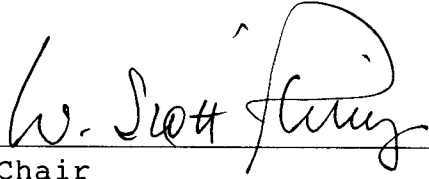


10/18/13

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**August 16, 2013**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on August 16, 2013.

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

---

Vice Chair  
Alabama Environmental Management Commission

Certified this 18th day of October 2013.

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**August 16, 2013**

**Convened: 11:00 a.m.**  
**Adjourned: 11:39 a.m.**

**Part A**

**Transcript**  
**Word Index**

**Part B**

**Attachment Index**  
**Attachments 1 - 3**

**Part A**

Page 1

1 \* \* \* \* \*

2

3

4 ALABAMA ENVIRONMENTAL MANAGEMENT

5 COMMISSION MEETING

6

7

8 ALABAMA DEPARTMENT OF ENVIRONMENTAL

9 MANAGEMENT

10 Alabama Room

11 1400 Coliseum Boulevard

12 Montgomery, Alabama 36110-2400

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20 Taken by: Bridgette W. Mitchell,

21 ACCR 231

22

23

Page 3

1 CHAIRMAN BROWN: Good morning.

2 We'll call the meeting of the Alabama

3 Environmental Management Commission to

4 order and acknowledge that we have not

5 only a quorum but all members present

6 today.

7 First item on the agenda is

8 consideration of the minutes for the

9 meeting on June 21, 2013.

10 DR. MILLER: I move we approve

11 the minutes as written.

12 DR. LAIER: Second.

13 CHAIRMAN BROWN: All in favor?

14 (Unanimous.)

15 CHAIRMAN BROWN: Any opposed?

16 (No response.)

17 CHAIRMAN BROWN: The minutes

18 are approved. Second item on the

19 agenda is the report from the director.

20 MR. LeFLEUR: Good morning,

21 Commissioners, and good morning and

22 welcome to all of you present for the

23 final of the six scheduled meetings of

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1 \* \* \* \* \*

2 APPEARANCES

3

4 COMMISSION MEMBERS PRESENT:

5 H. Lanier Brown, II, Esquire, Chair

6 W. Scott Phillips, Vice Chair

7 John H. Lester, D.V.M.

8 Samuel L. Miller, M.D.

9 James E. Laier, Ph.D., P.E.

10 Mary J. Merritt

11 Terry D. Richardson, Ph.D.

12

13

14 ALSO PRESENT:

15 Robert Tambling, EMC Legal Counsel

16 Lance R. LeFleur, ADEM Director

17 Ron Gore, Air Division

18 Debi Thomas, EMC Executive

19 Assistant

20

21

22

23

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1 the Alabama Environmental Management

2 Commission for Fiscal Year 2013.

3 In today's report, I will update

4 you on the budget, introduce a new

5 program to track departmental

6 performance, and close with a report on

7 our ongoing efforts to obtain

8 appropriate facilities for the Mobile

9 Field Office and Coastal Program.

10 Budget items first. We are about

11 to begin the final month of Fiscal Year

12 2013, and it is unlikely that proration

13 of the General Fund will be required.

14 Except for federal sequestration-

15 related shortfalls that are being

16 negotiated with EPA, we anticipate

17 being able to meet all federal grant

18 obligations.

19 The fee increase approved at the

20 last Commission meeting in June has

21 been implemented and became effective

22 on July 30. Absent any unforeseen

23 budget issues, we anticipate that the

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1 new fee structure will allow the  
2 Department to carry on at the absolute  
3 minimum level necessary to maintain  
4 state control over environmental  
5 permitting.  
6 Compliance and enforcement metrics,  
7 which are impartial and objective  
8 measures of performance, are important  
9 tools for managing any regulatory  
10 organization. Metrics are most useful  
11 when tracked over time and when  
12 compared to the same measures for  
13 comparable organizations. State and  
14 federal environmental regulatory  
15 agencies collect tremendous amounts of  
16 data. ADEM is a leader in managing  
17 this data, so much so that several  
18 other states now use many of our  
19 e-systems. The eFile, e-complaint,  
20 e-DMR, ALAWADR, and numerous other  
21 applications have not only made ADEM a  
22 leader in this arena, they have paid  
23 financial dividends by allowing the

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1 data in a usable format to assist with  
2 better oversight at both federal and  
3 state level. There have been many  
4 bumps along the way. The IT personnel  
5 at ADEM have been leading participants  
6 in addressing a number of the problems.  
7 In February of this year, EPA  
8 announced the release of new expanded  
9 state interactive visual compliance and  
10 enforcement metrics, commonly referred  
11 to as dashboards, which provide  
12 comparative maps that afford the public  
13 information about the performance of  
14 state and EPA enforcement and  
15 compliance programs across the country.  
16 The implementation of this new  
17 system will, when fully operational,  
18 provide the Department with a new tool  
19 to analyze our performance against  
20 other states and advance our management  
21 efforts. Additionally, the new system  
22 will allow our citizens to not only  
23 utilize the existing Web-based access

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1 Department to become an exceptionally  
2 low-cost and high-quality provider of  
3 environmental regulation.  
4 An additional benefit of this data  
5 management is that it allows individual  
6 citizens and interested organizations  
7 the unparalleled opportunity to find  
8 answers to virtually any question they  
9 may have related to Departmental  
10 activities.  
11 Today I'm pleased to report the  
12 next step in this ongoing process to  
13 better utilize data in the management  
14 of the environment in Alabama. For  
15 many years, the Department, like the  
16 environmental agencies in other states,  
17 has been providing data to the  
18 Environmental Protection Agency, our  
19 federal oversight agency. During the  
20 last several years, EPA has been  
21 working with all states to develop a  
22 system to improve the quality of the  
23 data, consolidate it, and present the

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1 to in-depth Alabama data through the  
2 ADEM system, but will provide ready  
3 access to standard performance reports  
4 comparing Alabama to all other states  
5 through the federal data system.  
6 The interactive state performance  
7 dashboards are located on EPA's  
8 Enforcement and Compliance History  
9 Online, or ECHO, website at  
10 [www.epa-otis.gov/echo/stateperformance/](http://www.epa-otis.gov/echo/stateperformance/)  
11 dashboard. You don't have to remember  
12 all that. We'll have it readily  
13 available. ECHO is an EPA tool that  
14 allows the user to map federal and  
15 state inspection, violation, and  
16 enforcement information for more than  
17 800,000 regulated facilities. Users  
18 can customize the dashboards to view  
19 state activity, EPA activity, or  
20 combined activity. The site also  
21 allows users to view national averages  
22 and display state enforcement trends  
23 over time. The address will be shown

<p style="text-align: right;">Page 9</p> <p>1 as a link on the ADEM website to allow 2 easy reference to both the EPA 3 dashboards and the ADEM e-system. The 4 EPA dashboards will provide the big 5 picture of how the Department is 6 performing against our sister states 7 and EPA standards, and the ADEM 8 e-system will allow for a more detailed 9 analysis of such things as individual 10 enforcement actions and responses to 11 specific complaints. 12 There are three important points to 13 bear in mind regarding these compliance 14 and enforcement metrics shown in the 15 new EPA dashboards. First, the 16 comparisons are only as accurate as the 17 data entered into the system. While 18 the data provided by Alabama is 19 reliable, currently the data for other 20 states will have varying degrees of 21 reliability. Second, many states are 22 not currently free-flowing data to EPA, 23 so there is a time lag in reporting</p>	<p style="text-align: right;">Page 11</p> <p>1 be in the process of being reported and 2 states may have alternative inspection 3 plans. EPA uses data like the 4 information here as a starting point 5 for assessing state performance but not 6 as the sole measure of performance. 7 More in-depth program reviews -- see 8 State Review Framework Reports -- are 9 used to identify needed state program 10 improvements. While file reviews and 11 management discussions can add to our 12 understanding, the many layers of 13 context and information make it 14 difficult to portray performance in a 15 consistent and transparent way. Close 16 quote. 17 Over time, the quality and 18 timeliness of comparison data from 19 other states can be expected to 20 improve. In spite of the current 21 shortcomings, I would like to begin 22 this process of regular analysis of 23 Departmental performance by utilizing</p>
<p style="text-align: right;">Page 10</p> <p>1 some results. And, lastly, EPA still 2 has some issues with the interface 3 between EPA's Information Systems 4 and ECHO, which we understand they are 5 aware of and are working to resolve. 6 These points are addressed with the 7 following statement that appears on the 8 EPA website, and I quote: State 9 performance is a complex and difficult 10 matter to analyze and explain. Data 11 alone cannot provide a complete picture 12 of performance. Many states have 13 issues with data completeness and 14 accuracy, and without investigation and 15 program knowledge, data can be 16 misleading or misinterpreted. Often, 17 there is important context around data 18 that must be taken into account to 19 provide an accurate picture. For 20 example, not all activities and 21 violations may be reported. Some 22 states are not authorized to run 23 programs. Current-year data may still</p>	<p style="text-align: right;">Page 12</p> <p>1 those dashboards which we have 2 determined from our review to be the 3 most accurate representation of 4 Departmental activities. 5 Beginning with this Commission 6 meeting, I will regularly be presenting 7 the dashboard analysis on a rotating 8 basis by media. State dashboards can 9 provide an easy-to-use summary of key 10 activities to answer questions such as: 11 How many and what kind of facilities 12 are regulated? How many have been 13 inspected? How many have violations? 14 And what enforcement actions have been 15 taken? Today we will begin with the 16 Land media. Air and Water media 17 dashboards will be presented in future 18 Commission meetings. 19 The majority of the Land 20 Division -- the major activity of the 21 Land Division is administering the 22 federal Resource Conservation and 23 Recovery Act of 1996, commonly referred</p>

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1 to as RCRA, which established a  
2 regulatory structure for the management  
3 of solid and hazardous waste. This  
4 statute and its associated regulations  
5 was intended to ensure proper  
6 management and disposal of hazardous  
7 waste. Please direct your attention to  
8 the screen where I will walk you  
9 through a few of the RCRA dashboards  
10 available for analysis of those  
11 programs.  
12 This first slide shows the total  
13 number of RCRA-regulated facilities in  
14 each of the states. As you can see,  
15 Alabama, with just under 5,000  
16 regulated facilities, is somewhere in  
17 the middle of the pack for the total  
18 number of facilities in the state.  
19 Alabama's total universe of 4,941  
20 facilities is broken down into four  
21 categories: Treatment, storage, and  
22 disposal facilities, TSDFs, shown in --  
23 are shown in purple, a very small slice

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1 represent the largest potential  
2 hazardous waste risk.  
3 Here you see a comparison of the  
4 percentage of large-quantity generators  
5 inspected annually in Alabama for the  
6 period from 2009 through the first  
7 quarter of 2013 to the national  
8 standard of 20 percent established by  
9 EPA. The 2013 data is for the first  
10 quarter only, so by year end, that bar  
11 will also exceed the 20-percent  
12 standard by a significant margin. This  
13 measure of the rate of inspections is  
14 one of our grant commitments made each  
15 year to EPA. As you can see, the Land  
16 Division consistently meets or exceeds  
17 the EPA requirement for the rate of  
18 inspections. You see that the green  
19 portion and the purple portion  
20 representing the state-only inspections  
21 and the combined state inspections plus  
22 independent EPA inspections,  
23 respectively, show the same percentage

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1 there in purple; large-quantity  
2 generators, LQGs, shown in yellow;  
3 small-quantity generators, SQGs, the  
4 blue portion; and "others" represented  
5 in orange. The majority of the  
6 regulated facilities fall into the  
7 small-generator or "other" category.  
8 These 4700 facilities either  
9 temporarily store small amounts of  
10 hazardous waste or simply transport  
11 wastes that are defined as hazardous.  
12 This large number of small facilities  
13 represents a very small fraction of the  
14 total hazardous waste in Alabama and,  
15 likewise, represents a very small risk  
16 of environmental exposure. By  
17 contrast, there are fewer treatment,  
18 storage, and disposal facilities and  
19 large generators of hazardous waste,  
20 but they represent the vast majority of  
21 hazardous waste managed in the state.  
22 The following dashboards will focus on  
23 the large generators and TSDFs, which

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1 coverage. The reason for this is that  
2 all EPA inspections are done with ADEM  
3 representatives present.  
4 This dashboard shows the percentage  
5 of inspected large-quantity hazardous  
6 waste generator and treatment, storage,  
7 and disposal facilities that were found  
8 to be in significant noncompliance, or  
9 SNCs, with an applicable state or  
10 federal requirement. The percentages  
11 of these large facilities found to be  
12 in significant noncompliance in both  
13 Alabama and the nation are small,  
14 thankfully. For the past several  
15 years, ADEM inspectors have been  
16 consistent with or slightly exceeded  
17 the national average of other state  
18 inspectors in identifying SNCs during  
19 facility inspections. The ideal is for  
20 there to be no facilities in  
21 noncompliance, but also to be sure that  
22 all facilities that actually are in  
23 noncompliance are identified when those



<p style="text-align: right;">Page 17</p> <p>1 facilities are inspected. 2 You see the red portion of this 3 slide representing the percentage of 4 sites where EPA participated with ADEM 5 in the inspection is higher than the 6 other percentages shown. The reason 7 for this is that ADEM and EPA focus the 8 joint inspections on those facilities 9 where there is either a high 10 probability or a history of significant 11 noncompliance. The number of 12 facilities jointly inspected is about 13 eight percent of the total inspections. 14 The previous slides showed the 15 number and types of facilities, the 16 inspection rates for the largest 17 facilities, and the percentage of those 18 facilities inspected that were found 19 not to be complying with permit 20 conditions. The next step in the 21 process of administering RCRA is the 22 enforcement activity against those 23 facilities found to be noncompliant.</p>	<p style="text-align: right;">Page 19</p> <p>1 website, a great deal of additional 2 inspection, violation, and enforcement 3 information can be displayed. 4 In future Commission meetings, we 5 will review these same type dashboards 6 for the Air and Water media. 7 Currently, dashboards are being updated 8 by EPA on an annual basis. At some 9 time in the future, EPA has plans to 10 update the data more frequently, 11 perhaps as frequently as quarterly. As 12 updated information becomes available, 13 I will incorporate it in my reports to 14 the Commission. 15 Earlier, I read the EPA statement 16 regarding reliance on the information 17 presented in the dashboard reports. In 18 that EPA statement, there was a 19 reference to State Review Framework 20 Reports which provide an in-depth 21 review of state programs. These 22 reviews, which are similar to audits, 23 are done approximately every three</p>
<p style="text-align: right;">Page 18</p> <p>1 On this slide, you see a depiction 2 of the percentage of those facilities 3 found to be in significant 4 noncompliance where enforcement action 5 is taken within 360 days, in accordance 6 with EPA's national RCRA enforcement 7 response guidelines. As you can see, 8 the EPA-specified national goal is 80 9 percent within 360 days. The 10 percentage shown for 2013 is one-fourth 11 of the year and, as with the prior 12 years, it is expected to surpass the 13 EPA 80-percent goal by year-end. Read 14 in conjunction with the somewhat higher 15 rate of identifying SNCs shown in the 16 last chart, you can see that there is 17 substantial and timely RCRA enforcement 18 activity within the state. 19 The slides I have shown you here 20 today are a few key dashboards which we 21 have determined give the most accurate 22 overall representation of departmental 23 performance. By going to the EPA</p>	<p style="text-align: right;">Page 20</p> <p>1 years. The Department has just 2 completed this tri-annual review, and 3 we expect a report of EPA's findings by 4 Year-End 2013. When those results 5 become available, I will present them 6 to the Commission. Since the State 7 Review Framework audit is performed on 8 a three-year cycle, the dashboard 9 analysis will be the one most 10 frequently presented to you. 11 I'd like to now bring you up to 12 date on the current state of our 13 physical facilities in south Alabama. 14 At the June 21, 2013, Commission 15 meeting, I reported to you that 16 following termination of the existing 17 lease at the Brooklyn Aeroplex, the 18 Coastal Program had just leased office 19 facilities approximately nine miles 20 further inland at an acceptable cost. 21 It was also noted that this is a less- 22 than-desirable situation because it 23 does not correct the substantial</p>

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1 existing inefficiencies of having two  
2 separate physical locations for  
3 operating units that are under common  
4 management and it does not address the  
5 poor positioning to meet what are  
6 projected to be dramatically-increasing  
7 regulatory demands in the Mobile area.  
8 Further, it does not address the  
9 substandard facilities currently  
10 housing the Mobile field office.  
11 Nonetheless, immediate action was  
12 required to deal with the first -- with  
13 the fast-developing relocation  
14 requirement, and options were limited.  
15 Now that the FY2014 operating  
16 budget issues have been addressed,  
17 funding acquisition of appropriate  
18 physical facilities in Mobile is the  
19 top financial priority for the  
20 Department. Discussions have been  
21 entered into with the Governor's Office  
22 to explore possible sources to provide  
23 the funding for the necessary physical

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1 facilities in Mobile. Preliminary cost  
2 estimates for a single facility to  
3 house the Coastal Program and the  
4 Mobile field office, including  
5 appropriate regional laboratory  
6 facilities, is about \$5.5 million. The  
7 need for proper physical facilities in  
8 the Mobile area grows each day, and I  
9 will continue to report on efforts to  
10 resolve this problem in the coming  
11 months.  
12 Once again, let me close with my  
13 thanks to you for serving the state as  
14 Commissioners on the Alabama  
15 Environmental Management Commission and  
16 for allowing me to also serve the state  
17 in this capacity.  
18 Are there any questions? I would  
19 be pleased to try to answer them at  
20 this time.  
21 (No response.)  
22 CHAIRMAN BROWN: Thank you.  
23 MR. LeFLEUR: Thank you.

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1 CHAIRMAN BROWN: Next on the  
2 agenda is the report from the  
3 Commission Chair. I don't have any  
4 particular comments today, so we'll  
5 move on to Agenda Item 4. Commission  
6 will consider adoption of proposed  
7 amendments to ADEM Administrative  
8 Code 335-3, Air Pollution Control  
9 Program Regulations. And we'll call on  
10 the Department for comments.  
11 MR. GORE: Good morning,  
12 Mr. Chair, lady, gentlemen. As you  
13 know, EPA adopts many nationally  
14 applicable technology-based standards  
15 for air pollution sources around the  
16 country. The EPA encourages and we  
17 like to adopt those standards and  
18 administer those on a day-to-day basis  
19 here at the state. I have the latest  
20 batch for your approval, if you see so  
21 fit. We had a public comment period  
22 that lasted from May 27 to July 12,  
23 public hearing on July 11th. There

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1 were no comments except for one comment  
2 from EPA. We have reconciled EPA's  
3 comment in the package.  
4 Unless you have any questions, we  
5 would like to ask that you adopt these  
6 changes.  
7 MR. PHILLIPS: I move we adopt  
8 the proposed amendments.  
9 DR. MILLER: Second.  
10 CHAIRMAN BROWN: All in favor?  
11 (Unanimous.)  
12 CHAIRMAN BROWN: Any opposed?  
13 (No response.)  
14 MR. GORE: Thank you.  
15 CHAIRMAN BROWN: Next on the  
16 agenda is Agenda Item 5, which is East  
17 Huntsville/Madison County Civic  
18 Association versus ADEM and Vulcan  
19 Construction Materials. I and  
20 Commissioner Richardson will be  
21 recusing, so I will turn this over to  
22 the Vice Chair.  
23 VICE CHAIRMAN PHILLIPS: Thank

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1 you, Mr. Chairman. I want to note that  
2 we'll consider the Hearing Officer's  
3 order/recommendation on Respondent  
4 ADEM's and the Intervener Vulcan  
5 Construction Material's motions to  
6 strike and dismiss. The Hearing  
7 Officer recommended that the motion to  
8 strike and dismiss be granted.  
9 I'll entertain a motion from the  
10 Commission.  
11 DR. MILLER: I move we accept  
12 the Hearing Officer's recommendation.  
13 VICE CHAIRMAN PHILLIPS: Do I  
14 have a second?  
15 DR. LAIER: Second.  
16 VICE CHAIRMAN PHILLIPS: I have  
17 a motion and a second to accept the  
18 Hearing Officer's recommendation. Just  
19 a reminder that Commissioner Richardson  
20 and the Chairman will be recusing  
21 themselves. All in favor signify with  
22 sign "aye."  
23 (Unanimous.)

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1 VICE CHAIRMAN PHILLIPS: All  
2 opposed, same.  
3 (No response.)  
4 VICE CHAIRMAN PHILLIPS: Motion  
5 passes. Turn it back over to the  
6 chairman.  
7 CHAIRMAN BROWN: Thank you.  
8 Agenda Item 6, Other Business. I don't  
9 know of anything. Do any of the  
10 Commissioners have any items to  
11 address?  
12 (No response.)  
13 CHAIRMAN BROWN: Agenda Item 7  
14 is our future business session. I know  
15 we will meet October 18, 2013, at  
16 11 a.m. in this conference room. All  
17 Commissioners available on that date?  
18 (No response.)  
19 CHAIRMAN BROWN: Next we have  
20 three requests to address the  
21 Commission which were made, and we have  
22 first for consideration is a request  
23 from Michael Mullen of the

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1 Choctawhatchee Riverkeeper on the  
2 subject of regulation of construction  
3 stormwater. I have previously  
4 recommended that the Commission approve  
5 that request. And we'll entertain a  
6 motion.  
7 MR. PHILLIPS: So move.  
8 DR. RICHARDSON: Second.  
9 CHAIRMAN BROWN: All in favor?  
10 (Unanimous.)  
11 CHAIRMAN BROWN: Next we have a  
12 request from David Ludder to address  
13 Title VI Compliance of the Alabama  
14 Department of Environmental Management.  
15 Chair has recommended disapproval of  
16 this request based on pending Title VI  
17 Complaint filed by Mr. Ludder at the  
18 EPA. Do I have a motion?  
19 MR. PHILLIPS: I have a motion  
20 to accept the Chairman's  
21 recommendation.  
22 DR. LAIER: Second.  
23 CHAIRMAN BROWN: All in favor?

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1 (Unanimous.)  
2 CHAIRMAN BROWN: All opposed?  
3 (No response.)  
4 CHAIRMAN BROWN: The third  
5 request is a request by Mary Schaeffer  
6 and Benjamin Eaton on behalf of the  
7 Black Belt Citizens Fighting for Health  
8 and Justice on the subject of the  
9 Arrowhead Landfill and the City of  
10 Uniontown's Wastewater Treatment Plant.  
11 The Chair has previously recommended  
12 approval of this request based on the  
13 fact that Ms. Schaeffer and Mr. Eaton  
14 did not appear as named complainants in  
15 the Title VI Complaint related to the  
16 Arrowhead Landfill, but I will  
17 entertain a motion.  
18 DR. RICHARDSON: Motion to  
19 approve the request.  
20 CHAIRMAN BROWN: Is there a  
21 second?  
22 DR. LAIER: Second.  
23 CHAIRMAN BROWN: All in favor

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1 say aye.  
2 DR. RICHARDSON: Mr. Chairman,  
3 I would like to have discussion,  
4 please.  
5 CHAIRMAN BROWN: I'm sorry.  
6 Any discussion?  
7 DR. RICHARDSON: I would like  
8 to move to postpone the question until  
9 the Commission meeting following such  
10 time that the Title IX Civil Rights  
11 Action has been resolved.  
12 CHAIRMAN BROWN: Title VI.  
13 DR. RICHARDSON: Title VI.  
14 Thank you.  
15 CHAIRMAN BROWN: Is there a  
16 second?  
17 DR. LESTER: Second.  
18 CHAIRMAN BROWN: Is there any  
19 further discussion?  
20 (No response.)  
21 CHAIRMAN BROWN: All in favor  
22 of Commissioner Richardson's motion to  
23 postpone the Schaeffer/Eaton Black Belt

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1 Citizens' public comments until after  
2 the Title VI Complaint has been  
3 resolved say aye.  
4 (Unanimous.)  
5 CHAIRMAN BROWN: Any opposed?  
6 (No response.)  
7 CHAIRMAN BROWN: So be it.  
8 Then Mr. Mullen. Mr. Mullen, welcome.  
9 And as you know, ten minutes.  
10 MR. MULLEN: Thank you. I may  
11 be a little long. I'll just cut it  
12 off. I just want to talk about an  
13 example of the problem with ineffective  
14 enforcement of construction stormwater  
15 permits. Back when he was acting  
16 Director, John Hagood said that the  
17 enforcement on these permits is out of  
18 control, and it's still out of control.  
19 It's not going to work. I had a  
20 whole host of videos to show. But  
21 looking at -- that's what happens  
22 sometimes when you put video slides in  
23 the PowerPoint. For some reason -- it

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1 came up earlier when we checked it out.  
2 Anyway, looking at just the area around  
3 Troy University in Troy as an example,  
4 this aerial photograph points out  
5 eleven different sites on the slide;  
6 one is just off the slide. Every one  
7 of these except for one has had  
8 moderate to severe noncompliance  
9 issues. I wish I'd be able to show you  
10 the slide because it showed some of  
11 those. And you've seen all this. I've  
12 sent you an extended larger file.  
13 But what happens in many cases is  
14 no phasing is done. The whole site is  
15 cleared; no phasing is done or improper  
16 BMPs are put in or BMPs are not  
17 monitored. In this particular site, I  
18 thought this was a -- this area is  
19 still bare. That slope is -- nothing's  
20 been done with that slope for months  
21 and months and months. It's never been  
22 stabilized. That's just one example.  
23 And you can see over time -- this is

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1 two different projects, two different  
2 phases. Month after month after month,  
3 you go through a whole series of things  
4 and there's an initial noncompliance on  
5 these sites and we don't get a rapid  
6 return to compliance.  
7 This is a construction entrance on  
8 a site. It was that way beginning back  
9 around February or March of this year,  
10 and it's -- until just recently has  
11 stayed that way. You can't see it in  
12 this picture. You can see it in this  
13 one. There has been an unprotected  
14 storm drain there the whole period of  
15 the time until just recently.  
16 This site has stayed largely bare  
17 the whole time. Yes, it's stable now  
18 because the project is over, but sites  
19 are -- there's no general deterrence.  
20 You know, when you have this many sites  
21 that are having problems, the  
22 Department's enforcement compliance  
23 efforts are not creating deterrence.

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1 They don't think it's important to do  
2 erosion and sediment control. It's not  
3 being incorporated. It's not part of  
4 the job. It's something I have to do  
5 over here on the side.  
6 There was finally a penalty order  
7 proposed on this site. Big deal.  
8 They're almost through. And what's a  
9 \$7,000 penalty? Site has just large  
10 areas that were left unstabilized for a  
11 long period of time, BMPs that are  
12 incomplete. This occurred every major  
13 rain we had from early -- late last  
14 year until probably up through about  
15 June of this year when they finally  
16 stabilized parts of the site where  
17 there's no active construction going on  
18 month after month.  
19 Another site. Warning letters,  
20 eventually a consent order, offsite  
21 pollution continued for a period of  
22 time and still continues after the  
23 consent order. They removed sediment

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1 from the conveyance, but they didn't  
2 get -- all this (indicating) is  
3 downstream from that site.  
4 This is a recent picture. This  
5 is a recent -- I'm sorry. This is not  
6 the recent. There is a recent picture.  
7 It was in the other thing. But the  
8 kind of sediment that was in there from  
9 an earlier project, the kind of erosion  
10 we had on this project because of  
11 failure to have good erosion-sediment  
12 control plan.  
13 Again, not a -- no -- no proper  
14 drainage plan, failed to stabilize an  
15 area where a lot of water was going to  
16 come over. Just poor planning. And,  
17 again, another big pool of sediment  
18 downstream of this site. This is an  
19 earlier construction site going to the  
20 same drainage. Again, large amounts of  
21 sediment. Another side of that same  
22 project. This is a new one. This is a  
23 relatively minor one, but, again, we

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1 had discharge from this that resulted  
2 in NOV because people are not doing  
3 enough. They don't consider it  
4 important enough.  
5 More recent facility. And this one  
6 really points out a lot of the  
7 problems. This occurred in late June,  
8 early July. And I had a good  
9 conversation with the owner of the  
10 company doing this project. And can't  
11 see it on here, but there were a number  
12 of silt fences up here that were in my  
13 videos. Wrong kind of silt fence,  
14 Class C silt fence, weren't appropriate  
15 for the area, weren't properly located.  
16 I asked the gentleman, Why are you  
17 using some of these BMPs that are  
18 inadequate or improper? I was told,  
19 It's what my architect told me to do.  
20 Okay? The Department does not review  
21 best management plans unless they're on  
22 a priority stream, you know. We're  
23 going to -- one suggestion is that the

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1 Department start reviewing those plans  
2 or have some independent party review  
3 those plans. I have former students  
4 that work for an engineering firm who  
5 tell me that customers will not do a  
6 good robust erosion settlement control  
7 plan because they know the consequences  
8 of failure are not that much of a risk.  
9 Same site. Here's the  
10 inappropriate fence poorly located.  
11 Poor gentleman out here on the Fourth  
12 of July trying to do something about  
13 it. Futile. This is another project.  
14 There haven't been any violations  
15 observed that we've seen there yet. It  
16 was well done. This was a successful  
17 site. There was a cease order on this  
18 site. The contractor on this site  
19 sent, I think, 20 or 30 people to  
20 erosion settlement control training at  
21 Auburn as a result of the cease order,  
22 was embarrassed by the cease order, but  
23 they're falling back. Some of these

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1 other sites that I've shown you  
2 previously, same contractor. They're  
3 falling back into the same pattern.  
4 Another contractor. You know, just  
5 about every site -- I've been looking  
6 at construction sites in the Troy area  
7 since about 1998, and I can count on  
8 one hand the ones that had good erosion  
9 sediment control, and I think one of  
10 those was by accident. Even after --  
11 in this case, even after the consent  
12 order and the penalty was issued, there  
13 still continued for about a month and a  
14 half, two months after that to continue  
15 to be preventable runoff coming off the  
16 site.  
17 Another project. Just on and on  
18 and on. You've got the -- you've got  
19 the complete slide show. It's redacted  
20 to make sure we're not putting any  
21 companies' names up there. This  
22 particular site was interesting. If  
23 you go to record, you find out EPA did

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1 Word slides. You have them. You also  
2 have a letter that I gave Mr. Brown --  
3 and you should all get a copy of it --  
4 indicating what we see. We would like  
5 to see the Department or the Commission  
6 or both put together a group of  
7 stakeholders to look at effectiveness  
8 and to make sure that metrics are being  
9 used, examined, that will actually say,  
10 Are we effective? What percentage of  
11 sites are in noncompliance? How long  
12 does it take a site to return to  
13 compliance after there's a warning  
14 letter, after there's an NOV, after  
15 there's an order? How many repeat  
16 violators do we have out there? Until  
17 we measure those sorts of things, we're  
18 spending a lot of taxpayer money to do  
19 enforcement, we're pretending to do  
20 enforcement, but we're not doing any  
21 good enforcement.  
22 I appreciate your time. And I  
23 probably even ran over a little bit.

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1 an inspection of it. The EPA's  
2 inspection was so late in the process  
3 that everything looked pretty good.  
4 And one of the problems is, if you're  
5 counting grapefruits and what you're  
6 looking for is apples, we don't know  
7 what's going on with compliance. You  
8 know, if all you're counting -- I  
9 worked in education, and if all you're  
10 counting is how many people come to  
11 your seminar and that sort of thing,  
12 you're not evaluating what's happening,  
13 you don't know what's going on. And  
14 looking at the effectiveness of  
15 enforcement, if all we're doing is  
16 we're counting how many inspections,  
17 how many orders, and that sort of thing  
18 and we're not looking at are we  
19 returning them to compliance, what  
20 percentage of them are in  
21 noncompliance, we've got serious  
22 problems.  
23 I'm not going to go through these

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1 CHAIRMAN BROWN: That's all  
2 right. Thank you, Mr. Mullen.  
3 Any comments by the Department?  
4 (No response.)  
5 CHAIRMAN BROWN: Thank you.  
6 Any questions or comments from the  
7 Commission?  
8 (No response.)  
9 CHAIRMAN BROWN: Well, I will  
10 entertain a motion to adjourn.  
11 MR. PHILLIPS: I move we  
12 adjourn.  
13 DR. LAIER: Second.  
14 CHAIRMAN BROWN: All in favor?  
15 (Unanimous.)  
16 CHAIRMAN BROWN: Meeting  
17 adjourned.  
18  
19  
20  
21  
22  
23

1                   REPORTER'S CERTIFICATE

2  
3       STATE OF ALABAMA    )  
4       ELMORE COUNTY       )

5  
6           I do hereby certify that the above  
7       and foregoing transcript was taken down  
8       by me in stenotype, and the questions  
9       and answers thereto were transcribed by  
10       means of computer-aided transcription,  
11       and that the foregoing represents a  
12       true and correct transcript of the  
13       testimony given by said witness.

14  
15           I further certify that I am  
16       neither of counsel, nor any relation to  
17       the parties to the action, nor am I  
18       anywise interested in the result of  
19       said cause.

20           I further certify that I am  
21       duly licensed by the Alabama Board of  
22       Court Reporting as a Certified Court  
23       Reporter as evidenced by the ACCR  
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26       Bridgette W. Mitchell  
27       Certified Court Reporter and  
28       Commissioner for the State of  
29       Alabama at Large  
30       ACCR No. 231 - Expires 9/30/13  
31       MY COMMISSION EXPIRES 1/14/2014

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**Part B**

## **Attachment Index**

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| <b>Attachment 3</b> | <b>Order to adopt Hearing Officer's Order/Recommendation on Respondent ADEM's and Intervenor Vulcan Construction Materials, LP's Motions to Strike and Dismiss (Agenda Item 5)</b> |

**Attachment 1**

Amended 8/5/13

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: August 16, 2013

TIME: 11:00 a.m.

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

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

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON JUNE 21, 2013
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Admin. Code Division 335-3, Air Pollution Control Program Regulations, Rules 335-3-1-.02, 335-3-10-.01, 335-3-10-.02, 335-3-11-.01, 335-3-11-.06, and Appendix C. Revisions to the Division 3 Code are being proposed to incorporate by reference changes to the EPA's New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The definition of volatile organic compounds (VOCs) in Chapter 335-3-1 is also being proposed for revision to be consistent with EPA's revisions. Chapter 335-3-1 is considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to this Chapter are proposed to be incorporated into Alabama's SIP. The Department held a public hearing on the proposed amendments on July 11, 2013.

5. EAST HUNTSVILLE/MADISON COUNTY CIVIC ASSOCIATION, INC. V. ADEM, AND VULCAN CONSTRUCTION MATERIALS, LP, EMC DOCKET NO. 13-01 (NPDES-RELATED MATTER)

The Commission will consider the Hearing Officer's "Order/Recommendation" on Respondent ADEM's and Intervenor Vulcan Construction Materials, LP's Motions to Strike and Dismiss in this appeal/request for hearing regarding ADEM's issuance of NPDES Permit No. AL0075507 to Vulcan Construction Materials, LP, Gurley Quarry, Madison County. This item was tabled to this meeting at the last meeting of the Commission on June 21, 2013.

6. OTHER BUSINESS
7. FUTURE BUSINESS SESSION

**PUBLIC COMMENT PERIOD**

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

**Request 1**

Michael William Mullen, Choctawhatchee Riverkeeper

SUBJECT: Regulation of construction stormwater

(Chair Brown will recommend that the Commission approve the request.)

**Request 2**

David A. Ludder, Esq.

SUBJECT: Title VI Compliance at the

Alabama Department of Environmental Management

(Chair Brown will recommend that the Commission approve the request.)

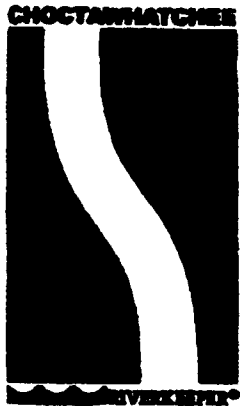
**Request 3**

Mary Schaeffer and Benjamin Eaton,

on behalf of Black Belt Citizens Fighting for Health and Justice

SUBJECT: Arrowhead Landfill and the City of Uniontown's Wastewater Treatment Plant

(Chair Brown will recommend that the Commission approve the request.)



H. Lanier Brown, II, Esq, Chair  
c/o Environmental Management Commission  
P.O. Box 301463  
Montgomery, AL 36130-1463



July 27, 2013

Dear Chairman Brown:

I am writing to request approval for a presentation at the August 16th AEMC meeting. The presentation will address regulation of construction stormwater (CSW). It will show examples of noncompliance by a subset of CSW permit holders in the Troy area over approximately. Note that my observation is that almost every construction site that I have patrolled has had significant compliance issues and many have had offsite pollutant transport.

A good many of these CSW permit holders have been on the receiving end of compliance actions by ADEM. Despite this, in far too many instances, noncompliance has continued largely unabated for much too long - often months.

The fact that so many sites fall into noncompliance is an indication that ADEM has not created and is not creating general deterrence sufficient to achieve good rates of compliance by CSW permit holders. The fact that it often takes so long for return to compliance and that many permit holders are serial violators, repeating violations on site after site after site is an indication that ADEM has not created and is not creating general deterrence.

The presentation will show a few samples of failure to effectively enforce showing permitting and compliance enforcement actions over time and images from the sites over the same time periods. The PPP that will be used in the presenta-

Choctawhatchee RIVERKEEPER<sup>®</sup>, Inc.  
P.O. Box 6734  
Banks, AL 36005  
334-807-1365  
Email: [riverkeeper@roycable.net](mailto:riverkeeper@roycable.net)  
Web: <http://choctawhatcheeriver.org>



tion has been redacted to remove all permit numbers and permit holder names. What will be shown is part of a much larger PPP with almost 100 slides. I will be sending Ms. Thomas a separate e-mail with a link to a DropBox file with the larger presentation so that she might share that presentation with commissioners. At this time I am attaching a few introductory slides and an example of the format the remainder of the presentation will have.

Many in the environmental community have spent considerable time and resources over the years to document ADEM's failure to effectively enforce CSW permits and to convey that failure as well as suggestions for improvement to ADEM. To date there has been little in the way of effective response from the Department. It would almost seem that the Department does not want to effectively enforce CSW permits. This is unfortunate because the current situation does not utilize resources well as it leads to in some cases a necessity for repeated inspections and very numerous correspondence, calls and meetings.

Once again, on the afternoon of the August 16th meeting members of the environmental community will meet with the Director and staff. CSW permit compliance and effective enforcement will be one of the main topics of the meeting. There will be a request to the Department for it to begin to collect some data that will give an accurate depiction of the effectiveness of the CSW compliance enforcement efforts at the Department. Currently there does not appear to be any data captured that provides a true measurement of the effectiveness of compliance enforcement. As a result effectiveness is judged not by the degree to which compliance is occurring but rather by the number of activities—inspections, enforcement actions etc. This does not indicate what percentage of facilities are in compliance, how many repeat violations occur at sites, how many permit holders are serial violators or critically, how soon noncompliant sites are returned to compliance.

In addition some suggestions will be made both for changes to the permitting process and for compliance enforcement that very possibly could lead to increased compliance rates.

Respectively submitted,



Michael William Mullen, CPESC  
Choctawhatchee Riverkeeper



LAW OFFICE OF  
**DAVID A. LUDDER**  
A Professional Limited Liability Company



**FACSIMILE TRANSMITTAL**

<b>TO:</b> Chair, AEMC	<b>FAX NO.:</b> (334) 279-3052
<b>DATE:</b> July 31, 2013	<b>NO. PAGES:</b> 16
<b>MATTER:</b> Request to Speak at Aug 16 AEMC Meeting	
<b>SUBJECT:</b> Title VI Compliance at the Alabama Department of Environmental Management	

**MESSAGE:**

Please allow me time to address the AEMC on the above-referenced subject matter. Attached is a draft Powerpoint presentation which I expect to be the focus of my comments.

Thank you.

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



August 1, 2013

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

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

Re: Request to Address the Environmental Management Commission  
on August 16, 2013, regarding Arrowhead Landfill and  
the City of Uniontown's Wastewater Treatment Plant

Dear Chairman Brown:

Black Belt Citizens Fighting for Health and Justice is a non-profit organization of concerned citizens in Uniontown, Alabama. On behalf of our group, the two undersigned members hereby request to be placed on the agenda to address the Environmental Management Commission (EMC) at its next meeting to be held on August 16, 2013. We have two issues that we wish to bring before the EMC.

Regarding the Arrowhead Landfill, we will present to the EMC the test results obtained by Dr. Betsy Dobbins, Department of Biology, Samford University, from her water sampling of both surface run-off from the landfill and well water on Booker Gipson's property adjacent to the landfill. These test results reveal: a) elevated levels of conductivity, and b) elevated levels of arsenic.

We will request ADEM's immediate enforcement action against Arrowhead Landfill to prevent more toxic landfill contaminants from migrating offsite, as well as ADEM's further testing to identify and quantify all contaminants, damages and health risks, and ADEM's supervision and oversight of Arrowhead's remediation of the situation. Our citizens want to be kept fully informed of ADEM's and Arrowhead's actions and progress in this matter.

Regarding the City of Uniontown's long-overdue and much-needed upgrades to its Wastewater Treatment Plant (WWTP), we will reiterate to the EMC our strenuous objections to the proposed location for construction of a second spray field. Mr. John Stevens, PE, Vice President of Sentell Engineering, Inc. in Tuscaloosa, Alabama, is the engineer in charge of this project. The proposed site, on the south side of Perry County Road 53 (coordinates of approximately 32-23.176N, 87-30.830W), is completely unsuitable for use as a wastewater spray field for many compelling reasons, which we will discuss in detail.

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

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

Sincerely,



Mary Schaeffer  
PO Box 878  
Uniontown, AL 36786  
Home: 334-628-8278  
Cell: 334-231-5161  
[mlschaeffer@bellsouth.net](mailto:mlschaeffer@bellsouth.net)



Benjamin Eaton  
PO Box 276  
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[beneaton@bellsouth.net](mailto:beneaton@bellsouth.net)

**Attachment 2**

**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. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [335-3-1-.02/Definitions (Amend), 335-3-10-.01/General (Amend); 335-3-10-.02/Designated Standards of Performance (Amend); 335-3-11-.01/General (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source Categories (Amend);

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

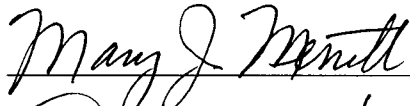

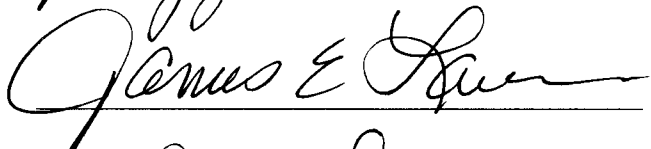

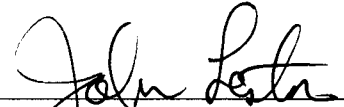
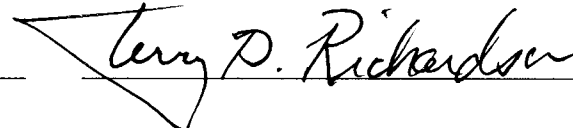
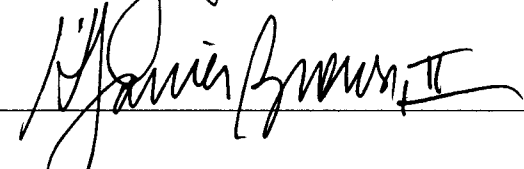
Appendix C/EPA Regulations Reference Documents for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (Amend)] of the Department's Air Division – Air Pollution Control Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.

**ENVIRONMENTAL MANAGEMENT COMMISSION  
RESOLUTION**

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of August 2013.

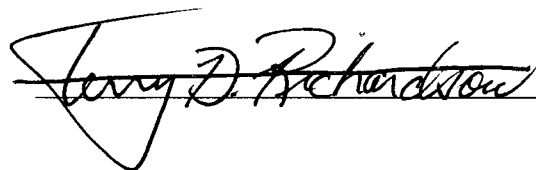
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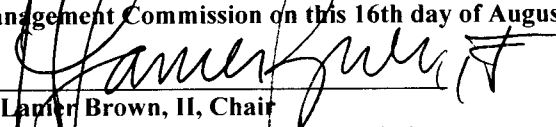
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 _____  _____  _____  _____	 _____  _____  _____  _____
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ABSTAINED:

  
\_\_\_\_\_

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of August 2013.

  
\_\_\_\_\_  
H. Lauer Brown, II, Chair  
Environmental Management Commission  
Certified this 16th day of August 2013

**Attachment 3**



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

In the Matter of:	)	
	)	
East Huntsville/Madison County Civic	)	
Association, Inc.,	)	
Petitioner,	)	
	)	
vs.	)	
	)	EMC Docket No. 13-01
Alabama Department of Environmental	)	
Management,	)	
Respondent,	)	
	)	
and	)	
	)	
Vulcan Construction Materials, LP,	)	
Intervenor.	)	

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ORDER

This cause having come before the Environmental Management Commission pursuant to the Hearing Officer's "Order/Recommendation" on Respondent ADEM's and Intervenor Vulcan Construction Materials, LP's Motions to Strike and Dismiss, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Hearing Officer's "Order/Recommendation" on Respondent ADEM's and Intervenor Vulcan Construction Materials, LP's Motions to Strike and Dismiss is hereby adopted; and

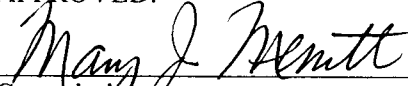
2. That pursuant to the adoption of the Hearing Officer's "Order/Recommendation," Respondent ADEM's and Intervenor Vulcan Construction Materials, LP's Motions to Strike and Dismiss are hereby granted and the Hearing Request filed by Mr. Binkley on behalf of the East Huntsville/Madison County Civic Association, Inc. is hereby struck and this matter is dismissed; and

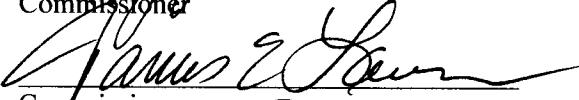
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and

4. That a copy of the Order, along with a copy of the Hearing Officer's "Order/Recommendation," attached hereto and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

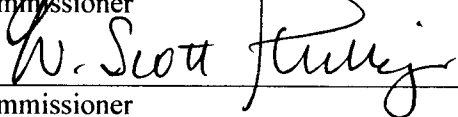
ISSUED this 16th day of August 2013.

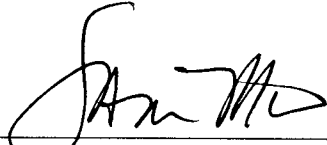
APPROVED:

  
Commissioner

  
Commissioner

  
Commissioner

  
Commissioner

  
Commissioner

Commissioner

Commissioner


DISAPPROVED:

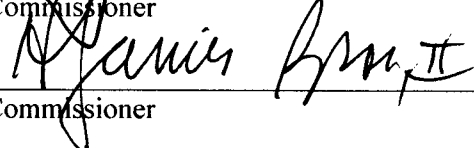
Commissioner

Commissioner

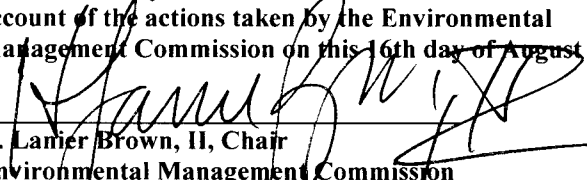
Commissioner

RECUSED:

  
Commissioner

  
Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 16th day of August 2013.

  
H. Lamar Brown, II, Chair  
Environmental Management Commission  
Certified this 16th day of August 2013

BEFORE THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

EAST HUNTSVILLE/MADISON COUNTY )  
CIVIC ASSOCIATION, INC. )

Petitioner, )

vs. )

ALABAMA DEPARTMENT OF )  
ENVIRONMENTAL MANAGEMENT, )

Respondent. )

DOCKET NO. 13-01



**ORDER/RECOMMENDATION**

This matter is before the undersigned on the Department's and Intervenor, Vulcan Materials, LP's ("Vulcan") Motions to Strike and Dismiss. The primary basis for the Motions is Ala. Admin. Code r. 335-2-1-30, which prohibits a non-attorney from representing a party before the Commission. Hence, the Department and Vulcan argue that the failure of an attorney for Petitioner to sign the subject notice of appeal requires the dismissal of this matter.

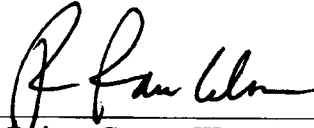
Clifford H. Binkley filed a response to the Motions and states that although the notice of appeal was not signed an attorney, a typographical error existed in the notice and that he meant to bring the appeal on behalf of himself and not on behalf of the East Huntsville/Madison County Civic Association, Inc. ("Association"). However, the face of the notice clearly states the appealing party is the Association and other portions of the notice indicate the Association is the party bringing the appeal.

Based on precedent, the undersigned is bound to agree with the Department's and Vulcan's position. See Canaan Systems, Inc. v. Department, EMC Docket No. 09-06, 2009 WL 2634671 (August 21, 2009). Therefore, the undersigned RECOMMENDS that the Department's and Vulcan's

Motions to Strike and Dismiss be GRANTED.

Petitioner shall have until June 7, 2013 to file objections to this Recommendation and the Department may file any reply by June 11, 2013.

Done this 23<sup>rd</sup> day of May, 2013.



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