

**6/15/20**

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

**This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on February 14, 2020.**

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

**Samuel L. Miller, Chair**

**Alabama Environmental Management Commission**

**Certified this 12th day of June 2020.**

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

**Convened: 11:10 a.m.  
Adjourned: 12:06 p.m.**

**Part A**

**Transcript  
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**Part B**

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**Part A**

**ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION**  
**Meeting on 02/14/2020**

1 ALABAMA ENVIRONMENTAL MANAGEMENT  
2 COMMISSION MEETING

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11 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

12 Alabama Room

13 1400 Coliseum Boulevard

14 Montgomery, Alabama 36110-2400

15 February 14, 2020

16 11:10 a.m.

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25 Taken by: Victoria M. Castillo, ACCR No. 17

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<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 COMMISSION MEMBERS PRESENT:</p> <p>4 John (Jay) H. Masingill, III</p> <p>5 Kevin McKinstry</p> <p>6 Mary J. Merritt</p> <p>7 Thomas P. Walters, P.E.</p> <p>8</p> <p>9 COMMISSION MEMBERS NOT PRESENT:</p> <p>10 Samuel L. Miller, M.D., Chair</p> <p>11 H. Lanier Brown, II, Esq., Vice Chair</p> <p>12 Ruby L. Perry, D.V.M.</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15 Robert Tambling, AEMC Legal Counsel</p> <p>16 Debi Thomas, AEMC Executive Assistant</p> <p>17 Lance R. LeFleur, ADEM Director</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 approved. Item two, Director LeFleur.</p> <p>2 MR. LeFLEUR: Good morning and</p> <p>3 welcome to the third meeting of the Alabama</p> <p>4 Environmental Management Commission for fiscal</p> <p>5 year 2020. Today's report will summarize how our</p> <p>6 permitting program works and then provide a</p> <p>7 consolidated analysis of how the Department is</p> <p>8 doing in obtaining compliance with its Air,</p> <p>9 Water, Drinking Water, and Hazardous Waste</p> <p>10 programs compared to the rest of the nation.</p> <p>11 In 2013 EPA began providing metrics</p> <p>12 to measure the performance of the Air, Water,</p> <p>13 Drinking Water, and Hazardous Waste programs for</p> <p>14 all states in the nation. Each year since then I</p> <p>15 have presented updated metrics on our performance</p> <p>16 in each media. The six years of analysis has</p> <p>17 shown that the Department consistently</p> <p>18 outperforms the national averages. That high</p> <p>19 performance has significant tangible beneficial</p> <p>20 results on the quality of the environment in our</p> <p>21 state as has been shown in the yearly reports</p> <p>22 presented to you titled "State of the Environment</p> <p>23 in Alabama." Beginning with today's report, I</p> <p>24 will be presenting the information for the</p> <p>25 individual programs in a new consolidated format.</p>
<p>1 (WHEREUPON, proceedings began at</p> <p>2 11:10 a.m.)</p> <p>3 MR. MASINGILL: Good morning,</p> <p>4 everyone. Well, as you can see, Chair Miller is</p> <p>5 not here and neither is Vice Chair Brown so I'm</p> <p>6 the acting chair today. I'm Commissioner</p> <p>7 Masingill. And I know we have a quorum. And I'd</p> <p>8 like to call the first item. First item is</p> <p>9 consideration of the minutes from the December</p> <p>10 13th, 2019 Commission meeting. The minutes have</p> <p>11 been circulated to the members of the Commission.</p> <p>12 I will entertain a motion to adopt those minutes.</p> <p>13 MR. WALTERS: So moved.</p> <p>14 MR. MCKINSTRY: Second.</p> <p>15 MR. MASINGILL: Is there any</p> <p>16 discussion?</p> <p>17 (No response.)</p> <p>18 MR. MASINGILL: Seeing none, I</p> <p>19 will call for the question. All in favor of</p> <p>20 approving the minutes, please say "aye."</p> <p>21 (All Commissioners respond with</p> <p>22 "aye.")</p> <p>23 MR. MASINGILL: All opposed?</p> <p>24 (No response.)</p> <p>25 MR. MASINGILL: The minutes are</p>	<p>1 Those less inclined toward statistical data will</p> <p>2 probably breathe a sigh of relief that we will</p> <p>3 cover the information in one report rather than</p> <p>4 four.</p> <p>5 As you may recall, the format for</p> <p>6 reviewing each program's metrics is to look at</p> <p>7 the size and composition of the universe of</p> <p>8 regulated facilities, then to compare the rate of</p> <p>9 inspections, informal enforcement actions, and</p> <p>10 significant non-compliance to the rest of the</p> <p>11 nation. This format was chosen to highlight that</p> <p>12 our objective is for the regulated facilities to</p> <p>13 comply with the requirements of environmental</p> <p>14 permits and regulations issued by the Department.</p> <p>15 By looking at non-compliance metrics, we are in</p> <p>16 effect looking at compliance. Before reviewing</p> <p>17 EPA's compliance and enforcement metrics, we will</p> <p>18 go over a bit of background on the permits and</p> <p>19 regulations that are the standards against which</p> <p>20 compliance is measured.</p> <p>21 The process of developing</p> <p>22 environmental permits involves standards based on</p> <p>23 good science, statutory authority to issue</p> <p>24 permits, and proper rulemaking. Good science</p> <p>25 requires a rigorous analysis to determine what is</p>

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<p style="text-align: right;">Page 6</p> <p>1 protective of human health and the environment. 2 In air, it is the National Ambient Air Quality 3 Standards. In the water media, it's called Water 4 Quality Standards. In drinking water, it is the 5 Maximum Contaminant Levels. For hazardous waste, 6 it is a combination of management standards to 7 prevent releases and cleanup standards when 8 releases do occur. The standards are the result 9 of exhaustive studies overseen by federal 10 agencies including EPA, the Centers for Disease 11 Control, and the Agency for Toxic Substances and 12 Disease Registry. These agencies are the best in 13 the world at what they do. 14 ADEM's statutory authority derives 15 from EPA delegating to the state, and 16 subsequently to ADEM, the authority to administer 17 federal environmental laws including the Clean 18 Air Act, the Clean Water Act, the Safe Drinking 19 Water Act, and the Resource Conservation and 20 Recovery Act. To obtain that delegation of 21 authority to administer those federal 22 environmental laws, the state must enact state 23 laws conforming to the federal laws, provide the 24 resources necessary to administer the programs, 25 and demonstrate ongoing competence.</p>	<p style="text-align: right;">Page 8</p> <p>1 permit quality reviews performed by EPA for the 2 Water Division, Title V permitting audits by EPA 3 for the Air Division, and the State Review 4 Framework, which is a comprehensive audit of the 5 Air, Water, and Hazardous Waste operational 6 activities including data management, compliance, 7 monitoring, and enforcement. EPA performs such 8 an audit on a four to five year cycle. State 9 Review Framework findings are posted on our 10 website. 11 Now to the dashboard slides that 12 analyze compliance with, and enforcement of, 13 those permits and requirements. First, we will 14 look at the size of the regulated universe for 15 each of the four program areas. The universe of 16 regulated air facilities is down slightly from 17 731 to 712 between 2011 and 2019. In the water 18 media, you can see there was a steep drop in the 19 number of regulated facilities from nearly 17,000 20 to around 10,000 between 2012 and 2013 and it has 21 been generally steady since then. The decline is 22 the result of counting the facility once when it 23 was subject to a permit by rule and a second time 24 when it transitioned to the new general permit 25 during 2011 and 2012. This artificially inflated</p>
<p style="text-align: right;">Page 7</p> <p>1 The final step in the development of 2 a permitting program is rulemaking. Rulemaking 3 accomplishes a number of things. It adopts the 4 environmental standards to be used in permits and 5 enforcement. It defines the activities to be 6 regulated -- like construction, manufacturing, 7 and waste treatment. Rulemaking sets parameters 8 as to what permit conditions will be. That is, 9 the duties of the permit holder to operate and 10 maintain its facility to mitigate harm to the 11 environment and the like. It sets pollution 12 control and reporting requirements and, finally, 13 rulemaking sets forth the processes for issuing 14 permits. The Alabama Environmental Management 15 Commission is the body that adopts rules. You 16 will be considering proposed rules later in this 17 meeting that have been through a standardized 18 formal process for rulemaking. That process 19 provides the public the opportunity for input and 20 the opportunity to appeal. EPA provides ongoing 21 oversight to confirm that the Department is 22 meeting federal standards and delegated program 23 obligations in its permits. This is done by 24 providing drafts of permits for EPA review and 25 comment in delegated programs, regular formal</p>	<p style="text-align: right;">Page 9</p> <p>1 the 2011 and 2012 numbers. 2 In drinking water, the universe has 3 been very steady at around 580 facilities. This 4 is a relatively small number of facilities. In 5 the case of drinking water, a smaller number of 6 facilities that are of larger size is beneficial 7 because larger facilities have improved access to 8 management and other resources. 9 The universe of hazardous waste 10 facilities has increased from about 4,000 to 11 nearly 5,500 in the period from 2011 to 2019. 12 The increase is attributable in large part to a 13 national enforcement settlement agreement that 14 caused pharmacies and other retail facilities 15 selling pharmaceuticals to report as hazardous 16 waste generators. 17 Next is inspections. As has often 18 been repeated in my reports to you, the 19 Department relies on inspections as the most 20 significant tool to obtain compliance with 21 environmental permits and requirements in 22 Alabama. Independent research supports this 23 concept, as will upcoming data showing our 24 results. 25 The following graphs will show</p>

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1 inspection rates for each of the four media. The  
 2 different programs have different names for the  
 3 inspection activities such as full compliance  
 4 evaluation or facilities inspected, or site  
 5 visits, or inspection coverage due to the  
 6 slightly different terminology used in the  
 7 various federal enabling statutes. The graphs  
 8 will use the term inspections for all media.  
 9 There will be one graph for each media showing  
 10 the inspection rate for all regulated facilities.  
 11 A second inspection graph will show the  
 12 inspection rate for the largest regulated  
 13 facilities in that media, except for drinking  
 14 water. The large facilities are the ones that  
 15 have the greatest potential for adverse impact on  
 16 the environment and are therefore important to  
 17 look at closely. Data on the inspection of the  
 18 largest facilities for drinking water media is  
 19 not broken out in reports to EPA so there will be  
 20 no second inspection graph for drinking water.  
 21 The blue bars represent the  
 22 inspection rate of all facilities during the last  
 23 nine years for the Department's Air program. The  
 24 dashed red line represents the average inspection  
 25 rate for the nation. As you can see Alabama has

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1 an inspection rate that is consistently more than  
 2 two and a half times the national average and  
 3 shows a flat trend at around 90 percent.  
 4 Looking at just the largest  
 5 regulated facilities in Air, there's a similar  
 6 pattern of inspections at two to three times the  
 7 national average. The green bars for the water  
 8 program likewise consistently show an inspection  
 9 rate for all facilities that is two to three  
 10 times better than the national average shown by  
 11 the red dashed line. As you can see, there has  
 12 been a favorable trend over the years. For the  
 13 largest regulated facilities in water, the  
 14 inspection rate has been trending higher in  
 15 recent years and is about twice the national  
 16 average.  
 17 The orange bars for the drinking  
 18 water program show an inspection rate for all  
 19 regulated facilities that is typically nearly  
 20 three times the national average shown by the red  
 21 dashed line as noted a moment ago. Drinking  
 22 water data for large facilities only is not  
 23 available; however, with an inspection rate of  
 24 nearly 100 percent of all facilities, the largest  
 25 systems are being inspected at a high rate.

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1 Closing out inspections, the brown  
 2 bars for the Hazardous Waste program show a rate  
 3 for all inspections that is two to three times  
 4 the national average. For treatment, storage,  
 5 and disposal, abbreviated TSD, facilities and  
 6 large quantity generators in Hazardous Waste, the  
 7 inspection rate has been trending higher in  
 8 recent years and is about twice the national  
 9 average.  
 10 The enforcement group of graphs  
 11 highlights the second most important element,  
 12 after inspections, in our strategy to achieve  
 13 compliance. It's been our strategy to utilize  
 14 education, including informal enforcement, to  
 15 obtain a higher level of compliance. Research  
 16 has shown that inspections and technical  
 17 assistance, which is education, are the biggest  
 18 contributors to compliance. Most violations are  
 19 not intentional. They are many times the result  
 20 of either not knowing what is required under the  
 21 permits, accidents, or mistakes. Informal  
 22 enforcement is one form of education that helps  
 23 avoid those situations. Additionally, penalties  
 24 and formal enforcement actions typically require  
 25 five to ten times the resources of informal

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1 enforcement actions so utilizing a higher  
 2 percentage of informal actions uses resources  
 3 more effectively. EPA enforcement data was used  
 4 to create the following graphs showing the  
 5 relationship between informal and formal  
 6 enforcement actions.  
 7 In this Air program graph, the blue  
 8 columns represent the percentage of all  
 9 enforcement actions that are informal and the  
 10 dashed red line represents the average percentage  
 11 for the nation. As you can see, ADEM  
 12 consistently has a higher rate of informal  
 13 enforcement. Our trend is flat to increasing.  
 14 The slowly rising national trend line seems to  
 15 indicate the rest of the nation is seeing the  
 16 benefits of increased informal enforcement,  
 17 although the rate continues to be below that of  
 18 ADEM.  
 19 In the Water program, the percentage  
 20 of informal actions is again considerably higher  
 21 than the national average represented by the red  
 22 dashed line. Our trend is essentially flat at a  
 23 rate approaching 100 percent while the rest of  
 24 the nation is slowly trending up toward the ADEM  
 25 rate. The trend for our drinking water program



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<p style="text-align: right;">Page 14</p> <p>1 is increasing informal enforcement at a rate 2 above the dashed red line representing the 3 national average that is also increasing. 4 Hazardous Waste, like the other ADEM 5 programs, shows the high rate of informal 6 enforcement that yields high levels of 7 compliance. This program has employed a rate of 8 informal enforcement that is similar to that of 9 other ADEM programs but is lower than the 10 national average. We will be applying an 11 increased emphasis on informal enforcement and 12 other forms of education that we expect will 13 further enhance the compliance rates in our 14 Hazardous Waste program. 15 This final group of slides will look 16 at the rates of significant non-compliance 17 commonly referred to as SNC. These are the ones 18 that can potentially adversely impact human 19 health or the environment. The objective of all 20 environmental programs is to have a low 21 non-compliance rate, which is synonymous with a 22 high compliance rate. This group of graphs is 23 where we see if our strategy of high rates of 24 inspections and informal enforcement is showing 25 results.</p>	<p style="text-align: right;">Page 16</p> <p>1 program, incidents of non-compliance classified 2 as "significant" do occur. They typically 3 involve exceeding the maximum number of days 4 hazardous waste can be stored at a location 5 and/or the repeated occurrences of minor 6 violations such as poor recordkeeping and 7 labeling. 8 As you can see on this slide, the 9 trend for SNC is essentially flat at a rate 10 around two to three percent; however, our 11 significant non-compliance rate is higher than 12 the national average. Importantly, none of the 13 SNCs in Alabama has been found to result in harm 14 to human health or the environment. In order to 15 reduce the hazardous waste SNC rate in the 16 future, we are implementing a stepped up targeted 17 education program, including expanded informal 18 enforcement which makes use of warning letters 19 and notices of violation. The program will also 20 involve one-on-one training sessions with the 21 treatment, storage, and disposal facilities, 22 which are the largest hazardous waste handlers, 23 as well as joint sessions with their downstream 24 customers that represent the next largest 25 handlers.</p>
<p style="text-align: right;">Page 15</p> <p>1 Beginning with Air, the blue bars 2 represent the percent of inspections that result 3 in significant non-compliance, or SNC, for 4 Alabama and the dashed red line represents the 5 national average. The SNC rate for Alabama is 6 consistently below the national average and is 7 generally trending steady at one percent. That 8 pronounced 2016 peak in both our rate and the 9 national rate is the result of EPA changing how 10 the definition of a SNC is applied in its 11 reporting guidance. 12 The Water program has a SNC rate per 13 inspections conducted of about half the national 14 average and is trending favorable. The Drinking 15 Water program continues to have a SNC rate about 16 one-third the national average, the dashed red 17 line, and the rate is trending flat to favorable. 18 The Hazardous Waste program 19 primarily focuses on hazardous waste handling 20 sites, overseeing measures to prevent new 21 hazardous material releases, and remediating past 22 hazardous material releases. For decades, we 23 have had no substantial new hazardous waste sites 24 created in Alabama and many legacy sites have 25 been cleaned up. However, in the Hazardous Waste</p>	<p style="text-align: right;">Page 17</p> <p>1 To summarize, the number of 2 regulated facilities in Alabama is generally 3 steady to growing. High inspection rates are 4 being implemented across all programs. The 5 Department emphasizes informal enforcement which 6 is a form of education. Alabama has low rates of 7 significant non-compliance compared to the rest 8 of the nation in the Air, Water, and Drinking 9 Water programs. A stepped up education program 10 is being implemented in the hazardous waste 11 program to further reduce the rate of significant 12 non-compliance, and the long-term trends in these 13 key metrics are favorable. 14 These metrics are consistent with 15 the trends in non-statistical environmental 16 quality measures over many years highlighted in 17 my periodic reports on the State of the 18 Environment in Alabama. They are also consistent 19 with EPA, regulated industry, and independent 20 research groups' findings that Alabama is one of 21 the top environmental performers in the nation. 22 I do recognize that, as has been 23 said about politics, environmental issues are 24 local. While the state overall has an enviable 25 environmental record, there are serious</p>

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1 environmental issues occasionally that can and do  
2 dramatically impact local communities. In just  
3 the past year there have been several.  
4         At nine locations around Alabama,  
5 the long-standing commonly used method of  
6 disposing of coal combustion residuals in unlined  
7 impoundments is an important issue. In the  
8 central part of the state two significant fish  
9 kills occurred as a result of some combination of  
10 human error, equipment failures, and facility  
11 operating procedure errors. In the northern part  
12 of the state there has been heightened concern  
13 about the unknown risks of emerging contaminants  
14 known as per and poly fluorinated alkyl  
15 substances abbreviated as PFAS. Although these  
16 issues occur throughout the nation, they become  
17 critically important to local area residents when  
18 an event occurs in their backyard.  
19         The Department has highly trained,  
20 experienced, and dedicated scientists, engineers,  
21 and emergency personnel that quickly respond when  
22 these types of environmental events occur.  
23 However, the Department has an opportunity to  
24 communicate better with local communities. We  
25 are taking steps to address that opportunity, and

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1 I will be reporting on those efforts in the  
2 future.  
3         Finally, in keeping with the  
4 Department's commitment to encourage our  
5 personnel to continue their professional  
6 development, I'm pleased to recognize two  
7 individuals who have completed the Certified  
8 Public Manager I program, seven individuals who  
9 have completed the advanced Certified Public  
10 Manager II program, and one individual who has  
11 completed the rigorous process to earn the  
12 designation of Professional Engineer. For those  
13 of you that are here, please stand when I call  
14 your name and remain standing.  
15         The Certified Public Manager I, Kris  
16 Berry from our Permits and Services Division;  
17 Shawn LaGrone from Field Operations. I believe  
18 he's gone back to Decatur. Our Certified Public  
19 Manager II, Daniel Arthur in our Land Division;  
20 Ross Caton in Water; Michael Cruise in Land;  
21 Latoya Hall also in Land Division; Diane  
22 Lockwood, Permits and Services; Samantha Sims in  
23 Air Division; Carla Snow in Field Operations.  
24 And our Professional Engineer, Jackson Rogers in  
25 Air. Congratulations to each of you.

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1                   (Audience applause.)  
2                   MR. LeFLEUR: We are a stronger  
3 organization because of your work. Job well  
4 done. This concludes today's report. I will be  
5 happy to answer any questions you have.  
6                   MR. MASINGILL: Questions?  
7                   (No response.)  
8  
9                   MR. LeFLEUR: Okay. Thank you.  
10                   MR. MASINGILL: Thank you,  
11 Director LeFleur.  
12                   Item four is the consideration of  
13 the proposed amendments to ADEM Administrative  
14 Code 335 -- you're right. I have no report.  
15                   MR. WALTERS: Make it official.  
16                   MR. MASINGILL: Thank you, Tom.  
17                   MR. WALTERS: Sure.  
18                   MR. MASINGILL: Item four is  
19 consideration of the proposed amendments to ADEM  
20 Administrative Code 335-3, Air Pollution Control  
21 Program regulations.  
22                   Do we have comments from the  
23 Department?  
24                   Yes, Mr. Gore?  
25                   MR. GORE: Good morning,

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1 Mr. Chair, ma'am, gentlemen. I'm Ron Gore with  
2 the Department's Air Division. I'm here to  
3 request that you make several changes to the  
4 Department's Air regulations. We held a public  
5 comment period from November 25th through January  
6 10th in the public hearing on January 8th. No  
7 oral comments were received, but we did receive  
8 some written comments. The changes we're asking  
9 to make fall into two areas, both of which are  
10 related to primacy for air pollution regulations  
11 in Alabama from EPA. The first type we adopt by  
12 reference, so either going to adopt them exactly  
13 like EPA says or we don't get them. So not much  
14 controversy over those. And there are some which  
15 we adopt regulations which EPA in turn approves  
16 as being equivalent to ours although not -- to  
17 theirs although not identical. The area we had  
18 substantive comments in is in our nitrogen oxides  
19 training program. About half the comments were I  
20 thought minuscule in nature -- numbering,  
21 clarification -- and about half were substantive.  
22 We have clarified those comments and why we  
23 propose the changes in your package. And pending  
24 any questions, I'd like to ask that you adopt all  
25 these regulations.

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<p>1 MR. MASINGILL: Thank you. Any 2 questions of Mr. Gore? 3 (No response.) 4 MR. MASINGILL: I will entertain 5 a motion to adopt the proposed amounts to the Air 6 Pollution Control Program regulations. 7 MS. MERRITT: I move to adopt 8 the proposed amendments. 9 MR. WALTERS: Second. 10 MR. MASINGILL: It has been 11 moved and seconded. Is there any discussion? 12 (No response.) 13 MR. MASINGILL: Seeing none, I 14 will call for the question. All in favor of 15 adoption of the proposed amendments, please say 16 "aye." 17 (All Commissioners respond with 18 "aye.") 19 MR. MASINGILL: All opposed? 20 (No response.) 21 MR. MASINGILL: The proposed 22 amendments are approved. 23 MR. GORE: Thank you. 24 MR. MASINGILL: Item five is 25 consideration of proposed amendments to ADEM</p>	<p>1 Mr. Kelly? 2 (No response.) 3 MR. MASINGILL: I will entertain 4 a motion to adopt the proposed amendment to the 5 State Revolving Fund programs. 6 MS. MERRITT: Move to adopt the 7 proposed amendments. 8 MR. WALTERS: Second. 9 MR. MASINGILL: It's been moved 10 and seconded. Is there any discussion? 11 (No response.) 12 MR. MASINGILL: Seeing none, I 13 will call for the question. All in favor of 14 adoption of the proposed amendments, please say 15 "aye." 16 (All Commissioners respond with 17 "aye.") 18 MR. MASINGILL: All opposed? 19 (No response.) 20 MR. MASINGILL: Proposed 21 amendments are approved. 22 MR. KELLY: Thank you. 23 MR. MASINGILL: Item six is 24 consideration of the proposed amendments to ADEM 25 Administrative Code 335-13, Solid Waste Program</p>
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<p>1 Administrative Code 335-11, State Revolving Fund 2 Programs. Do we have any comments from the 3 Department? 4 MR. KELLY: Yes. Morning, 5 members of the Commission. I'm Russell Kelly, 6 Chief of the Permits and Services Division. The 7 Department held a public hearing on December 5th, 8 2019, on the revisions to the Division 11 of the 9 ADEM Administrative Code. These rules are being 10 proposed to revise the Clean Water and Drinking 11 Water State Revolving Fund regulations that are 12 known as the SRF program. These revisions 13 provide further clarity with updated federal 14 guidelines. The minor changes include revising 15 definitions to be consistent with the federal 16 definitions, clarifying rules to provide greater 17 transparency, and formatting changes as needed 18 throughout both chapters. Changes were also made 19 to clarify the parameters required to obtain a 20 loan, the time frames that loans will be received 21 by the Department. Please note that no comments 22 were received during the notice period. I would 23 ask for your favorable consideration. Now I will 24 answer any questions. 25 MR. MASINGILL: Any questions of</p>	<p>1 regulations. And I see we have Mr. Cobb. 2 MR. COBB: Thank you, 3 Mr. Chairman, and good morning, Commissioners. 4 And I'm Stephen Cobb, Chief of the Land Division. 5 And I'm here today to recommend this Commission 6 adopt amendments to the Department's Division 13 7 Solid Waste Program regulations to include 8 Chapter 335-13-16, requirements for beneficial 9 use of by-product materials for the purpose of 10 land application. This proposed chapter will 11 establish procedures to regulate the land 12 application of eligible nonhazardous by-product 13 materials within the state. These regulations 14 will not supercede or replace existing federal 15 requirements such as the EPA 503 B Biosolids Rule 16 under the federal Clean Water Act, but will 17 provide the Department with additional rules and 18 authority to supplement the federal requirements. 19 These regulations provide the Department with 20 regulatory authority to resolve issues related to 21 the handling of transportation and land 22 application of all beneficially used by-product 23 materials to ensure protection of human health 24 and the environment. 25 The proposed revisions to the Solid</p>

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1 Waste Program regulations were the subject of two  
2 public comment periods. The first public comment  
3 period ran from July 21st, 2019, to September  
4 5th, 2019. And a public hearing was held at the  
5 Department on September 5th. Oral and written  
6 comments were received by the Department during  
7 the first public comment period. Based on the  
8 comments received, the proposed regulations were  
9 amended and the Department made the decision to  
10 return to public notice. The second public  
11 notice period ran from November 1 to January 7th,  
12 2020, and a public hearing was held at the  
13 Department on January 7th. Oral and written  
14 comments were also received by the Department  
15 during the second comment period; however, no  
16 additional changes were made to the proposed  
17 regulations as a result of the comments received.  
18 The Department's response to the comments  
19 received during each of the two comment periods  
20 have been provided to the Commission as part of  
21 the rulemaking package before you today. The  
22 Department asks that the Commission adopt the  
23 proposed changes to the Department's Division 13  
24 Solid Waste Program regulations, and I'm here and  
25 happy to answer any questions that you might

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1 have.

2 MR. MASINGILL: Any questions?

3 MR. JOHNSON: Mr. Acting Chair,  
4 there are objections to this proposed rulemaking.  
5 And I have registered for the public comment  
6 period. I ask to instead be heard before you-all  
7 vote.

8 MR. TAMBLING: May I address the  
9 Commission? I think that's out of order. There  
10 has been an opportunity for the public comment  
11 and hearing. And if you have any questions for  
12 Mr. Cobb, I would suggest that you ask them now.

13 MR. MASINGILL: All right. At  
14 this point --

15 MS. LAY: What was your name,  
16 sir?

17 MR. MASINGILL: Me?

18 MR. TAMBLING: I'm counsel for  
19 the Commission. My name is Robert Tambling.

20 MR. MASINGILL: Any questions  
21 for Mr. Cobb and the Commissioners?  
22 (No response.)

23 MR. MASINGILL: I will entertain  
24 a motion to adopt the proposed amendments --

25 MR. WALTERS: So moved.

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1 MR. MASINGILL: -- the proposed  
2 amendment to the Solid Waste Program regulations.  
3 MR. WALTERS: Move to adopt.  
4 MS. MERRITT: Second.  
5 MR. MASINGILL: It has been  
6 moved and second. Is there any discussion?  
7 (No response.)  
8 MR. MASINGILL: Seeing none, I  
9 will call for the question. All in favor of  
10 adoption of the proposed amendment, please say  
11 "aye."  
12 (All Commissioners respond with  
13 "aye.")  
14 MR. MASINGILL: All opposed?  
15 (No response.)  
16 MR. MASINGILL: The proposed  
17 amendments are approved.  
18 MR. COBB: Thank you,  
19 Mr. Chairman.  
20 MR. MASINGILL: Item seven is  
21 consideration of proposed amendments to ADEM  
22 Administrative Code 335-14, Hazardous Waste  
23 Program regulations. Do we have comments from  
24 the Department? Again, Mr. Cobb?  
25 MR. COBB: Yes, Mr. Chairman.

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1 The Department is today proposing to amend  
2 Division 14 of the ADEM Administrative Code in  
3 order to adopt two new federal rules promulgated  
4 by the U.S. EPA. These rules address the  
5 management standards for hazardous waste  
6 pharmaceuticals and an amendment to the P075  
7 listing for nicotine. And, secondly, rules for  
8 the safe management of recalled air bags. A  
9 description of each of these rules is provided in  
10 your packets and adoption of these rules is  
11 necessary to ensure ADEM's Hazardous Waste  
12 regulations remain as stringent as federal rule,  
13 which is a requirement to preserve the program's  
14 federally authorized status. The Department made  
15 the proposed rules available for public comment  
16 and review between October 13 and December 5th  
17 2019 and no written comments were received.  
18 A public hearing was held on  
19 December 5th of 2019 and no comments or testimony  
20 were offered at that hearing. As required by  
21 law, the proposed rules were also approved by the  
22 State Committee of Public Health at its meeting  
23 on January 15th. And as such, the Department  
24 asks that the Commission adopt these rules as  
25 proposed. And, again, I'm happy to answer any

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1 questions.  
2 MR. MASINGILL: Are there any  
3 questions from the Commission?  
4 (No response.)  
5 MR. MASINGILL: I will entertain  
6 a motion to adopt the proposed amendment to the  
7 Hazardous Waste Program regulations.  
8 MR. MCKINSTRY: Move to adopt  
9 the proposed amendments.  
10 MS. MERRITT: Second.  
11 MR. MASINGILL: It has been  
12 moved and seconded. Is there any discussion?  
13 (No response.)  
14 MR. MASINGILL: Seeing none, I  
15 will call for the question. All in favor of  
16 adoption of the proposed amendments, please say  
17 "aye."  
18 (All Commissioners respond with  
19 "aye.")  
20 MR. MASINGILL: All opposed?  
21 (No response.)  
22 MR. MASINGILL: The proposed  
23 amendments are approved.  
24 MR. COBB: Thank you.  
25 MR. MASINGILL: Item eight is

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1 consideration of the proposed amendments to ADEM  
2 Administrative Code 335-15, Brownfield  
3 Redevelopment and Voluntary Cleanup Program  
4 regulations. Let's see, we have Mr. Cobb again.  
5 I see we have Mr. Cobb again.  
6 MR. COBB: Yes, sir,  
7 Mr. Chairman. Once again I'm here to recommend  
8 that the Commission adopt proposed amendments to  
9 the Department's Brownfield Redevelopment and  
10 Voluntary Cleanup Program regulations, also known  
11 as Division 15. These amendments serve to  
12 provide additional definitions, consistency with  
13 other Departmental programs, and to clarify  
14 requirements for program participation. These  
15 proposed revisions were the subject of public  
16 review and comment period between October 13,  
17 2019, and December 5th, 2019. Again, no written  
18 comments were received during the public comment  
19 period. A public hearing was also held on  
20 December 5th, 2019, during which no verbal or  
21 written testimony was offered. The revised  
22 regulations were presented to you today for your  
23 consideration and the Department asks that you  
24 adopt these proposed changes to these  
25 regulations. And, again, I will be happy to

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1 answer any questions.  
2 MR. MASINGILL: Any questions?  
3 (No response.)  
4 MR. MASINGILL: I will entertain  
5 a motion to adopt the proposed amendments to the  
6 Brownfield Redevelopment and Voluntary Cleanup  
7 Program regulations.  
8 MR. WALTERS: Move to adopt the  
9 proposed amendments.  
10 MS. MERRITT: Second.  
11 MR. MASINGILL: It has been  
12 moved and seconded. Is there any discussion?  
13 (No response.)  
14 MR. MASINGILL: Seeing none, I  
15 will call for the question. All in favor of  
16 adoption of the proposed amendments, please say  
17 "aye."  
18 (All Commissioners respond with  
19 "aye.")  
20 MR. MASINGILL: All opposed?  
21 (No response.)  
22 MR. MASINGILL: The proposed  
23 amendments are approved.  
24 MR. COBB: Thank you,  
25 Mr. Chairman.

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1 MR. MASINGILL: Thank you,  
2 Mr. Cobb. Item nine is consideration of the  
3 proposed amendments to ADEM Administrative Code  
4 335-1, General Administration Regulations. Do we  
5 have any comments?  
6 MR. KELLY: Morning again,  
7 Commissioners. On December 5th, 2019, the  
8 Department held a public hearing on revisions to  
9 the Division 1 regulations of the ADEM  
10 Administrative Code. The proposed revisions  
11 include modifying and adding forms that are  
12 necessary for the implementation of the  
13 Department's rules and regulations. In total 46  
14 forms were modified and five were added.  
15 Additional modifications on the proposed order to  
16 restructure the Brownfield Voluntary Cleanup  
17 Program fees to outline the Fee Schedule H to  
18 align with the program annual requirements  
19 identified in Division 15 and also the Fee  
20 Schedule E as it relates to Division 13 of the  
21 Solid Waste Regs. A modification was also  
22 proposed to Fee Schedule J to correct a citation.  
23 It's important to note that during the comment  
24 period no comments were received during the  
25 period or at the public hearing. At this time

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<p>1 I'd like to request your favorable review in 2 answering questions. 3 MR. MASINGILL: Any questions 4 from the Commissioners? 5 (No response.) 6 MR. MASINGILL: I will entertain 7 a motion to adopt the proposed amendments to the 8 General Administration regulations. 9 MS. MERRITT: Move to adopt. 10 MR. WALTERS: Second. 11 MR. MASINGILL: It has been move 12 and seconded. Is there any discussion? 13 (No response.) 14 MR. MASINGILL: Seeing none, I 15 will call for the question. All in favor of 16 adoption of the proposed amendments please say 17 "aye." 18 (All Commissioners respond with 19 "aye.") 20 MR. MASINGILL: All opposed? 21 (No response.) 22 MR. MASINGILL: Proposed 23 amendments are adopted. 24 MR. KELLY: Thank you. 25 MR. MASINGILL: Item ten is</p>	<p>1 (No response.) 2 MR. MASINGILL: Seeing none, I 3 move to the next item. The next item is future 4 business sessions. Our next Commission meeting 5 is scheduled for April 10th, 2020. Do any of the 6 Commissioners who are present today have a known 7 conflict with the date? 8 (No response.) 9 MR. MASINGILL: I see no known 10 conflict. All right. We have reached the point 11 in our meeting for public comment period. We 12 have got I think four people that would like to 13 comment. I will call on Amble Johnson first. 14 MR. JOHNSON: Mr. Acting Chair 15 and Commissioners, I'm here to talk to you about 16 the importance of improving the regulations 17 regarding the land application of by-product 18 materials such as industrial poultry waste and 19 sludges. Now, we agree with the Department 20 that -- I'm an associate attorney with the 21 Southern Environmental Law Center. And the 22 Southern Environmental Law Center agreed with the 23 Department that enhanced regulations of this 24 problem are necessary as we see growing issues 25 with it, especially in our rural parts of</p>
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<p>1 Shady Side Farm versus ADEM, EMC Docket No. 19-05 2 which is an NPDES-related matter. The Commission 3 will consider the Joint Motion to Dismiss 4 submitted by Petitioner Shady Side Farm, LLC, and 5 respondent ADEM requesting that the Commission 6 grant the motion. Any comment? 7 MR. WALTERS: I move we grant 8 the Joint Motion to Dismiss. 9 MR. MCKINSTRY: Second. 10 MR. MASINGILL: It has been 11 moved and seconded. Is there any discussion 12 regarding the Joint Motion to Dismiss? 13 (No response.) 14 MR. MASINGILL: Seeing none, I 15 will call for the question. All in favor of 16 granting the Joint Motion to Dismiss, please say 17 "aye." 18 (All Commissioners respond with 19 "aye.") 20 MR. MASINGILL: All opposed? 21 (No response.) 22 MR. MASINGILL: The Joint Motion 23 to Dismiss is Granted. The next item is other 24 business. I have no other business. Are there 25 any Commissioners that have any business?</p>	<p>1 Alabama. However, both procedurally and 2 substantively the enactment of the current 3 regulations that you-all just approved are 4 problematic. So on the procedural facet, there 5 has been consideration of the industrial input. 6 And so when Mr. Cobb talked about those two 7 rounds of public comment, changes were made in 8 favor of industry after the first one. However, 9 there was a complete lack of dialogue after the 10 second public comment hearing. Mr. Cobb 11 indicated that he would respond to the comments 12 that were submitted by the Southern Environmental 13 Law Center and has not sent those comments to us. 14 Then on a substantive level there's a vagueness 15 to the definitions and terms in these regulations 16 that present problems of enforceability to 17 protecting the people of Alabama. Thank you. 18 MR. MASINGILL: Thank you, 19 Mr. Johnson. Julie Lay. 20 MS. LAY: Hi, my name is Julie 21 Lay. My family was impacted by the application 22 of poultry wastewater sludge, and I live in 23 Marshall County. This company that applied the 24 sludge also handles Class B biosolids. I have 25 come and I have spoke here at the ADEM, spoke to</p>



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1 you gentlemen and lady. Spoke to you guys about  
2 giving you science studies. I have given you  
3 case studies of farms that's been decimated by  
4 this practice. At this point I really don't know  
5 what to say. I'm really happy that regulations  
6 are being passed. However, they are very gray.  
7 There's a lot of gray area in there. As a  
8 citizen of Alabama, I'm not really sure what  
9 standards these companies are going to be held to  
10 legally. If I see them dump -- can they dump?  
11 What are they dumping? Do I get to see their  
12 nutrient management plan? If they don't have a  
13 nutrient management plan, what standard are they  
14 going to be held to? What are the repercussions?  
15 And the regulations clearly don't state that. I  
16 encourage all of you to just continue researching  
17 biosolids, continue researching facilities and  
18 communities that have been impacted by the  
19 continual dumping on land by poultry wastewater  
20 sludge, how well water is being contaminated.  
21 People are sick. I really encourage you guys to  
22 keep researching this. Conversations and  
23 sessions need to be had as soon as possible -- as  
24 soon as possible for more sustainable options for  
25 these waste streams. As populations increase,

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1 we're going to continue to have these issues.  
2 And this is not going to go away and the dumping  
3 is going to get more and more. And this simply  
4 is not acceptable and not sustainable. And as  
5 the gentleman said in the public hearing, it's  
6 inhumane to expose people to this. And I agree.  
7       Prior to new industries and  
8 expansions coming to communities, these waste  
9 streams need to be considered. In reviewing my  
10 county solid waste program, nothing is mentioned  
11 about this waste stream in my community -- in my  
12 county solid waste program. So those need to be  
13 talked about. There's major implications to  
14 this. There's human deaths, animal deaths,  
15 chronic waste disease in deer, food crops  
16 contamination, water contamination, closure of  
17 farms. This is simply against agriculture. This  
18 is deceiving farmers into taking a product that  
19 is going to decimate their livelihood. And, you  
20 know, whether you're Republican, Christian, or  
21 atheist, or pro-sludge, or anti-sludge, we all  
22 eat. All of us have that in common. We all have  
23 to eat. And tonight when you go and you sit down  
24 with your families, your grandchildren maybe for  
25 a Valentine's meal, I encourage all of you to

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1 look at your plate of food and wonder what has my  
2 food been grown in? Has it been grown in  
3 industrial sludge, human sludge? Because this is  
4 a reality. Thank you.  
5       MR. MASINGILL: Thank you,  
6 Ms. Lay. Cindy Wigley.  
7       MS. WIGLEY: Thank you for the  
8 opportunity to speak today. My background is an  
9 educator by trade. I don't have a degree that  
10 Julie Lay has. But I happen to live as a  
11 resident in Marshall County and I live about a  
12 mile from a holding pond. And so this negatively  
13 impacts the citizens and residents there of the  
14 community. The putrid smell that comes from  
15 those holding ponds keeps us from being able to  
16 even use our land that we live on that's a  
17 generational thing. This land has been in our  
18 family for generations. So we're not able to,  
19 you know, some days even sit on our back porch  
20 when we get home from work. We're not able to  
21 have family functions at our homes, at our own  
22 homes. And so, you know, it's impacting not only  
23 us, just several communities throughout the  
24 state. There's others that are getting involved.  
25 There's news media now that's getting involved

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1 about this application.  
2       So the smell -- the putrid smell is  
3 not a typical farm smell. I was raised on a  
4 farm. I still live on a farm. We have had  
5 chickens. Our family is deeply engrained in the  
6 chicken industry, the poultry industry. So, you  
7 know, cattle -- we have horses. We have  
8 everything. We put chicken litter on our land,  
9 or used to more so than now. This is not a  
10 typical smell. These are by-products from meat  
11 that is rotting flesh, blood and guts from  
12 industry, things that they're cleaning their  
13 utensils there with things being sold to  
14 farmers as fertilizer.  
15       And so I just -- I know you take  
16 your position very seriously. And I just ask  
17 that you please consider the impact that this has  
18 on our residents in the state of Alabama.  
19 Because it's not -- it's not about farmers. Has  
20 nothing to do with farmers whatsoever. It has  
21 everything to do with a company based out of  
22 Georgia making money by dumping the sludge on  
23 Alabama land. Thank you for the opportunity.  
24       MR. MASINGILL: Thank you,  
25 Ms. Wigley. Michael Mullen.

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1 MR. MULLEN: I'm here today as  
2 president of the Environmental Defense Alliance.  
3 Once again, I urge you to follow ADEM's mission  
4 statement. I have said that enough that I think  
5 all of you and the Director probably will know  
6 what that mission statement is. I'm not going to  
7 read it again. But I will read you an admonition  
8 or remind you of an admonition from a justice of  
9 the Alabama Supreme Court. And I quote, Perhaps  
10 ADEM should be reminded that it was created to  
11 implement the state's environmental regulatory  
12 system and importantly to protect human health  
13 and safety. ADEM was created to establish and  
14 enforce environmental regulations. Of course  
15 that enforcements must be balanced with  
16 reasonable efforts to assist industry in  
17 maintaining regulatory compliance. However, in  
18 the case -- that was referred to at that time --  
19 it appears ADEM tipped the scales against the  
20 public by implementing an environmental  
21 regulation so as -- to a business or landfill  
22 friendly.  
23 I think that's occurring again.  
24 Hopefully, the regulations that are put -- that  
25 you-all voted to approve will address some of

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1 these problems. But we know since July 2nd of  
2 1988 ADEM unlawfully allowed use of alternative  
3 cover on sanitary and on municipal solid waste  
4 and construction debris landfills. Contrary to  
5 EPA regulations, ADEM has not required landfill  
6 operators to demonstrate that alternative cover  
7 materials are effective in controlling disease  
8 vectors, fires, odors, et cetera, et cetera.  
9 ADEM has approved the long list of alternative  
10 cover materials without requiring any proof by  
11 the users that demonstrated the safetiness or  
12 effectiveness of these materials. Since around  
13 or before October 6th, 2011, and perhaps earlier,  
14 ADEM has interpreted its rules to allow removal  
15 of cover daily and weekly the next day after it's  
16 applied.  
17 ADEM does not require or maintain  
18 records from landfill operators or reports from  
19 landfill operators that detail which approved  
20 alternative cover materials have been used or  
21 when they were used. So I guess my ask is if  
22 nothing else ADEM ought to require that any of  
23 these materials that are going to be used are  
24 proved to be effective before they're allowed to  
25 be used.

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1 Second thing, not directly related  
2 to this, but perhaps, we see all these growing  
3 things about ADEM's inspections and enforcement  
4 and compliance. What we don't see is when an  
5 informal compliance action is issued we have  
6 asked -- the environmental committee has asked,  
7 How long does it take after that informal action  
8 to see a return to compliance? We have asked the  
9 Department to give us information that said after  
10 different types of enforcement actions how long  
11 does it take to comply? We would like to see the  
12 Department compile those, provide them to you, so  
13 that you can provide to the public how well are  
14 these informal actions working. And as a  
15 certified professional in erosion and sediment  
16 control, they don't appear to be working very  
17 well on construction sites. And I have made  
18 complaints to you-all before. So warning  
19 letters, other informal actions. We see sites  
20 that six, nine months, a year after they have  
21 opened up, they are operating, they're still not  
22 in full compliance. We would like to see you-all  
23 ask the Department to come up with that  
24 information and provide it to the public. Thank  
25 you.

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1 MR. MASINGILL: Thank you,  
2 Mr. Mullen. I think that's all of our  
3 commenters. Do I have a motion to adjourn?  
4 MR. WALTERS: So moved.  
5 MR. MCKINSTRY: Second.  
6 MR. MASINGILL: All in favor  
7 say "aye."  
8 (All Commissioners respond with  
9 "aye.")  
10 MR. MASINGILL: Meeting is  
11 adjourned.  
12 (The meeting adjourned at  
13 12:06 p.m.)  
14 \*\*\*\*\*  
15  
16  
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21  
22  
23  
24  
25



1 STATE OF ALABAMA)

2 COUNTY OF ELMORE)

3

4

5 I hereby certify that the above  
6 proceedings were taken down by me and transcribed  
7 by me using computer-aided transcription and that  
8 the above is a true and accurate transcript of  
9 said proceedings taken down by me and transcribed  
10 by me.

11 I further certify that I am neither  
12 of kin nor of counsel to any of the parties nor  
13 in anyway financially interested in the outcome  
14 of this case.

15 I further certify that I am duly  
16 licensed by the Alabama Board of Court Reporting  
17 as a Certified Court Reporter as evidenced by the  
18 ACCR number following my name found below.

19

20

21

22

23

*Victoria Castillo*

24

VICTORIA CASTILLO, ACCR #17, 9/30/20

25

FREELANCE COURT REPORTER

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ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

Meeting on 02/14/2020

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ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

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**Part B**



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**Attachment 1**

1/15/20

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 14, 2020

TIME: 11:00 a.m.

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

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\* The Agenda for this meeting will be available on the ADEM website, [www.adem.alabama.gov](http://www.adem.alabama.gov),  
under Environmental Management Commission.

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

AEMC Meeting Agenda  
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## AEMC Meeting Agenda

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1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 13, 2019
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-3, Air Pollution Control Program Regulations. These amendments include proposed revisions to incorporate by reference changes to the EPA's New Source Performance Standards (NSPS), the National Emissions Standards for Hazardous Air Pollutants (NESHAPs), and the definition of volatile organic compounds (VOCs) to allow the Department to retain State primacy of federal programs. Revisions to Chapter 335-3-3 are being proposed to reflect EPA's amendments to the Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units. Revisions are being proposed to Chapter 335-3-8 to regulate NOx emissions from non-EGU (electric generating unit) sources subject to the NOx SIP call emissions budget. Appendix D, which is a list of nonattainment areas within the State, is being proposed for revision to reflect that all areas of the State meet all ambient air quality standards. The Department held a public hearing on the proposed amendments on January 8, 2020.

5. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-11, STATE REVOLVING FUND PROGRAMS REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-11, State Revolving Fund Programs Regulations, Chapters 335-11-1 (Clean Water State Revolving Fund) and 335-11-2 (Drinking Water State Revolving Fund). Amendments are being proposed to the Clean Water and Drinking Water State Revolving Fund Programs to provide additional clarity to the Department's rules and regulations in accordance with updated federal guidelines. The minor changes include modifications to the definitions to be consistent with the federal definitions, minor modifications to the rules to provide greater clarity, and formatting changes, as needed, throughout both chapters. The Department held a public hearing on the proposed amendments on December 5, 2019.

6. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-13, SOLID WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-13, Solid Waste Program Regulations, new Chapter 335-13-16, Requirements for Beneficial Use of By-Products Materials for the Purpose of Land Application, Rules 335-13-16-.01 through 335-13-16-.07. Amendments to ADEM Administrative Code 335-13 are proposed to adopt new standards for the beneficial use of by-product materials for the purpose of land application. The Department held a public hearing on the proposed amendments on January 7, 2020.

7. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-14, HAZARDOUS WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations to adopt Hazardous Waste Management Standards for Hazardous Waste Pharmaceuticals and the Safe Management of Recalled Air Bag Rules. Amendments are being proposed to incorporate Hazardous Waste Management Pharmaceuticals and Safe Management of Recalled Air Bag rules promulgated by EPA to ensure consistency with state and federal statutes. Revisions to the code are also being proposed to make general clarification and correct typographical or grammatical errors. The Department held a public hearing on the proposed amendments on December 5, 2019.

8. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-15, BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations. Amendments are being proposed to add a definition for Operation and Maintenance and outline programmatic requirements for modifying an application. Revisions to the code are also being proposed to make general clarification and correct typographical or grammatical errors. The Department held a public hearing on the proposed amendments on December 5, 2019.

9. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-1, GENERAL ADMINISTRATION REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-1, General Administration Regulations, Rules 335-1-1-.07 (Departmental Forms, Instructions, and Procedures) and 335-1-6-.07 (Fee Schedules E, H and J). Amendments to Rule 335-1-1-.07 are being proposed in order to delete, modify, and add forms required with the implementation of ADEM Program Regulations. Amendments to Rule 335-1-6-.07 are being proposed to correct a citation in Fee Schedule J, to restructure the Solid Waste Permits/Registration Program Fees in Schedule E needed to adopt new standards for the beneficial use of by-product materials for the purpose of land application, and to align the Brownfield Voluntary Cleanup Program fees with programmatic requirements identified in Division 15. The Department held a public hearing on the proposed amendment on December 5, 2019.

10. SHADY SIDE FARM, LLC V. ADEM, EMC DOCKET NO. 19-05 (NPDES-RELATED MATTER)

The Commission will consider the *Joint Motion to Dismiss*, submitted by Petitioner, Shady Side Farm, LLC and Respondent, ADEM. The Parties are jointly requesting that the Commission grant the *Joint Motion to Dismiss* to provide for the final resolution of all matters between them related to this administrative appeal. The subject of this appeal is ADEM Notice of Violation – Need to Apply, issued on April 18, 2019 to Shady Side Farm, FID61643, Chambers County.

11. OTHER BUSINESS

12. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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

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

**Attachment 2**





## Alabama Department Of Environmental Management

### Process for Developing Permits

- Science based Standards
- Statutory Authority
- Proper Rulemaking



## Alabama Department Of Environmental Management

### Science based Standards

- Protect Human Health and the Environment
- Air – National Ambient Air Quality Standards
- Water – Water Quality Standards
- Drinking Water – Maximum Contaminant Levels



## Alabama Department Of Environmental Management

### Science based Standards

- Hazardous – Management Standards & Cleanup Standards
- Federal Oversight of Standards from:
  - EPA
  - CDC
  - ATSDR



## Alabama Department Of Environmental Management

### Statutory Authority

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Resource Conservation and Recovery Act





## Alabama Department Of Environmental Management

### Statutory Authority

- Federal Delegation Requires:
  - Enact Conforming State Laws
  - Adequate Resources
  - Continuing Competency



## Alabama Department Of Environmental Management

### Proper Rulemaking

- Adopt Standards
- Define Regulated Activities
- Define Permit Conditions
- Set Pollution Control and Reporting Requirements
- Permit Issuance Process



## Alabama Department Of Environmental Management

### Proper Rulemaking

- AEMC Adopts Rules
- Formal Rulemaking Process
- Opportunity for Public Input
- Opportunity for Appeal



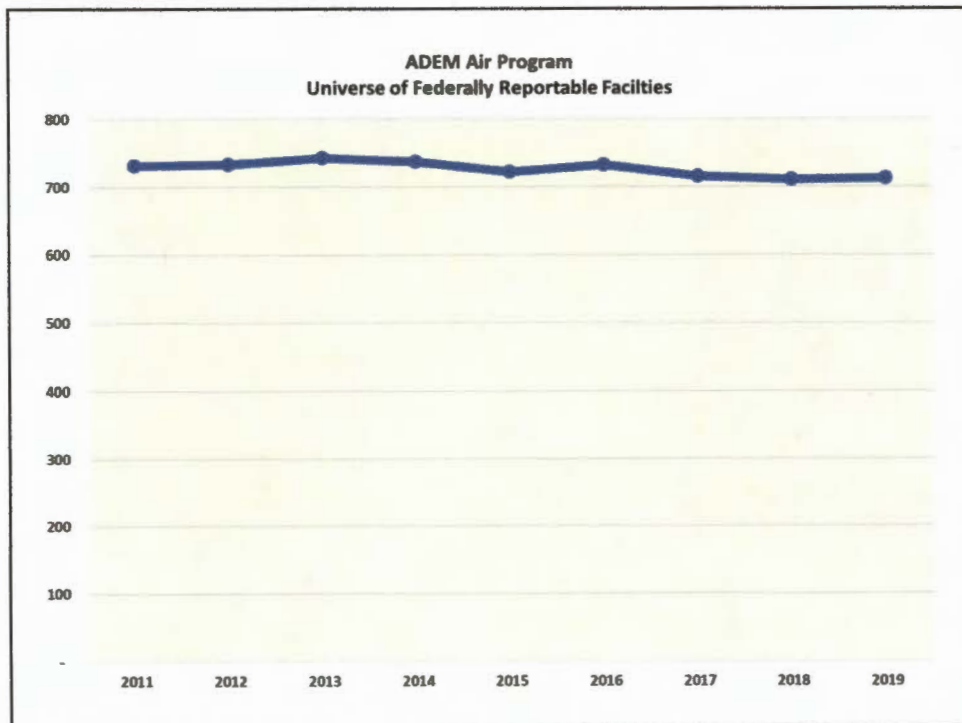
## Alabama Department Of Environmental Management

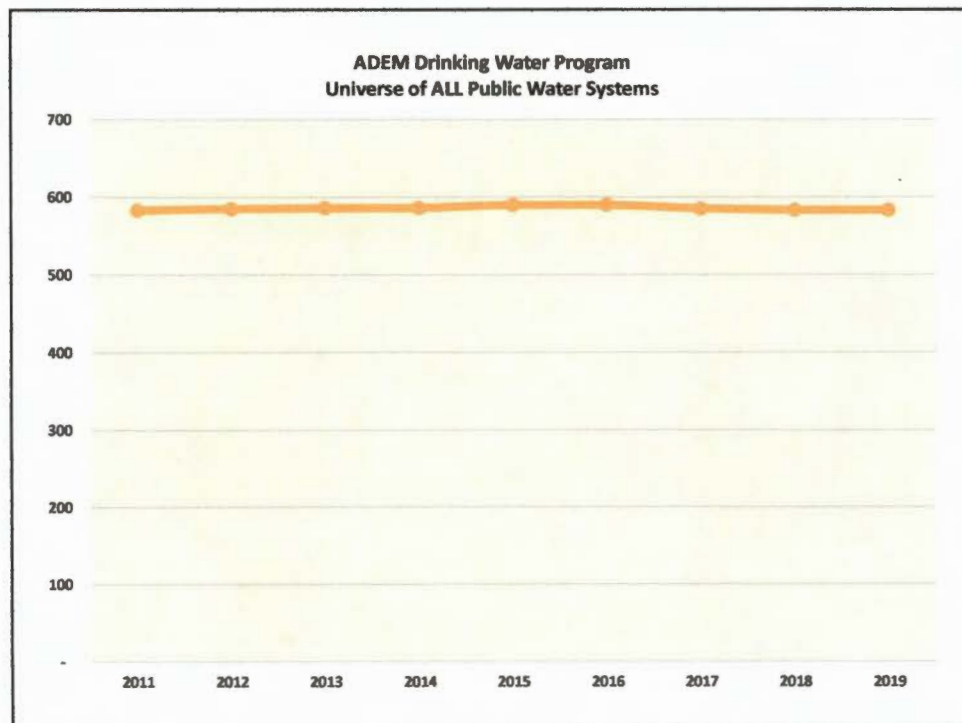
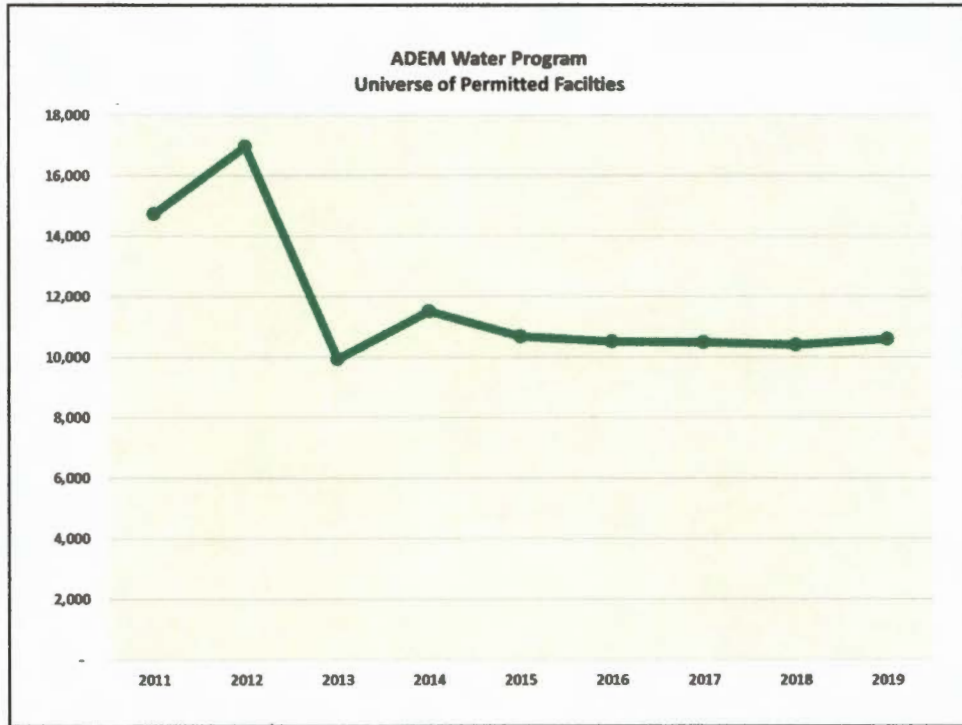
### Ongoing Federal Oversight

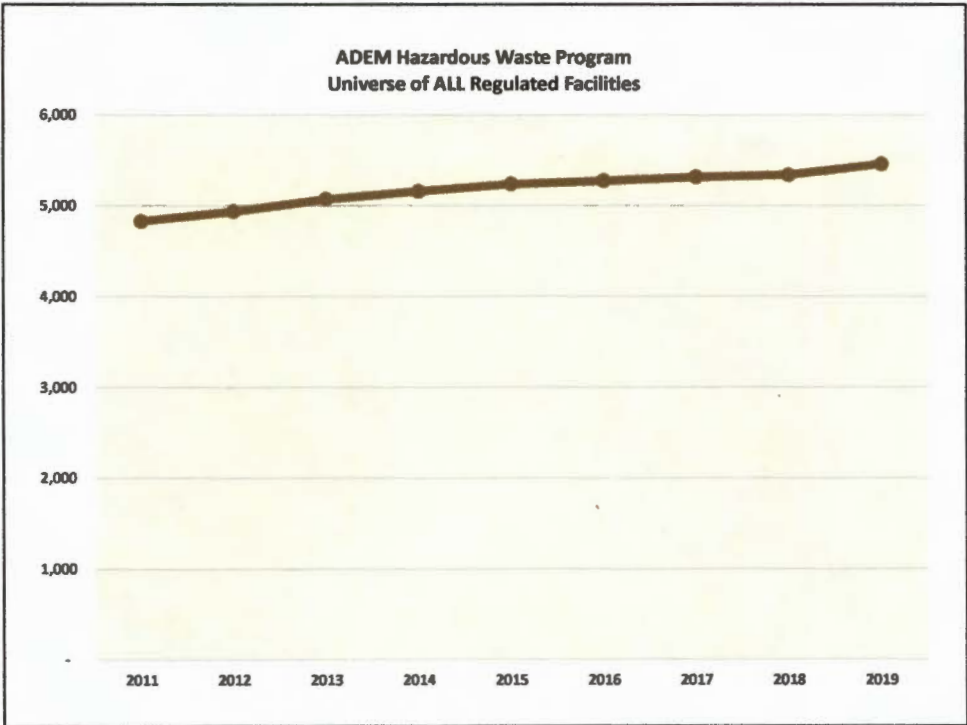
- EPA Review of Individual Draft Permits
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# SIZE OF UNIVERSE

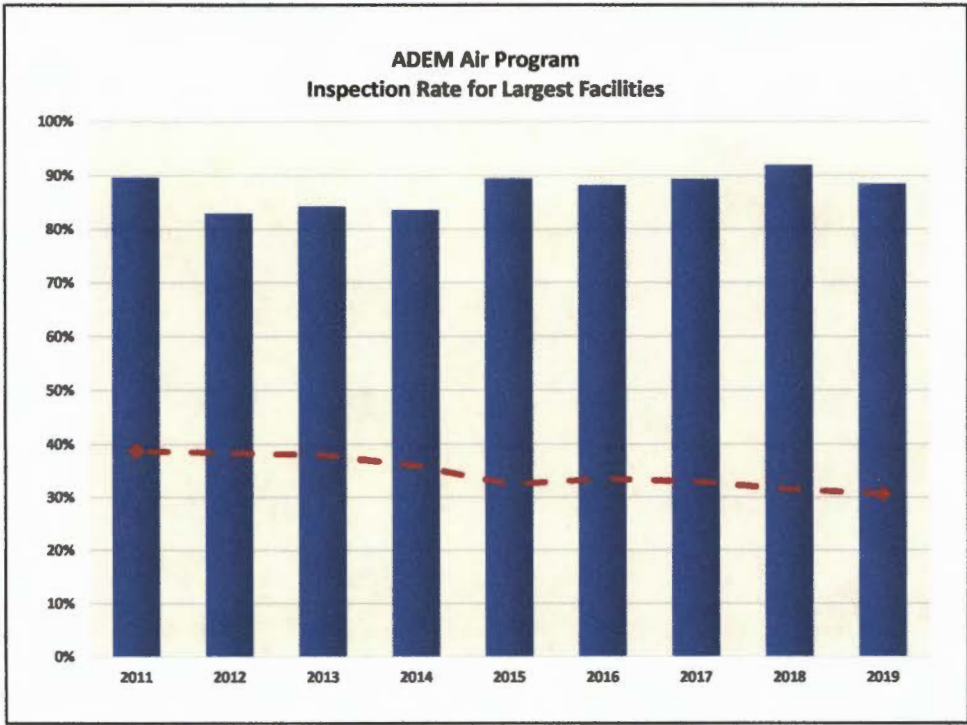
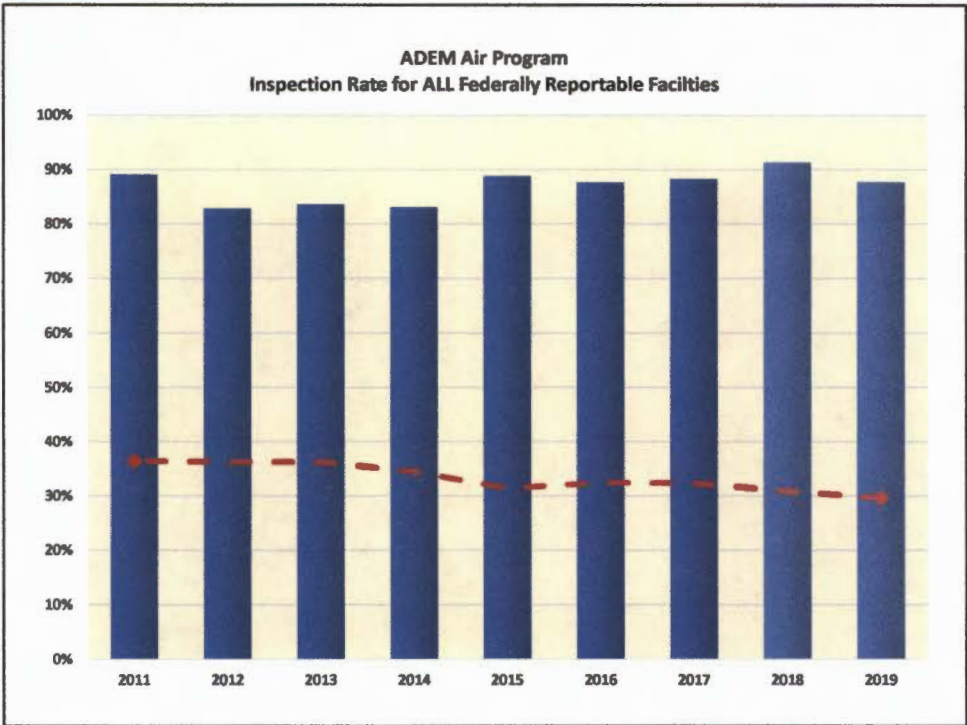




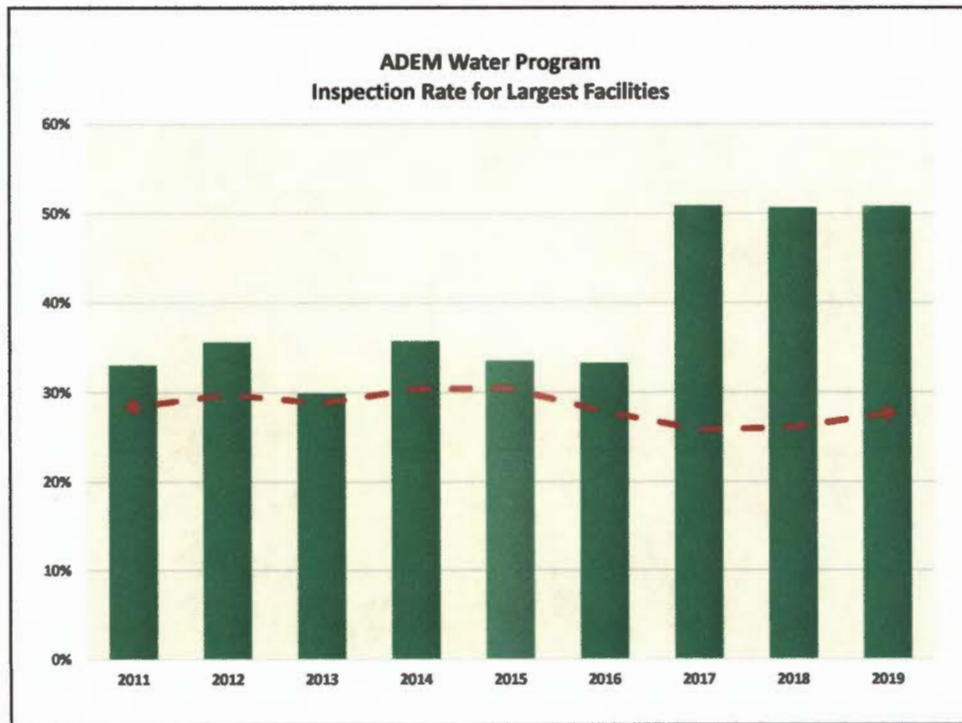
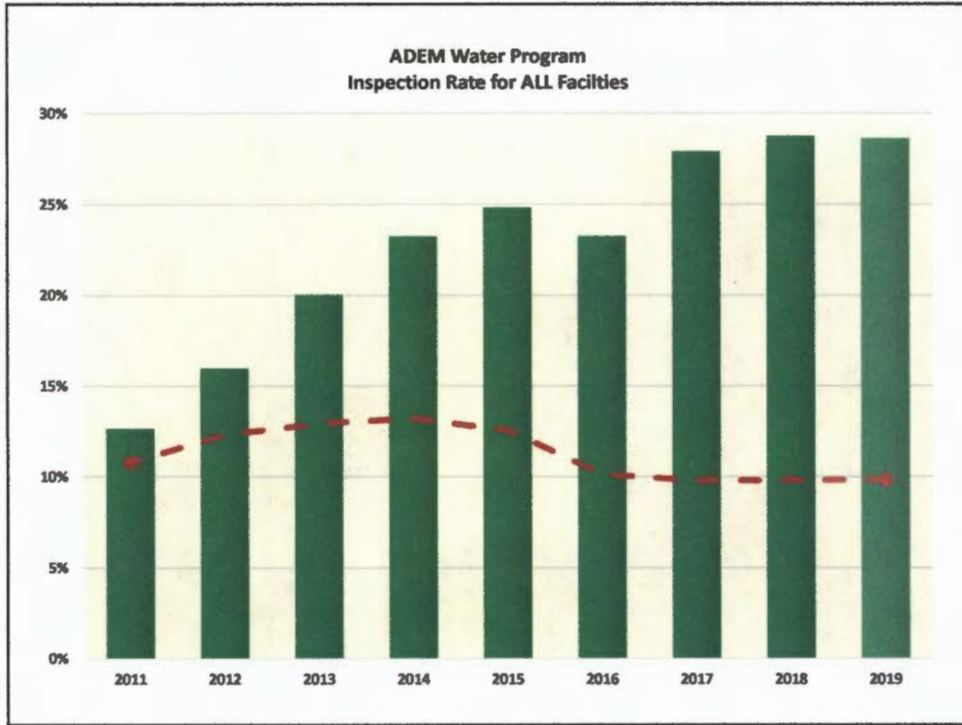


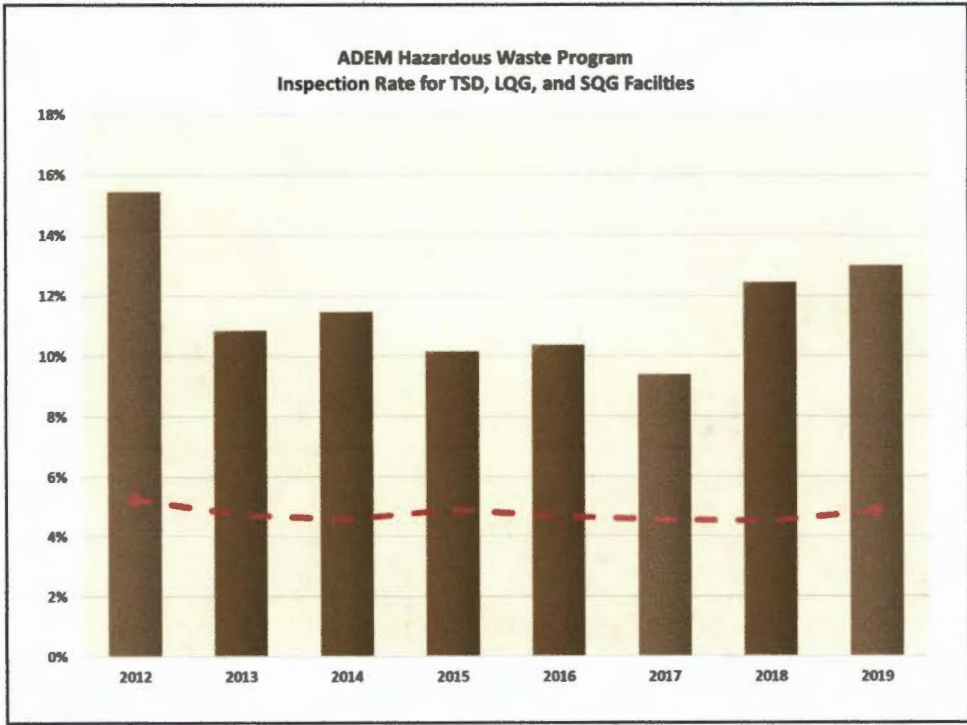
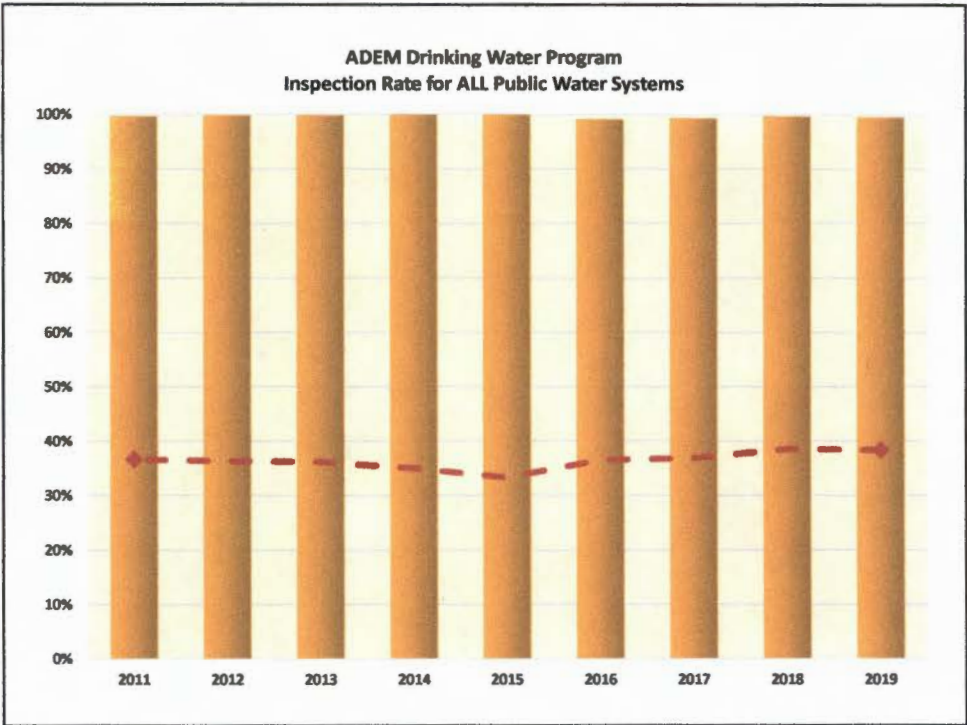
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Environmental Management

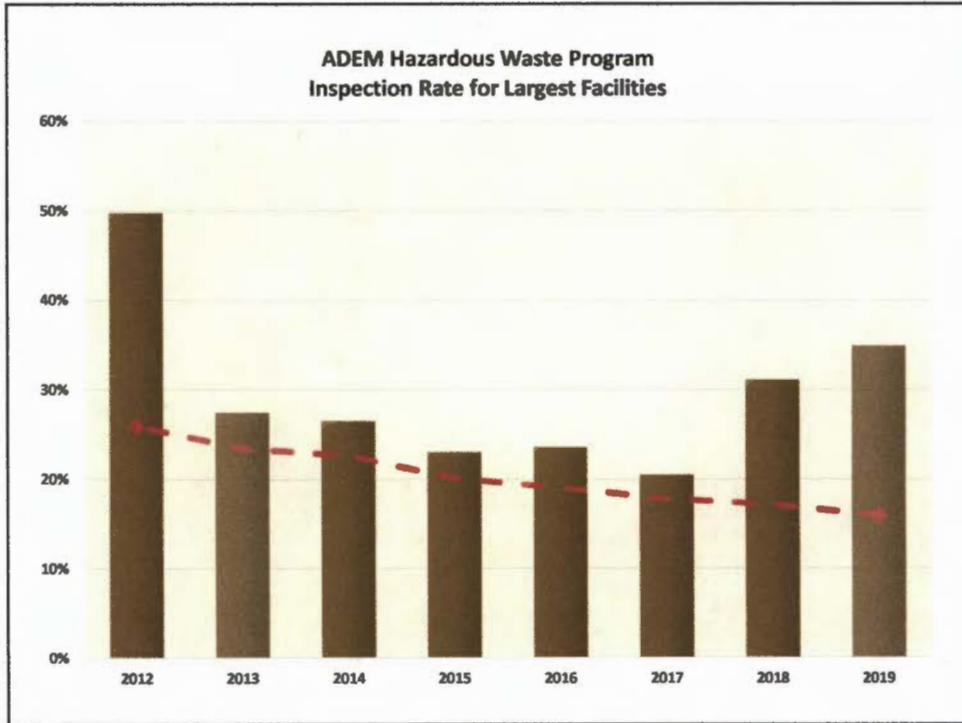
**INSPECTIONS**







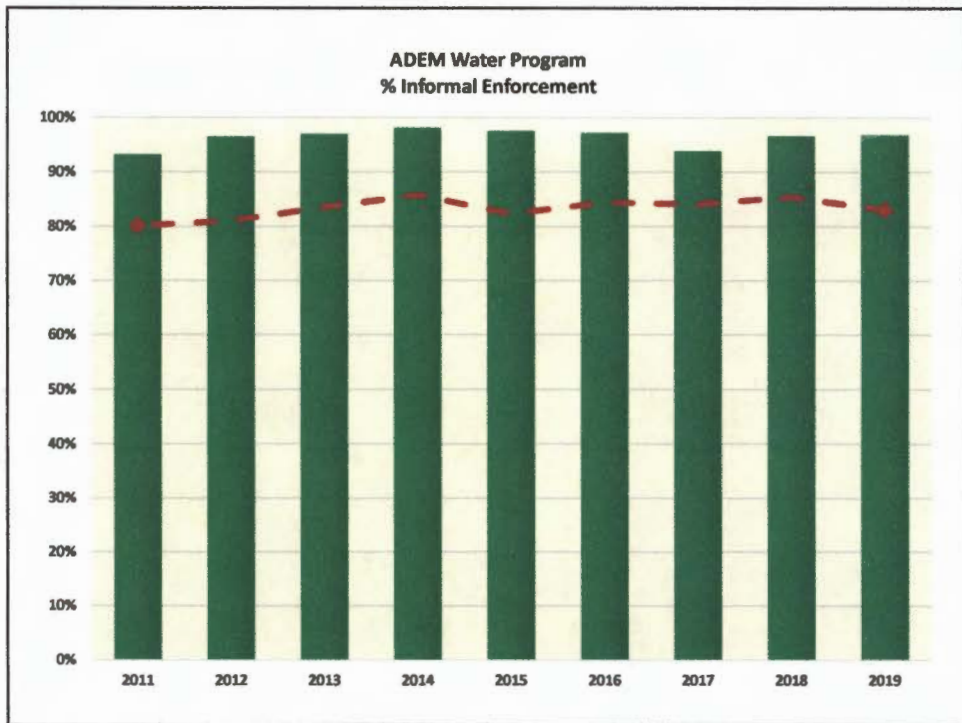
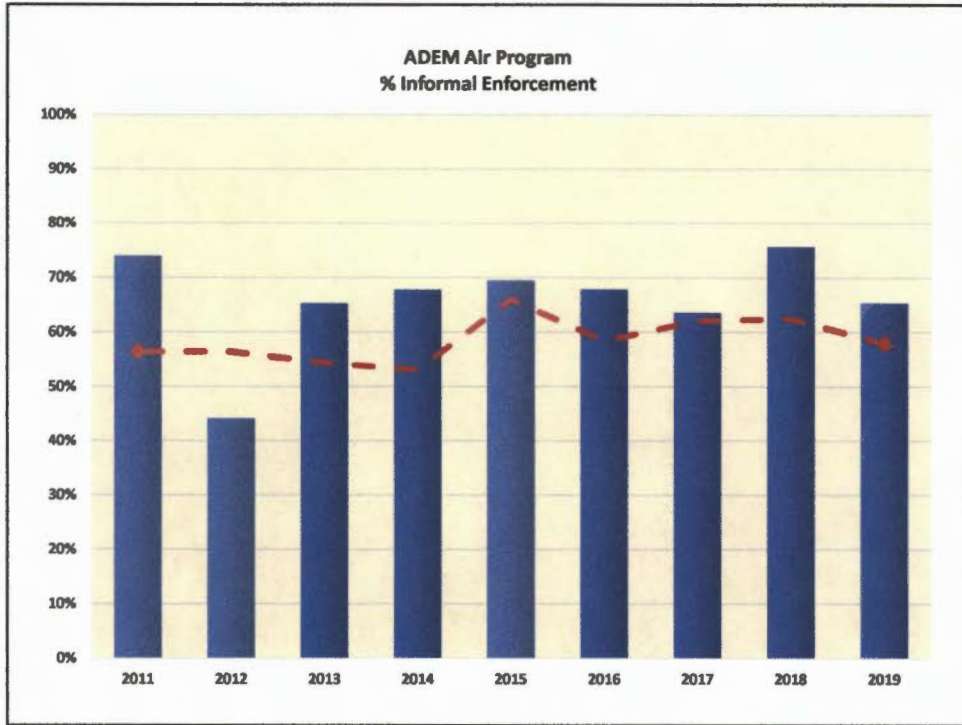




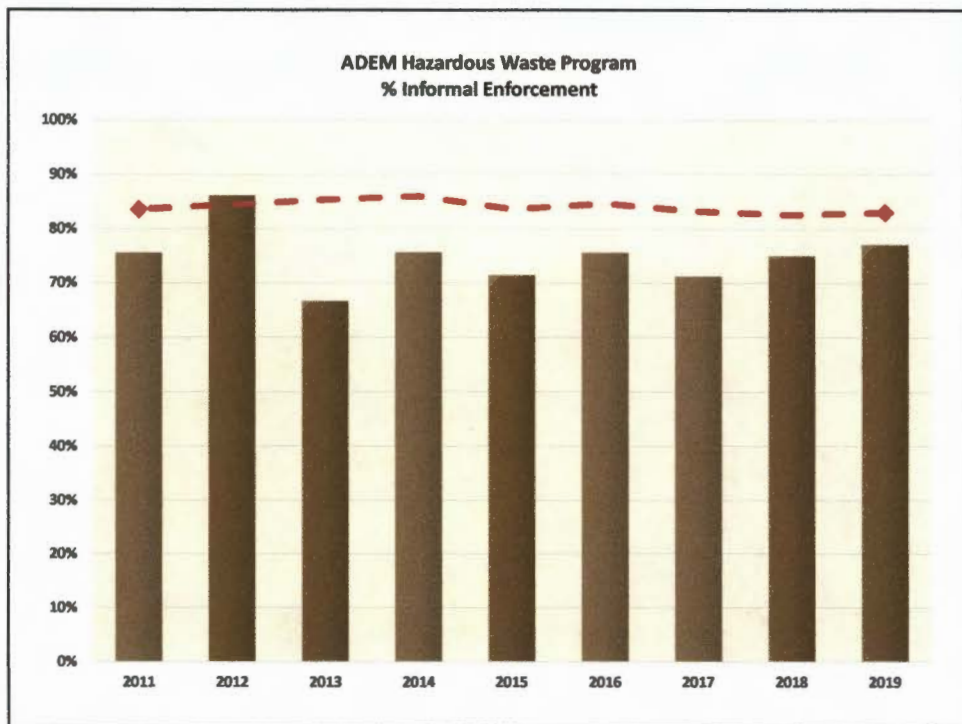
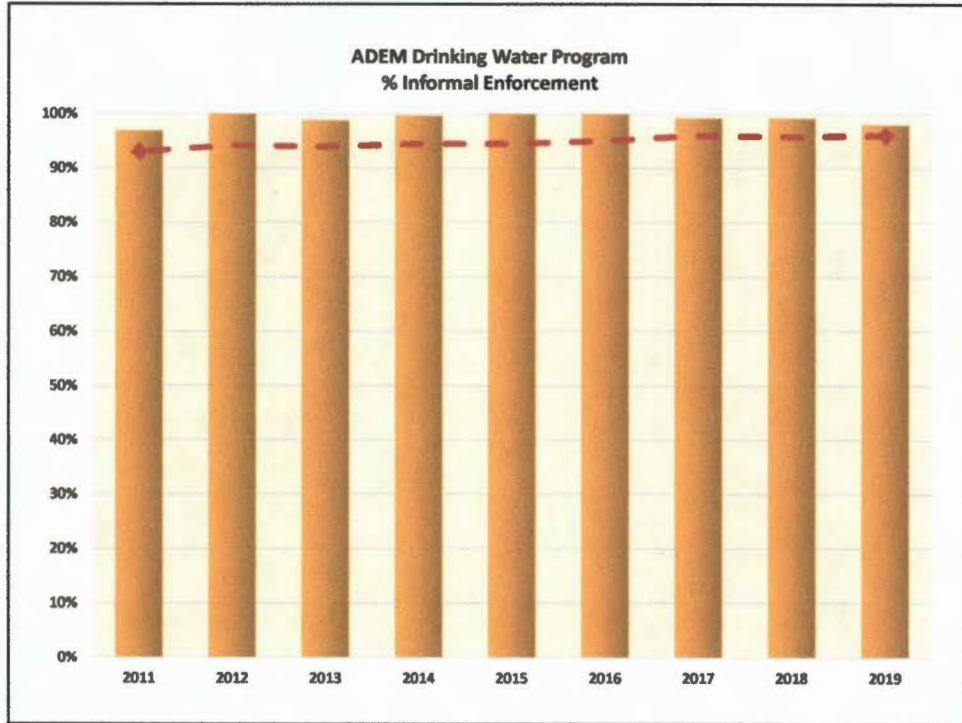
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Environmental Management**

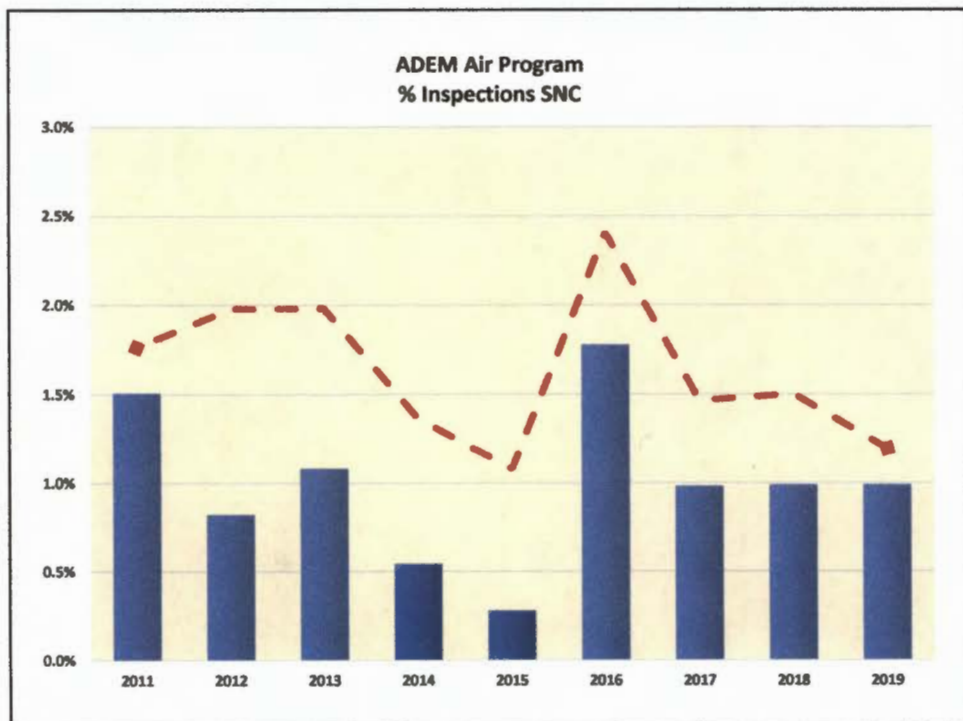
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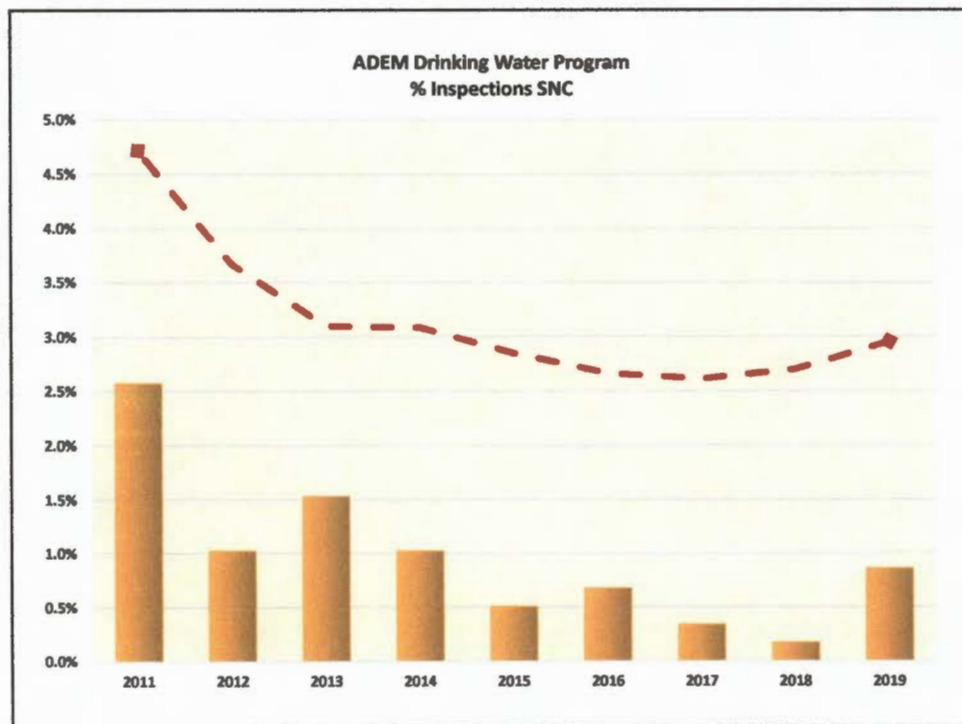
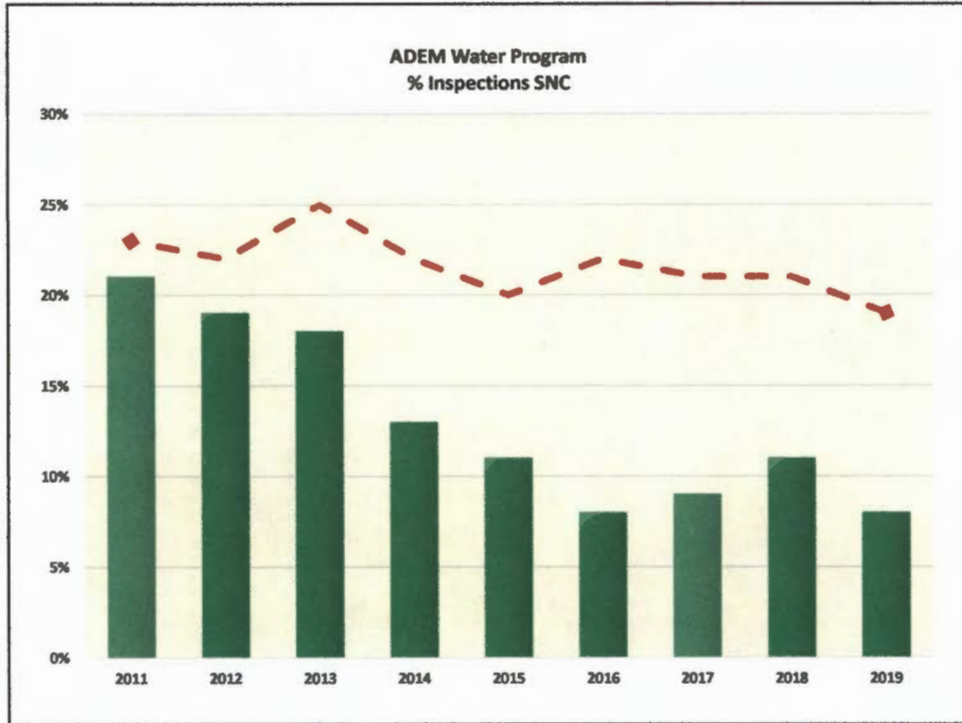


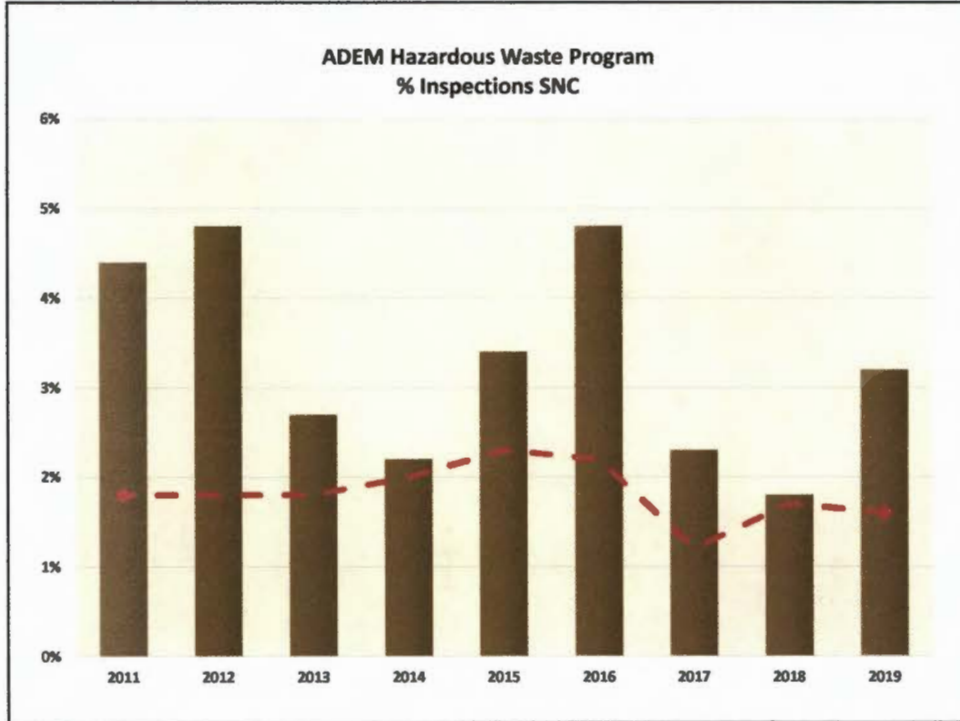




**SIGNIFICANT  
NON-COMPLIANCE**







## Alabama Department Of Environmental Management

### Summary

- Regulated Universe Steady to Growing
- High Rates of Inspections
- High Rates of Informal Enforce (Education)
- Low Rates of Serious Non-Compliance for Air, Water, Drinking Water
- Program to Reduce Hazardous SNCs
- Favorable Trends



**Attachment 3**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-3 of the Department's Air Division – Air Pollution Control Program Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [335-3-1-.02/Definitions (Amend); 335-3-3-.05/Incineration of Commercial and Industrial Solid Waste (Amend); 335-3-8-.71/NOx Budget Program (New); 335-3-8-.72/NOx Budget Program Monitoring and Reporting (New); 335-3-10-.01/General (Amend); 335-3-10-.02/Designated Standards of Performance (Amend); 335-3-10-.03/Appendices to CFR 60

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

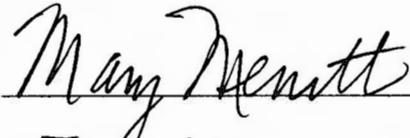
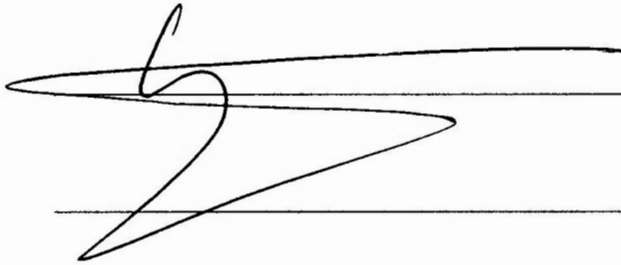

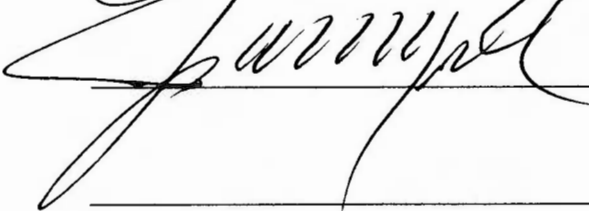
(Amend); 335-3-11-.01/General (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source Categories (Amend); 335-3-11-.07/Appendices to 40 CFR 63 (Amend); 335-3-Appendix D/Nonattainment Areas (Amend)] of the Department's Air Division – Air Pollution Control Program Rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 14<sup>th</sup> day of February 2020.

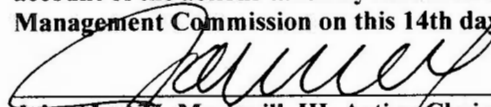
APPROVED:

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ABSTAINED:

<hr/>	<p>This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 14th day of February 2020.</p>  <hr/>
<hr/>	<p>John (Jay) H. Masingill, III, Acting Chair Environmental Management Commission Certified this 14th day of February 2020</p> <hr/>

**Attachment 4**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-11 of the Department's Permits and Services Division – Clean Water State Revolving Fund Program in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-11 [rules 335-11-1-.01/Definitions (Amend); 335-11-1-.02/Eligible Applicants (Amend); 335-11-1-.03/Eligible Projects (Amend); 335-11-1-.04/Project Priority List (Amend); 335-11-1-.05/Criteria for Ranking (Amend); 335-11-1-.08/Administrative Fees (Amend); 335-11-1-.09/Terms of Assistance Agreements from the CWSRF (Amend); 335-11-1-.11/Application Procedures (Amend); 335-11-1-.12/Requisition of Funds (Amend); 335-11-1-.13/Project Changes (Amend); 335-11-1-.15/Project Sign (Amend); 335-11-1-.16/Project Initiation (Amend); 335-11-2-.01/Definitions (Amend); 335-11-2-.02/Eligible Applicants (Amend); 335-11-2-.03/Eligible Projects (Amend); 335-11-2-.04/Project Priority List (Amend); 335-11-2-.05/Criteria for Ranking (Amend); 335-11-2-.08/Administrative Fees (Amend); 335-11-2-.09/Terms of Assistance Agreements from the DWSRF (Amend); 335-11-2-.11/Application Procedures (Amend); 335-11-2-.12/Requisition of Funds (Amend); 335-11-2-.13/Project Changes (Amend); 335-11-2-.15/Project Sign (Amend); 335-11-2-.16/Project Initiation (Amend); 335-11-2-.19/Project

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

Activities Not Eligible for Funding (Amend)]; of the Department's Administrative Division – General Administration rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-11 – State Revolving Fund Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 14<sup>th</sup> day of February 2020.

APPROVED:

*Mary Nemitt*  
*Jim Gratten*  
*[Signature]*

*[Signature]*

DISAPPROVED:

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

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

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

*[Signature]*

John (Jay) H. Masingill, III, Acting Chair  
Environmental Management Commission  
Certified this 14th day of February 2020

ABSTAINED:

\_\_\_\_\_

\_\_\_\_\_



**Attachment 5**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-27-2, 22-27-7, 22-27-9, 22-27-12 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-13 [335-13-16-.01/Purpose (New); 335-13-16-.02/Definitions (New); 335-13-16-.03/Specific Requirements for Land Application of By-Product Materials (New); 335-13-16-.04/Notification and/or Registration Application Requirements (New); 335-13-16-.05/Operating Criteria for Land Application of By-Product Materials (New); 335-13-16-.06/Recordkeeping and

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**


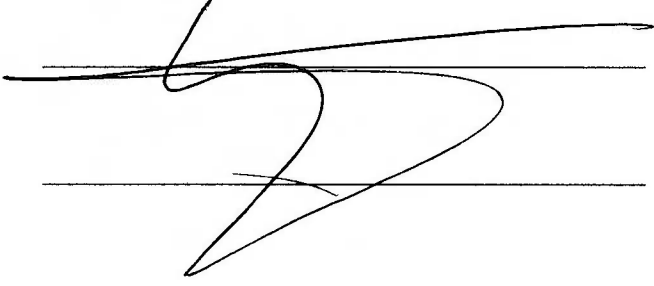
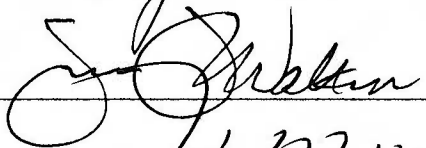

Reporting Requirements (New); 335-13-16-.07/Variances (New)] of the Department's Land Division – Solid Waste Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 14<sup>th</sup> day of February 2020.

APPROVED:

DISAPPROVED:

_____	_____
_____	_____
_____	_____

ABSTAINED:

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

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



**John (Jay) H. Masingill, III, Acting Chair  
Environmental Management Commission  
Certified this 14th day of February 2020**

**Attachment 6**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-14 of the Department's Land Division's Hazardous Waste Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.


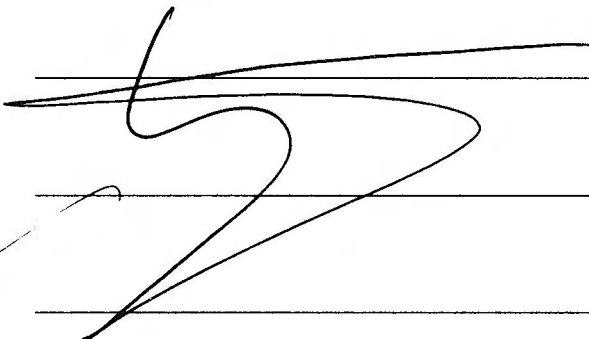


NOW THEREFORE, pursuant to Ala. Code. §§ 22-30-3, 22-30-9, 22-30-10, 22-30-11, 22-30-12, 22-30-14, 22-30-15, 22-30-16 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-14 [rules 335-14-1-.02/Definitions and References (Amend); 335-14-2-.01/General (Amend); 335-14-2-.04/Lists of Hazardous Wastes (Amend); 335-14-2-.08/Financial Requirements for Management of Excluded Hazardous Secondary Materials (Amend); 335-14-2-.09/Use and Management of Containers (Amend); 335-14-2-.10/Tank Systems (Amend); 335-14-3-.01/General (Amend); 335-14-5-.01/General (Amend); 335-14-7-.15/Reserved (New); 335-14-7-.16/Hazardous Waste Pharmaceuticals (New); 335-14-8-.01/General Information (Amend); 335-14-9-.01/ Subpart A - General (Amend); 335-14-11-.02/Standards for Small Quantity Handlers of Universal Waste (Amend); 335-14-11-.07/Petitions to Include Other Wastes Under Chapter 335-14-11 (Amend); 335-14-5-.02/General Facility Standards (Amend); 335-14-5-.07/Closure and Post-Closure (Amend); 335-14-5-.09/Use and Management of Containers (Amend); 335-14-5-.12/Waste Piles (Amend); 335-14-5-.19/Special Provisions for Cleanup (Amend); 335-14-5-.30/Containment Buildings (Amend); 335-14-6-.01/General (Amend)] of the Department's Hazardous Waste Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Service Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-14 – Hazardous Waste Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 14<sup>th</sup> day of February 2020.

APPROVED:

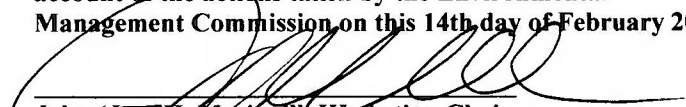
DISAPPROVED:

_____	_____
_____	_____
_____	_____

ABSTAINED:

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

  
John (Jay) H. Masingill, III, Acting Chair  
Environmental Management Commission  
Certified this 14th day of February 2020

**Attachment 7**



**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-15 of the Department's Land Division – The Brownfield Redevelopment and Voluntary Cleanup Program in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-15 [rules 335-15-1-.02/Definitions (Amend); 335-15-3-.01/Purpose (Amend); 335-15-3-.03/Application Processing (Amend); 335-15-4-.03/Voluntary Property Assessment Plans (Amend); 335-15-4-.04/Voluntary Cleanup-Work Plans (Amend); 335-15-4-.06/Certification of Compliance-Letter of Concurrence (Amend); 335-15-5-.02/Financial Assurance (Amend); 335-15-6-.01/Purpose (Amend); 335-15-6-.03/Voluntary Cleanup Properties Inventory (Amend); 335-15-7-.02/Applicability (Amend); 335-15-7-.03/Definitions (Amend); 335-15-7-.05/Terms of the Loan (Amend); 335-15-7-.07/Pre-application Procedures (Amend); 335-15-7-.08/Application Procedures (Amend); 335-15-7-.15/Administrative and Performance of Loan (Amend); 335-15-7-.25/Ineligible Fund Uses (Amend); 335-15-7-.27/Pre-award Costs (Amend); 335-15-7-.32/Notice of Noncompliance (Amend)]; of the Department's Land Division – The Brownfield Redevelopment and Voluntary Cleanup Program, administrative code attached hereto, to become

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**


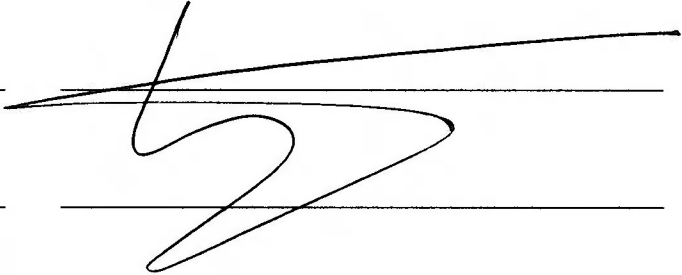
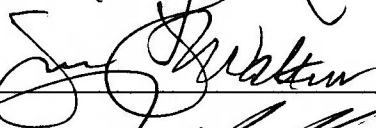

effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-15 – The Brownfield Redevelopment and Voluntary Cleanup  
Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 14<sup>th</sup> day of  
February 2020.

APPROVED:

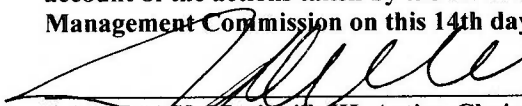
DISAPPROVED:

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ABSTAINED:

<hr/>	<hr/>
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This is to certify that this Resolution is a true and accurate  
account of the actions taken by the Environmental  
Management Commission on this 14th day of February 2020.

  
John (Jay) H. Masingill, III, Acting Chair  
Environmental Management Commission  
Certified this 14th day of February 2020

**Attachment 8**

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

WHEREAS, the Alabama Department of Environmental Management gave notice of a public hearing on the proposed revisions to ADEM Admin. Code 335-1 of the Department's Administrative Division – General Administration Rules in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Alabama Department of Environmental Management did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [rules 335-1-1-.07/Departmental Forms, Instructions, and Procedures (Amend); 335-1-6-.07 (Fee Schedule E, H, and J)/Payment of Fees (Amend)]; of the Department's Administrative Division – General Administration rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

ADEM Admin. Code division 335-1 – General Administration

IN WITNESS WHEREOF, we have affixed our signatures below on this 14<sup>th</sup> day of February 2020.

APPROVED:

*Mary Bennett*  
*Sam Brubaker*  
*[Signature]*

*[Signature]*

DISAPPROVED:

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

ABSTAINED:

\_\_\_\_\_

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

*[Signature]*  
John (Jay) H. Masingill, III, Acting Chair  
Environmental Management Commission  
Certified this 14th day of February 2020

**Attachment 9**

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

In the matter of:

**SHADY SIDE FARM, LLC,**

Petitioner,

v.

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,**

Respondent.

\*  
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\*  
\*  
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**EMC Docket No.: 19-05**

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**ORDER ON JOINT MOTION TO DISMISS**

BEFORE the Commission in the above matter is the Joint Motion to Dismiss filed on December 17, 2019, by Petitioner **Shady Side Farm, LLC** (“Shady Side”), and Respondent, **Alabama Department of Environmental Management** (the “Department”). Having considered the same, the Commission hereby ORDERS, ADJUDGES and DECREES as follows:

1. The Joint Motion to Dismiss this matter in full is hereby granted; and
2. This action has been taken and this Order shall be deemed rendered effective as of the date shown below, and
3. A copy of this Order, along with a copy of the Joint Motion to Dismiss this matter in full, which is attached hereto as Exhibit A and made a part hereof, shall be forthwith served on each of the parties hereto, either personally, or by certified mail, return receipt requested.



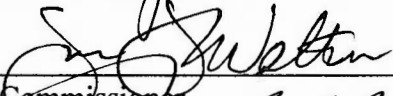
ISSUED and ORDERED this 14th day of February, 2020.

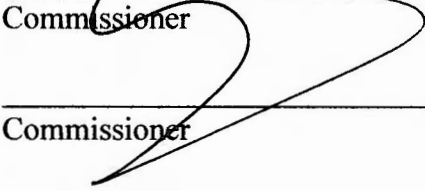
**THE ENVIRONMENTAL MANAGEMENT  
COMMISSION OF THE ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

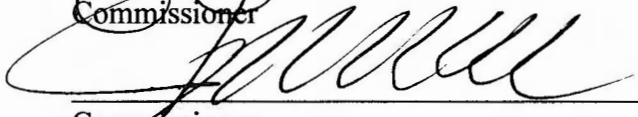
**APPROVED:**

  
\_\_\_\_\_  
Commissioner


  
\_\_\_\_\_  
Commissioner

  
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Commissioner

  
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Commissioner

  
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Commissioner

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Commissioner

  
\_\_\_\_\_  
Commissioner

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**DISAPPROVED:**

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

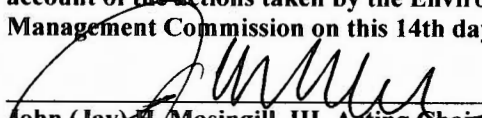
\_\_\_\_\_  
Commissioner

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**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 February 2020.

  
\_\_\_\_\_  
John (Jay) H. Masingill, III, Acting Chair  
Environmental Management Commission  
Certified this 14th day of February 2020

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

RECEIVED  
DEC 17 2019  
ENV. MGMT.  
COMMISSION

In the matter of: \*  
\*  
**SHADY SIDE FARM, LLC,** \*  
\*  
Petitioner, \*  
\*  
v. \*  
\*  
**ALABAMA DEPARTMENT OF** \*  
**ENVIRONMENTAL MANAGEMENT,** \*  
\*  
Respondent. \*

**EMC Docket No.: 19-05**

**JOINT MOTION TO DISMISS**

COME NOW, Petitioner **Shady Side Farm, LLC** (“Shady Side”), and Respondent, **Alabama Department of Environmental Management** (the “Department”), by and through their respective undersigned counsel of record, and file this, their **JOINT MOTION TO DISMISS** the *Notice Of Violation* issued to Shady Side (alleging a violation of NPDES permitting requirements), and the subsequent **NOTICE OF APPEAL** (filed by Shady Side), jointly stating as follows:

1. On April 18, 2019, the Department issued a Notice of Violation to Shady Side, alleging violation of NPDES permitting requirements.
2. Shady Side filed a Notice of Appeal on May 14, 2019, and Erosion Pros, LLC, filed a response on behalf of Shady Side on May 17, 2019.
3. Upon consideration of the *Joint Motion to Suspend Administrative Appeal* filed on May 30, 2019, the Environmental Management Commission of the Alabama Department of Environmental Management (the “Commission”) issued an Order granting same.

4. After further consideration, the Department issued a letter opinion on December 10, 2019, asserting its finding that Shady Side had been properly coordinating with Natural Resources Conservation Service for the subject site work, and that NPDES permit coverage had not been and was not required (see attached).

THEREFORE, in consideration of all of the above, Shady Side and the Department enter into this JOINT MOTION TO DISMISS all matters asserted by or on behalf of each of them related to or in connection with the said Notice of Violation dated April 18, 2019; and acknowledge that an Order rendered by the Commission granting this JOINT MOTION TO DISMISS will provide for the final resolution of all matters between them related to the said Notice of Violation.

WHEREFORE, Petitioner, **Shady Side Farm, LLC**, and Respondent, the **Alabama Department of Environmental Management**, hereby respectfully request that the Commission grant this MOTION TO DISMISS and award such other or further relief, as it may deem proper in this matter.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of December, 2019.

**SHADY SIDE FARM, LLC:**

By: /s/Robert E. L. Gilpin  
**Robert E.L. Gilpin, Esq.**  
*Attorney for Shady Side Farm, LLC*

**Of Counsel:**  
GILPIN GIVHAN, P.C.  
2660 Eastchase Lane, Suite 300  
Montgomery, AL 36117  
Phone: 334-244-1111  
Email: [rgilpin@gilpingivhan.com](mailto:rgilpin@gilpingivhan.com)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

By: /s/Rebecca E. Patty  
Rebecca E. Patty, Esq.  
*Attorney for Alabama Department of  
Environmental Management*

**Address:**  
1400 Coliseum Boulevard  
Montgomery, AL 36110  
Phone: (334) 271-7700  
Email: [REP@adem.alabama.gov](mailto:REP@adem.alabama.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been provided, on this 17<sup>th</sup> day of December, 2019, to the following individuals, via email to the email address listed below, and via hand delivery to the following;

**Samuel L. Miller, M.D., Chair**  
**H. Lanier Brown, II, Esq., Vice Chair**  
Alabama Environmental Management Commission  
1400 Coliseum Blvd.  
P.O. Box 301463  
Montgomery, AL 36130-1463  
Phone: (334) 271-7706  
Email: [aemc@adem.alabama.gov](mailto:aemc@adem.alabama.gov)

**/s/ Robert E.L. Gilpin, Esq.**  
OF COUNSEL

**LANCE R. LEFLEUR**  
DIRECTOR



**KAY IVEY**  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

December 10, 2019

RECEIVED

Robert Gilpin

**CERTIFIED MAIL (NO. 91 7199 9991 7037 0286 3460)**

Mr. Robert E.L. Gilpin  
Gilpin Givan, PC  
Lakeview Center  
Suite 300  
2660 Eastchase Lane  
Montgomery, Alabama 36117

RE: Shady Side Farms, LLC  
Mr. Loring White  
Chambers County (017)

Dear Mr. Gilpin:

The Department has received various documents in response to the Notice of Violation issued on April 18, 2019. Based upon our review of the information submitted, the Department has determined that the above-referenced facility was coordinating with the Natural Resources Conservation Service on the implementation of a Conservation Management Plan. As such, NPDES permit coverage is not required for the above-referenced site as outlined in ADEM Admin. Code r 335-6-12-.11(6)(d).

Should you have any questions, please feel free to contact me at 334/271-7977.

Sincerely,

Rebecca E. Patty  
Associate General Counsel

REP/lc

Copy: Scott Hughes, ADEM-Field Operations Division (e-mail)

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)