

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: October 16, 2015
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 21, 2015

2. ELECTIONS

The Commission will elect a Commission Chair and Vice Chair.

3. REPORT FROM THE DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. REPORT AND RECOMMENDATIONS FROM THE PERSONNEL COMMITTEE ON THE ADEM DIRECTOR JOB PERFORMANCE EVALUATION FOR COMMISSION CONSIDERATION

The Personnel Committee will report on the ADEM Director Job Performance Evaluation and present the Committee's recommendations to the Commission for consideration.

6. REPORT FROM THE RULEMAKING COMMITTEE ON ADEM ADMIN. CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS

The Rulemaking Committee will report on the Committee's re-examination and study of ADEM Admin. Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3).

7. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE 335-3, AIR POLLUTION CONTROL PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Admin. Code 335-3, Air Pollution Control Program Regulations. The Alabama Department of Environmental Management proposes to amend ADEM Admin. Code Rules 335-3-1-.02, 335-3-10-.01, 335-3-10-.02, 335-3-10-.03, 335-3-11-.01, 335-3-11-.02, 335-3-11-.03, 335-3-11-.06, 335-3-11-.07, 335-3-11A-.01, 335-3-11A-.02, and Appendix C, and the addition of rules 335-3-5-.06 through 335-3-5-.36, and rules 335-3-8-.07 through 335-3-8-.70. 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. Revisions to chapters 335-3-5 and 335-3-8 include new regulations to implement EPA's Cross State Air Pollution Rules (CSAPR), which requires states to reduce power plant emissions that contribute to ozone and/or fine particle pollution in other states. Chapters 335-3-1, 5, and 8 are considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to these Chapters are proposed to be incorporated into Alabama's SIP. Also, Alabama's Regional Haze SIP is being proposed for revision to replace reliance on the Clean Air Interstate Rule (CAIR) with reliance on CSAPR. The Department held a public hearing on the proposed amendments on September 9, 2015.

8. OTHER BUSINESS

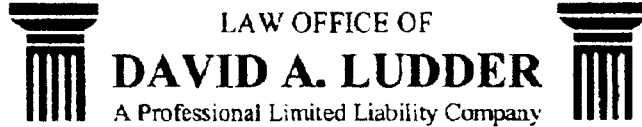
9. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

(The Request from the public to address the Commission is attached to the agenda.)

David A. Ludder, Esq., on behalf of the Environmental Defense Alliance
SUBJECT: “Ineffective Enforcement by the Alabama Department of Environmental Management”
and the need for the Commission to “develop environmental policy for the State” and/or to
“advise the Director” as authorized by the Ala. Code § 22-22A-6(a) to ensure effective enforcement
(The full Commission will vote on whether or not to grant the Request
prior to moving to the Public Comment Period.)

REQUEST



September 29, 2015

~~April 3, 2015~~

Delivered Via Facsimile

H. Lanier Brown, II, Chair
Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

October 16

Re: **Request to Speak at ~~April 17~~ AEMC Meeting**

Dear Chair Brown:

On behalf of the Environmental Defense Alliance, I request the opportunity to address the Environmental Management Commission on the topic of "Ineffective Enforcement by the Alabama Department of Environmental Management" and the need for the Commission to "develop environmental policy for the State" and/or to "advise the Director" as authorized by Ala. Code § 22-22A-6(a) to ensure effective enforcement. The history of enforcement against a single unnamed facility will be used to illustrate the ineffective enforcement. A copy of written materials to be presented is attached.

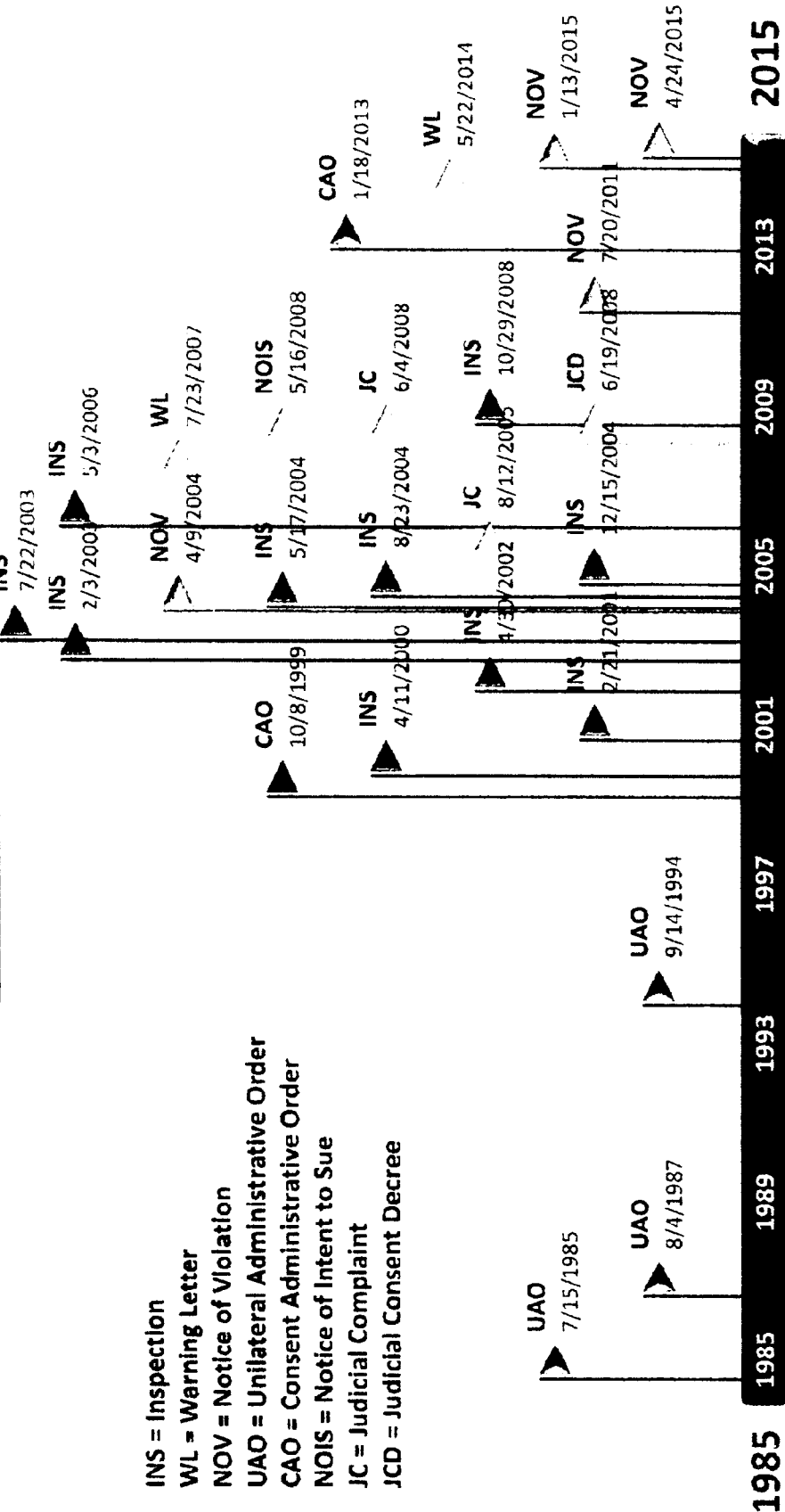
Sincerely,

David A. Ludder



NPDES Permit No. [REDACTED]
 (Fish & Wildlife)

- INS = Inspection
- WL = Warning Letter
- NOV = Notice of Violation
- UAO = Unilateral Administrative Order
- CAO = Consent Administrative Order
- NOIS = Notice of Intent to Sue
- JC = Judicial Complaint
- JCD = Judicial Consent Decree



1985 1989 1993 1997 2001 2005 2009 2013 2015

The following policies should prevent a repetition of the failures experienced in the [REDACTED] case:

(1) ADEM should promptly issue a Notice of Violation or Administrative Order to any permittee that has violated permit conditions during three consecutive months; *provided however*, that if the permittee has been issued a Notice of Violation for the same type of violation during the previous twelve months, the enforcement action shall be an Administrative Order or Judicial Action;

(2) ADEM should promptly issue an Administrative Order (consent or unilateral) to, or commence a Judicial Action against, any permittee that has violated permit conditions during any six of the preceding twelve months; *provided however*, that if the permittee has been issued a Administrative Order for the same type of violation during the previous twelve months, the enforcement action shall be a Judicial Action;

(3) All Administrative Orders issued by ADEM (consent and unilateral) should require compliance with permit conditions as expeditiously as possible and by a date certain;

(4) All Administrative Orders issued by ADEM (consent and unilateral) that include schedules for the completion of interim tasks should include the assessment of prospective administrative penalties in a sufficient amount to ensure that permittees will meet the schedules;

(5) If a permittee is in violation of an Administrative Order (consent or unilateral), ADEM should seek compliance by filing suit to enforce the Order or by assessment of an administrative penalty in a sufficient amount to ensure a prompt return to compliance;

(6) ADEM should oppose the entry of any Consent Decree that does not include a date after which the violator must achieve and maintain compliance with permit conditions;

(7) Negotiations of Judicial Consent Decrees should be concluded promptly (less than 12 months).

Implementation of these policies may require revisions in *Memorandum #105, Compliance and Enforcement Strategy* (eff. Jan. 1, 2008) and *NPDES and Pretreatment Permit Program, Compliance/Enforcement Management Strategy (CMS/EMS)* (Jan. 28, 2011).
