5/31/13

DRAFT

Minutes

Environmental Management Commission Meeting

Alabama Department of Environmental Management Building

1400 Coliseum Boulevard

Montgomery, Alabama 36110-2400

April 19, 2013

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Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 19, 2013

Convened: 11:04 a.m.
Adjourned: 1:18 p.m.

Part A

Transcript
Word Index

Part B

Attachment Index
Attachments 1 - 5

Part A

1 * * * * * *
2
3 ALABAMA DEPARTMENT OF ENVIRONMENTAL
4 MANAGEMENT
5 COMMISSION MEETING
6
7 * * * * * *
8
9 ALABAMA DEPARTMENT OF ENVIRONMENTAL
10 MANAGEMENT
11 (ADEM)
12 1400 Coliseum Boulevard
13 Alabama Room
14 Montgomery, Alabama 36110-2400
15
16 April 19, 2013
17 11:00 a.m.
18
19
20
21 Taken by: Margaret-Lea Flatt, ACCR# TL2024
22
23

1 A P P E A R A N C E S
2
3 COMMISSION MEMBERS PRESENT:
4 H. Lanier Brown, II, Esq., Chair
5 W. Scott Phillips, Vice Chair
6 John H. Lester, D.V.M.
7 Mary J. Merritt
8 Samuel L. Miller, M.D.
9
10 COMMISSION MEMBERS NOT PRESENT:
11 James E. Laier, Ph.D., P.E.
12 Terry D. Richardson, Ph.D
13
14 ALSO PRESENT:
15 Robert Tambling, EMC Legal Counsel
16 Debi Thomas, EMC Executive Assistant
17 Lance R. LeFleur, ADEM Director
18 Steven Jenkins, Chief,
19 Field Operations Division
20 Ronald Gore, Chief, Air Division
21
22
23

1 (The proceedings began at
2 approximately 11:04 a.m.)
3 CHAIRMAN BROWN: We'll call the
4 meeting of the Environmental Management
5 Commission to order. On a first note, we
6 have a quorum here today. First item on
7 the agenda is consideration of the minutes
8 for the February 15th, 2013, meeting.
9 COMMISSIONER MILLER: I move
10 that we accept the minutes.
11 COMMISSIONER MERRITT: I
12 second.
13 CHAIRMAN BROWN: All in favor?
14 ALL: Aye.
15 CHAIRMAN BROWN: All opposed?
16 (No response.)
17 CHAIRMAN BROWN: Motion passes.
18 Agenda Item 2 is a
19 report from the Director.
20 Good morning.
21 DIRECTOR LEFLEUR: Good
22 morning.
23 Chairman, I know you

1 were fortunate enough to be in Birmingham
2 traffic when there was a wreck. I'm
3 pleased that you're here.
4 Good morning, and
5 welcome to all of you present here for the
6 fourth of the six scheduled meetings of
7 the Alabama Environmental Management
8 Commission for Fiscal Year 2013.
9 In today's report
10 I'll comment on the current state of the
11 ADEM budget and the proper funding of the
12 Department moving forward, update you on
13 some of the Department's ongoing
14 efficiency measures, and last but not
15 least, I have asked someone to join us to
16 highlight the success of an important
17 cooperative environmental project.
18 Budget items first.
19 We are now past the halfway mark into
20 FY13, and it appears that the State
21 General Fund Revenues are on target, so at
22 this point, it does not appear that
23 proration will be required this year.

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1 ADEM operates within
2 the financial limitations of its budget
3 year-to-year. There are three general
4 components to ADEM's operating budget:
5 Federal grants, permit fees paid by the
6 regulated community, and state general
7 fund allocations.
8 Each year the
9 Department negotiates detailed performance
10 objectives; such as, numbers of
11 inspections, numbers of permits issued,
12 and so forth, with the federal government
13 as a condition to receiving the federal
14 grants portion of its budget. The
15 Department is held accountable to EPA for
16 achieving those performance objectives.
17 In addition to
18 federal grants, ADEM requires funding from
19 permit fees and state general funds to
20 enable it to achieve the federal
21 performance objectives. In recent years,
22 ADEM has operated within the confines of a
23 total budget that is near the minimum to

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1 meet federal performance objectives, and
2 based on what we have seen thus far in
3 both federal and state budgeting
4 processes, that will also be the case in
5 FY2014.
6 Since my last report
7 to you, the State Senate has passed its
8 proposed General Fund Budget for FY2014.
9 In it, the Senate has proposed ADEM
10 receive $1 million in General Funds to
11 cover the increased cost of employee
12 fringe benefits over FY2013. It also
13 includes an additional $380,000 general
14 fund line item earmarked to pay for
15 implementation of the Concentrated Animal
16 Feeding Operations, CAFO, program.
17 The Senate's
18 proposed FY2014 budget does not provide
19 the $4 million of General Funds necessary
20 for a portion of the Department's annual
21 operating expenses.
22 On Wednesday, the
23 State House General Fund Budget Committee

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1 released its recommendations on the FY2014
2 budget to the full House for consideration
3 over the next several days. The
4 Department is continuing to work to secure
5 appropriate funding in the House budget.
6 Since the final
7 legislative budget has not been agreed
8 upon by the House and Senate, the
9 Department will delay requesting
10 Commission rule-making on the Department's
11 fee schedule until the June 21, 2013,
12 Commission meeting. At that time, the
13 Department's FY2014 general fund
14 appropriation will be final, and the
15 Department will propose action to cover
16 any remaining budget shortfall.
17 Between now and
18 then, as I said, the Department will
19 continue its efforts to secure the
20 necessary general fund appropriation to
21 avoid permit fee increases.
22 On a related front,
23 you are no doubt aware that the Department

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1 has been working diligently for more than
2 a year to reach out to all those who would
3 be impacted by any possible increase in
4 permit fees. In an effort to provide
5 interested parties ample opportunities to
6 weigh in on such an important possible
7 action as what might be a 50 percent
8 permit fee increase, we have now also
9 extended the well-publicized public
10 comment period that began on February 1st,
11 2013, until May 6, 2013, which will result
12 in a total comment period of more than 13
13 weeks.
14 It should be
15 recognized that the proposed increased
16 permit fees will be equal to any reduced
17 state general fund allocation, so overall
18 Departmental funding will not change and
19 will remain very close to the bare minimum
20 needed to meet federal grant commitments.
21 If permit fees are
22 to be increased, the revenue generated
23 from the increase will be allocated

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1 exclusively to the cost of issuing permits
2 and will not exceed the statutory limit
3 for permit fees, which is the cost to
4 issue permits.
5 The current level of
6 Federal funding will cover any portion of
7 the costs to issue permits not funded by
8 the current total of permit fees plus the
9 State General Fund allocation. One final
10 note in this area: The current combined
11 total of permit fees and State General
12 Fund allocations is at the minimum level
13 needed to meet federal match requirements,
14 so any net reduction in funding from State
15 sources will endanger federal funding.
16 Given the very
17 difficult budget situation we find at both
18 the Federal and State level, it is
19 appropriate to address the level of
20 efficiency when considering budgets.
21 Taxpayers and the fee-paying regulated
22 community have the right to know how
23 effectively budget funds are being spent.

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1 Stated directly,
2 what is the cost and what is the quality
3 of the services provided by the
4 Department? The following slides will
5 address those questions.
6 First, how does
7 Alabama's cost of providing environmental
8 regulation compare to other states? What
9 is the cost of environmental regulation in
10 Alabama?
11 This slide compares
12 the total FY2013 budget to the eight
13 southeastern states comprising EPA
14 Region 4. As you will recall, the earlier
15 reference to three sources of funding:
16 Federal funds, the green portion of the
17 graph; General Funds, the blue portion;
18 and Permit Fees, the yellow portion. As
19 you can see, Alabama has the lowest total
20 dollars of funding in Region 4 and ranks
21 41st nationally.
22 This slide
23 highlights the last 24 years of the blue

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1 General Fund portion of our budget. These
2 are actual appropriated dollars without
3 any adjustment for inflation. The high
4 water market for General Fund
5 appropriations in the last 20 years was in
6 2008.
7 Since 2008, the
8 General Fund appropriation has dropped
9 57 percent. Since 2011, it has dropped
10 approximately 50 percent. In FY2013, the
11 Department was required to sell its
12 surveillance aircraft for $1.2 million to
13 provide sufficient operating funds to
14 maintain its federal grant commitments.
15 This slide compares
16 funding from all state sources, which for
17 Alabama, is permit fees and general funds,
18 on a per capita basis in EPA Region 4. In
19 simple terms, this represents the burden
20 borne by each citizen for environmental
21 regulation. As you can see, Alabama is
22 the lowest in Region 4 and ranks 49th in
23 the nation.

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1 In 2008, which as
2 you saw earlier was the high water mark
3 for General Fund appropriations, Alabama
4 also ranked 49th. We are consistently
5 ranked 49th.
6 At 49th nationally,
7 ADEM is an exceptionally low-cost provider
8 of environmental regulation.
9 Now the question:
10 How does the quality of the environmental
11 regulation in Alabama compare to other
12 states?
13 In early 2012, the
14 US Office of Inspector General, the
15 federal watchdog agency, released a report
16 following a comprehensive review of the
17 air, land, and water enforcement
18 activities in all 50 states. This was a
19 review of enforcement and looked at
20 inspection rates, penalties, high priority
21 violations, and other factors.
22 Earlier in my
23 remarks, I noted that each year the

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1 Department enters into formal commitments
2 with EPA to meet specific performance
3 objectives as a condition to EPA providing
4 federal funds. This Office of Inspector
5 General report is based on those measures
6 of performance.
7 This slide
8 summarizes the findings in the OIG report.
9 Note the ten states in dark green which
10 are the highest ranked. The OIG calls
11 them top tier in enforcement. You see
12 California, Florida, North Carolina, and
13 Pennsylvania. These are all wealthy
14 states with very large environmental
15 budgets. You also see Alabama in the top
16 tier.
17 As one of the top 10
18 in the nation, ADEM provides high quality
19 environmental regulation based on a
20 rigorous analysis by an unbiased,
21 independent third party.
22 To summarize, ADEM
23 is an exceptionally low-cost provider of

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1 exceptionally high quality environmental
2 regulation. One rarely sees the low-cost
3 provider also being the high quality
4 provider. Indeed, those two
5 characteristics are normally mutually
6 exclusive. Alabama is arguably the most
7 efficient provider of environmental
8 regulation in the entire nation.
9 In Commission
10 meetings over the past two years, I have
11 highlighted many cost-cutting efficiency
12 measures that have been undertaken by the
13 Department to better use federal and state
14 budget dollars. Some of those measures
15 include: Increased automation that
16 reduces headcount; the development of
17 general permits that can be issued in a
18 fraction of the time and at a fraction of
19 the cost required to issue individual
20 permits, but, yet, include tighter
21 environmental standards; and streamlining
22 inspection and enforcement activities, to
23 name just a few.

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1 Taxpayers and the
2 permit fee paying regulated community can
3 be assured that environmental regulation
4 in Alabama is low cost and high quality
5 when compared to every other state in the
6 nation.
7 In previous
8 Commission meetings, I have recounted how,
9 on many occasions, working in partnership
10 with other organizations and individuals,
11 ADEM's mission has been accomplished more
12 effectively. These partnerships often
13 include governmental and nongovernmental
14 organizations. Today, Roberta Swann, the
15 director of the nongovernmental
16 environmental organization, the Mobile Bay
17 National Estuary Program, has come to
18 report on a good example of how these
19 partnerships work. She has brought with
20 her some governmental and nongovernmental
21 partners that I would like to introduce
22 after her remarks.
23 With that, Roberta,

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1 if you would come forward. I'm not very
2 good, but I know pointing this little
3 arrow moves it forward.
4 MS. SWANN: Good morning. My
5 name is Roberta Swann, and I'm the
6 director of the Mobile Bay National
7 Estuary Program, and I'm going to show you
8 a couple of slides of a project that is
9 substantially completed down in coastal
10 Alabama.
11 The Mobile Bay
12 National Estuary Program, for those who
13 aren't familiar with us, we are funded by
14 US EPA, we're non-regulatory, and we're
15 one of 28 programs throughout the United
16 States and Puerto Rico. We receive half
17 of our money from EPA, and the other half
18 we receive from local governments and
19 state government and some private
20 interest.
21 We've been in
22 existence for 18 years, and our charge is
23 to build community consensus around what

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1 we value most about our coastal
2 environment and then to develop a
3 comprehensive conservation management and
4 implement that plan so that we can protect
5 our coastal natural resources.
6 One of those natural
7 resources is the D'Olive Watershed, one of
8 the areas that we value highly. The
9 D'Olive Watershed is well-known as being
10 the area of the Lake Forest development,
11 residential development, which started in
12 the 1970s. And it was known because at
13 that time there weren't any regulations
14 related to sediment. And this NASA
15 picture is actually a sediment plume that
16 was generated from the development of that
17 area.
18 Since then we've had
19 a lot of sediment transporting into Mobile
20 Bay from the activities in that watershed.
21 If you look at the maps on the right-hand
22 side, in 1974, the color red is the
23 urbanized color. These are maps that were

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1 actually developed by NASA as well. The
2 color red is urbanization, in 1974, you
3 can see in this watershed -- you can see
4 from the red that it was somewhat
5 urbanized in 1974, but you can still see a
6 lot of green. By 1984, the red had
7 expanded. By 1996, it had expanded even
8 more, and by 2008, it's pretty much all
9 red in that upper northwest corner of the
10 watershed.
11 In this watershed
12 there are five stream segments on the
13 State's 303(d) list of impaired water
14 bodies, all due to siltation. One of
15 those streams is Joe's Branch. Why is
16 sediment a problem in this watershed?
17 This watershed is unique in that it has
18 very steep slopes, extreme topography,
19 highly erodable soils, inherent
20 instability from exposed sediments from
21 all of the different sizes of tributaries.
22 We, in southern
23 Alabama, have a very large quantity of

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1 hard rainfall annually, over 5 feet of
2 rainfall each year. There is excessive
3 runoff in this watershed due to urban
4 development, creating a lot of volume and
5 velocity of storm-water runoff. And this
6 picture down at the bottom is actually
7 demonstrative of the color of the water
8 that you typically see a day or two after
9 a rainfall event. And the cause of
10 increased volume and velocity due to the
11 development has caused deeply eroded
12 stream valleys. That was our challenge.
13 So back in 2008, we
14 decided that we needed a comprehensive
15 watershed management plan for this
16 watershed. And with the help of ADEM and
17 other partners, we hired Thompson
18 Engineers to actually go in and walk the
19 whole watershed, characterize the
20 watershed, and work with a group of
21 stakeholders, both businesses, government,
22 and private citizens to develop a
23 watershed management plan so that we could

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1 fix some of those problems.
2 On the right-hand
3 side, is a picture of the Joe's Branch
4 section of the watershed, and it shows
5 some of the brainstorming that went on
6 throughout that process. The objectives
7 of the plan were primarily to reduce
8 upstream sediment influx, reduce outgoing
9 sediment to Mobile Bay, remediate and
10 restore past effects of sediment, and to
11 mitigate future impacts through incentives
12 or through regulation modification at the
13 local level.
14 Right there, where
15 you see that circle, that is Joe's Branch.
16 And on this map that you're looking at,
17 where you see the heavy red lines, those
18 were all the severely-compromised
19 waterways or tributaries in that watershed
20 that needed to be addressed. And many of
21 them still do need to be addressed. The
22 hatched areas were areas that were right
23 behind them, frankly.

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1 So once we got the
2 watershed management plan written and
3 published, the first thing we needed to do
4 was stop the bleeding. We had a lot of
5 sediment coming into Mobile Bay, and in
6 particular this sediment load was coming
7 from a tributary to Joe's Branch.
8 So the first project
9 that we needed to go after was, we have to
10 fix this tributary to Joe's Branch,
11 primarily because it was so compromised
12 that it was threatening Highway 31 in
13 Spanish Fort, Alabama. We worked with
14 Alabama Department of Transportation
15 because they were looking to expand
16 Highway 31, and we decided to create a
17 partnership to see what we could do to not
18 only stabilize the stream, but also,
19 maybe, encourage increased ecological
20 function.
21 So the objective of
22 this project was to remove this stream
23 segment from the State's 303(d) list by

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1 significantly reducing the amount of
2 sediment being delivered to the D'Olive
3 creek in Mobile Bay. And if you look at
4 this, it had been turned into a mini
5 canyon.
6 The project partners
7 for this project were the Alabama
8 Department of Environmental Management,
9 thank you very much, through a Section 319
10 project; the Alabama Department of
11 Transportation; the Alabama Department of
12 Conservation; and as for resources,
13 Baldwin County, the cities of Daphne,
14 Spanish Fort, the Coastal Alabama Clean
15 Water Partnership, the Dauphin Island Sea
16 Lab, the Geological Survey of Alabama,
17 Mobile Bay NEP, Thompson Engineering, and
18 a private property owner, because this
19 stream is actually located on private
20 property, Westminster Village.
21 And what's unique
22 about this partnership, is that not only
23 do you have four different state agencies

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1 working together, you have the Department
2 of Conservation and Natural Resources and
3 the Geological Survey taking on the
4 monitoring aspects of this project, you
5 have the Department of Transportation
6 working with the Department of
7 Environmental Management to actually fund
8 the restoration or to fund the
9 implementation of this drainage measure,
10 if you will.
11 The project funding,
12 we received $645,000 from the ADEM 319
13 grant, we received $200,000 from ALDOT,
14 and that was a little bit outside of their
15 normal way of doing business. They
16 typically would go in and just hard build
17 a structure to stabilize the stream
18 segment, but they were willing to work
19 with us to try something new that was a
20 little bit more environmental. And then
21 the Sea Lab -- we are a program of the Sea
22 Lab. They are our administrative sponsor.
23 They actually donated over $200,000 in

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1 in-kind services to this project.
2 We also leveraged
3 funds in terms of preward project
4 management, technical assistance from the
5 city of Daphne, monitoring, and initial
6 engineering, and conservation easement.
7 Because we did this project on private
8 property, we required the property owner
9 to undertake a conservation easement that
10 would protect this property and its
11 perpetuity because of the public funds
12 spent on private property.
13 I will say that the
14 reason why the National Estuary Program
15 undertook this project was because we had
16 a situation where we had a degraded stream
17 segment in the city of Spanish Fort, but
18 the impacts of that stream were actually
19 in the city of Daphne. The City of Daphne
20 couldn't address the problem because it
21 was outside of their jurisdiction. The
22 City of Spanish Fort did not want to set a
23 precedent of working on private property,

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1 and so we became the middle man, if you
2 will, to get this project accomplished.
3 So the question, in
4 looking at what we were going to do, was
5 what can we do to restore this stream or
6 to fix this stream so that we have some
7 kind of ecological function that comes
8 back as part of the project. And what we
9 came up with was to implement a step-pool
10 storm conveyance system. This had not
11 been done in Alabama. It had been done in
12 Anne Arundel County in Maryland. We
13 decided to see if we could modify what
14 they did up there and if it would work
15 down here.
16 So now I'm going to
17 go through a series of pictures of the
18 actual construction. These first two
19 pictures show the clearing and the grading
20 of the site. This is the building of the
21 splash pools, and you can see Highway 31
22 in the background. This is constructing
23 the step pools. These are the step pools

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1 from the splash pool looking downstream,
2 and if you can remember those first
3 pictures and all of the erosion that had
4 occurred, this is what it looks like now.
5 So quite different. These are the step
6 pools in action. This is just -- I say
7 substantially completed because the
8 vegetation is still growing. We just
9 planted it.
10 This is from the
11 bottom looking up. And this is reclaiming
12 the wetlands. At the bottom of this
13 thousand feet of stream segment, there
14 were wetlands that had been filled in from
15 the sediment that was washing downstream
16 from all of that velocity of storm water.
17 And we were actually able to remove the
18 sediment from that wetland area and
19 replant the wetland as well. And this is
20 the rebirth of the wet lands.
21 We did have some
22 lessons learned from this project.
23 Because we implemented a new technology,

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1 there were very few contractors that knew
2 how to do this type of building. And it
3 wasn't really that unique except for they
4 were having to create these weirs, if you
5 will, building them out of big rocks and
6 that's like a puzzle. You have to know
7 how to put that puzzle together. That was
8 a very unique component of this project.
9 We were able to find
10 one local contractor that was willing to
11 take on the job and that had done some
12 stream restoration in the past. He had
13 worked with a Dr. Greg Jennings, who we
14 brought in as a technical consultant and
15 was very versed in this type of work. So
16 that actually worked in our favor.
17 The larger pools
18 that we created had some unique design
19 considerations that we had to contend
20 with. And the typical construction in
21 general, typical construction mindset
22 didn't quite work. We had to be very
23 agile on our feet, very flexible on our

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1 feet. It was a matter of building a
2 section of it, seeing how it performed,
3 and then it was a continuous improvement
4 process to get to the bottom of this step
5 pool system.
6 I'd like to
7 specially thank some people that were
8 related and that really supported this
9 project and really supported us in
10 undertaking it. And that is: At ADEM,
11 Lance LeFleur, Norman Blakely, Scott
12 Hughes, and Patti Hurley. They were all
13 incredibly supportive and provided a lot
14 of time to this project in coming down to
15 the coast to meet with us.
16 At ALDOT, Vince
17 Calametti and Lee Reach were just
18 unbelievably patient with us and willing
19 to work and be flexible with us. ADCNR,
20 Phillip Hinesley, that's the coastal
21 section chief, he was willing to share the
22 cost of the monitoring with the Geological
23 Survey, and that would be Marlon Cook, who

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1 is doing all of the monitoring for the
2 project.
3 This is also a
4 unique project because we have
5 premonitoring data, during the
6 construction monitoring data, and we will
7 have post-monitoring data taken by the
8 Geological Survey of Alabama. All of that
9 will be quality assured.
10 For the cities of
11 Spanish Fort and Daphne, Bruce Rinkert and
12 Ashley Campbell were just on the job every
13 day. And I have to give a special call
14 out to Ashley Campbell. She has walked
15 every stream in the D'Olive watershed, and
16 she really was the person that identified
17 this as a bleeding vein, frankly.
18 Westminster Village,
19 Bobby Fortenberry, who is also a city
20 councilman at the City of Spanish Fort,
21 and then Thompson Engineering. Thank you.
22 DIRECTOR LEFLEUR: Thank you,
23 Roberta. Before introducing some of the

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1 partners on this project, I'd like to add
2 a few things to what Roberta said.
3 Nongovernmental
4 organizations, NGOs, can be valuable
5 partners for many reasons, but one in
6 particular is that as NGOs, they are free
7 to choose what approach they would like to
8 take. When they elect to be involved in a
9 positive way, it can have dramatic
10 beneficial impacts. In this case, several
11 NGOs led by Roberta and the Mobile Bay
12 National Estuary Program have chosen to
13 bring together and work cooperatively with
14 the elected officials, private
15 organizations, state agencies, including a
16 ADEM, and others to produce an important
17 tangible positive result.
18 Now, one of the big
19 things that struck me on this project -- I
20 have spent some time in Mobile -- Roberta
21 alluded to it, but this branch has
22 contributed to more than 1,400 acres of
23 Mobile Bay that were shallow grass beds

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1 with productive fish habitat that are now
2 filled in with silt transported by storm
3 water.
4 This project is
5 important not just for being a successful
6 collaboration of diverse partners on a
7 single project and not just for being an
8 innovative technological step toward a
9 solution, to a substantial storm water
10 erosion challenge in Baldwin County; it is
11 also important as demonstration of how to
12 develop a comprehensive storm water plan,
13 how to implement that storm water plan in
14 the face of severe financial challenges
15 and setbacks, and how to get buy-in and
16 commitment from groups that are more often
17 at odds with one another, and how to
18 create a model that can be utilized in the
19 rest of the state.
20 For these reasons,
21 the Green Organization, an international
22 environmental organization based in
23 London, awarded this project its 2012

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1 International Green Apple Award for
2 Environmental Best Practice Silver Award
3 for the North American continent. At this
4 time, I'd like to introduce and
5 congratulate some of the people here today
6 who helped this project to happen.
7 From the City of
8 Spanish Fort, Mayor Mike McMillan. Would
9 you please stand and be recognized? Mayor
10 Dane Haygood, City of Daphne; Baldwin
11 County Commissioner, Skip Gruber; Coastal
12 Alabama Clean Water Partnership, Christian
13 Miller; Thompson Engineering, Emery Baya;
14 Alabama Department of Transportation,
15 Barry Fagen; Geological Survey, Marlon
16 Cook; and several of the ADEM staff, Patti
17 Hurley, Norman Blakely, and Scott Hughes.
18 Would you all please stand?
19 I want to tip my hat
20 to you, and I'll give this to Roberta to
21 take home, but on behalf of the Green
22 Apple Organization, I'd like to offer this
23 award for you with a commendation letter

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1 attached. It's quite an honor, and you
2 all should be very proud of the work that
3 you've done. And I certainly appreciate
4 all the work that you've done.
5 Once again, let me
6 close with my thanks to you for serving
7 the State of Alabama as commissioners on
8 the Alabama Environmental Management
9 Commission and for allowing me to serve
10 the State in this capacity.
11 If there are any
12 questions, I'd be pleased to address them
13 at this time.
14 CHAIRMAN BROWN: Any questions,
15 comments?
16 (No response.)
17 CHAIRMAN BROWN: Thank you.
18 Item 3 on the agenda is a report from the
19 Commission chair, and you'd probably be
20 glad to know that I don't have any
21 specific comments today.
22 Agenda Item 4,
23 consideration of the adoption of proposed

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1 amendments to ADEM Code, Division 335-3,
2 Air Pollution Control Program Regulations.
3 We will consider the
4 adoption, and we'll call on the Department
5 for comments.
6 MR. GORE: Mr. Chair, madam,
7 gentlemen, I'm Ron Gore with the
8 Department's Air Division. As you know,
9 large portions of our regulations are
10 adopted pursuant to EPA regulations. And
11 in order to maintain privacy, I come
12 before you two or three times a year to
13 ask you to catch up the State's rules with
14 the Federal rules. And that's what I'm
15 here for today.
16 We held a public
17 comment period on these changes that began
18 on December 24th and ended February 6th.
19 We held a public hearing on February 6.
20 No comments during the hearing or during
21 the comment period. Pending any specific
22 questions you have about these changes, we
23 would ask that you would adopt them.

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1 VICE-CHAIRMAN PHILLIPS: I move
2 that we adopt the changes.
3 CHAIRMAN BROWN: All in favor?
4 ALL: Aye.
5 CHAIRMAN BROWN: All opposed?
6 (No response.)
7 CHAIRMAN BROWN: Motion
8 carries.
9 MR. GORE: Thank you.
10 CHAIRMAN BROWN: Next, the
11 Commission will consider adoption of
12 proposed amendments to ADEM Administrative
13 Code 335-8, Coastal Program Regulations,
14 and we'll hear comments from the
15 Department.
16 MR. JENKINS: Good morning,
17 Chairman, members of the Commission. I'm
18 Steven Jenkins with the Department's Field
19 Operations Division. As part of your
20 package, you have the hearing record and
21 related documents for the proposed
22 adoption of modifications to the ADEM
23 Administrative Code Division 335-8,

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1 Coastal Program Rules. The Department
2 proposes, specifically, to modify
3 335-8-1-09 to reflect that draft
4 environmental impact statements and draft
5 environmental assessments are reviewed for
6 relevant projects in the coastal area and
7 not the final documents.
8 These changes make
9 this rule consistent with NOAA
10 regulations. Rule-making requirements
11 have been completed with public notice
12 provided on February 3rd. Hearing was
13 held on April 3rd, and the comment period
14 was held open until April 5th. No
15 comments were received during the
16 rule-making process.
17 At this time, the
18 Department requests your favorable action
19 by adopting these proposed regulation
20 changes. I'd be pleased to answer any
21 questions.
22 COMMISSIONER LESTER: Move to
23 adopt.

1 VICE-CHAIRMAN PHILLIPS: Second.
2 CHAIRMAN BROWN: All in favor?
3 ALL: Aye.
4 CHAIRMAN BROWN: All opposed?
5 (No response.)
6 CHAIRMAN BROWN: Motion
7 carries.
8 Next on the agenda,
9 the Commission will consider the request
10 for stay of administrative action filed by
11 Petitioner City of Brundidge, Alabama, in
12 its appeal/request for hearing.
13 Petitioner has filed a brief in support of
14 request for stay of administrative action,
15 containing request for oral argument on
16 the motion for stay.
17 The Department has
18 filed a response to request for stay of
19 administrative action. Intervener
20 Brundidge Acquisitions, LLC, has filed a
21 response in opposition to the request for
22 stay of administrative action.
23 All of these briefs

1 have been supplied to the Commissioners
2 and reviewed, so if we grant your motion
3 for oral argument, be quick.
4 The Chair will
5 entertain a motion for request for oral
6 argument.
7 VICE-CHAIRMAN PHILLIPS: I move
8 we grant the Petitioner's request for oral
9 argument.
10 CHAIRMAN BROWN: All in favor?
11 ALL: Aye.
12 CHAIRMAN BROWN: All opposed?
13 (No response.)
14 CHAIRMAN BROWN: Motion
15 carries.
16 MS. THOMAS: Chair, do you want
17 to set a certain time?
18 CHAIRMAN BROWN: We're about
19 to.
20 Ten minutes each.
21 MR. WALKER: Thank you, members
22 of the Committee. I'm Dorman Walker and
23 together with my partner, Jim Noles, we

1 represent the City of Brundidge. And I'd
2 like to point out that today we have with
3 us the mayor of the City of Brundidge.
4 Mayor Ramage, there he is. And the --
5 Cynthia Pearson, who is the president pro
6 temp of the County Commission -- excuse
7 me, City Council. Betty Baxter, who is
8 also with the City Council; Linda Faust,
9 who works in the city government; and also
10 Greg Thomas, who is City Manager.
11 I'm going to do most
12 of the argument, and then my partner,
13 Mr. Noles, will close with some comments
14 on public policy. And I'll be as brief as
15 I can.
16 This is about a
17 landfill that's located in the City of
18 Brundidge, and in particular, it's about
19 ADEM's decision to transfer the operating
20 permit for that landfill to a new entity
21 called Brundidge Acquisitions without the
22 associated host government agreement. So
23 the issue, essentially, for the contested

1 case that underlies this request for a
2 stay is whether or not ADEM properly
3 transferred the permit without the
4 associated host government agreement.
5 So what is a host
6 government agreement, and why does it
7 matter? Landfills, if they're not
8 operated properly, are inherently
9 dangerous to public safety and public
10 health. They can be a source of disease,
11 of noxious odors, of rats, snakes, insect
12 infestations. They can make it
13 impossible, if not highly unpleasant, for
14 people who live in the vicinity of a
15 landfill to conduct their lives in an
16 ordinary and reasonable way.
17 Cities want to have
18 landfills for purposes of economic
19 development and a city has to give its
20 permission to a landfill before permits
21 can be issued. And once a city gives its
22 permission, it can't revoke it. So if you
23 invite a landfill into your city, you're

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1 inviting them for the long haul. Not for
2 a few years, not for a decade, but for
3 decades and generations to come.
4 And so a city that's
5 thinking about doing that, and Brundidge
6 is not the only city by any means, they're
7 a local government that has host
8 government agreements, these are very
9 common, typically negotiates a host
10 government agreement and says we'll give
11 approval to you so that you can get the
12 permit, but in return, you have to agree
13 to some very reasonable terms of local
14 oversight so that if there's a problem
15 with how you're operating the landfill, we
16 can come in and get you to correct that.
17 If you're not taking care of noxious
18 odors, for example, we can come in and get
19 you to correct that. If there's a problem
20 with vermin or with disease or leaks or
21 litter, we can come in and correct that.
22 So, like so many
23 other governmental entities, Brundidge

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1 negotiated a host government agreement as
2 a condition of giving its approval for the
3 permit. So these are two really important
4 points: Brundidge would never have given
5 approval for the permit without acceptance
6 of the host government agreement. Those
7 two things were linked together. They
8 were different sides of the same coin.
9 Approval of the
10 permit and acceptance of the host
11 government agreement. And the host
12 government agreement is not a mere
13 contract, as Brundidge Acquisitions refers
14 to it in its preview. It's what lawyers
15 say -- it's intended to run with the land.
16 Regardless of who, over the generations to
17 come, is operating this landfill, the host
18 government agreement will apply to that
19 person. It moves from operator to
20 operator to operator. It imposes on them
21 the same reasonable regulations for local
22 oversight.
23 Now, there's some

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1 allegations that the host government
2 agreement is redundant of the provisions
3 of oversight that are in ADEM's
4 regulations and in the statutes, but
5 that's not the case. And I'll get to that
6 in a second.
7 But the two points
8 are that approval for the permit never
9 would have been given without the host
10 government agreement, and the host
11 government agreement is intended to last
12 for the life of the landfill. And what's
13 happened here is that ADEM has permitted
14 transfer of the landfill permit without
15 the associated host government agreement.
16 And just so that I'm
17 sure that I get this across, what we would
18 like to ask to be done, so that you know,
19 is that a stay be granted, and it --
20 ultimately, we would like for ADEM to
21 transfer the permit with the host
22 government agreement or to not transfer
23 the permit while a lawsuit between

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1 Brundidge and the Coffee County Commission
2 and Brundidge Acquisitions is decided,
3 which will determine whether or not
4 Brundidge Acquisitions can properly
5 purchase the landfill.
6 First, I think the
7 first thing is that ADEM curiously
8 challenges the standing of Brundidge in
9 this matter to protest over the transfer
10 of the permit for a landfill in the middle
11 of Brundidge without the host government
12 agreement. The elements withstanding are
13 a concrete injury that's traceable to an
14 action that's challenged and that can be
15 addressed. In this case, the concrete
16 injury is the loss of the local
17 government's approval to have reasonable
18 oversight for the actions for the
19 operations of the landfill.
20 In addition, it's
21 traceable to the actions of ADEM because
22 ADEM is the one that transferred the
23 permit. The addressability can be given

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1 by this commission right here; first, by
2 granting the stay, and later on by
3 ordering one of the forms of relief that
4 I've talked about earlier.
5 So not only does
6 Brundidge have standing, but that is, in
7 fact, consistent with a number of cases
8 before this Commission in the past. For
9 example, in EMC Docket 02-03, Marshall
10 County Commission had standing to protest
11 the issuance of renewal of a landfill to
12 Bishop Landfill. In EMC Docket 97-08, the
13 City of Phenix challenged the issuance of
14 an NPDES permit. And there are a number
15 of others that I can provide to you, but
16 I'm going to move on.
17 There are four
18 things that ADEM -- that Brundidge must
19 show in order to get a stay. One is, a
20 substantial likelihood that it will
21 prevail on the merits; two, that it will
22 suffer irreparable harm if it doesn't get
23 a stay, the benefits of the stay will

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1 outweigh any harm that might be caused to
2 ADEM, and that granting the stay will not
3 harm the public interest.
4 Let me just say, I
5 don't believe ADEM has indicated any harm
6 that will come to it if the stay is
7 granted. So on three, that's taken care
8 of. And my partner Jim Noles will talk
9 about harm to the public interest by, in
10 effect, dismantling the system of host
11 government agreements in Alabama, which is
12 what this action does.
13 I'd like to focus on
14 the substantial likelihood that Brundidge
15 will prevail on the merits. And there's
16 Statute 22-27-48 of the Alabama Code that
17 says very clearly, I'm going to read from
18 the statute now, "The Department may not
19 consider an application for a new or
20 modified permit for a facility," and that
21 means a landfill, "unless such application
22 has received approval by the effective
23 local government having an approved plan."

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1 So what this says
2 is: If a permit is modified, approval has
3 to be given by the local government. The
4 transfer of a permit is a modification of
5 the permit. The name of the permit
6 operator is printed on the transfer. To
7 transfer the permit, you change the
8 permit. It's both a physical modification
9 and a conceptual modification of the
10 permit, if you will.
11 ADEM says, well,
12 we've never looked at it that way, and our
13 interpretation of the statute is that a
14 modification means something like a change
15 in the operational capacity of the
16 landfill. It doesn't mean a transfer.
17 We've always treated that differently.
18 The fact that ADEM may have done something
19 historically, and done it improperly,
20 doesn't give any justification for
21 continuing to do that.
22 ADEM says we're
23 entitled to deference in how we interpret

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1 the statute, and that's true. If a
2 statute calls into question the technical
3 expertise of ADEM, then that is entitled
4 to deference. This statute is not
5 unclear, it's not ambiguous, and ADEM can
6 only interpret a statute when it's unclear
7 and unambiguous.
8 MS. THOMAS: One minute.
9 MR. WALKER: Okay. Thank you.
10 It says that if a -- I'm going to need a
11 little bit more time, if I can have some.
12 It says that you
13 cannot transfer a permit without the local
14 government approval, and that's what's
15 happened here. So there's the substantial
16 likelihood that ADEM will prevail on that
17 issue.
18 In addition,
19 Brundidge will suffer irreparable harm if
20 the permit is -- if a stay is not granted,
21 in that, the permit will be transferred
22 without the host government agreement and
23 Brundidge will lose the ability to have

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1 local control. Given that I'm about out
2 of time, I'm going to ask my partner, Jim
3 Noles, to come up and talk about the last
4 prong here, the public policy aspects of
5 this.
6 MR. NOLES: Thank you,
7 Commissioners. I will be brief. This
8 just has to do with some policy issues
9 that I think you should be aware of as the
10 policy-setting arm of the Department. As
11 Mr. Walker pointed out, what we're facing
12 here is the permit being transferred, and
13 in the course of that transfer, by action
14 of a bankruptcy order, the underlying host
15 government agreement being negated, going
16 away.
17 So after this
18 occurs, after this permit is transferred,
19 Brundidge Acquisitions will have a
20 landfill permit without the host
21 government agreement in place. They will
22 not have any of the obligations to the
23 City of Brundidge that they now owe, or

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1 that the landfill now owes, under that
2 host government agreement. That's a very,
3 very important point. Because for that
4 reason, the City of Brundidge is adamantly
5 opposed to the landfill permit being
6 transferred because they lose all control
7 that they have bargained for, and
8 negotiated over the years, with respect to
9 this particular landfill.
10 And that's an
11 important point for y'all, because I think
12 as you'll probably remember and probably
13 be reminded of at some point, ADEM has
14 always taken great comfort in the fact
15 that ADEM is not involved in the landfill
16 siting business, other than a technical
17 standpoint.
18 When someone comes
19 to you and complains that we don't want a
20 landfill in our backyard, your response --
21 ADEM's response, has always been:
22 Rightfully so. We're not in the landfill
23 siting business. That's a matter of host

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1 government approval; that's between you
2 and your County Commission; or that's
3 between you and your City Council. Well,
4 that's what we've got here, except we're
5 in a situation where we're saying we do
6 not approve this landfill in our
7 community.
8 And so if you
9 disagree with Brundidge on this, and
10 acquiesce to this transfer, what you're
11 saying to us, what you're saying to
12 Alabama, what you're saying to, I suppose,
13 anybody else that comes up and complains
14 about the landfill siting, you're saying
15 that, well, actually, we do get involved
16 in landfill siting. Because that's what
17 you're doing here.
18 The other point I
19 would make is that this is an interesting
20 situation in that this involves a
21 bankruptcy. That through the bankruptcy
22 process by which the trustee -- I've
23 learned more about bankruptcy than I ever

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1 intended to for this process -- but the
2 bankruptcy trustee has an ability to
3 reject a so-called executory contract in
4 the course of a bankruptcy.
5 In this case, he
6 successfully argued that the host
7 government agreement is an executory
8 contract. So the host government
9 agreement is going to go away. Well,
10 gosh, unfortunately, as Brundidge has
11 learned through hard experience, these
12 private landfill companies quite often go
13 bankrupt. So you're really setting up a
14 situation where you've created a roadmap
15 for future landfill operators to know that
16 they can weasel out of a host government
17 agreement by going bankrupt through a
18 reorganization or liquidation and then
19 operate the landfill without the
20 requirements of the host government
21 agreement.
22 The third point I
23 would -- and that's an issue. Because,

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1 again, as Mr. Walker pointed out, these
2 landfills operate -- this is not three
3 years, ten years, twenty years. These
4 things operate for decades.
5 And if we allow that
6 to happen -- and again, I'm wrapping up
7 here. We're really just allowing ADEM and
8 the Commission to acquiesce to what a
9 bankruptcy court in New Jersey is saying
10 should be done with respect to Alabama's
11 environmental regulations. That's what
12 really -- it's what sticks in my crawl
13 more than anything else on this, I think.
14 All we have to do to
15 prevent this from happening right now is
16 for the Commission to order that this
17 transfer be stayed. That it -- that the
18 transfer not take place. Essentially, the
19 transfer be rescinded at this point. Not
20 saying that you permanently deny the
21 transfer, not saying that you approve it.
22 Just stay it right now.
23 That's useful

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1 because then you don't get to the issue of
2 how involved you are or are not in host
3 government local approval processes. You
4 don't get into the issue of what is or is
5 not allowed in bankruptcies, you can stay
6 everything, and you can let this case that
7 Mr. Walker pointed out in Pike County play
8 out, and we can figure out if whether or
9 not Brundidge Acquisitions, which we've
10 always maintained is just an alterego to
11 Coffee County, is even authorized under
12 other Alabama law to even own this
13 landfill in the first place.
14 If the Pike County
15 judge does what he's supposed to do, we
16 win that argument. This matter becomes
17 moot for y'all. And I think that's about
18 it, actually. That's all I've got. I'd
19 love to take questions. I'm sure
20 Mr. Walker will take questions. That's
21 all we have.
22 CHAIRMAN BROWN: I have a
23 couple.

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1 MR. NOLES: Yes, sir.
2 CHAIRMAN BROWN: Due to a court
3 ruling, there is no host government
4 agreement anymore, correct?
5 MR. NOLES: It's a contingent
6 order that upon the sale of the land --
7 once the sale is consummated between the
8 debtor and Brundidge Acquisitions, at that
9 moment the host government agreement will
10 be voided. I think that's correct. If
11 I'm wrong, I'll be corrected.
12 CHAIRMAN BROWN: There is an
13 existing valid Brundidge -- City of
14 Brundidge permit for the operation of the
15 landfill currently.
16 MR. NOLES: There is a current
17 valid ADEM permit for the operation.
18 CHAIRMAN BROWN: What about
19 Brundidge?
20 MR. NOLES: Right now, it's
21 operating under a valid host government
22 agreement -- that's not being met, by the
23 way. It's being violated throughout this

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1 whole process because you're not supposed
2 to be able to transfer the landfill
3 without the host government agreement and
4 ask for permission. But that host
5 government agreement is in place. I may
6 see where you're going with that.
7 The problem is:
8 ADEM is knocking over a domino
9 deliberately here. Who knows what other
10 dominoes are going to fall. You transfer
11 it, the sale is going to take place, the
12 agreement is going to be voided. So just
13 because we're talking two dominoes down
14 the road, I wouldn't be comfortable with
15 that. I didn't mean to be presumptuous,
16 sir.
17 CHAIRMAN BROWN: That's okay.
18 Any other questions?
19 COMMISSIONER LESTER: If we
20 give a stay, are we negating the
21 bankruptcy judge's order?
22 MR. NOLES: Not at all. No,
23 sir.

1 COMMISSIONER LESTER: Ask our
2 attorney.
3 MR. TAMBLING: I don't need to
4 be answering those questions. This is
5 oral argument.
6 MR. NOLES: In fact, I have a
7 short paragraph that I can read from the
8 bankruptcy judge's order that says that --
9 COMMISSIONER LESTER: That's
10 the question I want to know. If we do the
11 stay, are we negating his order of the
12 sale of the landfill?
13 MR. NOLES: You're not negating
14 the stay with -- in fact, the relief from
15 the stay, the judge's relief from the stay
16 says that we are allowed to come and argue
17 such matters and take such actions before
18 ADEM, before the Commission, regarding the
19 landfill as we deemed appropriate. So
20 this is in the carve out to the stay, so
21 you'll be okay there.
22 COMMISSIONER MILLER: I have a
23 question. I don't see whether we grant

1 the stay or not how that's going to
2 reestablish the host government agreement.
3 I don't see what effect that's going to
4 have. Can you explain that to me?
5 MR. NOLES: Yes, sir. The
6 agreement is in place right now. But by
7 the transfer occurring, then the sale is
8 going to be allowed to be consummated. If
9 the sale is consummated between the debtor
10 and Brundidge Acquisitions, then at that
11 moment, that host government agreement is
12 voided by act of court order. So you are
13 correct. That's correct. Right now, the
14 host government agreement, although it's
15 being violated, is in place.
16 But by this
17 transfer, you are -- ADEM is affirmatively
18 agreed -- and we warned ADEM about this
19 several times before the court order was
20 even issued, that this was going to
21 happen. We did not want to be here. We
22 did not want ADEM to transfer the permit.
23 We tried to head that off at the pass.

1 But they just know that that's what's
2 going to happen. The roadmap has been
3 laid out.
4 COMMISSIONER MILLER: Well, I
5 appreciate your position, and I understand
6 why you're here, but some of the things
7 that you cited in your response or your
8 brief don't seem to be quite matching up
9 with what's occurred here to me.
10 Now, I went and
11 looked at the statute and read the parts
12 that both sides have quoted and gone to.
13 Do you know whether or not when this
14 transfer was requested that they requested
15 ADEM to provide the transfer within a
16 certain period of time?
17 MR. NOLES: You know, it's
18 interesting that you bring that up. From
19 what I've seen, and I think Mr. Sasser
20 will back me up on this and the ADEM
21 attorney -- they requested that in the
22 case of the NPDES permit -- and we're
23 talking about the landfill permit -- that

1 that transfer occur 30 days out. They
2 requested that the SID permit be
3 transferred 30 days out. There was no
4 request with respect to the landfill
5 permit being transferred.
6 COMMISSIONER MILLER: No
7 request for a certain time at all?
8 MR. NOLES: Unfortunately,
9 Brundidge Acquisitions has represented
10 that to be the case in their brief.
11 Unless I'm mistaken, that's just not
12 accurate. I welcome to be corrected.
13 COMMISSIONER MILLER: Well,
14 maybe the main sticking point here would
15 be that they turned in their request and
16 said that we need this right away.
17 Because the way I read it, the statute
18 says they had to request it 30 days prior
19 to the transfer. But if they didn't
20 request the transfer be accomplished in a
21 certain amount of time, then the flip side
22 of that to me was that ADEM could have
23 done it a year away, four days away, six

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1 weeks away, and that wouldn't have had
2 anything to do with the Brundidge
3 Acquisitions request.
4 In other words, they
5 can request it, and if they don't put a
6 time limit on it, then, obviously, they
7 have met the 30-day minimum requirement
8 for asking for a transfer. They don't
9 say, we need this within a week or we need
10 this within six months. If they just put
11 it in and say, here it is, you just rule
12 on it when you want to, I don't see how
13 that violates any ADEM regulations.
14 MR. NOLES: Yes, sir. But I
15 would argue, I would respond to that that
16 it does in -- the ADEM regulation
17 specifically says you must submit 30 days
18 prior to the transfer. And in this case,
19 it was submitted on March 19th, and the
20 transfer occurred on March 22nd.
21 COMMISSIONER MILLER: That
22 wasn't Brundidge Acquisitions. They
23 didn't request a transfer.

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1 MR. NOLES: No. But if ADEM
2 had waited the 30 days that they were
3 supposed to do --
4 COMMISSIONER MILLER: The way I
5 read it was ADEM is not required to do it
6 within four days or four weeks.
7 MR. NOLES: They're supposed to
8 at least give it 30 days though.
9 COMMISSIONER MILLER: No.
10 That's not the way I read it. The way I
11 read it was, Brundidge Acquisitions has to
12 give it to ADEM 30 days prior to when they
13 would like the transfer to occur. But
14 that doesn't mean that ADEM can act on it
15 anytime they want to.
16 CHAIRMAN BROWN: At the end of
17 the day though, is this whole matter about
18 host agreement?
19 MR. NOLES: Yes, sir. And I
20 was just about to say, I hate to get
21 caught up arguing about this particular
22 tree.
23 COMMISSIONER MILLER: That's

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1 one of your main arguments is that ADEM
2 didn't wait 30 days.
3 MR. NOLES: Well, I would be
4 prepared to, I think, concede that
5 particular argument. I would be prepared
6 to concede that argument. That was just
7 one of the examples of -- I was just
8 trying to give ADEM something they could
9 point to where they have specifically
10 violated a regulation to turn back on.
11 I think the broader
12 issues are the fact that what we're
13 looking at -- what ADEM is looking at
14 doing here is transferring a permit that
15 is going to allow a sale that they know is
16 going to take place, that they know is
17 going to result in the negation of a host
18 government agreement, which they know
19 means you're going to have a landfill
20 operating in a town of 3,000 people that
21 has no control over the landfill. And at
22 that point, you've got ADEM involved in
23 the siting of a landfill.

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1 CHAIRMAN BROWN: Well, it's
2 already sited.
3 MR. NOLES: It's sited with the
4 host government agreement --
5 CHAIRMAN BROWN: It's already
6 sited. It's there.
7 MR. NOLES: Yes, sir. With the
8 agreement.
9 CHAIRMAN BROWN: But, from a
10 policy standpoint, we have a unique
11 situation where the host government
12 agreement has been terminated by a court.
13 MR. NOLES: Let's call it
14 terminated, yes, sir.
15 CHAIRMAN BROWN: There's
16 nothing in any statute or anything that
17 requires a host government agreement.
18 MR. NOLES: The statute
19 requires host government approval. And
20 when the host government approval was
21 clearly conditioned on the host government
22 agreement, I would say that you can't have
23 one without the other.

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1 CHAIRMAN BROWN: And what is
2 the nature of the host government
3 approval? Resolutions?
4 MR. NOLES: Yes.
5 CHAIRMAN BROWN: And what does
6 the resolution specifically say?
7 MR. NOLES: Well, I don't think
8 we have the resolution with us, but we do
9 have the actual agreement that the
10 landfill operator signed. And it's in the
11 whereas clauses. In fact, I may have
12 it -- I'll read.
13 This is what the
14 host government agreement says: Whereas,
15 said government approval was contingent
16 upon the execution of an agreement, dated
17 January 16th, 2001, and subsequently
18 modified on May 1st, 2002, between the
19 City and Brundidge Landfill, LLC; whereas,
20 the city assigned it to the authority;
21 whereas, the authority has determined that
22 entering into the agreement, amendment,
23 modification, substitution, or renewal of

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1 the initial agreement is in the best
2 interest of the city and the authorities
3 and incorporators.
4 And if I go back to
5 that first clause: Whereas, the said host
6 government agreement -- I'm sorry.
7 Whereas, said host government approval was
8 contingent upon the execution of the host
9 government agreement. Whereas, said host
10 government approval was contingent upon
11 the execution of the host government
12 agreement.
13 VICE-CHAIRMAN PHILLIPS:
14 Mr. Walker, you made a comment about
15 things like noxious odors, items that were
16 in the host government agreement that were
17 not handled by either state or local rules
18 and regulations. Could you give us a few
19 more examples of that and how they really
20 aren't covered by other regulatory or
21 ordinance?
22 MR. WALKER: There certainly
23 are ADEM regulations that relate to those

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1 things, but they -- for example,
2 Paragraph 8.4 says that Brundidge, the
3 operator, I believe is what it says, shall
4 implement an effective dust management and
5 supression program, and there's no
6 corresponding regulation in Division 13.
7 Paragraph 8.5 says, Brundidge Landfill
8 shall make reasonable efforts to minimize
9 the amount of mud tracked onto the
10 entrance road. There's no corresponding
11 provision in Division 13.
12 This is an important
13 one. Paragraph 8.6 says that Brundidge
14 Landfill agrees to permit an independent
15 third party selected and hired by the
16 authority to audit the landfill to assess
17 both the landfill's waste disposal
18 operations in compliance with this
19 agreement and the relevant environmental
20 laws and regulations on no more than an
21 annual basis. That's not covered in
22 Division 3.
23 The Paragraph 8.10

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1 requires reseeding of land cleared
2 immediately after use and reforestation.
3 That's not covered by Division 13. 8.17
4 requires the operator to advise the
5 authority when closure plans are being
6 prepared and to allow the authority the
7 timely opportunity to comment on those
8 plans. That's not covered by Division 13.
9 MR. NOLES: And Paragraph 12 is
10 particularly important in what it enables
11 Brundidge to do. Brundidge Landfill, LLC,
12 further agrees that no change, variance,
13 waiver, or modification to or from any
14 provision of any permit issued by ADEM to
15 Brundidge Landfill, LLC, regarding the
16 operation of the landfill, will be
17 requested from ADEM without prior approval
18 by the authority.
19 That gives Brundidge
20 a remarkable extra regulatory degree of
21 oversight on this landfill. It's
22 intentional. I wrote it that way to be
23 intentional when we did the agreement.

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1 Because typically, for example, when a
2 landfill requests a variance, you don't
3 have to go to your host government
4 agreement. But this is a very, very
5 powerful paragraph and that's what that's
6 in there.
7 CHAIRMAN BROWN: Conceptually,
8 public policy. I don't understand how the
9 Commission or the Department can insist
10 upon the host government agreement that
11 has been deemed judicially unenforceable?
12 MR. NOLES: That actually is
13 not what happened, your Honor. Let me
14 say, the bankruptcy judge made it clear
15 that her interest is in bringing money
16 into the estate. And she doesn't care how
17 our landfills are regulated in Alabama.
18 She's not interested in that. She says,
19 you're standing with your host
20 government -- it's clear that it's not
21 Brundidge Acquisitions -- I mean, it's not
22 the trustee; it's not the bankruptcy court
23 to have any issue with the host government

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1 agreement. It's Brundidge Acquisitions.
2 In fact, the trustee
3 filed a motion with the court, where he
4 said, Look, don't tell me I have to void.
5 Don't tell me I have to reject the host
6 government agreement because if the sale
7 with Brundidge Acquisitions doesn't go
8 through, a new purchaser may agree to the
9 host government agreement. So the trustee
10 doesn't have a problem with the host.
11 He's just trying to do his job of trying
12 to bring in assets so that -- the court
13 and the trustee both said, we don't care
14 how waste and landfills are regulated in
15 Alabama. Our job is to bring in money.
16 If you've got an
17 issue over the host government agreement,
18 resolve that before the Alabama agency and
19 the Alabama courts. The Court gave us
20 specific permission to file the lawsuit
21 that we did in Pike County and gave us
22 permission to come to this administrative
23 agency to make the arguments that we're

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1 doing now. So it would be wrong to
2 conclude that the Court expressed any
3 opinion about the host government
4 agreement, except that it was an obstacle
5 to Brundidge Acquisition's purchase of the
6 landfill because Brundidge Acquisitions
7 didn't want to live up to the terms of the
8 host government agreement.
9 If you're the City
10 of Brundidge, you have to wonder about a
11 new provider that comes in and says up
12 front, we don't want to live up to the
13 terms of your host government agreement.
14 We don't wanted to have any local
15 oversight.
16 CHAIRMAN BROWN: Thank you.
17 Any other questions? Comments?
18 (No response.)
19 CHAIRMAN BROWN: I guess we'll
20 hear from Brundidge next. I mean,
21 Brundidge Acquisitions.
22 MR. PENTON: Thank you,
23 Mr. Chairman, members of the Commission.

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1 My name is Sim Penton, and along with my
2 partner, Robert Gilpin, I represent
3 Brundidge Acquisitions. And as you
4 pointed out, this is not about siting a
5 landfill. It has nothing to do with
6 siting a landfill.
7 And what Norman
8 didn't hit on when he was talking about
9 the burden they've got -- there are four
10 points, and he did name them, but they
11 deserve to be discussed. They've got to
12 have a substantial likelihood that they're
13 going to prevail on the merits of the
14 hearing before Judge Jim Hampton. They
15 filed to challenge the transfer that's
16 been assigned to Hearing Officer Jim
17 Hampton. He has not set a hearing on
18 that, but he will.
19 They have to prove
20 that the city is going to suffer
21 irreparable harm if they're not granted
22 the stay. They have to prove that the
23 benefits of a stay outweigh the harm it

1 will cause to ADEM, to my client, and to
2 the bankruptcy court trustee, and the
3 creditors of the bankrupt estate. And
4 they have to prove that the issuance of
5 the stay will not harm the public
6 interest.
7 It is worth
8 emphasizing the first of those
9 requirements: A substantial likelihood
10 that they will prevail before Judge
11 Hampton. That's not a likelihood. That's
12 not a mere preponderance. That's a
13 substantial likelihood. That's not just
14 tipping the scales. That's not
15 51 percent. That's substantially more
16 than a likelihood. So they're going to
17 ask you to believe that Judge Hampton is
18 going to rule that ADEM has been
19 interpreting their rules and acting in an
20 unlawful manner for 20 years. I submit to
21 you, they can't meet that burden. This is
22 not about a modification.
23 CHAIRMAN BROWN: And

1 ultimately, the Hearing Officer just makes
2 a recommendation?
3 MR. PENTON: Ultimately, the
4 Hearing Officer. You're absolutely right.
5 Just makes a recommendation.
6 They still have to
7 prove that there's a substantial
8 likelihood that they're going to prevail.
9 They exaggerate the scope of the 22-27-48
10 and the ADEM Administrative Code. And
11 there's no requirement for notice of
12 approval of a transfer, nor is there a
13 requirement for any agreement between a
14 host government and a landfill operator.
15 None. You won't find it anywhere.
16 The required
17 approval for Permit 55-07 was submitted
18 and unquestionably this exists outside of
19 any agreement. It is undisputed that
20 Brundidge Acquisitions has not sought to
21 modify the physical operation of that
22 landfill, the landfill site, the capacity,
23 or anything else. Again, they cannot meet

1 their burden.
2 The lone legal
3 authority they cite in support of their
4 argument of that transfer is a
5 modification in a case called TransAmerica
6 Waste decision. It's nowhere close to our
7 facts. It involves expansion of the area
8 of the landfill and an increase in receipt
9 of garbage. It's just not close.
10 This is what they're
11 trying to do. They're trying to come to
12 this agency and attack the order of the
13 bankruptcy court. There's no legal
14 authority for them doing that. They
15 participated, they filed an appearance in
16 the bankruptcy court, they filed an
17 objection, the bankruptcy court ruled, and
18 they have allowed the time for an appeal
19 of that ruling to expire. They've instead
20 tried to collaterally attack that before
21 this agency and in Pike County Circuit
22 Court.
23 When the transfer

1 was sought by my client, we used forms
2 supplied by ADEM. To say that we mislead
3 the agency in any fashion is inaccurate.
4 We use the forms that required that the
5 transfer of the permit does not change any
6 condition of the permit or registration
7 approval. The permit makes no reference
8 to a host government agreement. They've
9 already conceded that ADEM did not violate
10 any 30-day requirement, so I won't waste
11 time on that.
12 They simply cannot
13 meet the burden of a substantial
14 likelihood. Second, the City has not
15 shown that it would irreparably harmed in
16 the absence of the stay. The landfill is
17 not operating now. The irreparable harm
18 would be if you allowed the permit to
19 revert to an insolvent bankrupt operator
20 in bankruptcy in New Jersey.
21 As everyone knows,
22 ADEM has the exclusive authority to
23 regulate this landfill. The language in

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1 the host government agreement that they've
2 cited is duplicitous to other ADEM
3 regulations in the Code of Alabama.
4 Three, the City
5 cannot show that the benefits of a stay
6 outweigh the harm to Brundidge
7 Acquisitions, the bankruptcy court, or the
8 citizens of Brundidge. This is what we're
9 here about. The City doesn't bring it up.
10 The city wants to buy the landfill. The
11 City tried unsuccessfully in 2011. Their
12 bid fell short.
13 The City had an
14 opportunity to purchase the landfill
15 during the bidding process in the
16 bankruptcy court. They chose not to
17 submit a bid.
18 Finally, the
19 issuance of the stay will not harm the
20 public interest. This is most important.
21 As I mentioned, is it better for the
22 citizens of Brundidge to have the permit
23 in the hands of a viable well-funded

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1 Alabama operator or in the hands of a
2 bankrupt and solvent company in New
3 Jersey?
4 There is no threat
5 by this transfer. The City simply wants
6 to create barrier after barrier to the
7 consummation of this transaction in the
8 hopes that purchaser after purchaser will
9 fall out and they will be able to buy it
10 for a fraction of what my client is paying
11 for.
12 Their arguments just
13 don't have merit. They've raised them
14 here. They've raised them in Pike County.
15 It just cannot be emphasized enough that
16 they cannot meet these burdens. My
17 partner, Robert Gilpin, and I will answer
18 any questions that you've got. We welcome
19 them.
20 VICE-CHAIRMAN PHILLIPS: I have
21 a question. What is it in the host
22 government agreement that concerns
23 Brundidge Acquisition?

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1 MR. GILPIN: First off, the
2 bankruptcy court ruled in light of the
3 affidavit stated by the trustees
4 bankruptcy that that agreement is rejected
5 in the time from --
6 VICE-CHAIRMAN PHILLIPS: I
7 appreciate it.
8 MR. GILPIN: So, secondly, that
9 agreement -- to say that that's a host
10 government approval --
11 VICE-CHAIRMAN PHILLIPS: I
12 didn't ask that either.
13 MR. GILPIN: I'm getting to it.
14 Is duplicitous. For instance, they're
15 talking about mud on the street. They're
16 talking about dust control. Your staff
17 will tell you that that's the reason you
18 have cover every day, to prevent dust, to
19 prevent mud. That's the reason why you
20 have a waste water collection center.
21 VICE-CHAIRMAN PHILLIPS: So the
22 answer is that --
23 MR. GILPIN: It's duplicitous.

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1 And frankly, we're trying to avoid being
2 held up.
3 VICE-CHAIRMAN PHILLIPS: Okay.
4 MR. PENTON: There's just no
5 authority for a notice requirement or a
6 host government approval transfer. It's
7 plain and simple. There is valid host
8 government approval for this site.
9 MR. GILPIN: The host
10 government approval occurred in the early
11 '90s, and the site has not changed.
12 MR. PENTON: And they didn't
13 bring you the resolution. The resolution
14 that approves the site has no language
15 about a host government agreement.
16 CHAIRMAN BROWN: Anybody else?
17 We'll hear from the
18 Department now, please. Thank you.
19 MR. SASSER: Good afternoon.
20 May it please the Commission. My name is
21 Chris Sasser. And for the Department, I
22 want to say that our interest in this
23 case, obviously, is different than the

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1 other previous parties, but it is very
2 important because it is in maintaining
3 regulatory consistency and administering
4 the statutes and the rules addressing
5 solid waste.
6 You need to know
7 that the Department handled this permit
8 transfer like it would any other and
9 commited no legal error in transferring
10 the permit. First of all, local approval
11 is not required for a transfer of permit.
12 There is no legal authority that has been
13 cited that says so. Because the permit
14 transfer does not result in a change to
15 the physical operations of a landfill, new
16 local approval is not required. Remember,
17 this permit has already been to the local
18 approval process and nothing has changed
19 as to the physical operations, and
20 therefore, as to the conditions of the
21 permit, which, of course, include
22 compliance with our Division 13
23 regulations.

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1 The Department
2 construes modification to mean a physical
3 change in the landfill operations. And
4 our rule addressing modification, which is
5 separate, identifies such changes as
6 expansion, conversion to a landfill that
7 goes to a higher regulatory regimen; such
8 as, from an construction landfill to
9 industrial or either of those to a
10 municipal landfill, or, of course,
11 expansion of either area of the landfill.
12 In contrast, the
13 transfer is governed by a separate rule,
14 and it simply requires notification of the
15 specified forms which have been
16 promulgated by the Department. The
17 transfer, by its terms, and that form
18 that's signed does not authorize a change
19 to the physical operations, and the
20 landfill permit conditions, therefore,
21 remain unchanged. Essentially, as far as
22 we're concerned, this is a name change to
23 the permit. And this Department, for

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1 those reasons, as reflected in the rules
2 and reflected under past practice for over
3 20 years, has handled those permit
4 transfers this way since the statute was
5 passed.
6 We do get deference.
7 And we get deference if -- by the court --
8 if what we do has a reason to it. And
9 I've just given you a reason to it. It's
10 a reason that can be backed up by the way
11 that the regulations are structured. This
12 is not just an argument that we're making.
13 Just as importantly, under that statute,
14 Section 48: New or modified permits are
15 the ones that are either approved or
16 disapproved by the local governing body.
17 There is no provision for contingencies
18 outside the terms of the permit, so the
19 original approval for this particular
20 permit is still valid.
21 I think that the
22 30-day issue has already been handled. I
23 would say that, as to the transfer

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1 application, it does require the
2 transferee to assume the requirements and
3 obligations of the permit, not any
4 obligations outside the permit, outside
5 the purview of the Department; such as,
6 the host government agreement, or also
7 known as the contract. Thus, the
8 transferee, when it signed it and
9 submitted it to ADEM, did not mislead us.
10 And we committed no error in accepting the
11 application.
12 If any of y'all have
13 any questions, I'll be happy to try and
14 field them. If not, I'm finished.
15 CHAIRMAN BROWN: Any questions?
16 VICE-CHAIRMAN PHILLIPS: I have
17 a question.
18 Since you were
19 referred to as agreeing relative to some
20 of the requirements on mud on roads and
21 things, do you think what is in the host
22 agreement is covered by the other
23 regulations -- other of our regulations?

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1 MR. SASSER: I don't have that
2 agreement in front of me, so I can't say
3 blanketly. But I do know that from
4 looking at it, that many of those -- I can
5 say that many of those I saw looked
6 familiar. I do know that the dust
7 suppression -- and I can stand corrected,
8 but I believe the permit is required to
9 have a Title 5 Air Permit, and that air
10 permit does require the dust supression.
11 But the argument about cover, cover would
12 eliminate a lot of this too.
13 As to the mud on the
14 roads, to the extent that it might
15 constitute a storm water discharge, the
16 NPDES best management practices could
17 potentially cover that. And, of course,
18 I'd just like to say two things. As for
19 the audit, the yearly inspection or
20 whatever, our inspectors aren't bound
21 by -- we can go out there any time that we
22 deem necessary.
23 VICE-CHAIRMAN PHILLIPS: Thank

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1 you.
2 CHAIRMAN BROWN: Anybody else
3 have any questions?
4 (No response.)
5 COMMISSIONER MILLER: I have a
6 comment. When I first saw this was coming
7 up, I really hoped that: Number one, it
8 could be worked out prior to us having to
9 hear the contest. And I kind of went in
10 with the idea that, well, I can understand
11 why Brundidge would not want this to
12 happen. And I was kind of hoping maybe to
13 find something that would cause us to
14 grant the stay. But the more I read, I
15 just don't think your case is very strong
16 at all. That's just my personal opinion.
17 I wish it were stronger, but I just don't
18 see, personally, how us granting this stay
19 would be the correct action. And
20 secondly, you're still going to contest it
21 in the court anyway, so whatever we say
22 would be reversed.
23 And you said,

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1 initially, that, you know, the host
2 government agreement can't be revoked once
3 given.
4 MR. WALKER: Host government
5 approval.
6 COMMISSIONER MILLER: Approval
7 can't be revoked. So I can't balance that
8 with what's happening in New Jersey in the
9 court.
10 MR. WALKER: What the court was
11 doing in New Jersey was saying we don't
12 care how you regulate landfill. Go have
13 that resolved in Alabama. All we want to
14 do is move past that because it's an
15 obstacle because Brundidge Acquisitions
16 doesn't want to have local government
17 oversight. So what our job is to do is to
18 get money into the estate, and we don't
19 care about anything else in the world.
20 And anything that gets in the way, we're
21 just moving it out of the way. And they
22 said --
23 COMMISSIONER MILLER: I don't

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1 see how what we do here today will have
2 any effect on oversight of the landfill.
3 I guess that's what I'm having trouble
4 getting my hands around. You guys don't
5 have any environmental engineers working
6 for the City of Brundidge, do you? And if
7 you did and they found a problem with the
8 landfill, they're going to come to ADEM
9 and ask them to make the ruling, not you.
10 MR. NOLES: Actually, we do.
11 At times, we do retain outside
12 environmental officials.
13 COMMISSIONER MILLER: What do
14 you do with his report if he comes in and
15 finds something he doesn't like?
16 MR. NOLES: We go to -- we've
17 done this in the past. We go to either
18 Brundidge Landfill, LLC, or the
19 performance bond company that's
20 guaranteeing the performance and say,
21 you're in breach of this agreement. Fix
22 it. And they fix it. It gives us a
23 private cause of action to assure our

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1 clients without having to come to ADEM,
2 which is operating, according to the
3 Director, at near minimum efficiency with
4 a $4-million shortfall --
5 CHAIRMAN BROWN: No, no.
6 Maximum efficiency, minimum funding.
7 MR. NOLES: I apologize.
8 COMMISSIONER MILLER: I went
9 into this, this way, hoping that you guys
10 were right, but I just have not been
11 convinced.
12 MR. NOLES: The last thing I'll
13 say is that: One, you've got to keep in
14 mind that what you're allowing to happen
15 here is that first domino to fall, and you
16 know exactly what the other dominoes are.
17 The permit transfers, the sale is
18 consummated, the host government agreement
19 is voided, and Brundidge is left with a
20 landfill in its community without the
21 protections of a host government
22 agreement. And that host agreement, maybe
23 y'all need to ask somebody with the

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1 technical interpretation department.
2 Section -- Paragraph 12 of that host
3 government agreement which gives us the
4 right to approve any modification or any
5 variance is in no way duplicative of ADEM
6 regulations. That bothers me that no one
7 has come and said that yet.
8 VICE-CHAIRMAN PHILLIPS: Isn't
9 that a matter to be dealt with outside of
10 this jurisdiction? I don't see how that
11 host government agreement constitutes
12 something that we should be breaking the
13 tie between the two of them.
14 MR. NOLES: Sure, except for
15 the fact that we're arguing that the host
16 government agreement is what the host
17 government approval is contingent upon.
18 There's a reason that that host
19 agreement --
20 VICE-CHAIRMAN PHILLIPS:
21 That's also why we have a process. And I
22 don't see how the stay is going to -- it's
23 not going to eliminate -- if we don't

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1 issue the stay, we still have a process.
2 You filed an appeal, right?
3 MR. NOLES: Yes, sir.
4 VICE-CHAIRMAN PHILLIPS: So
5 there's still a method for you to still be
6 heard.
7 MR. NOLES: There will be, but
8 in the meantime, this sale could
9 consummate tomorrow for all I know.
10 VICE-CHAIRMAN PHILLIPS: I
11 don't usually close on houses when there's
12 a question on the title.
13 MR. NOLES: We're off the
14 reservation on this, so I don't know
15 what's going to happen.
16 VICE-CHAIRMAN PHILLIPS:
17 That's true. I can't answer it either.
18 Someone made a comment about the landfill
19 is not operating at the moment. One of
20 you said that.
21 MR. WALKER: It's operating in
22 a sense that a landfill operates until
23 closure is effected, but it's not

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1 receiving waste on a daily basis.
2 VICE-CHAIRMAN PHILLIPS:
3 Practically it's not operating because
4 it's not --
5 CHAIRMAN BROWN: Is there staff
6 or maintenance or anybody present?
7 MR. WALKER: There's one person
8 there that's taking care of the bare
9 minimal administrative requirements, from
10 what we understand.
11 MR. GILPIN: If the permit
12 would be transferred, there would be more
13 people.
14 CHAIRMAN BROWN: Who is that
15 one person? Who is his employer?
16 MR. PENTON: His name is Mark
17 Barbary, and I believe he's employed by --
18 MR. GILPIN: Employed by the
19 bonding company.
20 VICE-CHAIRMAN PHILLIPS: To
21 insure that all requirements are being
22 met?
23 MR. GILPIN: We've had to take

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1 prompt action.
2 CHAIRMAN BROWN: Any further
3 discussion?
4 (No response.)
5 CHAIRMAN BROWN: Can I have a
6 motion?
7 COMMISSIONER MILLER: I didn't
8 hear the motion.
9 CHAIRMAN BROWN: I'm asking for
10 one.
11 COMMISSIONER MILLER: I move
12 that we do not grant the stay.
13 COMMISSIONER MERRITT: I
14 second.
15 CHAIRMAN BROWN: Motion has
16 been made to deny the request for stay.
17 All in favor in say "aye."
18 ALL: Aye.
19 CHAIRMAN BROWN: Any opposed?
20 (No response.)
21 CHAIRMAN BROWN: Motion
22 carries.
23 Any other business?

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1 (No response.)
2 VICE-CHAIRMAN PHILLIPS: I have
3 some other business. Could we take like a
4 two-minute break? Just a quick break.
5 CHAIRMAN BROWN: Sure. So
6 Commissioner Phillips can do his business.
7 (A brief recess was taken.)
8 CHAIRMAN BROWN: All right.
9 Let's get started. Let's reconvene. Now
10 that all of the Commission's business has
11 been taken care of, we will move into the
12 public comment period. We've got two
13 requests to appear before the Commission.
14 I'd recommend that we -- somebody make a
15 motion to approve.
16 COMMISSIONER LESTER: I move.
17 VICE-CHAIRMAN PHILLIPS:
18 Second.
19 CHAIRMAN BROWN: All in favor?
20 ALL: Aye.
21 CHAIRMAN BROWN: We'll ask the
22 speakers to limit their presentations to
23 ten minutes and to be mindful that in

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1 addition to providing oversight and active
2 policy, this Commission also adjudicates
3 disputes from ADEM, such that, no specific
4 enforcement actions or permitting
5 decisions or entities should be mentioned
6 so that we can maintain our objectivity
7 since the other side could not be present
8 to respond.
9 First is Outcast
10 Voters' League.
11 MR. HOWARD: Mr. Chairman, the
12 rest of the group, we will ask permission
13 to show a brief clip from CBS 42. My name
14 is Kelvin Howard, on behalf of the Outcast
15 Voters' League. Frank Matthews will be
16 presenting. We have some concerned
17 members from north Birmingham who have
18 come down this morning to attend. So
19 before that, allow Mr. Matthews to
20 introduce himself.
21 MR. MATTHEWS: Thank you,
22 Mr. Chairman, Mr. Brown, Mr. Phillips,
23 Mr. Lester, and Ms. Merritt, for the

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1 opportunity to bring our grave concerns
2 before you. I'm the president of the
3 Outcast Voters' League, and just before we
4 get into summation of why we're here, as
5 well as from the Vice President of the
6 North Birmingham Committee, Ms. Anna
7 Brown, there's a little piece that
8 Channel 42 did after the press conference,
9 and we would like to start our
10 presentation with that little piece.
11 (Video being shown.)
12 MR. HOWARD: When we initially
13 asked to come to speak before you, we
14 didn't know this. And we wanted
15 specifically to bring just this one
16 company. There's two companies that we're
17 concerned about, and I won't mention their
18 names since 42 did. I want to present to
19 you about five copies of photos that --
20 CHAIRMAN BROWN: Would the
21 other one be the one I read your comments
22 in the newspaper last week?
23 MR. HOWARD: I don't even know

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1 the name of them. That's just one of the
2 problems, Mr. Chairman. We can't even
3 find out the name of them. And I'll let
4 Anna speak to -- the one you just saw was
5 the one on Fred Shuttlesworth and 27th
6 Street. And what you had was Maclin Park
7 there, and mind you, Mr. Chairman, you
8 know what happened with Hudson Middle
9 School. It's only three blocks from the
10 same facilities. And we got a company
11 that somebody said is not operating with a
12 valid permit, and there's about a
13 six-foot -- it looks like crossties that
14 they're using, and if you look at the
15 photos here, you'll see the crossties here
16 and stacks and stacks of garbage right
17 next to the park. So you've got children,
18 very curious. I lived in public housing,
19 we were very curious people, that's going
20 to go over there and deal with this stuff.
21 So that's a grave concern.
22 This and the Vice
23 President of the Norwood Community could

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1 just talk about -- and don't mention the
2 name -- which we don't know, but you know
3 the man, just tell them what's going on
4 with this other company that we hope you
5 guys can do something about.
6 CHAIRMAN BROWN: This is the
7 other facility?
8 MR. MATTHEWS: This is the one
9 here. And you see it has standing water.
10 And if you go down 65 North, and you know
11 where that big MAC truck sits there on
12 that thing, it's about three stories high.
13 Don't know what's in there. You've got
14 standing water. And you go to try to get
15 in there and you've got three different
16 companies.
17 And you're, like,
18 which company is this. They go, well, we
19 this and we that. Well, you can't get
20 here and when you go around to try to get
21 in there, they got trucks dealing with
22 aluminum cans and stuff. I really think
23 it's just totally illegal.

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1 The address that
2 they give is 2201 29th Street, but when
3 you go there it says, deconstruction
4 environment waste service. And they say,
5 well, we don't have anything do with that.
6 And you can't find out who's doing what,
7 who is in control of it.
8 I would hope that
9 investigators will actually find out why
10 this mounds and mounds of rubbish has been
11 there. Just before Anna, I went over the
12 regulations that you guys have. And one
13 of them said that 75 percent of that waste
14 need to move.
15 As you saw in that
16 video, this waste here looks like it's
17 growing hair, all that grass up there.
18 This should be bald headed. The barber
19 should go cut it -- all that grass stacked
20 up there. It's been there for eternities.
21 That's a violation as relates to your
22 code. This is a code that you guys sent
23 out. And I'm really so upset about it.

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1 And the reason I am upset about it is
2 because the school children from this
3 particular facility and the other facility
4 that we don't know really who owns is by
5 another school.
6 Now, it's about
7 children. When the little kids was taken
8 from the bus and put in that bunker, we
9 were very concerned about it. When the
10 ten-year-old -- the sign fell in the
11 airport and killed a ten-year-old, we were
12 very, very concerned. The eight-year-old
13 killed in Boston, very concerned. And I
14 won't even mention the thing in
15 Connecticut. That would just break my
16 heart. These are the same children that's
17 being killed by a site. And we don't have
18 nowhere else to go.
19 As you said, in the
20 other deliberation you just had, the city
21 is very limited. But you guys are the
22 authority so we're coming here, as I said,
23 somebody stumbled at the table. Because

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1 these guys have been operating without a
2 general operational permit. And somebody
3 could explain to me what that really
4 means. And 42 dug that up. So something
5 is going on with that one. But this other
6 one is really the one that I'm really
7 concerned about.
8 I happened upon the
9 other one. I bought an old '74 Eldorado.
10 I've been wanting one all my life. Tore
11 the thing up before I even get it for my
12 birthday. I was headed to the junkyard,
13 and I happened upon this one. And start
14 talking to some of the community members
15 and start talking to the grandkids. And
16 one of our ladies here said she had to
17 holler to keep her kid from going over
18 there. So it's a great, great concern.
19 And this needs to be
20 addressed in the few minutes we have one
21 unnamed, whatever it is.
22 COMMISSIONER MILLER: How far
23 apart are the two sites?

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1 MR. MATTHEWS: One is on 29th
2 Street and the other is on 27th Street.
3 MS. BROWN: Good afternoon, my
4 name is Anne Brown, and I'm the Vice
5 President of the North Birmingham
6 Neighborhood Association, and also a
7 member of the North Birmingham Community,
8 which consists of six neighborhoods:
9 Collegefield, Fairmount, North Birmingham,
10 Pacifico, Finley, and Hoover City. And if
11 you have been following the news lately,
12 you will know that our area is under EPA.
13 We have had problems with pollution from
14 the plants there.
15 And if you seen
16 Channel 42's story on deadly deception,
17 you'll see our story there. And it seems
18 like people just want to come to our
19 neighborhood and drop off trash. Now, the
20 other location that Mr. Matthews is
21 speaking of is three blocks from my house.
22 And my neighbors were calling me -- I was
23 riding down the freeway with someone one

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1 day and I saw this pile.
2 My neighbor starts
3 calling me, have you seen that trash
4 sitting up there. Well, the address is
5 listed as 2201 29th Avenue North. That is
6 the site of the old National Woodwork
7 Building. The gentleman came to the
8 neighborhood association early last year,
9 said he wanted to get a permit there. And
10 we refused that. We voted and we turned
11 him down.
12 It went before the
13 Public Safety Committee of the Birmingham
14 City Council, he had a hearing there. He
15 was denied. It went to the full council
16 with a denial. It went before the full
17 council and he was turned down. But yet
18 still, he blocked off the part that you
19 get from main street, you have to go
20 around and the entrance, is one block from
21 Lewis School where all our elementary
22 children go. On the back side of it is
23 one block from two sets of apartment

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1 buildings and houses there.
2 Now, the problem is:
3 I drove through there, there were three
4 big mountains of trash. One of them had a
5 toilet seat sitting on top of it. We
6 called the city, we called the police, we
7 called the fire. During our
8 investigation, we found out not -- like I
9 said, he had been turned down for the junk
10 dealer's. He didn't even have a business
11 office license to operate. His license
12 had expired in 2011, and it had never been
13 renewed again.
14 Now, I asked him
15 when he came before us, where do you live?
16 Do you have all this stuff in your
17 neighborhood? So why are you coming to my
18 neighborhood, contaminating my
19 neighborhood, devaluing our property,
20 putting our children in danger, and yet
21 you go home to a nice clean tree-lined
22 street, and that's not fair to us.
23 And what I'm asking

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1 for today on behalf of the neighbors in
2 the North Birmingham community is that we
3 need to really start enforcing and
4 penalizing these people who have utter
5 disregard for the laws. And when the city
6 or whoever tell them they can't operate,
7 and they don't go through the purpose of
8 getting a real business license, they need
9 to be punished. They really do. We don't
10 know where he's bringing this stuff from.
11 We don't know if there's asbestos or what
12 in there. We don't know and it is not
13 fair to us.
14 We're having
15 problems with air pollution, soil
16 pollution, water pollution, and every kind
17 of pollution you want to name in north
18 Birmingham. And it's not fair to add
19 anymore to it. And I'm asking you on
20 behalf of our neighbors in north
21 Birmingham to come out, make this man
22 stop, cease, desist right now, and then
23 penalize him for coming out there with

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1 this business.
2 I would like y'all
3 to come out there and look at it. To see
4 what's going on.
5 MR. MATTHEWS: Commissioner,
6 again, if y'all don't have any questions,
7 thank you for seeing us.
8 CHAIRMAN BROWN: I do have a
9 couple of questions. Has anybody filed a
10 compliant with the Department for
11 violations or perceived violations of the
12 regulations?
13 MR. MATTHEWS: Here's the
14 situation again, Chairman, I was headed to
15 buy some auto parts and happened upon this
16 one. I kept seeing the other one. You
17 can't help but see it if you're on the
18 interstate. So I called a press
19 conference because I know that the media
20 can stir up some stuff better than you
21 can. Sometimes you just act up, so we're
22 in the process.
23 And Mr. Howard is

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1 pro bono for us Outcast Voters' League and
2 now these citizens, so we're going to try
3 to follow it wherever it needs to go. And
4 to take him from his job and to take us
5 from our job, that's what we wanted to
6 plead to you guys. You are the ultimate
7 authority to a degree.
8 CHAIRMAN BROWN: We're always
9 happy to hear from the public, but the way
10 to get action is to file a complaint. You
11 can do it online, you can submit your
12 pictures of anything you think is a
13 violation. And then if you don't get
14 action, you call Director LeFleur.
15 MR. HOWARD: Can I entertain
16 one question?
17 CHAIRMAN BROWN: Sure.
18 MR. HOWARD: What is the
19 process and what is a general operation
20 permit that this particular facility don't
21 have? You can speak with him. Now that
22 we know that -- what's the gentleman's
23 name?

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1 CHAIRMAN BROWN: LeFleur.
2 MR. HOWARD: No, Mr. Hughes
3 just spoke to it. He is the one that said
4 this particular company didn't have to be.
5 What is the general permit and what is the
6 penalty? If you get stopped for not
7 having a driver's license, there's a
8 penalty. So he's been stopped, his
9 company has been stopped and flagged for
10 not having their permit. What is the
11 general permit, what are the violations,
12 what are the penalties for violating?
13 CHAIRMAN BROWN: Quite
14 frankly -- the penalties vary based on a
15 number of factors. But if somebody is
16 operating a business as a public nuisance
17 within the city limits of Birmingham, I
18 would expect that the city legal
19 department would take them to court to
20 shut them down.
21 MR. HOWARD: Well, she said
22 that the city --
23 MS. BROWN: That's what I

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1 wanted to speak to is that we -- on the
2 last one on 29th Avenue, the one that you
3 see from the freeway, we went to the City
4 of Birmingham to let them know that this
5 man was operating without a license. We
6 did get them to come out; they saw that he
7 was operating. They closed them down; he
8 stayed closed for about a week.
9 Now he's back to
10 doing business again, just like nobody has
11 come by and said anything.
12 MR. HOWARD: We will, with the
13 help of our attorney, find out the name of
14 this particular company and go through
15 that process. But we would hope that
16 since the other company's name, which we
17 didn't necessarily name, that you guys can
18 do whatever y'all need to do because
19 nothing needs to be filed if your own
20 personnel is saying on record that they
21 don't have a permit, Mr. Chairman.
22 CHAIRMAN BROWN: Thank you.
23 Would the Department

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1 like to comment?
2 DIRECTOR LEFLEUR: We have
3 certain actions underway against some of
4 these parties currently, but we will dive
5 into this one and find out if there's any
6 other things that are cooking up there
7 that we need to be dealing with, to be
8 sure.
9 CHAIRMAN BROWN: Thank you.
10 And next is
11 Mr. Snyder, Adam Snyder.
12 MR. SNYDER: Thank you.
13 Mr. Chairman, Commissioners, and Director
14 LeFleur, my name is Adam Snyder, and I'm
15 the Director of Conservation Alabama, at
16 least for a few more days, and co-chair of
17 ADEM Reform Coalition, the same
18 short-timer disease with both of those
19 positions.
20 Thank you for the
21 opportunity to speak today, and I will be
22 leaving my post to work with a Nature
23 Conservancy in the month of May. So

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1 coming up soon, you won't have Adam Snyder
2 to kick around anymore or vice versa. I
3 won't be able to kick you around anymore.
4 I've been working in
5 different capacities in the environmental
6 community in Alabama for nearly a dozen
7 years. I know many of you from those
8 capacities. We've had ups and downs, and
9 we've had knock-down, drag-out fights, and
10 we've accomplished quite a few things
11 together.
12 And I appreciate the
13 work that the Commission does, the
14 Director, and all the staff at ADEM do to
15 protect our environment and the
16 willingness that you have to have a public
17 comment period. That's something we
18 fought to get in the last 12 years, and we
19 have this opportunity to speak and to work
20 with you directly.
21 Some of the things
22 that I am the most proud of in the last 12
23 years is what this Commission did to

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1 reduce the amount of carcinogens emitted
2 in Alabama. I think that was a huge step
3 forward for the protection of our public
4 health. And this Commission made a policy
5 decision to do that. It was not required
6 by EPA; it was not required by anyone.
7 You decided that was what we needed to do
8 to protect the public health.
9 We're actually
10 seeing benefits from that. We're seeing
11 reductions in carcinogens in our water. A
12 report came out last year that we've seen
13 an 8-percent reduction in just the first
14 couple years after that policy passed in
15 '07 and '08. My greatest disappointment,
16 however, is that somehow Doc "Ironman"
17 Lester will outlast me here at ADEM after
18 18 years on the Commission.
19 COMMISSIONER LESTER: Well,
20 don't worry about it because I'm a member
21 of that thing you're going to work for, so
22 now I'm your boss.
23 MR. SNYDER: I just sent in my

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1 paperwork last week.
2 COMMISSIONER LESTER: I'll have
3 to cancel my membership then.
4 MR. SNYDER: Don't do that. I
5 don't know how you made it 18 years on
6 this Commission and still going like the
7 Energizer Bunny.
8 I want to briefly
9 talk about where we've been as a
10 coalition, an ADEM Reform Coalition, as
11 far as our score card and evaluation.
12 When the Director came in in 2010, it was
13 under difficult circumstances. The oil
14 spill had just happened, it expedited his
15 timeline to come on board in order to
16 address that. And much of the first year,
17 I would say, was all oil spill all the
18 time.
19 The Director has
20 been very open in meeting with us and
21 talking with us. And, in fact, we should
22 be meeting right now to talk as we do
23 every few months about issues. And in

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1 June of 2010, we sat down and talked about
2 priorities that the environmental
3 community had, and we looked at four
4 different areas.
5 One was the NPDES
6 petition that was dropped in January of
7 2010, another was enforcement, third was
8 storm water, and fourth was air toxins.
9 And if you go back to the strategic plan
10 that this Commission adopted in 2009, some
11 of those issues were priorities in that
12 strategic plan.
13 I will point out in
14 reviewing for this talk that we haven't
15 had much discussion about strategic plans
16 since 2009. There's been no formal review
17 that I've heard or any discussion. It's
18 supposed to be a five-year strategic plan,
19 so we're on the cusp of looking at that
20 again. So I think it's time to look at
21 that again and see how we progress and be
22 preparing for another strategic plan.
23 We tried to put

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1 those four areas down on paper to be very
2 clear. I know we've had complaints from
3 previous directors. Trey was here
4 earlier; I don't know if Trey's still
5 here. But the environmental community
6 tends to move the ball and change what our
7 priorities are. So we wanted to have it
8 down on paper. These are the things that
9 we want to see happen and that we want to
10 come back at a later date to evaluate.
11 We don't have time
12 to get into the details because it was a
13 very detailed document. I would say on
14 the petition, we haven't had much progress
15 in that area. The Director has made it
16 very clear that he does not want to
17 discuss the petition, although EPA has
18 directed us to work with ADEM on the
19 petition. I know that has been a
20 contentious item and it has been seen as
21 adversarial.
22 I would submit to
23 you that that was, we felt, our only

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1 option to move forward with the petition
2 in order to leverage these issues and
3 highlight them to EPA and to enter into a
4 conversation. Unfortunately, what we have
5 had, there is no conversation on the
6 particulars of the petition itself. We
7 talked about some of the issues that are
8 encased in that petition outside of that
9 petition, but we haven't talked about it.
10 That's very
11 frustrating to us in that three years have
12 gone by since the petition was dropped and
13 the movement has not happened. So we hope
14 we can engage in that conversation. EPA
15 has asked us on multiple occasions to work
16 with the Department on trying to address
17 these issues. Really, what we want is
18 these issues solved. It's not so much
19 that we want the EPA to take over this
20 agency, but we don't know where else to
21 turn.
22 The second item is
23 air toxins and we've talked about that for

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1 quite a while. In 2008 my organization
2 issued a report about air toxins. It
3 really affects our residents in north
4 Birmingham who were here earlier. Our
5 study showed that people are being exposed
6 to excessive levels of carcinogens through
7 the air. That is no fault of anyone's.
8 No one operator is
9 violating, so to speak. It is the way our
10 permitting program is set up, that it does
11 not account for cumulative risk. That was
12 a priority of the 2009 strategic plan. We
13 want to see air toxins addressed in some
14 way. It's something that I won't be able
15 to carry forward, but this Commission took
16 a stand about cancer risk in water, and we
17 feel like it's only natural to take a
18 stand against cancer risk in air.
19 Obviously, those are
20 two different states of matter, but it is
21 certainly affecting public health, and we
22 want this Commission to take action on
23 that. Those items are areas in which we

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1 have not seen movement. We had a few
2 meetings about air toxins, and we
3 appreciate those conversations. But in
4 the end, we haven't seen movement in those
5 areas.
6 And enforcement,
7 quickly, three broad areas in enforcement.
8 And I brought this along because we've had
9 a lot of discussion about this color-coded
10 document that we've gone through of what's
11 moved and what hasn't, and it's a little
12 bit complicated. I just want to talk
13 about this.
14 Access to records,
15 that has dramatically improved, and we
16 commend the Director and the Department
17 for what you've done. Actually, since
18 Trey is here, it started under his
19 leadership and Marilyn carried that
20 forward -- I thought Marilyn was here, but
21 I guess she stepped out -- in doing the
22 technology, the e-files, having access to
23 more information. That has dramatically

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1 improved.
2 We still need more
3 access offline. It is difficult for those
4 who aren't on computers. And we are far
5 behind, as far as access online, to get
6 information, but that access has improved.
7 A second area is inspections and review.
8 We really need more information to see
9 where we are on that to be able to
10 evaluate.
11 I would say, going
12 forward, we'll be talking with the
13 Director today and in future conversations
14 that enforcement is a key area that we
15 want to continue as a priority.
16 The third is
17 enforcement. The Director gave an
18 excellent presentation about how ADEM has
19 been able to make the most of very little.
20 I would also say that we are not seeing
21 compliance to the degree that our groups
22 would like to see on the ground. There is
23 a field here of external review of ADEM's

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1 enforcement program.
2 And then we have
3 people who are on the ground every day,
4 river keepers on the rivers that are not
5 seeing the compliance. And where we all
6 want to get, I think we agree on this, we
7 want to get to compliance as quickly as
8 possible. And some of our watersheds, we
9 have some concerns that we're not getting
10 to compliance quickly, and we're not
11 seeing deterrence, as in fines.
12 We talked about the
13 greatest, the largest action that this
14 agency has ever taken against a
15 municipality in Mobile, as far as storm
16 water, is very significant. And this
17 agency should be commended on doing what
18 they needed to do. Unfortunately, soon
19 thereafter, Mobile was again in violation.
20 So it is not
21 deterring action. It is still being seen
22 as a cost of doing business. We'll pay
23 the fine, but we know we're not going to

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1 have to change the way we operate.
2 Overall, as the ADEM Reform Coalition, our
3 biggest hurdle, our issue is fighting more
4 of the same. We don't want to see the
5 status quo; we want to see change.
6 I just saw a quote
7 earlier that change should not be seen as
8 a threat. It should be seen as an
9 opportunity. Certainly, the way we see it
10 is an opportunity.
11 The final area in
12 which we are looking at is storm water.
13 We're still in process on some of the
14 Phase 1 permits. That has been ongoing.
15 Phase 2 has come out, and what we have
16 seen in some of the storm water management
17 plans are with marked improvement. So we
18 commend the Director and staff on that.
19 Particularly, the
20 Director has great focus and attention on
21 LID, low impact development, green
22 infrastructure, post-construction, and
23 impaired waterways. These are areas of

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1 major concern for our organizations and
2 we've been glad to see that that has been
3 an emphasis under the Director.
4 Those are the --
5 still, as you will get many misses from
6 Mike Mullen and his work on the
7 Choctawhatchee. That storm water is one
8 of his biggest concerns and biggest areas
9 of work, and I will say that Mike will be
10 taking over a new role as co-chair of the
11 ADEM reform coalition, starting on May
12 1st. So he also will work with them as
13 far as what that means as being co-chair.
14 It's not as easy to be co-chair as it is
15 to do the great advocacy work that Mike
16 does. He's going to have to balance out.
17 What we hope, going
18 forward, and I hope, on behalf of my
19 department that we'll continue to have
20 these conversations. I would say, it
21 wasn't one of our items of evaluation of
22 the Director, but the communication and
23 his time has been tremendous. And we want

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1 to commend you, Director, and the staff
2 that has taken the time to meet with us,
3 to hear out our concerns. Sometimes those
4 meetings have been very contentious. I
5 think we've had several meetings where
6 either end of the table -- either the
7 Director or I have been waving our finger
8 at one another. But we've settled down
9 and worked through those issues.
10 We need to keep the
11 conversation going. More of the same from
12 us would be not to have the conversation
13 and to speak through the media, speak
14 outside and not directly to the Director.
15 My final comment
16 will be that it has been three years --
17 nearly three years since the Director has
18 come on board. And I would submit to you
19 that it is time for an evaluation of the
20 Director. That is one of the major
21 responsibilities of this Board is hiring
22 and firing the Director and evaluation.
23 I'm not saying that

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1 we have particular concerns in that you
2 need -- some people think you need
3 evaluations so you can seek someone out
4 for firing. I'm not saying that. I just
5 think that it needs to be a regular job of
6 the Commission to evaluate the Director.
7 And three years is more than enough time
8 to review the Director's performance.
9 Overall, we have
10 mixed reviews. We see promise in some
11 areas. There's other areas that we want
12 to see improvements. And personally, I
13 hope that my organization, the ADEM Reform
14 Coalition, is continued in being committed
15 in working with the Director and staff and
16 this Commission to find solutions to these
17 problems that continue to nag us, so we
18 can overcome more of the same.
19 I appreciate your
20 time.
21 CHAIRMAN BROWN: Thank you.
22 MS. THOMAS: We need to set the
23 next meeting.

1 CHAIRMAN BROWN: The next
2 Commission meeting is June 21st, 2013.
3 We'll start at 11:00 a.m., as usual.
4 Anybody know of any reason --
5 VICE-CHAIRMAN PHILLIPS: I
6 won't be here.
7 CHAIRMAN BROWN: You'll be
8 doing your business?
9 VICE-CHAIRMAN PHILLIPS: Yes.
10 CHAIRMAN BROWN: Anybody else
11 can't be here?
12 (No response.)
13 CHAIRMAN BROWN: Well, that's
14 our meeting. And with that, I will
15 entertain a motion to adjourn.
16 VICE-CHAIRMAN PHILLIPS: So
17 moved.
18 COMMISSIONER LESTER: So moved.
19 CHAIRMAN BROWN: All in favor?
20 ALL: Aye.
21 CHAIRMAN BROWN: We are
22 adjourned.
23 (The proceedings concluded at

1 approximately 1:18 p.m.)
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1 * * * * * * * * * * *
2 REPORTER'S CERTIFICATE
3 * * * * * * * * * * *
4 TATE OF ALABAMA)
5 OUNTY OF MONTGOMERY)
6 I, Margaret-Lea Flatt, Certified Court
7 eporter and Notary Public in and for the
8 tate of Alabama at Large, do hereby certify
9 hat on April 19, 2013, I reported the
10 forementioned proceedings, and that the
11 ages herein contain a true and accurate
12 ranscription of the said proceedings.
13 I further certify that I am neither of
14 in nor of counsel to the parties to said
15 ause, nor in any manner interested in the
16 esults thereof.
17 This the 23rd day of May, 2013.
18
19
20 Margaret-Lea Flatt, ACCR TL2024
Certified Court Reporter and
Notary Public for the
21 State of Alabama
22 My Commission expires 1/16/17.
23

1 * * * * * * * * * * *

2 REPORTER'S CERTIFICATE

3 * * * * * * * * * * *

4 STATE OF ALABAMA)

5 COUNTY OF MONTGOMERY)

6 I, Margaret-Lea Flatt, Certified Court

7 Reporter and Notary Public in and for the

8 State of Alabama at Large, do hereby certify

9 that on May 7, 2013, I reported the

10 aforementioned proceedings, and that the

11 pages herein contain a true and accurate

12 transcription of the said proceedings.

13 I further certify that I am neither of

14 kin nor of counsel to the parties to said

15 cause, nor in any manner interested in the

16 results thereof.

17 This the 20th day of May, 2013.

18

19 Margaret-Lea Flatt, ACCR TL2024

20 Certified Court Reporter and
Notary Public for the

21 State of Alabama

22 My Commission expires 1/16/17.

23

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Part B

Attachment Index

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Attachment 2	**Resolution to adopt amendments to ADEM Admin. Code Div. 335-3, Air Pollution Control Program Regulations (Agenda Item 4)**
Attachment 3	**Resolution to adopt amendments to ADEM Admin. Code Div. 335-8, Coastal Program Regulations (Agenda Item 5)**
Attachment 4	**Order granting Petitioner's Request for Oral Argument (Agenda Item 6)**
Attachment 5	**Order denying Petitioner's Request for Stay (Agenda Item 6)**

Attachment 1

Amended 4/8/13

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: April 19, 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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1.	Consideration of minutes of meeting held on February 15, 2013**	2
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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON FEBRUARY 15, 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 the adoption of 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, 335-3-10-.03, 335-3-11-.01, 335-3-11-.06, 335-3-11-.07, 335-3-14-.04, 335-3-16-.01, 335-3-17-.01, 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). Additional proposed changes include revisions to the Prevention of Significant Deterioration (PSD) regulations to correct an error made by EPA by removing condensables from inclusion in particulate matter emissions, and to incorporate EPA's changes to regulations for permits that have Plantwide Applicability Limits (PALs). The definition of greenhouse gases (GHGs) in Rules 335-3-14-.04 and 335-3-16-.01 are being proposed for revision to temporarily exclude biogenic carbon dioxide emissions to be consistent with EPA's definition. The definition of volatile organic compounds (VOCs) in Chapter 335-3-1, and transportation conformity rules in Chapter 335-3-17 are also being proposed for revision to be consistent with EPA's revisions. Chapters 335-3-1, 335-3-14, and 335-3-17 are considered part of the federally-enforceable State Implementation Plan (SIP). Revisions to these Chapters are proposed to be incorporated into Alabama's SIP. The Department held a public hearing on the proposed amendments on February 6, 2013.

5. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE DIVISION 335-8, COASTAL PROGRAM REGULATIONS

The Commission will consider the adoption of proposed amendments to ADEM Admin. Code Division 335-8, Coastal Program Regulations. In a letter dated April 14, 2011, the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) concurred with the ADEM that its 1994 Division 8 Coastal Program Regulations constituted a routine change (RPC) pursuant to 15 C.F.R. 923.84. On October 1, 2012, NOAA provided a clarification statement to the ADEM regarding Environmental Assessments and Environmental Impact Statements referenced in the current code. Therefore, additional modification of the ADEM's Division 8 Coastal Program Regulations – specifically ADEM Admin. Code r. 335-8-1-.09(1)(b)5 and 2(a)3 – is necessary to make the code fully consistent with Section 307 of the Coastal Zone Management Act and 15 C.F.R. Part 930. The Department held a public hearing on the proposed amendments on April 3, 2013.

6. CITY OF BRUNDIDGE, ALABAMA V. ADEM, EMC DOCKET NO. 13-02

The Commission will consider the "Request for Stay of Administrative Action" filed by Petitioner City of Brundidge, Alabama in this appeal/request for hearing regarding the transfer of Solid Waste Disposal Facility Permit No. 55-07 by ADEM to Brundidge Acquisitions, LLC on March 22, 2013.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

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

Request 1

Kelvin W. Howard, Esq., on behalf of the Outcast Voters' League
SUBJECT: Effects of non-compliant waste facilities on African American Communities in the City of Birmingham, Alabama

Request 2

Adam R. Snyder, Executive Director of Conservation Alabama and Co-Chair of the ADEM Reform Coalition
SUBJECTS: Comments on his involvement with ADEM over the last 12 years and ADEM Reform Coalition and other groups' assessment of Director LeFleur's progess on their priorities for ADEM under his leadership

WSK
WALDREP STEWART & KENDRICK LLC
Attorneys At Law

Request 1

April 3, 2013

VIA FACSIMILE, E-MAIL, AND U.S. CERTIFIED MAIL

Mr. Lance R. LeFleur
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

RE: Outcast Voters' League

Dear Mr. LaFleur:

This correspondence comes to your attention on behalf of the Outcast Voters' League. **Please consider this correspondence as an official request to come and speak to the Environmental Management Commission (EMC) at the April 19, 2013 meeting.** The Outcast Voters' League wants to discuss the effects of non-compliant waste facilities on African American Communities in the City of Birmingham, Alabama.

The Outcast Voters' League's purpose is to promote the notions of justice and equality for the African American Community. We look forward to addressing the EMC at the aforementioned April meeting.

Yours truly,

WALDREP STEWART & KENDRICK, LLC

Kelvin W. Howard
For the Firm

KWH/aml

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2323 2ND AVENUE NORTH BIRMINGHAM, AL 35203
(205) 254-3216 FAX (205) 324-3802 TOLL FREE 800-476-5129 WSKLLC.COM
BIRMINGHAM MONTGOMERY BESSEMER

CONSERVATION
ALABAMA

Request 2

April 5, 2013

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

Dear Commissioner Brown:

As a representative of the ADEM Reform Coalition and my organization, I'm requesting an opportunity to speak to the Alabama Environmental Management Commission at your April 19, 2013 meeting.

As you may have heard, I will be stepping down as director of Conservation Alabama at the end of the month to take a position with the national office of The Nature Conservancy. Although I'll remain based in Alabama, my work will be focused on conservation funding and issues campaigns throughout the Southeast.

With my departure from Conservation Alabama, I will also be stepping down as co-chair of the ADEM Reform Coalition. As you know, ARC is the coalition of environmental organizations that has focused on fundamental agency improvements since 2002. And in June 2010, the ADEM Reform Coalition and other groups met with Director LeFleur to discuss our priorities for ADEM under his leadership.

During my public remarks at the April 19 meeting of the AEMC, I will provide a brief retrospective of my involvement with ADEM over the last 12 years. Additionally, I will be providing the ADEM Reform Coalition and other groups' assessment of Director LeFleur's progress on the four priority areas identified in June 2010: the NPDES petition; enforcement; stormwater; and air toxics. As a coalition, we are overdue in providing a scorecard of progress under Director LeFleur's leadership, and we hope this presentation will allow us to move forward with updating our priorities for future discussions with the Director and senior staff.

Thank you for your consideration of this request to speak.

Sincerely,

Adam R. Snyder
Executive Director

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www.conservationalabama.org

Post Office Box 130656 • Birmingham, Alabama 35213-0656 • Phone: (205) 533-6178 • FAX: (205) 533-9058

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 did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-3 [rules 335-3-1-.02/Definitions (Amend); 335-3-10-.01/General (Amend); 335-3-10-.02/Designated Standards of Performance (Amend); 335-3-10-.03/Appendices to 40 CFR 60 (Amend); 335-3-11-.01/General (Amend); 335-3-11-.06/National Emission Standards for Hazardous Air Pollutants for Source Categories (Amend); 335-3-11-.07/Appendices to 40 CFR 63 (Amend); 335-3-14-.04/Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting(PSD)] (Amend); 335-3-16-.01/Definitions (Amend); 335-3-17-.01/Transportation Conformity (Amend); 335-3-Appendix C/EPA Regulation 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 19th day of April 2013.

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 19th day of April 2013.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 19th day of April 2013

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 335-8 of the Department's Coastal 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 did not receive any written or oral comments at the public hearing or during the public comment period.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-8 [rules 335-8-1-.09/ Review Process for Federally Regulated Activities (Amend)] of the Department's Coastal 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 335-8 - Coastal Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 19th day of April 2013.

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 19th day of April 2013.

H. Lamar Brown, II, Chair
Environmental Management Commission
Certified this 19th day of April 2013

Attachment 4

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

In the Matter of:	)	
	)	
City of Brundidge, Alabama,	)	
Petitioner,	)	
	)	
vs.	)	
	)	EMC Docket No. 13-02
Alabama Department of	)	
Environmental Management,	)	
Respondent,	)	
	)	
and	)	
	)	
Brundidge Acquisitions, LLC,	)	
Intervenor.	)	

ORDER

This cause having come before the Environmental Management Commission pursuant to the Request for Oral Argument at the hearing on the motion for stay contained in the Petitioner's "Brief in Support of Request for Stay of Administrative Action" in the above-styled appeal and having considered the same and having considered ADEM Admin. Code Rule 335-2-1-.23(4), pertaining to oral argument on an application for a stay, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner's Request for Oral Argument is hereby granted; and

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

3. That a copy of the Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

ISSUED this 19th day of April 2013.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of April 2013.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 19th day of April 2013

Attachment 5

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

In the Matter of:	)	
	)	
City of Brundidge, Alabama,	)	
Petitioner,	)	
	)	
vs.	)	
	)	EMC Docket No. 13-02
Alabama Department of	)	
Environmental Management,	)	
Respondent,	)	
	)	
and	)	
	)	
Brundidge Acquisitions, LLC,	)	
Intervenor.	)	

ORDER

This cause having come before the Environmental Management Commission pursuant to the Petitioner's "Request for Stay of Administrative Action" ("Request for Stay"); Petitioner's "Request for Hearing to Contest Administrative Action;" Petitioner's "Brief in Support of Request for Stay of Administrative Action;" "ADEM's Response to Request for Stay of Administrative Action;" and "Intervenor Brundidge Acquisitions, LLC's Response in Opposition to Request for Stay of Administrative Action" for the above-styled appeal and having considered the same and having considered the factors enumerated in ADEM Admin. Code Rule 335-2-1-.23(5) that the party requesting a stay must show before a stay of a contested action may be granted, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Request for Stay is hereby denied; and

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

3. That a copy of the Order shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

ISSUED this 19th day of April 2013.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 19th day of April 2013.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 19th day of April 2013