


10/21/19

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 16, 2019**

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, 2019.



Samuel L. Miller, Chair

Alabama Environmental Management Commission

Certified this 18th day of October 2019.

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
August 16, 2019

Convened: 11:00 a.m.
Adjourned: 11:55 a.m.

Part A

Transcript
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Part A

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1 MEETING OF THE
2 ALABAMA ENVIRONMENTAL
3 MANAGEMENT COMMISSION
4
5
6 ALABAMA DEPARTMENT OF ENVIRONMENTAL
7 MANAGEMENT
8
9
10 Alabama Room
11 1400 Coliseum Boulevard
12 Montgomery, Alabama 36110-2400
13 August 16, 2019
14 11:00 a.m.
15
16 * * * * *
17
18
19
20
21 COURT REPORTER:
22 PATRICK R. MILLER, ACCR 631
23 * * * * *

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1 * * * * *
2 DR. MILLER: Good morning,
3 everyone. Welcome to the August 16th,
4 2019 Environmental Management
5 Commission meeting. Our first item is
6 consideration of the meeting minutes
7 from June 21st, 2019. These have been
8 circulated among the members of the
9 Commission, and I will entertain a
10 motion to accept those minutes.
11 MR. MASINGILL: Move to adopt the
12 minutes of the June 21st, 2019
13 Commission meeting as circulated.
14 DR. PERRY: Second.
15 DR. MILLER: It's been moved and
16 seconded. Is there any discussion?
17 (No response was heard.)
18 DR. MILLER: If not, I will call
19 for the question. All in favor of
20 approving these minutes, please say
21 aye.
22 (A unanimous consent was
23 heard.)

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1 * * * * *
2 APPEARANCES
3 COMMISSION MEMBERS PRESENT:
4 Samuel L. Miller, M.D., Chair
5 H. Lanier Brown, II, Esq., Vice Chair
6 Kevin McKinstry
7 Thomas P. Walters, P.E.
8 Ruby L. Perry, D.V.M.
9 John (Jay) H. Masingill, III
10
11 COMMISSION MEMBER NOT PRESENT:
12 Mary J. Merritt
13
14
15 ALSO PRESENT:
16
17 Lance R. LeFleur, ADEM Director
18
19 Robert D. Tambling,
20 EMC Legal Counsel
21
22 Zack Wilson, Paralegal
23 Debi Thomas, EMC Executive Assistant
* * * * *

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1 DR. MILLER: All opposed, no.
2 Okay. All right. Item Number 2 is
3 the report from Director LeFleur.
4 MR. LEFLEUR: Good morning. And
5 good morning to all present for the
6 final meeting of the Alabama
7 Environmental Management Commission
8 for Fiscal Year 2019. Today's report
9 will update you on the Department's
10 funding situation, report on the state
11 of the environment in Alabama, and
12 review the steps in the Department's
13 enforcement process.
14 As reported at the last Commission
15 meeting, the Department was
16 appropriated \$4 million in the State
17 General Fund budget for Fiscal Year
18 2020, which will begin on October the
19 1st. The federal portion of the
20 Department's FY 2020 budget is
21 anticipated to be essentially the same
22 as it has been since at least 2010.
23 The Department will be able to meet

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1 all its performance obligations with
2 the available funding.
3 The process to complete the
4 paperwork for funding the Mobile field
5 office continues. The Department is
6 making preparations to move quickly on
7 the purchase of a site, executing a
8 contract with the selected
9 architectural/engineering firm, and
10 beginning design activities when the
11 final approval for disbursements is
12 received.
13 Preliminary bid drawings for the
14 Birmingham field office lab upgrades
15 are anticipated in the next two weeks,
16 and bid documents are anticipated to
17 go out within 45 days after that.
18 Kickoff for the software upgrades
19 for the NPDES, Scrap Tire, Recycling,
20 Unauthorized Dump, and UST programs
21 has taken place, and work is well
22 underway. I am pleased to report that
23 the Department was successful in being

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1 awarded a \$200,000 competitive EPA
2 grant that will be applied to portions
3 of the software upgrades.
4 As in years past, a number of my
5 reports to you this year have focused
6 on various performance measures in the
7 Department's NPDES, Drinking Water,
8 Air, Resource Conservation and
9 Recovery Act programs. Those reports
10 have highlighted how the Department
11 has performed on a six- to eight-year
12 horizon against all other states using
13 standard quantitative metrics from
14 EPA.
15 In 2016, I began periodic reports
16 on the state of the environment in
17 Alabama using qualitative measures in
18 addition to those quantitative metrics
19 from EPA. Today's report, once again,
20 takes the longer view and compares the
21 state of Alabama's environment when
22 reliable records first became
23 available 20 to 30 years ago versus

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1 where it is now. This report is
2 something of a "then versus now"
3 comparison that will look at how the
4 public in Alabama perceives our
5 environment, and what the actual data
6 shows.
7 We start with public perceptions.
8 Beginning in 1998, every five years
9 the Department has commissioned a
10 survey of public opinion in Alabama
11 for the purpose of determining how
12 well the public understands matters
13 related to the environment. The
14 public has both correct and incorrect
15 perceptions about the environment.
16 Some of the correct perceptions are:
17 In 2018, 92 percent ranked the
18 environment good versus 76 percent in
19 1998 and it's the highest percentage
20 since the survey began 20 years ago.
21 49 percent ranked water cleaner than
22 25 years ago versus 19 percent in
23 1998, and it is also the highest

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1 percentage since the survey began.
2 Keep in mind that since water has been
3 getting cleaner, the baseline from
4 which the "25 years ago" comparison is
5 made is higher as time passes. 43
6 percent rank air cleaner than it was
7 25 years ago versus 18 percent in
8 1998, again, the highest percentage
9 since the survey began. Once again,
10 since air -- the air has been getting
11 cleaner, the baseline from which the
12 comparison is made is higher as time
13 passes. Finally, 90 percent of the
14 respondents recognize that Alabama's
15 environmental standards are protective
16 of human health and the environment.
17 This is up from just 76 percent in the
18 last survey in 2013. These correct
19 perceptions show headway is being made
20 in educating the public.
21 The survey also shows several
22 incorrect perceptions, which means we
23 still have work to do in educating the

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1 public. In 2018, 73 percent did not
2 realize that motor vehicles are the
3 biggest source of air pollution in
4 Alabama and the nation. 89 percent of
5 the public did not realize that
6 stormwater is the biggest source of
7 water pollution, and despite ample
8 objective evidence to the contrary, 44
9 percent do not perceive environmental
10 laws are being enforced in Alabama.
11 The next series of slides will be a
12 comparison of the environmental data
13 for air, water, and land showing
14 environmental quality measures when
15 reliable data first became available
16 and those same measures today. Unlike
17 performance metrics available from
18 EPA, comparisons of the environmental
19 quality data from other states is not
20 available.
21 Beginning with air, there are six
22 basic air quality standards: Fine
23 particles, ozone, oxides of Nitrogen,

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1 Sulfur Dioxide, Carbon Monoxide, and
2 Lead. There is also a regional haze
3 goal.
4 Over time, most of the standards
5 have been revised, as shown on this
6 slide, each time becoming more
7 stringent. Fine particles and ozone
8 standards have seen four revisions
9 since the Clean Air Act was passed in
10 1971, while the others have been more
11 stable. In 2008, EPA set the 2018
12 goal for total reductions in haze.
13 This next slide shows that one by
14 one, Alabama has been able to attain
15 individual air quality standards even
16 as the standards are becoming tighter.
17 The fine particle standards --
18 standard was first met in 2013
19 followed by ozone in 2014. NOx was
20 first met back in 1971, SO2 in 1977,
21 Carbon Monoxide in 1971, and Lead in
22 2015. In 2015, for the first time
23 since the Clean Air Act was enacted in

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1 1971, the state of Alabama reached
2 attainment for all air quality
3 standards. In addition, Alabama met
4 the 2018 regional haze goal in 2013,
5 five years early.
6 As shown in this graph, air
7 pollution emissions in Alabama have
8 declined materially since 1990, and
9 improvement continues even after the
10 ever more stringent air quality
11 standards were attained. Today, the
12 public in Alabama can breathe easier
13 than it could in 1990.
14 Moving on to water media. In the
15 water media, we look at drinking water
16 data first because of its importance
17 in that it directly impacts every
18 individual in Alabama.
19 Potential contaminants in drinking
20 water fall into four categories:
21 Organic chemicals, Inorganic
22 chemicals, Radionuclides, and
23 Microbes.

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1 In 1982, when the Department was
2 created, there were 23 water
3 contaminants regulated. That number
4 is currently at 89, with most of the
5 increase being in the organic
6 chemicals category.
7 We are obviously regulating more
8 potential contaminants in drinking
9 water. With more contaminants to
10 monitor, the logical question is, How
11 well are the water systems doing?
12 This next slide addresses that
13 question. In 1982, 82 percent of the
14 water systems in Alabama were
15 consistently in compliance with the
16 standards for the 23 regulated
17 contaminants. Today, 98 percent of
18 the water systems in Alabama are
19 consistently in compliance with the
20 standards for the 89 contaminants now
21 regulated. I would also point out
22 that the only state -- only the state
23 of Hawaii has a lower rate of drinking

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1 water violations than here in Alabama.
2 Needless to say, the citizens of
3 Alabama have much safer drinking water
4 now than they did in 1982.
5 Another measure of water quality
6 looks at the impairments to surface
7 waters in the state. Section 303(d)
8 of the Clean Water Act calls for a
9 listing of impaired water bodies,
10 which are those not meeting
11 federally-approved water quality
12 standards for various pollutants such
13 as nutrients, pathogens, metals, and
14 suspended solids.
15 This chart couples both the area of
16 impairments and the number of
17 pollutants. For example, if one mile
18 of a stream or one acre of surface
19 water is impaired for nutrients and
20 pathogens, that would be counted as
21 two combination miles of impaired
22 stream, or two combination acres of
23 surface water.

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1 body that will bring that water body
2 into compliance with water quality
3 standards. During the period from
4 1998 through 2018, more than one
5 million combination acres of impaired
6 streams -- excuse me, lakes,
7 reservoirs, oceans, and estuaries were
8 added to the 303(d) list when
9 identified. In 2018, there remained
10 about 690,000 combination acres of
11 impaired lakes, reservoirs, ocean, and
12 estuaries as a result of approximately
13 400,000 combination acres being
14 removed from the list due to improved
15 water quality or being addressed by
16 TMDL development.
17 Impaired water bodies have seen
18 significant improvement over the
19 years. The 303(d) list identifies
20 impaired water bodies. Water bodies
21 are also tracked by an assigned
22 designation or use classification.
23 The data in this slide will go back to

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1 25 percent of the 59,000 miles of
2 perennial rivers and streams and 93
3 percent of the more than one million
4 acres of lakes, reservoirs, ocean, and
5 estuaries in the state have now been
6 fully assessed for impairments. Over
7 the years, as more water bodies have
8 been assessed, more impairments have
9 been identified and listed.
10 During the period from 1998 to
11 2018, nearly 12,000 combination miles
12 of impaired rivers and streams were
13 identified and added to the 303(d)
14 list. In 2018, there remained 3,300
15 combination miles of impaired rivers
16 and streams as a result of 8,600
17 combination miles being removed from
18 the list due to improved water quality
19 or being assessed through the
20 development of a Total Maximum Daily
21 Load, or TMDL determination. A TMDL
22 sets limits for the discharge of
23 pollutants into the assessed water

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1 1982, which is a bit further than the
2 previous slide. Looking at the three
3 highest designations -- Outstanding
4 National Resource Waters, Outstanding
5 Alabama Waters, and Treasured Alabama
6 Lakes -- you can see that in 1982, no
7 state waters were yet determined to
8 have met the requirements to be
9 designated in the highest categories.
10 By 2018, Alabama was recognized to
11 have more than 1,100 miles and nearly
12 5,600 acres of natural waters of
13 outstanding quality that are
14 considered important. Alabama also
15 has more than 40,000 acres of
16 exceptionally high quality waters
17 resulting from the impoundment of
18 water courses into reservoirs with the
19 Treasured Alabama Lakes designation.
20 Conversely, on the other end of the
21 scale, the number of miles of water
22 courses in the lowest use category,
23 which is below the fish and wildlife

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1 classification and suitable only for
2 industrial and agricultural use, has
3 declined from more than 700 miles to
4 just over 100 miles.
5 Since 1982, Alabama has seen a
6 dramatic increase in waters qualifying
7 for the highest quality designations
8 and use classifications and, likewise,
9 a dramatic decrease in those falling
10 into the lowest classifications.
11 As measured by drinking water,
12 impaired water bodies, and water body
13 designations and use classifications,
14 water quality in Alabama has improved
15 significantly over the years.
16 Moving on to data from the land
17 media, we begin by looking at an area
18 that has had heightened -- a
19 heightened level of public interest in
20 the last few years, landfills.
21 Landfills are a necessary feature if
22 we are to dispose of solid waste
23 generated by each of us in a safe,

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1 efficient, and effective manner. In
2 1989, Alabama had 141 municipal solid
3 waste landfills. All of those have
4 been closed, and today there are 32
5 state-of-the-art lined MSW permitted
6 landfills handling all of the
7 municipal waste in Alabama. Alabama,
8 like other states, has had to deal
9 with not only permitted landfills but
10 also with unauthorized solid waste
11 dumps. Since 2009, nearly 1,900
12 unauthorized solid waste dumps have
13 been remediated. More than 1,300 of
14 those have been remediated by actions
15 against responsible parties, while
16 more than 500, representing innocent
17 landowners, have been cleaned up using
18 funds provided by the \$1-per-ton fee
19 for solid waste disposed of in
20 landfills, which was initiated in
21 2009.
22 In addition to safely disposing of
23 solid waste, efforts have been

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1 expanding to reduce the total amount
2 of solid waste in Alabama by promoting
3 recycling. Once again, there has been
4 significant progress made over the
5 years. The solid waste reduction rate
6 in Alabama today is five times what it
7 was in 1989 and, in 2018, for the
8 first time, the 25 percent recycling
9 goal set back in 1991 has been met.
10 The total now comes to more than 2.4
11 million tons per year. That's an
12 important accomplishment. Scrap tires
13 present special problems as fire
14 hazards and breeding grounds for
15 vectors. Since 2006, more than 300
16 illegal scrap tire dumps containing
17 nearly ten million tires have been
18 cleaned up. Today, solid waste in
19 Alabama's environment is being dealt
20 with far more responsibly.
21 In the past, underground storage
22 tanks typically found at gas stations
23 have been subject to leaks due to

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1 corrosion or physical damage. Leaking
2 petroleum products contaminate both
3 soil and groundwater. New regulations
4 and technology now prevent or provide
5 for early detection of leaks from
6 tanks installed in recent years, but
7 many legacy sites exist in Alabama and
8 throughout the nation. Since 1989,
9 more than 12,000 leak sites have been
10 identified in Alabama. More than
11 11,000, or 92 percent, have been
12 cleaned up, with the remaining 1,000
13 in some stage of the cleanup process.
14 There is much less contaminated soil
15 and groundwater in Alabama now than
16 there was in 2000 -- in 1989.
17 The final state of the environment
18 slide shows what has been happening
19 with other contaminated legacy sites
20 known as brownfields. These most
21 often are old industrial sites. As
22 with underground storage tanks, new
23 regulatory programs and technology

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1 have all but halted the creation of
2 new brownfield sites. The brownfield
3 program has identified nearly 600 --
4 approximately 600 legacy brownfield
5 sites. Since 2001, 400 of those sites
6 totaling more than 5,000 acres have
7 been returned to productive use, and
8 81 of the remaining sites totaling
9 more than 7,000 acres are actively
10 enrolled in the brownfields program.
11 The land returned to productive use is
12 very often in prime areas for future
13 industrial development. Both the
14 environment and the economic prospects
15 in Alabama have been improved since
16 2001 because of this program.
17 The quality of Alabama's
18 environment has been improving
19 continuously over the years. The data
20 shows the progress. The progress has
21 come through the cooperative efforts
22 of federal and state regulatory
23 agencies as well as industry, the

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1 environmental community, and involved
2 citizens. That's not to say there was
3 always agreement among all the players
4 about important issues. Quite the
5 contrary, opposing points of view
6 are -- often occurred, and often, that
7 led to better results. Results are
8 what we all look for. This report is
9 a look back at some highlights of
10 achievements and is a commitment to
11 continue the work. The state of the
12 environment in Alabama is much
13 improved over what it was 20 to 30
14 years ago. Our citizens breathe
15 cleaner air, have higher quality
16 water, and can be assured that solid
17 waste management and contaminated land
18 remediation have significantly
19 progressed. The current state of the
20 environment in Alabama is very good,
21 and all trends are favorable.
22 Recently, there has been some
23 heightened public interest in several

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1 potential or actual violations of
2 environmental regulations in Alabama
3 and possible enforcement actions.
4 ADEM regulates approximately 35,000
5 facilities in Alabama. The objective
6 of all our environmental programs is
7 to obtain the highest level of
8 compliance with environmental
9 regulations and permit conditions by
10 the regulated industries. Using a pie
11 chart representation, research has
12 shown that the biggest contributors to
13 compliance directly and indirectly
14 are -- excuse me, I went in the wrong
15 direction -- there we go --
16 Inspections, the solid dark orange
17 portion being when the inspection is
18 directly on the facility, and the
19 light orange portion being when the
20 inspection is known to have occurred
21 at another facility, is the largest
22 driver of compliance at a total of 47
23 percent. Technical assistance or

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1 education, the solid green -- dark
2 green portion being direct and the
3 light green portion being indirect, is
4 next at 44 percent. And then direct
5 and indirect penalties, the dark and
6 light red portions, is third at nine
7 percent. The Department has been
8 among the -- has among the highest
9 inspection rates in the nation. ADEM
10 also has one of the highest rates of
11 informal enforcement which is a form
12 of technical assistance or education.
13 Penalties in Alabama are consistent
14 with the rest of the nation. Our
15 objectives are to let permit holders
16 be aware that we are staying informed
17 about their operations, and to help
18 permit holders stay in compliance
19 rather than just punishing them when
20 they are out of compliance. The high
21 inspection rate and informal
22 enforcement are the major reasons
23 Alabama has one of the lowest

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1 violation rates in the nation;
2 however, violations do occur.
3 When violations do occur, the first
4 priorities are to stop any continuing
5 violation and clean up or remediate
6 the impacted area. The Department
7 follows a systematic enforcement
8 process that can be tailored to
9 address a given set of circumstances.
10 The process involves a number of
11 steps. First, a possible violation
12 must be identified. This can occur in
13 several ways including a citizen
14 complaint, an inspection, regular data
15 submission from the facility, or self-
16 reported violation. Second, the
17 Department must determine it has the
18 legal authority to take enforcement
19 action. Authority must be granted
20 under state law. Third, the matter
21 must undergo investigation where
22 scientific data is gathered and
23 analyzed and the root cause

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1 and with or without a penalty; a
2 consent order or settlement agreement
3 with or without penalty; a cease and
4 desist order; or a court action.
5 Penalties under administrative orders
6 are determined in accordance with
7 Alabama environmental statutes
8 weighing six factors including: The
9 seriousness of the violation, the
10 standard of care exercised by the
11 entity, any history of violations, and
12 any economic benefit gained. Those
13 accused of violating environmental
14 regulations or permit conditions are
15 afforded an opportunity to have an
16 informal conference, or a show cause
17 meeting, to tell their side of the
18 story. Formal enforcement actions,
19 which include a penalty, are put on
20 public notice and posted on the
21 Department's website. Finally, in
22 accordance with the Alabama
23 Environmental Management Act, the

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1 determined. Next, there must be a
2 properly developed standard against
3 which a possible violation be
4 measured -- must be measured and a
5 determination of what environmental
6 regulation or permit condition has
7 been violated.
8 Next, the appropriate level of
9 enforcement is determined. A number
10 of factors are considered. Violations
11 can be caused by human error, process
12 failures, or natural disasters. The
13 seriousness of the violation is
14 considered. For example, a paperwork
15 error may be less serious than a
16 violation impacting human health or
17 the environment. Next, violations may
18 be the result of intentional,
19 unintentional, or negligent actions.
20 Enforcement options include a warning;
21 a formal notice of violation; an
22 administrative order, meaning that it
23 is without the consent of the violator

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1 violator may appeal the Department's
2 enforcement action to the
3 Environmental Management Commission,
4 then to the Alabama state courts.
5 That completes today's report. I
6 will be pleased to answer any
7 questions you may have.
8 DR. MILLER: Any questions?
9 (No response was heard.)
10 MR. LEFLEUR: Okay. Thank you.
11 DR. MILLER: The Commission Chair
12 has no report for today.
13 Our next item is consider amendment
14 to ADEM Administrative Code 335-5, and
15 we will call on the Department for
16 comments.
17 MR. COBB: Thank you, Mr. Chairman,
18 and good morning, Commissioners. I'm
19 Stephen Cobb, Chief of the Land
20 Division, and I am here today to
21 recommend that the Commission adopt
22 the proposed amendments to the
23 Department's Division 5 Uniform

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1 Environmental Covenants Program
2 regulations. These amendments propose
3 to revise the requirements for
4 submitting multiple paper copies in an
5 effort to reduce paper waste and to
6 amend the covenant registry process to
7 allow for the recording of recording
8 instruments as is described in the
9 Unified -- Uniform Environmental
10 Covenant program. The proposed
11 revisions to the covenant program
12 regulations were the subject of a
13 public comment period that ran from
14 May 26th, 2019 to July 11th, 2019, and
15 a public hearing was held at the
16 Department on July 11th. No written
17 comments were received by the
18 Department during the public notice
19 period. The revised regulations are
20 presented to you today for your
21 consideration, and the Department asks
22 that the Commission adopt the proposed
23 changes to these regulations.

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1 I will be happy to answer any
2 questions that you might have.
3 DR. MILLER: Thank you. All right.
4 I will entertain a motion from the
5 Commission regarding these proposed
6 amendments to the Uniform
7 Environmental Covenants program.
8 MR. WALTERS: I move to adopt the
9 proposed amendments.
10 DR. MILLER: Is there a second?
11 MR. MASINGILL: Second.
12 DR. MILLER: Moved and seconded.
13 Any further discussion?
14 (No response was heard.)
15 DR. MILLER: If not, I'll call for
16 the question. All that are -- move to
17 adopt the proposed regulations, please
18 signify by saying aye.
19 (A unanimous consent was
20 heard.)
21 DR. MILLER: All opposed, no. The
22 motion has been adopted.
23 MR. COBB: Thank you.

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1 DR. MILLER: Our next agenda item
2 is the Commission will consider
3 proposed amendments to the ADEM
4 Administrative Code 335-6, the Water
5 Quality Program Regulations. I will
6 call on the Department for discussion.
7 Thank you.
8 MR. KITCHENS: Mr. Chairman,
9 members of the Commission, I am Jeff
10 Kitchens. I am the Chief of the
11 Department's Water Division. You have
12 before you the complete hearing record
13 for proposed revisions to the Water
14 Program Division 6 regulations. On
15 April 21, 2019, the Department
16 initiated the rulemaking process to
17 consider proposed revisions to ADEM
18 Administrative Code, Chapter 335-6-6,
19 which sets forth the NPDES program
20 regulations. The Department's
21 proposed revisions reflect revisions
22 to the federal regulations promulgated
23 in the final rule referred to as the

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1 NPDES program update rule. This
2 rulemaking also included one unrelated
3 administrative revision. The most
4 notable revision in this rulemaking is
5 changing the minimum required method
6 of public notice for permits and
7 permit-related public hearings from
8 being published in the newspapers to
9 being posted on the Department's
10 website. On June 10th, 2019, a public
11 hearing was held to receive comments
12 from interested persons regarding the
13 proposed revisions. Written comments
14 were accepted any time during the
15 public comment period, which extended
16 from April 21 through June 10, 2019.
17 Only one person provided comments on
18 the proposed revisions. As noted in
19 the reconciliation statement provided
20 to you, the Department determined that
21 the comments received did not
22 necessitate any changes to the
23 proposed rule. The Department

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1 respectfully requests that the
2 Commission adopt the rules revisions
3 as proposed, and I will be happy to
4 answer any questions that you may
5 have.
6 DR. MILLER: Any questions for the
7 Department?
8 (No response was heard.)
9 DR. MILLER: All right. At this
10 point, we will entertain a motion to
11 adopt the proposed amendments.
12 MR. MASINGILL: I move to adopt the
13 proposed amendments.
14 DR. PERRY: Second.
15 DR. MILLER: It's been moved and
16 seconded. Is there any further
17 discussion?
18 (No response was heard.)
19 DR. MILLER: If not, I'll call for
20 the question. All in favor, say aye.
21 (A unanimous consent was
22 heard.)
23 DR. MILLER: All opposed, no. It's

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1 been passed. All right.
2 Our next agenda item is
3 consideration of a proposed amendment
4 to Administrative Code 335-6, and
5 we'll call on the Department again.
6 MR. KITCHENS: Mr. Chairman,
7 members of the Commission, you have
8 before you the complete hearing record
9 for proposed changes to the Water
10 Quality Program Regulations found in
11 ADEM Administrative Code 335-6-11. On
12 May 26th, 2019, the Department
13 initiated the rulemaking process to
14 propose the addition of the public
15 water supply use classification to a
16 segment of the Duck River within Duck
17 River Reservoir in the Black Warrior
18 River Basin. The Department held a
19 public hearing on July the 11th, 2019,
20 to receive data, views, and comments
21 from interested persons regarding the
22 proposed rule revisions. Written
23 comments were accepted any time during

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1 the public comment period which
2 extended from May 26th to July 11,
3 2019. During the comment period, the
4 Department received written comments
5 from one organization. At the public
6 hearing on July the 11th, 2019, one
7 person presented oral testimony. All
8 comments received were supportive of
9 the Department's proposed changes;
10 however, a water body name change was
11 requested. As discussed in the
12 reconciliation statement, the
13 Department requests that the
14 Commission adopt the changes to the
15 regulations with the revisions as
16 proposed, and I will be happy to
17 answer any questions that you may have
18 on this one.
19 DR. MILLER: Are there any
20 questions?
21 MR. WALTERS: What was the name
22 change request?
23 MR. KITCHENS: Originally, we had

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1 proposed the reservoir to be called
2 Duck Creek of Duck River Lake, and
3 the -- the organization asked for it
4 to be called Duck River -- River
5 Reservoir due to some branding
6 opportunities that they've done in the
7 past.
8 DR. MILLER: Which way did you go?
9 MR. KITCHENS: We changed it to --
10 we proposed to change it to Duck River
11 Reservoir as requested by the
12 commenters.
13 DR. MILLER: Okay. All right.
14 Well, I'm going to call for the
15 question on this proposed amendment.
16 Do I have a --
17 DR. PERRY: I move to adopt that
18 proposed amendment.
19 MR. MASINGILL: Second.
20 DR. MILLER: Moved and seconded.
21 Any further discussion?
22 (No response was heard.)
23 DR. MILLER: If not, I'll call for

<p style="text-align: right;">Page 37</p> <p>1 the question. All in favor, say aye. 2 (A unanimous consent was 3 heard.) 4 DR. MILLER: All opposed, no. 5 MR. KITCHENS: Thank you. 6 DR. MILLER: Thank you. Our next 7 agenda item is listed as Other 8 Business. I have no other business. 9 Are there any Commissioners who do 10 have other business items that they 11 would like to discuss? 12 (No response was heard.) 13 DR. MILLER: All right. Our next 14 session is October the 18th, 2019. 15 Does anybody have a known conflict at 16 this point for that date? 17 (No response was heard.) 18 DR. MILLER: I see no known 19 conflict available. All right. 20 Now, our next item on the menu is a 21 public comment period, and we have 22 three registered comments, the first 23 from Mayor McCarty of Wilsonville.</p>	<p style="text-align: right;">Page 39</p> <p>1 how to proceed with closure as a 2 binary choice between two options, 3 closure in place versus closure by 4 removal, that is, closure by capping 5 the coal ash impoundments where they 6 are versus closure by excavating and 7 placing the coal ash waste in a new, 8 more secure impoundment. In choosing 9 between these options, the Court must 10 not mechanically select a harsher or 11 more lenient choice, but instead 12 exercise flexibility rather than 13 rigidity to mold its decree to the 14 necessities of the particular case. 15 Closure in place has the clear 16 benefits of being both faster and less 17 expensive than closure by removal. 18 TVA has also persuasively argued that 19 there are some risks that's associated 20 with excavation of coal ash on the 21 scale that would be required here. 22 The contamination from this particular 23 plant, at least in recent years,</p>
<p style="text-align: right;">Page 38</p> <p>1 MR. MCCARTY: Good morning, 2 Mr. Chairman. 3 DR. MILLER: Good morning. 4 MR. MCCARTY: Members of the 5 Commission, thank y'all very much for 6 letting me come to speak again. Y'all 7 asked me to e-mail you some stuff 8 which I did after one failed attempt, 9 and I -- I didn't get the attachments 10 right. And anyway I wanted to cover 11 this opinion here written by Judge 12 Waverly Crenshaw, because this opinion 13 has everything in it you need to know 14 about coal ash, but the power 15 companies were afraid you would ask. 16 Please turn to the pink tab. I just 17 want to read this into the record of 18 how Judge Crenshaw ended this 19 gigantically large opinion. 20 Paragraph 491 here: Although the 21 Court has searched in vain for a 22 compromise position, the parties have 23 consistently presented the question of</p>	<p style="text-align: right;">Page 40</p> <p>1 apparently has been mild compared to 2 what could result from a catastrophic 3 event such as a spill during removal 4 or the accidental triggering of a 5 larger failure in the pond floor. The 6 Court, therefore, does not take the 7 possibility of closure by removal 8 lightly, and if the Court were 9 convinced that closure in place would 10 be adequate, that is the relief the 11 Court would order. The evidence 12 before the Court, however, offers no 13 such assurances, and, in fact, offers 14 ample reason to doubt that closure in 15 place could actually put an end to the 16 inadvertent discharges that have 17 plagued this ash pond. For example -- 18 well, let's skip 494. I'm probably 19 going to run a little short on time. 20 Go to 495. If closure in place did 21 prove inadequate, the likely if not 22 inevitable result would be yet more 23 litigation, and, of course, decade</p>

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1 after decades of public simply having
2 to hope that whatever unplanned
3 incidental leakage that was coming
4 from the impoundments was not enough
5 to do them significant harm. The
6 history of this particular site offers
7 a grim preview of what it means to
8 leave an abandoned unlined coal ash
9 waste pond in place next to a river.
10 The site has not been a waste
11 treatment facility for over 45 years.
12 It has been closed for almost 20.
13 Still, water infiltrates it. Still,
14 it leaks pollutants. Still, counsel
15 for TVA and counsel for environmental
16 groups are locked in conflict of
17 what -- about what can be done and
18 what should be done. This particular
19 site is not even located in karst
20 terrain, which the one in Wilsonville
21 is, meaning that the risks associated
22 will likely even be greater. As long
23 as the ash remains where it is, there

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1 these two unappealing options, the
2 Court is impelled to select the one
3 that actually, reliably, puts an end
4 to this saga. Accordingly, the Court
5 will order TVA to fully excavate the
6 coal ash waste currently located in
7 these ponds. The Court understands
8 that the technical challenges of such
9 a process are significant and that
10 finalizing a plan for closure may take
11 a great deal of time. 502, the Court
12 is fully cognizant of the costs its
13 chosen remedy would impose. 503,
14 while the burden of closure by removal
15 may be great, it is the only adequate
16 resolution to an untenable situation
17 that has gone on far too long. From
18 the Court's privileged advantage,
19 pointing to 2017 and based on all of
20 the evidence presented at trial, it is
21 difficult to imagine why anyone would
22 choose to build an unlined ash pond in
23 karst terrain immediately adjacent to

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1 is every reason to think that the
2 dangers, uncertainties, and conflicts
3 giving rise to this case will survive
4 another 20 years, 45 years, or more.
5 While the process of closure by
6 removal would not be swift, it would
7 at least be an end. Some of this is
8 technical right through here in these
9 next -- please turn over to Number
10 500. Ultimately, then, the Court is
11 confronted with two possible futures,
12 each unpalatable in its own way. In
13 one future, TVA closes the ponds in
14 place, and all the uncertainty that
15 has characterized the first 60 years
16 of this operation continues in
17 modified form in perpetuity. In the
18 other future, TVA expends
19 significantly more money and effort,
20 but the coal ash waste is finally
21 removed to an impoundment that is not
22 plagued by the intractable flaws of
23 its ponds' current design. Faced with

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1 a river. The Court, however,
2 understands that it is now the
3 beneficiary of technical knowledge and
4 environmental resources that may not
5 have informed the decision-making of a
6 half a century ago. The futility of
7 second guessing such decades-old
8 actions is one reason that the state
9 of Tennessee has a statute -- or the
10 Clean Water Act has a statute of
11 limitations. Nevertheless, while the
12 decision to build an ash pond complex
13 is in the past, the consequences of
14 that decision continue today, and it
15 now falls on the Court to address
16 them. The way to do this is not to
17 cover up those decades-old mistakes,
18 but to pull them up by their roots.
19 TVA, as the entity responsible for the
20 ponds, must be the entity to do so.
21 This exactly corresponds to the
22 situation in Wilsonville except there
23 has not been a major spill at this

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1 particular place. This exactly
2 corresponds to what's going on in
3 Wilsonville.
4 Now, please read this entire
5 opinion, because this entire opinion
6 goes through the extremely logical and
7 methodical way this judge approached
8 this. Even more significant, this
9 case was later overturned in an
10 appellate court in a two-to-one
11 opinion. The dissent was limited.
12 Mr. Counselor, no findings of fact
13 were overturned. In fact, TVA didn't
14 really push trying to overturn the
15 findings of fact. They pushed
16 technicalities. It was overturned on
17 a technicality. TDEC, your equivalent
18 in Tennessee, pursued the matter, and
19 now TVA -- TVA has agreed to remove
20 the coal ash in spite of a federal
21 court ruling saying they didn't have
22 to.
23 DR. MILLER: Thank you, Mr. Mayor.

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1 MR. MCCARTY: You bet. Thank you.
2 I appreciate all y'all's time. In
3 fact, I've got a couple more handouts
4 here I'll ask Mr. Esquire to...
5 DR. MILLER: Our next presenter is
6 Michael Mullen from the Choctawhatchee
7 Riverkeeper.
8 MR. MULLEN: Thank you for this
9 opportunity. I'll be very brief. I
10 know you-all know the mission
11 statement, but I hope that you will
12 think about this Department's mission
13 statements which, by all reason, is
14 your mission statement as well. The
15 mission of ADEM is to ensure the --
16 ensure for all citizens of the state a
17 safe, healthful, and productive
18 environment. I ask you to, in all
19 your decisions, in all your
20 expectations of the Department, to
21 keep this mission statement. First
22 and foremost before you, is the
23 Department fulfilling its mission on

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1 making continuous progress toward
2 fulfilling its mission statement? Are
3 your actions in line with the
4 fulfillment of the mission statement?
5 You know, the Department is doing many
6 good things. There has been much
7 progress since -- since 1982, but
8 there are some areas where the
9 Department is not really doing that
10 good a job. Some of these stats that
11 the Director uses are national stats.
12 They don't get down into some of the
13 permit areas. Wastewater treatment
14 plant operations, for example. In
15 many cases when there's a settlement,
16 it does not specify -- or there's a
17 legal action -- it does not specify a
18 date certain for cleanup. If we're
19 going to protect the citizens of
20 Alabama, these orders, these decisions
21 should have a date certain, or -- or a
22 goal, good solid goals for that. On
23 construction site issues -- and I deal

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1 with those a lot because I'm a
2 certified professional erosion and
3 sediment control -- and I see lots of
4 problems in that area. I urge you, if
5 you have the time, go pull up the
6 eFile database and start looking and
7 see how many FID -- how many
8 facilities you see identified by FID
9 numbers. Those are assigned when an
10 entity does not have a permit. It is
11 16 years after the start of this
12 program that -- that pushed down the
13 acreage numbers for requiring
14 construction operators to get a
15 permit. You see -- we see way too
16 many FID numbers out there. We also
17 don't see rapid return to compliance
18 in many cases, and I'll give you an
19 example without any names, locations,
20 or anything, the site that I filed a
21 complaint about in January or
22 February, it was inspected rather --
23 inspected fairly quickly, March the

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1 1st. An ENO -- a notice of violation
2 was issued the 27th of March. Not
3 until ADEM did another inspection, or
4 the entity knew that ADEM was going to
5 do another inspection, the last week
6 or so, was that site brought into
7 compliance. I have this feeling, and
8 I don't know how ADEM did this, I
9 don't know the history, but I think
10 that construction permits are dealt
11 with on a similar way that wastewater
12 permits are. The situation is
13 different. The time scales are
14 different. You know, we shouldn't
15 have a 30-day period between an
16 inspection finding problems and either
17 a cease order or an -- you know, some
18 kind of action being taken. So I
19 probably said all I want to say.
20 The other -- other -- other issue
21 that I have a lot of concern about,
22 yes, all these things are in place on
23 how -- on how permitting decisions are

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1 made, on how enforcement actions are
2 taken, but there's very little
3 transparency. There's not very much
4 detail, and there's very little
5 transparency, and that's another area.
6 If citizens are going to be able to
7 look at and respect this agency and
8 feel that it is working on behalf of
9 fulfilling this mission statement,
10 there will be much more transparency
11 in the Department.
12 And I thank you for this time.
13 Thank you.
14 DR. MILLER: Thank you, Mr. Mullen.
15 Next is Casi Callaway from Mobile
16 Baykeeper.
17 MS. CALLAWAY: Thank you. I want
18 to thank you for the opportunity to be
19 here. And I want to talk a little bit
20 more and follow up with what Mayor
21 McCarty said about coal ash. I think
22 there's some issues that I want to
23 make sure y'all are really clear on,

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1 and I want to start with really
2 praising the Director and the
3 leadership at ADEM and all of those
4 numbers that you're seeing on that --
5 on that podium. One of the -- on the
6 screen. A lot -- we -- I'm excited to
7 look into those and figure out how
8 they're working in our community. I
9 want to see how they're more in our
10 area. The numbers are a little bit
11 not as great in the coastal Alabama
12 area, so maybe I need to take some
13 ownership over that. We are always
14 thrilled that when we call, ADEM will
15 come, so there's some really great
16 things with that. I think the
17 challenge we're looking at though with
18 coal ash is if Alabama is going to
19 lead, if we're going to be only behind
20 Hawaii on an issue, or only behind a
21 couple of other states on an issue,
22 this is one where we need to be there
23 as well. Example is Virginia. When

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1 Virginia -- what Virginia state
2 legislature did is they said, Look
3 at -- they told the utilities, We
4 appreciate that you say closing the
5 place is the best method. Show us.
6 Show us your math. Get a third-party
7 consultant to come in, review
8 everything, make that public.
9 And then they -- and tell us, How
10 much is it going to cost? How long is
11 it going to take to close it, but also
12 how permanent is that closure? What
13 is that going to look like?
14 Then Virginia state legislature
15 went back again and said, Oh, by the
16 way, include recycling.
17 I love that Alabama's numbers on
18 recycling are so huge. It's beautiful
19 to see that we've improved so much.
20 You can recycle ash -- coal ash into
21 concrete easily, and companies want to
22 do it, especially as we're developing.
23 Y'all might have heard we want to

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1 build a new bridge down in coastal
 2 Alabama. A lot of concrete needed for
 3 that. The state of Virginia is doing
 4 it. The state of North Carolina's
 5 Department of Environmental Quality
 6 after Hurricane Florence said, The
 7 science is clear. You must dig up
 8 this ash, move it to an upland and
 9 lined landfill away from our rivers.
 10 That is what -- is the only
 11 permanent -- that puts an end to coal
 12 ash. North Carolina, South Carolina,
 13 Virginia, Tennessee, Georgia Power,
 14 each of these -- Georgia Power, not
 15 the state, not the legislature, not
 16 the -- not the agencies, but the
 17 company itself is saying, We're going
 18 to dig it up and move it.
 19 Alabama can lead on this issue, and
 20 we need Alabama to lead on this issue.
 21 I live in a coastal community. Y'all
 22 know this. What we know about our
 23 Plant Barry is it's 21 million tons of

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1 coal ash behind a dam made of clay,
 2 dirt, and coal ash. It is right
 3 alongside one of the fastest-moving
 4 rivers in our state at 67,000 cubic feet
 5 per second. It is in a wetland, it is
 6 in a high-velocity flood zone, it is a
 7 place that is prone to hurricanes, more
 8 importantly than anything else. Then
 9 what you look at is how much the BP oil
 10 disaster hit our community. One summer,
 11 three months, was an economic hit to the
 12 state of Alabama of a billion dollars.
 13 The volume behind the coal ash pond at
 14 Plant Barry alone is 20 times the volume
 15 of the BP oil spill. We have an
 16 obligation, and you have a
 17 responsibility to insist that Alabama
 18 Power show its math. How are you doing
 19 this? Prove that -- I think the way
 20 we're going to solve it or show that
 21 we're out of groundwater is monitored
 22 natural attenuation. That's check and
 23 hope. We need and we deserve better

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1 than that. We ask that the
 2 Environmental Management Commission lead
 3 on this, that you encourage and demand
 4 that your -- your officers at the state
 5 lead on this issue. Close these ponds
 6 permanently, put an end to coal ash. We
 7 didn't know what we were doing in the
 8 '50s. We're not mad at anybody for what
 9 we did in the past, but we know today,
 10 and we need to do the right thing today.
 11 Thank y'all so much.
 12 DR. MILLER: Thank you. I think
 13 that's all of our speakers for today,
 14 and I will entertain a motion that the
 15 Commission adjourn.
 16 MR. JOHNSON: Chairman -- Chairman
 17 Miller, is there any -- I was a little
 18 late getting in. Is there any chance I
 19 could do a --
 20 DR. MILLER: I'm sorry. Who are you?
 21 MR. JOHNSON: I'm Keith Johnson with
 22 the Southern Environmental Law Center,
 23 and I was late. I didn't get to sign up

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1 for the --
 2 DR. MILLER: Maybe you should do it
 3 next time.
 4 MR. JOHNSON: Okay. Thank you.
 5 DR. MILLER: I move that -- is there
 6 a motion to adjourn?
 7 MR. WALTERS: So moved.
 8 DR. MILLER: Second?
 9 MR. MASINGILL: Second.
 10 DR. MILLER: All approving that, say
 11 aye.
 12 (A unanimous consent was
 13 heard.)
 14 DR. MILLER: All right. Thank you.
 15 (Whereupon, the hearing
 16 concluded at 11:55 a.m.)
 17
 18
 19
 20
 21
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 23 * * * * *

1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA
3 MONTGOMERY COUNTY
4 I, Patrick Miller, Alabama Certified
5 Court Reporter No. 631, and Commissioner for the
6 State of Alabama at Large, hereby certify that on
7 Friday, August 16th, 2019, I reported the
8 PROCEEDINGS in the matter of the foregoing cause,
9 and that the pages herein contain a true and
10 accurate transcription of said proceedings.
11 I further certify that I am neither kin
12 nor of counsel to the parties to said cause, nor
13 in any manner interested in the results thereof.
14 This 28th day of August, 2019.
15
16
17
18 _____
19 PATRICK MILLER, ACCR-631
20 Commissioner for the
21 State of Alabama at Large
22 MY LICENSE EXPIRES: 9/30/2019
23 MY COMMISSION EXPIRES: 2/08/23

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20 Commissioner for the
21 State of Alabama at Large
22 MY LICENSE EXPIRES: 9/30/2019
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<p>unrelated (1) 32:2</p> <p>untenable (1) 43:16</p> <p>up (12) 8:17;18:17;19:18; 20:12;25:5;44:17,18; 48:5;50:20;53:7,18; 55:23</p> <p>update (2) 4:9;32:1</p> <p>upgrades (3) 5:14,18;6:3</p> <p>upland (1) 53:8</p> <p>urge (1) 48:4</p> <p>use (8) 15:22;16:22;17:2,8, 13;21:7,11;34:15</p> <p>uses (1) 47:11</p> <p>using (4) 6:12,17;18:17;23:10</p> <p>UST (1) 5:20</p> <p>utilities (1) 52:3</p>	<p style="text-align: center;">W</p> <p>WALTERS (3) 30:8;35:21;56:7</p> <p>warning (1) 26:20</p> <p>Warrior (1) 34:17</p> <p>waste (17) 17:22;18:3,7,10,12, 19,23;19:2,5,18;22:17; 29:5;39:7;41:9,10; 42:20;43:6</p> <p>Wastewater (2) 47:13;49:11</p> <p>Water (46) 6:7;7:21;8:2;9:7,13; 11:14,15,15,20;12:2,9, 11,14,18;13:1,3,5,8,9, 11,19,23;14:7,18,23; 15:1,2,15,17,20,20; 16:18,21;17:11,12,12, 14;22:16;31:4,11,13; 34:9,15;35:10;41:13; 44:10</p> <p>waters (7) 13:7;16:4,5,7,12,16; 17:6</p> <p>Waverly (1) 38:12</p> <p>way (8) 36:8;42:12;44:16; 45:7;48:15;49:11; 52:16;54:19</p> <p>ways (1) 25:13</p> <p>website (2) 27:21;32:10</p> <p>week (1) 49:5</p> <p>weeks (1) 5:15</p> <p>weighing (1) 27:8</p> <p>Welcome (1) 3:3</p> <p>wetland (1) 54:5</p> <p>what's (1) 45:2</p> <p>Whereupon (1) 56:15</p> <p>wildlife (1) 16:23</p> <p>Wilsonville (4) 37:23;41:20;44:22; 45:3</p> <p>within (2) 5:17;34:16</p> <p>without (4) 26:23;27:1,3;48:19</p> <p>work (3)</p>	<p>5:21;8:23;22:11</p> <p>working (2) 50:8;51:8</p> <p>written (5) 29:16;32:13;34:22; 35:4;38:11</p> <p>wrong (1) 23:14</p> <p style="text-align: center;">Y</p> <p>y'all (6) 38:5,6;50:23;52:23; 53:21;55:11</p> <p>y'all's (1) 46:2</p> <p>Year (4) 4:8,17;6:5;19:11</p> <p>years (22) 6:4,23;7:8,20,22;8:4, 7;11:5;14:7;15:19; 17:15,20;19:5;20:6; 21:19;22:14;39:23; 41:11;42:4,4,15;48:11</p> <p>you-all (1) 46:10</p> <p style="text-align: center;">Z</p> <p>zone (1) 54:6</p> <p style="text-align: center;">1</p> <p>1,000 (1) 20:12</p> <p>1,100 (1) 16:11</p> <p>1,300 (1) 18:13</p> <p>1,900 (1) 18:11</p> <p>10 (1) 32:16</p> <p>100 (1) 17:4</p> <p>10th (1) 32:10</p> <p>11 (1) 35:2</p> <p>11,000 (1) 20:11</p> <p>11:00 (1) 1:14</p> <p>11:55 (1) 56:16</p> <p>11th (4) 29:14,16;34:19;35:6</p> <p>12,000 (2) 14:11;20:9</p> <p>1400 (1) 1:11</p> <p>141 (1)</p>	<p>18:2</p> <p>16 (2) 1:13;48:11</p> <p>16th (1) 3:3</p> <p>18 (1) 8:7</p> <p>18th (1) 37:14</p> <p>19 (1) 7:22</p> <p>1971 (4) 10:10,20,21;11:1</p> <p>1977 (1) 10:20</p> <p>1982 (7) 12:1,13;13:4;16:1,6; 17:5;47:7</p> <p>1989 (4) 18:2;19:7;20:8,16</p> <p>1990 (2) 11:8,13</p> <p>1991 (1) 19:9</p> <p>1998 (6) 7:8,19,23;8:8;14:10; 15:4</p> <p>1st (2) 4:19;49:1</p> <p style="text-align: center;">2</p> <p>2 (1) 4:2</p> <p>2.4 (1) 19:10</p> <p>20 (6) 6:23;7:20;22:13; 41:12;42:4;54:14</p> <p>2000 (1) 20:16</p> <p>2001 (2) 21:5,16</p> <p>2006 (1) 19:15</p> <p>2008 (1) 10:11</p> <p>2009 (2) 18:11,21</p> <p>2010 (1) 4:22</p> <p>2013 (3) 8:18;10:18;11:4</p> <p>2014 (1) 10:19</p> <p>2015 (2) 10:22,22</p> <p>2016 (1) 6:15</p> <p>2017 (1) 43:19</p> <p>2018 (10) 7:17;9:1;10:11;11:4;</p>	<p>14:11,14;15:4,9;16:10; 19:7</p> <p>2019 (15) 1:13;3:4,7,12;4:8; 29:14,14;31:15;32:10, 16;34:12,19;35:3,6; 37:14</p> <p>2020 (2) 4:18,20</p> <p>21 (3) 31:15;32:16;53:23</p> <p>21st (2) 3:7,12</p> <p>23 (2) 12:2,16</p> <p>25 (5) 7:22;8:4,7;14:1;19:8</p> <p>26th (3) 29:14;34:12;35:2</p> <p>27th (1) 49:2</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3,300 (1) 14:14</p> <p>30 (2) 6:23;22:13</p> <p>300 (1) 19:15</p> <p>303d (4) 13:7;14:13;15:8,19</p> <p>30-day (1) 49:15</p> <p>32 (1) 18:4</p> <p>335-5 (1) 28:14</p> <p>335-6 (2) 31:4;34:4</p> <p>335-6-11 (1) 34:11</p> <p>335-6-6 (1) 31:18</p> <p>35,000 (1) 23:4</p> <p>36110-2400 (1) 1:12</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>40,000 (1) 16:15</p> <p>400 (1) 21:5</p> <p>400,000 (1) 15:13</p> <p>43 (1) 8:5</p> <p>44 (2) 9:8;24:4</p> <p>45 (3) 5:17;41:11;42:4</p>
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47 (1) 23:22	12:13			
49 (1) 7:21	89 (3) 9:4;12:4,20			
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494 (1) 40:18	90 (1) 8:13			
495 (1) 40:20	92 (2) 7:17;20:11			
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67,000 (1) 54:4				
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Part B

Attachment Index

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**Attachment 2 Director's Slides
(Agenda Item 2)**

**Attachment 3 Resolution adopting amendments to ADEM Administrative Code 335-5,
Uniform Environmental Covenants Program Regulations, and Attachment A –
Adopted Amendments
(Agenda Item 4)**

**Attachment 4 Resolution adopting amendments to ADEM Administrative Code 335-6,
Water Quality Program Regulations, Chapter 335-6-6, National Pollutant
Discharge Elimination System, Rules 335-6-6-.02, 335-6-6-.08, and 335-6-6-.21,
(NPDES-Related Matter) and Attachment A – Adopted Amendments
(Agenda Item 5)**

**Attachment 5 Resolution adopting amendments to ADEM Administrative Code 335-6,
Water Quality Program Regulations, Rule 335-6-11-.02, Use Classifications
(NPDES-Related Matter), and Attachment A – Adopted Amendments
(Agenda Item 6)**

Attachment 1

7/17/19

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: August 16, 2019

TIME: 11:00 a.m.

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

<u>ITEM</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on June 21, 2019**	2
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4. Consideration of proposed amendments to ADEM Administrative Code 335-5, Uniform Environmental Covenants Program Regulations, Rules 335-5-1-.05, 335-5-1-.06, 335-5-1-.07, and 335-5-3-.02	2
5. Consideration of proposed amendments to ADEM Administrative Code 335-6, Water Quality Program Regulations, Chapter 335-6-6, National Pollutant Discharge Elimination System, Rules 335-6-6-.02, 335-6-6-.08, and 335-6-6-.21 (NPDES-Related Matter)	2
6. Consideration of proposed amendments to ADEM Administrative Code 335-6, Water Quality Program Regulations, Rule 335-6-11-.02, Use Classifications (NPDES-Related Matter)	2
7. Other business	2
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PUBLIC COMMENT PERIOD	3
Brief statements by members of the public registered to speak	3

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

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON JUNE 21, 2019
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-5, UNIFORM ENVIRONMENTAL COVENANTS PROGRAM REGULATIONS, RULES 335-5-1-.05, 335-5-1-.06, 335-5-1-.07, AND 335-5-3-.02

The Commission will consider proposed amendments to ADEM Administrative Code 335-5, Uniform Environmental Covenants Program Regulations, Rules 335-5-1-.05, 335-5-1-.06, 335-5-1-.07, and 335-5-3-.02. Revisions to Division 5 Code are being proposed to amend the regulations to align with provisions described in the Uniform Environmental Covenants Act and to clarify programmatic requirements associated with those provisions. The Department held a public hearing on the proposed amendments on July 11, 2019.

5. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-6, WATER QUALITY PROGRAM REGULATIONS, CHAPTER 335-6-6, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM, RULES 335-6-6-.02, 335-6-6-.08, AND 335-6-6-.21 (NPDES-RELATED MATTER)

The Commission will consider proposed amendments to ADEM Administrative Code 335-6, Water Quality Program Regulations, Chapter 335-6-6, National Pollutant Discharge Elimination System, Rules 335-6-6-.02, 335-6-6-.08, and 335-6-6-.21. Amendments to Chapter 335-6-6 incorporate the federal regulation revisions of the NPDES Program Updates published on February 12, 2019 at 84 FR 3324. One federal regulation revision is that NPDES permitting programs now have the option to publish public notices of permit decisions and permit public hearings via web notice in lieu of publishing such notices in newspapers which will be a significant cost savings to the Department. The Department held a public hearing on the proposed amendments on June 10, 2019.

6. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-6, WATER QUALITY PROGRAM REGULATIONS, RULE 335-6-11-.02, USE CLASSIFICATIONS (NPDES-RELATED MATTER)

The Commission will consider proposed amendments to ADEM Administrative Code 335-6, Water Quality Program Regulations, Rule 335-6-11-.02, Use Classifications. Revisions to Division 6 Code are being proposed to revise the water use classifications for the Black Warrior River Basin segments of Duck River (3 segments) in Cullman County. The Department held a public hearing on the proposed amendments on July 11, 2019.

7. OTHER BUSINESS
8. 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

ADEM

**Alabama Department Of
Environmental Management**

**Report
on
State of the Environment in Alabama
to
Alabama Environmental Management
Commission**

August 16, 2019

adem.alabama.gov

ADEM

**Alabama Department Of
Environmental Management**

The Environment: Then verses Now

- What does the Alabama public think?
- What does the data show?



Alabama Department Of Environmental Management

Survey of Public Opinion

- Every 5 years 1998 – 2018 [5 times]
- Correct perceptions:
 - 92% rank environment good vs. 76% in 1998
 - 49% rank water cleaner than 25 yrs ago vs. 19% in 1998
 - 43% rank air cleaner than 25 yrs ago vs. 18% in 1998
 - 90% agree standards are protective of human health and the environment



Alabama Department Of Environmental Management

Survey of Public Opinion

- Incorrect perceptions:
 - 73% do not realize motor vehicles biggest source of air pollution in Alabama and Nation
 - 89% do not realize storm water biggest source of water pollution
 - 44% do not perceive environmental laws are being enforced in Alabama



Alabama Department Of
Environmental Management

AIR DATA



Alabama Department Of
Environmental Management

Air Quality and related standards

- PM2.5
- Ozone
- NO_x
- SO₂
- CO
- Pb
- Haze



Alabama Department Of Environmental Management

Revisions to Air Quality

Standards and Goals

- PM_{2.5} – 1971; 1987; 1997; 2006; 2012
- Ozone – 1971; 1979; 1997; 2008; 2015
- NO_x – 1971; 2010
- SO₂ – 1971; 2010
- CO – 1971
- Pb – 1978; 2008
- Haze – goal for 2018 set in 2008



Alabama Department Of Environmental Management

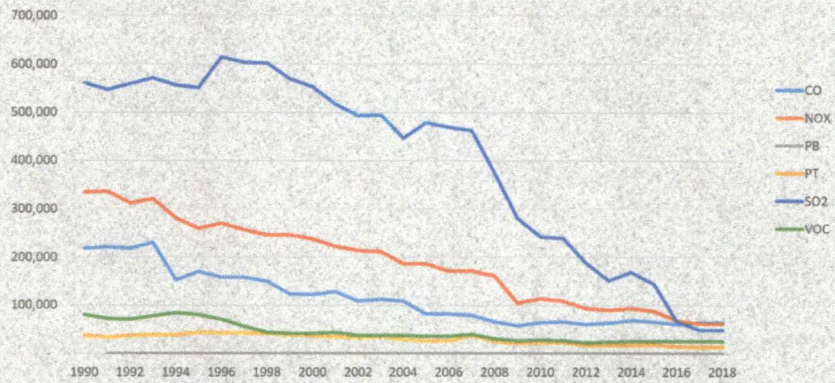
Statewide Attainment of Air Quality and related standards

- PM_{2.5} – 2013
- Ozone – 2014
- NO_x – 1971
- SO₂ – 1977
- CO – 1971
- Pb – 2015
- Haze – 2013



Alabama Department Of Environmental Management

AL Emissions from Major Sources, 1990 - 2018

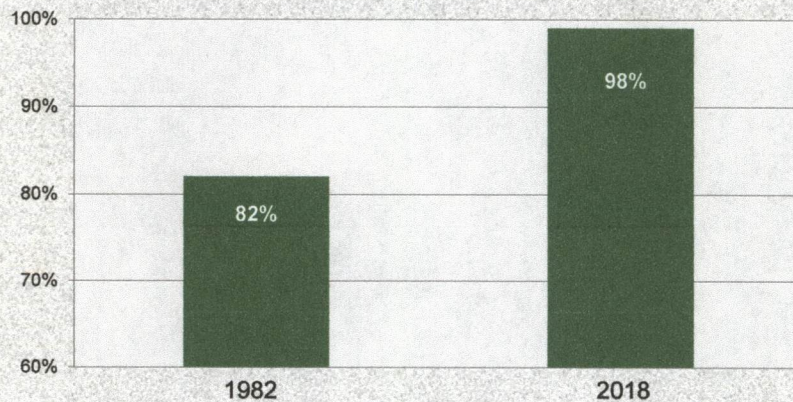


Alabama Department Of Environmental Management

WATER DATA

**Number of Drinking Water Contaminants
Regulated**

	<u>1982</u>	<u>2018</u>
• Organic chemicals	7	55
• Inorganic chemicals	10	19
• Radionuclides	3	7
• Microbes	3	8
Total	23	89

Percentage of Public Water Systems in Compliance



Alabama Department Of Environmental Management

303(d) Impaired water body / pollutant combinations 1998-2018

	<u>Listed</u>	<u>Ending</u>
River/Stream (miles)	11,913	3,276
Lake/Reservoir (1000s ac)	546	224
Ocean/Estuary (1000s ac)	562	463



Alabama Department Of Environmental Management

Water Designations & Classifications

	<u>1982</u>	<u>2018</u>
• Highest Quality Waters:		
— Outstanding National Resource Waters		
> miles	0	805
> acres	0	1,946
— Outstanding Alabama Waters		
> miles	0	343
> acres	0	3,651
— Treasured Alabama Lakes (acres)	0	40,065
• Lowest Use Classifications:		
— Lower than Fish & Wildlife (miles)	713	138



Alabama Department Of
Environmental Management

LAND DATA



Alabama Department Of
Environmental Management

Landfills

- Improved landfills 1989 - 2018:
 - 141 unlined MSW landfills closed
 - 32 state-of-the-art lined MSW landfill permits today



Alabama Department Of Environmental Management

Unauthorized solid waste dumps (UAD)

- 1,880 UADs remediated 2009 – 2018
 - 1,341 UADs remediated by responsible parties
 - 539 UADs innocent landowners held harmless



Alabama Department Of Environmental Management

Solid waste & Scrap tire recycling

- Solid waste reduction since 1989
 - rate increased from 5% to 25%
 - rate increased from .2 million TPY to 2.44 million TPY
- Scrap tire cleanup since 2006
 - 341 illegal scrap tire dumps cleaned up
 - 9.9 million passenger tires cleaned up



Alabama Department Of Environmental Management

Underground Storage Tanks (UST)

Since 1989:

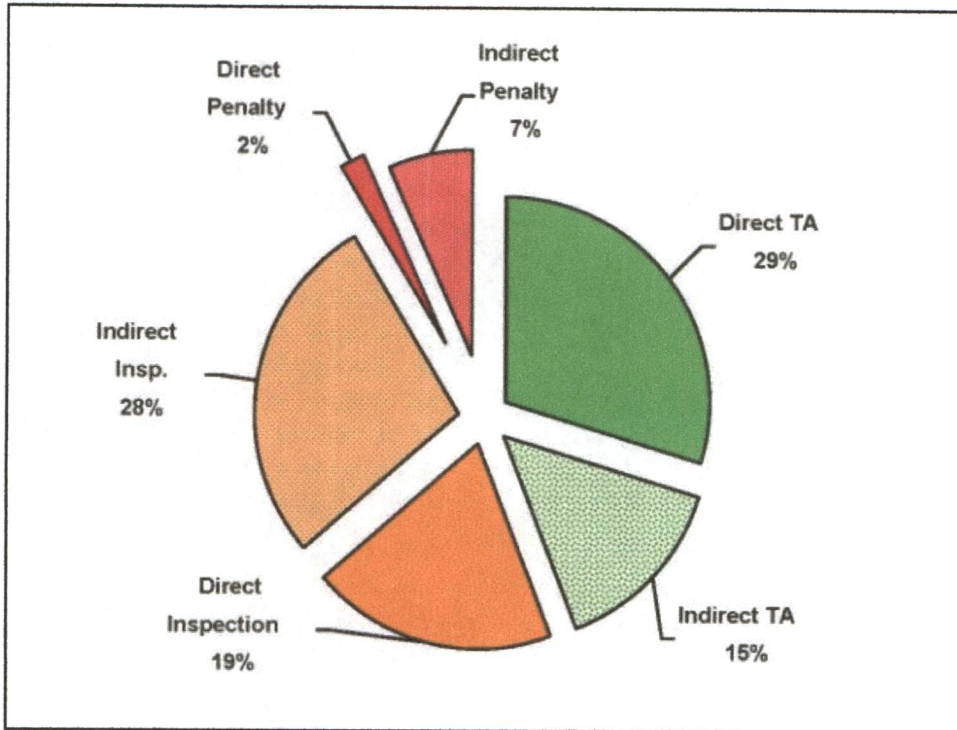
- 12,129 UST leak sites identified
- 11,136 UST sites cleaned up
- 993 UST sites currently being cleaned up



Alabama Department Of Environmental Management

Brownfields (BF)

- 611 BF sites identified 2001 – 2019
- 400 BF sites returned to productive use
 - 5,403 acres returned to productive use
- 81 BF sites currently actively enrolled
 - 7,328 acres currently actively enrolled



ADEM Alabama Department Of Environmental Management

Enforcement Process

- Identify possible violation
- Determine legal authority to take enforcement
- Obtain data
- Measure against standards to determine regulations violated



Alabama Department Of Environmental Management

Enforcement Process

- Determine appropriate level of enforcement:
 - Cause
 - Seriousness
 - Level of intent or negligence
 - Available enforcement options
 - Penalty if applicable



Alabama Department Of Environmental Management

Enforcement Process

- Show cause opportunity
- Public disclosure
- Opportunities to appeal

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 335-5 of the Department's Land Division's Uniform Environmental Covenants Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

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


NOW THEREFORE, pursuant to Ala. Code §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate the Uniform Environmental Covenants Program [335-5-1-.05/Registry of Environmental Covenants (Amend); 335-5-1-.06/Fees (Amend); 335-5-1-.07/Process for Entering a Covenant (Amend); 335-5-3-.02/Recording of Covenants (Amend);], of the Department's Land Division - Uniform Environmental Covenants 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 335-6 – Uniform Environmental Covenants Program

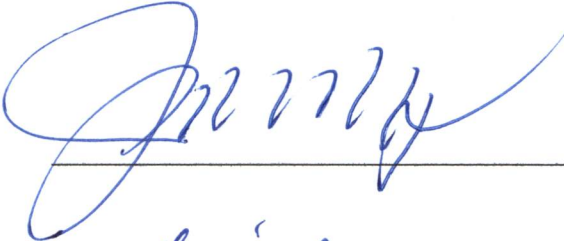
IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of August 2019.


APPROVED:

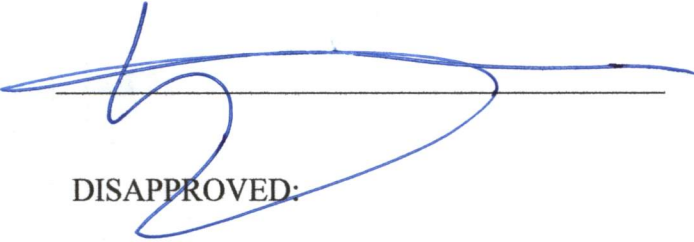













DISAPPROVED:

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 16th day of August 2019.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 16th day of August 2019

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 335-6 of the Department's Water Division's Water Quality Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Alabama Department of Environmental Management 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 335-6 [rules 335-6-6-.02/Definitions (Amend); 335-6-6-.08/Application Format and Procedures for New Permits and for Permit Reissuance (Amend); 335-6-6-.21/Public Notice Requirements (Amend);] of the Department's Water Division – Water Quality Program rules,

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

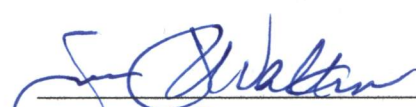
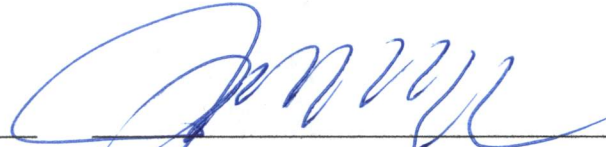


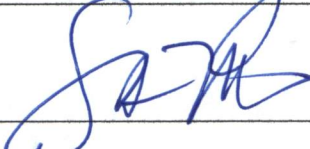
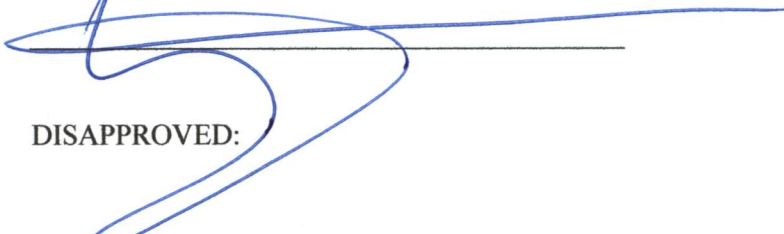
administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

**ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

ADEM Admin. Code division 335-6 – Water Quality Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of August 2019.

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 16th day of August 2019.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 16th day of August 2019

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 335-6 of the Department's Water Division's Water Quality Program Rules and Regulations in accordance with Ala. Code § 22-22A-8 (2006 Rplc. Vol.) and Ala. Code § 41-22-4 (2000 Rplc. Vol.); and

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

WHEREAS, the Alabama Department of Environmental Management 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.

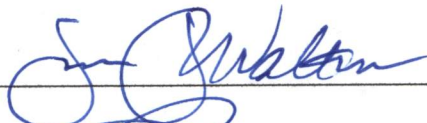

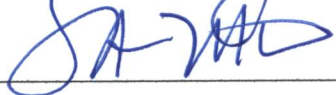
NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-6 [rules 335-6-11-.02/Use Classifications (Amend);] of the Department's Water Division – Water Quality Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

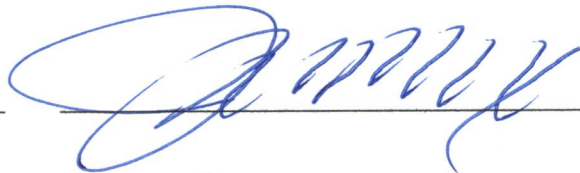

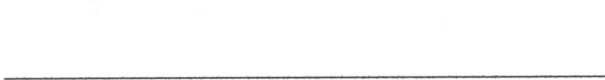
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ADEM Admin. Code division 335-6 – Water Quality Program

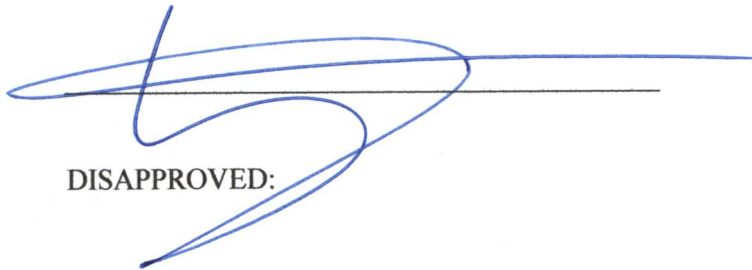
IN WITNESS WHEREOF, we have affixed our signatures below on this 16th day of August 2019.

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 16th day of August 2019.



Samuel L. Miller, Chair
Environmental Management Commission
Certified this 16th day of August 2019