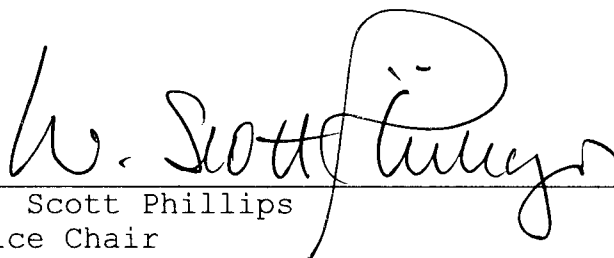


12/13/13

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 18, 2013

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 18, 2013.

A handwritten signature in black ink, appearing to read "W. Scott Phillips". The signature is written in a cursive style with a large, looped initial "W".

W. Scott Phillips
Vice Chair
Alabama Environmental Management Commission

Certified this 13th day of December 2013.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 18, 2013

Convened: 11:00 a.m.
Adjourned: 12:23 p.m.

Part A

Transcript
Word Index

Part B

Attachment Index
Attachments 1 - 4

Part A

L*4545*L* Page 1

1
2 * * * * *
3
4 ALABAMA DEPARTMENT OF ENVIRONMENTAL
5 MANAGEMENT
6 COMMISSION MEETING
7
8 * * * * *
9
10 ALABAMA DEPARTMENT OF ENVIRONMENTAL
11 MANAGEMENT
12 (ADEM)
13 1400 Coliseum Boulevard
14 Alabama Room
15 Montgomery, Alabama 36110-2400
16
17 October 18, 2013
18 11:00 a.m.
19
20
21
22 Taken by: Margaret-Lea Flatt, ACCR# TL2024
23

Page 3

1 (The proceedings began at
2 11:00 a.m.)
3 VICE-CHAIRMAN PHILLIPS: Good
4 morning. We'll call the meeting of the
5 Environmental Management Commission to
6 order. I want to acknowledge that we have
7 a quorum.
8 So we'll move to
9 Agenda Item No. 1 for the consideration of
10 the minutes of our Commission meeting held
11 on August the 16th.
12 I'll entertain a
13 motion from the Commission regarding the
14 minutes.
15 COMMISSIONER LESTER: So moved.
16 COMMISSIONER LAIER: Second.
17 VICE-CHAIRMAN PHILLIPS: I have
18 a motion to second. Any further
19 discussion?
20 (No response.)
21 VICE-CHAIRMAN PHILLIPS: No
22 further discussion.
23 All in favor of the

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1 A P P E A R A N C E S
2
3 COMMISSION MEMBERS PRESENT:
4 W. Scott Phillips, Vice Chair
5 James E. Laier, Ph.D., P.E.
6 John H. Lester, D.V.M.
7 Mary J. Merritt
8 Samuel L. Miller, M.D.
9 Terry D. Richardson, Ph.D.
10
11 COMMISSION MEMBERS NOT PRESENT:
12 H. Lanier Brown, II, Esq., Chair
13
14 ALSO PRESENT:
15 Robert Tambling, EMC Legal Counsel
16 Debi Thomas, EMC Executive Assistant
17 Lance R. LeFleur, ADEM Director
18 Phillip Davis, Chief, Land Division
19 Nelson Brooke, Black Water Riverkeeper
20 Barbara Evans
21 Benjamin Eaton
22
23

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1 motion, signify with the sign "Aye."
2 ALL: Aye.
3 VICE-CHAIRMAN PHILLIPS: All
4 opposed, same sign.
5 (No response.)
6 VICE-CHAIRMAN PHILLIPS: Motion
7 carries.
8 Agenda Item No. 2,
9 it's time, once again, for the Commission
10 to consider the election of the Commission
11 Chair and Vice-Chair. So I will entertain
12 a motion from the Commission for Chair.
13 COMMISSIONER LESTER:
14 Mr. Chairman, I make a motion that we
15 re-elect the present Chairman and
16 Vice-Chairman.
17 COMMISSIONER MILLER: Second.
18 VICE-CHAIRMAN PHILLIPS: I have
19 a motion and a second to stay with the
20 current Chair, Lanier Brown, and current
21 Vice-Chair, which is me.
22 Any discussion on
23 the motion?

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1 (No response.)
2 VICE-CHAIRMAN PHILLIPS: All in
3 favor of the motion, signify with the sign
4 "Aye."
5 ALL: Aye.
6 VICE-CHAIRMAN PHILLIPS: Any
7 opposed?
8 (No response.)
9 VICE-CHAIRMAN PHILLIPS: Motion
10 carries.
11 Okay. We'll move to
12 Agenda Item No. 3 while we're signing the
13 motion -- report from the Director.
14 Mr. Director?
15 DIRECTOR LEFLEUR: Good morning
16 and congratulations to the Chairman and
17 the Vice-Chairman on their election.
18 I would also like to
19 recognize that Commissioner Mary Merritt
20 has been elected as the president of the
21 Enterprise Chamber of Commerce. That's
22 quite an honor and congratulations.
23 Good morning, again,

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1 and welcome to all of you present for the
2 first of the six scheduled meetings of the
3 Alabama Environmental Management
4 Commission for Fiscal Year 2014.
5 In today's report, I
6 will update you on the budget and continue
7 the Departmental performance review begun
8 at the last Commission meeting by
9 presenting the water media dashboards,
10 discuss the progress of the e-complaint
11 system, and close by recognizing several
12 members of the Department who have reached
13 new milestones in their individual
14 professional development.
15 Budget items first.
16 We are now at the beginning of Fiscal Year
17 2014, and except for federal sequestration
18 related shortfalls, we anticipate that our
19 state-generated funds will suffice to
20 allow the Department to carry on at the
21 minimum level necessary to meet all
22 federal grant obligations.
23 The recent federal

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1 government shutdown had negligible
2 financial or operational impact on the
3 Department. Normally, we do have regular
4 interaction with EPA and that was
5 essentially eliminated, however, it did
6 not materially impact the Department.
7 In previous
8 Commission meetings, I have shared with
9 you that in spite of extremely low funding
10 levels, the Department has been recognized
11 by federal oversight agencies and the
12 regulated community as being a high
13 performance provider of environmental
14 regulation. Nonetheless, regardless of
15 where the Department is currently, we are
16 committed to further improving
17 performance. The bulk of my remarks today
18 will focus on performance, performance,
19 and performance.
20 Compliance and
21 enforcement metrics, which are objective
22 measures of performance, are important
23 tools for managing any regulatory

Page 8

1 organization. Metrics are most useful
2 when tracked over time and when compared
3 to the same measures for comparable
4 organizations. They help identify areas
5 where improvement may be possible.
6 In February of this
7 year, EPA announced the release of new
8 state interactive visual compliance and
9 enforcement metrics -- commonly referred
10 to as dashboards -- that provide
11 comparative maps that track the
12 performance of the state and EPA
13 compliance and enforcement programs across
14 the nation. The launch of this new system
15 has not been without glitches.
16 The implementation
17 of this new federal system will, when
18 fully operational, provide the Department
19 with a new tool to analyze its performance
20 against other states and advance our
21 management efforts. The new federal
22 system will also allow individual citizens
23 access to standard performance reports

<p style="text-align: right;">Page 9</p> <p>1 comparing Alabama to other states in 2 addition to the in-depth information about 3 Alabama environmental activities, which 4 has been available for some time on the 5 ADEM website. This will allow any citizen 6 or group that wishes, to be informed. 7 The interactive 8 state performance dashboards are located 9 on EPA's Enforcement and Compliance 10 History Online, ECHO, web site. ECHO is 11 an EPA tool that allows the user to map 12 federal and state inspection, violation, 13 and enforcement information for more than 14 800,000 regulated facilities. The web 15 address is shown as a link on the ADEM 16 website, which allows easy reference to 17 both the federal dashboards and the ADEM 18 e-system. The dashboards will provide the 19 big picture, and the ADEM e-system allows 20 for a more detailed analysis. 21 Although these 22 dashboards allow a user to measure the 23 performance of the various states and EPA</p>	<p style="text-align: right;">Page 11</p> <p>1 inspections, and finally, the enforcement 2 activities related to those facilities 3 found to be in noncompliance. Each of the 4 areas addressed was compared to either 5 national averages or EPA national 6 standards. 7 Today we will 8 continue with examination of the Water 9 media using a similar analysis of the 10 NPDES, National Pollutant Discharge 11 Elimination System, program under the 12 Clean Water Act. As was the case in 13 looking at RCRA dashboards at the last 14 meeting, we will use these dashboards to 15 answer such questions as: how many, and 16 what types of facilities are regulated? 17 How many have been inspected? How many 18 have violations? And what enforcement 19 actions have been taken? 20 Please turn your 21 attention to the screen where I will walk 22 you through a few of the NPDES dashboards 23 available for analysis of those programs.</p>
<p style="text-align: right;">Page 10</p> <p>1 in the environmental arena, it is 2 important to remember that there are 3 currently data gaps, reporting delays, and 4 data inaccuracies that require careful 5 interpretation of the results displayed. 6 Over time, the quality of comparison data 7 can be expected to improve. In spite of 8 the current shortcomings, I would like to 9 continue the process of regular analysis 10 of Departmental performance using these 11 dashboards that I began at the last 12 Commission meeting. 13 As you will recall 14 from my last presentation, I focused on 15 the Land Division's administration of the 16 federal Resource Conservation and Recovery 17 Act of 1976, which established a 18 regulatory structure for the management of 19 solid and hazardous wastes. The 20 presentation highlighted the number of 21 facilities regulated, the types of 22 facilities, the inspection rates for the 23 largest facilities, the results of those</p>	<p style="text-align: right;">Page 12</p> <p>1 This first slide shows the total number of 2 NPDES regulated facilities in each of the 3 states. As you can see on this map, 4 Alabama, with just under 10,000 regulated 5 facilities, falls into the group of states 6 with the second largest number of 7 regulated facilities. 8 This map is a good 9 illustration of one of the reasons careful 10 interpretation of the report is necessary. 11 As you can see, there are only three 12 states in the dark blue indicating that 13 they have more regulated facilities than 14 Alabama. Clearly, states such as 15 California, Georgia, Indiana, Michigan, 16 and others with larger populations and 17 industrial bases than Alabama would be 18 expected to have more regulated 19 facilities. This apparently illogical 20 situation is explained by the fact that 21 currently EPA only requires reporting for 22 so-called "majors" or large facilities, 23 and thus, some states only report those</p>

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1 majors; while other states, including
2 Alabama, report all categories. In the
3 future, all states will be required to
4 report all categories.
5 This second slide
6 represents Alabama's total universe of
7 facilities permitted under the NPDES
8 program and accurately reflects the
9 State's total universe for the NPDES
10 program is 9,669 facilities. Those
11 facilities are classified by permit type
12 as follows: Individual Majors, shown in
13 blue, 189; Individual Non-Majors shown in
14 yellow, 1,408; and General Permits shown
15 in orange, 8,074.
16 As an aside, this
17 slide also reflects our considerable
18 efforts to promote the use of General
19 Permits, which reduces work load, and in
20 many cases results in more restrictive
21 discharge limits.
22 Since the EPA
23 database currently only has complete

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1 comparable data for so-called "majors" in
2 all states, we will be using that portion
3 of Alabama's total universe to draw
4 comparisons against other states and EPA
5 national standards.
6 In this third slide,
7 you see a comparison of the percentage of
8 inspections conducted at Individual Major
9 Facilities in Alabama for the period from
10 2009 through the first quarter of 2013 to
11 the national standard of 50 percent
12 established by EPA.
13 The 2013 data is for
14 the first quarter only as shown by the
15 dark portion of that bar. By year end,
16 this bar will also exceed the 50 percent
17 standard by a significant margin as shown
18 by the additional light blue portion of
19 that bar. This measure of the rate of
20 inspections is one of our grant
21 commitments made each year to EPA. As you
22 can see, the Water program consistently
23 meets or exceeds the EPA requirement for

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1 the rate of inspections.
2 The dashboard shown
3 on this fourth slide reflects the
4 percentage of Individual Major Facilities
5 that were found to be in significant
6 non-compliance, SNC, with an applicable
7 state or federal requirement. This
8 compliance designation is determined by
9 automated analysis of the data reported to
10 EPA.
11 Failure to submit
12 discharge monitoring reports, DMRs,
13 unauthorized discharges, or violation of
14 any judicial or administrative order can
15 cause a facility to be classified in
16 significant non-compliance. Because this
17 is a wholly automated process, not only in
18 Alabama but across the country, it is an
19 objective measure of the state's
20 performance compared to that of other
21 states.
22 The rate of
23 significant non-compliance in Alabama for

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1 FY13 is expected to be significantly below
2 the national average shown in red, and
3 this number has consistently dropped since
4 2009.
5 On this fifth slide,
6 you see the total number of all
7 enforcement actions taken in the Water
8 program for the period from 2009 through
9 the first quarter of FY2013. Formal
10 actions are shown in blue, and the
11 informal actions are shown in yellow.
12 Since informal enforcement actions do not
13 carry monetary penalties, they must be
14 considered comparable to regulated
15 industry training or education.
16 If this slide is
17 analyzed in conjunction with the previous
18 two slides where the numbers of
19 inspections is up and the percentage of
20 facilities in significant non-compliance
21 is down, it can reasonably be interpreted
22 that the increased number of informal
23 enforcement actions, which are in many

<p style="text-align: right;">Page 17</p> <p>1 ways educational, is having the desired 2 impact of promoting greater compliance. 3 In closing out the 4 Water media dashboards, I will once again 5 remind you that the data presented must be 6 interpreted with care because the system 7 is not yet fully populated or fully 8 operational. Over time, the reliability 9 of the information presented will improve. 10 Periodically, it has 11 been my practice to report to you on 12 various efforts to improve Departmental 13 performance, and I am doing so again 14 today. An important contributor to 15 improved performance involves our 16 electronic management of facility data and 17 other information. The dashboards just 18 presented help us manage our organization 19 by utilizing performance measuring data or 20 metrics to objectively compare the 21 Department's performance against EPA's 22 standards and our counterparts in other 23 states. These comparison metrics can</p>	<p style="text-align: right;">Page 19</p> <p>1 to discuss in a bit more detail our 2 eComplaint system. 3 In broad terms, the 4 Department achieves its mission to assure 5 for all citizens of the state a safe, 6 healthful, and productive environment by 7 issuing permits that are protective of the 8 environment and human health, inspecting 9 to make sure permit conditions are met, 10 and taking enforcement actions when permit 11 conditions are not met. Maximum 12 compliance with permit conditions is the 13 goal. The Department takes a 14 multi-pronged approach toward achieving 15 the goal of maximum compliance with permit 16 conditions. 17 Enforcement, along 18 with risk-based inspections and regulated 19 industry training combine to build a 20 program that achieves the compliance goal. 21 Developed primarily to assist with the 22 enforcement portion of our overall 23 compliance program, the eComplaint system</p>
<p style="text-align: right;">Page 18</p> <p>1 point us to areas where improvement may be 2 possible. 3 We also seek to 4 manage other types of information to make 5 our operations more efficient. As I have 6 reported in the past, electronic facility 7 data and other information management is 8 an area where we have invested a 9 substantial percentage of our resources. 10 In addition to the metrics data, some 11 examples of the types of other electronic 12 information managed include eFile; eNOI, 13 notice of intent to operate under a 14 general permit; eDMR, discharge monitoring 15 report; eDWR, drinking water monitoring 16 report; eSSO, sanitary sewer overflows; 17 ePay; and eComplaint systems. 18 To illustrate how 19 electronically managing this other 20 information can improve performance, just 21 as the metrics data management that goes 22 into dashboards can highlight possible 23 areas for improvement, today I would like</p>	<p style="text-align: right;">Page 20</p> <p>1 also has citizen involvement as an 2 important objective. 3 The eComplaint 4 system has been in development for several 5 years and has been fully operational for 6 about 30 months. The purpose of 7 eComplaint is three-fold: to allow 8 citizens a convenient way to file 9 complaints; to increase Departmental 10 performance by focusing inspection and 11 enforcement efforts on those facilities 12 where there is an increased likelihood of 13 non-compliance; and to increase 14 Departmental efficiency by reducing the 15 manpower necessary to enter and administer 16 complaints. 17 The eComplaint 18 system allows anyone with access to a 19 computer or smart phone to file a 20 complaint 24/7. If they wish, the person 21 filing the complaint can do so 22 anonymously. Receipt of the complaint is 23 acknowledged and a file number is</p>

<p style="text-align: right;">Page 21</p> <p>1 assigned, so anyone can check on the 2 status of the complaint at any time. Once 3 a complaint is filed, even without the 4 file number, an individual can go to the 5 Department website and enter the location, 6 company name, or other information and 7 locate the entire facility file. 8 The file contains 9 all actions related to the site including 10 the specific permit, inspections, 11 correspondence, and enforcement 12 activities. If the individual filing the 13 complaint provided contact information, 14 the eComplaint system will even notify the 15 individual when the matter has been 16 processed. 17 For those without 18 access to a computer or smart phone, a 19 telephone call to the main telephone 20 number for the Department or a letter will 21 quickly begin the complaint process. If 22 contact information is provided, the same 23 notifications in the website-based system</p>	<p style="text-align: right;">Page 23</p> <p>1 achievable any more than it is possible to 2 assure that none of the automobiles 3 traveling on the interstate ever exceed 4 the 70-miles-per-hour speed limit. 5 The eComplaint 6 system helps the Department utilize 7 limited resources to focus enforcement 8 efforts where there is an increased 9 likelihood of non-compliance. To be sure, 10 every complaint does not indicate an 11 occurrence of non-compliance. For 12 example, many of the slides recently 13 presented to the Commission showed 14 conditions up gradient from the designed 15 treatment systems so settling ponds and 16 other storm water control features that 17 prevent silt from entering waters of the 18 state were not depicted. 19 Likewise, it is 20 widely understood in the environmental 21 regulatory community, including EPA, that 22 extraordinarily heavy rain events over 23 short time periods can represent upset</p>
<p style="text-align: right;">Page 22</p> <p>1 will be provided. 2 At the last two 3 Commission meetings, there have been 4 citizen presentations related to the 5 Department's construction stormwater 6 enforcement program. Many of the concerns 7 expressed were initially brought to the 8 attention of the Department through the 9 eComplaint system. It is this community 10 participation in the eComplaint system 11 that clearly demonstrates that the system 12 works. The Department is very pleased 13 that the public is involved in this 14 important activity. 15 As mentioned just a 16 moment ago, the Department's ultimate goal 17 is maximum compliance with permit 18 conditions. Realistically, even if the 19 state-provided budget were in the top 20 2 percent in the nation, rather than a 21 budget in the bottom 2 percent where we 22 are now, it is unlikely that 100 percent 23 compliance 100 percent of the time is</p>	<p style="text-align: right;">Page 24</p> <p>1 conditions that can overwhelm even the 2 best control systems, as was illustrated 3 in a number of the slides presented at the 4 last Commission meeting. This situation 5 is not normally considered non-compliance 6 requiring enforcement action by regulatory 7 agencies. 8 However, although 9 some complaints do not necessarily reflect 10 non-compliance, citizen involvement -- and 11 in particular, the eComplaint system -- 12 are extremely valuable in moving us toward 13 our goal of the maximum level of 14 compliance, not only in the construction 15 storm water arena, but in all of our 16 enforcement efforts. 17 Enforcement is an 18 important component of compliance. 19 Although the US Office of the Inspector 20 General deemed the Department to be one of 21 the top ten in the nation regarding 22 enforcement, in spite of being 49th in the 23 nation of state-provided funding, we</p>

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1 cannot and will not let up on our efforts
2 to incorporate enforcement along with
3 inspections and regulated industry
4 training to obtain the highest possible
5 level of compliance.
6 I thank all citizens
7 who assist the Department by using the
8 eComplaint system.
9 Improving the
10 performance of the Department is an
11 ongoing activity, and I have reported on
12 several efforts. Another way we seek to
13 improve performance is to encourage the
14 professional development of our staff.
15 Today, I would like
16 to recognize members of our staff who have
17 achieved a milestone in their professional
18 development by earning either their
19 Professional Engineer or PE, or Certified
20 Public Manager, CPM, designation. As you
21 may be aware these designations require
22 rigorous study, training, and testing.
23 I'm glad I am not going through what they

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1 have been through.
2 Please let me
3 introduce them to you, and after they all
4 stand, join me in a round of applause for
5 their significant accomplishment.
6 I don't know how
7 many are here today, but I will begin by
8 introducing those who have earned their PE
9 designation. Julie Ange, Latoya Hall,
10 Jared Kelly, Ashley Mastin, Jack Mobley,
11 please remain standing. We want to see
12 your smiling faces.
13 Those who have
14 earned their CPM, Certified Public Manager
15 designation, Gina Curvin, John Dean, Bruce
16 Freeman, Becky Patty, and Scott Ramsey.
17 Congratulations to each and every one of
18 you.
19 (Applause.)
20 DIRECTOR LEFLEUR: After January
21 we'll look into getting you a raise.
22 Finally, in keeping
23 with the water theme in the dashboards

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1 presentation, I invite everyone present to
2 please take a look at the display board in
3 the lobby which focuses on water body
4 classifications, including current
5 proposals for upgrading several water
6 bodies which are out for public comment.
7 Once again, let me
8 close with my thanks to you for serving
9 the state of Alabama as Commissioners on
10 the Alabama Environmental Management
11 Commission and for allowing me to serve
12 the State in this capacity. If there are
13 any questions, I'd be pleased to try to
14 address them now.
15 VICE-CHAIRMAN PHILLIPS: Thank
16 you, Mr. Director, and congratulations to
17 all of our wonderful staff. Great work.
18 Any questions from
19 the Commission to the Director?
20 (No response.)
21 VICE-CHAIRMAN PHILLIPS: Okay.
22 Thank you.
23 Agenda Item No. 4 is

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1 a report from the Commission Chair.
2 Considering I'm serving in that capacity
3 today, I don't know of anything that
4 Commissioner Brown had to say. So we'll
5 move to Agenda Item No. 5.
6 Agenda Item No. 5 is
7 that we will consider as a Commission the
8 adoption of proposed amendments to ADEM's
9 Administrative Code Division 335-6, which
10 is the Water Quality Program regulations
11 Chapter 335-6-16, Administrative
12 Guidelines and Procedures for the Alabama
13 Underground and Above-ground Storage Tank
14 Trust Fund.
15 I'll call on the
16 Department for comments.
17 MR. DAVIS: Good morning, and
18 thank you.
19 Mr. Chairman and
20 members of the Commission, my name is
21 Phillip Davis from the Department's Land
22 Division. You have before you a proposed
23 revision to Division 6 Chapter 16 of the

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1 ADEM Administrative Code, which contains
2 the administrative procedures for the
3 Alabama Underground and Above-ground
4 Storage Tank Trust Fund.
5 Earlier this year,
6 the Alabama Storage Tank Trust Fund
7 management board voted to recommend to the
8 Commission that the per-occurrence
9 indemnification limit for fund-eligible
10 tank releases be increased from 1.1 to one
11 to \$1.3 million. This amount is
12 periodically reviewed and adjusted and was
13 last increased in January 2010.
14 The rule-making
15 proposal you have before you proposed
16 335-6-16-.09 would implement this
17 recommended increase. A public notice for
18 this rule-making was published on
19 July 28th, and a public hearing was held
20 on September 11th of this year. No
21 comments were received during the comment
22 period or at the hearing.
23 The Department

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1 requests your consideration of this
2 revision as proposed. And I'd be glad to
3 answer any questions that you might have
4 at this time.
5 VICE-CHAIRMAN PHILLIPS: I'll
6 entertain a motion from the Commission
7 regarding the proposed amendments to the
8 Water Quality Program regulations.
9 COMMISSIONER RICHARDSON: I move
10 to adopt.
11 COMMISSIONER LAIER: Second.
12 VICE-CHAIRMAN PHILLIPS: I have
13 a motion and a second. Are there any
14 further discussion or questions for the
15 Department?
16 (No response.)
17 VICE-CHAIRMAN PHILLIPS: There
18 were none. All in favor of the motion
19 signify with the sign "Aye."
20 ALL: Aye.
21 VICE-CHAIRMAN PHILLIPS: All
22 opposed, same sign.
23 (No response.)

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1 VICE-CHAIRMAN PHILLIPS: Good.
2 Thank you. We'll wait a moment as we sign
3 the resolution.
4 Okay. We'll move to
5 Agenda Item No. 6, the City of Brundidge,
6 Alabama versus ADEM and Brundidge
7 Acquisitions, LLC, EMC Docket No. 13-02.
8 I'll note that the Commission will
9 consider the Report of the Hearing Officer
10 and that the report includes proposed
11 findings of fact, conclusions of law, and
12 the Hearing Officer's recommendations.
13 Petitioner filed
14 objections to the Report of the Hearing
15 Officer and a request for oral argument
16 and proposed alternative findings of fact
17 and conclusions of law. The Department
18 filed a reply to the Petitioner's
19 objections and request for oral argument,
20 and then the Petitioner filed a request to
21 file a response to ADEM's reply with an
22 attached response to file if their request
23 is granted. And then the Intervener filed

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1 a response to the Petitioner's objections
2 to the Report of the Hearing Officer.
3 In regard to the
4 Petitioner's request to file response to
5 ADEM's reply, there is a Commission rule
6 that provides that further briefs beyond
7 objections to the recommendation of the
8 Hearing Officer and replies to those
9 objections shall be filed only with
10 permission of the Chair.
11 As Chair today, I'm
12 going to ask for the Commission to have
13 input on the ruling of the Petitioner's
14 request to file response to ADEM's reply,
15 and ask the Commission for a motion
16 regarding the matter.
17 Do I have a motion?
18 COMMISSIONER RICHARDSON: I move
19 to deny the Petitioner's request.
20 VICE-CHAIRMAN PHILLIPS: I have
21 a motion to deny. Do I have a second?
22 COMMISSIONER MILLER: Second.
23 VICE-CHAIRMAN PHILLIPS: And a

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1 second.
2 Any further
3 discussion, which is to deny the
4 Petitioner's request to file response to
5 ADEM's reply?
6 (No response.)
7 VICE-CHAIRMAN PHILLIPS: No
8 further discussion.
9 All in favor of the
10 motion to deny, please signify and raise
11 your hand by the sign "Aye."
12 ALL: Aye.
13 VICE-CHAIRMAN PHILLIPS: All
14 opposed?
15 (No response.)
16 VICE-CHAIRMAN PHILLIPS: Motion
17 carries.
18 MS. THOMAS: I will incorporate
19 that in the order with the other, yes,
20 sir.
21 VICE-CHAIRMAN PHILLIPS: So I'll
22 note that we will entertain a motion from
23 the Commission regarding the Petitioner's

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1 request for oral argument.
2 Do I have a motion?
3 COMMISSIONER RICHARDSON: Move
4 to deny the Petitioner's request for oral
5 argument.
6 VICE-CHAIRMAN PHILLIPS: I have
7 a motion to deny.
8 Do I have a second?
9 COMMISSIONER LAIER: Second.
10 VICE-CHAIRMAN PHILLIPS: I have
11 a motion and a second. Any further
12 discussion on the motion?
13 (No response.)
14 VICE-CHAIRMAN PHILLIPS: No
15 further discussion. All in favor of the
16 motion to deny the Petitioner's request
17 for oral argument, signify with the sign
18 "Aye" and raise your hand.
19 ALL: Aye.
20 VICE-CHAIRMAN PHILLIPS: Motion
21 carries.
22 Okay. With that,
23 I'm going to entertain a motion from the

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1 Commission regarding the Report of the
2 Hearing Officer.
3 Do I have a motion
4 from the Commission regarding the Report
5 of the Hearing Officer?
6 COMMISSIONER MILLER: I move we
7 accept the Hearing Officer's
8 recommendation.
9 VICE-CHAIRMAN PHILLIPS: I have
10 a motion to accept. Do I have a second?
11 COMMISSIONER LAIER: Second.
12 VICE-CHAIRMAN PHILLIPS: I have
13 a motion and a second. Any further
14 discussion on the motion to accept the
15 Hearing Officer's report and
16 recommendations?
17 MS. THOMAS: I did want to note
18 that in the first option there was -- in
19 the recommendation in the Hearing
20 Officer's report, he noted that the word
21 "role" should have been "rule," r-u-l-e
22 versus r-o-l-e. So I did want to make
23 that note.

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1 VICE-CHAIRMAN PHILLIPS: That's
2 a good point. Did everyone on the
3 Commission understand that?
4 ALL: Yes.
5 VICE-CHAIRMAN PHILLIPS: So we
6 have a motion to accept the Hearing
7 Officer's proposal in connection with the
8 recommendation, with the word "rule,"
9 r-u-l-e, in the place of the word "role,"
10 r-o-l-e.
11 All in favor,
12 signify by the sign "Aye."
13 ALL: Aye.
14 VICE-CHAIRMAN PHILLIPS: All
15 opposed?
16 (No response.)
17 VICE-CHAIRMAN PHILLIPS: Motion
18 carries.
19 Do you have that
20 incorporated, Debi?
21 MS. THOMAS: Yes, sir, I do.
22 VICE-CHAIRMAN PHILLIPS: We'll
23 move to Agenda Item No. 7, which is other

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1 business. Is there any other business
2 which is to come before the Commission?
3 (No response.)
4 VICE-CHAIRMAN PHILLIPS: None
5 coming before the Commission. We'll move
6 to Agenda Item No. 8, which is our next
7 business session. Our next session is
8 December 13 of this year. Start time is
9 still 11:00 a.m. as usual, in this
10 conference room.
11 Anyone have any
12 issues with that date or time?
13 (No response.)
14 VICE-CHAIRMAN PHILLIPS: Okay.
15 Great. Okay. As we move forward, we're
16 going to the public comment period. I'm
17 going to ask the Commission for a motion
18 regarding granting or denying the requests
19 to address the Commission. Chair Brown
20 has recommended granting the requests
21 contingent upon presentations meeting the
22 requirements of the Commission; including,
23 not having references to matters that are

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1 subject to legal or administrative action,
2 and that we're asking the speakers to
3 limit their time to ten minutes.
4 The requests are:
5 No. 1 from Nelson Brooke of Black Warrior
6 Riverkeeper; the second is Barbara Evans,
7 a citizen; and request three is Benjamin
8 Eaton on behalf of Black Belt Citizens
9 Fighting for Health and Justice.
10 Do I have a motion
11 for granting or denying these requests?
12 COMMISSIONER MILLER: I move
13 that we grant it.
14 VICE-CHAIRMAN PHILLIPS: Do I
15 have a second?
16 COMMISSIONER LESTER: Second.
17 VICE-CHAIRMAN PHILLIPS: I have
18 a motion and a second. Any discussion?
19 (No response.)
20 VICE-CHAIRMAN PHILLIPS: There
21 will be no further discussion. All in
22 favor signify by saying "Aye."
23 ALL: Aye.

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1 VICE-CHAIRMAN PHILLIPS: Any
2 opposed, same sign.
3 COMMISSIONER RICHARDSON: No.
4 VICE-CHAIRMAN PHILLIPS: Motion
5 carries.
6 Chair will call on
7 Mr. Brooke to come to the podium. And,
8 Mr. Brooke, keep your presentation to ten
9 minutes.
10 MR. BROOKE: Is there any chance
11 to raise that screen so people can see the
12 presentation a little better?
13 VICE-CHAIRMAN PHILLIPS: Are you
14 talking about the TV?
15 MR. BROOKE: Yes, sir.
16 VICE-CHAIRMAN PHILLIPS: Surely.
17 Mr. Director, can
18 you get someone to move that out of the
19 way?
20 MR. BROOKE: So I'm here today
21 to present about the town of Uniontown's
22 Waste Water Treatment System, which has
23 been having considerable issues meeting

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1 permit limits for -- at a minimum, over a
2 decade. And I want to bring to your
3 attention that this has been something
4 that's been known by the Department. The
5 earliest official notice in the file that
6 I've seen is back to 2002, so over a
7 decade ago.
8 The waste water
9 lagoon in Uniontown, Alabama, in Perry
10 County has been known to be in a state of
11 complete failure due to hydraulic
12 overload, lack of adequate design and
13 capacity, and improper inputs by local
14 districts.
15 So pictured here is
16 the waste water treatment plant lagoon
17 system on the left-hand side, and then on
18 the right-hand side of the picture is an
19 industry known as Southeastern Cheese,
20 which had a permit up until very recently
21 to discharge its waste water into this
22 treatment system. The green line down the
23 middle of the two facilities is an unnamed

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1 tributary to Cotton Creek which flows into
2 Cottonwood Creek a tributary which flows
3 out into the Black Warrior River just
4 above Demopolis.
5 So for over a
6 decade, this lagoon has illegally or in an
7 unpermitted fashion, I would say,
8 discharged by overflowing into this
9 unnamed tributary of Cottonwood Creek, and
10 that's what we will see next.
11 This is the lagoon
12 overflowing its banks into this tributary
13 without a permit to do so.
14 The waste water
15 received very little treatment prior to
16 this by-pass situation, putting excrement
17 and waste directly into this tributary.
18 Cottonwood Creek is on the State's 303(d)
19 list of impaired water bodies for this
20 very reason.
21 COMMISSIONER MILLER: When were
22 these taken?
23 MR. BROOKE: This is back from

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1 2009. I'm not trying to paint the picture
2 that this is currently ongoing. This is a
3 historical overview of what has gone on
4 out there at the facility.
5 So this is a
6 photograph of the receiving water body.
7 This contaminated water is the only water
8 in this unnamed tributary, Cottonwood
9 Creek, at the time of the photograph.
10 Downstream in Cottonwood Creek and leading
11 all the way down to Big Prairie Creek, for
12 at least a decade this creek ran septic.
13 Essentially, totally dead --
14 COMMISSIONER RICHARDSON: So all
15 these tires and all this stuff comes from
16 a wastewater treatment facility?
17 MR. BROOKE: I doubt it. A lot
18 of what you're seeing there -- I'm
19 standing on a bridge -- was probably
20 dumped over the bridge. But the nasty
21 cloudy green water, that is the same as no
22 life, is the matter here that I'm
23 discussing.

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1 So fast forward to
2 current day, about 2012, is a point in
3 time when significant alarm was raised by
4 downstream property, and there's farmers
5 and timber companies. After the community
6 in Uniontown and Perry County had been
7 complaining about problems for many years,
8 these property owners finally raised the
9 bar and got interest. A lot of people
10 live down in Big Prairie Creek downstream
11 of all of this were very unhappy about
12 what had been going on.
13 A couple of events
14 occurred: a lift station overflowed, and
15 one of the overflows from the lagoon was
16 reported and elevated, and also issues
17 with the spray field came up. And, so,
18 ADEM and the Health Department and a lot
19 of entities got involved. Well, what I
20 want to highlight is that for over a
21 decade nothing adequate was done to fix
22 this problem although it was known.
23 According to the

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1 town's permit, whenever an overflow or an
2 upset condition occurs outside the permit
3 limits, they're required to make an
4 immediate report within 24 hours to ADEM
5 to report their problem -- this was not
6 being done. It was actually very rarely
7 done. So although ADEM knew there were
8 ongoing problems, there was very little
9 attention to the matter at hand, and very
10 little enforcement; particularly, no
11 meaningful enforcement, no fines.
12 So the Director
13 mentioned a minute ago that we've got
14 these dashboards. Well, the dashboards
15 don't really show us what's happening on
16 the ground. An informal enforcement
17 action is not necessarily going to be
18 successful in a case like this, and the
19 case history here shows that. No fine
20 is -- on the town of Uniontown, it's no
21 push for them to get off their duff and do
22 something about this problem to protect
23 downstream people and local citizens and

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1 wildlife.
2 So, what the
3 facility is permitted to do is discharge
4 their wastewater from the lagoon to a
5 spray field miles away. The permit is for
6 groundwater discharge. There is no permit
7 for surface water discharge. Just to the
8 left of this spray field here is a
9 tributary of that of Chilatchee Creek,
10 which flows into the Alabama River. This
11 is called Freetown Creek. You'll notice
12 the large gray-colored lake on the
13 left-hand side. This is an aerial
14 photograph.
15 The ground cannot
16 absorb all of the wastewater that's being
17 passed out through the spray field, so
18 it's pooling up in a massive lagoon. The
19 dike at the lower end of that property
20 next to the creek has been failing and
21 allowing direct discharges of improperly
22 treated wastewater to Freetown Creek for
23 an untold number of years.

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1 Once again,
2 inadequate reporting and oversight from
3 the town and from ADEM has allowed this to
4 be an ongoing issue over the years.
5 VICE-CHAIRMAN PHILLIPS: Is that
6 a natural dike or man-made dike?
7 MR. BROOKE: It is a man-made
8 dike. It's right next to the creek; it's
9 just made of earth. It's only yea high.
10 It's not a very impressive situation.
11 COMMISSIONER MILLER: Point to
12 the lagoon that you're talking about.
13 MR. BROOKE: Right here. So
14 These are all the spray nozzles. All the
15 wastewater is supposed to go into the
16 ground, that's what the permit says. It's
17 a groundwater discharge, but there's, in
18 fact, an ongoing surface water
19 discharge -- has been for years.
20 VICE-CHAIRMAN PHILLIPS: Has
21 anybody tested the water in the lagoon.
22 MR. BROOKE: Not in the lagoon
23 that I'm aware of, but we've sampled the

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1 water coming out of it. The bacteria
2 colonies is too numerous to count. It's
3 way out of control.
4 VICE-CHAIRMAN PHILLIPS: But not
5 in the lagoon?
6 MR. BROOKE: I don't know what
7 the situation is in the lagoon, but that's
8 where the overflows are coming from. So
9 what's entering the creek is too numerous
10 to count.
11 COMMISSIONER MILLER: It's not
12 treated waste?
13 MR. BROOKE: It's supposed to
14 be, but the lagoon is in an upset
15 condition because it hasn't been
16 maintained over the years. So we've just
17 got an ongoing problem.
18 COMMISSIONER MILLER: What I'm
19 asking is: Is the water going into the
20 spray field raw sewage, or is it treated
21 sewage, or what is -- what's going out of
22 the nozzles in the spray field?
23 MR. BROOKE: I couldn't

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1 technically tell you that it's untreated
2 or raw because it has gone through a
3 treatment system -- a three-cell lagoon.
4 However, being too numerous to count
5 bacteria, it's received so little adequate
6 treatment that it could be characterized
7 as pretty darn close to raw sewage.
8 VICE-CHAIRMAN PHILLIPS: That's
9 in the creek?
10 MR. BROOKE: That's what's
11 coming out of the spray field into the
12 creek. And that is current -- that is
13 going on --
14 COMMISSIONER MILLER: Do you
15 have documentation somewhere?
16 MR. BROOKE: I'm going to show
17 you here shortly.
18 So ADEM got involved
19 in 2012 after much public to-do. This was
20 the first time that I'm aware of that any
21 public notice was given to the public
22 about sewer overflows and the impact of
23 public health. The Department of Public

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1 Health got involved. Part of the
2 wastewater permits is a requirement that
3 the facility operator notify the public,
4 not just ADEM, but the public when there
5 are raw sewage overflows. That isn't
6 being done, and in 2012 was the first time
7 that it happened.

8 It's the
9 Department's responsibility to ensure that
10 these operators are notifying the public
11 so people can be out of harm's way.
12 That's not being done here and at most
13 facilities around the state of Alabama,
14 which is very unfortunate.

15 Here you can see at
16 the bottom end of the lagoon -- this is a
17 more recent satellite image -- there is
18 fresh dirt being placed down here. The
19 town is starting to try to address the
20 issue. However, over a year after
21 enforcement action was brought by the
22 Department, we still have raw sewage
23 overflowing or partially-treated sewage

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1 overflowing out of this spray field into
2 Freetown Creek.

3 Monies were
4 attributed through the USDA, about
5 \$4.8 million, to fix the problem. But a
6 year into it, we still have significant
7 problems out there at the site, permit
8 conditions are not being met, and the
9 public is not being notified. And further
10 more, the facility operators are not
11 notifying ADEM. Each and every single day
12 that this is overflowing it is a
13 requirement of the permit -- they're not
14 notifying ADEM or the public. So that's
15 very unfortunate.

16 So we have a
17 timeline to get this whole process done.
18 It seems to be going a lot slower than it
19 should. In the mean time, you asked about
20 the treatment -- if it's being treated.
21 One of the lagoon cells -- two of them are
22 being cleaned out. They went from being,
23 as I understand it, between eight and ten

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1 feet deep to about two feet deep, filled
2 up with sludge.

3 The sludge is
4 currently being pumped out of the lagoon
5 on to a neighboring cattle farmer's field.
6 And that sludge and the water along with
7 it is actually running off of the field
8 and down drainages onto neighboring
9 property. The pipeline itself is leaking
10 at many of its joints and putting sludge
11 all over fields along with a --

12 VICE-CHAIRMAN PHILLIPS: When
13 was that picture taken?

14 MR. BROOKE: This one was taken
15 on October 10th, so last week. This is
16 where a tractor is at the other end of
17 that pipeline miles away spraying the
18 sludge on a local farmer's field. It is
19 saturating the land, running off the land
20 down drainages and off site. We
21 understand that a local property owner has
22 made a report to ADEM that the sludge is
23 now entering onto her property. So we

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1 have a problem that is being spread out
2 into multiple areas.

3 There's no
4 documentation on ADEM eFile as to whether
5 or not this is a permitted activity, if it
6 has the blessing, or even that it's a part
7 of the plan that I have found. So as far
8 as the public being informed by the new
9 eDocuments capabilities of ADEM, there are
10 some pretty serious shortcomings when it
11 comes to people being able to know what's
12 going on.

13 This is on
14 September 11th. This is overflow from the
15 spray field. This is Freetown Creek
16 downstream of the overflow. This is the
17 lagoon area -- I shouldn't say lagoon,
18 this is the spray field. But this is the
19 lagoon at the spray field that has formed.
20 And this entire red area right here is
21 upgradient of where the new dike is being
22 repaired is suspect to failure. There are
23 multiple overflows occurring out of this

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1 spray field and into Freetown Creek.
2 While there may be
3 signs at the fence around the facility,
4 that doesn't really help the local
5 neighbor because the sewage is spilling
6 through the dike and outside of that
7 fence. There's sewage all into the woods
8 and down into the creek, and cattle are
9 walking in it. Like I said, multiple
10 overflows ongoing down there at the site.
11 Lots of standing sewage in the woods and
12 coming out of the dike.
13 This is Freetown
14 Creek at the site of one of those
15 overflows into it. Like I said, the
16 bacteria is too numerous to count. The
17 plan under the \$4.8 million -- and this is
18 my closing point -- calls for the creation
19 of a second spray field upstream of the
20 existing one on an unnamed tributary to
21 Freetown Creek.
22 It is very well
23 established in what is going on at this

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1 spray field and what's going on with the
2 sludge spreading, that the soil and the
3 geology in the area cannot handle land
4 application at the volumes being
5 described. There is no information in
6 eFile that definitively shows studies have
7 been done to say that an additional spray
8 field will be an adequate measure to fix
9 the problem out there. It appears it is
10 just going to spread the problem to
11 another location, further endangering and
12 harming locals that live in the area. And
13 so our concern is that more studies need
14 to be done and the creation or addition of
15 a new adequate treatment plan with all
16 these monies is possible and should be
17 considered.
18 VICE-CHAIRMAN PHILLIPS: Thank
19 you, Mr. Brooke.
20 Do we have any
21 questions from the Commission?
22 COMMISSIONER RICHARDSON: Just
23 to be clear, these samples that you're

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1 talking about, they're from the spray
2 field lagoon overflow, not from Freetown
3 Creek?
4 MR. BROOKE: They are from
5 what's coming out of the spray field
6 before it enters into Freetown Creek.
7 COMMISSIONER RICHARDSON: Before
8 it gets into the creek?
9 MR. BROOKE: That's right.
10 COMMISSIONER MILLER: When were
11 these pictures taken?
12 MR. BROOKE: This photograph was
13 taken either on September 11th or
14 October 10th. So I can tell you there in
15 this last month it's been an ongoing
16 issue. And from what locals say, it's
17 been the case for over a decade. It's
18 just not being reported adequately by the
19 operator. So unless there are inspectors
20 on the ground doing what we're doing, and
21 unless the facility operator is
22 self-reporting, it's "Don't show me, don't
23 tell me." But we have a serious ongoing

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1 problem.
2 VICE-CHAIRMAN PHILLIPS: Have
3 you had any discussions with the
4 Department?
5 MR. BROOKE: About this
6 particular issue?
7 VICE-CHAIRMAN PHILLIPS: Yes.
8 MR. BROOKE: No, sir.
9 VICE-CHAIRMAN PHILLIPS: What I
10 want to hear then is: What does the
11 Department have to say about this,
12 Director LeFleur?
13 DIRECTOR LEFLEUR: I would like
14 to set the record straight on several
15 matters and generally give you some
16 background on Uniontown. Uniontown is a
17 small impoverished minority community that
18 for many years has experienced great
19 difficulty in providing adequate and
20 affordable public services, such as
21 wastewater treatment to its citizens.
22 As you well know,
23 ADEM is charged with issuing permits with

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1 conditions that, when complied with, will
2 be protective of the environment and
3 public health. ADEM has no authority to
4 dictate how the permit conditions will be
5 met. That is up to the permittee, who in
6 this case is Uniontown. If the permit
7 conditions are not met, the Department
8 does have the authority to take
9 enforcement action.

10 Uniontown's most
11 recent series of failures to meet permit
12 conditions began in 2008, and the
13 Department's enforcement actions have gone
14 through the required process to the point
15 where some 19 months ago it reached state
16 circuit court where it is now pending.
17 Although neither ADEM nor EPA is
18 authorized to stipulate what actions the
19 community must take to meet its permit
20 conditions, for several years ADEM has
21 worked with USDA, Congresswoman Sewell's
22 office, the mayor, the city council, the
23 engineering firm hired by Uniontown, the

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1 hydro-geologist hired by Uniontown, the
2 EPA, and the court system to assist the
3 city in finding a longterm solution to its
4 long-standing wastewater treatment problem
5 without financially breaking the backs of
6 the Uniontown citizens.

7 As a result of years
8 of work, funding has been obtained and
9 necessary upgrades to the system are under
10 way. As you can see from the presentation
11 just made, the project is not yet
12 complete. The presentation just made is
13 an illustration of recent activities by
14 this environmental advocacy group to
15 highlight the well-known and painfully
16 obvious problems this impoverished
17 community has been wrestling with for many
18 years.

19 With the help of the
20 individuals and organizations I just
21 mentioned, this long-standing problem is
22 being addressed. I would add one more
23 item on this sludge matter. Sludge is

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1 regulated directly by EPA. The Department
2 has no oversight, authority for the ground
3 application of sludge. And that's why it
4 does not appear on our website.

5 But there are many
6 issues with this particular situation, and
7 there's far more than may be apparent. Do
8 you have any questions?

9 VICE-CHAIRMAN PHILLIPS: Does
10 anyone on the Commission have any
11 questions for the Department?

12 COMMISSIONER RICHARDSON: Not
13 from the Department, but I have one for
14 Mr. Brooke.

15 Mr. Brooke, what are
16 you proposing be done?

17 MR. BROOKE: I'm proposing that
18 these people be listened to. They're not
19 being well informed. It might be well
20 known to the Department that this has been
21 going on a long time, but locals have not
22 adequately been notified and certainly
23 downstream property owners have not been

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1 notified. So they're in harm's way, and
2 they don't necessarily know it.

3 I called some people
4 downstream and they were not aware that it
5 was still going on and they're using the
6 creek. So what we're asking is, is that
7 the Department go back and look at the
8 current plan and make it known how the
9 decision was arrived at and what the other
10 alternatives are and why those were not
11 chosen, because the current plan for a new
12 spray field is a continuation of the
13 problem in another location that appears
14 to be an inadequate fix. It's not really
15 going to fix it, it's just going to spread
16 the problem out.

17 COMMISSIONER LESTER: I
18 understand that this is enforced now?

19 MR. BROOKE: The enforcement
20 action, sure. But the plan to fix the
21 problem is already under way. There's an
22 engineering firm out there moving ahead
23 with the plan to add a new spray field.

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1 COMMISSIONER LESTER: The
2 court -- what can the court do?
3 MR. BROOKE: That's not my -- I
4 have no idea.
5 COMMISSIONER LESTER: If it's in
6 the court, can we hear it? They're not
7 bringing it before us.
8 MR. BROOKE: The question is:
9 Is the current plan adequate to fix the
10 problem and adequately treat the sewage or
11 is it just going to start the same problem
12 in a separate location? There's nothing
13 I've seen in the file that says that it's
14 actually going to fix the problem. And we
15 have other people that are going to
16 present on this.
17 VICE-CHAIRMAN PHILLIPS: We get
18 it. Thank you.
19 Mr. Director, I'm
20 going to ask, as a Commissioner, that you
21 look into the plan and if you have any
22 questions of these production supervisor
23 people as you hear them to please talk

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1 with them and get whatever information you
2 need, and just let us know how that goes.
3 DIRECTOR LEFLEUR: Yes, sir. We
4 have been and we will continue to do so.
5 VICE-CHAIRMAN PHILLIPS: Okay.
6 I'll call on Ms. Evans.
7 Ms. Evans, ten
8 minutes, please.
9 MS. EVANS: It won't be that
10 long. My name is Barbara Evans, I'm also
11 here about the wastewater situation in
12 Uniontown. I don't have any pictures, and
13 I'm not an engineer, and I don't know all
14 the fancy terms. But I know this: I know
15 that throughout the black belt we have a
16 lot of these same problems with small
17 towns not reporting to ADEM things that
18 are going on. This may be one of the most
19 egregious situations that I've ever seen.
20 But, you know, it's not unheard of,
21 because sometimes our folks are not
22 well-trained to even know what's going on.
23 But in this

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1 particular case, we have been to the
2 mayor, we've been to USDA, we've been to
3 the congresswoman, we've been everywhere
4 trying to say -- we got this \$4.8 million.
5 We're never going to get it again. This
6 is the big chance to fix it. And we just
7 think it's crazy to make another spray
8 field which borders a residential black
9 community where people have farm animals
10 and are raising families.
11 We just think it's
12 crazy to do the same thing over again when
13 it didn't work the first time. And it's
14 not going to work because of the famous
15 Selma chalk where everyone wants to bring
16 a dump into the Black Belt because of that
17 chalk. This is the same stuff that's
18 underneath about ten inches of topsoil in
19 these spray fields. That water is not
20 going anywhere. It's going to constantly
21 overflow and overflow.
22 Like I said, I'm not
23 an engineer, this is just common sense.

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1 I've been out there, I've seen it for
2 myself. We don't know where to turn. You
3 are our only hope. We have begged, we've
4 talked to the engineer, who tried to tell
5 me that the water was going -- the spray
6 would evaporate in the air. And then we
7 came here and they said, No it was
8 supposed to go down through the ground.
9 The people in
10 Uniontown did not get adequate public
11 notice in the public meetings. They don't
12 even have a local paper in Uniontown.
13 They put it in the Montgomery Advertiser.
14 There might have been something in the
15 Marion paper, but it certainly wasn't
16 adequate notice. And even the few people
17 that went to a public meeting never heard
18 the word "spray field."
19 And that's another
20 trick that they use in the Black Belt.
21 When they have these public meetings, they
22 talk in a way that nobody knows what
23 they're talking about. It's very

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1 effective. They just did it with a public
2 housing things recently. So that's what I
3 came up here to tell you. I just wanted
4 to come right out and say we've got these
5 problems. We've got to find some
6 different way for wastewater treatment.
7 The work is already starting. They're
8 working on the sewage within the town of
9 Uniontown, but we really need to stop that
10 second spray field. It doesn't work.
11 Thank you very much.
12 VICE-CHAIRMAN PHILLIPS: Thank
13 you Ms. Evans.
14 Does the Commission
15 have any questions?
16 COMMISSIONER RICHARDSON: Yes, I
17 do. I understand you have met with your
18 elected officials, your city commission,
19 mayor, people who are in charge of where
20 the spray field is put and the design that
21 it has. You've spoken with these people?
22 MS. EVANS: Over and over again
23 to the point where our vice-president is

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1 now even being denied a place on the
2 agenda in Uniontown because they don't
3 want to hear us anymore. Over and over
4 again.
5 COMMISSIONER MILLER: The thing
6 that strikes me is: Where, and if they
7 put a spray field in, is not where ADEM
8 would be involved. ADEM, as I understand
9 it, is in charge of once the local plan is
10 put forward, and the permit conditions
11 have to be met. But I don't think ADEM
12 can say -- either the Department or us or
13 anybody can say that you can't put a spray
14 field right here. I may be wrong on that,
15 but I don't think I am.
16 MS. EVANS: But then who can?
17 COMMISSIONER MILLER: Your
18 elected officials.
19 MS. EVANS: But they won't. I
20 mean, it's too late. And by the time that
21 happens, the one-time \$4.8 million will be
22 gone. It will be a total wreck, it will
23 be in all the papers. It will be a total

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1 wreck. And then they'll do something
2 about it. But now we've got a chance to
3 stop problems before they start. Why
4 would we not do that?
5 Right now, as we
6 speak, ADEM inspectors are out there
7 looking at the latest breach because they
8 insisted that they go out there this
9 morning, even though we were coming here.
10 So your inspectors are on the ground in
11 Uniontown right now looking at the latest
12 breach.
13 Really, we've got to
14 do something, you know, these grants are
15 too hard to come by. This is our chance
16 to stop problems before they start. And
17 we -- certainly, with all of us working
18 together, there's got to be a way, you
19 know, to stop this problem from occurring.
20 And that's really why we're here. They're
21 moving forward, and they're moving fast.
22 COMMISSIONER MILLER: We all
23 hear you and we all sympathize with you.

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1 And we'll do everything we can to assist
2 you, but I don't know how far we can move
3 along the lines. We can't say you can't
4 put a spray field in where you're choosing
5 to put it in. We can just say this is the
6 condition that has to be met to be
7 permitted. I don't know if --
8 MS. EVANS: How do you know that
9 the -- this really sounds terrible -- if
10 they didn't tell you when there were
11 problems over all these years, and it's
12 been longer than ten years, why do you
13 believe anything they even have in their
14 permit application? You know, we're not
15 dealing here with folks that seem forth
16 coming. We're dealing with the same
17 people that were charged with maintaining
18 the old spray field, and they didn't do
19 that.
20 So that's where
21 we're caught up. I'm not going to say
22 it's corrupt, but we're caught up in
23 something. And somehow the state of

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1 Alabama, you know, we've got to figure out
 2 a way to stop this before it causes more
 3 problems.
 4 COMMISSIONER MILLER: We hear
 5 you loud and clear.
 6 MS. EVANS: Thank you.
 7 VICE-CHAIRMAN PHILLIPS: Thank
 8 you, Ms. Evans.
 9 Mr. Eaton?
 10 MR. EATON: Good afternoon.
 11 VICE-CHAIRMAN PHILLIPS: Good
 12 afternoon.
 13 MR. EATON: My name is Benjamin
 14 Eaton, and I am a resident of Uniontown,
 15 Alabama, about 80 miles west of here. I'd
 16 like to thank you for allowing me to
 17 present this presentation on wastewater
 18 treatment upgrades.
 19 Much-needed upgrades
 20 to correct wastewater treatment plant
 21 failures that have lasted over a decade.
 22 Plan includes a new spray field to
 23 supplement spray field No. 1; to increase

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1 capacity for land applications of treated
 2 wastewater. The proposed site of the new
 3 spray field raises serious technical and
 4 environmental issues. We believe it will
 5 not operate properly, but instead, it will
 6 fail. It's no doubt it will fail.
 7 I'm sort of
 8 piggybacking off of Mr. Brooke and
 9 Ms. Evans as a resident. Proposed new
 10 spray field site. As you can see in the
 11 yellow boundaries, that is the new spray
 12 field site. As you look closely, in the
 13 surrounding area that is a community. And
 14 the road that you see wiring off from the
 15 right, that is the main road into the
 16 city. So we're not only looking at a
 17 disaster in failure, it's embarrassing.
 18 It's just poor -- it's not a very
 19 conducive site.
 20 VICE-CHAIRMAN PHILLIPS: Where
 21 is the spray field No. 1 on that map?
 22 MR. EATON: I haven't gotten to
 23 it yet.

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1 VICE-CHAIRMAN PHILLIPS: So it's
 2 not adjacent to it -- it's not next to it.
 3 MR. EATON: No, it's not next to
 4 it. This is moving closer to the city.
 5 Spray field No. 1 is about two and a half
 6 miles outside of the city.
 7 COMMISSIONER RICHARDSON: Pretty
 8 much south of the city, right?
 9 MR. EATON: Yes. Citizens'
 10 objections: Site lies adjacent to and
 11 entirely too close to occupied family
 12 residences. Site receives rainwater
 13 run-on from uplands to the west. Site has
 14 Freetown Creek running from the north to
 15 south through the middle of the tract.
 16 Site consists of lowlands alongside
 17 Freetown Creek subject to ponding.
 18 VICE-CHAIRMAN PHILLIPS: And
 19 this is actually a tributary -- it's a
 20 tributary to Freetown Creek.
 21 MR. EATON: Yes. Residences at
 22 northwest corner. You see there are
 23 homes. Those are not the only two homes,

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1 but there are approximately 12 residences
 2 in that area. And at the lower right-hand
 3 corner, you're looking at the proposed new
 4 site.
 5 COMMISSIONER MILLER: That's the
 6 dirt road running through it?
 7 MR. EATON: Yes, sir.
 8 COMMISSIONER MILLER: Now, where
 9 is the creek on here?
 10 MR. EATON: It will be on the
 11 next one. These are some of the other
 12 residences in the lower left-hand corner
 13 of the site. The wide open area you see
 14 up above to the right, that is the host
 15 site. Proximity of homes to the proposed
 16 site. You see the little yellow line,
 17 that is the projected area for the new
 18 spray field. And as you can see down
 19 below it, you see the homes in the wooded
 20 area. It actually is less than 300 feet
 21 away from the homes -- the residences in
 22 that area.
 23 COMMISSIONER RICHARDSON: That

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1 line of trees that we see coming out of
2 the top right and exiting out the right
3 side, and then that line of trees that
4 joins there, those are part of those
5 tributaries -- the one longest one is the
6 tributary that you're referring to?
7 MR. EATON: Yes, right.
8 COMMISSIONER RICHARDSON: Okay.
9 MR. EATON: Creek running
10 through the middle of the proposed new
11 spray field site, but it's a tributary of
12 Freetown Creek. This site is to the left
13 and right of that tributary. Freetown
14 Creek runs south of that area. You can
15 see the wooded area to the right that has
16 been cleaned. It has been removed from
17 the site.
18 COMMISSIONER MILLER: Is this
19 tributary -- does it have constant running
20 water all of the time or is it dry?
21 MR. EATON: It all depends on
22 the rain water. When it rains, yes. It
23 doesn't have to rain much. But right at

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1 the corner of the pipe at the road, it
2 constantly have water at all times. No
3 matter what the drought is, it will have
4 water.
5 Ponding water on
6 proposed site. You can see during their
7 clean off, they're cleaning the area. It
8 rained a couple of days before, and this
9 is where we are. This is -- it's going to
10 pond. There's no way that it cannot
11 pound.
12 Looking at the
13 picture, that's the new spray field of
14 proposed site. Here's a comparison of
15 what it looks like in the old spray field.
16 You see there, that is fresh repair dirt
17 where they have tried to stop the runoff.
18 This is not the first time. This is the
19 third time that they have repaired that
20 dike in order to stop the water from
21 running into the tributary of Freetown
22 Creek.
23 There's another

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1 shot. These are close-up shots. When I
2 first saw it -- it's not just a dike, I
3 call it a pond. It's huge, you know.
4 That's the way it looks.
5 Citizens'
6 objections: The site consists of
7 Sumter-Kipling-Sucarnoochee soils -- which
8 is actually the worst group of soil in the
9 state of Alabama -- having limitations of
10 wetness, flooding, shrink-swell potential,
11 hazard of erosion, and very slow
12 permeability. Soils are too clayey and
13 percolate slowly. Soils are classified as
14 having severe limitations for use as
15 absorption fields for sanitary facilities.
16 Site will stay saturated and pose a
17 serious health threat as a breeding ground
18 for bacteria and mosquitoes.
19 Citizens objections:
20 Project engineer John Stevens of Sentell
21 Engineering, Inc. states he doesn't want
22 the wastewater spray to percolate; he
23 wants it to evaporate. Overflow from this

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1 site will contaminate Freetown Creek and
2 downstream waterways. Overflow will
3 contaminate Wilson's catfish ponds located
4 to the south of Freetown Creek.
5 Wilson's catfish
6 pond on Freetown Creek, just south of
7 proposed spray field. If you can -- right
8 here in this area, that is the new
9 proposed spray field site. If you follow
10 the tributary -- Freetown Creek, it runs
11 right into Mr. Wilson's catfish pond.
12 Here's a shot of the
13 old spray field. As you can tell, the red
14 line down near the lower left-hand corner
15 of the ponding, that is the dike being
16 repaired. That's where they had it
17 repaired one time before spray field
18 number one existed.
19 All the surfaces
20 that you see to the right in the middle,
21 those are spray heads where they're
22 constantly spraying. When I say,
23 "Constantly spraying," I mean, 24/7. And

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1 to divide the spray from that spray field
2 to the other spray field, it's just going
3 to spread the problem. It's not going to
4 work.
5 Here's a closer shot
6 of spray field number one operating when
7 ground is saturated. Not only does it
8 operate when the grounds are saturated, if
9 it's raining it has been operating. I've
10 witnessed myself. And we know that those
11 are not permitted.
12 VICE-CHAIRMAN PHILLIPS: How
13 many more do you have, Mr. Eaton?
14 MR. EATON: Just a few.
15 Spray field number
16 one ponding and overflowing above newly
17 constructed dike. Spray field number one
18 overflows to Freetown Creek. As you can
19 tell, the green, that is actually the
20 ponding. It's spilled over the dike to
21 the right leaving the ground saturated.
22 That is on the outside of the berm, and it
23 is flowing into Freetown Creek. Spray

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1 field number one overflows to Freetown
2 Creek.
3 Our requests to
4 ADEM: Perform a professional on-site
5 assessment, including a soil analysis,
6 percolation test, and other testing by the
7 hydrogeologist to determine the
8 suitability of the site of proposed spray
9 field number two; require the relocation
10 of proposed spray field number 2 to an
11 appropriate alternative site -- not around
12 the people, not around the community, the
13 neighborhood; require the city to properly
14 operate and maintain spray field number
15 one to eliminate overflows to Freetown
16 Creek; guarantee that the upgraded
17 treatment facilities and spray fields will
18 function as intended and not put our
19 health at risk or pollute the environment.
20 Black Belt Citizens
21 Fighting for Health and Justice, our
22 goals: The proposed new spray field
23 relocated to a site remote from family

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1 homes, waterways, livestock, fish ponds,
2 and farming operations. For a cost of
3 \$4.8 million a wastewater treatment system
4 that not only functions properly and will
5 not pollute the environment, but also does
6 not create a negative impact on any local
7 resident.
8 We are a small,
9 poor, town in the black belt area. We can
10 not fight against the big money people
11 that comes in wanting to put whatever they
12 want to in our town. They're putting our
13 health and environment at risk. So we
14 look to you all to help us. We look to
15 ADEM, EPA, USDA, FDA, FAA, and any other
16 agency that is there to help protect us
17 from putting our health and environment
18 and making it a problem. Thank you.
19 VICE-CHAIRMAN PHILLIPS: Thank
20 you, Mr. Eaton.
21 Do we have any
22 questions from the Commission?
23 COMMISSIONER LAIER: I have a

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1 question or two.
2 The grant, who is
3 the recipient of the grant money?
4 MR. EATON: The city,
5 Congresswoman Terri Sewell, and USDA.
6 COMMISSIONER LAIER: I think
7 that's where you need to be starting. We
8 certainly have concerns. You have painted
9 a serious picture of an unfortunate site
10 condition that needs to be addressed, but
11 you're talking to the wrong entities. You
12 have to be talking to the people who are
13 in charge of organizing this. We don't
14 pay the bills for these people to do this
15 work. We don't have any direct control
16 over these people; your city has that
17 control. They have the money; they must
18 have hired these people.
19 If they're not
20 satisfied with the way these people are
21 working, they need to be talking to the
22 contractor, to engineers to take charge of
23 this operation. That's not our

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1 responsibility.
2 MR. EATON: That's where we are
3 in between a rock and a hard spot. We
4 have spoken with Congresswoman Terri
5 Sewell, we have spoken with Nivory Gordon
6 at USDA, and none of them have actually
7 stepped up and said you need to go here
8 and you need to do this. I have
9 constantly asked for a request to be on
10 the city council agenda, and every chance
11 they get, they deny me. Everybody is
12 shutting us off. So where do we start?
13 We start with the people who have the
14 power to do so. We can't do it.
15 COMMISSIONER LAIER: I think
16 you're asking us to do what we are charged
17 to do, and that is to provide the
18 guidelines, and we've done that. These
19 people can't do the processing and
20 operation of the facility without
21 complying to our regulation. But we are
22 not responsible for paying the bills,
23 directing them on how to build it right,

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1 or directing them to do all the things you
2 want us to do, that's not within our
3 purview.
4 You have to be
5 taking charge in your city. Your city
6 people can do the things you're asking us
7 to do. We certainly have concerns, we
8 certainly want to do what we can do from
9 our responsibility point of view. The
10 Director is going to look into this in
11 more depth, but I think you need to be
12 looking for others to deal with what's
13 going on.
14 We can't shut down
15 construction. If you're not satisfied
16 with the way they're building this, only
17 the people who have hired the workers can
18 stop them from doing work. We don't have
19 the authority.
20 MR. EATON: We understand that,
21 but when you fail in every lower level,
22 where do you go?
23 VICE-CHAIRMAN PHILLIPS: Any

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1 other questions?
2 (No response.)
3 VICE-CHAIRMAN PHILLIPS: Thank
4 you, Mr. Eaton. And as you heard, we most
5 certainly will have the Director looking
6 into it and doing what we can do under our
7 authority.
8 MR. EATON: Thank you.
9 VICE-CHAIRMAN PHILLIPS: Thank
10 you.
11 Okay. We're at the
12 point for adjournment. Do I have a motion
13 to adjourn from the Commission?
14 COMMISSIONER MILLER: So moved.
15 COMMISSIONER LAIER: Second.
16 VICE-CHAIRMAN PHILLIPS: All in
17 favor?
18 ALL: Aye.
19 VICE-CHAIRMAN PHILLIPS: We're
20 adjourned. Thank you.
21 (The proceedings concluded at
22 approximately 12:23 p.m.)
23

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<p>tools (1) 7:23</p> <p>top (3) 22:19;24:21;73:2</p> <p>topsoil (1) 63:18</p> <p>total (7) 12:1;13:6,9;14:3; 16:6;66:22,23</p> <p>totally (1) 42:13</p> <p>toward (2) 19:14;24:12</p> <p>town (7) 39:21;44:20;46:3; 49:19;65:8;79:9,12</p> <p>towns (1) 62:17</p> <p>town's (1) 44:1</p> <p>track (1) 8:11</p> <p>tracked (1) 8:2</p> <p>tract (1) 71:15</p> <p>tractor (1) 51:16</p> <p>training (4) 16:15;19:19;25:4,22</p> <p>traveling (1) 23:3</p> <p>treat (1) 61:10</p> <p>treated (5) 45:22;47:12,20; 50:20;70:1</p> <p>treatment (17) 23:15;39:22;40:16, 22;41:15;42:16;48:3,6; 50:20;54:15;56:21; 58:4;65:6;69:18,20; 78:17;79:3</p> <p>trees (2) 73:1,3</p> <p>tributaries (1) 73:5</p> <p>tributary (16) 41:1,2,9,12,17;42:8; 45:9;53:20;71:19,20; 73:6,11,13,19;74:21; 76:10</p> <p>trick (1) 64:20</p> <p>tried (2) 64:4;74:17</p> <p>Trust (3) 28:14;29:4,6</p> <p>try (2) 27:13;49:19</p> <p>trying (2) 42:1;63:4</p> <p>turn (2)</p>	<p>11:20;64:2</p> <p>TV (1) 39:14</p> <p>two (9) 16:18;22:2;40:23; 50:21;51:1;71:5,23; 78:9;80:1</p> <p>type (1) 13:11</p> <p>types (4) 10:21;11:16;18:4,11</p> <p style="text-align: center;">U</p> <p>ultimate (1) 22:16</p> <p>unauthorized (1) 15:13</p> <p>under (8) 11:11;12:4;13:7; 18:13;53:17;58:9; 60:21;83:6</p> <p>Underground (2) 28:13;29:3</p> <p>underneath (1) 63:18</p> <p>understood (1) 23:20</p> <p>unfortunate (3) 49:14;50:15;80:9</p> <p>unhappy (1) 43:11</p> <p>unheard (1) 62:20</p> <p>Uniontown (16) 40:9;43:6;44:20; 56:16,16;57:6,23;58:1, 6;62:12;64:10,12;65:9; 66:2;67:11;69:14</p> <p>Uniontown's (2) 39:21;57:10</p> <p>universe (3) 13:6,9;14:3</p> <p>unless (2) 55:19,21</p> <p>unlikely (1) 22:22</p> <p>unnamed (4) 40:23;41:9;42:8; 53:20</p> <p>unpermitted (1) 41:7</p> <p>untold (1) 45:23</p> <p>untreated (1) 48:1</p> <p>up (13) 16:19;23:14;25:1; 40:20;43:17;45:18; 51:2;57:5;65:3;68:21, 22;72:14;81:7</p> <p>update (1) 6:6</p>	<p>upgraded (1) 78:16</p> <p>upgrades (3) 58:9;69:18,19</p> <p>upgradient (1) 52:21</p> <p>upgrading (1) 27:5</p> <p>uplands (1) 71:13</p> <p>upon (1) 37:21</p> <p>upset (3) 23:23;44:2;47:14</p> <p>upstream (1) 53:19</p> <p>USDA (6) 50:4;57:21;63:2; 79:15;80:5;81:6</p> <p>use (4) 11:14;13:18;64:20; 75:14</p> <p>useful (1) 8:1</p> <p>user (2) 9:11,22</p> <p>using (5) 10:10;11:9;14:2; 25:7;60:5</p> <p>usual (1) 37:9</p> <p>utilize (1) 23:6</p> <p>utilizing (1) 17:19</p> <p style="text-align: center;">V</p> <p>valuable (1) 24:12</p> <p>various (2) 9:23;17:12</p> <p>versus (2) 31:6;35:22</p> <p>Vice-Chair (2) 4:11,21</p> <p>VICE-CHAIRMAN (69) 3:3,17,21;4:3,6,16, 18;5:2,6,9,17;27:15,21; 30:5,12,17,21;31:1; 32:20,23;33:7,13,16, 21;34:6,10,14,20;35:9, 12;36:1,5,14,17,22; 37:4,14;38:14,17,20; 39:1,4,13,16;46:5,20; 47:4;48:8;51:12;54:18; 56:2,7,9;59:9;61:17; 62:5;65:12;69:7,11; 70:20;71:1,18;77:12; 79:19;82:23;83:3,9,16, 19</p> <p>vice-president (1) 65:23</p>	<p>view (1) 82:9</p> <p>violation (2) 9:12;15:13</p> <p>violations (1) 11:18</p> <p>visual (1) 8:8</p> <p>volumes (1) 54:4</p> <p>voted (1) 29:7</p> <p style="text-align: center;">W</p> <p>wait (1) 31:2</p> <p>walk (1) 11:21</p> <p>walking (1) 53:9</p> <p>wants (2) 63:15;75:23</p> <p>Warrior (2) 38:5;41:3</p> <p>Waste (7) 39:22;40:8,16,21; 41:14,17;47:12</p> <p>wastes (1) 10:19</p> <p>wastewater (15) 42:16;45:4,16,22; 46:15;49:2;56:21;58:4; 62:11;65:6;69:17,20; 70:2;75:22;79:3</p> <p>water (38) 6:9;11:8,12;14:22; 16:7;17:4;18:15;23:16; 24:15;26:23;27:3,5; 28:10;30:8;39:22;40:8, 16,21;41:14,19;42:6,7, 7,21;45:7;46:18,21; 47:1,19;51:6;63:19; 64:5;73:20,22;74:2,4,5, 20</p> <p>waters (1) 23:17</p> <p>waterways (2) 76:2;79:1</p> <p>way (17) 20:8;25:12;39:19; 42:11;47:3;49:11; 58:10;60:1,21;64:22; 65:6;67:18;69:2;74:10; 75:4;80:20;82:16</p> <p>ways (1) 17:1</p> <p>web (2) 9:10,14</p> <p>website (4) 9:5,16;21:5;59:4</p> <p>website-based (1) 21:23</p>	<p>week (1) 51:15</p> <p>welcome (1) 6:1</p> <p>well-known (1) 58:15</p> <p>well-trained (1) 62:22</p> <p>west (2) 69:15;71:13</p> <p>wetness (1) 75:10</p> <p>what's (9) 44:15;47:9,21;48:10; 52:11;54:1;55:5;62:22; 82:12</p> <p>whenever (1) 44:1</p> <p>whole (1) 50:17</p> <p>wholly (1) 15:17</p> <p>wide (1) 72:13</p> <p>widely (1) 23:20</p> <p>wildlife (1) 45:1</p> <p>Wilson's (3) 76:3,5,11</p> <p>wiring (1) 70:14</p> <p>wish (1) 20:20</p> <p>wishes (1) 9:6</p> <p>within (3) 44:4;65:8;82:2</p> <p>without (6) 8:15;21:3,17;41:13; 58:5;81:20</p> <p>witnessed (1) 77:10</p> <p>wonderful (1) 27:17</p> <p>wooded (2) 72:19;73:15</p> <p>woods (2) 53:7,11</p> <p>word (4) 35:20;36:8,9;64:18</p> <p>work (10) 13:19;27:17;58:8; 63:13,14;65:7,10;77:4; 80:15;82:18</p> <p>worked (1) 57:21</p> <p>workers (1) 82:17</p> <p>working (3) 65:8;67:17;80:21</p> <p>works (1) 22:12</p>
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Part B

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| Attachment 1 | Agenda |
| Attachment 2 | Order to adopt motion on election of Chair and Vice Chair
(Agenda Item 2) |
| Attachment 3 | Resolution to adopt amendments to ADEM Admin. Code
Division 335-6, Water Quality Program Regulations
(Agenda Item 5) |
| Attachment 4 | Order to deny Petitioner's Request to File Response to
ADEM's Reply; deny Petitioner's Request for Oral Argument;
and adopt Report of Hearing Officer with the exception that
the Commission's Finding includes a change in the Finding
recommended by the Hearing Officer of the word "role" to
the word "rule"
(Agenda Item 6) |

Attachment 1

Amended 10/07/13

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: October 18, 2013

TIME: 11:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 16, 2013

2. ELECTIONS

The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 335-6, WATER QUALITY PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Admin. Code Division 335-6, Water Quality Program Regulations, Chapter 335-6-16, Administrative Guidelines and Procedures for the Alabama Underground and Aboveground Storage Tank Trust Fund , Rule 335-6-16-.09, Scope of Tank Trust Fund Coverage. Revisions to this Rule are being proposed to establish the scope of Trust Fund coverage, effective January 1, 2014. The scope of Trust Fund coverage is proposed at \$1.3 million per incident. The Department held a public hearing on the proposed amendments on September 11, 2013.

6. THE CITY OF BRUNDIDGE, ALABAMA V. ADEM, AND BRUNDIDGE ACQUISITIONS, LLC, EMC DOCKET NO. 13-02

The Commission will consider the Report of Hearing Officer in this appeal/request for hearing regarding the transfer of Solid Waste Disposal Facility Permit No. 55-07 by ADEM to Brundidge Acquisitions, LLC on March 22, 2013.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

(The Requests from the public to address the Commission are attached to the agenda.)

Request 1

Nelson Brooke, Black Warrior Riverkeeper, on behalf of Black Warrior Riverkeeper, Inc.

SUBJECT: The City of Uniontown's Wastewater Treatment Plant, Uniontown Lagoon

(Chair Brown will recommend that the Commission grant the Request contingent upon the presentation not including references to matters that are the subject of pending legal or administrative actions.)

Request 2

Barbara Evans, Citizen

SUBJECT: Wastewater Spray Field in Uniontown, Alabama

(Chair Brown will recommend that the Commission grant the Request contingent upon the presentation not including references to matters that are the subject of pending legal or administrative actions.)

Request 3

Benjamin Eaton, on behalf of Black Belt Citizens Fighting for Health and Justice

SUBJECT: Uniontown's Wastewater Treatment Plant, Wastewater Spray Field

(Chair Brown will recommend that the Commission grant the Request contingent upon the presentation not including references to matters that are the subject of pending legal or administrative actions.)

REQUEST 1

Black Warrior RIVERKEEPER®
712 37th Street South
Birmingham, AL 35222
Tel: (205) 458-0095
Fax: (205) 458-0094
edillard@blackwarriorriver.org
www.BlackWarriorRiver.org



September 13, 2013

H. Lanier Brown, II, Esq., Chairman
Environmental Management Commission
PO Box 301463
Montgomery, AL 36130-1463

Via electronic mail only

Re: Request to Address the Environmental Management Commission
October 18, 2013
The City of Uniontown's Wastewater Treatment Plant

Dear Chairman Brown:

Black Warrior Riverkeeper, Inc. (Riverkeeper) is a nonprofit organization located in Birmingham, Alabama, whose mission is to protect and restore the Black Warrior River and its tributaries. At this time, on behalf of Riverkeeper, Nelson Brooke and I would each like the opportunity to address the Environmental Management Commission (EMC) on the Uniontown Lagoon, which is located in the Black Warrior River watershed. If our request is granted, we will of course provide the EMC with copies of our respective presentations closer to the scheduled meeting.

Please know that I appreciate your kind consideration of our request. Thank you.

Sincerely,

Eva Dillard
Staff Attorney

cc: Debi Thomas, EMC Executive Assistant



**Barbara Evans
278 Harriet Tubman Road
Lowndesboro, Alabama 36752**

September 27, 2013

H. Lanier Brown II, Esq.
Chairman, Alabama Environmental Management Commission
P.O. Box 310463
Montgomery, Alabama 36130

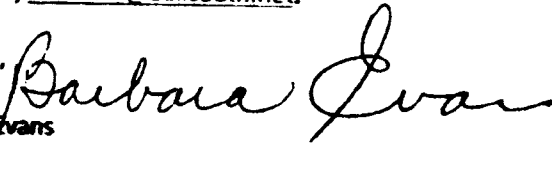
Dear Chairman Brown:

This is a request for me to have 3 minutes on the agenda at the upcoming EMC meeting on October 18, 2013. My subject will be the wastewater sprayfield in Uniontown, Alabama.

I will be brief and courteous. I am not a part of any legal action involving ADEM.

I appreciate your consideration. If there are any questions or concerns, I can be contacted at (334)284-0555 or (preferred) alawatch@bellsouth.net.

Sincerely,



Barbara Evans
citizen





**BLACK BELT CITIZENS
FIGHTING FOR HEALTH AND JUSTICE**
P.O. Box 523
Uniontown, AL 36786

October 4, 2013

H. Lanier Brown, II, Esq., Chairman
Environmental Management Commission
PO Box 301463
Montgomery, AL 36130-1463

Via Fax to 334-279-3052
Total of 2 pages

Re: Request to Address the Environmental Management Commission on
October 18, 2013, regarding Uniontown's Wastewater Treatment Plant

Dear Chairman Brown:

Black Belt Citizens Fighting for Health and Justice is a non-profit organization of concerned citizens in Uniontown, Alabama. On behalf of our group, the undersigned member hereby requests to be placed on the agenda to address the Environmental Management Commission (EMC) at its next meeting to be held on October 18, 2013. We have an issue that we wish to bring before the EMC.

Regarding the City of Uniontown's upgrades to its Wastewater Treatment Plant (WWTP) we will express to the EMC our strenuous objections to the location proposed for construction of a second spray field. Mr. John Stevens, PE, Vice President of Sentell Engineering, Inc. in Tuscaloosa, Alabama, is the engineer in charge of this project.

The proposed new spray field site on the south side of Perry County Road 53 (coordinates of approximately 32-23.176N, 87-30.830W) is completely unsuitable for use as a wastewater spray field for many compelling reasons, which we will discuss in detail.

We will request ADEM's cooperation and support to find a reasonable and appropriate alternative location to resolve this issue for the long term for all the various stakeholders in the City of Uniontown's WWTP, before the grant and loan funds are mis-spent in building a new spray field that is doomed to fail.

H. Lanier Brown, II, Esq., Chairman

October 4, 2013

We ask that you approve this request for the undersigned member of our group to speak on behalf of the Black Belt Citizens Fighting for Health and Justice and other Uniontown citizens. We appreciate your consideration of our request. Thank you very much.

Sincerely



Benjamin Eaton

PO Box 276

Uniontown, AL 36786

Home: 334-628-3012

Cell: 334-507-8951

beneaton@bellsouth.net

Attachment 2

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

MOTIONS

Elect Lanier Brown as Chair and

Scott Phillips as Vice Chair

ORDER

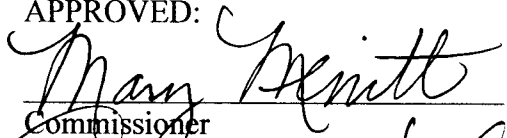
This cause having come before the Environmental Management Commission pursuant to the above motion, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

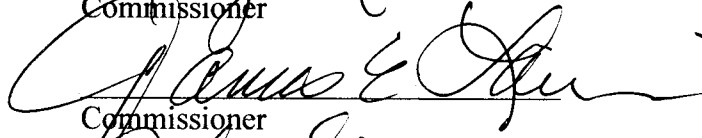
1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

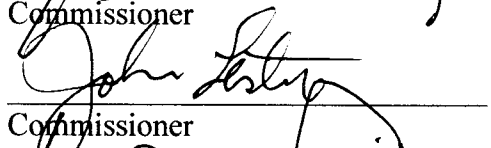
Environmental Management Commission Order
Page 2

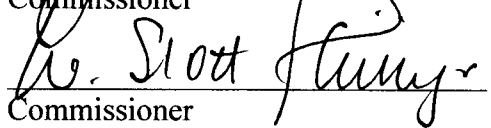
ISSUED this 18th day of October 2013.

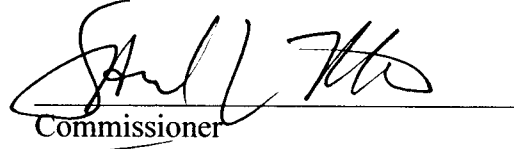
APPROVED:

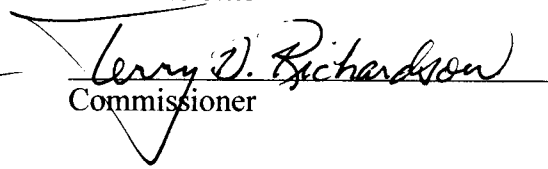

Commissioner


Commissioner


Commissioner


Commissioner


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Commissioner

Commissioner

DISAPPROVED:

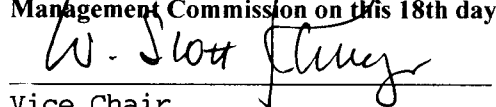
Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 18th day of October 2013.



Vice Chair
Environmental Management Commission
Certified this 18th day of October 2013

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 335-6 of the Department's Water Division's Water Quality Program Rules and Regulations 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.

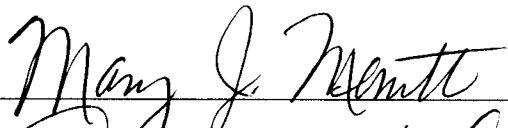
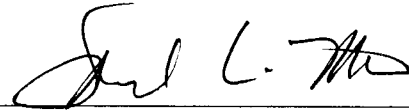
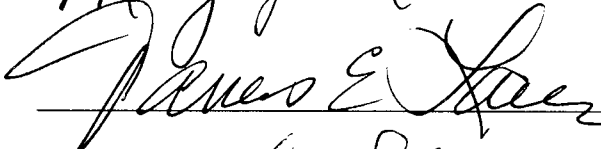
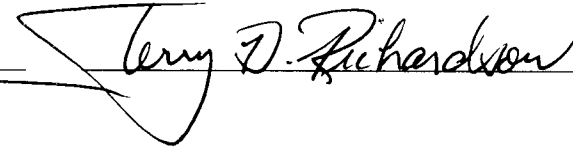

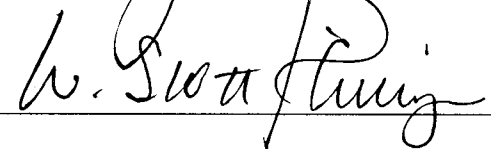
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [rule 335-6-16-.09/Scope of Tank Trust Fund Coverage (Amend)] of the Department's Water Quality 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 335-6 – Water Quality Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 18th day of October 2013.

APPROVED:

 _____	 _____
 _____	 _____
 _____	_____
 _____	_____

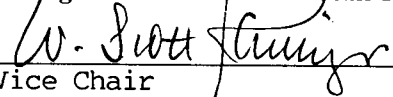
DISAPPROVED:

_____	_____
_____	_____
_____	_____

ABSTAINED:

_____	_____
-------	-------

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 18th day of October 2013.



Vice Chair
Environmental Management Commission
Certified this 18th day of October 2013

Attachment 4

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

In the Matter of:)	
)	
The City of Brundidge, Alabama,)	
Petitioner,)	
)	
vs.)	
)	EMC Docket No. 13-02
Alabama Department of Environmental)	
Management,)	
Respondent,)	
)	
and)	
)	
Brundidge Acquisitions, LLC,)	
Intervenor.)	

ORDER

The Commission having considered the record, including the Report of the Hearing Officer and its Proposed Findings of Fact, Conclusions of Law, and Recommendation; the Petitioner's Objections to the Report of the Hearing Officer and Request for Oral Argument; the Petitioner's Proposed Alternative Findings of Fact and Conclusions of Law; the Department's Reply to Petitioner's Objections to the Report of the Hearing Officer and Request for Oral Argument; the Petitioner's Request to File Response to ADEM's Reply and attached Petitioner's Response to ADEM's Reply; and the Intervenor's Response to the Petitioner's Objections to the Report of the Hearing Officer, hereby ORDERS, ADJUDGES, and DECREES as follows:

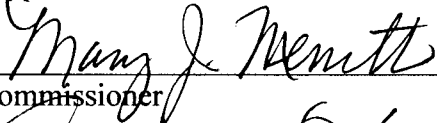
1. That the Petitioner's Request to File Response to ADEM's Reply is hereby denied;
2. That the Petitioner's Request for Oral Argument is hereby denied; and
3. That the Report of the Hearing Officer and its Proposed Findings of Fact, Conclusions of Law, and Recommendation are hereby adopted with the exception that the Commission finds that the transfer of Permit Number 55-07 was performed in a manner consistent with the promulgated rule of ADEM and consistent with applicable Alabama law, and no error resulted from the transfer; and

4. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

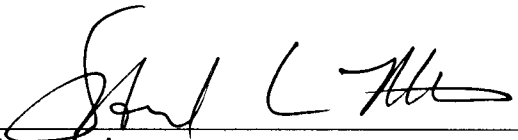
5. That a copy of the Order, along with a copy of the Report of the Hearing Officer, attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

ISSUED this 18th day of October 2013.

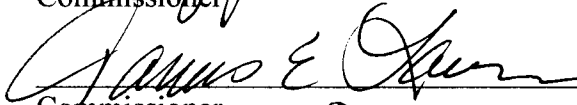
APPROVED:



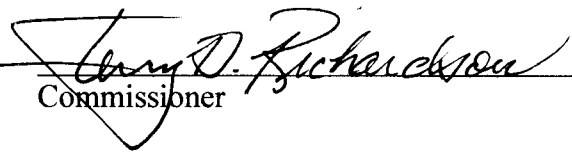
Commissioner



Commissioner



Commissioner

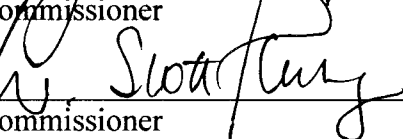


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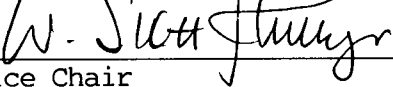
DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 18th day of October 2013.



Vice Chair
Environmental Management Commission
Certified this 18th day of October 2013

BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

THE CITY OF BRUNDIDGE, ALABAMA Petitioner, v. ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, Respondent and BRUNDIDGE ACQUISITIONS, LLC, Intervenor.

EMC Docket No. 13-02 Solid Waste Disposal Facility Permit No. 55-07



REPORT OF HEARING OFFICER

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

I. FINDINGS OF FACT

The relevant history of this proceeding actually begins with the construction of a solid waste landfill in the City of Brundidge in the early 1990s. The landfill constructed at that time is the same landfill which is the subject of the present proceeding, and it is uncontroverted that the City of Brundidge provided approval of the construction of the landfill pursuant to Code of Alabama, 1975, §22-27-48(a). [P. Ex. 1] That approval also

resulted in the initial Host Government Agreement (hereinafter HGA) between the City of Brundidge and Brundidge Landfill, LLC. The City of Brundidge negotiated various provisions of the HGA that were for its economic benefit and its public interest. The opening of the landfill did not occur until several years later. The exact reasons for the delay in opening were not clear, but that fact does not play into this recommendation.

In 2003, the City of Brundidge Solid Waste Authority (hereinafter “COBSWA”) was formed and sometime thereafter, the City of Brundidge assigned the HGA to COBSWA. COBSWA, however, does not have a municipal solid waste plan approved by ADEM. [Transcript, p. 54] A new host government agreement (“the Agreement”) was executed by COBSWA and the then-current operator, Brundidge Landfill, LLC. [P.Ex. 1] The purpose of assigning the Agreement to COBSWA was to avoid the prohibitions of *Code of Alabama, 1975*, §41-16-57, which prevents a municipality from entering into a contract with a term longer than three years. [Transcript, P. 68] The Agreement also stated that it superseded all prior agreements including the original agreement. [P. Ex. 1, ¶43] While the City of Brundidge was not a party to the Agreement, it signed the Agreement acknowledging its terms. [at p. 19]

The Agreement contained various economic provisions that addressed such matters as cost to the City of Brundidge, its residents and Pike County for disposing of waste at the landfill and the percentage of gate fees charged by the operator that the City of Brundidge would receive. [at pp. 9-12] The Agreement also contained various provisions requiring the operator to abide by ADEM and U. S. EPA regulations and laws. [at pp. 4-6] In addition, the Agreement stated that no laws, ordinances or regulations would be enacted that would be more stringent than those implemented by ADEM and the EPA. [*Id.* at ¶25]

In 2012, the operator of the landfill, Brundidge Landfill, LLC and its parent company Transload America, began experiencing financial difficulty and ultimately filed for bankruptcy protection. [Tr. 45-47] As a result, Transload America and one of its creditors, Nuveen, sought to sell the landfill. The City of Brundidge, along with two other interested parties, sought to purchase the landfill but the offers were not accepted. [at pp. 45-48] Thereafter Nuveen and Transload abandoned their efforts to sell the landfill and subsequently, as part of the bankruptcy, the Bankruptcy Trustee sought to sell the landfill.

Brundidge Acquisitions, with financial backing from Coffee County, successfully bid on the landfill. [P. Ex. 2 & 3] As part of the sale, the Bankruptcy Trustee moved the

Bankruptcy Court for an order under the Bankruptcy Code rejecting the Agreement as an executory contract. [P. Ex. 5] The court entered an order conditionally, rejecting the Agreement until such time as the sale of the landfill to Brundidge Acquisitions could be consummated.

On March 19, 2013, Brundidge Acquisitions filed an application with ADEM seeking transfer of the permit from Brundidge Landfill, LLC to Brundidge Acquisitions. [P. Ex. 11] Brundidge Acquisitions did not, however, request any changes to the permit itself; i.e., it did not seek to change the capacity, the type of waste received, etc. On March 22, 2013, ADEM approved the application by Brundidge Acquisitions for the transfer of the permit and transferred the permit to Brundidge Acquisitions. [P. Ex. 12] ADEM only changed the name of the permittee to Brundidge Acquisitions but did not make any changes to the permit itself.

On March 29, 2013, the City of Brundidge filed a request for hearing with ADEM. In its request, the City alleged three errors on the part of ADEM in the transfer of the permit to Brundidge Acquisitions. First, the City of Brundidge essentially alleged that the Agreement represents host government approval as required under *Code of Alabama, 1975, §22-27-48(a)* and that the transfer of the permit would allow the Agreement to be rejected by the Bankruptcy Court. The City of Brundidge also claimed that without the Agreement in place, Brundidge Acquisitions would be operating the landfill without the requisite local approval. Additionally, the City of Brundidge claimed that Brundidge Acquisitions misled ADEM when it executed ADEM's application form for the transfer of the permit. The City of Brundidge argued that Brundidge Acquisitions' representation that it would assume responsibility for the facility and that it would abide by all permit or registration conditions was misleading because Brundidge Acquisitions has previously sought rejection of the Agreement by the Bankruptcy Trustee. The City of Brundidge further argued that ADEM erred by transferring the permit in less than thirty days, but said City of Brundidge has now abandoned this alleged error.

On April 4, 2013, the City of Brundidge filed a request to stay the transfer of the permit. On April 9, 2013, Brundidge Acquisitions intervened in the matter filed by the City of Brundidge. ADEM and Brundidge Acquisitions each filed briefs in opposition to the City of Brundidge's request to stay. On April 19, 2013, the City of Brundidge's request for stay was heard by AEMC. Following oral argument, AEMC denied the City of Brundidge's request for stay.

On May 1, 2013, the City of Brundidge filed a motion to amend its request for hearing to add a new claim. The new claim essentially asserts a new legal theory regarding the application of *Code of Alabama, 1975, §22-27-48(a)*. In essence, the City of Brundidge argues that the transfer of a permit is a modification requiring local approval. Brundidge Acquisitions filed a brief in opposition to the City of Brundidge's motion to amend, responding that the efforts of the City of Brundidge to amend its request for hearing were improper as well as the fact that there was no legal support, statutory or otherwise, for the City of Brundidge's new claim. This motion filed by the City of Brundidge is ruled on by separate order.

On June 6, 2013, following the close of discovery in this matter, a hearing was held on this matter at the ADEM offices in Montgomery, Alabama. The evidence in this case came before the undersigned in the form of testimony presented by four witnesses, all under oath and subject to cross-examination. In addition, the parties presented documentary evidence that was properly marked and admitted into the record. The undersigned was able to view the witnesses, observe the demeanor of those witnesses and assess the credibility of the witnesses.

On June 24, 2013, Brundidge Acquisitions closed on the purchase of the landfill and is now the owner of the landfill as well as the holder of the permit. Accordingly, pursuant to the Bankruptcy Court's order and now that the sale of the landfill has closed, the Agreement has been formally rejected (rather than being conditionally rejected).

On July 11, 2013, ADEM filed a motion to dismiss the petition based upon its contention that the City of Brundidge lacked standing to proceed. Briefs and arguments were submitted by all parties to the undersigned on this issue.

II. CONCLUSIONS OF LAW

1. This matter is properly before AEMC by way of this Report of the undersigned, together with the entire record including transcript of testimony, exhibits, arguments submitted and all documents allowed into evidence.
2. The Petitioner was properly served with notice of the hearing, which took place at the ADEM offices located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

3. All parties were given the opportunity to respond to, and present evidence and argument on, all material issues at the hearing conducted on June 6, 2013 in accord with Rule 335-2-1-.15 of the ADEM Admin Code, and the hearing was conducted in accord with ADEM rules.
4. This is a *de novo* process in which AEMC stands in ADEM's shoes and substitutes its judgment for that of ADEM on questions of law and fact related to the propriety of Administrative Order Number 12-060-SW. (ADEM Admin Code R. 335-2-1-.14(6); *Marshall County Environmental Action Group, et al.*, AEMC Docket Number 96-21) Because the process is *de novo* and AEMC should substitute its judgment for that of ADEM, there is no right or opportunity to participate in the deliberative pre-decisional process, as such right was afforded to the Petitioner to an even-larger extend in the *de novo* hearing.
5. The burden of proof lies with the Petitioner to prove its contentions by preponderating legal evidence to the undersigned's satisfaction, the same as in civil cases in this State. (ADEM Admin. Code R. 335-2-1-.27(5); *Town of Loachapoka, et al.*, AEMC Docket Nos. 03-01 and -02; *River Ridge Homeowners Association*, AEMC Docket No. 99-03; *Sierra Club, et al.*, AEMC Docket No. 91-29, *Affirmed*, Montgomery County Circuit Court, Case No. CV-92-1190)
6. The Petitioner bore the burden of going forward with the evidence. (ADEM Admin. Code R. 335-2-1-.14(6))
7. The Petitioner in this matter, the City of Brundidge, is an aggrieved party and entitled to maintain this challenge before the AEMC and has demonstrated that it stands to suffer an injury by the transfer of Permit 55-07. Accordingly, as a part of the undersigned's findings, ADEM's motion to dismiss based upon the argument that the City of Brundidge lacks standing to proceed should be denied. A separate order to that effect is entered on this same date.
8. ADEM's transfer of Permit 55-07 was done without the approval of the City of Brundidge; however, that transfer does not violate *Code of Alabama, 1975, §22-27-48*.

9. Approval of the landfill was given by the City of Brundidge when Permit 55-07 was originally issued and §22-27-48(a) does not require that ADEM revisit the issue of local government approval every time a permit is transferred. Only on the issuance of a new permit or a “modified” permit is the approval of local government revisited. Such was not required with the transfer that occurred here.
10. The rejection of the HGA as referenced in the hearing and in the briefs (actually labeled “Agreement,” P. Ex. 1) occurred as a result of the actions and orders of the United States Bankruptcy Court for the District of New Jersey. ADEM simply transferred Permit 55-07, and its actions were not the cause of the City of Brundidge’s loss of the contractual benefits it had received as a result of its earlier negotiations.
11. The City of Brundidge will lose some of its control and benefit of the landfill because of the rejection of the HGA as ordered by the Bankruptcy Court (conditionally done on February 19, 2013 and subsequently ordered at a time following the hearing of this matter on June 6, 2013) much like creditors lose rights and benefits every day when debtors file a petition in bankruptcy court. There is no question that people, companies and even municipalities suffer a harsh reality when they, as creditors (or in this case as a party to an executed contract), lose the benefit of their bargain because of a discharge in bankruptcy or some other actions of the Bankruptcy Court. Congress has decided that bankruptcy is an available remedy, and creditors or contractors lose as a result. That is what happened to the City of Brundidge through no fault of ADEM.
12. The application process used herein for the transfer of this permit was not misleading to ADEM and there has been no complaint by ADEM that it was misleading.

III. RECOMMENDATION

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

That the transfer of Permit Number 55-07 was performed in a manner consistent with the promulgated rule of ADEM and consistent with applicable Alabama law, and no error resulted from that transfer.

Respectfully submitted this 24th day of September, 2013.



JAMES E. HAMPTON

Hearing Officer

J. Dorman Walker, Jr., Esq.
James L. Noles, Jr., Esq.
Simeon F. Penton II, Esq.
Robert E. L. Gilpin, Esq.
Joseph W. Carlisle, Esq.
P. Christian Sasser, Esq.
Anthony Todd Carter, Esq.