledges that we  
6 have a quorum and calls this meeting to  
7 order.  
8 First item on the agenda is  
9 consideration of the minutes of the meeting  
10 held on August 15, 2014. The minutes have  
11 been circulated to all members of the  
12 Commission, and I will entertain a motion  
13 regarding that.  
14 DR. MILLER: I move we  
15 accept the minutes as written.  
16 DR. RICHARDSON: Second.  
17 CHAIRMAN BROWN: The Chair  
18 will call for the question. All in favor  
19 say "aye."  
20 (All Commission members  
21 signify "aye.")  
22 CHAIRMAN BROWN: Any  
23 opposed?

Page 2

1 A P P E A R A N C E S  
2  
3 COMMISSION MEMBERS PRESENT:  
4 H. Lanier Brown, II, Esquire, Chair  
5 W. Scott Phillips, Vice Chair  
6 James E. Laier, Ph.D, P.E.  
7 Terry D. Richardson, Ph.D.  
8 Samuel L. Miller, M.D.  
9 Mary J. Merritt  
10  
11 COMMISSION MEMBER NOT PRESENT:  
12 Robert L. Carson, Jr., D.V.M.  
13  
14 ALSO PRESENT:  
15 Robert Tambling, EMC Legal Counsel  
16 Debi Thomas, EMC Executive Assistant  
17 Lance R. LeFleur, ADEM Director  
18  
19  
20  
21  
22  
23

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1 (No response)  
2 CHAIRMAN BROWN: Motion  
3 passes. Next item on the agenda is  
4 elections. Chair notes the Commission will  
5 consider the election of the Commission  
6 Chair and Vice-Chair. And the Chair will  
7 first entertain a motion from the  
8 Commission regarding the election of the  
9 Chair.  
10 DR. RICHARDSON:  
11 Mr. Chairman, I move that we continue the  
12 executive body as it exists.  
13 DR. MILLER: Second.  
14 CHAIRMAN BROWN: And for  
15 clarification, that would be me as Chair  
16 and Mr. Phillips, Commissioner Phillips, as  
17 Vice-Chair?  
18 DR. RICHARDSON: Correct.  
19 CHAIRMAN BROWN: All in  
20 favor?  
21 (All Commission members  
22 signify "aye.")  
23 CHAIRMAN BROWN: Any

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 5</p> <p>1 opposed?<br/>2 (No response)<br/>3 CHAIRMAN BROWN: Motion<br/>4 passes. Next item on the agenda is the<br/>5 report from the ADEM director, Director<br/>6 LeFleur.<br/>7 Good morning.<br/>8 MR. LeFLEUR: Good morning<br/>9 and congratulations.<br/>10 CHAIRMAN BROWN: Thank you,<br/>11 I think.<br/>12 MR. LeFLEUR: Let me offer a<br/>13 good morning and welcome to all of you<br/>14 present for the first scheduled meeting of<br/>15 the Alabama Environmental Management<br/>16 Commission for fiscal year 2015. As we<br/>17 begin the new fiscal year, I am pleased to<br/>18 report that the Department met or exceeded<br/>19 all of its EPA grant commitments for fiscal<br/>20 year 2014.<br/>21 A copy of the Department's<br/>22 fiscal year 2015 Operations Plan which<br/>23 incorporates the grant commitments included</p>                                                                                                                                                                                                                        | <p style="text-align: right;">Page 7</p> <p>1 General Fund appropriation, federal grants,<br/>2 and other generated revenue was able to<br/>3 meet all of our financial obligations.<br/>4 After several consecutive years of<br/>5 significant budget cuts, both Federal and<br/>6 State FY 2015 budgets seem to be<br/>7 stabilizing, albeit at the lowest level in<br/>8 decades.<br/>9 I regularly report to you on the<br/>10 Department's budget and on our performance<br/>11 given the limited funding available.<br/>12 Recently I highlighted the role of<br/>13 innovation and the embracing of forward<br/>14 leaning ideas plays in allowing the<br/>15 Department to achieve top performance with<br/>16 its limited budget.<br/>17 Today I would like to highlight<br/>18 two examples of how the Department is<br/>19 seeking to supplement its budget to fund<br/>20 innovation. Funding to move innovative<br/>21 programs forward is hard to find. One of<br/>22 the very few opportunities to obtain any<br/>23 funding beyond normal State General Fund</p> |
| <p style="text-align: right;">Page 6</p> <p>1 in the work plans the Department negotiates<br/>2 with the EPA each year has been provided to<br/>3 each Commissioner. We look forward to the<br/>4 challenge of meeting, and hopefully<br/>5 exceeding, these obligations again this<br/>6 fiscal year.<br/>7 In today's report I will update<br/>8 you on the operating budget and then focus<br/>9 on several topics including: Highlighting<br/>10 a new Departmental electronic innovation<br/>11 now available for public use; setting out<br/>12 the deadlines for public comment on an<br/>13 unusually large number of far-reaching new<br/>14 environmental regulations being proposed by<br/>15 EPA; and, discussing some environmental<br/>16 misperceptions commonly held by some<br/>17 members of the public. I will close by<br/>18 recognizing several of our employees who<br/>19 have gone the extra mile in their service<br/>20 to the Department and the State.<br/>21 As you know, September 30th<br/>22 marked the end of the fiscal year 2014<br/>23 budget cycle. The Department, with our</p> | <p style="text-align: right;">Page 8</p> <p>1 appropriations and Federal Programmatic<br/>2 Grants are the competitive federal grant<br/>3 programs where we compete with all the<br/>4 other states for limited, but important,<br/>5 funding dollars.<br/>6 I have two slides that track<br/>7 some of these competitive grant dollars<br/>8 that the Department has been able to obtain<br/>9 for innovative programs. This first slide<br/>10 highlights three individual competitive<br/>11 Wetland Program Development grants that are<br/>12 currently being used to enhance the<br/>13 Department's surface water quality<br/>14 monitoring capabilities focusing on wetland<br/>15 systems.<br/>16 These funds facilitate the<br/>17 development of ADEM's statewide wetland<br/>18 monitoring program. A considerable portion<br/>19 of the funds goes to coordinate efforts<br/>20 among various state and federal agencies<br/>21 and to development of sampling and<br/>22 assessment procedures.<br/>23 The funds from these competitive</p>                       |

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1 grants also support the continued  
2 development of the Department's innovative  
3 surface water quality monitoring database  
4 ALAWADR. The ALAWADR database program has  
5 been a very successful effort, as evidenced  
6 by the fact that it has been adopted by  
7 three other states and appears likely to be  
8 adopted by two more in the near future.  
9 The second slide shows the  
10 awards from the Exchange Network Grants.  
11 Over the last decade, the Department has  
12 received ten competitive grants totaling  
13 more than \$2.6 million. These grants have  
14 been used for various eGovernment projects  
15 and for establishing infrastructure to  
16 support the Exchange Network Data Flow.  
17 As has often been noted, a major  
18 contributor to the Department's ability to  
19 achieve top-tier performance with state-  
20 provided funding that is at the very bottom  
21 nationally is our significant investment in  
22 eGovernment applications. The Exchange  
23 Network Grants have been an extremely

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1 important source of funding for this  
2 effort.  
3 In a time of ever shrinking  
4 budgets, the Department is successfully  
5 using competitive grant dollars to fund  
6 critical projects that might otherwise go  
7 undone.  
8 Continuing with the subject of  
9 innovation in the data management area, I  
10 am pleased to introduce you to a recent  
11 change to the Department's Web site. The  
12 Department continually strives to both make  
13 compliance easier for the regulated  
14 community and to provide timely access and  
15 transparency to the citizens of the state.  
16 With this in mind, the home page  
17 on our Web site has been modified to  
18 include a new icon entitled eGov Portal.  
19 As the name suggests, a number of  
20 eGovernment applications that were  
21 previously accessible individually in  
22 various other locations are now accessible  
23 in one convenient location.

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1 In the next three slides, I will  
2 navigate you through the eGovernment Portal  
3 and show you where the information entered  
4 goes.  
5 This slide represents a screen  
6 shot of the home page of the ADEM Web site  
7 with the eGovernment Portal clearly  
8 identified. If the eGov Portal is  
9 selected, as shown on this next slide, a  
10 portion -- excuse me -- the portal main  
11 page will be displayed, which has links to  
12 eDischarge Monitoring Reporting, eSanitary  
13 Sewer Overflow Reporting, the eDrinking  
14 Water Reporting System, eNotice of Intent,  
15 ePayment options, and ePermitting. It's a  
16 little hard to read, but you will also note  
17 the Coming Soon applications depicted at  
18 the bottom of the page.  
19 Where applicable, the inputs to  
20 these links quickly feed directly into both  
21 ADEM and EPA federal databases. For  
22 example, as shown in this next slide, the  
23 eDMR and eSSO portal data and documents are

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1 submitted to the ADEM data management  
2 system and then automatically  
3 electronically loaded into the eFile and  
4 the What's Happening in Your County  
5 applications on the ADEM Web site.  
6 By creating this portal, the  
7 Department has improved efficiency and  
8 accurate data management with the added  
9 benefit of providing timely access and  
10 transparency for the public. The ADEM data  
11 management system also automatically  
12 transfers data to the Federal EPA database  
13 known as PCS-ICIS.  
14 From there, EPA feeds Alabama's  
15 data, along with data from other states,  
16 into the Enforcement and Compliance History  
17 Online, or ECHO, database. Using the ECHO  
18 database, EPA generates the dashboards that  
19 we regularly present to the Commission and  
20 that are readily available to the general  
21 public.  
22 For an interesting visual  
23 covering the Department's eGovernment

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1 program, please take a moment to look at  
2 the display board located out in the main  
3 foyer.  
4       Implementation of efficiencies  
5 such as these has become particularly  
6 important as the pace of proposed new  
7 federal regulations has quickened in the  
8 waning years of the current  
9 administration. There are currently three  
10 important new environmental initiatives  
11 with public comment periods ending before  
12 the close of the calendar year.  
13       If anyone present has an  
14 interest in any of these critical areas of  
15 environmental regulation and has already --  
16 has not already done so, you still have  
17 time to submit your written comments before  
18 the close of the public comment period.  
19       These new areas include: Waters  
20 of the U.S., the comment period closing on  
21 November the 14th; North Birmingham  
22 Proposed NPL listing, with the comment  
23 period closing on November 21st; the Clean

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1 Air Act Section 111(d) proposed -- or  
2 proposed regulation, with the comment  
3 period closing on December 1st.  
4       These proposed regulations can  
5 have profound impact on federal control of  
6 water bodies and the health and economic  
7 well-being of citizens -- of the citizens  
8 and businesses in Birmingham and other  
9 areas of our state.  
10       In addition to these new  
11 regulations that have already been  
12 proposed, EPA plans to publish new ozone  
13 regulations on December 1st and coal ash  
14 regulations on December 19th. Although we  
15 do not know the content of these new  
16 regulations, we fully expect them to result  
17 in many areas of the United States to be in  
18 non-attainment for ozone and a  
19 transformation in the way in which coal ash  
20 is managed in this country.  
21       Again, if you have not already  
22 done so, I encourage all interested parties  
23 to make their opinions known on these

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1 important environmental issues.  
2       Beginning in 1998 and  
3 reoccurring every five years, the  
4 Department has worked with both the  
5 University of Alabama and Auburn University  
6 to conduct a statewide public opinion  
7 survey focused on gauging perceptions of  
8 the environment. By maintaining the  
9 consistency of the questions and  
10 methodology over the past 15 years, we are  
11 able to identify opinions and the trend of  
12 opinions on environmental issues in  
13 Alabama.  
14       Although the latest survey  
15 results identify some positive trends in  
16 Alabamians' understanding of their  
17 environment, the results also identify some  
18 glaring misperceptions.  
19       First the positives. The most  
20 recent survey results document that 88  
21 percent of those surveyed rate the overall  
22 quality of the environment in Alabama as  
23 either very good or fairly good compared to

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1 only 76 percent in the original 1998  
2 survey. In 1998, Alabamians were asked to  
3 compare the quality of Alabama's water  
4 resources to its quality 25 years prior.  
5 Only 19 percent of those surveyed indicated  
6 that water quality was either somewhat  
7 cleaner or much cleaner at that time. In  
8 the most recent survey, 36 percent  
9 indicated that Alabama's water resources  
10 were either somewhat cleaner or much  
11 cleaner.  
12       In 1998, Alabamians were asked  
13 to compare Alabama's air quality to its air  
14 quality 25 years prior. Only 18 percent  
15 indicated that air quality was either  
16 somewhat cleaner or much cleaner at that  
17 time. In the most recent survey, 31  
18 percent indicated that Alabama's air  
19 quality was either somewhat cleaner or much  
20 cleaner. All of these are correct  
21 perceptions by virtually any objective  
22 standard used to measure environmental  
23 quality.



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1           These positive trends in  
2 educating the public are a result of the  
3 diligent efforts of a number of groups  
4 including: Industry, environmental groups,  
5 state and federal agencies including ADEM,  
6 and everyday Alabamians.  
7           On the other side of the coin,  
8 however, the most recent survey results  
9 also highlight some areas where Alabamians  
10 still have some serious misperceptions  
11 about Alabama's environment. A full 62  
12 percent of those surveyed do not recognize  
13 that cars, trucks, and other vehicles are  
14 the biggest source of air pollution in  
15 Alabama as they are throughout the nation.  
16 Likewise, 86 percent of those surveyed do  
17 not understand that nonpoint source  
18 pollution or stormwater is the single  
19 biggest cause of water quality issues in  
20 Alabama as is it across the nation.  
21           Perhaps one of the most  
22 troubling misperceptions revealed by the  
23 survey is that only 76 percent of those

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1 efforts, we are attempting to not only  
2 correct these misperceptions, but to also  
3 highlight the significant progress that has  
4 been made to improve the environment in the  
5 30 years since the agency was formed.  
6           I would like to take a few  
7 minutes -- a few moments to focus on our  
8 employees. If we are to be a high-  
9 performing organization in the future, we  
10 must develop our employees. To that end,  
11 one of the Department's Operating Plan  
12 objectives is to promote a high-performing  
13 work environment in part through the  
14 ongoing development of our human  
15 resources. We aggressively encourage the  
16 development of our personnel from the most  
17 junior employees to the top levels of  
18 management.  
19           Formalized training is an  
20 important component of employee  
21 development. I'd like to recognize a  
22 number of our employees that have reached a  
23 significant milestone in their formalized

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1 surveyed either agree or strongly agree  
2 that environmental standards are protective  
3 of human health and the environment.  
4 Although we, as regulators, understand that  
5 most environmental standards are developed  
6 at the national level to ensure the  
7 protection of all Americans, and that those  
8 environmental standards are based on  
9 extensive, rigorous scientific study and  
10 research, this reality is not being  
11 effectively communicated to the public here  
12 in Alabama.  
13           It is important that we make  
14 every effort to ensure that all residents  
15 have confidence in the established  
16 environmental standards since they are the  
17 building blocks of our permitting,  
18 inspection, and enforcement activities.  
19           To deal with the misperceptions,  
20 ADEM personnel are addressing these topics  
21 in their messaging when they go out and  
22 speak to citizens, elected officials, and  
23 stakeholder groups. Through these outreach

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1 training.  
2           The Alabama Training Institute  
3 at Auburn University of Montgomery offers  
4 the nationally-accredited Certified Public  
5 Manager or CPM training program, which  
6 provides comprehensive management training  
7 in two segments: CPM I and CPM II. Each  
8 segment is presented -- or excuse me. Each  
9 segment is presented two days per month  
10 over a nine-month period. The total time  
11 to complete the certification program is 18  
12 months. Courses include topics such as  
13 leadership, project management,  
14 interpersonal communication, performance  
15 coaching, building and leading teams,  
16 managing public organizations, and building  
17 partnerships.  
18           The CPM program has been a  
19 valued part of the Department's supervisory  
20 training program for many years and has  
21 been most helpful in preparing new  
22 supervisors for the rigors of their  
23 management roles. We have nine graduates

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1 of phase one of the CPM program. Those of  
2 you who are present, please stand and be  
3 recognized as I call your name.  
4       Emily Anderson, Shelane  
5 Bergquist, Eric Cleckler, Kelley Hartley,  
6 Lisa Hicks, Heather Jones -- you-all can  
7 continue to stand for just a moment --  
8 Catherine McNeill, Chris Sasser, and Shawn  
9 Sibley. Pause for my applause.  
10       (Audience applause)  
11       MR. LeFLEUR: Thank you.  
12 The development of personnel can also take  
13 the form of honing leadership skills in  
14 state and national organizations important  
15 to accomplishing the Department's stated  
16 mission. Like formalized training, taking  
17 on the added responsibility of serving in a  
18 leadership position with state and national  
19 organizations is totally voluntary.  
20       There are outside service  
21 efforts afford -- excuse me -- their  
22 outside service affords the Department  
23 extraordinary opportunities to participate

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1 entities working for needed environmental  
2 infrastructure funding from the  
3 governments -- from governments and capital  
4 markets, and for the effective use of these  
5 financial resources.  
6       Aubrey is the manager of the  
7 Department's State Revolving Fund Program  
8 which has provided Alabama communities with  
9 \$1.5 billion in funding for clean water and  
10 safe drinking water infrastructure  
11 improvements.  
12       Eric Cleckler, also in the  
13 Permits and Services Division, serves on  
14 the National Network Technology Board which  
15 is a subgroup of the Exchange Network  
16 Leadership Council. In his capacity, Eric  
17 advises the ENLC on matters related to  
18 technology and innovation within the  
19 Exchange Network. This has been absolutely  
20 critical in bringing EPA up to ADEM  
21 standards of electronic data management.  
22       Richard Hulcher -- you guys can  
23 stand, too. Richard Hulcher in our Field

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1 at the national level as policy is  
2 developed that will be the basis of future  
3 regulation. By getting in on the ground-  
4 floor discussions, they can direct future  
5 national regulation in such a way as to  
6 maximize its positive impact on the  
7 environment while minimizing any negative  
8 impact on the states.  
9       We are fortunate to have a  
10 number of employees who serve as officers  
11 in national and state organizations, and I  
12 would now like to recognize those employees  
13 who have gone the extra mile in their  
14 service to the Department and the state.  
15 Each of you please stand when I call your  
16 name, and we will hold our applause until  
17 the end.  
18       Aubrey White in the Permits and  
19 Services Division will be installed as  
20 President of the Counsel of Infrastructure  
21 and Financing Authorities, or CIFA, on  
22 November 10th. CIFA is the national  
23 organization of state, regional, and local

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1 Operations Division is a member of the  
2 Southeast Region of Certified Crop  
3 Advisors, CCA, Governing Board whose  
4 mission is to administer and promote the  
5 CCA program in Alabama and Georgia  
6 according to International Certified Crop  
7 Advisor Guidelines.  
8       Ruth Perez, also in the Field  
9 Operations Division, serves as the  
10 Secretary of the Alabama Fisheries  
11 Association. The AFA is an organization of  
12 individuals from various fisheries and  
13 water resource related groups dedicated to  
14 the development, conservation, and  
15 management of commercial and recreational  
16 fisheries in Alabama and the wise  
17 utilization and protection of fisheries and  
18 aquatic habitats.  
19       Jack Mobley in the Water  
20 Division serves as the Capacity  
21 Development Coordinator of the Joint  
22 National Capacity Development and Operator  
23 Certification Workshop for the Association

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1 of State Drinking Water Administrators.  
2 That's a long title there. In this  
3 capacity, Jack works to develop plans,  
4 policies, and strategies to improve the  
5 viability of water systems.  
6 The Land Division currently has  
7 six members serving in leadership positions  
8 for regional or national organizations.  
9 Dorothy Malaier serves as the  
10 Vice-Chair of the Leaking Underground  
11 Storage Tank Task Force of the ASTSWMO  
12 Tanks Subcommittee.  
13 Brian Espy has been the Team  
14 Leader Liaison on the Interstate Technology  
15 and Regulatory Council Board of Advisors  
16 since 2009.  
17 Gavin Adams is the first Vice-  
18 Chairman of the Southeast Regional --  
19 excuse me -- Southeast Recycling  
20 Development Council Board.  
21 Sonja Massey is a Member of the  
22 Groundwater Protection Council Board of  
23 Directors.

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1 Section of the Water Division in 1980.  
2 In 1983, Steve was promoted to  
3 section chief and, for the next six years,  
4 led the effort to develop and secure EPA  
5 approval of the State Nonpoint Source  
6 Management Program while managing the NPDES  
7 permitting and enforcement activities for  
8 the mining -- for mining operations and  
9 compliance activities in the nonpoint  
10 source area.  
11 In 1989, Steve transferred to  
12 the Land Division where he became Chief of  
13 the Hazardous Waste Compliance Branch. For  
14 the next seven years, Steve focused his  
15 efforts on completing outstanding  
16 groundwater assessments at interim status  
17 treatment, storage, and disposal facilities  
18 so that permitting could proceed.  
19 He also managed inspection and  
20 compliance assurance activities at  
21 hazardous waste generators. These efforts  
22 have contributed to the Department  
23 receiving additional program authorizations

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1 Curt Johnson serves as Chairman  
2 of the National Work Group on Leak  
3 Detection Evaluations.  
4 Stephen Cobb serves as the State  
5 Co-Chair of the Department of Defense  
6 Munitions Response Dialogue.  
7 And please join me in a round of  
8 applause in recognition of the significant  
9 commitments that these employees have  
10 made.  
11 (Audience applause)  
12 MR. LeFLEUR: These people  
13 have gone above and beyond the scope of  
14 their jobs for the benefit of the  
15 Department, the state, and the nation.  
16 As a final personnel matter, let  
17 me please -- please join me in  
18 congratulating Steve Jenkins, Chief of the  
19 Field Operations Division, on his pending  
20 retirement on January 1st, 2015. Steve  
21 graduated from the University of Tennessee  
22 in 1979 and began his 34-year career with  
23 ADEM in the Mining and Nonpoint Source

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1 from EPA.  
2 In 1996, Steve became Branch  
3 Chief of the Montgomery Field Office and  
4 two years later was promoted to Chief of  
5 the Field Operations Division where he  
6 serves to this day. Over the past 16  
7 years, Steve has been responsible for  
8 managing compliance sampling activities at  
9 NPDES facilities, environmental emergency  
10 response functions, including responses to  
11 hurricanes and tornados, spills of oil and  
12 hazardous materials, including Deepwater  
13 Horizon response where he lead the state's  
14 efforts in removing oil from Alabama's  
15 beaches, marshes, and near-shore  
16 environment.  
17 In addition, he has been  
18 responsible for managing ambient water  
19 quality monitoring, special water quality  
20 studies, ambient air monitoring, NPDES  
21 compliance evaluation activities, nonpoint  
22 source inspection and compliance activities  
23 and the regulatory provisions of the

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1 Alabama Coastal Program.  
2       Since Steve has been a proponent  
3 -- Steve has been a proponent of strong  
4 quality control and quality assurance. His  
5 efforts in this area led to the creation of  
6 the Department's Office of Environmental  
7 Quality. To say that Steve's replacement  
8 will have big shoes to fill is truly an  
9 understatement. Steve, please stand and be  
10 recognized for a long and distinguished  
11 career.  
12       (Audience applause)  
13       MR. LeFLEUR: In January of  
14 2010 a group of environmental organizations  
15 calling itself the ADEM Reform Coalition  
16 filed a petition with EPA requesting that  
17 EPA withdraw ADEM's authority to issue and  
18 administer NPDES water permits for failure  
19 to meet requirements of the Federal Clean  
20 Water Act. The areas of alleged failure  
21 were in permitting quality, recordkeeping,  
22 inspections, administrative procedures,  
23 enforcement, penalty assessments, and

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1 funding.  
2       In April of this year, I  
3 notified you that EPA had found that none  
4 of the allegations included in the petition  
5 to withdraw ADEM's authority to issue and  
6 administer NPDES water permits was worthy  
7 of withdrawal. That decision by EPA has  
8 been appealed to the 11th Circuit Court of  
9 Appeals by the group Environmental Defense  
10 Alliance, which is represented by the Law  
11 Office of David Ludder. The matter is  
12 pending before that court at this time.  
13       With that, once again, let me  
14 close with my thanks to you for serving the  
15 state as Commissioners on the Alabama  
16 Environmental Management Commission and for  
17 allowing me to serve the state in my  
18 capacity.  
19       If there are any questions, I  
20 will be pleased to address them now.  
21       CHAIRMAN BROWN: Thank you,  
22 Director.  
23       Any questions from the

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1 Commission?  
2       (No response)  
3       CHAIRMAN BROWN: Thank you.  
4       MR. LeFLEUR: Thank you.  
5       CHAIRMAN BROWN: Next item  
6 on the agenda is the report of the  
7 Commission Chair. I have no particular  
8 report today other than to comment a little  
9 bit on the next item, which is the  
10 Rulemaking Committee.  
11       And as many of you know or have  
12 seen, we -- the Rulemaking Committee is  
13 taking a look at our rules or procedures  
14 for public comment, and it seems that some  
15 of the feedback I've been made aware of  
16 deals with concerns that we want to  
17 eliminate that.  
18       And, as Chair, I just wanted to  
19 say that I sort of initiated or requested  
20 that the Rulemaking Committee look at that,  
21 these issues, not to kill public comment  
22 but to -- hopefully to enhance it by  
23 providing some guidance or -- as to what we

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1 would like to see. That would allow us to  
2 engage the commentators rather than -- all  
3 too often we find ourselves listening to  
4 presentations about matters that are  
5 outside our areas of prescribed  
6 responsibility or that we simply cannot do  
7 anything about and don't have much to  
8 commentary in response. And so that's why  
9 we've undertaken this review. And I just  
10 wanted to make that point clear, from the  
11 Chair's perspective.  
12       And with that, I will move on to  
13 the next item on the agenda, which is the  
14 Rulemaking Committee's report.  
15       VICE-CHAIR PHILLIPS: Thank  
16 you, Mr. Chairman.  
17       The Rulemaking Committee was  
18 charged with reviewing our existing Rule  
19 335-2-3-.05, Sections 1 through 3 regarding  
20 the Commission agenda, specifically the  
21 area of public comment.  
22       The Rulemaking Committee  
23 requested comments from the public on our

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1 existing rule and asked for comments  
2 regarding improvements, changes, or  
3 modifications to that rule. We received 56  
4 comments by our deadline of September 15th,  
5 2014 at 5 p.m. By far the majority of  
6 those comments were for the Commission to  
7 keep public comment as a part of the  
8 Commission meetings. While we did get some  
9 comments on improvements, there were not  
10 many.

11 In our Rulemaking Committee  
12 meeting today, Committee members agreed  
13 that we needed more time to review the  
14 existing rule and consider any needed  
15 changes; therefore, we have set another  
16 meeting of the Committee on December 12th  
17 at 10 a.m. in this conference room.

18 Additionally, the Rulemaking  
19 Committee today heard from Commissioner  
20 Richardson, who raised in Other Business,  
21 the topic of Environmental Justice Policy  
22 and requested the Rulemaking Committee to  
23 take this issue up after we complete our

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1 work on the public comment rule.  
2 That's it for the Rulemaking  
3 Committee report. If there are any  
4 questions, I'll be happy to answer them.

5 CHAIRMAN BROWN: Any  
6 questions from the Commission?  
7 (No response)  
8 CHAIRMAN BROWN: Next item  
9 on the agenda is consideration of adoption  
10 of proposed amendments to ADEM  
11 Administrative Code 335-3, Air Pollution  
12 Control Program regulations.

13 MR. GORE: Good morning,  
14 Mr. Chair, ladies and gentlemen, my name's  
15 Ron Gore with the Department's Air  
16 Division. We're here to ask that you make  
17 some changes to the Air rules. If you  
18 recall, several years ago EPA for the first  
19 time declared that greenhouse gases are an  
20 air pollutant. Soon thereafter, EPA  
21 adopted rules that said that large point  
22 sources of greenhouse gases have to obtain  
23 both construction and operating permits

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1 when they didn't have to do so before.  
2 Soon thereafter, the Department  
3 requested that you adopt the rules which  
4 mirror the EPA's requirements and you did  
5 so. And surprise, surprise, after the  
6 federal rulemaking, many lawsuits ensued.  
7 And recently the Supreme Court ruled that  
8 only some of these large sources of  
9 greenhouse gases have to obtain permits.

10 So what we're asking you to do  
11 is to adopt changes to the state's rules  
12 that reflect the U.S. Supreme Court's  
13 ruling on which sources have to obtain  
14 these greenhouse gas permits.

15 We held a public comment period  
16 from July 28th through September 12th. The  
17 hearing was September 10th. There were no  
18 comments. And pending any questions, I  
19 would ask you to adopt these changes.

20 VICE-CHAIR PHILLIPS: Move  
21 we adopt the proposed changes,  
22 Mr. Chairman.  
23 DR. RICHARDSON: Second.

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1 CHAIRMAN BROWN: All in  
2 favor?  
3 (All Commission members  
4 signify "aye.")  
5 CHAIRMAN BROWN: Any  
6 opposed?  
7 (No response)  
8 CHAIRMAN BROWN: Motion  
9 passes.

10 Next item on the agenda,  
11 Chair -- excuse me -- Commission will  
12 consider adoption of proposed amendments to  
13 ADEM Administrative Code 335-7, Water  
14 Supply Program regulations. Call on the  
15 Department for comments.

16 MR. HARRISON: Good morning,  
17 Mr. Chairman and members of the  
18 Commission. My name is Dennis Harrison,  
19 and I am the Chief of the Drinking Water  
20 Branch of the Water Division.

21 On July 20 -- in July of 2014,  
22 the Department initiated a rulemaking  
23 process to consider proposed amendments to

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1 ADEM Administrative Code 335-7 addressing  
2 new federal regulations that were  
3 promulgated on February 26th, 2014.  
4 Adoption of these revisions will allow the  
5 Department to retain primacy for  
6 implementation of federal drinking water  
7 requirements for public water systems in  
8 Alabama.  
9 In this rulemaking, the  
10 Department proposed changes to existing  
11 rules to adopt the requirement of the new  
12 federal revised Total Coliform Rule. These  
13 proposed revisions will provide for  
14 increased protection against microbial  
15 pathogens in public water systems. Other  
16 revisions proposed for adoption include  
17 correcting clerical errors and making  
18 clarifications to existing rules.  
19 On September 10th, 2014, a  
20 public hearing was held regarding the  
21 proposed revisions. Written comments were  
22 accepted any time during the public comment  
23 periods, which extended from July 27th,

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1 signify "aye.")  
2 CHAIRMAN BROWN: Any  
3 opposed?  
4 (No response)  
5 CHAIRMAN BROWN: Motion  
6 carries.  
7 MR. HARRISON: Thank you  
8 very much.  
9 CHAIRMAN BROWN: All right.  
10 Next on the agenda is -- Chair will --  
11 excuse me -- Commission will consider the  
12 hearing officer's order and recommendation  
13 recommending the Commission deny ADEM's  
14 motion to strike and motion to dismiss and  
15 grant ADEM's motion for summary judgment in  
16 R. Nolan Williams versus ADEM, EMC Docket  
17 No. 14-01.  
18 Chair will entertain any motion  
19 from the Commission.  
20 VICE-CHAIR PHILLIPS: I move  
21 we adopt the hearing officer's order of  
22 recommendation.  
23 DR. LAIER: Second.

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1 2014 to September 10th, 2014.  
2 During the comment period, the  
3 Department received one written comment  
4 from one commentator, which was U.S. EPA  
5 Region 4. EPA's comment concerned the  
6 clarification of an existing rule. The EPA  
7 comment has been addressed. Had the  
8 hearing on September 10th, 2014. No one  
9 presented oral testimony.  
10 The Department requests that the  
11 Commission adopt the proposed revisions  
12 with changes pursuant to EPA's comment. I  
13 will be happy to address any questions the  
14 Commission may have.  
15 VICE-CHAIR PHILLIPS: I move  
16 we adopt the proposed amendments,  
17 Mr. Chairman.  
18 DR. LAIER: Second.  
19 MR. HARRISON: Thank you  
20 very much.  
21 CHAIRMAN BROWN: All in  
22 favor?  
23 (All Commission members

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1 CHAIRMAN BROWN: All in  
2 favor?  
3 (All Commission members  
4 signify "aye.")  
5 CHAIRMAN BROWN: All right.  
6 Motion carries.  
7 Next on the agenda is other  
8 business. Is there other business any  
9 Commissioner would like to raise?  
10 (No response)  
11 CHAIRMAN BROWN: Moving on.  
12 Chair notes that the next Commission  
13 meeting will be December 12, 2014, 11 a.m.  
14 in this conference room. And with that, we  
15 will move to the public comment period.  
16 David Ludder, on behalf of the  
17 Environmental Defense Alliance, has  
18 requested to address the Commission on  
19 ADEM's Graduated Enforcement Response. The  
20 Chair has recommended that Lawyer Ludder's  
21 request to address the Commission be  
22 granted, and I will entertain a motion at  
23 this time.

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1 VICE-CHAIR PHILLIPS: I move  
2 we grant the request.  
3 DR. LAIER: Second.  
4 CHAIRMAN BROWN: All in  
5 favor?  
6 (All Commission members  
7 signify "aye.")  
8 CHAIRMAN BROWN: Mr. Ludder,  
9 ten minutes, please.  
10 MR. LUDDER: Thank you,  
11 Mr. Chairman. My name is David Ludder and  
12 I represent the Environmental Defense  
13 Alliance today. The presentation that I  
14 prepared today has to do with the  
15 Department's enforcement efforts and some  
16 concerns that we have about it. We think  
17 that the Department's Graduated Enforcement  
18 Response is intended to be a fair and  
19 expedient use of its resources to achieve  
20 compliance; however, we also think that the  
21 way it's being administered, it is  
22 resulting in delays in compliance and  
23 continued environmental degradation.

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1 This graphic illustrates what --  
2 what is called the Graduated Enforcement  
3 Response. These are basically the choices  
4 the Department has in going after a  
5 non-compliant facility: No action, a  
6 warning letter, a notice of violation, an  
7 administrative order, and litigation.  
8 Penalties cannot be imposed until you get  
9 to the level of administrative order.  
10 Everything before that is just informing  
11 the facility that there's a violation.  
12 The general theory of violation  
13 deterrent is that it is a function of a  
14 perceived risk of detection. That's the  
15 traffic cop sitting out there that you  
16 see. If you don't see them, you don't  
17 perceive a risk of getting caught. The  
18 perceived risk of certain consequences --  
19 if a traffic cop sees you speeding but  
20 tells you don't do it next time -- maybe  
21 the perception is that you're not going to  
22 have consequences. And the perceived risk  
23 of severe consequences, that's when the

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1 traffic cop issues a ticket that costs you  
2 money.  
3 On December 13th last year, the  
4 Director, in his report to the Commission,  
5 made the statement that's on this slide.  
6 And basically it says that, Compliance is a  
7 function of inspections, education, and  
8 penalties, and that his inclination was --  
9 or his -- his belief was that inspections  
10 and education are far more productive in  
11 achieving compliance than penalties,  
12 although penalties should continue to be a  
13 part of the mix.  
14 This strategy is based on a 2004  
15 study by the Oregon Department of  
16 Environmental Quality. And important note  
17 about that study, it does not include  
18 many -- many smaller facilities. It  
19 addressed major facilities. So, for  
20 example, that study omitted all non-major  
21 NPDES facilities in the study. So there's  
22 a real question of whether those  
23 conclusions apply to smaller facilities.

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1 In this graphic, the Oregon DEQ  
2 polled -- polled the representatives of  
3 industry and asked, What would make you  
4 comply? What has the most influence? And  
5 the three top influences here are shown.  
6 This is what they said would  
7 influence them. Training in the systems  
8 and publications was number one; increased  
9 inspections was number two; and increased  
10 penalties was number three. Now, mind you,  
11 these -- these results only apply to the  
12 larger facilities that were part of the  
13 study.  
14 In this graphic, the Oregon DEQ  
15 measured, or attempted to measure, what are  
16 the actual company responses to enforcement  
17 activity. In other words, this was not  
18 what you -- what do you say causes you to  
19 change your behavior, this is what actually  
20 caused a change in behavior. And you'll  
21 see that, for example, the inspection  
22 group, the direct inspection meant -- means  
23 that if your facility got inspected, that

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1 would have a strong influence in changing  
2 your behavior. If you -- and the second  
3 orange triangle says indirect inspection.  
4 That means, if someone you know had an  
5 inspection, that would cause you to change  
6 your behavior.  
7       So in this graphic, the  
8 inspections were number one, technical  
9 assistance was number two, and penalties  
10 came up -- came way less. Again, I remind  
11 you this was only for the larger  
12 facilities. Frankly, I would expect larger  
13 facilities to respond better than smaller  
14 facilities.  
15       In April of this year, the  
16 Director announced that he was, in fact,  
17 adjusting ADEM's approach to enforcement  
18 and it was going to include more  
19 inspections, more -- more rapid informal  
20 enforcement, and more technical  
21 assistance. And, in fact, the EPA  
22 dashboards show, on the left graphic, that  
23 informal enforcement is on the rise and

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1 according to the type of source they are.  
2       Now, this comment was from the  
3 Oregon study. Because this study did not  
4 address the smallest sources, the study  
5 acknowledges that a successful regulatory  
6 strategy for small companies must create  
7 general deterrence by somehow increasing  
8 the perception of enforcement risk or  
9 increasing their level of expertise.  
10       This graphic is from the EPA's  
11 Alabama State Review Framework published in  
12 March of this year. And you'll notice that  
13 in this one -- in this graphic, it's the  
14 Clean Water Act element for enforcement  
15 actions promoting return to compliance.  
16 The conclusion is that enforcement actions  
17 here in Alabama by the Department do not  
18 consistently result in violators returning  
19 to compliance within a certain time frame.  
20 And the data below that indicates that the  
21 national goal is 100 percent and ADEM's  
22 result is 57 percent.  
23       Another element of the Clean

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1 formal enforcement is on the decline. And  
2 formal enforcement includes administrative  
3 orders and litigation. Informal includes  
4 warning letters and notices of violation.  
5       Now, in this graphic on the  
6 left, it shows the facilities in the NPDES  
7 program. The large part of that circle,  
8 the large orange part, is non-major  
9 sources, and that accounts for 84 percent  
10 of the total population of NPDES sources.  
11 And, remember, the Oregon study did not  
12 include any of those types of sources. The  
13 small orange piece of the pie is  
14 non-major -- non-major sources with  
15 individual permits. Again, that was not  
16 included in the Oregon study. And then the  
17 final piece is that small sliver. Those  
18 are major sources. That was included in  
19 the Oregon study.  
20       And on the right side, there are  
21 graphics showing facilities inspected by  
22 the state in 2013 and then also a breakdown  
23 below that of facilities inspected

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1 Water Act State Review Framework is the --  
2 that timely and appropriate enforcement  
3 action should be taken in accordance with  
4 policy relating to specific media. They  
5 conclude that significant non-compliers --  
6 or non-compliance is not being addressed in  
7 a timely and appropriate manner here in  
8 Alabama. The national goal is 98 percent.  
9 Their result of reviewing ten facilities  
10 was zero percent in Alabama. And the  
11 national goal for addressing significant  
12 non-compliance is that 100 percent is the  
13 goal, and in Alabama 25 percent achieved.  
14       This excerpt is from the EPA's  
15 recent decision on the petition to  
16 withdraw. And again, they reiterate in the  
17 highlighted portion, ADEM is still not  
18 taking timely and appropriate action in  
19 many cases because ADEM relies on informal  
20 actions such as notices of violation and  
21 warning letters. And I would remind you, I  
22 think that there is an element of the  
23 petition to withdraw that EPA has yet to



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1 decide and that is specifically on  
2 enforcement.  
3       In this graphic, I've shown you  
4 what has happened in the context of one  
5 facility, and you'll notice no flags for  
6 inspections. So in this facility -- in the  
7 case of this facility, inspections did not  
8 even influence the facility's decision to  
9 comply. There are multiple notices of  
10 violation and one warning letter and still  
11 the facility didn't comply.  
12       I think the take-away lesson is  
13 that, at least in this group of facilities,  
14 or facilities like this, the risk of  
15 consequences for MOB's and warning letters  
16 is not perceived to be there and so they  
17 don't take them seriously.  
18       In this next facility, there are  
19 multiple inspections and there are multiple  
20 MOB's and multiple warning letters. And  
21 finally, I think there's -- there's an  
22 administrative order in there as well and  
23 still there is non-compliance. Again, I

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1 think the risk of severe consequences is  
2 not perceived.  
3       In this third facility, we have  
4 multiple administrative orders, multiple  
5 inspections, multiple MOB's, and still there  
6 was non-compliance. Now, I won't go  
7 through all those administrative orders.  
8 Each one has a little different twist to  
9 it. But nevertheless they are there. I'll  
10 be happy to do that if you want.  
11       Finally, on -- in February of  
12 this year, the Director made this  
13 statement, When credible objective data is  
14 used, it reduces the need to rely on  
15 limited observations, anecdotal accounts,  
16 or personal opinions. Absolutely true.  
17 Hardly can argue with that. Credible,  
18 objective data.  
19       What we think needs to happen is  
20 that when ADEM takes -- when ADEM detects a  
21 violation, there needs to begin a process  
22 of evaluating how the company responds. In  
23 other words, how many days does it take to

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1 go from detection to -- to initiation of  
2 enforcement action, whether it's a warning  
3 letter or MOB? Then how many days does it  
4 take after that to -- for the Department to  
5 determine whether or not there has been  
6 compliance? And how many days does it take  
7 before the facility is back in compliance?  
8       There's no way to do that today  
9 with the records that at least we can  
10 access on eFile. We continue to measure  
11 when they're -- well, I take that back. I  
12 think we can measure when there is  
13 compliance again by DMR's, or such similar  
14 reports. But we think that to make sure  
15 that the criticisms of EPA are addressed,  
16 we need some kind of a feedback loop to  
17 show us that the enforcement actions are  
18 actually achieving results, not being  
19 ignored.  
20       That's all I have. Any  
21 questions?  
22       (No response)  
23       CHAIRMAN BROWN: Thank you.

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1 Commission -- excuse me. I will entertain  
2 a motion to adjourn.  
3       VICE-CHAIR PHILLIPS: So  
4 move.  
5       MR. LeFLEUR: Mr. Chairman,  
6 might I respond to those comments?  
7       CHAIRMAN BROWN: If you  
8 must.  
9       MR. LeFLEUR: I don't want  
10 to go against the wishes of the Chairman.  
11       VICE-CHAIR PHILLIPS: I move  
12 we adjourn.  
13       CHAIRMAN BROWN: Second? Do  
14 I have a second?  
15       DR. LAIER: Second.  
16       CHAIRMAN BROWN: All in  
17 favor?  
18       (All Commission members  
19 signify "aye.")  
20       CHAIRMAN BROWN: We're  
21 adjourned.  
22       (The meeting concluded at  
23 11:53 a.m.)

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1 STATE OF ALABAMA)  
2 COUNTY OF MONTGOMERY)  
3  
4  
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6 proceedings were taken down by me and  
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17 Reporting as a Certified Court Reporter as  
18 evidenced by the ACCR number following my  
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|                                                |                                                                                                                                 |                                                                                                                                    |                                                          |                                                              |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------|
|                                                | 28:8,21,22                                                                                                                      | 24:7                                                                                                                               | 12:15                                                    | <b>assistance (2)</b><br>45:9,21                             |
| <b>\$</b>                                      | <b>activity (1)</b><br>44:17                                                                                                    | <b>Advisors (2)</b><br>24:3;25:15                                                                                                  | <b>Although (4)</b><br>14:14;15:14;18:4;<br>43:12        | <b>Association (2)</b><br>24:11,23                           |
| <b>\$1.5 (1)</b><br>23:9                       | <b>actual (1)</b><br>44:16                                                                                                      | <b>AFA (1)</b><br>24:11                                                                                                            | <b>ambient (2)</b><br>28:18,20                           | <b>assurance (2)</b><br>27:20;29:4                           |
| <b>\$2.6 (1)</b><br>9:13                       | <b>actually (2)</b><br>44:19;51:18                                                                                              | <b>afford (1)</b><br>21:21                                                                                                         | <b>amendments (4)</b><br>34:10;36:12,23;<br>38:16        | <b>ASTSWMO (1)</b><br>25:11                                  |
| <b>*</b>                                       | <b>Adams (1)</b><br>25:17                                                                                                       | <b>affords (1)</b><br>21:22                                                                                                        | <b>Americans (1)</b><br>18:7                             | <b>attempted (1)</b><br>44:15                                |
| <b>***** (1)</b><br>53:1                       | <b>added (2)</b><br>12:8;21:17                                                                                                  | <b>again (8)</b><br>6:5;14:21;30:13;<br>45:10;46:15;48:16;<br>49:23;51:13                                                          | <b>among (1)</b><br>8:20                                 | <b>attempting (1)</b><br>19:1                                |
| <b>A</b>                                       | <b>addition (2)</b><br>14:10;28:17                                                                                              | <b>against (2)</b><br>37:14;52:10                                                                                                  | <b>Anderson (1)</b><br>21:4                              | <b>Aubrey (2)</b><br>22:18;23:6                              |
| <b>ability (1)</b><br>9:18                     | <b>additional (1)</b><br>27:23                                                                                                  | <b>agencies (2)</b><br>8:20;17:5                                                                                                   | <b>anecdotal (1)</b><br>50:15                            | <b>Auburn (2)</b><br>15:5;20:3                               |
| <b>able (3)</b><br>7:2;8:8;15:11               | <b>Additionally (1)</b><br>33:18                                                                                                | <b>agency (1)</b><br>19:5                                                                                                          | <b>announced (1)</b><br>45:16                            | <b>Audience (3)</b><br>21:10;26:11;29:12                     |
| <b>above (1)</b><br>26:13                      | <b>address (5)</b><br>30:20;38:13;40:18,<br>21;47:4                                                                             | <b>agenda (10)</b><br>3:8;4:3;5:4;31:6;<br>32:13,20;34:9;36:10;<br>39:10;40:7                                                      | <b>appealed (1)</b><br>30:8                              | <b>August (1)</b><br>3:10                                    |
| <b>absolutely (2)</b><br>23:19;50:16           | <b>addressed (4)</b><br>38:7;43:19;48:6;<br>51:15                                                                               | <b>aggressively (1)</b><br>19:15                                                                                                   | <b>Appeals (1)</b><br>30:9                               | <b>Authorities (1)</b><br>22:21                              |
| <b>accept (1)</b><br>3:15                      | <b>addressing (3)</b><br>18:20;37:1;48:11                                                                                       | <b>ago (1)</b><br>34:18                                                                                                            | <b>appears (1)</b><br>9:7                                | <b>authority (2)</b><br>29:17;30:5                           |
| <b>accepted (1)</b><br>37:22                   | <b>ADEM (19)</b><br>5:5;11:6,21;12:1,5,<br>10;17:5;18:20;23:20;<br>26:23;29:15;34:10;<br>36:13;37:1;39:16;<br>48:17,19;50:20,20 | <b>agree (2)</b><br>18:1,1                                                                                                         | <b>applause (6)</b><br>21:9,10;22:16;26:8,<br>11;29:12   | <b>authorizations (1)</b><br>27:23                           |
| <b>access (3)</b><br>10:14;12:9;51:10          | <b>ADEM's (8)</b><br>8:17;29:17;30:5;<br>39:13,15;40:19;45:17;<br>47:21                                                         | <b>agreed (1)</b><br>33:12                                                                                                         | <b>applicable (1)</b><br>11:19                           | <b>automatically (2)</b><br>12:2,11                          |
| <b>accessible (2)</b><br>10:21,22              | <b>adjoin (2)</b><br>52:2,12                                                                                                    | <b>Air (11)</b><br>14:1;16:13,13,15,18;<br>17:14;28:20;34:11,15,<br>17,20                                                          | <b>applications (4)</b><br>9:22;10:20;11:17;<br>12:5     | <b>available (3)</b><br>6:11;7:11;12:20                      |
| <b>accomplishing (1)</b><br>21:15              | <b>adjourn (2)</b><br>52:21                                                                                                     | <b>Alabama (21)</b><br>3:3;5:15;15:5,13,22;<br>17:15,20;18:12;20:2;<br>23:8;24:5,10,16;29:1;<br>30:15;37:8;47:11,17;<br>48:8,10,13 | <b>apply (2)</b><br>43:23;44:11                          | <b>awards (1)</b><br>9:10                                    |
| <b>accordance (1)</b><br>48:3                  | <b>adjourned (1)</b><br>45:17                                                                                                   | <b>Alabama's (7)</b><br>12:14;16:3,9,13,18;<br>17:11;28:14                                                                         | <b>approach (1)</b><br>45:17                             | <b>aware (1)</b><br>31:15                                    |
| <b>according (2)</b><br>24:6;47:1              | <b>administer (3)</b><br>24:4;29:18;30:6                                                                                        | <b>Alabamians (4)</b><br>16:2,12;17:6,9                                                                                            | <b>appropriate (3)</b><br>48:2,7,18                      | <b>aye (8)</b><br>3:19,21;4:22;36:4;<br>39:1;40:4;41:7;52:19 |
| <b>accounts (2)</b><br>46:9;50:15              | <b>administered (1)</b><br>41:21                                                                                                | <b>Alabamians' (1)</b><br>15:16                                                                                                    | <b>appropriation (1)</b><br>7:1                          | <b>B</b>                                                     |
| <b>accurate (1)</b><br>12:8                    | <b>administration (1)</b><br>13:9                                                                                               | <b>ALAWADR (2)</b><br>9:4,4                                                                                                        | <b>appropriations (1)</b><br>8:1                         | <b>back (2)</b><br>51:7,11                                   |
| <b>achieve (3)</b><br>7:15;9:19;41:19          | <b>administrative (10)</b><br>29:22;34:11;36:13;<br>37:1;42:7,9;46:2;<br>49:22;50:4,7                                           | <b>albeit (1)</b><br>7:7                                                                                                           | <b>approval (1)</b><br>27:5                              | <b>based (2)</b><br>18:8;43:14                               |
| <b>achieved (1)</b><br>48:13                   | <b>Administrators (1)</b><br>25:1                                                                                               | <b>allegations (1)</b><br>30:4                                                                                                     | <b>April (2)</b><br>30:2;45:15                           | <b>basically (2)</b><br>42:3;43:6                            |
| <b>achieving (2)</b><br>43:11;51:18            | <b>adopt (8)</b><br>35:3,11,19,21;37:11;<br>38:11,16;39:21                                                                      | <b>alleged (1)</b><br>29:20                                                                                                        | <b>aquatic (1)</b><br>24:18                              | <b>basis (1)</b><br>22:2                                     |
| <b>acknowledged (1)</b><br>3:4                 | <b>adopted (3)</b><br>9:6,8;34:21                                                                                               | <b>Alliance (3)</b><br>30:10;40:17;41:13                                                                                           | <b>area (4)</b><br>10:9;27:10;29:5;<br>32:21             | <b>beaches (1)</b><br>28:15                                  |
| <b>acknowledges (2)</b><br>3:5;47:5            | <b>adoption (4)</b><br>34:9;36:12;37:4,16                                                                                       | <b>allow (2)</b><br>32:1;37:4                                                                                                      | <b>areas (7)</b><br>13:14,19;14:9,17;<br>17:9;29:20;32:5 | <b>became (2)</b><br>27:12;28:2                              |
| <b>across (1)</b><br>17:20                     | <b>advises (1)</b><br>23:17                                                                                                     | <b>allowing (2)</b><br>7:14;30:17                                                                                                  | <b>argue (1)</b><br>50:17                                | <b>become (1)</b><br>13:5                                    |
| <b>Act (4)</b><br>14:1;29:20;47:14;<br>48:1    | <b>Advisor (1)</b>                                                                                                              | <b>along (1)</b>                                                                                                                   | <b>ash (2)</b><br>14:13,19                               | <b>began (1)</b><br>26:22                                    |
| <b>action (4)</b><br>42:5;48:3,18;51:2         |                                                                                                                                 |                                                                                                                                    | <b>assessment (1)</b><br>8:22                            | <b>begin (2)</b><br>5:17;50:21                               |
| <b>actions (4)</b><br>47:15,16;48:20;<br>51:17 |                                                                                                                                 |                                                                                                                                    | <b>assessments (2)</b><br>27:16;29:23                    | <b>Beginning (1)</b><br>15:2                                 |
| <b>activities (7)</b><br>18:18;27:7,9,20;      |                                                                                                                                 |                                                                                                                                    |                                                          | <b>behalf (1)</b><br>40:16                                   |
|                                                |                                                                                                                                 |                                                                                                                                    |                                                          | <b>behavior (4)</b>                                          |

|                                                                                                                                                         |                                                                                                                  |                                                                                        |                                                                                                                                                                                     |                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| 44:19,20;45:2,6                                                                                                                                         |                                                                                                                  | 36:1,5,8,17;38:17,21;<br>39:2,5,9;40:1,5,11;<br>41:4,8,11;51:23;52:5,7,<br>10,13,16,20 | 29:1                                                                                                                                                                                | <b>company (2)</b><br>44:16;50:22                                                                           |
| <b>belief (1)</b><br>43:9                                                                                                                               | <b>C</b>                                                                                                         | <b>Chair's (1)</b><br>32:11                                                            | <b>Cobb (1)</b><br>26:4                                                                                                                                                             | <b>compare (2)</b><br>16:3,13                                                                               |
| <b>below (2)</b><br>46:23;47:20                                                                                                                         | <b>calendar (1)</b><br>13:12                                                                                     | <b>challenge (1)</b><br>6:4                                                            | <b>Co-Chair (1)</b><br>26:5                                                                                                                                                         | <b>compared (1)</b><br>15:23                                                                                |
| <b>benefit (2)</b><br>12:9;26:14                                                                                                                        | <b>call (4)</b><br>3:18;21:3;22:15;<br>36:14                                                                     | <b>change (4)</b><br>10:11;44:19,20;45:5                                               | <b>Code (3)</b><br>34:11;36:13;37:1                                                                                                                                                 | <b>compete (1)</b><br>8:3                                                                                   |
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| <b>better (1)</b><br>45:13                                                                                                                              | <b>calling (1)</b><br>29:15                                                                                      | <b>changing (1)</b><br>45:1                                                            | <b>Coliform (1)</b><br>37:12                                                                                                                                                        | <b>complete (2)</b><br>20:11;33:23                                                                          |
| <b>beyond (2)</b><br>7:23;26:13                                                                                                                         | <b>calls (1)</b><br>3:6                                                                                          | <b>charged (1)</b><br>32:18                                                            | <b>Coming (1)</b><br>11:17                                                                                                                                                          | <b>completing (1)</b><br>27:15                                                                              |
| <b>big (1)</b><br>29:8                                                                                                                                  | <b>came (2)</b><br>45:10,10                                                                                      | <b>Chief (6)</b><br>26:18;27:3,12;28:3,<br>4;36:19                                     | <b>comment (21)</b><br>6:12;13:11,18,20,22;<br>14:2;31:8,14,21;32:21;<br>33:7;34:1;35:15;37:22;<br>38:2,3,5,7,12;40:15;<br>47:2                                                     | <b>compliance (17)</b><br>10:13;12:16;27:9,13,<br>20;28:8,21,22;41:20,<br>22;43:6,11;47:15,19;<br>51:6,7,13 |
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| <b>billion (1)</b><br>23:9                                                                                                                              | <b>capabilities (1)</b><br>8:14                                                                                  | <b>Chris (1)</b><br>21:8                                                               | <b>commentator (1)</b><br>38:4                                                                                                                                                      | <b>component (1)</b><br>19:20                                                                               |
| <b>Birmingham (2)</b><br>13:21;14:8                                                                                                                     | <b>capacity (5)</b><br>23:16;24:20,22;25:3;<br>30:18                                                             | <b>CIFA (2)</b><br>22:21,22                                                            | <b>commentators (1)</b><br>32:2                                                                                                                                                     | <b>comprehensive (1)</b><br>20:6                                                                            |
| <b>bit (1)</b><br>31:9                                                                                                                                  | <b>capital (1)</b><br>23:3                                                                                       | <b>circle (1)</b><br>46:7                                                              | <b>comments (10)</b><br>13:17;32:23;33:1,4,<br>6,9;35:18;36:15;37:21;<br>52:6                                                                                                       | <b>concerned (1)</b><br>38:5                                                                                |
| <b>blocks (1)</b><br>18:17                                                                                                                              | <b>career (2)</b><br>26:22;29:11                                                                                 | <b>Circuit (1)</b><br>30:8                                                             | <b>commercial (1)</b><br>24:15                                                                                                                                                      | <b>concerns (2)</b><br>31:16;41:16                                                                          |
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| <b>bodies (1)</b><br>14:6                                                                                                                               | <b>cars (1)</b><br>17:13                                                                                         | <b>citizens (4)</b><br>10:15;14:7,7;18:22                                              | <b>Commissioner (4)</b><br>4:16;6:3;33:19;40:9                                                                                                                                      | <b>concluded (1)</b><br>52:22                                                                               |
| <b>body (1)</b><br>4:12                                                                                                                                 | <b>case (1)</b><br>49:7                                                                                          | <b>clarification (2)</b><br>4:15;38:6                                                  | <b>Commissioners (1)</b><br>30:15                                                                                                                                                   | <b>conclusion (1)</b><br>47:16                                                                              |
| <b>both (5)</b><br>7:5;10:12;11:20;<br>15:4;34:23                                                                                                       | <b>cases (1)</b><br>48:19                                                                                        | <b>clarifications (1)</b><br>37:18                                                     | <b>commitments (3)</b><br>5:19,23;26:9                                                                                                                                              | <b>conclusions (1)</b><br>43:23                                                                             |
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| <b>Branch (3)</b><br>27:13;28:2;36:20                                                                                                                   | <b>caught (1)</b><br>42:17                                                                                       | <b>cleaner (8)</b><br>16:7,7,10,11,16,16,<br>19,20                                     | <b>Committee's (1)</b><br>32:14                                                                                                                                                     | <b>conference (2)</b><br>33:17;40:14                                                                        |
| <b>breakdown (1)</b><br>46:22                                                                                                                           | <b>cause (2)</b><br>17:19;45:5                                                                                   | <b>clear (1)</b><br>32:10                                                              | <b>commonly (1)</b><br>6:16                                                                                                                                                         | <b>confidence (1)</b><br>18:15                                                                              |
| <b>Brian (1)</b><br>25:13                                                                                                                               | <b>caused (1)</b><br>44:20                                                                                       | <b>clearly (1)</b><br>11:7                                                             | <b>communicated (1)</b><br>18:11                                                                                                                                                    | <b>congratulating (1)</b><br>26:18                                                                          |
| <b>bringing (1)</b><br>23:20                                                                                                                            | <b>causes (1)</b><br>44:18                                                                                       | <b>Cleckler (2)</b><br>21:5;23:12                                                      | <b>communication (1)</b><br>20:14                                                                                                                                                   | <b>congratulations (1)</b><br>5:9                                                                           |
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|                                                                                                                                                         |                                                                                                                  | <b>Coastal (1)</b>                                                                     |                                                                                                                                                                                     | <b>consistency (1)</b>                                                                                      |

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| <b>sliver (1)</b><br>46:17                                    | <b>statewide (2)</b><br>8:17;15:6                                                                                                               | <b>supervisory (1)</b><br>20:19                                             | <b>three (6)</b><br>8:10;9:7;11:1;13:9;<br>44:5,10       | <b>truly (1)</b><br>29:8                                  |
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| <b>somewhat (4)</b><br>16:6,10,16,19                          |                                                                                                                                                 | <b>surface (2)</b><br>8:13;9:3                                              |                                                          | <b>Underground (1)</b><br>25:10                           |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                        |
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## Part B

## **Attachment Index**

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| <b>Attachment 1</b> | <b>Agenda</b>                                                                                                                           |
| <b>Attachment 2</b> | <b>Order to adopt motion to elect Lanier Brown as Chair and elect Scott Phillips as Vice Chair<br/>(Agenda Item 2)</b>                  |
| <b>Attachment 3</b> | <b>Resolution to adopt amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations<br/>(Agenda Item 6)</b> |
| <b>Attachment 4</b> | <b>Resolution to adopt amendments to ADEM Admin. Code Division 7, Water Supply Program Regulations<br/>(Agenda Item 7)</b>              |
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## **Attachment 1**



AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: October 17, 2014

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

| <u>ITEM</u>                                                                                                              | <u>PAGE</u>       |
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| 6. Consideration of adoption of proposed amendments to ADEM Admin. Code 335-3, Air Pollution Control Program Regulations | 2                 |
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\* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov), under Environmental Management Commission.

\*\* The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 15, 2014

2. ELECTIONS

The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE ADEM DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. REPORT FROM THE RULEMAKING COMMITTEE

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

The Commission will consider proposed amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations, Rule 335-3-14-.04, 335-3-16-.01 and Appendix I. Revisions are being proposed to the current construction permit regulations and Major Source Operating Permit rules in Division 3 to be consistent with the recent U.S. Supreme Court decision concerning the regulation of greenhouse gases. The Court ruled that sources of greenhouse gases would not be regulated under the PSD and Title V programs based solely on their greenhouse gas emissions. Appendix I is also being proposed for amendment to be consistent with EPA's revision of global warming potential values for certain greenhouse gases. The Department held a public hearing on the proposed amendments on September 10, 2014.

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

The Commission will consider proposed amendments to ADEM Admin. Code Division 7, Water Supply Program Regulations, chapters 335-7-1, 335-7-2, 335-7-10, 335-7-11, and 335-7-14. The proposed rulemaking would incorporate revisions made by EPA to the Total Coliform Rule (TCR). The Department held a public hearing on the proposed amendments on September 10, 2014.

8. R. NOLAN WILLIAMS V. ADEM, EMC DOCKET NO. 14-01 (NPDES-RELATED MATTER)

The Commission will consider the Hearing Officer's Order and Recommendation in which the Hearing Officer recommended that the Commission deny ADEM's Motion to Strike and Motion to Dismiss and grant ADEM's Motion for Summary Judgment in this request for hearing filed by Petitioner R. Nolan Williams, an adjoining landowner, concerning ADEM's issuance of NOR ("Notice of Registration") Tracking Number 229580/NPDES ("National Pollutant Discharge Elimination System") AFO ("Animal Feeding Operation") Permit Number AL001173 to Mark A. Potts, Newton, Alabama, Sandridge Farms, Dale County.

9. OTHER BUSINESS

10. FUTURE BUSINESS SESSION

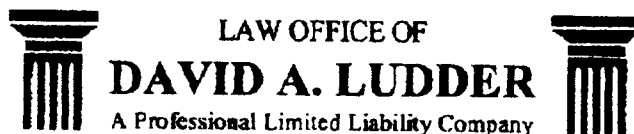
**PUBLIC COMMENT PERIOD**

(The Request from the public to address the Commission is attached to the agenda.)

David A. Ludder, Esq., on behalf of the Environmental Defense Alliance

SUBJECT: ADEM's graduated enforcement response

(Chair Brown will recommend that the Commission grant the Request. The full Commission will vote on whether or not to grant the Request prior to moving to the Public Comment Period.)



October 3, 2014

**Delivered via Facsimile**

(334) 279-3052

H. Lanier Brown, II, Esq. (Chair)

c/o Environmental Management Commission

P.O. Box 301463

Montgomery, AL 36130-1463

Re: **Request to Speak at October 17, 2014 Commission Meeting**

Dear Chairman Brown:

This is to request that I be permitted to address the Commission at its October 17, 2014 meeting on behalf of the Environmental Defense Alliance on the following topic:

***THE GRADUATED ENFORCEMENT RESPONSE***

Intent: Fair and expedient enforcement

Reality: Delayed compliance and increased environmental degradation

Fix: Continuous evaluation and adaptation

As the topic description suggests, the Environmental Defense Alliance is concerned that ADEM's implementation of the graduated enforcement response (included in ADEM's *Compliance and Enforcement Strategy*) is causing delayed compliance and unnecessary environmental degradation. The Commission has the authority to advise the Director on his manner of implementing the graduated enforcement response and to develop environmental policy for the State, including environmental enforcement policy. I intend to include a visual presentation and will provide it to the Commission as soon as it is completed, but certainly in advance of the meeting.

Sincerely,

David A. Ludder



## **Attachment 2**

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

MOTION

Elect Lanier Brown as Chair and

Elect Scott Phillips as Vice Chair

ORDER

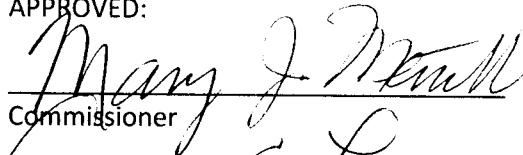
This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

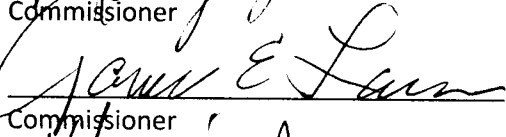
1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

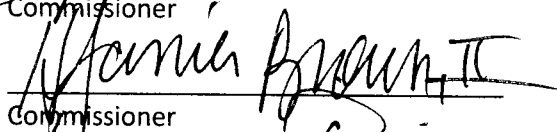
Environmental Management Commission Order  
Page 2

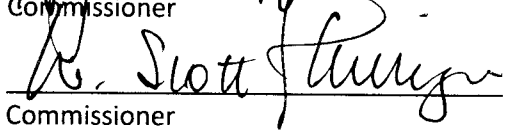
ISSUED this 17<sup>th</sup> day of October 2014.

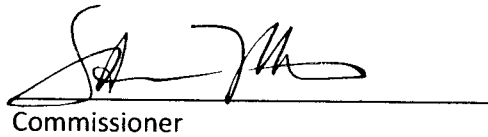
APPROVED:

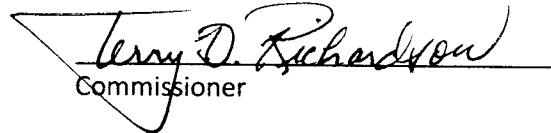
  
Commissioner

  
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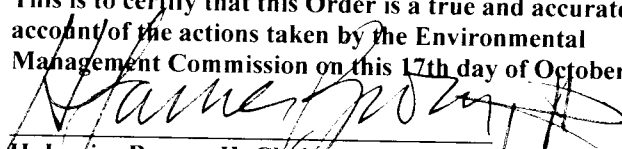
DISAPPROVED:

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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 17<sup>th</sup> day of October 2014.

  
H. Lanier Brown, II, Chair  
Environmental Management Commission  
Certified this 17<sup>th</sup> day of October 2014

## **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 335-3 of the Department's Air Division – Air Pollution Control 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 did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [rules 335-3-14-.04/Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD)] (Amend); 335-3-16-.01/Definitions (Amend); 335-3-Appendix I/Greenhouse Gas Global Warming Potentials (Amend)]; of the Department's Air Division – Air Pollution Control Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 17<sup>th</sup> day of  
October 2014.

APPROVED:

*Mary Merritt* \_\_\_\_\_ *SA/OM* \_\_\_\_\_  
*James E. Lee* \_\_\_\_\_ *Larry D. Richardson* \_\_\_\_\_  
*James Brown II* \_\_\_\_\_  
*W. Scott Quinn* \_\_\_\_\_

DISAPPROVED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 17th day of October 2014.

*James Brown II*  
\_\_\_\_\_  
H. Lamar Brown, II, Chair  
Environmental Management Commission  
Certified this 17th day of October 2014

ABSTAINED:

\_\_\_\_\_

## **Attachment 4**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-7 of the Department's Water Division – Water Supply 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. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-7 [335-7-1-.01/Definitions (Amend), 335-7-1-.03/Variance from Regulations (Amend); 335-7-1-.04/Variance Application (Amend); 335-7-1-.05/Exemption (Amend); 335-7-2-.07/Microbiological Standards and Monitoring Requirements (Amend); 335-7-2-.12/Stage 2

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

Disinfection Byproducts (Amend); 335-7-2-.21/Public Notification (Amend); 335-7-2-.22/Assessments (New); 335-7-10-.05/Records (Amend); 335-7-10-.06/Reports (Amend); 335-7-11-.04/Initial Monitoring to Establish Action Levels (Amend); 335-7-11-.05/Repeat Monitoring Requirements (Amend); 335-7-11-.06/Number of Lead-Copper Monitoring Sites (Amend); 335-7-11-.14/Corrosion Control Parameter Monitoring (Amend); 335-7-11-.17/Public Education Requirement (Amend); 335-7-11-.18/Reporting Requirements (Amend); 335-7-14-.04/Content of Reports (Amend); 335-7-14-.05/Additional Reporting Contents (New); 335-7-14-.06/Required Additional Health Information (Amend); 335-7-14-.07/Report Delivery and Recordkeeping (Amend); 335-7-14 Appendix B/Regulated Contaminants for CCR (Amend); 335-7-14 Appendix C/Health Affects and Required Language for Specific Contaminants (Amend)] of the Department's Water Division – Water Supply Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-7 -- Water Supply Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 17th day of  
October 2014.

APPROVED:

Mary J. Merritt  
James E. Lamm  
Haniel Brown II  
W. Scott Turner

Sam Latta  
Terry D. Richardson

DISAPPROVED:

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This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 17th day of October 2014.

Haniel Brown II  
H. Lanier Brown, II, Chair  
Environmental Management Commission  
Certified this 17th day of October 2014

ABSTAINED:

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\_\_\_\_\_

## **Attachment 5**

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

|                                     |   |                      |
|-------------------------------------|---|----------------------|
| In the Matter of:                   | ) |                      |
|                                     | ) |                      |
| R. Nolan Williams,                  | ) |                      |
|                                     | ) |                      |
| Petitioner,                         | ) |                      |
|                                     | ) | EMC Docket No. 14-01 |
| vs.                                 | ) |                      |
|                                     | ) |                      |
| Alabama Department of Environmental | ) |                      |
| Management,                         | ) |                      |
|                                     | ) |                      |
| Respondent.                         | ) |                      |

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ORDER


The Commission having considered the record, including the Hearing Officer's Order and Recommendation; ADEM's Motion to Strike and Motion to Dismiss; ADEM's Amended Motion to Strike and Motion to Dismiss; Petitioner's Response to the Motion to Strike and Motion to Dismiss as Filed by the Department Amended Pleading; ADEM's Motion for Summary Judgment; ADEM's Memorandum of Law in Support of ADEM's Motion for Summary Judgment and Exhibits A - G; and Petitioner's Response to the Motion for Summary Judgment as Filed by the Department, hereby ORDERS, ADJUDGES, and DECREES as follows:

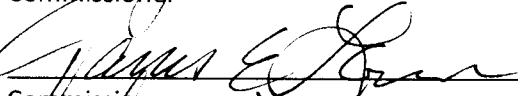
1. That the Hearing Officer's Order and Recommendation is hereby adopted; and
2. That pursuant to the adoption of the Hearing Officer's Order and Recommendation, ADEM's Motion to Strike and Motion to Dismiss is hereby denied and ADEM's Motion for Summary Judgment is hereby granted; and
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
4. That a copy of the Order, along with a copy of the Hearing Officer's Order and Recommendation, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.



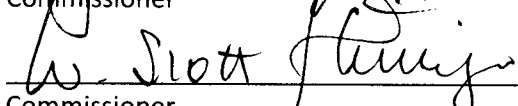
ISSUED this 17th day of October 2014.

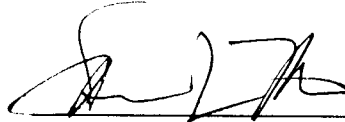
APPROVED:

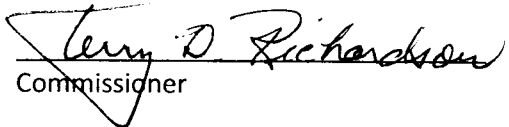
  
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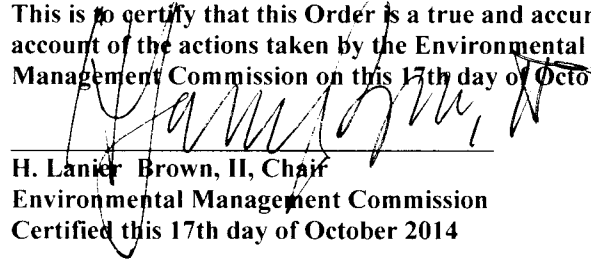
DISAPPROVED:

\_\_\_\_\_  
Commissioner

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Commissioner

\_\_\_\_\_  
Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 17th day of October 2014.

  
\_\_\_\_\_  
H. Lanier Brown, II, Chair  
Environmental Management Commission  
Certified this 17th day of October 2014

BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

R. NOLAN WILLIAMS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 ) DOCKET NO. 14-01  
 )  
 ALABAMA DEPARTMENT OF )  
 ENVIRONMENTAL MANAGEMENT, )  
 )  
 Respondent. )



**ORDER AND RECOMMENDATION**

This matter is before the Undersigned Hearing Officer on the Department’s “Motion to Strike and Motion to Dismiss,” as amended, and the Department’s “Motion for Summary Judgment.” The evidentiary hearing previously set for September 17, 2014, was continued by the Undersigned pending resolution of the aforesaid Motions.

1. On June 26, 2014, the Department issued a Notice of Registration (“NOR”)/NPDES Permit to Mark A. Potts related to an animal feeding operation (poultry farm). An adjoining landowner, R. Nolan Williams, the Petitioner in these proceedings, filed an objection and hearing request related to the NOR/NPDES Permit arguing that no notice was provided to Petitioner prior to the Department’s grant of the Permit. The Department subsequently filed a “Notice of Pleading Defects” arguing that the Petitioner’s request for hearing did not include a short and plain statement of error as required by ADEM Admin. Code R. 335-2-1-.04(5). In response, Petitioner filed an “Amended “Pleading” to further reiterate his grounds for appeal, to wit: That the Department granted the subject Permit without notice to him as an adjoining landowner and, therefore, the Permit was not lawful. The Department then filed a “Motion to Strike and Motion to Dismiss” and an “Amended Motion to Strike and Dismiss” arguing that the Petitioner’s notice of appeal, as amended,

did not comply with ADEM's administrative code.

2. The Undersigned entered an Order on August 12, 2014, advising, among other things, that the parties could file a statement as to whether Petitioner was given notice of the Permit proceedings and whether Petitioner was required to receive any such notice. The Department then filed a "Motion for Summary Judgment."

3. For purposes of this appeal, the Undersigned assumes from a purely procedural standpoint that Petitioner's notice of appeal was proper and that the June 26, 2014, letter from the Department to Mark A. Potts regarding the NOR/NPDES Permit constituted administrative action which could be the basis of an appeal. Hence, the Undersigned recommends the denial of the Department's Motion to Strike and Motion to Dismiss. However, for the reasons stated herein, the Undersigned recommends the Department's Motion for Summary Judgment be granted.


4. The primary basis of Petitioner's appeal is the argument that he was entitled to notice of the Permit proceedings referenced in the June 26, 2014, letter. Petitioner, in essence, argues that because the permitted poultry operation would interfere with his use and enjoyment of his property, he should have received notice of the proceedings. As noted above, the Undersigned allowed the parties to present any arguments they had in support or opposition of their respective positions and held a phone conference with the parties referencing this subject. Petitioner did not present any arguments that supported his position that Department rules, regulations or other applicable law required any such notice. Conversely, the Department presented evidence indicating that no such notice was required. Moreover, and in any event, the Department presented evidence that Petitioner received actual notice of the proceedings when he met with ADEM officials prior to the June 26, 2014, letter. Since there was no law, rule or regulation submitted to the Undersigned indicating that

formal notice of the type argued by Petitioner was required, the Undersigned finds that summary judgment should be granted in favor of the Department. Whether Petitioner has any desire and grounds to commence proceedings in state court directly against the poultry farm owner related to Petitioner's assertion that the poultry farm allegedly interferes with use and enjoyment of Petitioner's property, are decisions left to Petitioner. The Undersigned is only holding that there exists no genuine issue of material fact as to the subject appeal against the Department and that the Department is entitled to judgment as a matter of law. In other words, the Undersigned finds that Petitioner does not state a proper appeal from a substantive standpoint against the Department based on the allegations in the notice of appeal.

5. Based on the foregoing, the Undersigned recommends that the Department's Motion for Summary Judgment be GRANTED. The scheduling of any evidentiary hearing before the Undersigned is deemed moot.

6. Petitioner shall have ten (10) days from the date of service of this Order and Recommendation to file any objections to the same. Not later than three (3) days prior to the meeting of the Commission on October 17, 2014, or ten (10) days after receipt of notice of the filing of objections, if any, by Petitioner, whichever is sooner, the Department may file and serve with the Commission a reply brief responding to arguments raised by Petitioner.

Done this 22<sup>nd</sup> day of September, 2014.



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R. Rainer Cotter, III  
Hearing Officer  
PO Box 310910  
Enterprise, Alabama 36330  
Ph. 334-347-2626  
Fax 334-393-1396  
Email: [rrc@enterpriselawyers.com](mailto:rrc@enterpriselawyers.com)

## CERTIFICATE OF SERVICE

The above-signed hereby certifies that the foregoing has been served on the following individuals by placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed this 22nd day of September, 2014:

Debi Thomas, Commission Secretary  
PO Box 301463  
Montgomery, Alabama 36130-1463  
Email: [aemc@adem.state.al.us](mailto:aemc@adem.state.al.us)

Anthony Todd Carter  
Rebecca E. Patty  
PO Box 301463  
Montgomery, Alabama 36130-1463  
Email: [atcarter@adem.state.al.us](mailto:atcarter@adem.state.al.us)  
[rep@adem.state.al.us](mailto:rep@adem.state.al.us)

Mickey John Glen McDermott  
PO Box 34  
Montgomery, AL 36101-0034  
E-mail: [mcdermottattorneys@gmail.com](mailto:mcdermottattorneys@gmail.com)