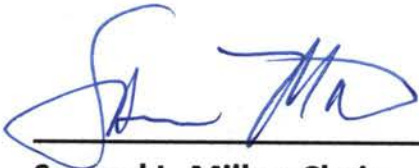


2/19/19

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 14, 2018

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 December 14, 2018.



Samuel L. Miller, Chair

Alabama Environmental Management Commission

Certified this 15th day of February 2019.

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 14, 2018**

**Convened: 11:00 a.m.
Adjourned: 1:28 p.m.**

Part A

**Transcript
Word Index**

Part B

**Attachment Index
Attachment 1
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Attachment 6**

Part A

<p style="text-align: right;">Page 1</p> <p>1 2 3 4 5 MEETING OF THE ALABAMA ENVIRONMENTAL 6 MANAGEMENT COMMISSION 7 DECEMBER 14, 2018 8 11:00 A.M. 9 10 11 12 13 14 LOCATION: Alabama Department of Environmental 15 Management Building 16 Alabama Room 17 1400 Coliseum Boulevard 18 Montgomery, Alabama 36110 19 20 21 22 23</p>	<p style="text-align: right;">Page 3</p> <p>1 DR. MILLER: Good morning, 2 everyone. We have got a nice crowd this 3 morning. Glad to see that. I'm going to call 4 the meeting to order. 5 First agenda item is 6 consideration of the minutes for the meeting 7 held on October 19, 2018. Is there any 8 discussion or additions or deletions to those 9 minutes? 10 MR. BROWN: Move to approve. 11 MR. MASINGILL: Second. 12 MR. WALTERS: Excuse me. Just one 13 exception. The minutes failed to recognize me 14 as being in appearance that day. So if we can 15 correct those. 16 DR. MILLER: We can correct that 17 I'm pretty sure. All right. So we have a 18 move to adopt the corrected minutes. 19 MR. BROWN: Move to adopt minutes 20 with the revision. 21 DR. MILLER: Okay. And a second? 22 MR. MASINGILL: Second. 23 DR. MILLER: All in favor say aye.</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 COMMISSION MEMBERS PRESENT: 4 Samuel L. Miller, M.D., Chair 5 H. Lanier Brown, II, Vice Chair 6 John (Jay) H. Masingill, III 7 Ruby L. Perry, D.V.M. 8 Mary J. Merritt 9 Kevin McKinstry 10 Thomas P. Walters, P.E. 11 12 ALSO PRESENT: 13 Robert Tambling, EMC Legal Counsel 14 Kayla Currie, Assistant Attorney General 15 Lance R. LeFleur, ADEM Director 16 Debi Thomas, EMC Executive Assistant 17 18 19 20 21 22 23</p>	<p style="text-align: right;">Page 4</p> <p>1 COMMISSIONERS: Aye. 2 DR. MILLER: All opposed? 3 MR. BROWN: We do want to give him 4 his hundred dollars. 5 MR. WALTERS: Christmas. 6 DR. MILLER: Our next item is 7 elections of the committee members for the 8 Personnel Committee and the Rulemaking 9 Committee. We circulated a list of the 10 commissioners, and the list included Tom 11 Walters as chairman of the Personnel Committee 12 with Kevin McKinstry and Ruby Perry as the 13 other members. And for the Rulemaking 14 Committee, Lanier Brown as the chairman, and 15 Jay Masingill and Mary Merritt are the serving 16 members. I assume that's all right with 17 everyone. Is there any discussion on those 18 nominations? 19 MR. BROWN: Move to accept the 20 nominations to the committees decided by the 21 Chair. 22 MR. MASINGILL: Second. 23 DR. MILLER: All right. Is there</p>

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1 any discussion?
2 If not I'll call for the
3 question. All in favor say aye.
4 COMMISSIONERS: Aye.
5 DR. MILLER: All opposed, no.
6 All right. Thank you.
7 Our agenda item number three is
8 our report from the ADEM Director Mr. LeFleur.
9 DIRECTOR LEFLEUR: Commissioner
10 Walters, I knew you were here.
11 MR. WALTERS: Thank you, sir.
12 DIRECTOR LEFLEUR: Good morning and
13 welcome all to the second meeting of the
14 Environmental Management Commission for fiscal
15 year 2019. Today's report will update you on
16 fiscal year 2020 budget plans, report on
17 progress in replacing the substandard
18 facilities in Mobile, review how the
19 Department measures its performance, review
20 EPA's Compliance and Enforcement Dashboards
21 for our NPDES program and update you on
22 several other matters.
23 We are two months into fiscal

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1 year 2019 and on target with funding and
2 expenditures. Looking ahead to fiscal year
3 2020, we are analyzing some emerging trends in
4 several revenue streams and departmental
5 expenditures. Preliminary projections show
6 slow growth in revenue if the economy and
7 therefore construction activity continues the
8 current trend. We are seeing signs of future
9 increases in required expenditures to offset
10 inflation that has taken place during the
11 extended period when the Department's budget
12 was flat or declining.
13 The State has been increasing the
14 charges to the Department for standard
15 services and new systems implemented by the
16 State that do not improve our efficiency. We
17 are also approaching the point in the life
18 cycle of several key elements of our software
19 systems where significant upgrades are
20 necessary. It is likely we will be going to
21 the legislature to seek a General Fund
22 appropriation beginning in fiscal year 2020.
23 I will be providing updates as we get closer

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1 to the legislative session.
2 On the federal side, we are
3 operating under a continuing resolution until
4 a fiscal year 2019 federal budget is
5 approved. The continuing resolution means our
6 federal funding this fiscal year will be at
7 the same rate as last year until a final
8 federal budget is adopted.
9 Progress continues in our efforts
10 to obtain funding for the field office in
11 Mobile from the RESTORE Act funds Alabama is
12 receiving following the 2010 Deepwater Horizon
13 oil spill.
14 The group of projects that
15 includes our field office funding completed
16 the required public comment period. It is
17 anticipated the response to comments currently
18 being prepared by the Alabama RESTORE Act
19 Council will be completed and the final state
20 expenditure plan will be sent to the Federal
21 RESTORE Council by calendar year end. The
22 Federal RESTORE Council is expected to provide
23 its approval during the first quarter of

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1 2019. The Department has prepared a draft
2 request for proposals for design and
3 engineering services for the new field
4 office. The RFP will be issued and
5 negotiations for a site will begin in early
6 2019.
7 Measuring performance is a
8 critical exercise for any organization.
9 Accurately measuring performance requires
10 objective measures where political and
11 agenda-driven bias are not present. The
12 measures of the performance of personnel
13 within the Department must be consistent with
14 how the performance of the Department as a
15 whole is measured. Today I will review with
16 you the criteria the Department uses to
17 internally assess the performance of our
18 personnel as well as the Department itself.
19 We begin with planning. At the
20 October Commission meeting the 2019 update to
21 the Five-Year Unified Strategic Plan and the
22 Department's 2019 Annual Operating Plan were
23 reviewed. Later in today's agenda you will

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1 consider adopting the strategic plan.
2 The Department's annual operating
3 plans contain specific short and intermediate
4 term goals and actions to achieve the broad
5 goals in the strategic plan. Departmental
6 personnel are measured by how well their
7 individual annual plans move us toward the
8 strategic goals as well as how challenging and
9 innovative their goals are. Personnel are
10 measured on their achievement of the goals.
11 Progress is reported to you and
12 to the public at large at each Commission
13 meeting and prior to each Commission meeting
14 in the "ADEM Update" memo you receive.
15 Included among the goals in the Annual
16 Operating Plan is for each of the work plans
17 negotiated with EPA for the four major EPA
18 delegated programs to be met.
19 Another objective measure is an
20 analysis of each division's performance
21 against all other states using EPA's
22 Compliance and Enforcement Metrics. This is a
23 regular part of my reports to the Commission

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1 criteria. The State Review Framework review
2 performed by EPA about every three years, is a
3 form of audit of each delegated program
4 focusing on data completeness and accuracy,
5 inspections, enforcement, meeting grant
6 commitments, and so forth.
7 EPA periodically performs reviews
8 of permit quality, laboratory operations, and
9 other matters. EPA also periodically
10 recognizes certain state activities as being
11 best practices for other states to consider
12 adopting. More frequently the U.S. -- more
13 infrequently, excuse me, the U.S. Office of
14 Inspector General ranks each program in each
15 state assigning a ranking in the top ten and
16 declining groupings of ten. These federally
17 generated comparisons against programs in
18 sister states is a measure used by the
19 Department to assess performance. Those
20 analyses by EPA and the Office of the
21 Inspector General are presented in my reports
22 to you or posted on the ADEM website as they
23 occur.

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1 throughout the year. Later in today's report
2 we will review the NPDES program dashboards.
3 A logical question related to
4 performance is "Are our efforts resulting in
5 actual improvements to the environment in
6 Alabama?" So we look at the actual results of
7 efforts to improve the environment by
8 measuring what is happening over time with
9 Alabama's air, land, and water quality
10 measures. Every 12 to 18 months the
11 Commission and the public, both here and in
12 other forums, are presented a report called
13 "The State of the Environment in Alabama"
14 where trends in meeting the National Ambient
15 Air Quality Standards, Drinking water and
16 water body quality standards, solid waste and
17 hazardous waste controls and cleanup, along
18 with many other environmental quality measures
19 are reviewed.
20 Periodically EPA, our federal
21 oversight body, and EPA's oversight body, the
22 U.S. Office of the Inspector General, analyze
23 the performance of each state using objective

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1 There's a national organization
2 comprised of the leaders of the environmental
3 programs in each state called the
4 Environmental Council of States. Among other
5 activities, ECOS recognizes individual states'
6 performance in various areas such as
7 innovations. Recognition of accomplishments
8 by our peers is considered in analyzing the
9 performance of the Departmental personnel.
10 Feedback from the regulated
11 community is another factor used to assess
12 performance. The Alabama Department of
13 Commerce for a number of years has annually
14 drawn attention to results of an independent
15 survey of business and industry ranking states
16 on the desirability for locating new business
17 and industry. Environmental criteria such as
18 timeliness of permitting and unbiased
19 enforcement are included in the survey. And
20 how the state is ranked is considered in
21 evaluating the performance of the Department
22 and its personnel.
23 Maintaining a spotless record of

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1 nondiscrimination is a departmental goal,
2 along with proactively going the extra mile to
3 help disadvantaged communities by engaging in
4 our Environmental Justice Program which
5 measures actual results. Periodically my
6 reports to the Commission update you on these
7 activities. Personnel are evaluated on their
8 record in this area.

9 Finally, resources, especially
10 financial resources, are provided by federal
11 and state taxpayers and regulated industry.
12 It is the obligation of all Departmental
13 personnel to use those resources wisely, and
14 they are evaluated on how well they do so.

15 Those are some of the criteria
16 used internally to measure the performance of
17 our personnel. As part of my regular reports
18 to the Commission, it's my objective to
19 provide you information using those criteria
20 so you can determine how the entire Department
21 is performing.

22 At the last Commission meeting we
23 discussed the 2019 update to the five-year

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1 Unified Strategic Plan as well as the 2018
2 Departmental Operating Plan results and the
3 Operating Plan objectives for 2019.
4 Development and execution of the Operating
5 Plan is one of the criteria used to measure
6 performance.

7 Next, in today's report, we will
8 review another area of performance measures,
9 EPA's Compliance and Enforcement Metrics
10 comparing our NPDES program to other states.
11 Over time it has become clear that the
12 Department consistently outperforms national
13 averages in all areas. Today we will continue
14 the previous stepped-up focus on performance
15 trends. Despite having the lowest funding in
16 the entire nation, ADEM consistently beats
17 national averages and is, in fact, ranked by
18 EPA and the U.S. Office of Inspector General
19 as a top ten performer. Our objective is to
20 not only continue to be a top ten performance
21 program but to constantly improve, which means
22 we must measure ourselves against ourselves by
23 looking more closely at trends.

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1 As has been the case with other
2 media and previous reports on the NPDES water
3 program, the following slides will look at the
4 size of the universe of regulated facilities,
5 the inspections performed, the violations
6 found in those inspections, the most serious
7 violations, and the enforcement actions taken
8 as a result of the violations. The dashboards
9 presented today, along with many others, are
10 readily available to any interested party on
11 the EPA website.

12 The first slide is the one
13 typically presented in updates which shows the
14 size of the universe of NPDES permitted water
15 discharging facilities. It shows there are
16 approximately 10,400 NPDES permitted entities
17 in Alabama, which is down slightly from 2017.
18 Nearly 87 percent of the total permits are
19 General Permits shown in red. The graph
20 clearly displays the Department's strategy to
21 increasingly use General Permits because they
22 both reduce the workload associated with
23 permit issuance, which increases efficiency,

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1 and generally have tighter discharge limits.

2 There are several groups of
3 graphs on EPA's website related specifically
4 to enforcement and compliance. The first of
5 these is inspections. The graph in the
6 inspections group of dashboards -- the graphs
7 in the inspections group of dashboards analyze
8 the rate of inspections.

9 This next slide is one typically
10 presented in our regular updates. It shows
11 the percentage of all major facilities
12 inspected in Alabama. The purple columns --
13 the colors aren't quite right in this light,
14 but the purple ones consistently show that the
15 Department consistently exceeds both the
16 national average, shown by the dashed blue
17 line, and the EPA target of 50 percent, shown
18 by the solid black line. Our trend is
19 basically flat at a level approaching 100
20 percent.

21 The inspection group of
22 dashboards is also -- in the inspection group
23 of dashboards is also a graph showing the

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1 percentage of non-majors with General Permits
2 or GPs that have been inspected. You may
3 recall from the earlier pie chart that General
4 Permits is the largest category of permit
5 holders. Note that EPA has not displayed a
6 target for the rate of inspections for GP
7 non-majors as they did for majors because the
8 target rate varies -- the target rates vary on
9 the specific GP sector. However, every year
10 ADEM's rate of inspections, the purple
11 columns, exceeded the national average shown
12 as the blue dashed line.

13 For GP non-majors the percentage
14 of inspections has been trending up, which
15 reflects a key element in our strategy to
16 increase compliance by increasing
17 inspections. The newly implemented field
18 tablet based inspection program allows us to
19 maintain high inspection rates despite
20 Department-wide declining head count.

21 The next group of graphs on the
22 EPA website is the violations group of
23 dashboards which analyze permit violations

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1 minimum.

2 The serious violations dashboard
3 group focuses specifically on serious
4 violations. This slide showing serious
5 violations is a subset of the previous slide.
6 As you can see, the national average,
7 represented by the dashed red line, has been
8 hovering between 20 and 25 percent, while
9 Alabama's level of serious violations has been
10 declining over the long-term and is now about
11 half the national average. The long-term
12 trend is down, which is good, despite the
13 slight uptick in 2018. It remains to be seen
14 if we are near the lowest practically
15 achievable level. We seek the lowest possible
16 occurrence of violations which means the
17 highest level of compliance. The final group
18 of enforcement dashboard slides will help
19 explain how Alabama is able to achieve the
20 high levels of compliance shown in this and
21 the preceding slide.

22 In the Enforcement Actions
23 dashboard group the next graph illustrates the

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1 found in those inspections. Once again, this
2 slide is one typically included in our regular
3 updates. It shows the percentage of majors in
4 non-compliance. As you see, the percentage of
5 major facilities in Alabama with serious
6 violations, shown in orange, and non-serious
7 violations, shown in blue, is better, often by
8 a wide margin, than the respective national
9 averages shown as the red and blue dashed
10 lines.

11 The trend is up slightly in
12 non-serious violations and approaching the
13 national average, that dashed blue line.

14 Non-serious violations can include such things
15 as paperwork issues and other violations not
16 impacting the environment. Serious violations
17 in both Alabama, the orange columns, and the
18 nation, the red dashed line, are trending
19 flat. The increase in non-serious violations
20 that began in 2017 does not appear to have a
21 discernible cause but is an area for
22 attention. The serious non-compliance level
23 is approaching what may be a steady-state

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1 trend in formal enforcement actions. In this
2 graph, unlike others, the dashed red line
3 represents the percentage of major facilities
4 in Alabama that are classified as being in
5 significant non-compliance rather than
6 representing a national average. The long-
7 term trend is going down, which means
8 compliance is going up. As is often stated,
9 one of our primary objectives is to increase
10 compliance, and this line demonstrates that
11 that objective is being met.

12 The blue columns represent the
13 percentage of major facilities that are in any
14 state of non-compliance and also have a formal
15 enforcement action against them. As you can
16 see, formal actions for non-compliance are
17 being used less over time.

18 This graph is not one of the EPA
19 dashboard graphs. Since the prior graph does
20 not show how ADEM compares to the rest of the
21 nation, this graph was developed in-house
22 using EPA data to show the percentage of total
23 enforcement actions that are informal forms of

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1 enforcement for both Alabama and the nation.
2 ADEM employs an intentional strategy to focus
3 on informal enforcement to obtain the lowest
4 levels of non-compliance shown in earlier
5 graphs.
6 The graph illustrates that our
7 percentage of informal enforcement actions to
8 formal enforcement actions is consistently
9 higher than the nation as a whole. As you can
10 see, the trend was increased -- increasing
11 slightly during the period from 2011 to 2014
12 when it peaked. Since then the trend has been
13 down slightly.
14 A number of informal actions
15 included in the graph between 2011 and 2014
16 came about as a result of seeking to increase
17 participation in the electronic Discharge
18 Monitoring Reporting or eDMR system. That
19 effort was very successful and is a big reason
20 why we lead the nation in eDMR participation.
21 Following that push, the percentage of
22 informal enforcement actions has returned to a
23 more typical level which continues to be well

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1 above what other states are doing.
2 As you can see, the national
3 trend is moving toward a higher percentage of
4 informal actions like we have been doing for
5 some time. By way of reminder, that strategy
6 of using informal action is based on
7 independent research that shows informal
8 action together with inspections is ten times
9 more successful in achieving compliance than
10 penalties resulting from formal enforcement
11 actions. This approach is also far more cost
12 effective because it is estimated to take
13 between five and ten times the resources to
14 undertake a formal enforcement action compared
15 to an informal action. Better results at
16 lower cost is what we're about.
17 To summarize, the universe of
18 NPDES regulated facilities is basically steady
19 with increasing reliance on General Permits.
20 Inspection rates continue at a level much
21 higher than the national average and GP
22 inspection rates are trending up. Overall
23 violations are very low and trending flat,

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1 well below the national average. Serious
2 violations are very low and trending down, and
3 enforcement is skewed toward informal
4 enforcement. These graphs demonstrate that
5 our high inspection rates and informal
6 enforcement emphasis is getting the results --
7 the desired results of high compliance rates.
8 The metrics displayed in these
9 dashboard groups continue to be readily
10 available, comprehensive, verifiable,
11 objective measures of performance. As you've
12 seen, every group of measures demonstrates
13 that the Department is consistently beating
14 national averages and that performance is
15 trending toward continued improvement.
16 As mentioned a few moments ago,
17 at the October Commission meeting, planning
18 activities and performance against plans were
19 reviewed. The review of NPDES dashboards
20 today is another measure of departmental
21 performance. There have been two recent
22 developments related to another of the
23 criteria used to measure performance. The

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1 developments are in the area of maintaining a
2 clean nondiscrimination record.
3 In June of this year,
4 Florida-based attorney David Ludder filed a
5 Title VI discrimination complaint with EPA
6 when the Department upgraded its procedure for
7 investigating discrimination complaints. You
8 may recall a memo from me dated August the
9 10th, 2018, addressing the negative media
10 coverage initiated by the complainant in
11 connection with the claim. That status memo
12 is on the ADEM website under Director's
13 Correspondence. I am pleased to notify you
14 that last week EPA dismissed that Title VI
15 complaint with a finding that the Department
16 had not engaged in discrimination.
17 In May of 2017, an environmental
18 activist group based in Connecticut filed a
19 Title VI discrimination complaint with EPA
20 when the Department renewed the landfill
21 permit for the Stone's Throw landfill in
22 Tallassee, Alabama. The complaint was filed
23 on the same day EPA dismissed a similar Title

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1 VI complaint that had been pending for
2 fourteen years. On Monday of this week, EPA
3 dismissed that complaint with a finding that
4 the Department had not discriminated. These
5 actions by EPA again reaffirmed that the
6 Department is maintaining a spotless
7 nondiscrimination record which is one of our
8 goals.

9 It was noted earlier that one of
10 the criteria used to measure departmental
11 performance is achieving objectives set out in
12 the Department's Annual Operating Plan. One
13 of the goals in the Annual Operating Plan is
14 to encourage professional development of our
15 personnel.

16 Today I am pleased to recognize
17 several of our staff who have achieved a
18 significant milestone in their professional
19 development. Two have achieved the
20 designation of Professional Engineer. Eric
21 Reidy, would you please stand? Eric.
22 Jennifer Youngpeter, would you please stand
23 also?

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1 waste water treatment system that will allow
2 Uniontown to meet ADEM water quality standards
3 and environmental permit conditions. The
4 Department will continue to monitor the
5 situation.

6 That completes my report. I will
7 be pleased to answer any questions you may
8 have.

9 DR. MILLER: Any commissioners have
10 questions for Mr. LeFleur?

11 Thank you.

12 DIRECTOR LEFLEUR: Thank you.

13 DR. MILLER: Our next item is a
14 report from the Commission Chair, and I will
15 report that I have no report.

16 We're also going to today
17 consider a resolution for former Commissioner
18 Elliott Craig Martin, D.V.M., and I'm going to
19 read the resolution into the minutes.

20 Whereas Elliott Craig Martin,
21 D.V.M., served as a member of the Alabama
22 Environmental Management Commission in the
23 Chemist Veterinary position from March 2015

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1 We also have one person who has
2 achieved the Professional Geologist
3 designation. Billie Jean Tyler, would you
4 please stand?

5 Congratulations to all of you.
6 (Applause.)

7 DIRECTOR LEFLEUR: Well done.

8 Finally I would like to give you
9 a brief update on efforts to upgrade the
10 Uniontown waste water facilities that I
11 reported on at the last Commission meeting.
12 The USDA has obtained funding to coverage 75
13 percent of the \$31 million total cost for the
14 upgrades. Commitments for approximately half
15 of the remaining 25 percent of the cost have
16 been obtained. Work continues to put in place
17 the remaining 3.6 million dollars.

18 The first in the latest round of
19 stakeholder meetings to receive final
20 stakeholder input took place in November.
21 USDA continues to be at the forefront in
22 overseeing the financial, engineering, and
23 operational work that must be done to obtain a

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1 until September 2018 and as a member of the
2 Commission's Personnel Committee from April of
3 2015 until September of 2018; and whereas due
4 to his veterinarian expertise he provided
5 experience, wisdom, and foresight in the
6 Commission's deliberations on significant
7 issues; and, whereas, his steadfast dedication
8 to his service on the Commission will be
9 greatly missed by his fellow Commissioners,
10 the Commissioners' legal counsel and
11 assistant, the leadership and staff of the
12 Alabama Department of Environmental
13 Management, and many within the governmental,
14 regulated, and environmental communities.
15 Now, therefore, be it resolved that the
16 Alabama Department -- Alabama Environmental
17 Management Commission expresses gratitude to
18 Elliott Craig Martin, D.V.M., for his
19 significant contribution toward ensuring all
20 citizens of the state a safe, healthful, and
21 productive environment. Done this day, the
22 14th of December 2018.

23 I will entertain a motion of the

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1 Commission regarding this resolution.
2 MR. BROWN: Move to adopt the
3 resolution.
4 MR. MASINGILL: Second.
5 DR. MILLER: Any discussion?
6 All in favor say aye.
7 COMMISSIONERS: Aye.
8 DR. MILLER: All opposed, no.
9 Thank you.
10 At our October 19th, 2018,
11 meeting the Commission adopted a motion to
12 consider the Strategic Planning Ad Hoc
13 Committee's recommendation and adoption of the
14 draft 2019 AEMC and ADEM Unified Strategic
15 Plan. I think we've all had a chance to look
16 this over. The Committee recommended that we
17 adopt the plan. And at this point I would
18 like to open the floor for a move to adopt
19 this plan and further discussion.
20 MS. MERRITT: I move to adopt the
21 recommendation of the Strategic Plan Ad Hoc
22 Committee and adopt the draft of the 2019 AEMC
23 and ADEM Unified Strategic Plan.

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1 MR. BROWN: Second.
2 DR. MILLER: All right. Is there
3 any further discussion?
4 All right. Well, I'm going to
5 call for the question. We have a motion to
6 adopt the recommendation of the Strategic
7 Planning Ad Hoc Committee. And I'd like to
8 ask all in favor say aye.
9 COMMISSIONERS: Aye.
10 DR. MILLER: All opposed say no.
11 Motion passes.
12 Our next item is concerning the
13 consideration of the Hearing Officer's Order
14 and Recommendation of Gene Hamby and Hamby
15 Farms, LLC, versus ADEM and CWI Alabama. The
16 Hearing Officer found that there was no
17 genuine issue of material fact -- material
18 fact as to the Petitioner's claim that the
19 Department and CWI are entitled to judgment as
20 a matter of law.
21 Now, this set of documents were
22 distributed through the Commission. The
23 appeal was multi-faceted, very complex, and we

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1 asked Robert and Kayla to sort of go through
2 that and give us the unbiased opinion as to
3 what the appeal was really saying. And at
4 this point in time we've had no request for
5 any oral argument from either side on this
6 appeal.
7 So is there anyone who feels
8 uncomfortable addressing the appeal and
9 determining whether the Hearing Officer was
10 correct or incorrect in his response?
11 All right. I'll entertain a
12 motion regarding the Hearing Officer's Order
13 and Recommendation from the Commission.
14 MR. WALTERS: I move to adopt the
15 Hearing Officer's Recommendation.
16 DR. PERRY: Second.
17 DR. MILLER: Any discussion?
18 I'm going to call for the
19 question. All in favor of the motion and
20 second, please signify by saying aye.
21 COMMISSIONERS: Aye.
22 DR. MILLER: All opposed, no.
23 At this time is there any other

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1 business that members of the Commission would
2 like to bring in front of the Commission and
3 discuss?
4 We have some proposed dates for
5 Commission meetings in calendar year 2019.
6 They are February 15th, April 12th, June 21st,
7 August 16th, October 18th, and December 13th.
8 Is there any discussion on these dates? Is
9 there anyone who has a potential conflict that
10 you're aware of?
11 All right. I'll entertain a
12 motion regarding adoption of the proposed
13 Commission meeting dates.
14 MR. MASINGILL: Move to adopt the
15 proposed Commission meeting dates, time, and
16 location.
17 MR. BROWN: Second.
18 DR. MILLER: Any further
19 discussion?
20 If not, I'll call for the
21 question. All in favor say aye.
22 COMMISSIONERS: Aye.
23 DR. MILLER: All opposed, no.

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1 We'll now move on to the Public
2 Comment Period, and we have two requests to
3 make presentations today. One request is from
4 Mr. David A. Ludder on behalf of the
5 Environmental Defense Alliance. And the other
6 one is from Michael Hansen representing GASP.
7 We have circulated the outline of
8 these two proposed presentations among the
9 Committee members. And I'll accept a motion
10 to either approve, deny, or table the request
11 for these presentations to be made.
12 MR. WALTERS: I move to approve the
13 requests to make the presentations.
14 DR. PERRY: Second.
15 DR. MILLER: Move and seconded.
16 All in favor say aye.
17 COMMISSIONERS: Aye.
18 DR. MILLER: All opposed, no.
19 All right. Mr. Ludder, you can
20 go first. I'll remind you we'd like for you
21 to keep this to ten minutes.
22 MR. LUDDER: Thank you,
23 Mr. Chairman, members of the Commission. My

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1 name is David Ludder. I am here today to
2 speak on behalf of the Environmental Defense
3 Alliance, but I do want to make a side comment
4 first.
5 I represented a number of black
6 residents of Alabama on one of those Title VI
7 challenges that Director LeFleur mentioned.
8 If all you know is what he told you today, you
9 do not have the full story. And I will come
10 back to this Commission next time and give you
11 the rest of the story.
12 But on behalf of the
13 Environmental Defense Alliance, I would like
14 today to talk about encouraging this
15 Commission to adopt some policies or rules
16 governing how you conduct business over email.
17 I came before you in August and
18 at that time made a presentation where I
19 suggested that the use of private email
20 services to communicate with others about
21 official business and the failure to disclose
22 those emails must end. I believe that was --
23 that was subsequent to the conviction of

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1 Oliver Robinson, David Roberson, and Joel
2 Gilbert in July over the North Birmingham
3 situation. Part of the reason that I came
4 before you in August was because a lot of the
5 records that were disclosed in the trial of
6 those defendants showed email traffic that
7 occurred between a former AEMC member, Scott
8 Phillips.
9 On September 27, 2018, the
10 president of the Environmental Defense
11 Alliance wrote this Commission that in the
12 wake of the testimony and convictions in that
13 case I just mentioned public confidence in
14 this Commission and the Department has been
15 severely shaken and perhaps irreparably. We
16 suggested that drastic measures must be taken
17 by the Commission to restore public
18 confidence. And we submitted detailed
19 recommendations. One of those was to end the
20 AEMC practice of conducting public business on
21 private email.
22 At the October meeting of this
23 Commission board member Mark Johnston made a

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1 presentation where he again said -- or again
2 recommended that the AEMC end the practice of
3 conducting public business on private email.
4 None of those requests and the recommendations
5 have been responded to by this Commission.
6 The records introduced in the
7 trial of Gilbert and Roberson show that during
8 his tenure on the Commission, Scott Phillips
9 sent at least twenty-three emails to persons
10 representing Drummond Company concerning the
11 35th Avenue site in North Birmingham. And he
12 received at least twenty-seven emails from
13 persons representing Drummond Company
14 concerning the 35th Avenue site.
15 A public records request was
16 submitted to the AEMC on July 23rd, 2018. The
17 response that we got did not include any of
18 these emails that Scott Phillips either
19 authored or received.
20 As a consequence, we have these
21 recommendations: Assign all EMC members an
22 email address on the domain adem.alabama.gov,
23 that would be a government-managed email

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1 system, and require that the EMC members use
2 it for all AEMC and ADEM related business, in
3 other words, cease using private emails.
4 The second recommendation is
5 require that all emails sent or received by
6 EMC members concerning EMC and ADEM related
7 matters, regardless of domain, be copied to
8 the EMC executive assistant. That would put
9 emails that originate from whatever source but
10 are related to government business in the
11 hands of a government official, the AEMC
12 executive assistant.
13 And the third recommendation is
14 to make all past and future emails sent or
15 received by EMC members concerning the EMC or
16 ADEM related matters, regardless of the domain
17 used, that is regardless of whether you use a
18 private email server or a government server,
19 make those emails available to the public upon
20 request.
21 Obviously my position is and the
22 position of the Environmental Defense Alliance
23 is that if you're doing government business,

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1 the government should have a right to look at
2 what you're doing.
3 Four easy steps to get where we
4 want to see you go. First, one of you has to
5 make a motion to adopt recommendations as
6 policy of the EMC. Second, a second EMC
7 member has to second the motion. You all know
8 this process. You all know how to get there.
9 Third, you can discuss the motion. And
10 fourth, you vote on the motion up or down.
11 But we haven't heard from you since August.
12 We would like one of you to make a motion and
13 to get this process started. At least have a
14 discussion about it. Don't go month after
15 month with no discussion. We await your
16 action. Thank you.
17 DR. MILLER: I'd like to call on
18 Robert Tambling, our attorney from the
19 Attorney General's office, to please comment
20 on whether the Open Records Act or the
21 Environmental Management Act allows for either
22 a policy or a rule regarding this situation.
23 MR. TAMBLING: Good morning,

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1 Commission members. I personally as your
2 lawyer have serious reservations whether the
3 Commission may lawfully adopt this proposal as
4 a rule, regulation, or even as its own
5 internal procedure. It's fairly well-settled
6 law in this state that an administrative
7 agency is a creation of the legislature and
8 only has those powers conferred on it by the
9 legislature. So an agency like the Alabama
10 Environmental Management Commission cannot
11 just adopt rules or fabricate policies out of
12 whole cloth. There has to be some underlying
13 statutory basis or legal authority for doing
14 so, whether you're talking about a rule, a
15 policy, or an internal procedure.
16 So while an agency like the
17 Commission might have the inherent authority,
18 for instance, to adopt policies in order to
19 manage and conduct its own business meetings,
20 I'm not aware of any statutes or other legal
21 authority that would authorize an agency in
22 any way to restrict or regulate how its
23 members are allowed to use their own private

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1 personal email accounts.
2 So for that reason alone, I would
3 recommend that the Commission not take any
4 action on this proposal. I think Mr. Ludder's
5 best recourse would be to take this matter up
6 to the legislature and have them pass a law
7 requiring it if they so desire.
8 DR. MILLER: Are you aware of any
9 state agency that requires a .gov or .state
10 email address?
11 MR. BROWN: For Boards and
12 Commission members.
13 MR. TAMBLING: For Boards and
14 Commission members? I'm not. I haven't done
15 an exhaustive search, but I'm not aware of it,
16 no.
17 DR. MILLER: Okay. So I guess the
18 answer, Mr. Ludder, would be go to the
19 legislature and get them to pass it.
20 MR. LUDDER: Mr. Chairman,
21 obviously the Department operates an email
22 system for its employees. And I'm sure the
23 Department doesn't allow its employees to use

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1 private emails for government business. If
2 they do, certainly it is inappropriate. So if
3 the Department can do it, I don't see why you
4 can't do it. You as the Commission are part
5 of the Department.
6 DR. MILLER: Thank you for your
7 comments.
8 MR. BROWN: Do you know,
9 Mr. Ludder, of any other --
10 MR. LUDDER: I haven't looked.
11 MR. BROWN: -- state agency -- I
12 mean, I have friends on various Boards and
13 Commissions now and in the past, and they all
14 use their work or home email address, so to
15 my --
16 MR. LUDDER: If that's going to be
17 the rule in the State of Alabama, then we're
18 just going to have to sue the Commission
19 members to produce emails, public records,
20 that are maintained in your possession,
21 something we would rather not do.
22 MR. BROWN: I think the
23 overwhelming majority of email traffic among

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1 the Commission members does copy to LeFleur,
2 Director LeFleur, because it's usually an
3 email that they send that generates the
4 discussions. If you send letters, you send
5 them to Debi. Then she sends them to us. So
6 they usually are copied.
7 You used the example of former
8 Commissioner Scott Phillips, and I don't think
9 you suffer any illusion that if we had had
10 this email address or this policy in those
11 emails with the folks in that trial that he
12 would have used his .gov email address.
13 MR. LUDDER: Well, wouldn't it have
14 been nice if he had?
15 MR. BROWN: But do you think he
16 would have?
17 MR. LUDDER: I don't know. I don't
18 know what his mind or what his intentions
19 were. I mean, obviously if he was attempting
20 to violate the law, then he wouldn't have.
21 DR. MILLER: Well, of course, we
22 don't know that he's violated any law until
23 his trial was over, so...

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1 MR. LUDDER: Exactly. We don't
2 know what his intent was.
3 DR. MILLER: Exactly.
4 MR. LUDDER: We do know that he
5 used an email address that wasn't a government
6 email address.
7 DR. MILLER: And all those -- none
8 of those came through the Department because
9 they looked for them here. So what difference
10 would it have made?
11 MR. LUDDER: Well, if they had come
12 through the Department, if you had a policy
13 requiring them to come through the Department,
14 we would have the information.
15 DR. MILLER: Well, we just heard
16 that we can't make that policy.
17 MR. LUDDER: Well, you heard one
18 opinion.
19 DR. MILLER: You did mention --
20 THE COURT REPORTER: I'm sorry.
21 (A discussion was held off the
22 record.)
23 DR. MILLER: I'm informed we're now

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1 digitally reconnected so we can proceed. Are
2 there any other comments that any of the
3 Commissioners or Mr. Ludder would like to
4 make?
5 MR. BROWN: Why don't you come back
6 up here? We won't bite, I promise. Let me
7 back up for a minute.
8 Based on what I made reference
9 to, the Phillips email not being -- not being
10 on a .gov email was based on you set a -- what
11 I call a tome of a summary to us at trial. It
12 referenced some outside business that those
13 folks allegedly had with Mr. Phillips.
14 MR. LUDDER: Uh-huh, right.
15 MR. BROWN: And whether it was with
16 those folks or anybody else, that would be
17 done -- not be done on the .gov email I guess
18 was my point. Right?
19 MR. LUDDER: I mean, I -- if he has
20 nefarious reasons for doing that, sure. If
21 you had a government email, then at least
22 those who choose to comply with the law would
23 use it.

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1 MR. BROWN: But if it was work
2 related -- not related to the Commission
3 business, it would not be on .gov.
4 MR. LUDDER: Obviously if it was
5 work related, unrelated to Commission
6 activities --
7 MR. BROWN: Right.
8 MR. LUDDER: But his email was
9 related to Commission activities.
10 MR. BROWN: I haven't seen those,
11 so that's why I'm going off your tome,
12 summary, because it was so long.
13 There was something else I wanted
14 to ask you. I was going to point out that,
15 you know, during this process over the last
16 year you've made record requests, other people
17 have made record requests. And Debi forwards
18 those to us to see if we have documents and
19 email on our private email. I wouldn't
20 consider mine necessarily private since it's
21 my law firm's email account, but -- and we
22 respond to those to the extent we've got them.
23 So, you know, the second or other

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1 thing I guess I personally would be concerned
2 about is having one more email account, you
3 know, to check. My wife is already fussing at
4 me because I don't check my personal email
5 account where all of my -- anything related to
6 the kids goes. I'm always asking her, you
7 know, and she's like, didn't you read the
8 email? No, I didn't.
9 And I don't want to make light of
10 it, but -- what you're proposing, but it is a
11 concern. But, you know, my work email address
12 is the best way for me to timely get
13 information and respond to information because
14 it's always in my pocket and it's always on.
15 MR. LUDDER: Well, like I said,
16 we -- we've recommended that the best
17 alternative would be to create a ADEM email
18 address that you all use for business, for
19 ADEM business. If that's not possible, then
20 every email that you send from a private email
21 server should be sent to somebody at ADEM,
22 copied to ADEM, so it becomes a public record
23 and people can access it.

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1 MR. BROWN: I think that is our
2 normal practice.
3 DR. MILLER: That's the modus
4 operandi.
5 MR. BROWN: Like he said, we copy
6 Debi on most everything, on everything.
7 MR. LUDDER: It's the most
8 everything that bothered us.
9 MR. BROWN: Well, you know, nothing
10 is 100 percent, you know.
11 MR. LUDDER: This ought to be 100
12 percent. These are public records.
13 MR. BROWN: I've gotten an email
14 from, you know, board members that you
15 represent here today that, you know, didn't go
16 through Debi, but I don't think there's
17 anything nefarious about it.
18 MR. LUDDER: Well, those should be
19 public record. They should be accessible.
20 And if they're in your email system, we
21 don't -- we're not sure we're going to get
22 them. So that's why we say copy everything to
23 Debi automatically.

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1 Let me just close with these few
2 comments. State law requires public officials
3 to maintain public records and protect them.
4 State law also requires that they be delivered
5 up for examination on request, and it doesn't
6 matter where they are. If they're public
7 records, they are due to be delivered up. And
8 it's a crime not to deliver them up. It's a
9 misdemeanor punishable by a year in jail if
10 you do not deliver them up after requested to
11 do so.
12 I would suggest that you ask the
13 Attorney General for a formal opinion about
14 the question of whether you have authority to
15 adopt rules or procedures on the management of
16 emails. I'll leave it there.
17 MR. BROWN: Thank you.
18 DR. MILLER: Thank you.
19 MR. TAMBLING: May I just make a
20 point?
21 MR. BROWN: Don't you work for the
22 Attorney General?
23 MR. TAMBLING: Yes, I do. Just to

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1 underscore Commissioner Brown what you said
2 and just to shed some light on what Mr. Ludder
3 was talking about in his presentation, when
4 Mr. Ludder makes a public records request,
5 that public records request is circulated to
6 all the Commission members. And we ask and
7 have asked all the Commission members to
8 search their emails for anything that's ADEM
9 related, EMC business related that is a public
10 related. And those are turned over to us.
11 And the lawyers go through those and we vet
12 them to make sure, you know, that they're
13 subject to disclosure. And we feel like we've
14 done our job in getting that done.
15 So that's all I have to say about
16 that.
17 MR. LUDDER: I don't doubt the
18 diligence of asking. It's what they -- it's
19 what he gets in response to those asks.
20 That's the issue.
21 DR. MILLER: Well, I mean, from
22 what Robert -- and from what I can understand
23 Robert is saying, you can make a request, but

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1 Robert and Kayla have to determine what you
2 are allowed to receive from your request. So,
3 I mean, a Court asking for something is
4 different than a physicist, so --
5 MR. BROWN: Well, I think it's -- I
6 think the difference is the emails that
7 Mr. Ludder are referring to with Commissioner
8 Phillips were beyond the scope of a public
9 records request. And I think that's why he's
10 making the suggestions that he is today. But
11 I think the bottom line is that the Commission
12 members, when we communicate by email, Debi is
13 copied. And when we do seek public records
14 request, we are asked to search our email and
15 provide them. I know I've done that. I
16 presume that all of my colleagues up here have
17 done the same. And I suspect and encourage
18 everybody to continue to do that and to try to
19 remember to copy Debi.
20 DR. MILLER: Thank you.
21 All right. Our next presentation
22 is Mr. Michael Hansen representing GASP.
23 MR. HANSEN: Thank you for having

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1 me and approving my comments. I'll start by
2 introducing myself. My name is Michael
3 Hansen. This is the first time I've ever been
4 before you. I am the Executive Director of
5 GASP. I want to introduce GASP as well.
6 We're a nonprofit health advocacy organization
7 fighting for healthy air and environmental
8 justice for the people of the greater
9 Birmingham area. We will turn ten next year,
10 and we have over 700 members in Alabama as
11 well as thousands of supporters throughout the
12 state.
13 For years now we have been
14 involved with the activities in North
15 Birmingham with regard to contamination, soil,
16 air pollution, and other concerns. We've been
17 attending meetings at neighborhood association
18 gatherings, EPA-led meetings, and working with
19 the people, the residents of North Birmingham,
20 for about nine years now, including Betty,
21 Keisha, Charlie, and several others.
22 I want to start my presentation
23 about my request by giving a brief overview of

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1 the history of the NPL as a matter before this
2 Commission.
3 The National Priorities List or
4 NPL is a designation given to sites that meet
5 a certain criteria. Back in 2014, the EPA
6 proposed that summer to add the North
7 Birmingham, also known as the 35th Avenue
8 Superfund Site, to the National Priorities
9 List. GASP advocated on behalf of the people
10 of the area to do that, and that summer -- in
11 June of that year Director LeFleur wrote a
12 letter and did not say that he opposed -- that
13 the Department opposed such action. However,
14 a few months later, Director LeFleur clarified
15 that he did, in fact, oppose the action --
16 that the Department opposed that. And thus
17 begun months of back and forth between ADEM,
18 EPA, GASP, and other organizations.
19 Let's see. On December 12th --
20 so four years ago this week -- GASP gave a
21 presentation to the EMC -- some of you were
22 Commissioners at that time -- asking the EMC
23 to direct in its capacity the Director to

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1 change ADEM's position back to not opposing
2 the NPL. Our presentation focused mostly on
3 property values because that was a talking
4 point that we heard from industry, and I wrote
5 the talk -- the presentation. Our Executive
6 Director gave it. And there was some back and
7 forth letters between Stacie and Director
8 LeFleur.

9 During that period, Director
10 LeFleur stated that he did not take issue at
11 this time with EPA HRS documentation records.
12 That is the basis for the NPL recommendation.

13 So I want to transition really
14 quickly to a matter that David referenced in
15 his presentation, which is the USA V. Gilbert
16 lawsuit -- corruption trial that we saw this
17 summer. We learned a lot from that trial.
18 For example, we learned that a convicted
19 felon, Joel Gilbert, a lobbyist for Drummond
20 Company, sent talking points in advance of
21 that presentation on December 12th before the
22 EMC to all of the Commissioners at that time.
23 He was able to do so because a Commissioner

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1 rather. That's about twice the score on a
2 scale of 0 to 100.

3 The statute requires only one of
4 three criteria to be met. It meets one of
5 them. The other two are that it's the state's
6 highest priority or that -- let's see. I
7 can't remember the third. But it doesn't
8 matter because it meets one of three. So that
9 is -- that's the bottom line is that the
10 position is wrong, and I'm here today to ask
11 you as commissioners, the seven of you, to
12 direct Mr. LeFleur to change the Department's
13 position and considering reinstating his
14 proposal from 2014 to list the 35th Avenue
15 site on the National Priorities List.

16 So in conclusion, I would argue
17 to all of you that when you know better, you
18 must do better. We've learned a lot this year
19 about the corruption that was rampant
20 throughout this process. Your mission as an
21 agency is to secure a safe, healthy, and
22 productive environment, and I would argue that
23 this is not a safe or healthy environment for

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1 had sent via email our presentation that we
2 shared with EMC in advance with Joel Gilbert
3 and David Roberson.

4 Convicted felon, Joel Gilbert,
5 was in constant communication about the NPL
6 and Director LeFleur, Commissioner Brown,
7 Commissioner Phillips at that time. And so
8 what we learned was there was this
9 communication that was divulging information
10 we were planning to present.

11 Afterwards -- let's see. Sorry.
12 Joel was meeting with LeFleur and Brown here
13 at ADEM, and ultimately ADEM sent a letter to
14 EPA -- EPA invoking the dispute process.

15 The final thing I want to
16 transition to is that regardless of all of
17 that ADEM's position is wrong. The EPA has
18 statutes that govern how this process works.
19 It requires that one of three possible
20 elements be met. One of them is that the site
21 in question meets a threshold score on the
22 Hazard Ranking System of 28.5. The 35th
23 Avenue site received a score of 28.5 -- of 50

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1 the people of North Birmingham. This body was
2 not exempt from the corruption, as we have
3 seen. But today you all know better. A lot
4 of you are new to this body, and I implore you
5 to do better.

6 And lastly I just want to point
7 out that one of our board members is here.
8 If I had adopted the position of polluters in
9 my capacity as Executive Director of GASP, I
10 would have been fired by our board a long time
11 ago. And I don't understand why you allow the
12 agency to adopt the position of polluters over
13 the people of the State of Alabama. That's
14 all I have.

15 MR. BROWN: Excuse me. Excuse me.
16 You did not mention -- I thought it was going
17 to be part of your presentation -- the studies
18 on the health risks out there.

19 MR. HANSEN: Sure.

20 MR. BROWN: And I thought that was
21 glaring. I mean, when GASP first came and
22 Dr. Propst spoke it was, you know, based on
23 purportedly what the ATSDR stated. And it

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1 seems to me that whatever action we take must
2 be based on whether or not there's a risk to
3 public health. And as I remember reading at
4 the time the Jefferson County Department of
5 Health Study and the ATSDR, both of those
6 concluded that there was no risk of harm to
7 the general public.
8 MR. HANSEN: Thank you for bringing
9 that up. Actually that was the third thing
10 that I couldn't forget. So we've got one of
11 three criteria.
12 MR. BROWN: But you did forget.
13 The third thing you couldn't remember.
14 MR. HANSEN: Right. The one
15 requirement that all three be met. The ATSDR
16 has a role. It's one of three possible
17 triggers for eligibility for the National
18 Priorities List. The ATSDR did say that there
19 are health risks and they are primarily for
20 vulnerable people like children.
21 MR. BROWN: I think it says
22 children with Pica. To be specific, your
23 report said it was children with Pica were at

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1 risk.
2 MR. HANSEN: I don't know what
3 you're specifically referring to, however --
4 MR. BROWN: The ATSDR.
5 MR. HANSEN: -- it doesn't matter.
6 Right. I've read all of the ATSDR health
7 documentation.
8 MR. BROWN: Do you know what Pica
9 is? Do you know what Pica is?
10 MR. HANSEN: My point is -- it
11 doesn't matter. It's irrelevant. My point
12 is --
13 MR. BROWN: I'm done.
14 MR. HANSEN: No, no, no.
15 MR. BROWN: I mean, if my questions
16 are irrelevant, then you should not be
17 speaking to me.
18 MR. HANSEN: Sir, what I was saying
19 was, one of three criteria need to be met.
20 One is of them is met. That's correct. The
21 Commission should direct Mr. LeFleur to change
22 the Department's position.
23 MR. BROWN: Do you know what Pica

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1 is?
2 MR. HANSEN: Pica.
3 MR. BROWN: Whatever.
4 MR. HANSEN: Do you know what Pica
5 is?
6 MR. BROWN: I do. I'm asking you.
7 MR. HANSEN: I'm not answering that
8 question. It's irrelevant.
9 MR. BROWN: Thank you.
10 DR. MILLER: Well, I've read the
11 ASTDR report three or four times. And I have
12 yet to find a valid reason for putting the
13 site on the NPL list.
14 MR. HANSEN: Mr. Miller,
15 Dr. Miller, have you visited North Birmingham?
16 DR. MILLER: I grew up up there.
17 MR. HANSEN: You grew up in
18 Collegeville and Harriman Park?
19 DR. MILLER: No. I grew up -- but
20 I did -- I did a couple of years over at the
21 Norwood Clinic in North Birmingham.
22 MR. HANSEN: Okay. Come with me,
23 please. I'm a nice guy. I will show you

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1 around. I will introduce you to the people
2 who live there and we'll talk about health
3 risks.
4 DR. MILLER: Well, all right.
5 Mr. LeFleur, would you like to
6 respond?
7 DIRECTOR LEFLEUR: Yes, please.
8 The outline that was available as
9 a public record I read over and prepared a
10 response to the points that were brought up to
11 make sure that I have what needs to be said.
12 But before that, I would like to
13 take strong exception to the implication that
14 I or any person in the Department was in any
15 way connected with any unethical or criminal
16 behavior. That implication has been made
17 before, and it is totally without foundation,
18 and I want to publicly and clearly state that
19 that is a wrong implication, a wrong
20 implication.
21 Now I would like to give you the
22 statement that I've prepared in anticipation
23 of this presentation.

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1 A presentation at the December
2 14th Commission meeting, December -- excuse
3 me -- December 2014 Commission meeting by GASP
4 sought the same action they seek today. The
5 Department's response with the reasons why the
6 Department did not concur the proposed
7 National Priorities List or NPL listing was
8 presented at the meeting. The transcript of
9 the meeting is on the ADEM website.
10 Also on the ADEM website is the
11 January 2015 response to letters from Stacie
12 Propst, the then Executive Director of GASP,
13 following up on that meeting. The ADEM
14 responses correct -- response corrects a
15 number of erroneous statements in the letters
16 from Ms. Propst.
17 The third item on the ADEM
18 website is my August 2018 response to a letter
19 from a group of environmental organizations,
20 including GASP, which again made a number of
21 erroneous statements related to the 35th
22 Avenue site as well as the USA versus Gilbert
23 trial.

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1 It's the obligation of the
2 Department to keep the Commission informed on
3 issues that come before it. I've reviewed the
4 GASP request to address the Commission today,
5 a public document, and I am pleased for the
6 opportunity to correct the erroneous
7 statements that have again been made by GASP
8 and similar organizations regarding ADEM's
9 determination not to concur with EPA's
10 proposed listing of the 35th Avenue site in
11 Birmingham. I'm hopeful my comments today
12 will answer any remaining questions interested
13 parties may have.
14 The EPA has been involved in a
15 RCRA enforcement action against a regulated
16 facility in the 35th Avenue area dating back
17 to the late 1980s. EPA has also been involved
18 in a 35th Avenue neighborhood investigation
19 since the 2000s, the early 2000s. Data from
20 the EPA CERCLA investigation was not shared
21 with ADEM since it has been solely an EPA
22 action.
23 After approximately a decade of

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1 investigation, without any prior indication of
2 an intent to propose that the neighborhood
3 site be listed on the National Priorities
4 List, in April of 2014 EPA contacted ADEM to
5 inquire whether the Department would support a
6 proposed listing.
7 ADEM's mission is to assure for
8 all citizens a safe, healthful, and productive
9 environment. While ADEM is very much in favor
10 of removing contamination at the 35th Avenue
11 site, it must also consider how best to
12 achieve actual results.
13 In its April 2014 letter to ADEM,
14 EPA stated that it was in the process of
15 completing the Hazardous Ranking System
16 documentation record. The documentation was
17 not available to the Department prior to
18 ADEM's June 6th, 2014, letter to respond to
19 the EPA that set out the three specific
20 circumstances under which the Department would
21 not object to the listing. Not objecting is
22 neither concurrence nor non-concurrence. It
23 is expressing no position.

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1 No Hazardous Ranking System, HRS,
2 documentation, was provided by EPA in June,
3 July, August, or September prior to ADEM
4 becoming aware, without notice from EPA, that
5 EPA was proposing an NPL listing that very
6 day. That day, September 16th, 2014, I sent a
7 strongly worded email to the EPA administrator
8 that ADEM did not and does not concur in the
9 listing for a number of reasons.
10 The reasons for not concurring
11 include, one, ADEM had not been provided the
12 requested HRS documentation establishing that
13 the site qualified for NPL listing. Two,
14 authoritative studies found no public health
15 hazard or elevated levels of illness. Three,
16 no authoritative studies have been identified
17 that did find the existence of a public health
18 hazard or elevated levels of illness. Four,
19 the specific circumstances stipulated in
20 ADEM's June 11, 2014, letter for ADEM to
21 refrain from objecting did not exist. And
22 they do not exist today. Five, listing would
23 provide no clear path to removing

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1 contamination since there was no responsible
2 party identified and no indication the state
3 would provide the required ten percent of the
4 cost when no responsible party was identified.
5 In other words, ADEM had no facts
6 other than EPA stating, without supporting
7 documentation, that they believe 35th should
8 be listed. All of the correspondence just
9 mentioned is readily available on the ADEM
10 website to any interested party.
11 On September 22nd, 2014, EPA
12 posted its HRS documentation on the EPA
13 website. In early 2014 -- November 2014, the
14 Department received information that raised
15 questions about several elements of the HRS
16 calculation. The HRS calculation result was
17 inconsistent with other criteria listed in the
18 CFR citation Mr. Hansen just provided as well
19 as the findings of the Jefferson County
20 Department of Health.
21 The HRS calculation was also
22 inconsistent with the background level of the
23 naturally occurring element arsenic EPA itself

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1 used in its June 6th, 2013, correspondence
2 with the Birmingham Board of Education
3 transmitting the results of more than 70 soil
4 samples at two schools in the 35th Avenue
5 area. The Removal Management Levels in that
6 correspondence used a background level of 13
7 parts per million rather than a level below
8 seven parts per million that was used in the
9 HRS calculation. ADEM had available no
10 information or finding consistent with the HRS
11 calculation.
12 On numerous occasions, including
13 the December 12th, 2014, Commission meeting,
14 the formal comments to EPA on January 13th,
15 2015, and the January 23rd, 2015, letter to
16 GASP Executive Director Propst, ADEM
17 recommended approaches to cleaning up
18 contamination that have been employed many
19 times in Alabama and elsewhere that have
20 proven to be more timely and effective than an
21 approach involving a listing on the National
22 Priorities List.
23 In fact, ADEM has never elected

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1 to concur in an NPL listing unless a
2 responsible party was identified because
3 alternative approaches have proven to be much
4 more timely and effective.
5 As an indicator of the time it
6 takes to clean up a site utilizing the NPL
7 approach, since 1983, Alabama has had fifteen
8 sites placed on the NPL, and in the thirty-
9 five years since 1983, only three of those
10 sites have been cleaned up resulting in
11 removal from the NPL. Just because a site can
12 be listed on the NPL does not mean it should
13 be listed. This is especially true if more
14 timely and effective alternatives are
15 available.
16 The advisability of utilizing an
17 alternative approach at the 35th Avenue site
18 has been reinforced by action of the
19 legislative branch of Alabama state government
20 adopting a Senate and House joint resolution
21 opposing the listing, which is a further
22 indication that the state funding of a ten
23 percent match is unlikely. If no responsible

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1 party is identified and the ten percent
2 matching funds are not available, cleanup
3 under the NPL cannot proceed.
4 EPA has the authority to finalize
5 a listing on the NPL list whether ADEM concurs
6 or does not concur. It is noteworthy that EPA
7 has not finalized the listing on the NPL but
8 rather has employed an alternative approach
9 that is well on its way to removing the
10 contamination at the 35th Avenue site. The
11 effectiveness of the alternative approach is
12 demonstrated by the fact that the cleanup of
13 the 35th Avenue site is now approximately 80
14 percent complete and is projected to be
15 complete in approximately two years. An NPL
16 listing would potentially have delayed the
17 cleanup for decades.
18 That completes my response to the
19 proposed presentation.
20 MR. BROWN: What I'm going to need
21 from you, is the NPL listing possibly a
22 delayed phase for a decade?
23 DIRECTOR LEFLEUR: An NPL listing

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1 requires that the State provide -- either you
2 have a responsible party, which in this case
3 there is not one that's been identified, or
4 that the State provide ten percent of the cost
5 of a cleanup that is funded through the
6 Superfund. If the State does not provide its
7 ten percent, the other expenditures out of the
8 Superfund cannot be made according to the law.
9 DR. MILLER: The word, the
10 designation NPL, the middle word there is
11 priority. So let's just say that this site
12 went on the Priorities List. Do the entities
13 in the Priorities List have a ranking as far
14 as where they are as far as how important they
15 are?
16 DIRECTOR LEFLEUR: Now, I would
17 have to defer to my hazardous waste experts,
18 but my understanding is there have been nearly
19 two thousand sites proposed for the NPL and of
20 those some subset, several hundred, have been
21 eliminated but the worse sites get the highest
22 priority, next, next, next.
23 MR. COBB: To some degree but not

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1 really anymore -- I'm Steve Cobb with the Land
2 Division.
3 DIRECTOR LEFLEUR: Please come up
4 here.
5 DR. MILLER: I just wondered if it
6 went on to the Priorities List and it wasn't a
7 high priority in that list, would that slow
8 things down?
9 MR. COBB: It's more a factor of
10 funding that -- as the list was originally
11 envisioned I believe back in the early '80s
12 when the rules were put in place, there was
13 some prioritization of sites between sites.
14 That's not so much anymore. It hasn't been
15 since at least the 1990s, and it's more a
16 function of where a site is in the time frame
17 and what monies are available in order to be
18 able to apply to those sites.
19 DIRECTOR LEFLEUR: Now, is money
20 available sufficient to fund all of the
21 proposed listings?
22 MR. COBB: No. The Superfund Trust
23 Fund, which is where the Superfund designation

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1 gets its name, has not been funded by the
2 taxes that were put in place originally since
3 I believe sometime in the late '90s. And it
4 is -- the Superfund is reliant upon annual
5 appropriations from Congress. So no, the
6 funding necessary to clean up the two thousand
7 or so sites that have been on the list is not
8 there at any given point in time.
9 MR. BROWN: It has been reduced
10 pretty much every year?
11 MR. COBB: That's correct.
12 DR. MILLER: So, in other words,
13 what I'm hearing you say is if it doesn't go
14 on the Superfund list and administrative
15 detail involved in that, which would take
16 a while, then it might be quicker to do it
17 with the approach that they're currently
18 taking?
19 MR. COBB: That's correct. And
20 that is what we and other states have seen
21 through the years that it's often much faster
22 and much more efficient to get cleanup done
23 not being on the NPL than being on the NPL.

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1 DR. MILLER: Well, I mean, I don't
2 guess you can call it fast since they're been
3 there since the 1980s.
4 MR. COBB: Right.
5 DR. MILLER: Does it seem to
6 accelerate? Is that your --
7 MR. COBB: Yes. The actions that
8 have been taken at 35th Avenue to this point
9 have been under the removals program, which is
10 able to go in and go ahead and remove things
11 and be done with it, as opposed to the
12 remedial program which is more of a study and
13 analysis type approach, and it necessarily
14 takes longer.
15 DR. MILLER: All right. Thank you
16 very much.
17 DIRECTOR LEFLEUR: Don't go too
18 far.
19 MR. BROWN: Director LeFleur, I
20 want to backtrack and make sure that I
21 remember from four years ago correctly. All
22 right?
23 DIRECTOR LEFLEUR: Yes.

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1 MR. BROWN: Just help me out here.
2 First of all, EPA does not need ADEM's
3 permission?
4 DIRECTOR LEFLEUR: That's correct.
5 MR. BROWN: To do whatever they're
6 going to do?
7 DIRECTOR LEFLEUR: Correct. This
8 happens under what's known as the CERCLA
9 program, which is not delegated to the states.
10 It's solely EPA's program.
11 MR. BROWN: And as I recall back
12 then, I read the Jefferson County Health
13 Department study which said that the risk of
14 harm from air in the 35th Avenue area was not
15 causing -- was not at levels -- toxic levels
16 sufficient to cause any incidents of illness
17 compared to higher than any other portion of
18 the county.
19 DIRECTOR LEFLEUR: Correct. The
20 particular study was a soil study but they had
21 an air study also.
22 MR. BROWN: Jefferson County was an
23 air study or soil?

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1 DIRECTOR LEFLEUR: It was soil.
2 MR. BROWN: And the ATSDR --
3 DIRECTOR LEFLEUR: Both an air and
4 a soil study.
5 MR. BROWN: And also concluded that
6 there was no risk of harm to the general
7 public?
8 DIRECTOR LEFLEUR: Well, the
9 Jefferson County study said that the incidents
10 of cancer, various types of cancer, COPD, low
11 weight birth incidences and other instances
12 related to infants, that all of those measures
13 in the 35th Avenue area were statistically the
14 same as they are in the rest of Jefferson
15 County.
16 MR. BROWN: Okay. And the ATSDR
17 found no risk of general harm or harm to the
18 general public?
19 DIRECTOR LEFLEUR: They said
20 there's no public health hazard. They did
21 note in the study that those with Pica
22 syndrome, which is eating large quantities of
23 the soil --

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1 MR. BROWN: Right.
2 DIRECTOR LEFLEUR: -- that those
3 with that syndrome have an elevated risk.
4 MR. BROWN: And under the removal
5 program, has EPA continued to remove soil
6 where kids are likely to be, parks and schools
7 and homes?
8 DIRECTOR LEFLEUR: Yes, they have.
9 There are a total of 600 sites that they have
10 identified as places where there are elevated
11 levels of contaminants. I believe they
12 prioritize those with the very highest levels
13 of contaminants and have been working down the
14 list. But of those 600, approximately 100
15 have said they do not want to have EPA
16 involved, which leaves about another 100 that
17 have not had the soil removed from their
18 yards.
19 MR. BROWN: Yet.
20 DIRECTOR LEFLEUR: Yet. That last
21 100 is what will take place over the next two
22 years.
23 MR. BROWN: And HRS is a

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1 calculation?
2 DIRECTOR LEFLEUR: Yes, sir.
3 MR. BROWN: As opposed to the
4 studies ATSDR and Jefferson County Health
5 where they're actually looking at the impact
6 on the community?
7 DIRECTOR LEFLEUR: That's correct.
8 The HRS calculation inserts numbers related to
9 the level of contaminants and makes the
10 presumption that that level multiplies, three
11 times the background level, is an adverse
12 impact on health. The ATSDR and Jefferson
13 County Health Studies look at what the actual
14 impacts have been to the health of the people
15 in the area.
16 MR. BROWN: And mention was made or
17 you mentioned one of the functions of the
18 Department is to keep the Commissioners -- the
19 Commission informed?
20 DIRECTOR LEFLEUR: Absolutely.
21 That's part of the strategic plan and is well
22 established.
23 MR. BROWN: And as part of that

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1 plan -- as part of that obligation, you meet
2 with the Commissioners?
3 DIRECTOR LEFLEUR: Yes,
4 individually I did.
5 MR. BROWN: Yes. And brief us on
6 what's going on in the ADEM world?
7 DIRECTOR LEFLEUR: Yes. I'm afraid
8 it gets tedious for you all, but yes, we go
9 into quite a lot of detail.
10 MR. BROWN: That's much more than
11 what you are able to present in the ten
12 minutes or so you give this presentation?
13 DIRECTOR LEFLEUR: Oh, yes.
14 Absolutely.
15 MR. BROWN: And this 35th Avenue
16 site was a regular part of your briefing?
17 DIRECTOR LEFLEUR: That's correct.
18 MR. BROWN: And we've heard about,
19 I guess, some bullet points that Mr. Gilbert
20 set, but even before Mr. Gilbert's bullet
21 points were set, did you also send out to the
22 Commissioners a list of bullet points with
23 citations attached informing the Commissioners

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1 as to why the GASP presentation was flawed?
2 DIRECTOR LEFLEUR: That is my
3 standard procedure that I have followed for
4 the entire time I've been at the Department,
5 and that is the procedure that I followed with
6 the GASP presentation back in 2014, as I say I
7 have done with every time there's a known
8 presentation coming to the Commission.
9 MR. BROWN: Thank you. That's all
10 I have. I wanted to make sure I understood
11 and remembered correctly.
12 DR. PERRY: I just have a clarity
13 statement. You said that ADEM is in the
14 process of addressing the 35th Avenue site and
15 that 80 percent -- you mentioned a percentage
16 of cleanup. Could you just restate that,
17 please?
18 DIRECTOR LEFLEUR: Yes. EPA --
19 this is an EPA activity. The removal action
20 is operating under their authority, not under
21 our authority. The cleanup is 80 percent
22 complete in terms of dollars expended and the
23 number of properties that eventually will be

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1 cleaned up. Both of those are at 80 percent
2 of where they expect it to be when it's
3 complete.
4 DR. PERRY: Okay. Thank you.
5 MR. BROWN: I guess regardless of
6 whether this is NPL listed or not, where EPA
7 has deemed soil contaminants especially high,
8 cleanup has always been ongoing?
9 DIRECTOR LEFLEUR: Yes.
10 MR. BROWN: And continues to be
11 ongoing?
12 DIRECTOR LEFLEUR: Yes. Oh, yes.
13 It's an ongoing process.
14 MR. BROWN: Thank you.
15 DR. MILLER: So what I'm hearing
16 you say is if it doesn't go on NPL it's going
17 to be completed much quicker than if it did?
18 DIRECTOR LEFLEUR: Well, back in
19 2014, that was certainly the case. I don't
20 know what would happen if EPA decided to
21 finalize the listing on the NPL today, whether
22 that would halt the existing cleanup
23 activities or whether they would go unabated.

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1 I'm not familiar enough with their process.
2 DR. MILLER: Fair enough.
3 DIRECTOR LEFLEUR: NPL listing
4 will not change -- will not shorten the time
5 to complete the cleanup for certain.
6 DR. MILLER: All right. Thank you.
7 Our next segment we have a period for the
8 public to make a presentation of no more than
9 three minutes to the Commission. And at this
10 point we're going to start with it looks like
11 E.L. McCarty, III; is that correct? There we
12 go.
13 MR. MCCARTY: That is correct,
14 Mr. Chairman. Thank you.
15 Good afternoon, Commission
16 members. I've spoken here twice before. Some
17 of you will remember. But the main reason I'm
18 here today is to speak to new members of this
19 Commission.
20 I'm the mayor of Wilsonville,
21 which is a small town in southeast Shelby
22 County. We have about 2,000 people. And we
23 have about 24 million tons of toxic coal ash.

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1 Coal ash has leached out into our groundwater
2 and poisoned and polluted our groundwater.
3 Alabama Power's own tests reveals this. I was
4 waiting with great anticipation for these
5 tests to come out. I wanted to know what
6 those results would be. We already had some
7 results that showed hot water.
8 This is less -- you may find this
9 odd. This is less an environmental issue to
10 me than it is a rule of law issue. If I harm
11 you, you have legal recourse to make me pay.
12 My dog bites you, Mr. Chairman, you can make
13 me pay to fix your hand or wherever the dog
14 bit you. Mr. Commissioner, if your tree falls
15 on my fence, I can make you fix my fence. If
16 I pull out of the parking lot today and hit
17 your car, you can make me pay for your car or
18 any injuries that you have. And the fact that
19 you might have extensive injuries doesn't
20 allow me to say, well, if it had been \$100,000
21 worth of surgeries I'd have paid for it, but
22 if it's 200, I just don't think I'm
23 responsible for that. That doesn't work in

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1 the legal world, does it?
2 MR. BROWN: Well, you know I know.
3 MR. MCCARTY: Imagine my surprise
4 when today these hot tests come out, test
5 results come out. There's already an
6 enforcement action that's been agreed to
7 behind closed doors with no public input that
8 I'm aware of, no knowledge whatsoever. I'm
9 the mayor of the town. This doesn't look
10 good, y'all. It doesn't smell good. It's not
11 good. It is not transparent.
12 They are not above the law. They
13 are trespassing on our property with this
14 polluted poisoned water and there should be a
15 legal remedy available. And also isn't it
16 interesting the last time I spoke Mr. LeFleur
17 said, well, he couldn't comment on ongoing
18 enforcement actions. How convenient. Really?
19 Now, all across the south coal
20 ash is being moved. Okay? Alabama is about
21 the only state where it's not being moved.
22 Some of these, by Court order admittedly. But
23 here's a really interesting one for you.

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1 Georgia Power is moving about half of their
2 coal ash ponds, those that are most vulnerable
3 to causing massive problems like the one in
4 Wilsonville.
5 Is there some magic on that
6 Alabama-Georgia border that says all that coal
7 ash in Georgia that can get out and cause a
8 problem, but in Alabama, oh, no, we're not
9 going to have a problem. No problems. We
10 automatically say here at Alabama Power
11 Company we're not going to move one bit of
12 coal ash.
13 And why is that? Why is it that
14 Georgia Power would move this coal ash and
15 Alabama Power would say no and frankly what
16 you going to do about it? I postulate two
17 reasons. One is with the disinformation
18 campaign out there, another way to pollute
19 stuff, polluted truth, that they don't think
20 there will be a big public backlash. The
21 other reason I think that they are pursuing
22 this policy of pollution and perpetuity or
23 kept it in place is that they think the

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1 oversight that they'll be subject to in
2 Alabama is feckless and complicit.
3 I intend to show them wrong if I
4 can on the former, and I would sincerely
5 appreciate if y'all would try to show them
6 different on the latter.
7 MR. BROWN: Let me ask you a
8 question. When did these test reports come
9 out?
10 MR. MCCARTY: The same day your
11 enforcement action did, whatever that date
12 was. I don't remember the date.
13 MR. BROWN: This has been months
14 and months ago?
15 MR. MCCARTY: Oh, yeah.
16 MR. BROWN: Okay. I was just
17 making sure you weren't talking about
18 something new.
19 MR. MCCARTY: It was last year.
20 MR. BROWN: I was thinking I missed
21 something. But you're telling me -- you and I
22 have had this discussion before.
23 MR. MCCARTY: Not exactly, but very

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1 close.
2 MR. BROWN: Yes. Same parent
3 company too.
4 MR. MCCARTY: That's correct. I
5 just think that's about the oddest thing I've
6 ever seen.
7 MR. BROWN: Do you know what the
8 criteria -- you said Georgia Power is moving
9 their, quote, most vulnerable.
10 MR. MCCARTY: Well, I don't know
11 exactly what their criteria are, but they are
12 going to be similar to the criteria that Judge
13 Crenshaw used in his opinion in the Tennessee
14 TVA case. If y'all have not read this
15 140-page opinion, you can actually get down to
16 the conclusion, if you like, but that 140-page
17 opinion is fascinating because he hears from
18 all kinds of experts on both sides. He hears
19 from people who don't really have a dog in the
20 fight one way or the other. He hears from all
21 these various experts, and he gives them a
22 degree of credibility. And then he comes to
23 the conclusion, you know, it's really --

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1 there's no way on these unlined pits that sit
2 on carse topography that it's so close to the
3 water table. And this one, by the way, in
4 Wilsonville is just upstream from a public
5 drinking water intake plant. Okay? It sits
6 right -- it abuts on the Coosa River. It's a
7 ticking time bomb.
8 Judge Crenshaw said it's really a
9 bad thing to order to have to move this, but
10 it's even worse to leave it there forever. So
11 read that opinion. That opinion lays that out
12 better than anything I've ever seen. It lays
13 it out in a very nonlegalistic common sense
14 way. He's actually a very succinct writer. I
15 know you probably read it. It's a terrific
16 opinion, and it lays this issue out.
17 In these situations the only --
18 I'm not real familiar with all the plants.
19 I'm concerned about the health, safety, and
20 welfare of my constitutes in Wilsonville who
21 have had arsenic levels too high in cows and
22 just all kinds of things like that over the
23 years. Okay? This stuff has got to go in

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1 Wilsonville.
2 The only other one I'm sort of
3 familiar with is Plant Barry because of its
4 ecological location. That's a disaster
5 waiting to happen. All of these plants may
6 be. I don't know.
7 MR. BROWN: Barry is the one down
8 in the Mobile area on the Chickasaw?
9 MR. MCCARTY: Right. Its sheer
10 location is a problem.
11 In Wilsonville, we've got an
12 unusual problem. Say, for example, in Barry,
13 they've got 21 million tons of stuff in 600
14 acres. We've got 24 million tons of it on 269
15 acres. It's six stories high. I don't even
16 know how deep it goes. And plant workers are
17 telling me Alabama Power is now moving gypsum
18 over from the gypsum pond into this pond
19 because they think they're going to be able to
20 just leave all that stuff there forever and
21 not worry about it. This is wrong on so many
22 levels.
23 Please step up and do something

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1 with this.
2 DR. MILLER: Thank you,
3 Mr. McCarty.
4 Our next statement will be from
5 Keisha Brown from Enact. Three minutes,
6 please, Ms. Brown.
7 MS. BROWN: Good afternoon.
8 DR. MILLER: Good afternoon.
9 MS. BROWN: My name is Keisha
10 Brown. I live in the 35th Avenue Superfund
11 site in Harriman Park and I'm part of Enact.
12 Five years ago my soil was
13 sampled by the EPA. They gave me a letter and
14 let me know that they -- they gave me the
15 results of my soil sample, and they tested for
16 fifteen chemicals and I had eleven of those
17 fifteen chemicals. So here is the amounts and
18 the numbers of the chemicals that was found on
19 my property, front and backyard. But my
20 next-door neighbor had the highest level in
21 the neighborhood, which is next door to me,
22 which I don't see how my level is so low. But
23 I'm not the lab so that's what they gave us,

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1 but I know it's high to me.
2 So the side effects ATSR put a
3 pamphlet with a sort of arsenic exposed to
4 lower levels -- this was at a lower level --
5 over time can lead to discoloration of skin,
6 small corns, and warts which a lot of people
7 have, and moles. PAHs was found on my
8 property. That's according to the
9 National Priorities List, 600 to a 1000, 1500
10 was found on this with coal tar, which the
11 trains sit there, you know, uncovered. And
12 I'm surrounded by two plants and a cement
13 plant and lead, which was found on my property
14 also, which is deadly to children and adults.
15 And this is what they told us to
16 do, ways to protect ourselves, wash our food,
17 hands, and don't eat, chew, or smoke in our
18 yard. This is what they told us. I did land
19 and air.
20 Now I'm down to water. Down the
21 corner from me -- this is my house right here.
22 There's a cement plant right across from there
23 and around the corner is a quarry. The quarry

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1 is filling up with water and is overlapping
2 and it's about to go into the road. So around
3 the corner from me is another quarry that's
4 about to overlap and it's full of water.
5 Well, if this is an operating
6 quarry, the State permit was renewed last year
7 in 2017, why is it full of water if it's next
8 to people? People don't know it's water
9 unless you look over there.
10 Here's another bigger picture of
11 two quarries that look like lakes, less than,
12 say, half a block from each other. This is
13 where I live. We're surrounded by all this.
14 We've got all of these problems and no one
15 seem to care. Everybody is like, hey, turn a
16 deaf ear, but we've got chemicals that causing
17 us to be sick. We're sick. We live in this
18 everyday. All these samples and even more.
19 This happened to my community. And we've all
20 got a water problem. We don't know if this is
21 in our groundwater. This is right around the
22 corner, walking distance. And these are like
23 lakes. This does not look like a quarry,

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1 active quarry. This looks like two lakes
2 adjoining each other.
3 And the strange thing about it,
4 people go on them roads every day. And so
5 what's going to happen is this one right here
6 is overflowing already. As you can see, it's
7 coming off to the street. Next thing cars --
8 people are going to be killed. And I know
9 y'all have -- should have a -- do you want to
10 see that?
11 MR. BROWN: All of them. All of
12 them.
13 MS. BROWN: All of them? This is
14 for me.
15 DR. MILLER: What do they extract
16 from the quarry?
17 MS. BROWN: Well, it's supposed to
18 be some cement. It's --
19 MR. BROWN: Rock quarry?
20 MS. BROWN: Rock quarry.
21 MR. BROWN: Or limestone or do you
22 know?
23 MS. BROWN: I think it's

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1 limestone. But obviously they're -- it's not
2 working because how can you work out there and
3 not know it's like a lake? And that's very
4 terrifying. When you go through -- people are
5 like, oh, my God, and it's coming onto the
6 street. The pond is going out to Urban Dairy
7 Road. It's now coming on the side of that
8 property. It's been going into the street.
9 Then you go on the viaduct which is like five
10 -- one, two, three, four, five -- and it's
11 filling up. So next thing you know we're
12 going to have a lot of flooding issues. And
13 we don't know if it's going into our drinking
14 water or what. That's another hazard.
15 And being that it's surrounded by
16 two cement plants, of course, those ponds are
17 flowing there. And the coal plant is a
18 hazard. All these places are jammed up where
19 I live at, which is punched in with all this
20 industry, and we need some help. I mean, I
21 understand that people are -- people, you
22 know, that's their job to make money, make the
23 stockholders happy, but we are human lives.

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1 We have rights. They have a right to get
2 permits to pollute, which results in sickness
3 and death, you know, the gift that keeps on
4 giving every year, sickness.
5 Our family is gone. Nobody is
6 hardly left. We're suffering, going back and
7 forth to the hospital. We need help.
8 Somebody I know up there has a heart. And I
9 hope today God changes somebody to say, hey,
10 this is a problem. We've got all these
11 issues. Either we're going to be drowning or
12 going to the cemetery.
13 This is everyday life for us in
14 Harriman Park. Either the train sitting there
15 for hours, the coal sitting uncovered. We've
16 got a quarry now that looks like a lake and
17 another quarry that's a lake. People go on
18 these roads everyday, every single day. So
19 what are you going to do, wait until it
20 overflows into the street and people start
21 drowning and people houses floating away?
22 Because we're trying to get somebody to come
23 and help people because that's what's going to

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1 happen next.
2 MR. BROWN: Have these -- the
3 water, has it overflowed from the quarry?
4 MS. BROWN: Yeah, on that one --
5 the first one that I just showed you, the blue
6 -- it's coming out the quarry. If you were
7 going -- I wish y'all would sometimes come in
8 person where you can see it's coming out. So
9 the next -- two more good rains, it's going to
10 be into the street. Next thing you're going
11 to have people drowning. Then the
12 neighborhood is going to flood, not only my
13 neighborhood but the neighboring neighborhoods
14 too. There's about five or six neighborhoods
15 going to be effected. So you've got -- the
16 other one on around the corner, if you count
17 one, two, three, four, five, on the train
18 tracks -- we're surrounded by all these
19 railroad tracks. It's overflowing. It looks
20 like a lake.
21 MR. BROWN: So has any complaint
22 been filed with ADEM?
23 MS. BROWN: No, I have not filed it

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1 with ADEM. I talked with the people from that
2 particular --
3 MR. BROWN: For the company?
4 MS. BROWN: Yes. And they told me,
5 oh, yes, Ms. Brown, we realize it's unusual
6 but one of our -- somebody is pumping it out.
7 It can't be pumped out because when we had
8 times of drought, the water is filling up. So
9 if they're not doing nothing -- if it keeps
10 on, keeps on, we're going to have a flood --
11 y'all are going to have a flooded out areas.
12 And that's a lot to know that people are
13 getting contaminated and then you're drowning.
14 MR. BROWN: But it hasn't flooded
15 yet?
16 MS. BROWN: Not yet, but it's
17 getting there.
18 MR. BROWN: Can I see the other
19 things you brought?
20 DR. MILLER: Lanier, could you pass
21 those down?
22 MR. BROWN: I can. Certainly.
23 DR. MILLER: Ms. Brown, where is

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1 your house on the map here?
2 MS. BROWN: My house is probably --
3 if it shows it, it's right in here off 45th
4 Avenue, right there.
5 DR. MILLER: Okay.
6 MS. BROWN: But see, you go right
7 here, that's the -- that's the point right
8 there. That's the cement plant. And that's
9 going around the curve because we're
10 surrounded by railroad tracks.
11 DR. MILLER: Thank you. Now, are
12 these ponds filling up just strictly from rain
13 water you think?
14 MS. BROWN: I don't believe it's
15 rain water because a couple of years when they
16 used to blast they did some damage to
17 residents' houses. I don't know if they
18 knocked something loose or whatever. We never
19 -- even the oldest resident, he's 100 years
20 old, he never seen no water in there. There's
21 no way you can see like on the road. It's
22 down deep. And you can see it's coming up and
23 it looks like a lake. And that part, what I

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1 showed you that's coming overlapping, it's
2 going to go into the street. It's on their
3 property, but a couple more rains it's going
4 to be on the road, a major road that people
5 travel everyday.
6 MR. BROWN: Do you mind if I have
7 someone make me a copy of this?
8 MS. BROWN: Yes, you can, you can
9 get some copies made of that.
10 MR. BROWN: Pardon me?
11 DR. PERRY: Is the next step to
12 report it to ADEM or make them aware of it?
13 MR. BROWN: If you think a
14 violation has occurred, she can make a
15 complaint. Could you at least make a copy?
16 Thank you.
17 DIRECTOR LEFLEUR: Do you want
18 those also?
19 MR. BROWN: Excuse me. You can
20 make -- if you feel there's a violation of the
21 permit to ADEM, you can do it electronically,
22 you can do it in person. And I'm sure
23 Director LeFleur would be happy to talk to you

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1 about what can be done, what cannot be done
2 about that issue.
3 MS. BROWN: I just hope that we get
4 some of the issues resolved because it's been
5 going for years and years and it's like
6 everything is piling up. People just got the
7 right to just -- it's one thing -- we just got
8 the pollution. We got the water problem. We
9 don't know if that's affecting our drinking
10 water or not. We don't know.
11 MR. BROWN: And EPA has not cleaned
12 your soil. You said they tested it.
13 MS. BROWN: On that paper they did.
14 They went and dug a little patch --
15 MR. BROWN: They tested it.
16 MS. BROWN: Yes, tested it and told
17 me that it was not removable level but other
18 people -- my next-door neighbor's yard is
19 adjacent to mine. Hers was the highest in the
20 community, so it had to be higher than what
21 they said. But still at the lower level it's
22 still deadly.
23 MR. BROWN: Did they remove it from

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1 her yard? They cleaned her yard?
2 MS. BROWN: Yeah. What they did,
3 they took the soil -- what they do is take the
4 soil and put it in my old high school, which
5 in a neighboring neighborhood in the science
6 building and stored it in old Carver High
7 School and left the soil sitting there days
8 before they take it to I guess a landfill in
9 front of residents houses. And on a rainy day
10 like today, it has an awful smell. So you've
11 got piles and piles of soil sitting there in
12 front of residential housing.
13 MR. BROWN: It's sitting at the
14 school?
15 MS. BROWN: Old school.
16 MR. BROWN: That's where EPA takes
17 it?
18 MS. BROWN: Yeah, EPA has got this
19 little office up there and it's been there for
20 like six years. So if it's contaminated or
21 good soil, guess what, you was contaminating
22 people over and over again. So what's the
23 purpose of it?

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1 MR. BROWN: You said it's the old
2 Carver High School.
3 MS. BROWN: Old Carver High School
4 on 3400 Terrence Lane.
5 MR. BROWN: I remember.
6 MS. BROWN: Okay. Okay. So
7 that's -- you know, we have all these issues.
8 And I know somebody has got a heart there. We
9 need help. We need help, you know. If we
10 keep on having this same situation over and
11 over. It's not getting better, it's getting
12 worse. And, God forbid, like I said, those
13 two lakes over there, like, lakes now
14 overflow, you're going to have a lot of people
15 that's going to be dying and a lot of people
16 going to be without homes.
17 DR. MILLER: All right. Ms. Brown,
18 if you need help in making the complaint to
19 ADEM about this, I'm sure they would be glad
20 to provide you with help.
21 MS. BROWN: Okay.
22 DR. MILLER: And once you make your
23 complaint, I'm sure that Director LeFleur will

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1 give us a follow-up on what's going on.
2 MS. BROWN: Okay.
3 DR. MILLER: All right. Thank you.
4 MS. BROWN: Thank you.
5 DR. MILLER: I'm sorry. I can't
6 read the next name. It looks like --
7 MS. COLLINS: Betty Collins?
8 DR. MILLER: Betty Collins; is that
9 correct?
10 MS. COLLINS: Yes.
11 DR. MILLER: She's also from Enact.
12 MS. COLLINS: Huh?
13 DR. MILLER: I said you're also
14 from Enact.
15 MS. COLLINS: Yes.
16 DR. MILLER: Well, thank you for
17 being here today. We look forward to your
18 three-minute discussion.
19 MS. COLLINS: Thank you for having
20 me. My name is Betty Collins. I was here on
21 last time and I heard -- my heart is grieved
22 because I don't know if nobody thinks this is
23 a priority, but it is. And as I stated on

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1 last time I was here -- I'm trying not to get
2 emotional. I had been to six funerals in one
3 month. I got to go to another one tomorrow.
4 My sister learned that she has a lung
5 problem. My brother has to wear a mask at
6 night. This is a priority. This is a
7 priority. And we need to be on that list to
8 help -- I attend church in that community. I
9 lived in that community for a long time. I
10 went to Carver High School. They putting dirt
11 on top of -- how can you put bad dirt on clean
12 dirt? Dirt is dirt. It don't change. So
13 let's not use politics on people's lives
14 because they are dying, dying. Do you hear
15 what I'm saying? They are dying. I got to go
16 to a funeral tomorrow because this lady done
17 died of cancer, cancer from all this
18 pollution. It's a plague.
19 Put yourself in my place. This
20 is my personal family, my sister. I had a
21 sister that died at age fifty-five. My baby
22 sister is fifty-five years old now with a bad
23 lung problem. My brother got to go to sleep

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1 at night with a mask on because he can't
2 breathe, and I know a lot of people go through
3 that, but it's personal. This is a priority.
4 We can't use politics. Politics have killed
5 so much stuff. We going -- we let people take
6 bribes. What we do with all that money? Find
7 the money and do something because we need
8 help in that community. We need help in other
9 communities.
10 If y'all could come there just
11 one day, just one day, and see what all of us
12 are going through -- like I said, I lived in
13 that community for many, many years. I still
14 go to church in that community. The plant is
15 right in the back of our church. The mayor
16 said long as EPA was giving her money and ABC
17 coal was giving her money she wasn't going to
18 do nothing about it. That's sad.
19 My granddaughter, she's twenty-
20 one years old. She has asthma. She goes to
21 Troy Alabama University. We had to come down
22 here because she was in the hospital. Where
23 did she get that pollution from? The city

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1 that she live in. Now she live in Troy going
2 to college.
3 It's a plague. It just keeps
4 lingering on. So I know you all can do
5 something. I know you can do something. But
6 if y'all could just come one day for an hour
7 and see -- and see what we going through.
8 It's heart breaking. Six funerals in one
9 month.
10 My daughter-in-law died. When
11 they cut her open blood was all in -- because
12 we didn't know why she died. She left three
13 children. The girl that I know, she's thirty-
14 six years old. She died. She left two, a
15 four year old and a ten year old. Do you know
16 how hard that is? So I know y'all can do
17 something. It is about Christmas. Give some
18 joy. Give some love. Do you want to do, but
19 we need help. Don't use politics because
20 people's lives -- put yourself in my place.
21 When you go home tonight, remember my face
22 because I know this brother do. He came and
23 shook my hand when I came in here. I know he

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1 do. I know he remember me because he came up
2 to me.
3 So if y'all could just come one
4 day, let me know when you coming. I will get
5 off my job. I'll get off my job. I'll do a
6 sacrifice. I left my job today to come here.
7 I lost money. I don't care because this means
8 a lot to me. It means a lot to me. And thank
9 you for listening at me.
10 DR. MILLER: Thank you.
11 All right. Next is also from
12 Enact, Mr. Charlie Powell. Welcome,
13 Mr. Powell.
14 MR. POWELL: Good afternoon. My
15 name is Charlie Powell. I've lived in the
16 Fairmont area forty-three of my sixty-five
17 years, and I've been going backwards and
18 forwards there because I still own property
19 there. Ain't no way I can do this in three
20 minutes. I'm going to just do what I can do.
21 First of all, a lot of this being
22 said up here, with all due respect, is lies.
23 I lived there. I know. I done seen people

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1 that -- you're looking at a Papa of sixteen
2 kids and I've seen ten buried. On my way here
3 today -- my baby brother is in the hospital.
4 They rushed him to the emergency room. I have
5 an aunt that's going there. She's seventy-
6 four. She walked off and left her house in
7 Fairmont and bought a house up there by me.
8 But now, with that being said, it's got to be
9 a connection to all this when they said that
10 the sickness ain't compared to somebody --
11 other places.
12 Well, they even came up with this
13 lie that it's one out of 10,000. It ain't
14 10,000 people in the whole three
15 neighborhoods. So where are they getting they
16 figures from? See, they're coming up with all
17 this paperwork. I understand how he was
18 reading it, that he said they said. But now
19 let me tell you what they said of him.
20 My wife -- I probably should have
21 been there with her. She's gone to chemo now
22 because she got cancer, and I moved her when I
23 married her out of Collegeville into Fairmont,

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1 which is a road divide there and Harriman
2 Park. Well, she got her cancer based upon
3 secondhand asbestos, which I worked in the
4 pipe shop. I worked at McWane. Then they
5 said I didn't have it. Then they came back
6 and said that I do have it.
7 Well, I'm not kicking that
8 because I went in that pipe shop. Didn't
9 nobody twist my arm and make me go in there.
10 They paid me to go in there. But my wife has
11 secondhand and she ain't worked in the pipe
12 shop. Where those figures come from? None.
13 Well, he says back there in the
14 '80s -- in the early '80s or mid '80s, well,
15 then they start cleaning up their act. But
16 all the damage was done. Mind you now, I was
17 there when wasn't no running water there, what
18 they call Urban Dairy Road.
19 They call it Urban Dairy Road
20 because there was a dairy farm. And them
21 cows, they have a little thing where they go
22 up under there and gaze in the pasture, in the
23 spring, and they was selling us some milk out

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1 of there. We drunk it. I drunk plenty of
2 it.
3 But, you know, back during that,
4 those was the days, but that's over with now.
5 Them people -- our fathers, what they did,
6 they was working trying to provide for us and
7 everybody wanted to own a home. But now they
8 didn't know, but we know better. So we ought
9 to be able to do better. And to show you
10 something -- you've got lawyers around
11 there -- the last lawyer come through there
12 and I thought it was a threat behind an
13 insult. What this character, Cory Watson,
14 well, they come around there offering folks
15 \$600 for their health and \$100 for their darn
16 property. The damage is --
17 MR. BROWN: Let me see it.
18 MR. POWELL: I got mine here
19 somewhere.
20 MR. BROWN: I didn't quite follow
21 that.
22 MR. POWELL: There's the 620 right
23 there. I think that's an insult.

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1 DR. MILLER: What did they offer
2 you the \$600 for?
3 MR. POWELL: For the health or
4 whatever they done to you or whatever. You
5 have to read into it.
6 DR. MILLER: Okay.
7 MR. POWELL: I want to be specific
8 when I say it. Then like they put them
9 government apartments there in '71 right when
10 I was coming out of high school, and it was
11 bad then and it's bad now.
12 So finally November the 14th,
13 they sent them a letter that they was going to
14 close them down. So I went in there to get
15 one of them letters because what they do now,
16 they got them closed in. They done stopped
17 the city bus from coming in there. They got a
18 fire hydrant on the outside but the fire truck
19 is bigger than the transit bus. They can't
20 get in there. So if they catch on fire now it
21 will probably kill them all. But now I was in
22 there trying to get one of these letters
23 because I wasn't supposed to be in there. And

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1 then I happen to go to one of the meetings.
2 And the meeting says -- they stated they was
3 moving them out of there because of the
4 contamination and other sources wouldn't go no
5 further with that.
6 So my take on that there, they
7 using all these big words and sitting up here
8 with all this stuff here. Oh, incidentally I
9 formed a group Panic in 2012 and we a 501(c),
10 and I been getting help from elsewhere up
11 north -- up out -- what is that? Washington
12 D.C. But in the meantime with that, them
13 people's coming around here -- now, like he
14 said, they don't find no contaminants. Well,
15 why are they around there cleaning it up if it
16 ain't contaminated?
17 One of my houses was fifteen
18 times the limit of contamination. Then the
19 previous mayor -- not the past mayor -- but
20 the previous mayor don't seem to want to work
21 with us. Mayor Bell, he gave Panic, my
22 organization, \$10,000 to do some research on
23 the inside of the house. Well, it's common

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1 logic if it's contaminated on the outside,
2 it's got to be contaminated on the inside.
3 Then if your kids go out there
4 and wash your hands, wash the toys they be
5 playing with, any woman know if you got kids,
6 you have to watch them all the time. And
7 every time they go outdoors you're going to
8 sooner or later forgot to wash them hands
9 sometimes and wipe their feet. But if they
10 are telling you all that -- she showed you the
11 paperwork, what in the world have we got
12 living there? And then not only that. What's
13 the problem they don't want to get us out of
14 there? Why don't they make this an NPL?
15 I got a lady that I'm working
16 with now. And you probably know her, Lois
17 Gibbs. Okay. Now -- but now they said all
18 this contamination ain't there. And, again, I
19 say, well, why are they cleaning it up? And
20 then they told me they spent an estimated \$23
21 million for the cleanup and still they got two
22 more years to go.
23 Now, you and I know it don't take

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1 no rocket scientist to see this here. You
2 done spent \$23 million to clean up. Wouldn't
3 it be more economical to just move the
4 peoples? You ain't got maybe 2,500 peoples in
5 all three of the neighborhoods. And then,
6 like he said, they trying to find a
7 responsible party. Well, you know who two of
8 them is, ABC and Walter Coal. And you put
9 enough pressure on a pipe, it will bend. Put
10 enough pressure on them, they don't want to
11 pay all this money. Then they going to help
12 you find the rest of them other people. You
13 take like U.S. Pipe. They moved right out of
14 Collegeville area right down to Bessemer with
15 the same can opened.
16 Now, and then McWane, they closed
17 it down, but they got a place in Utah. They
18 got a place down there in Anniston. If I can
19 find them, they can find them. They ain't
20 looking for them. What's happened -- what I
21 think happening, everybody getting paid off of
22 us. Then you can look at this thing. You
23 got -- you got people going to jail. I'm

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1 pretty sure y'all look at the news and stuff.
2 What did they put them in jail for? If this
3 don't -- if this don't supposed to be on no
4 NPL, why did they put Mr. Robinson in jail and
5 his other old colleague?
6 Now they always -- they also said
7 he took a \$360,000 bribe. Okay. They locked
8 him up and that's what prison needs to be.
9 But now they never said what the other folks
10 took. And I bet you if you combine them all
11 together you're going to come up with over a
12 million dollars. And that still could have
13 been getting us out of there.
14 And I understand you said that
15 you worked up there in Norwood. Well, see,
16 Norwood was different from the rest of the
17 neighborhood. When you get down to the point
18 black people had limited amount of places they
19 could stay back then and that was the places
20 where we at now. And we want out of there.
21 But looks like to me people taking bribes to
22 keep us in there. And people coming up with
23 what you call loopholes or some technology to

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1 still keep us in there.
2 Now, this paper I got here was --
3 they fixing to move them peoples out of the
4 project up there. It's about 1,000 people or
5 better. And if they moving them peoples out
6 of there, why can't we get out of there? We
7 homeowners. We done bought this stuff. Then
8 they done turn around and said, you know,
9 well, they rezoned.
10 This other mayor -- well, not the
11 mayor, his associate. Well, we fixed that
12 so -- after talking with him, we fixed this so
13 it won't happen no more. They can never put
14 no more foundries up there.
15 I reckon so. They rezoned it to
16 put warehouses there, but now they fixing to
17 tear those projects down. Where do you think
18 the warehouses is going? They think we simple
19 head Freds or somehow. But the whole thing in
20 a nutshell, they just keeping us there. We
21 don't want to be there no more. Why can't
22 they just give us fair market value on our
23 houses and make it an industrial park like it

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1 should be in the beginning?
2 There's one question that I would
3 like to ask them. When I was up there in D.C.
4 I asked this question here. And my question
5 is: Anybody in here want to live up there say
6 yeah. If not say nay.
7 AUDIENCE: Nay.
8 MR. POWELL: I rest my case. Do
9 you want a copy of that?
10 MR. BROWN: No. Thank you. It's a
11 notice of settlement between residents of
12 North Birmingham and U.S. Pipe and Mueller
13 Water Products, a mass tort case that was --
14 MR. POWELL: I didn't accept it.
15 DR. MILLER: Thank you, Mr. Powell.
16 Next we have Michael Mullen.
17 MR. MULLEN: My name's Michael
18 Mullen. Those of you who have been on the
19 Commission a while, I've probably been here
20 way too many times talking about erosion
21 control and enforcement. I'm here wearing a
22 different hat today. I'm here as the
23 president of the Environmental Defense

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1 Alliance Board.
2 I'll sort of make an aside I
3 wasn't going to make to start with. Really
4 one of the things that cuts across everything
5 you've heard today is your responsibility to
6 guide and direct the director and the agency
7 and their mission and it becomes your mission
8 is to assure for all citizens of the state a
9 safe, healthful, and productive environment.
10 And I hope day every day that you're doing
11 business as Commissioners you remember and
12 keep that as your focus.
13 On August 17th -- I'll refer to
14 Environmental Defense Alliance as EDA. EDA
15 encouraged the Commission to advise the
16 Director to evaluate the existing body of
17 evidence and to determine whether it's
18 sufficient to conclude that Scott Phillips
19 violated the State ethics law and if so to
20 report the same to the Alabama Ethics
21 Commission as required by law. It appears
22 that the Jefferson County grand jury has done
23 that evaluation and found probable cause to

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1 indict Scott Phillips for sixteen ethics
2 violations.
3 In the events that he's convicted
4 and sentenced, he could serve two to twenty
5 years in prison for each violation and a fine
6 up to \$30,000 for each violation. The grand
7 jury's action has effectively preempted or
8 made moot any evaluations or evidence that the
9 Director might pursue.
10 Whether or not Mr. Phillips is
11 convicted of the ethics violations for which
12 he has been charged, it is beyond dispute he
13 provided extensive assistance to Drummond
14 Company and its efforts to prevent EPA from
15 listing the 35th Avenue site on the NPL. He
16 did this for his own monetary reward while at
17 the same time serving as a member of this
18 commission that you serve on.
19 Now, again, you as Commissioners
20 and Director of this agency, your core mission
21 is to assure for all citizens of the State a
22 safe, healthful, and productive environment.
23 On August 17th, EDA came before

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1 you and urged the Commission to rescind its
2 June 16th, 2017 resolution expressing
3 gratitude to Scott Phillips for his service on
4 the Commission. EDA again asked this
5 Commission to condemn the actions of Scott
6 Phillips by rescinding that resolution.
7 Finally EDA hopes that you will
8 avoid such problems and -- both old
9 commissioners and new ones -- and perhaps
10 consider obtaining some ethics commission --
11 ethics training and avoid the consequences
12 that might occur if in you get into a problem.
13 There is a one-hour training video on the
14 Ethics Commission website that does provide
15 some training on ethics, and I hope you all
16 will consider every day -- every day that you
17 are going work for this Commission, every
18 matter that you attend to, that you remember
19 that brief mission that you have to ensure for
20 all citizens of the State a safe, healthful,
21 and productive environment. I thank you.
22 DR. MILLER: Thank you, Mr. Mullen.
23 Well, I suppose at this point I

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1 would entertain a motion that we adjourn.
2 MR. BROWN: So moved.
3 DR. MILLER: Second?
4 MS. MERRITT: Second.
5 DR. MILLER: All in favor say aye.
6 COMMISSIONERS: Aye.
7 DR. MILLER: All opposed say nay.
8 Thank you very much.
9
10 (The hearing concluded on December
11 14, 2018 at 1:28 p.m.)
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1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA)
3 JEFFERSON COUNTY)
4 I, Elaine Scott, Certified Court
5 Reporter and Commissioner for the State of
6 Alabama at Large, hereby certify that on
7 December 14, 2018, I reported the meeting of
8 the Alabama Environmental Management
9 Commission, and that pages 1 through 120
10 contain a true and accurate transcription of
11 the meeting set out herein.
12 I further certify that I am neither
13 of kin nor of counsel to any of the parties to
14 said cause nor in any manner interested in the
15 results thereof.
16
17
18 /s/Elaine Scott, CCR
19 ELAINE SCOTT, Court Reporter
20 and Commissioner for the State
21 of Alabama at Large
22 CCR NO. 354, Expires 9/30/19
23 MY COMMISSION EXPIRES NOVEMBER 16, 2019

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17 

18 /s/Elaine Scott, CCR
19 ELAINE SCOTT, Court Reporter
20 and Commissioner for the State
of Alabama at Large
CCR NO. 354, Expires 9/30/19

21 MY COMMISSION EXPIRES NOVEMBER 16, 2019
22
23

	22:9;25:11	62:8;63:7,18;64:20; 73:2	agenda (3) 3:5;5:7;8:23	amount (1) 113:18
\$	acres (2) 87:14,15	adjacent (1) 98:19	agenda-driven (1) 8:11	amounts (1) 88:17
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Part B

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Attachment 1 Agenda

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(Agenda Item 2)**

**Attachment 3 Director's Slides
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**Attachment 4 Resolution for former Commissioner Elliott Craig Martin, D.V.M.
(Agenda Item 5)**

**Attachment 5 Order adopting recommendation of the Strategic Planning Ad Hoc Committee
and adopting the Draft 2019 AEMC and ADEM Unified Strategic Plan
(Agenda Item 6)**

**Attachment 6 Order adopting Hearing Officer's Recommendation
(Agenda Item 7)**

Attachment 1

Amended 12/03/18

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: December 14, 2018

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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6. Consideration of the recommendation of the Strategic Planning Ad Hoc Committee and adoption of the Draft 2019 AEMC and ADEM Unified Strategic Plan	2
7. <u>Gene Hamby and Hamby Farms, LLC v. ADEM, and CWI Alabama, LLC</u> EMC Docket No. 18-08 (Administrative Action: ADEM's July 17, 2018, modification of CWI Alabama, LLC Solid Waste Disposal Facility Permit No. 17-10, Cherokee Industrial Landfill, Colbert County)	2
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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 OCTOBER 19, 2018

2. ELECTIONS

The Commission will elect Chairs and Members of the Commission's Personnel and Rulemaking Committees.

3. REPORT FROM THE ADEM DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. CONSIDERATION OF RESOLUTION FOR FORMER COMMISSIONER ELLIOTT CRAIG MARTIN, D.V.M.

6. CONSIDERATION OF THE RECOMMENDATION OF THE STRATEGIC PLANNING AD HOC COMMITTEE AND ADOPTION OF THE DRAFT 2019 AEMC AND ADEM UNIFIED STRATEGIC PLAN

The Commission will consider the recommendation of the Strategic Planning Ad Hoc Committee and adoption of the Draft 2019 AEMC and ADEM Unified Strategic Plan. The Committee recommends that the Commission adopt the Draft Plan.

7. GENE HAMBY AND HAMBY FARMS, LLC V. ADEM, AND CWI ALABAMA, LLC, EMC DOCKET NO. 18-08 (ADMINISTRATIVE ACTION: ADEM'S JULY 17, 2018, MODIFICATION OF CWI ALABAMA, LLC SOLID WASTE DISPOSAL FACILITY PERMIT NO. 17-10, CHEROKEE INDUSTRIAL LANDFILL, COLBERT COUNTY)

The Commission will consider the Hearing Officer's Order and Recommendation in which the Hearing Officer finds and recommends to the Commission that there is no genuine issue of material fact as to the Petitioners' claims and that the Department and CWI Alabama, LLC are entitled to judgment as a matter of law. The Hearing Officer also recommends that all relief requested in Petitioners' notice of appeal be denied and that CWI Alabama, LLC's Motion for Summary Judgment be granted.

8. OTHER BUSINESS

9. FUTURE BUSINESS SESSIONS

PUBLIC COMMENT PERIOD

a. REQUESTS TO MAKE PRESENTATIONS

- (1) Request 1 - Request from David A. Ludder, on behalf of the Environmental Defense Alliance
SUBJECT: Out of the Shadows: Conducting public business on private email.
(The full Commission will vote on whether to approve, deny, and/or table the request to make a presentation prior to moving to the Public Comment Period.)
- (2) Request 2 – Request from Michael Hansen, Gasp
SUBJECT: Advise the Director to change ADEM’s position on the proposed addition of the 35th Avenue Site to the National Priority List (NPL).
(The full Commission will vote on whether to approve, deny, and/or table the request to make a presentation prior to moving to the Public Comment Period.)

b. BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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

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

Attachment 2

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

MOTION

Accept nominations to committees as cited by 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 a copy of the list of committees is attached and made a part hereof; and
3. 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 14th day of December 2018.

APPROVED:


Commissioner


Commissioner


Commissioner


Commissioner


Commissioner


Commissioner


Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of December 2018.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of December 2018

12/14/18

Alabama Environmental Management Commission 2019 Committees

Personnel Committee

Chair: Tom Walters

Members: Kevin McKinstry
Ruby Perry

Rulemaking Committee

Chair: Lanier Brown

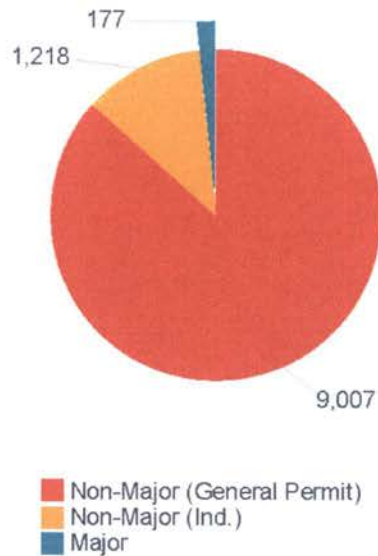
Members: Jay Masingill
Mary Merritt

Attachment 3

How ADEM Measures Performance

- Plans and Performance Against Plans
- EPA Performance Metrics
- State of Alabama's Environment
- EPA & US OIG Ranking
- State Peers Recognition
- Business Survey Ranking
- Non-discrimination Record
- Use of Resources

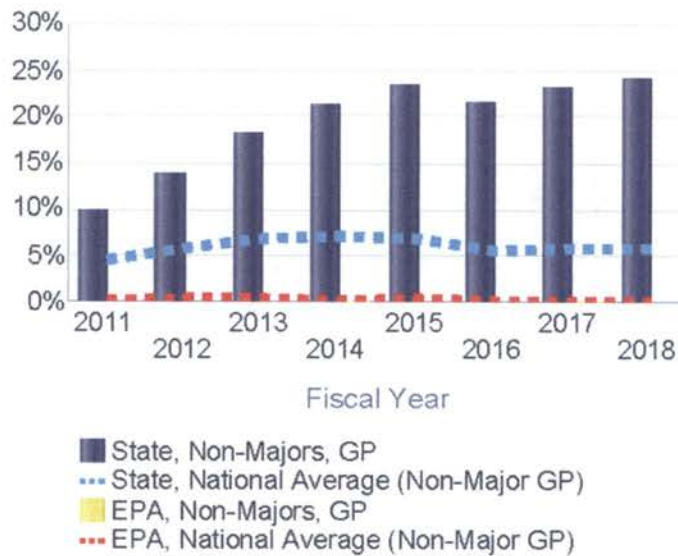
NPDES Facilities By Type - FY18 (All)



Facilities Inspected by State or EPA (Majors, %)



Facilities Inspected by State or EPA (Non-Majors Gen. Permit, %)

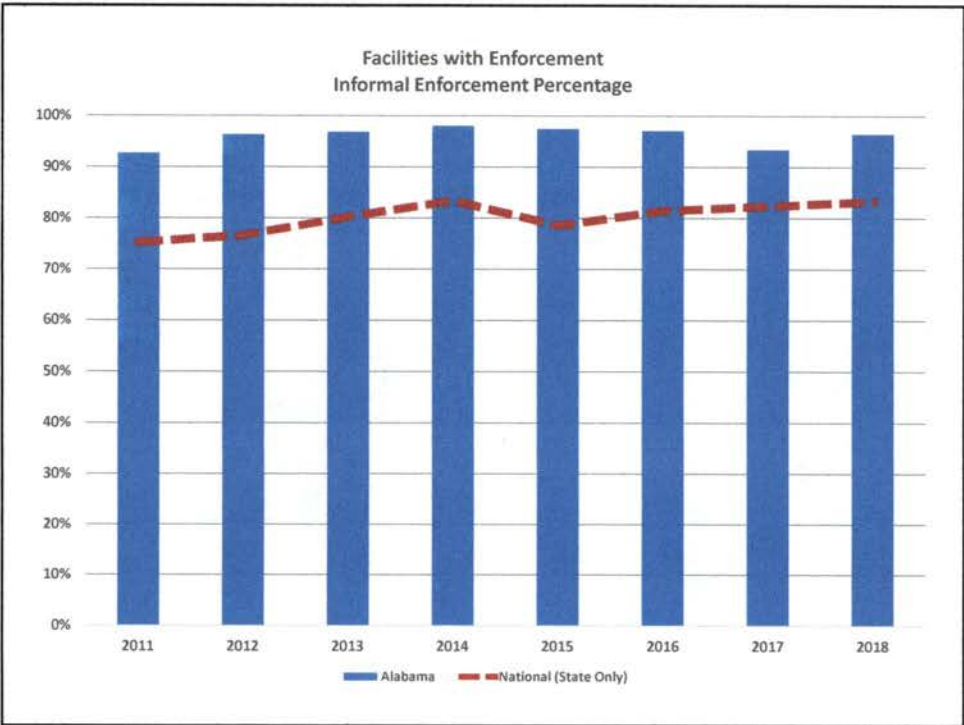


Facilities in Non-Compliance (Majors, %)



Major Facilities in Significant Non-Compliance (%)





Attachment 4

State of Alabama



RESOLUTION

WHEREAS, Elliott Craig Martin, D.V.M. served as a member of the Alabama Environmental Management Commission in the Chemist/Veterinarian position from March 2015 until September 2018 and as a member of the Commission's Personnel Committee from April 2015 until September 2018; and

WHEREAS, due to his veterinarian expertise, he provided experience, wisdom, and foresight in the Commission's deliberations on significant issues; and

WHEREAS, his steadfast dedication to his service on the Commission will be greatly missed by his fellow Commissioners, the Commission's legal counsel and assistant, leadership and staff of the Alabama Department of Environmental Management, and many within the governmental, regulated, and environmental communities; now

THEREFORE, be it resolved that the Alabama Environmental Management Commission expresses gratitude to ELLIOTT CRAIG MARTIN, D.V.M. for his significant contribution towards assuring for all citizens of the state a safe, healthful and productive environment.

DONE this 14th day of December 2018.

Mary Merritt

Commissioner

Samuel Miller

Commissioner

David

Commissioner

Sam Miller

Commissioner

Commissioner

[Signature]

Commissioner

James Brown, II

Commissioner

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of December 2018.

[Signature]

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of December 2018

Attachment 5

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

ORDER

This cause having come before the Environmental Management Commission pursuant to the recommendation of the Strategic Planning Ad Hoc Committee, and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the recommendation of the Strategic Planning Ad Hoc Committee is hereby adopted; and
2. That pursuant to the adoption of the recommendation of the Strategic Planning Ad Hoc Committee, the Commission hereby adopts the Draft 2019 AEMC and ADEM Unified Strategic Plan; and
3. That a copy of the Draft 2019 AEMC and ADEM Unified Strategic Plan is attached hereto as Exhibit A and made a part hereof; and
4. 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 14th day of December 2018.

APPROVED:



Commissioner



Commissioner



Commissioner



Commissioner



Commissioner



Commissioner



Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of December 2018.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of December 2018

EXHIBIT A

Alabama Environmental Management Commission
and Alabama Department of Environmental
Management

Unified Strategic Plan

1/2019

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2. High Performing Work Environment	
3. Credible Relationships with External Stakeholders	
4. Efficient and Effective Departmental Operations	
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B. Effectively Address Emerging Issues, Regulations and Interaction with the Public	
C. Departmental Support for AEMC	
D. Goal Focus	
E. Quality Operations	
F. Compliance	
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Purpose

This Unified Strategic Plan links the strategy for the AEMC (Commission) and the ADEM (Department). It is a unified, multi-year strategic plan to accomplish significant results in the fulfillment of both the Commission's and Department's mission as set out in the Code of Alabama, 1975, Section 22-22A-2.

Mission, Values, Operating Guidelines

The joint **Mission** of the Commission and Department is to...

Assure for all citizens of the state a safe, healthful and productive environment.

Both the Department and Commission have identified the following **values** that are important to the fulfillment of their mission and which will **guide the operation** of the Commission and Department.

1. **Clear, Science-Based Decisions and Policies to Protect Human Health and the Environment** - *We seek clarity and certainty in our regulations, methods and actions, ensuring they are based on objective, peer-reviewed scientific standards and that they provide protection for all citizens.*
2. **Respect each other's Roles** - *We will respect the roles of the Commission as a body, the Department as an organization, with the Director as the Chief Executive Officer.*
3. **Seek Transparent Communication** - *We will seek open and transparent communication within the Commission, the Department, and between the Commission and Department.*
4. **Use Resources Wisely** - *We respect the wise, productive, and efficient use of resources, prioritizing actions to gain the greatest environmental return on the investment of our limited resources, and relying on innovation and efficiency to multiply the resources we have.*
5. **Act on Agreed upon Goals** - *The Commission will seek agreement on goals and plans to achieve the most meaningful results to effectively execute our mission, of assuring a safe, healthful and productive environment. The Commission will act on those goals and plans only when agreed upon.*

Roles of the Commission and Department

In the fulfillment of its mission, the Commission and the Department have cooperative but different roles and responsibilities.

AEMC	ADEM
<p>The Commission's role is to set policy by:</p> <ol style="list-style-type: none"> (1) Promulgating rules, (2) Hearing appeals (3) Managing the Director of the Department. 	<p>The Department's role is to implement policy by:</p> <ol style="list-style-type: none"> (1) Managing permitting, compliance determinations, and enforcement actions to implement the Commission's set policy (2) Providing timely quality information to the Commission to help them in policy setting decisions.
<p>To fulfill its role, the Commission needs:</p> <p>Comprehensive, clear, and unbiased information for policy decision making.</p> <p>To convey any proposed new objectives, policies or initiatives to the Director.</p>	<p>To fulfill its role the Department needs:</p> <p>Clear direction from the AEMC</p> <p>Resources</p>
<p>The Commission depends on systems and procedures as follows:</p> <p>Defined processes to set policy, deal with emerging issues, adopt regulations, and interact with public</p> <p>Defined processes to obtain comprehensive, clear, and unbiased information from the department</p> <p>Operating guidelines to enable open, efficient, and collaborative decision making.</p>	<p>The Department relies on systems and procedures as follows:</p> <p>Budget management to manage financial resources.</p> <p>Operations management to manage the permitting, compliance determination, and enforcement operations of the organization.</p> <p>Performance and Quality management to lead the Department's professionals to seek high levels of performance and quality.</p>

Vision for Achieving the Most Meaningful Results for the Environment

The Commission and Department share a joint vision to achieve the most meaningful results for a safe, healthful and productive environment. Areas of accomplishment include, but are not limited to the following:

- **Air Media** - the achievement of ambient air quality at or above standards set by EPA,
- **Land Media** – the safe and responsible management and disposal of solid and hazardous wastes, the control, remediation, and redevelopment of contaminated soil and/or groundwater sites, and the diversion of recyclable materials from the solid waste disposal stream
- **Water Media** - the attainment of water quality standards and all use classifications, and minimizing the effects of stormwater runoff.

Key Goals for AEMC/ADEM

1. **Effective and Responsive Commission** - An effective and responsive commission is:
 - a. getting an open flow of information from all major stakeholders
 - b. collaborating within the Commission on decisions and reasons for them
 - c. setting and following operational guidelines that promote meaningful results
 - d. addressing issues in a timely manner
 - e. receiving comprehensive and unbiased information from the Department
2. **High Performing Work Environment** - The AEMC and the ADEM need a work environment that promotes productivity and is fulfilling for the organization and the people. A reflection of a high performing work environment is:
 - a. adequate financial resources to meet goals
 - b. high caliber personnel
 - c. high caliber data support systems
 - d. setting of high standards of performance and accountability
 - e. the accomplishment of goals
 - f. a clear line-of-sight between our mission, goals, and strategies to accomplish goals and individual employee work activities
 - g. high employee morale
3. **Credible Relationships with External Stakeholders** – Having a credible relationship with stakeholders (including citizens, the regulated community, and all branches and levels of government) is:
 - a. engaging in proactive outreach
 - b. making relevant commitments and keeping those commitments
 - c. having an open, efficient flow of information to and from stakeholders about their expectations
 - d. treating stakeholders fairly
 - e. providing equal access and consideration for all parties/stakeholders
 - f. demonstrating to stakeholders that resources are being used efficiently
 - g. providing timely information

4. Efficient and Effective Departmental Operations – Efficient and effective operations is:

- a. implementing a robust quality management system
- b. managing program operations to specific key performance metrics
- c. effectively managing our operational budget and individual program budgets
- d. making decisions, including both regulatory assistance and administrative deterrence, to promote progress toward 100% compliance, and
- e. consistently achieving timeliness standards in our actions.

Strategies to Achieve Mission, Vision, and Key Goals

There are factors that are critical to the success of efforts by the Commission and the Department to achieve their shared mission, vision, and goals. Those factors are reflected in following specific strategies which are implemented by the Commission and/or the Department:

- A. Practice Effective Communication Between the Commission and the Department –** Establish and promote practices to obtain comprehensive, clear, and unbiased information necessary to fulfill responsibilities.

Intent

- Provide quality timely information to the Commission for decision making.
- Promote transparency in communication between the Commission and Department

Strategies

- i. **Information Gathering Process for the Commission** – Maintain a process for the Commission to obtain information from the Department and other sources necessary to make rulemaking and policy decisions.
- ii. **Communications** –To be effective, the Commission and the Department need transparent, effective and positive communication. Collaboration and joint decision making require effective communication among the Commissioners, and between the Commission and outside stakeholders including the Department. Commissioners should avail themselves of opportunities to openly and clearly talk about issues, opportunities, and decisions and do so in compliance with the Open Meetings Act.
- iii. **Managing the Director** – The AEMC Personnel Committee, with input from the entire AEMC, meet with the Director for a formal review of performance at least annually.

- B. Effectively address Emerging Issues, Regulations, and Interaction with the Public –**
Utilize processes to effectively deal with emerging issues, adopting regulations and interacting with the public.

Intent

Provide for efficient and effective Commission operations by...

- standardizing practices for critical Commission activities and
- increasing and improving stakeholder involvement.

Strategies

- i. **Emerging Issues** – The Director will periodically update the Commission on emerging issues and will investigate and report back to the Commission on any emerging issues identified by the Commission.
- ii. **Public Input** – Evaluate and improve, as necessary, the AEMC process for receiving input from stakeholders.
- iii. **Department Initiated Regulations** – Assure that the AEMC is informed on all issues related to Department initiated proposed regulations.

C. Departmental Support for AEMC – Provide robust departmental support to the AEMC.

Intent

- Provide the Commission with comprehensive, unbiased and clear information with which to make decisions.

Strategies

- i. **Information Support for Decision Making** – Maintain a structured format for efficiently providing support to the Commission to meet their information needs by having the Director:
 - a. Proactively inform Commission on current issues
 - b. Reactively respond to issues raised by Commission
 - c. Report to the Commission regarding citizen raised issues
- ii. **Department Performance Reporting** – Provide internal and external operational (program), financial and performance information to the Commission on a regular basis.

D. Goal Focus – Focus ADEM staff around department and program goals.

Intent

Implement a performance management system to...

- Hold staff accountable for individual performance
- Center employee rewards around high performance
- Focus management on program metrics
- Improve employee satisfaction/morale
- Create clarity and alignment (employee line-of-sight) on departmental goals
- Enhance internal communications about performance expectations
- Improve quality through continuous process improvement.

Strategies

- i. **Mission** – Communicate and align all staff with the Department’s mission.
- ii. **Program Outputs and Performance Metrics** – Evaluate program and staff performance based on performance utilizing Departmental Operating Plan metrics, EPA grant commitments, and EPA State Review Framework audit elements.
- iii. **Performance Management** – Use performance metrics to communicate and reward high performance and to address and change poor performance.
- iv. **Staff Alignment** – Engage all staff in aligning work expectations with program goals. Gain staff input in setting program goals.
- v. **Celebrate Successes** – Identify key successes and find ways to celebrate them with employees, Commissioners and other involved stakeholders.

E. Quality Operations – Ensure that the Department is managing quality in operations.

Intent

Successfully manage the Department's operations by...

- Providing clarity and accountability for funding and resource allocation
- Create a clear picture of funding sufficiency
- Gain greater efficiency in operations
- More effectively meet customer needs and expectations
- Speed up the ability to accept and use new technologies
- Create clarity and accountability for operational performance
- Gain consistency across operations
- Develop a system that rewards employees for high performance
- Encourage and provide opportunities for employees to showcase capabilities
- Instill greater trust in the Department by the Commission, Alabama citizens and the regulated community.

Strategies

- i. **Quality Assurance Measures** – Utilize agreed upon quality assurance measures within permitting, compliance evaluation, enforcement and other pertinent support processes and functions.
- ii. **Audit Quality Performance** – Audit quality assurance measures and performance.
- iii. **Evaluate Program Performance based on Output Metrics** - Identify primary program products and evaluate performance by the key metrics for those products.
- iv. **Budgeting and Permitting Cost Justification** – Maintain standard budgeting and permitting cost justification methods across all programs.
- v. **Support of Department** – Ensure Department financial, IT, personnel, and other resource support is adequate to successfully meet defined program requirements
- vi. **Continuous Process Improvement** – Maintain a Department-wide continuous process improvement strategy.

F. Compliance – Implement operational changes, policy changes, and a multi-pronged approach to encourage 100% compliance among all regulated entities.

Intent

Encourage and support 100% compliance by...

- Reinforcing a normal expectation of compliance among all regulated sources
- Providing appropriate, measured, and focused compliance assistance where needed
- Assuring fair and consistent enforcement among all regulated entities
- Increasing the speed of compliance determinations and enforcement actions
- Providing departmental and commission focus on programs needing assistance with non-compliance rates
- Identifying and implementing solutions for achieving high compliance rates.

Strategies

i. Remove internal Obstacles to Compliance

- a. Program level operational changes to increase compliance
- b. Department level operational changes which are outside program's direct control to increase compliance
- c. Policy and related regulation changes that increase compliance

ii. Emphasize Multi-pronged Approach to Achieve Compliance:

- a. Inspections
- b. Informal enforcement as a training opportunity
- c. Formal enforcement activity to include penalties and cease & desist orders

Plan Adoption and Implementation

As set forth in Section 335-1-1.03 (4) through (6) of the ADEM Administrative Code the Unified Strategic Plan is to be adopted by the Commission. The Department will utilize the Unified Strategic Plan to guide its actions and will develop Departmental action plans consistent with the Unified Strategic Plan.

Agreement on Unified Strategic Plan – The Commission and the Department agree that the Unified Strategic Plan as set forth in this document represents the plan that will guide the actions of the Commission and the Department until a new plan is developed.

Annual Departmental Operating Plan – Execution of the Unified Strategic Plan will require the annual development and implementation of measurable actions coupled with a review of performance from the previous year. The identified measurable actions will be included in an Annual Departmental Operating Plan.

Day-to-Day Performance – The Unified Strategic Plan as well as Annual Departmental Operating Plans are intended to inform the Commission and guide the Department in the execution of the Department's mission.

Attachment 6

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

In the matter of:)	
)	
Gene Hamby and Hamby Farms, LLC,)	
Petitioners,)	
)	
v.)	
)	EMC Docket No. 18-08
Alabama Department of)	
Environmental Management,)	
Respondent,)	
)	
and)	
)	
CWI Alabama, LLC,)	
Intervenor.)	

ORDER

Before the Commission in the above matter is the Hearing Officer's *Order and Recommendation*. Also before the Commission are Petitioners' *Objections to Hearing Officer's Recommendation under ADEM Admin. Code R. 335-2-1-.28(1)*; Petitioners' *Proposed Order under ADEM Admin. Code R. 335-2-1-.28(1)*; Department's *Reply to Petitioners' Objection to Report of Hearing Officer etc.*; and Respondent-Intervenor's *Reply Brief in Response to Objection to Hearing Officer's Order and Recommendation*. Based upon a review of the documentary evidence, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:


1. That the Hearing Officer's Recommendation is hereby adopted; and
2. That pursuant to the adoption of the Hearing Officer's Recommendation, the Commission finds that there is no genuine issue of material fact as to the Petitioners' claims and that Respondent ADEM and Intervenor CWI Alabama, LLC are entitled to judgment as a matter of law; and
3. That all relief requested in Petitioners' notice of appeal is denied; and
4. That CWI Alabama, LLC's Motion for Summary Judgment is granted; and
5. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
6. That a copy of this Order along with a copy of the Hearing Officer's Order and Recommendation, attached hereto as Exhibit A, and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 14th day of December 2018.


APPROVED:




Commissioner



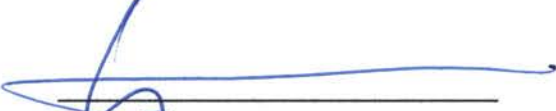
Commissioner



Commissioner



Commissioner



Commissioner



Commissioner



Commissioner

DISAPPROVED:

Commissioner

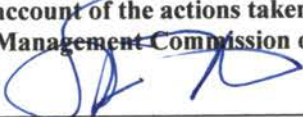
Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 14th day of December 2018.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 14th day of December 2018

BEFORE THE ALABAMA ENVIRONMENTAL
MANAGEMENT COMMISSION

GENE HAMBY & HAMBY FARMS, LLC,)
Petitioners,)
vs.)
ALABAMA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)
Respondent,)
and)
CWI ALABAMA, LLC,)
Respondent-Intervenor.)

EMC Docket No. 18-08



ORDER AND RECOMMENDATION

This matter is before the undersigned Hearing Officer on Intervenor, CWI Alabama, LLC's Motion for Summary Judgment. The Alabama Department of Environmental Management ("Department") joined in said Motion; a Response in Opposition to the Motion was filed by Petitioners, Gene Hamby and Hamby Farms, LLC; and, a hearing was held on the Motion on November 14, 2018 with all parties present.

After considering the Motion and the parties' submissions, the Hearing Officer recommends that CWI Alabama, LLC's Motion for Summary Judgment be GRANTED. The Hearing Officer specifically finds as follows:

1. In 2015, the Department issued a Solid Waste Disposal Facility Permit to P&F Industrial Enterprises, Inc. ("P&F") for a landfill in Colbert County, Alabama. P&F subsequently requested approval from the Colbert County Commission to expand the service area of the landfill. The Colbert County Commission approved an expanded service area to include Alabama, Tennessee, Mississippi and Georgia. In 2017, P&F filed an application with the Department for a name change and transfer

of its landfill permit. P&F sold its landfill to the Cherokee Solid Waste Disposal Authority and that entity leased the landfill to CWI Alabama, LLC. The Department approved the transfer of the permit to CWI and approved the name change of the landfill.

CDG Engineers & Associates, Inc., on behalf of CWI Alabama, LLC, filed an application with the Department to approve the change in service area, as well as for approval of a change in the cell sequence in use at the landfill and a change in the liner system of the landfill to eliminate the sand drainage layer and filter fabric. The only request which required local governing body approval was the change in service area. Ala. Code § 22-27-48(d) states in relevant part: “[T]here shall be no requirement for local review and approval of permit modifications for the limited purposes of changing liner and leachate collection design, changes in waste streams from within the facility’s designated service area, changes in sequence of fill, changes to incorporate new technology, and changes intended to bring a facility into compliance with statutes and regulations.”

The Department sent notices to adjoining landowners of the landfill as to the permit modification and after certain procedural and technical changes related to names in the request, sent another notice concerning the permit modification/change of service area to adjoining landowners. Notice was also published in the local newspapers. In 2018, the Department finalized the landfill permit modifications. Thereafter, Petitioners, Gene Hamby and Hamby Farms, LLC filed this appeal of the Department’s determination related to the permit modifications.

2. The relevant issues raised by Petitioners include: (1) that the host government, i.e., Colbert County Commission, did not provide approval of the permit modifications; (2) that the application submitted for approval to the Department contained material misstatements and omissions; (3) that the Colbert County Commission did not consider all required criteria when it

issued its approval; (4) that the Colbert County Commission did not approve the correct name/entity for the permit; (5) that all social and economic impacts of the landfill were not considered by the Colbert County Commission; (6) that the Colbert County Commission did not consider the transfer of the landfill to the Cherokee Solid Waste Disposal Authority (to be operated by CWI) in relation to consistency with the solid waste management plan; (7) that the Statement of Consistency with the Solid Waste Management Plan was required to be reissued based on new facts; (8) that the Department's approval of the transfer of permit was done prior to host government approval; (9) that host government approval should once again be required; (10) that there was a failure to provide proper names and addresses of property owners to be notified regarding the permit request; and, (11) that the Department failed to provide proper notice to adjacent landowners.

3. The Hearing Officer makes the following findings as to each issue raised by Petitioners:

a. **Host Government/Local Governing Body Approval.** Under the applicable statutory framework, all that the Department is charged with is determining whether the local governing body approved a modification to a permit which it was required to approve. Ala. Code § 22-27-48(b). The evidence demonstrates the Department made such a determination. It is clear that the Colbert County Commission provided the necessary approval. Assuming for the sake of argument that the Department was required to consider whether the local governing body itself considered all relevant factors, the evidence gleaned from the Colbert County Commission's resolution and minutes reflect that the County Commission considered all the necessary factors in approving the expanded service area of the subject landfill.

b. **Information in the Application.** Petitioners' Notice of Appeal does not specify what information in the application submitted to the Department constituted "material misstatements

and omissions.” In any event, the Hearing Officer fails to find any such material misstatements or omissions.

c. **Local Governing Body Consideration of Modified Permit Request.** The Hearing Officer notes that it is unclear under the applicable statutory framework whether the Department must look above and beyond or behind the local governing body’s approval of an application request like the one in the instant case. As noted above, the relevant statute indicates that the Department must simply determine whether there was approval given by the local governing body. Ala. Code § 22-27-48(b). As discussed in paragraph a. above, assuming for the sake of argument that the Department did, in fact, have to look beyond the act of approval by the Colbert County Commission to determine whether the County Commission considered relevant factors, the evidence demonstrates that the Colbert County Commission did consider the relevant factors in arriving at its approval and the Department’s determination of such approval was proper.

d. **Local Governing Body Consideration of Economic and Social Impacts.** As made clear in paragraphs a. and c. above, the Colbert County Commission explicitly stated in their Resolution that it did consider the economic and social impacts of the application. Therefore, and again, assuming, for the sake of argument only, that the Department was required to make a determination that the County Commission considered such impacts, the Hearing Officer finds ample evidence to support the conclusion that such a determination was made.

e. **Local Governing Body Consideration of Transfer of Landfill.** Petitioner argues that Colbert County Commission did not consider the transfer of the landfill to the Cherokee Solid Waste Disposal Authority (to be operated by CWI) in relation to consistency with the solid waste management plan. Applicable law, however, states that no such local approval is required. City of

Brundidge v. Alabama Dep't of Env'tl. Mgmt., 218 So. 3d 798, 815 (Ala. Civ. App. 2016) (where the court agreed with the Department's contention that a transfer of a permit was not the same as a permit modification and, hence, no local approval was necessary for a transfer.).

f. **Statement of Consistency with the Solid Waste Management Plan.** Petitioners claim that the Statement of Consistency with the Solid Waste Management Plan was required to be reissued based on new facts. It is not entirely clear what this claim is based upon, but assuming the Hearing Officer understands the claim to be that the local governing body was required to consider the transfer of the permit, such is without merit. As noted above, and in accordance with City of Brundidge, it does not appear that a transfer of a permit required any new determinations by the local governing body.

g. **Petitioners' Claim related to Department's Approval of Transfer of Permit.**

As explained above, the transfer of the subject permit did not require local government approval under applicable law. Hence, Petitioners' claim that there was some defect in the transfer process (by virtue of the local governing body not considering the transfer) is not supported by law.

h. **Notice Issues.** Petitioners devote a large majority of their response in opposition to CWI's Motion to the issue of notice provided to adjacent landowners of the landfill permit modification. While Petitioners do not dispute that they received notice, they argue that other adjacent landowners may not have received notice. In the context of claims such as are made in this case, the Hearing Officer finds that Petitioners lack standing to make their claims as to alleged lack of notice to third parties. See Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); Friends of Ball Play Basin, Inc. v. Alabama Department of Environmental Management and Alabama Waste Disposal Solutions, L.L.C., 1997 WL 529546 at 11. However, assuming Petitioners

did have standing to make such a claim, Petitioners fail to put forth substantial evidence indicating a specific adjoining landowner claimed that they did not get notice and thereby suffered some harm. Therefore, assuming, solely for the sake of argument, that Petitioners would have standing to assert claims on behalf of third party owners, the Hearing Officer finds the Department properly relied on a list of adjacent property owners provided to it by CWI and that CWI took all reasonable steps to compile the list of adjacent landowners.

4. The Hearing Officer finds, and recommends to the Commission, that there is no genuine issue of material fact as to the Petitioners' claims and that the Department and CWI Alabama, LLC are entitled to judgment as a matter of law. The Hearing Officer recommends that all relief requested in Petitioners' notice of appeal be denied and summary judgment be entered. The evidentiary hearing set for December 13, 2018, is moot and cancelled, and all other pending motions are denied as moot.

Done this 26th day of November, 2018.



R. RAINER COTTER, III
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following individual(s) by email and/or placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed this 26th day of November, 2018:

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/s/ R. Rainer Cotter, III
HEARING OFFICER