5/17/22

DRAFT

Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 8, 2022

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Convened: 11:00 a.m.
Adjourned: 11:53 a.m.

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Part A

ALABAMA ENVIRONMENTAL MANAGEMENT

COMMISSION MEETING

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Alabama Room (Main Conference Room)

1400 Coliseum Boulevard

Montgomery, Alabama 36110-2400

April 8, 2022

11:00 a.m.

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

A P P E A R A N C E S

COMMISSION MEMBERS PRESENT:
John (Jay) H. Masingill, III, Vice Chair
Kevin McKinstry
Mary J. Merritt
Samuel L. Miller, M.D.
Ruby L. Perry, D.V.M.
Thomas P. Walters, P.E., Chair

COMMISSION MEMBER NOT PRESENT:
H. Lanier Brown, II, Esq.

ALSO PRESENT:
Robert D. Tambling, AEMC Legal Counsel
Debi Thomas, AEMC Executive Assistant
Lance R. LeFleur, ADEM Director

(Proceedings began at 11:00 a.m.)

MR. WALTERS: I have 11 o'clock and we will call the meeting of the Environmental Management Commission to order we have a quorum. First item on our agenda is consideration of minutes that we held on February 11th, 2022.

I will entertain a motion.

DR. MILLER: I move to accept the minutes as written.

MR. MASINGILL: Second.

MR. WALTERS: I have motion and a second.

Any further discussion on the motion?

(No response.)

MR. WALTERS: All those signify by saying "aye."

(All Commissioners affirm.)

MR. WALTERS: Any opposed?

(No response.)

MR. WALTERS: Thank you. Agenda item number two is the report from our ADEM Director.

Director LeFleur, you have the

floor.

MR. LeFLEUR: Good morning. And welcome to all of you who are in attendance at the fourth meeting of the Environmental Management Commission for fiscal year 2022. The Department utilizes many sources of information to analyze and optimize our performance. The Department undergoes dozens of Federal, State, and internal operational, programmatic and financial audits that can identify areas for improvement. We regularly analyze and report on trends in various statewide environmental quality measures in the annual "State of the Environment in Alabama" report. Each year you receive a report on performance against our Annual Operating Plan. On the federal side, there is a yearly review of the performance against EPA work plans. In today's report, as has been done for a number of years, we will focus on the latest publicly available EPA-generated compliance and enforcement metrics that will compare the Department's performance against the rest of the states in the nation.

Analyzing the rates of compliance with permits and the rate of necessary

enforcement actions for our regulated industries in Alabama compared to the rest of the nation is an important way we measure our performance.

This EPA-provided analysis examines the Air, NPDES, Drinking Water and Hazardous Waste programs. The tool uses standard quantifiable metrics that allow for state-to-state comparisons and the development of national averages.

As you may recall from years past, the format for reviewing each program's metrics is to look at the size of the universe of regulated facilities, then to compare the rate of inspections, informal enforcement actions, and significant non-compliance to the rest of the nation. This format was chosen to highlight that our objective is for the regulated facilities to comply with the requirements of environmental permits and regulations issued by the Department. By looking at non-compliance metrics, we are in effect looking at compliance.

When we speak of compliance and enforcement, we are referring to compliance with permits developed by the Department in accord with carefully developed environmental standards

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and enforcement actions when conditions in those permits and regulations are not met.

Now to the dashboard slides that analyze compliance with, and enforcement of, environmental permit requirements.

To help identify the program that is the subject of the graph we will be using a color code where blue is air, green is water, orange is drinking water, and brown is land.

First, we will look at the size of the regulated universe for each of the four program areas.

In Alabama, two local air programs were grandfathered as stand-alone entities when the Clean Air Act became law in 1970. They operate independently of the ADEM State program, although ADEM does provide substantial technical and other assistance to them. Recent upgrades to the EPA database now allows us to analyze the activities of ADEM independent of the local programs' activities.

The universe of regulated Air facilities under the ADEM program is down from 636 to 586 between 2013 and 2021, about an 8 percent drop. The decline is primarily the

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result of some major sources closing over the years and other facilities reducing their emissions to the point they are no longer in the universe of Federally reportable facilities. The slight uptick from '20 to '21 is due to an increase in synthetic minor facilities, which are those capable of being a major source but are operating to keep emissions below the threshold of a major source.

In the Water media, you can see the number of regulated facilities has been generally steady at about 11,000. The slight decline from 2020 to 2021 is the result of fewer entities operating under one of our general permits. General permits cover such things as stormwater controls for construction, and construction activities are often cyclical.

In Drinking Water, the universe has been very steady at around 580 facilities. However, in 2021 there was a decline to 574 due to the closing of several transient systems, which are those at locations like RV parks or state parks. 574 is a relatively small number of drinking water systems. In the case of drinking water, a smaller number of facilities that are of

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larger size is beneficial because the larger facilities have improved access to management and other resources.

The universe of Hazardous Waste facilities steadily increased from about 5,100 in 2013 to nearly 5,600 in 2021. The more than 10 percent increase is attributable in large part to a national enforcement settlement agreement that caused pharmacies and other retail facilities selling pharmaceuticals to report as hazardous waste generators.

Next is inspections.

As has often been repeated in my reports to you, the Department relies on inspections as the most significant tool to obtain compliance with environmental permits and requirements in Alabama. Independent research supports this concept, as will upcoming data showing our results.

The following graphs will show inspection rates for each of the four media. The different programs have different names for inspection activities such as Full Compliance Evaluation or Facilities Inspected, or Site Visits, or Inspection Coverage due to the

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slightly different terminology used in the various federal enabling statutes. The graphs will use the term inspections for all media. There will be one inspection graph for each media showing the inspection rate for all regulated facilities. A second inspection graph will show the inspection rate for the largest regulated facilities in that media, except for Drinking Water. The large facilities are the ones that typically have the greatest potential for adverse impact on the environment and are therefore important to look at closely. Data on the inspection of the largest facilities for Drinking Water media is not broken out in reports submitted to EPA, so there will be no second inspection graph for Drinking Water.

In Alabama and throughout the nation, inspections is the area most affected by COVID-19. Since inspections often require close interpersonal contact in the field, the number of inspections went down in 2020 but generally recovered in 2021. You will see that decline and recovery in both our state and national averages.

The blue bars represent the inspection rate of all facilities during the last

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nine years for the Department's Air program. The dashed red line represents the average inspection rate for the nation. As you can see, Alabama continues to have an inspection rate that is nearly four times the national average and, with the exception of 2020, shows a fairly flat trend slightly over 98 percent.

Looking at just the largest regulated facilities in Air, there is a similar pattern of inspections in recent years, with the exception of 2020, at or near 100 percent, which is again about four times the national average.

The green bars for the Water program consistently show an inspection rate for all facilities that is more than two and a half times better than the national average shown by the red dashed line. Unlike Air, both 2020 and 2021 showed declines due to COVID-19 for the state and the nation.

For the largest regulated facilities in Water, with the exception of the COVID years, the inspection rate has been trending higher in recent years and is consistently higher than the national average.

The orange bars for the Drinking

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Water program show an inspection rate for all regulated facilities that is typically about three times the national average shown by the red dashed line. There was a drop-off in inspections nationally in 2020, but not so in our Drinking Water program. As noted a moment ago, Drinking Water data for the large facilities only is not available; however, with an inspection rate of nearly 100 percent for all facilities, the largest systems are being inspected at a high rate.

Closing out inspections, the brown bars for the Hazardous Waste program show a rate for all inspections that is two to three times the national average. Note that during the pandemic years of 2020 and 2021, the inspection rate dropped off slightly but to a much lesser degree compared to the rest of the nation, the red dashed line.

For Treatment, Storage, and Disposal facilities, abbreviated TSD, and Large Quantity Generators in Hazardous Waste, the inspection rate has been trending higher in recent years and is now more than twice the national average. Both of the Hazardous Waste inspection graphs

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reflect the increased emphasis on inspections to address our higher than desired instances of significant non-compliance.

The enforcement group of graphs highlights the second most important element, after inspections, in our strategy to achieve compliance. It has been our strategy to utilize education, including informal enforcement, to obtain a higher level of compliance. Research has shown that inspections and technical assistance, which is education, are the biggest contributors to compliance.

Most violations are not intentional. They are many times the result of either not knowing what is required under the permits, accidents, or mistakes. Informal enforcement is one form of education that helps avoid these situations. Additionally, penalties and formal enforcement actions typically require 5 to 10 times the resources of informal enforcement actions, so utilizing a higher percentage of informal actions uses resources more effectively.

EPA enforcement data was used to create the following graphs showing the relationship between informal and formal

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enforcement actions.

In this Air program graph, the blue columns represent the percentage of all enforcement actions that are informal and the dashed red line represents the average percentage for the nation. As you can see, ADEM consistently has a higher rate of informal enforcement. The slowly rising national trend line seems to indicate the rest of the nation is seeing the benefits of increased informal enforcement.

In the Water program, the percent of informal actions is again higher than the national average represented by the red dashed line. Our trend line is essentially flat around 95 percent. The rest of the nation is closing in on us at about 85 percent. Of course, some formal enforcement will always be required so we are not likely to go beyond our 95 percent level.

The informal enforcement trend for our Drinking Water program is flat and peaked out at a rate above the dashed red line representing the national average that is increasing.

Hazardous Waste, like the other ADEM programs, shows the high rate of informal

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enforcement that yields high levels of compliance. This program has employed a rate of informal enforcement that is similar to that of the other ADEM programs and is now on par with the rest of the nation. We will continue to apply emphasis on informal enforcement and outreach to hazardous waste facilities to enhance the compliance rates in our Hazardous Waste program.

This final group of slides will look at rates of Significant Non-Compliance commonly referred to as SNC. These are the ones that are of a more serious nature, may adversely affect human health and the environment, and are a cause for heightened concern. The objective of all environmental programs is to have a low non-compliance rate, which is synonymous with a high compliance rate. This group of graphs is where we see if our strategy of high rates of inspection and informal enforcement is showing results.

Beginning with Air, the blue bars represent the percent of inspections that resulted in a Significant Non-Compliance, or SNC, finding for Alabama facilities and the dashed red

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line represents the national average. The SNC rate for Alabama is consistently about one-third the national average and is now down to about one percent.

The Water program has a SNC rate per inspections conducted at the lowest level in the last nine years. The rate is also about one-third the national average and continues to trend favorable.

At less than one percent, the Drinking Water program continues to have a SNC rate about one-third the national average, the dashed red line.

As you can see, the Hazardous Waste program is the one area where we are above the national average in the percentage of inspections showing incidents of Significant Non-Compliance and we want to be below the national average.

The Hazardous Waste program primarily focuses on managing hazardous waste handling sites, overseeing the measures to prevent new hazardous material releases, and remediating past hazardous material releases. For decades, we have had no substantial new hazardous waste sites created in Alabama and many

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legacy sites have been cleaned up. However, in the Hazardous Waste program, incidents of non-compliance classified as "significant" do occur. Incidents of significant non-compliance typically involve exceeding the maximum numbers of days hazardous waste can be stored at a location and/or repeated occurrences of minor violations such as poor recordkeeping and labeling.

At 6.5 percent, this year's percentage rate shows significant improvement over last year's nine percent rate but we are not where we want to be. The 6.5 percent represents eight facilities in Significant Non-Compliance out of a universe of 124 large facilities inspected. Importantly, none of the SNCs in Alabama has been found to result in harm to human health or the environment. Efforts to reduce the hazardous waste SNC rate in the future will continue through the stepped up targeted education program, including video format instruction on the most common violations and how to avoid them. The program will also provide one-on-one training sessions with the Treatment, Storage, and Disposal facilities, which are the

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largest hazardous waste handlers, as well as joint sessions with their downstream customers that represent the next largest handlers. We will continue to address all violations with appropriate enforcement action.

So to summarize, the number of regulated facilities in Alabama is generally steady with some variation by media; high inspection rates are being implemented across all programs; the Department emphasizes informal enforcement which is a form of education; Alabama has low rates of Significant Non-Compliance compared to the rest of the nation in the Air, Water, and Drinking Water programs; an enhanced inspection and instructional program for facilities covered by the Hazardous Waste program is being implemented to reduce the rate of Significant Non-Compliance; and, overall, the Department out-performs the rest of the nation in compliance and enforcement with long-term trends in key metrics that are generally favorable.

These metrics are consistent with the trends in non-statistical environmental quality measures over many years highlighted in my periodic reports on the "State of the

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Environment in Alabama." They are also consistent with EPA, regulated industry, and independent research groups' findings that Alabama is one of the top environmental performers in the nation.

While the state overall has an enviable environmental record, there are occasionally serious environmental issues that can and do cause great concern in local communities. Typically, each year there are several. This year, significant concerns with coal ash, per- and polyfluoroalkyl substances, and the application of certain byproduct materials have been expressed by citizens. We address these in regulatory programs and enforcement actions and cover them in my reports to you, as well as in news releases.

In other matters, I'm pleased to report that the $5 million shortfall in funding to build the Mobile Field Office and Lab, that was the result of the 11-year delay between our initial cost estimate and confirmation of RESTORE Act funding, is resolved. The Alabama Legislature provided a $3 million special appropriation, and the Alabama Gulf Coast

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Recovery Council this week approved a $2 million inflation adjustment to our project. Construction of the Field Office and Lab commenced on April 4th. A groundbreaking ceremony is scheduled at the site on April 22nd. I will be giving regular updates during the estimated 18-month construction period.

The programs administered by the Department to upgrade public drinking water and wastewater systems in Alabama, highlighted in the February Commission meeting, have been progressing. As you may recall, the Alabama State Legislature appropriated $225 million from the State's federal American Rescue Plan Act, or ARPA, funds. Additionally, an estimated $765 million is being made available to ADEM from the Bipartisan Infrastructure Law, BIL, through EPA for water and sewer upgrades. To date, 473, which is approximately 45 percent of the 1,061 public drinking water and wastewater systems in Alabama, have submitted requests for $3.2 billion. We are analyzing the submissions and anticipate beginning to announce commitments to fund individual projects in the next two months.

Finally, as has been the case for

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the last several years, the Alabama Legislature appropriated $4 million toward ADEM's fiscal 2021 operating budget. We have notified the Governor's office, the Alabama Legislative Leadership, and members of the regulated community that the Department will, for the first time in five years and nine years respectively, be seeking increased funding from a combination of State General Funds and permit fees paid by regulated industries in FY 2025 to adjust for inflation. It's anticipated, after any increase in the Department's funding, we will continue to be the lowest funded environmental agency in the nation on a per capita basis.

And that concludes today's report. I will be pleased to answer any questions you may have.

MR. WALTERS: Any questions from the Commission?

(No response.)

MR. WALTERS: Hearing none, thank you.

MR. LeFLEUR: Thank you.

MR. WALTERS: Thank you, sir.

Item number three on the agenda is

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Report from the Commission Chair. The Commission Chair has no report to give today so we will proceed to item number four which is consideration of proposed amendments to ADEM Administrative Code Division 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations, and Division 335-1, General Administrative Regulations.

So at this time I am going to recognize Mr. Cobb from the Department on covering the 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations.

MR. COBB: Thank you, Mr. Chairman, and good morning, Commissioners. I'm Stephen Cobb, Chief of the Land Division, and I'm here today to recommend the Commission adopt amendments to the Department's Division 15 Brownfield Redevelopment and Voluntary Cleanup Program Regulations.

These amendments propose changes to Chapters 1, 3, 4, and 6. And the revisions to these chapters are being proposed to provide enhanced public participation for cleanup remedies in which the proposed final remedy is an environmental covenant. In addition, changes to

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the Voluntary Cleanup program application are proposed to improve site identification.

These revisions were the subject of a public comment period which ran from December 19th, 2021 to February 3rd of this year. The public hearing was held at the Department on February 3rd. No oral comments were received during the hearing and one set of written comments were received during the public comment period.

Based on the comments received, the proposed regulations have an amended to remove the definition and update the language of the environmental covenant public notice provision. In addition, revisions were made to the cleanup requirements to provide clarity and consistency with terminology. No other changes were made to the proposed regulations regarding the remaining comments received. The Department's response to the comments have been provided to the Commission.

The Department asks that the Commission adopt the proposed changes to the Division 15 regulations, and I'm happy to answer any questions that you might have.

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MR. WALTERS: Any questions for Mr. Cobb on the proposed amendments?

(No response.)

MR. WALTERS: I need a motion.

MS. MERRITT: I move that we adopt the proposed amendments.

MR. MASINGILL: Second.

MR. WALTERS: I have a motion and a second.

Any further discussion?

(No response.)

MR. WALTERS: All those in favor signify by saying "aye."

(All Commissioners affirm.)

MR. WALTERS: Any opposed?

(No response.)

MR. WALTERS: Motion carries.

MR. COBB: Thank you, Mr. Chairman.

MR. WALTERS: Mr. Cobb, you may remain standing and cover the proposed amendments to Administrative Code 335-1, General Administrative Regulations. Or excuse me --

MR. KELLY: Good morning, Mr. Chairman. I'm Russell Kelly, Chief of the Permits and Services Division. I will get that one this time. I was trying to get Steve to do it for me one time and he bailed on me.

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MR. WALTERS: I have got to put on my glasses to see far away. The pollen wreaks havoc on my contacts. That's why I can take them off to see up close, but I have got to put them on to see anything. Hang on a second, Russell.

MR. KELLY: Sure.

MR. WALTERS: I have messed this up before. I have got to sign this before we proceed.

Okay. Russell, you may proceed.

MR. KELLY: All right, sir. These are the revisions for Division 1. The Department held a public hearing on February 3rd on these revisions to the ADEM Administrative Code. The proposed revisions include modifying forms that are necessary to implement the Department's rules and regulations. In total, there were approximately 58 forms that were modified. Additional revisions are proposed Fee Schedule H. This is to address fee changes related to the Voluntary Cleanup Sites and the rules from Mr. Cobb that you just adopted.

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During the public comment period, one comment was received pertaining to Schedule H. The proposed regulations addressed this comment and is included as part of the reconciliation statement.

At this time, I would request your favorable consideration and answer any questions.

MR. WALTERS: Any questions of Mr. Kelly on this proposed amendment?

(No response.)

MR. WALTERS: I need a motion.

MS. MERRITT: Move to adopt the proposed amendment.

DR. PERRY: Second.

MR. WALTERS: I have a motion to adopt and a second.

Any further discussion regarding the motion?

(No response.)

MR. WALTERS: All those in favor, please signify by saying "aye."

(All Commissioners affirm.)

MR. WALTERS: Any opposed?

(No response.)

MR. WALTERS: Motion carries.

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MR. KELLY: Thank you, Mr. Chairman, and to the Commission.

MR. WALTERS: Item number five is Lee County Commission, Petitioner, versus ADEM, the Respondent, and Creekwood Resources, LLC, the Intervenor, EMC Docket No. 21-05. So this is an acknowledgment for the record that Petitioner, Lee County Commission's withdrawal for its Request for Hearing.

On September 2nd, 2021, the Petitioner requested a hearing regarding ADEM's issuance of NPDES Permit AL0084191 to Creekwood Resources, LLC, Shady Grove Quarry. On February 16th, 2022, the Lee County Commission filed with the Commission a withdrawal of its Request For Hearing. In the withdrawal, Lee County Commission gave notice that it no longer intends to pursue the hearing on the issuance of the permit and withdrew its Request for Hearing, without prejudice, to any rights, remedies, or claims, however denominated, or defenses and matters in avoidance, however denominated, in any other proceeding or lawsuit.

As the Chair, I acknowledge for the record Petitioner Lee County Commission's

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withdrawal of its Request for Hearing.

We now move on to agenda item number six, which is Alabama Power Company, Petitioner, versus ADEM, Respondent, EMC Docket No. 21-01. This is consideration of the Hearing Officer's Recommendation of Dismissal based on the Stipulation of Dismissal filed by the parties. The Hearing Officer recommends that the Commission dismiss the appeal with prejudice.

On January 8th, 2021, the Petitioner appealed a single aspect of NPDES Permit No. AL0002879 for Alabama Power Company, James M. Barry Electric Generating Plant, issued by ADEM on December 9th, 2020. On February 23rd, 2022, the parties filed a Stipulation of Dismissal. With the Stipulation of Dismissal, Alabama Power Company gave notice that it no longer intends to pursue this appeal.

I will entertain now a motion from the Commission regarding the Hearing Officer's Recommendation of Dismissal.

DR. PERRY: Move to adopt the Hearing Officer's Recommendation of Dismissal.

MR. WALTERS: I have a motion.

DR. MILLER: Second.

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MR. WALTERS: I have a motion and a second.

Any further discussion regarding the motion?

(No response.)

MR. WALTERS: All those in favor, signify by saying "aye."

(All Commissioners affirm.)

MR. WALTERS: Any opposed?

(No response.)

MR. WALTERS: Motion carries.

Agenda item number seven is the consideration of a petition to adopt ADEM Administrative Code Chapter 335-2-4, EMC Rulemaking Petition 22-01. The Petitioner is the Environmental Defense Alliance.

I will note that, on behalf of the Commission, I requested that Director LeFleur assist the Commission by providing the Department's response to the petition and any relevant information concerning the petition. I also requested, on behalf of the Commission, that the Petitioner and the Department have representatives present today some.

I think at this time -- I'm sorry, I

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did it again. Sorry, Debi. I forgot about this part. We're signing.

Mr. Ludder, you can go ahead and stand up, move things along, if you don't mind. We will hear comments from the Petitioner.

MR. LUDDER: Thank you, Mr. Chairman, members of the Commission. My name is David Ludder. I represent the Environmental Defense Alliance on this petition. Just a few remarks. I'm not going to take long.

I do want to point out that current statutes of Alabama provide that all records created or received by each of you that pertain to the business affairs or transactions of your office shall be kept in your office or place of business, and that office may be here at the Department; shall be preserved and guarded from mutilation, loss, or destruction; shall be turned over to your successors in office once you leave; and shall be made available for inspection and copying by citizens, unless exempt from disclosure.

The proposed rule describes the general course and methods by which records would be maintained and preserved by EMC members and

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transferred to successors in office and made available to the public. The Administrative Procedures Act requires that ADEM, which includes the Commission, must adopt a rule regarding its general course and methods of operations.

The proposed rule describes the methods by which the records of the EMC will be maintained, preserved, transferred, and made available to citizens. These methods described in the rule are not described in the statutes.

Prior Commissioners have left office without transferring records to their successors, as required by statutes. I'm sure I could ask each of you if your predecessors in office delivered to you any records and the answer would probably be no. Now, you have the duty to provide your records relating to your office to your successors in office. That is a legal requirement.

As indicated in our petition, one Commissioner has admitted that he had -- that he has abandoned records pertaining to his office to the possession of a previous employer and he no longer had possession, control, or custody of those records, even though they are official

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records of his office.

Now, the Director offers two reasons for denying the petition, both of which I suggest do not have merit. First, he says that the Alliance was recently provided an opportunity to obtain similar relief in a lawsuit against Commissioner Brown. But that lawsuit was not about Commissioner Brown's compliance with preservation or transfer requirements, it was simply to compel disclosure of any records that he had possession of. And that is not the subject of this petition.

Second, the Director says that the proposed rule would be superfluous because the statutes provide specific and expressed requirements. But the statutes did not specify how or where records will be maintained and preserved, do not specify how or when records will be transferred to successors in office. And the proposed rule specifies what records must be maintained and preserved, where the records must be maintained and preserved, and that a demand for transfer of records must be made by a successor in office; that is, you should be making a demand of your predecessors for transfer

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of their records to you.

In short, the proposed rule would establish the general course and methods of operation of Commissioners with respect to preservation and transfer of documents defined as records. The proposed rule provides details that are not specified in the statutes.

What the Alliance does not want to occur is further loss of records or destruction of records. The Alliance asks that you adopt the proposed rule or some other rule that will successfully prevent the loss of records so that citizens may inspect and copy them. If you conclude that the rule language proposed today should be modified, I encourage you to consult the staff of the State Records Commission. They are available to assist you in developing methods of operation to ensure the preservation and transfer of records in compliance with law.

Thank you. Any questions, I will be happy to take them.

MR. WALTERS: Thank you, Mr. Ludder.

Any questions?

(No response.)

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MR. WALTERS: Thank you, sir.

At this time we're going to call for comments from the Department.

MR. SIBLEY: Good morning, Chair Walters, Commissioners. I'm Shawn Sibley, ADEM General Counsel. And on behalf of the Director I want to make four short points. We've already -- we submitted in writing to you to reflect those points.

But, you know, the Open Records Act, the Uniform Electronic Transactions Act, and the Administrative Procedures Act, which is what Petitioner cites, are self-implementing. They're very particular in nature, they're specific. And the EMC, you guys, are just like many other state boards and agencies that have to comply with those acts.

And so in the Director's views, this will just be duplicative. In other words, this would just be rehashing what you're already required to do under the acts. And, you know, on a final note, it's just not necessary. Okay. You guys are already supposed to abide by these acts.

So if you have any questions, let me

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know. And, of course, you know, the Director points out it's within your purview to deny this and that's his opinion that you should deny it. But, then again, it's self-regulating. This is what would be, you know, self-regulating yourselves. So that's ultimately your call.

MR. WALTERS: Any questions?

DR. MILLER: I have one. I'm a little confused about what represents a document under either one of these proposals. I mean, are the things that we get from the Department every day with the news briefs, are those documents that would need to be saved?

MR. SIBLEY: They ultimately -- they could be. They're considered a public document if they're shared amongst, as opposed to something that you share with your lawyer would not necessarily be. So if you do save them and then there is a lawsuit, like Mr. Ludder talked about, that's something that would have to be determined by counsel later whether or not that's attorney-client privileged and what they --

DR. MILLER: If they come from the Department, are they not already saved?

MR. SIBLEY: Well, any

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correspondence that the Director has is required by statute to be saved. So there is -- matter of fact, there is a website link that's devoted to just that. And so those documents are there. So, typically, that's part of that, the Director's correspondence file that is required by statute to be saved pursuant to the records -- the RDA that he mentioned. And not only pursuant to the RDA, but the Management Act as well.

DR. PERRY: And just for clarity, so we do save records -- because I'm just making a note -- so we do save records, and if we do need access to those records, then we do have access to those records, correct?

MR. SIBLEY: Yes, ma'am, you're supposed to. That's right.

DR. PERRY: So what Attorney Ludder is saying that we have already have that in process in writing for us to follow anyway?

MR. SIBLEY: Yes, ma'am. It's prescribed in the acts that he mentioned. In other words, the Open Records Act, which is really the genesis of this, and the other two is the Uniform Electronic Transactions Act and of course the Administrative Procedures Act. Those

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are the three main acts that he cites in his petition. You're already required to comply with those.

DR. MILLER: So if we receive a document, the best thing for us to do is to forward it to Debi for her to store?

MR. SIBLEY: That's correct. And if there's ever a question of whether or not there's a privilege attached to it, for instance, attorney-client privilege, that can be determined later. But, you know, typically those -- you just have to assume under the Open Records Act that it's a public record when it comes to you.

DR. MILLER: But when Robert might mail us something and he labels it attorney-client privilege, should we forward that to Debi as well?

MR. SIBLEY: Yes. Yes. And just because it automatically, in my mind and in the Director's mind -- and Robert can correct me -- but it all needs to go to Debi. And if there's a question later whether or not it's label attorney-client privilege but if it originates from Robert, then there's an assumption that there's probably perhaps some

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sort of privilege attached. And at a later point there's a determination, especially if it's disputed, as to whether or not that's a privileged document, that is subject to some restrictions under the Open Records Act.

DR. MILLER: Well, I guess the next question is are we going to get Debi an assistant to file all this stuff because she's going to be flooded more than likely.

MR. SIBLEY: I will leave that up to Robert and Debi.

MR. WALTERS: Most of the materials we get are from Debi.

MR. TAMBLING: Can I just add something? I don't think my views as your counsel are one of the things that you can consider when you're going through rulemaking. But sending that information to Debi is helpful for the lawyers involved when we have to process public records requests and when we have to litigate under the Open Records Act because we won't have to call you and ask you, you know, Dr. Miller, will you please go through all of your e-mails or, Mr. Walters, please look through all of your e-mails. It will already be there.

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Debi will have possession and control of it. So we can go through those files and can collate them, we can identify which of those are subject to a privilege and which of those are actually public records, and we can release those. So it's helpful for you to forward all of your e-mails, any records that you produce or that you receive to Debi. Any questions?

(No response.)

MR. WALTERS: Okay. Well, in accordance with the Administrative Code Rule 335-2-2-.06, which is the disposition of petition, the Commission is required to either initiate rulemaking proceedings or deny the petition in writing on the merits and state the reasons for the denial. So I will note that the items that may be considered in review of petitions for rulemaking are in Administrative Code 235-2-2-.05, Consideration of Petition, paragraphs A through I.

So at this point, any more comments or questions from the Commission?

I know that personally all of my e-mails come to one -- all my Commission stuff is in one spot so it's going to be real easy for me

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to kick in a thumb drive and give it to whoever my successor is. So pretty simple.

All right. Do I have a motion considering the petition for rulemaking?

DR. MILLER: I move we deny the petition submitted by Mr. Ludder and the Environmental Defense Alliance based on the grounds that it sort of duplicates what we already have. And I appreciate Mr. Ludder bringing this to the forefront, and I think that we will, with or without the motion, forward all of our records to Debi and go from there.

MR. WALTERS: I have a motion.

MR. McKINSTRY: Second.

MR. WALTERS: I have a motion and a second.

Any further discussion on the proposed motion?

(No response.)

MR. WALTERS: Hearing none, I will call for the question. Those in favor of the motion signify by saying "aye."

(All Commissioners affirm.)

MR. WALTERS: Any opposed?

(No response.)

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MR. WALTERS: The motion carries.

Okay. Item number eight is other business. Any other business the Commission may have?

(No response.)

MR. WALTERS: Hearing none, we will move on to item nine, which is future business session. The date of our next Commission meeting is June 10th, 2022. Everyone going to be available, except for Jay?

MR. MASINGILL: I won't.

MR. WALTERS: That's good. All right. And I believe we don't have any sign-ups for public comment period. Very good.

All right. Then I will entertain a motion to adjourn.

DR. MILLER: So moved.

MR. WALTERS: We have a motion and a second to adjourn?

MR. MASINGILL: Second.

MR. WALTERS: All those in favor, say "aye."

(All Commissioners affirm.)

MR. WALTERS: We stand

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adjourned. Thank you for your attendance.

(Proceedings concluded at 11:53 a.m.)

****

STATE OF ALABAMA)
COUNTY OF ELMORE)

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

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Part B

Attachment Index

Attachment 1 Agenda

Attachment 2 Director's Slides
(Agenda Item 2)

Attachment 3 Resolution adopting amendments to ADEM Administrative Code 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations, and Attachment A, Adopted Revised Proposed (after comments) Rules
(Agenda Item 4)

Attachment 4 Resolution adopting amendments to ADEM Administrative Code 335-1, General Administration Regulations, and Attachment A, Adopted Revised Proposed (after comments) Rules
(Agenda Item 4)

Attachment 5 Order adopting Hearing Officer's Recommendation of Dismissal, and Exhibit A, Hearing Officer's Recommendation of Dismissal
(Agenda Item 6)

Attachment 6 Order adopting motion to deny the petition submitted by Petitioner, Environmental Defense Alliance, based upon the grounds: (1) That alternative means of obtaining the same or similar relief are available to Petitioner; (2) Existing statutes, including Alabama Open Records Act, already pertain to the Commission; and (3) The views of the Director of the Department.
(Agenda Item 7)

Attachment 1

Amended 3/25/22

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: April 8, 2022
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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5.	Lee County Commission, Petitioner v. ADEM, Respondent, and Creekwood Resources, LLC, Intervenor, EMC Docket No. 21-05 (NPDES-Related Matter)	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 11, 2022

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE DIVISION 335-1, GENERAL ADMINISTRATION REGULATIONS, AND DIVISION 335-15, BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code Division 335-1, General Administration Regulations, and Division 335-15, Brownfield Redevelopment and Voluntary Cleanup Program Regulations. Revisions to Division 1 of the ADEM Code are being proposed to modify and add forms required for the implementation of the Department's rules and regulations. Additional modifications are being proposed to restructure the Voluntary Cleanup Program fees outlined in Fee Schedule H. In addition, revisions to the Division 15 Code are being proposed to provide greater public participation for cleanup remedies in which the proposed final remedy is an Environmental Covenant. Additionally, changes to the Voluntary Cleanup Program Application are proposed to improve site identification. The Department is also proposing to update citation references and clarify language. The Department held public hearings on the proposed amendments on February 3, 2022.

5. LEE COUNTY COMMISSION, PETITIONER V. ADEM, RESPONDENT, AND CREEKWOOD RESOURCES, LLC, INTERVENOR, EMC DOCKET NO. 21-05 (NPDES-RELATED MATTER)

The Commission will acknowledge for the record Lee County Commission's withdrawal of its Request for Hearing.

On September 2, 2021, Lee County Commission ("LCC") filed with the Commission a Request for Hearing regarding ADEM's issuance of NPDES Permit AL0084191 to Creekwood Resources, LLC, Shady Grove Quarry ("Permit"). On February 16, 2022, LCC filed with the Commission a Withdrawal of Its Request for Hearing ("Withdrawal"). In the Withdrawal, LCC gave notice that it no longer intends to pursue the hearing on the issuance of the Permit and withdrew its Request for Hearing without prejudice to any rights, remedies, or claims (however denominated) or defenses and matters in avoidance (however denominated) in any other proceeding or lawsuit.

6. ALABAMA POWER COMPANY, PETITIONER V. ADEM, RESPONDENT, EMC DOCKET NO. 21-01 (NPDES-RELATED MATTER)

The Commission will consider the Hearing Officer's Recommendation of Dismissal, based on the Stipulation for Dismissal filed by the parties. The Hearing Officer recommends that the Commission dismiss the appeal with prejudice.

On January 8, 2021, Alabama Power Company ("APC") appealed a single aspect of NPDES Permit No. AL0002879 for APC, James M. Barry Electric Generating Plant, issued by ADEM on December 9, 2020. On February 23, 2022, the parties filed a Stipulation of Dismissal. With the Stipulation of Dismissal, APC gave notice that it no longer intends to pursue this appeal.

7. CONSIDERATION OF PETITION TO ADOPT ADEM ADMINISTRATIVE CODE CHAPTER 335-2-4, EMC RULE-MAKING PETITION 22-01, PETITIONER – ENVIRONMENTAL DEFENSE ALLIANCE

The Commission will consider the Petition to Adopt ADEM Administrative Code Chapter 335-2-4, Maintenance, Preservation, and Availability of Records, as a new chapter in ADEM Administrative Code Division 335-2, Environmental Management Commission Regulations. The proposed new chapter includes Rule 335-2-4-.01, Definitions, and Rule 335-2-4-.02, Duty to maintain, preserve, and make available records.

8. OTHER BUSINESS

9. FUTURE BUSINESS SESSIONS

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

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

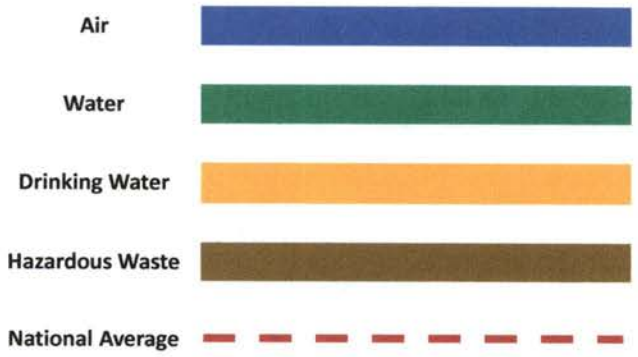
The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets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

Attachment 2

ADEM Alabama Department Of Environmental Management

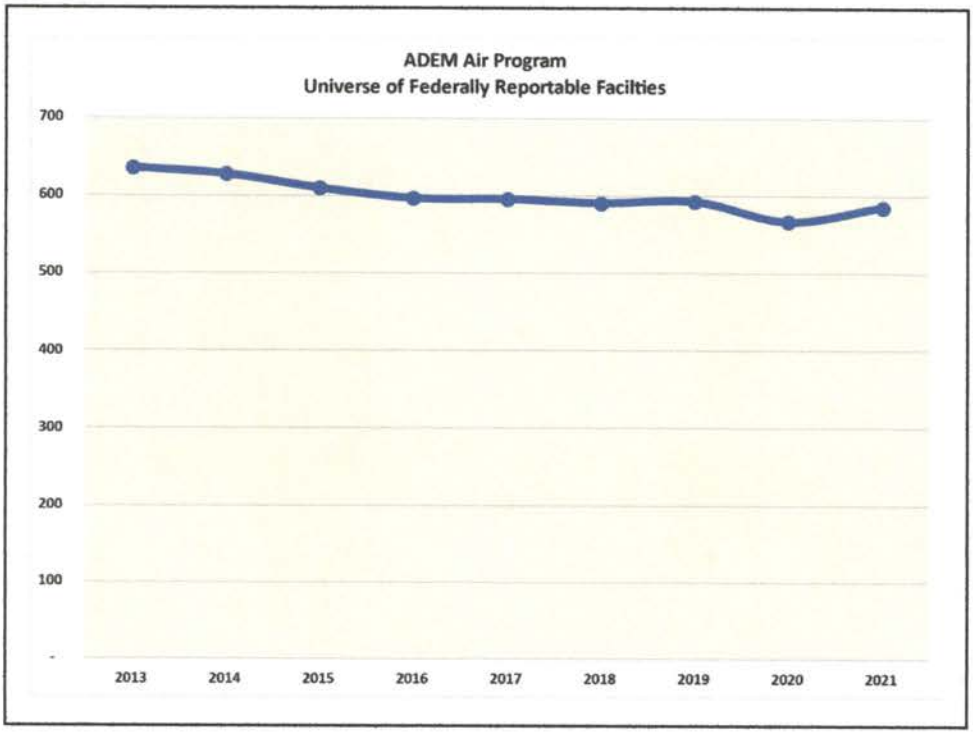
EPA Compliance and Enforcement Metrics

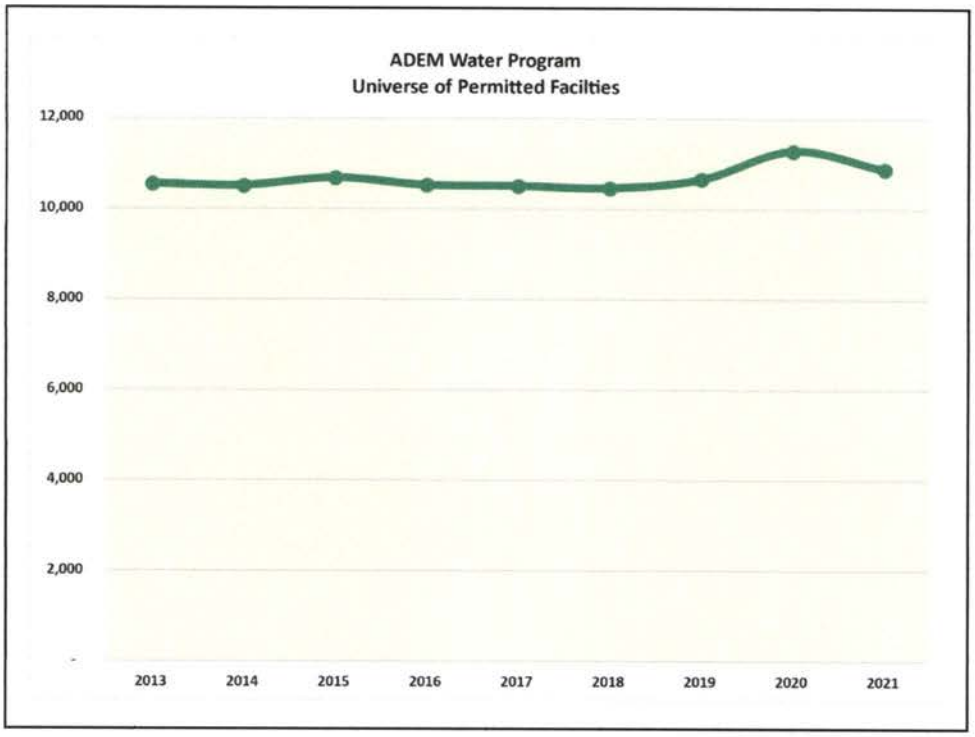
Color Legend for Graphs

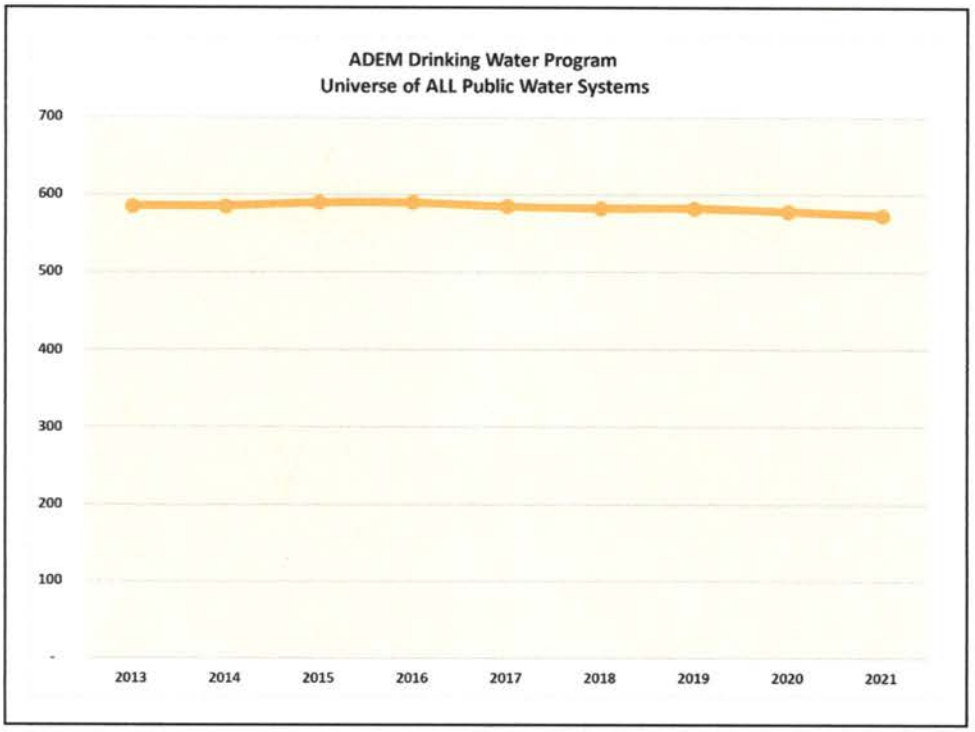


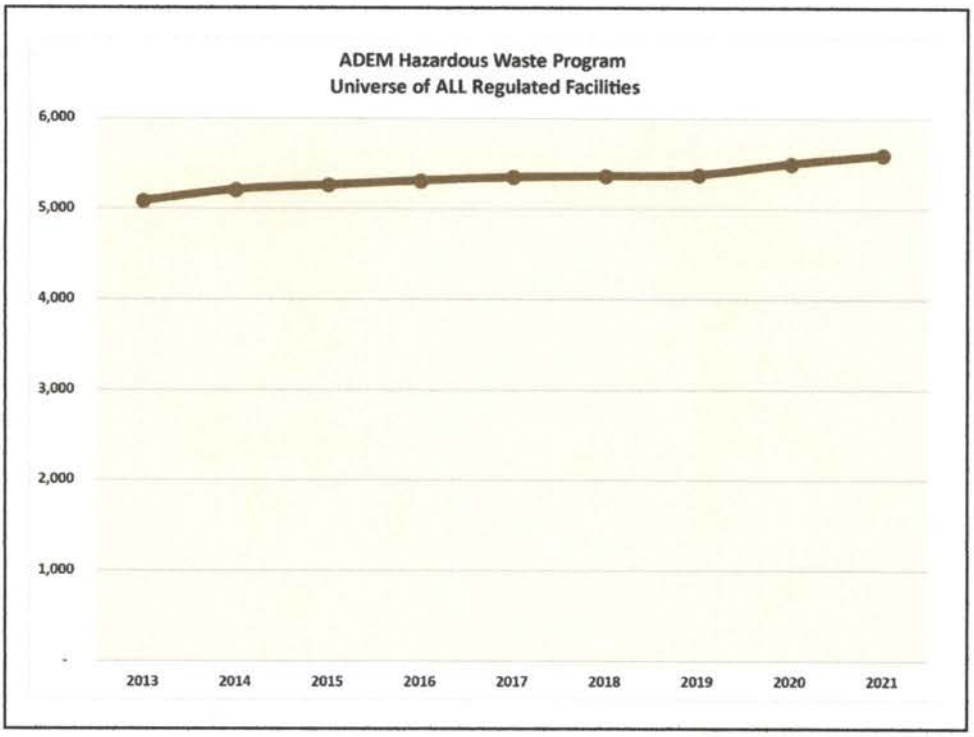
ADEM Alabama Department Of Environmental Management

SIZE OF UNIVERSE



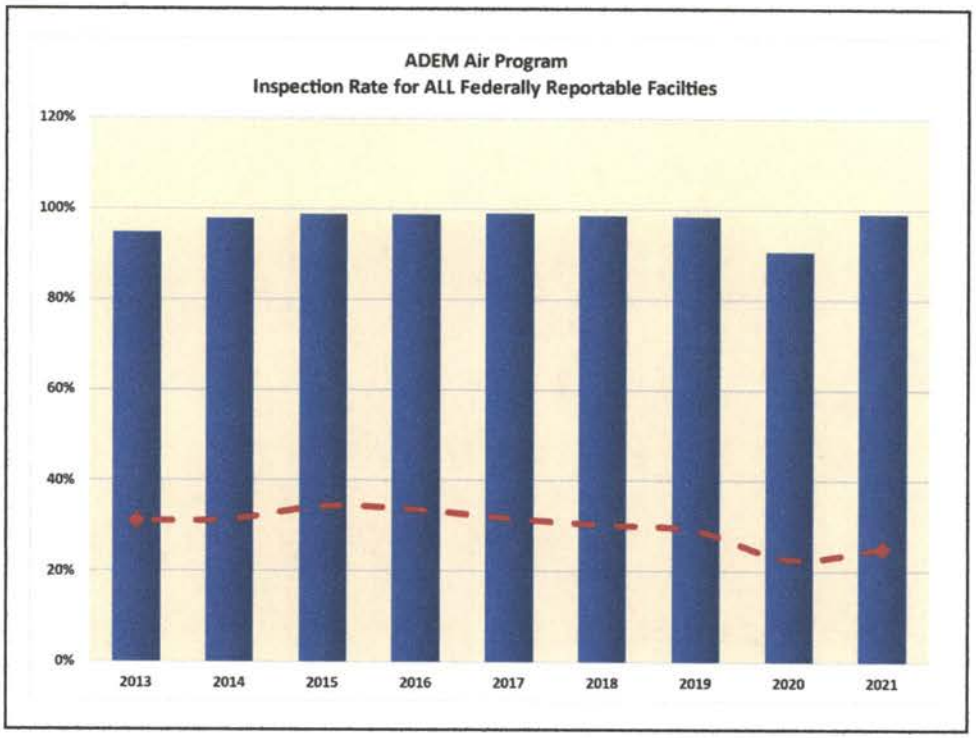

ADEM Water Program
Universe of Permitted Facilties
12,000
10,000
8,000
6,000
4,000
2,000
-
2013
2014
2015
2016
2017
2018
2019
2020
2021


ADEM Drinking Water Program
Universe of ALL Public Water Systems
700
600
500
400
300
200
100
-
2013
2014
2015
2016
2017
2018
2019
2020
2021



ADEM Alabama Department Of Environmental Management

INSPECTIONS


ADEM Air Program
Inspection Rate for ALL Federally Reportable Facilties
120%
100%
80%
60%
40%
20%
0%
2013
2014
2015
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2017
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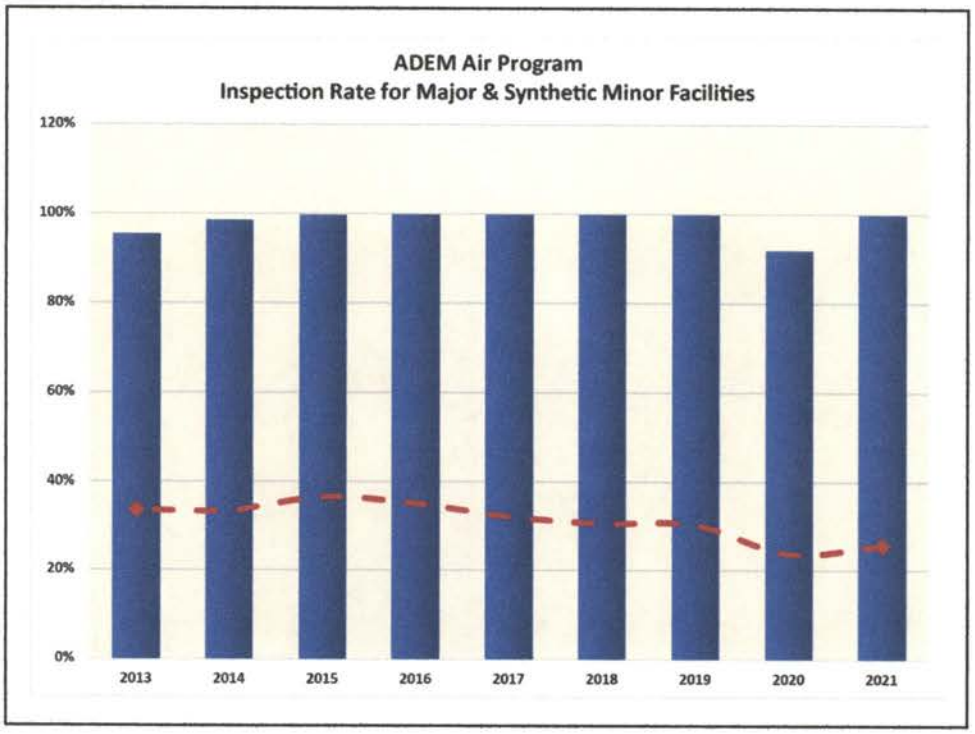
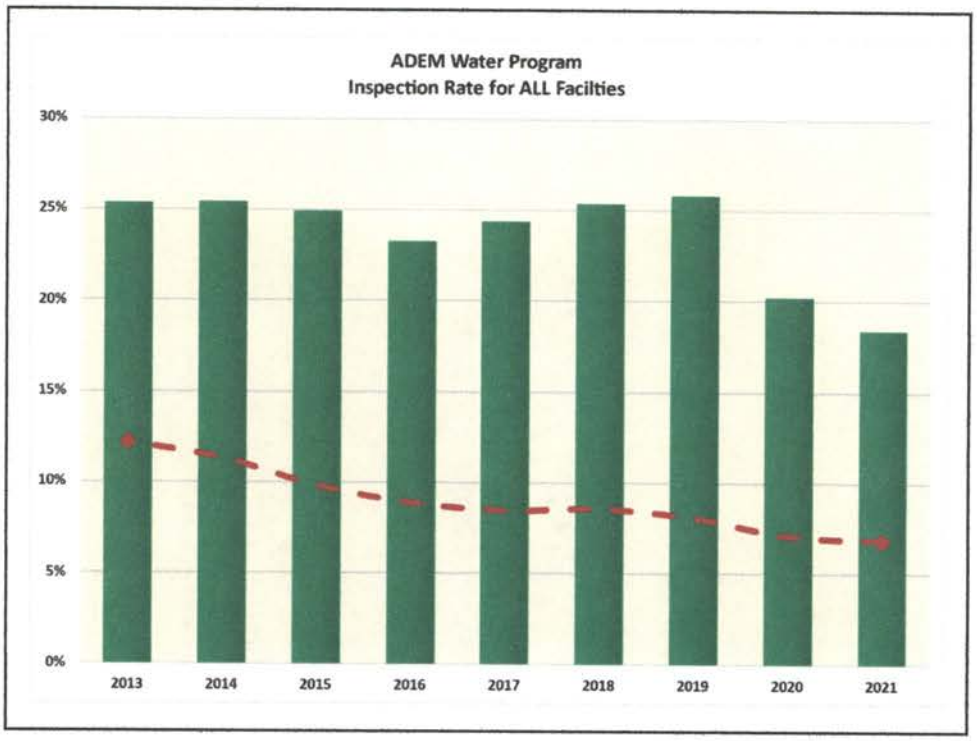
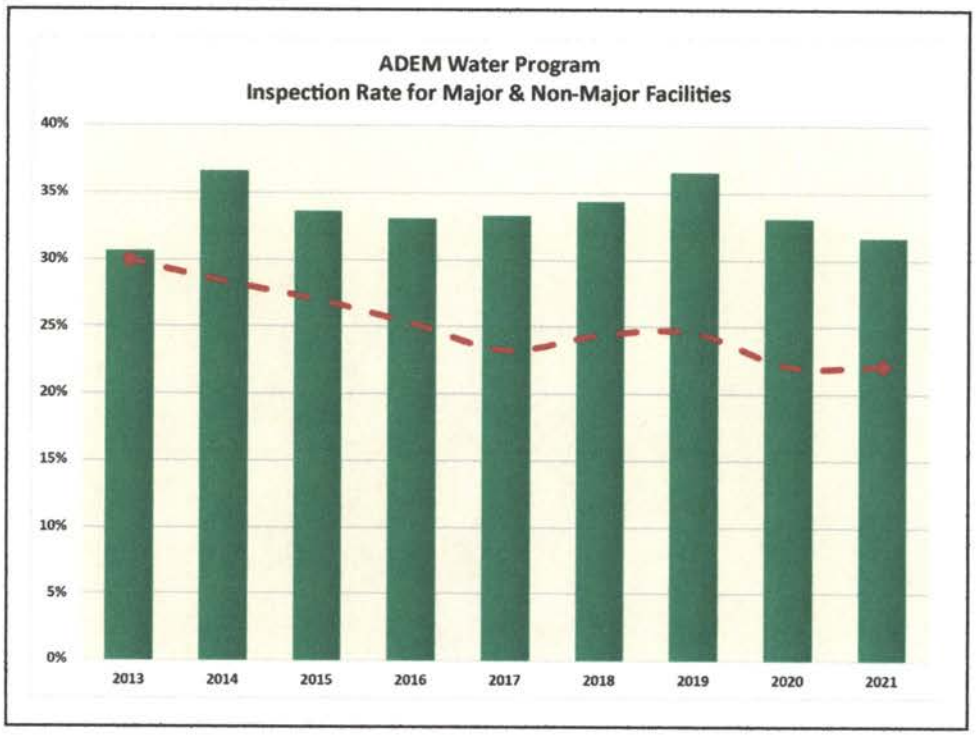
2021


ADEM Air Program
Inspection Rate for Major & Synthetic Minor Facilities
120%
100%
80%
60%
40%
20%
0%
2013
2014
2015
2016
2017
2018
2019
2020
2021


ADEM Water Program
Inspection Rate for ALL Facilties
30%
25%
20%
15%
10%
5%
0%
2013
2014
2015
2016
2017
2018
2019
2020
2021


ADEM Water Program
Inspection Rate for Major & Non-Major Facilities
40%
35%
30%
25%
20%
15%
10%
5%
0%
2013
2014
2015
2016
2017
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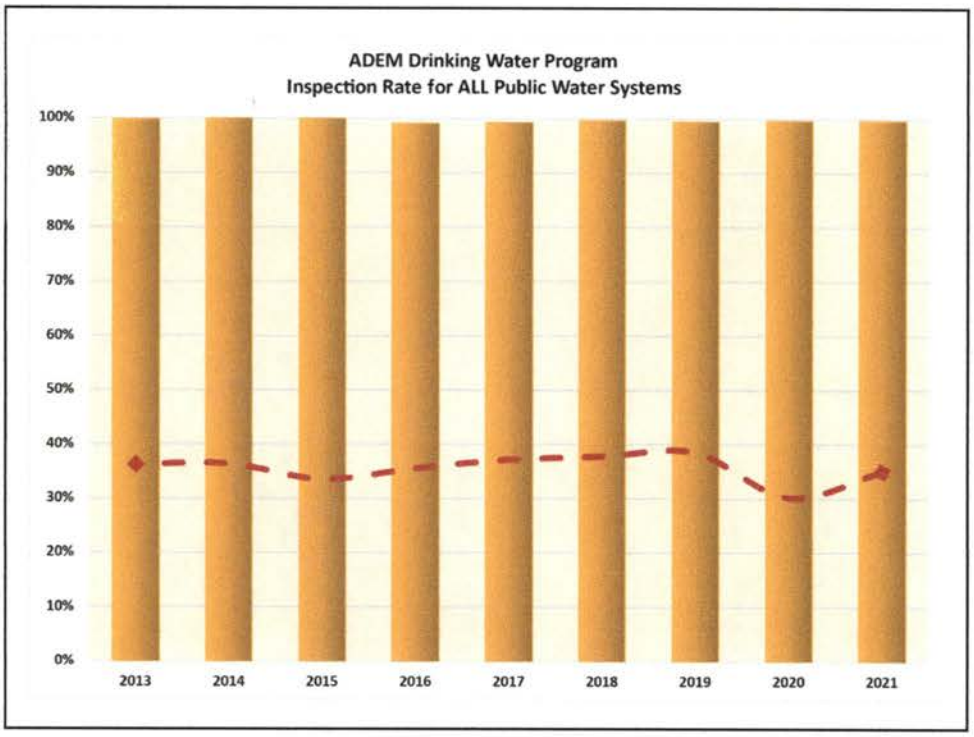
2021


ADEM Drinking Water Program
Inspection Rate for ALL Public Water Systems
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
2013
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2015
2016
2017
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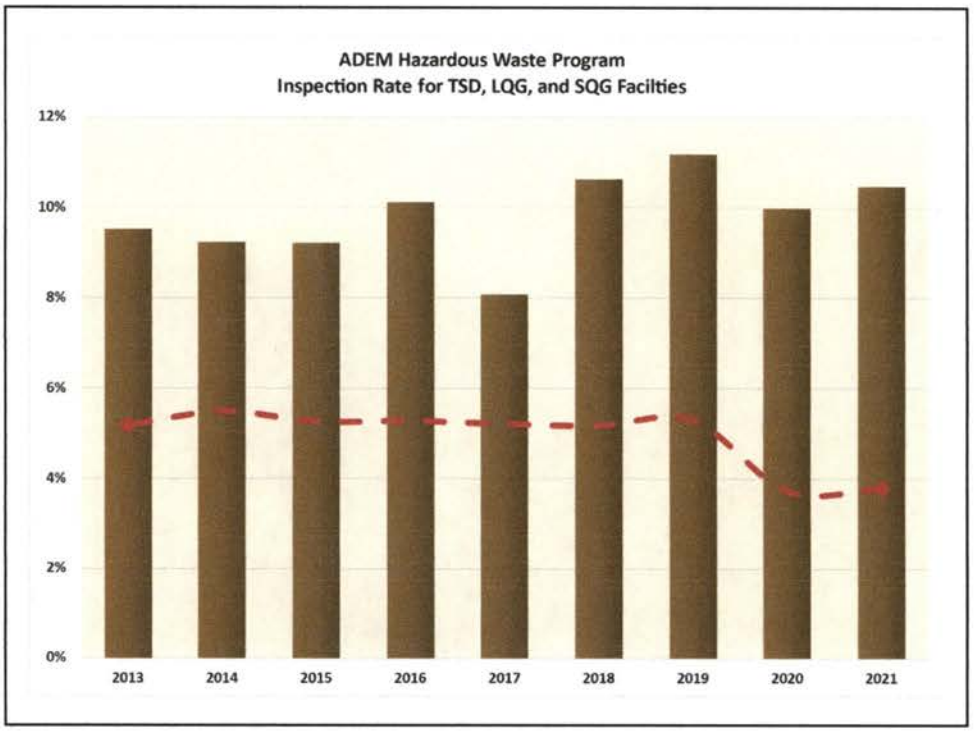
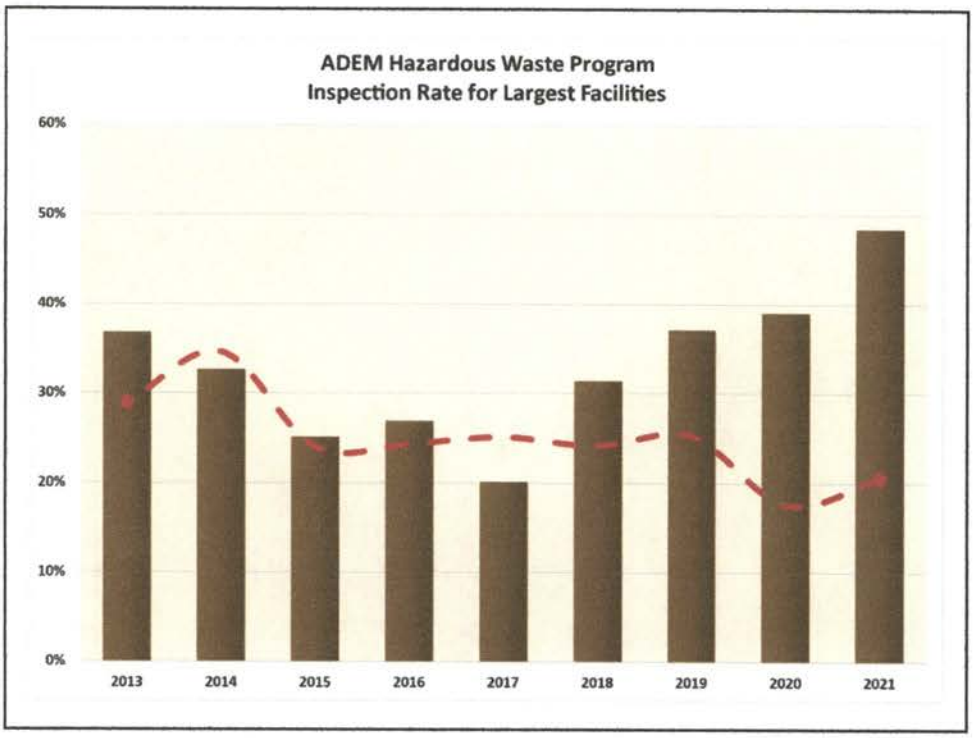
2019
2020
2021


ADEM Hazardous Waste Program
Inspection Rate for TSD, LQG, and SQG Facilties
12%
10%
8%
6%
4%
2%
0%
2013
2014
2015
2016
2017
2018
2019
2020
2021



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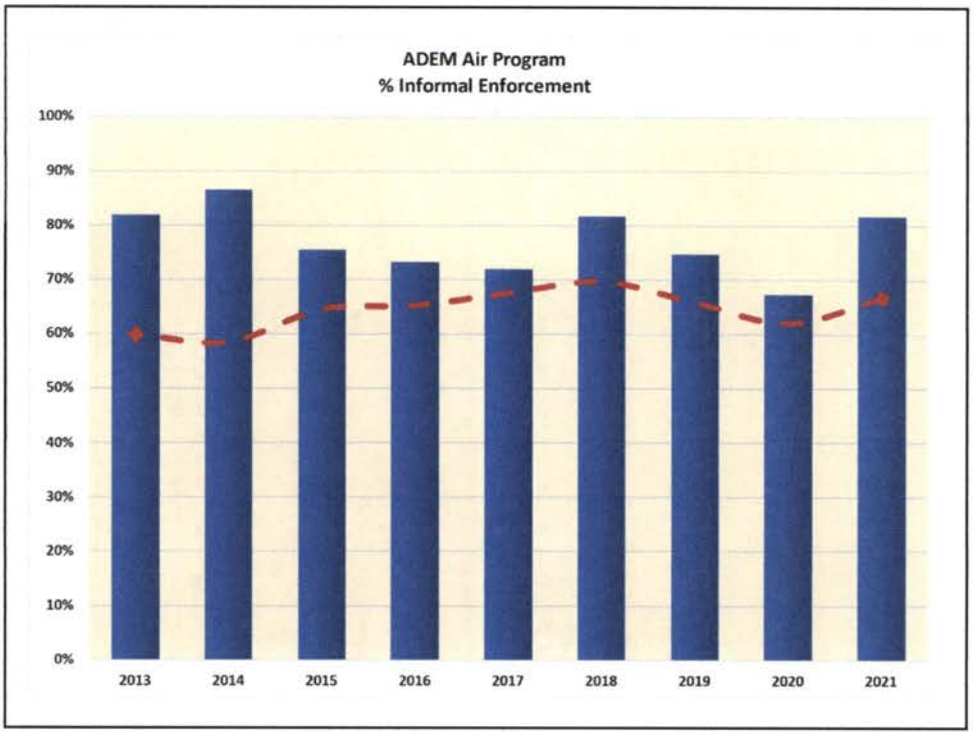
INFORMAL ENFORCEMENT


ADEM Air Program
% Informal Enforcement
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
2013
2014
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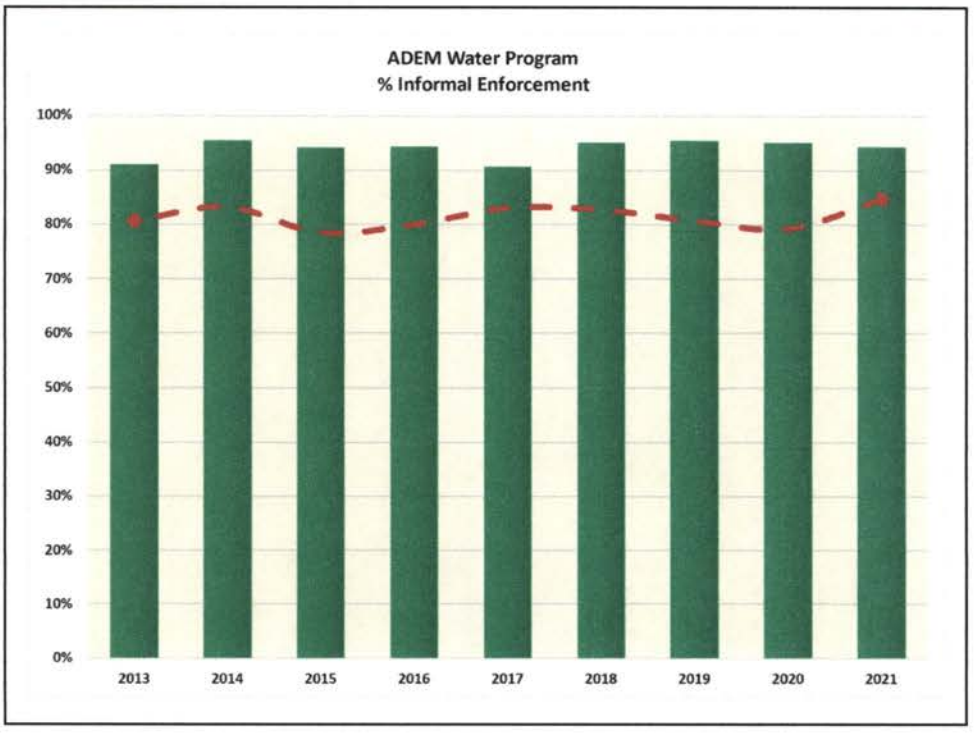
2021


ADEM Water Program
% Informal Enforcement
100%
90%
80%
70%
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50%
40%
30%
20%
10%
0%
2013
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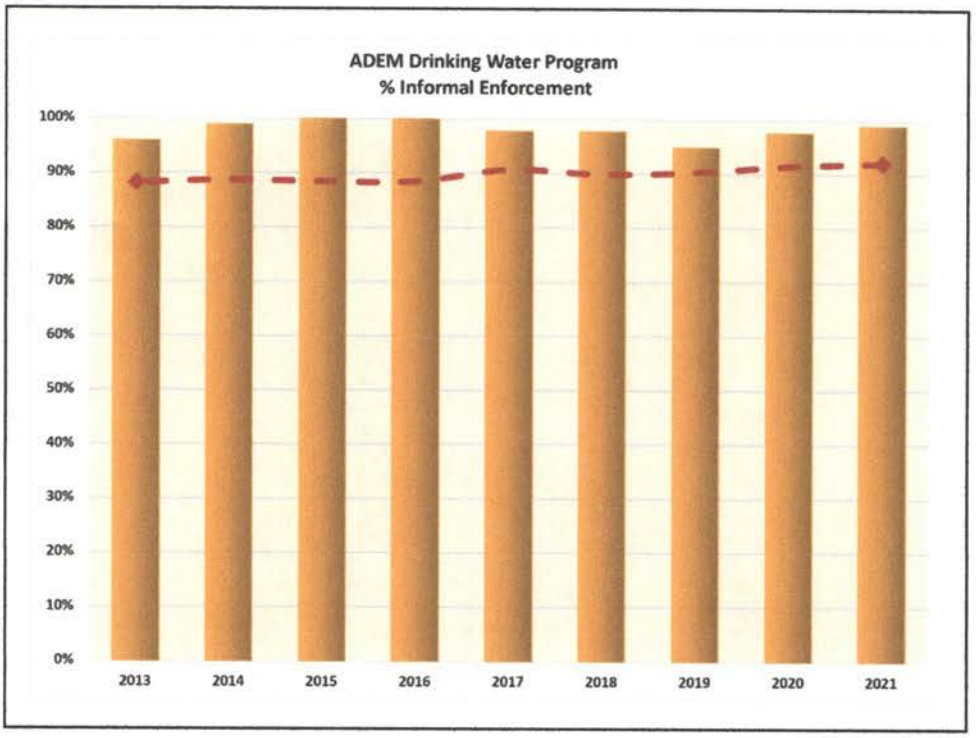
2021


ADEM Drinking Water Program
% Informal Enforcement
100%
90%
80%
70%
60%
50%
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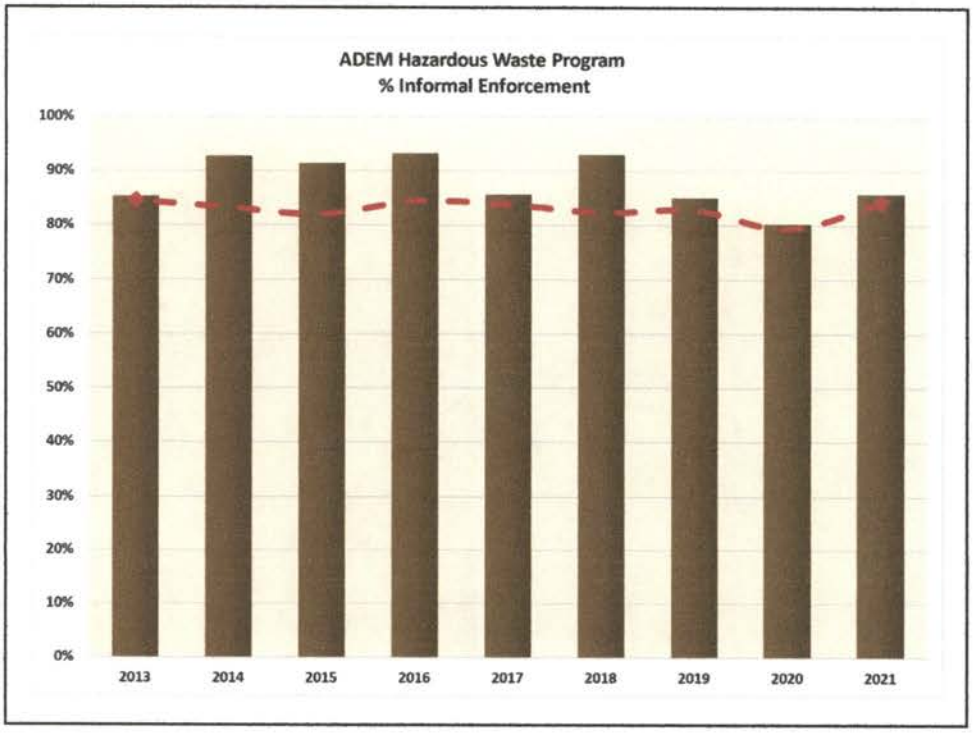
ADEM Hazardous Waste Program
% Informal Enforcement
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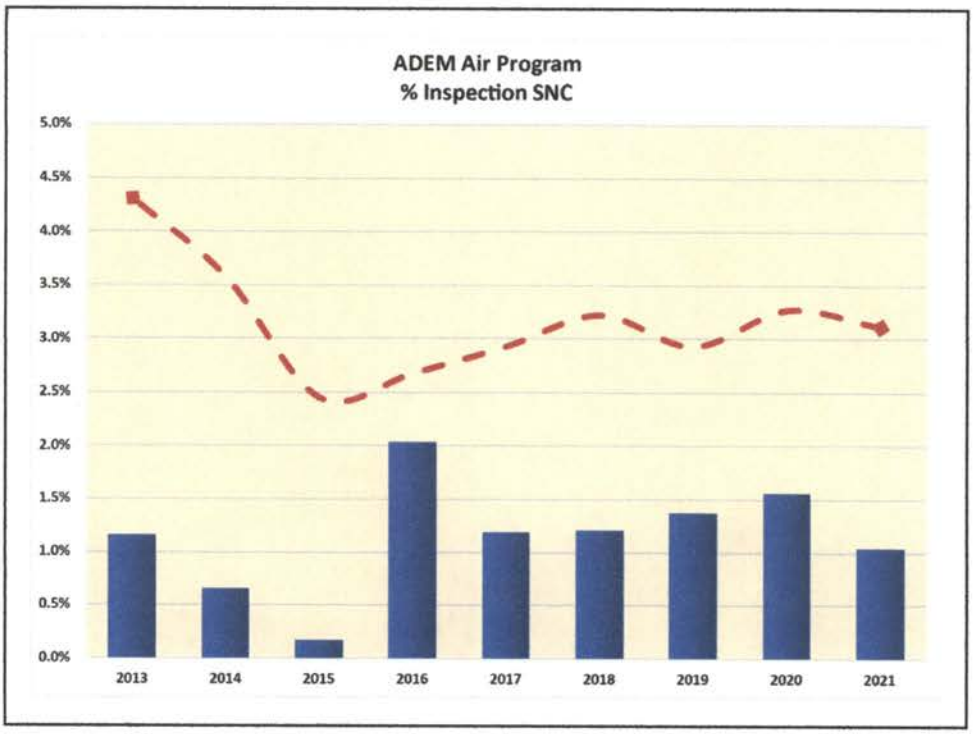
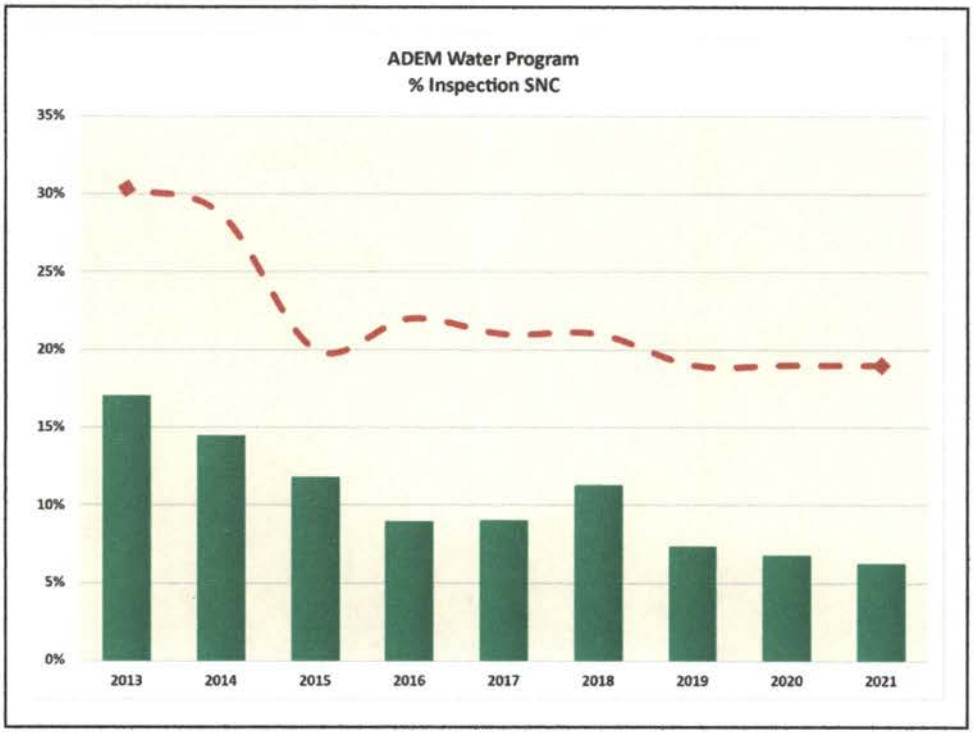
ADEM Alabama Department Of Environmental Management

SIGNIFICANT NON-COMPLIANCE




ADEM Water Program
% Inspection SNC
35%
30%
25%
20%
15%
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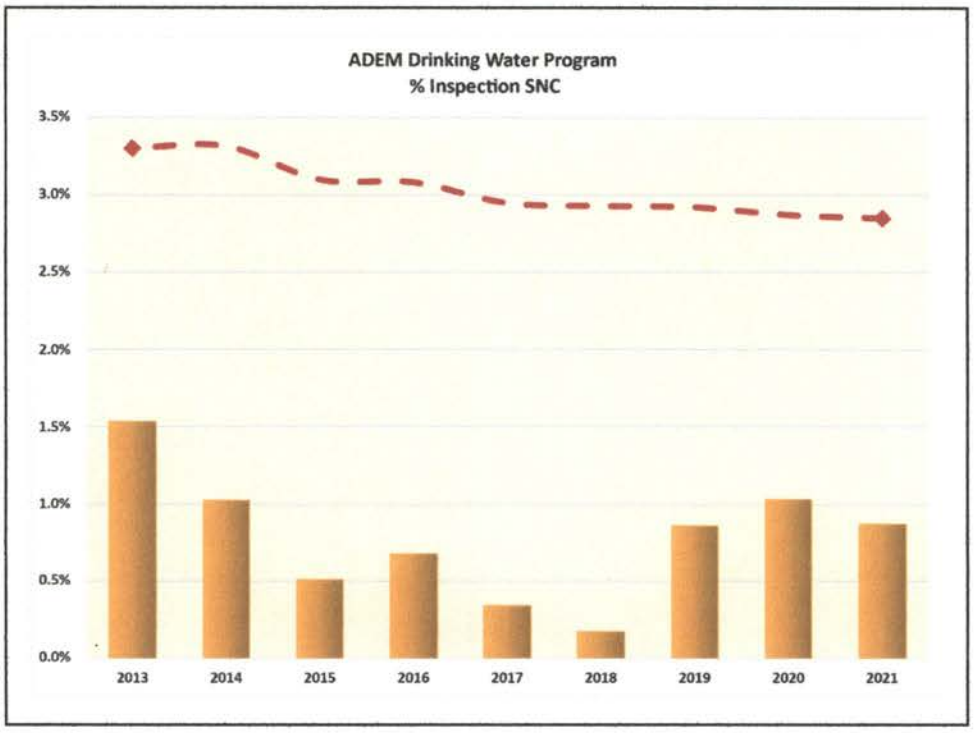
ADEM Drinking Water Program
% Inspection SNC
3.5%
3.0%
2.5%
2.0%
1.5%
1.0%
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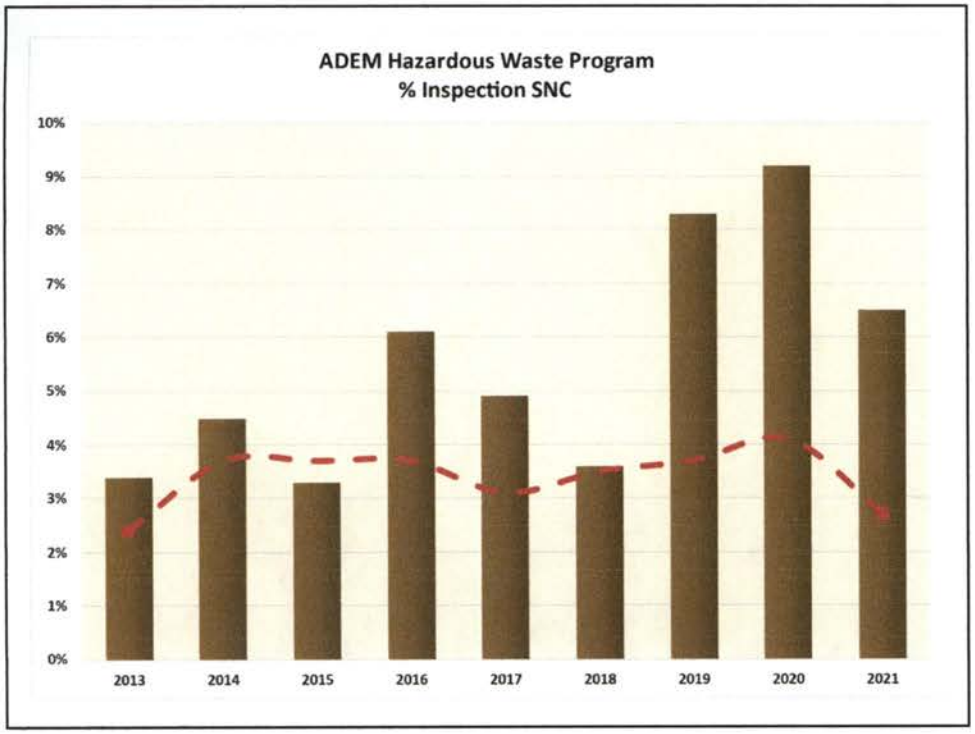


ADEM

Alabama Department Of Environmental Management

Summary

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

Attachment 3

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-15 [rules 335-15-1-.01/ Purpose (Amend);335-15-1-.02/Definitions (Amend); 335-15-3-.01/Purpose (Amend); 335-15-3-.02/ Application Package Submittal (Amend); 335-15-3-.03/Application Processing (Amend); 335-15-4-.01/ Purpose (Amend); 335-15-4-.02/ Limitation of Liability Qualifications (Amend);335-15-4-.03/Voluntary Property Assessment Plans (Amend);

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

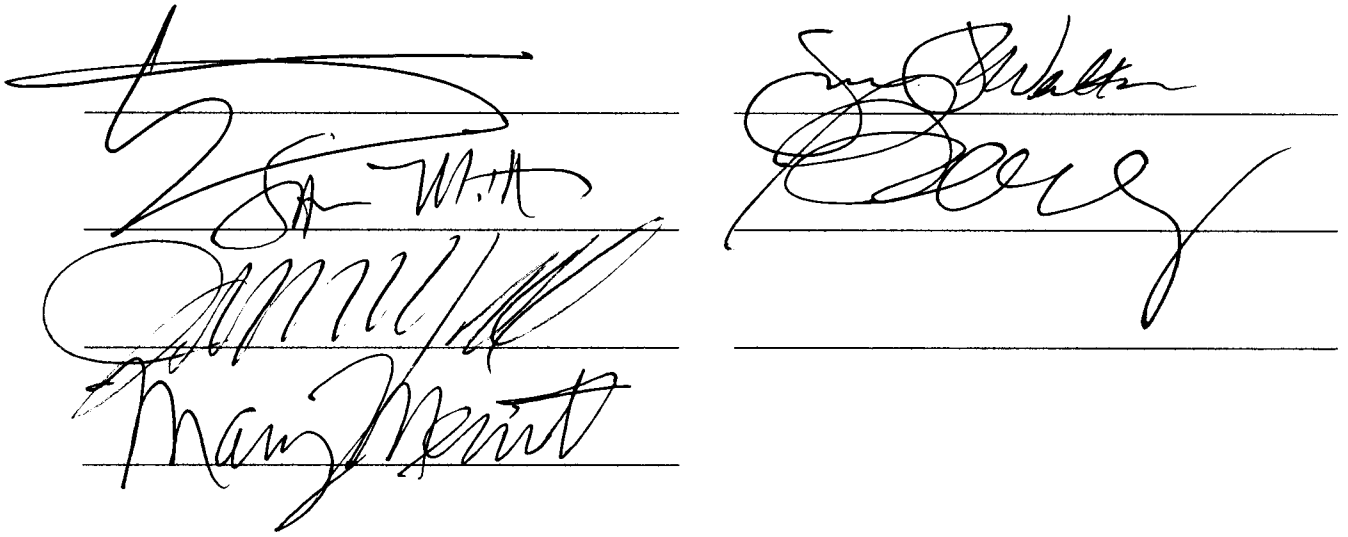
335-15-4-.04/Voluntary Cleanup-Work Plans (Amend); 335-15-4-.05/ Cleanup Requirements (Amend); 335-15-4-.06/Certification of Compliance-Letter of Concurrence (Amend); 335-15-6-.01/Purpose (Amend); 335-15-6-.02/ Public Participation (Amend);335-15-6-.03/Voluntary Cleanup Properties Inventory (Amend)] of the Department's Department's Land Division – The Brownfield Redevelopment and Voluntary Cleanup Program rules, administrative code attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

IN WITNESS WHEREOF, we have affixed our signatures below on this 8th day of April, 2022.

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 8th day of April 2022.

Thomas P. Walters, Chair
Environmental Management Commission
Certified this 8th day of April 2022

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LAND DIVISION - BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM

CHAPTER 335-15-1
GENERAL

TABLE OF CONTENTS

335-15-1-.01 Purpose
335-15-1-.02 Definitions

335-15-1-.01 Purpose. These regulations are promulgated pursuant to the Alabama Land Recycling and Redevelopment Act, Code of Alabama, 1975, § 22-30E-4. The Brownfield Redevelopment and Voluntary Cleanup Program provides a mechanism for the implementation of a cleanup program that encourages applicants to voluntarily assess, remediate, and reuse rural and urban areas of actual or perceived contamination. The program is designed to expedite the voluntary cleanup process and has been designed for entry at any stage of the cleanup process as long as all applicable criteria have been achieved up to the point of entry.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Austin R. Pierce; Pamela L. Monaghan
Statutory Authority: Code of Alabama, 1975, §§ 22-30E-1, 22-30E-2, and 22-30E-4.
History: May 16, 2002.
Amended: November 25, 2004; Proposed: December 20, 2021.

335-15-1-.02 Definitions. Unless otherwise defined in ADEM Admin. Code 335-15-1 through 335-15-7, the following words and terms shall have the meanings given below:

(a) "Alabama Land Recycling and Economic Redevelopment Commission" is the commission as established in the Code of Alabama, 1975 § 22-30E-12.

(b) "ADEM" is the Alabama Department of Environmental Management.

(c) "Applicant" is the owner, operator or prospective purchaser seeking to participate in the voluntary cleanup program by submission of an application under 335-15-2-.02.

(d) "Application fee" means the nonrefundable review fee submitted with the Voluntary Cleanup Program application.

(e) "Aquifer" means a geologic formation, group of formations or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(f) "Brownfield" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or perceived presence of a hazardous substance, pollutant or contaminant.

(g) "Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

(h) "Certification of compliance" means a statement prepared by a professional engineer or geologist licensed to practice in the State of Alabama which certifies compliance with a voluntary cleanup plan required by 335-15-4-.06.

(i) "Cleanup" means, for purposes of 335-15, the remediation, mitigation, control, or removal of contaminants from the environment in accordance with an approved "Voluntary Cleanup Plan".

(j) "Cleanup Properties Inventory" means the Voluntary Cleanup Properties Inventory compiled and updated as necessary by the Department pursuant to 335-15-6-.03(1) for all qualifying properties for which a property assessment plan or cleanup plan has been approved.

(k) "Commission" means the Alabama Environmental Management Commission as defined in Code of Alabama, 1975 § 22-22A-3(4).

(l) "Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

(m) "Contaminant" means any substance which results in alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including:

1. Solid waste (as defined in ADEM Admin. Code 335-13); or

2. Petroleum product(s).

(n) "Department" means the Alabama Department of Environmental Management or its successor agency.

(o) "Director" means the Director of the Alabama Department of Environmental Management or such other person to whom the director has delegated authority.

(p) "EPA" means the United States Environmental Protection Agency.

(q) "Engineer" means a person registered as a professional engineer with the State of Alabama Board of Registration for Professional Engineers and Land Surveyors and practicing under the Rules of Professional Conduct, specifically Canon II.

(r) "Environment" is defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., Section 9601, et seq.

(s) "Environmental Covenant" as defined in ADEM Admin. Code 335-5-1-.03.

(t) "Facility" is a term synonymous with "property".

(u) "Fiduciary" means a person who acts for the benefit of another party as a bona fide trustee, executor, and/or administrator.

(v) "Geologist" means a person registered as a professional geologist with the State of Alabama pursuant to the Alabama Professional Geologist Licensing Act.

(w) "Hazardous constituent" as defined in ADEM Admin. Code 335-14-2-Appendix VIII and/or ADEM Admin. Code 335-14-5-Appendix IX.

(x) "Hazardous substance" means any substance included on the List of Hazardous Substances and Reportable Quantities, codified as 40 CFR Part 302, Table 302.4, in force and effect on the effective date of 335-15-1 and subsequent revisions thereof, or any substance listed on the List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 CFR Part 355, Appendix A, in force and effect on the effective date of 335-15 and subsequent revisions thereof.

(y) "Hazardous waste" means any solid waste as defined in ADEM Admin. Code 335-14.

(z) "Hazardous Waste Treatment, Storage or Disposal Facility" means any property or facility which is intended or used for the treatment, storage or disposal of hazardous waste subject to the permit requirements of ADEM Admin. Code 335-14-8.

(aa) "Land Use Controls" means any restriction or control, which serves to protect human health and/or the environment, by limiting the use of and/or exposure to, any portion of a property, including water resources These controls include but are not limited to:

1. Engineering controls for remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater conveyance systems, slurry walls, liner systems, caps, leachate collection systems, pump and treat systems, and groundwater recovery systems.

2. Institutional controls which are legal or contractual restrictions on property use that remain effective after remediation is completed and are used to meet remediation levels. The term may include, but is not limited to, deed notations, deed restrictions and/or, water use restrictions, restrictive covenants, conservation easements, and limited development rights.

3. Water use restrictions which can be placed on the use of a particular water supply source that has been identified as being contaminated with hazardous substances or other contaminants in order to protect human health and the environment.

(bb) "Major Modification" means any modification that is not a minor modification.

(cc) "Minor Modification" means any administrative and/ or general information changes, correction of typographical errors, changes in ownership and or operational control, and changes in the frequency of, or procedures for, monitoring, reporting or sampling by the applicant to provide for more frequent monitoring, reporting or sampling.

(dd) "Mitigation" means reducing to the extent possible, or rectifying, the adverse impact by repairing, rehabilitating, restoring, or limiting exposure to the affected environment.

(ee) "Noncarcinogen" is a chemical classification, for the purposes of risk assessment, as an agent for which there is either inadequate toxicological data or which is not likely to be a carcinogen, based on an EPA weight-of-evidence classification system.

(ff) "Operation and Maintenance" means any action(s) required to operate and/or maintain the processes in place to minimize any potential exposures to environmental concerns on a property.

(gg) "Owner or Operator"

1. The definition includes the following:

(i) In the case of a facility, any person owning or operating such facility.

(ii) Any person who owned, operated, or otherwise controlled activities at a facility immediately prior to conveyance of title to a unit of state or local government or control of the facility due to bankruptcy, foreclosure, tax delinquency, or abandonment.

2. The definition does not include the following:

(i) A person who can show evidence of ownership, acted solely in a fiduciary capacity, and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances from the facility.

(ii) A unit of a state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquire title by virtue of its function as sovereign. This exclusion shall not apply to any state or local government which has caused or contributed to the release of hazardous wastes, hazardous constituents, or hazardous substances from the facility.

(hh) "Parent" has the same meaning as in 17 CFR 240.12b-2 (1 April 1996 Edition).

(ii) "Participant" means a person who has received confirmation of eligibility and has remitted payment of application fee.

(jj) "Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

(kk) "Petroleum" means oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, petroleum, gasoline, kerosene, fuel oil, oil sludge, used oil, substances or additives utilized in the refining or blending of crude petroleum or petroleum stock, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, and mixtures of natural gas and synthetic gas.

(ll) "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste. [Note: Some materials that meet the definition of "pollutant" may not meet the criteria to be considered a solid waste, whether hazardous or nonhazardous.]

(mm) "Preexisting release" means a release, as that term is defined in 335-15-1-.02, which occurred prior to an applicant's application for a limitation of liability pursuant to 335-15-4-.02.

(nn) "Property" is synonymous with "facility" and includes any or all of the following:

1. Any land, building, structure, installation, equipment, pipe or pipeline, sewer or publicly owned treatment works, pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, or storage container.

2. Any site or area where a hazardous waste, hazardous constituent, hazardous substance or petroleum product has been deposited, discharged, stored, disposed of, placed, or has otherwise come to be located.

3. A parcel of land defined by the boundaries in the applicable deed.

(oo) "Prospective developer" means any person who desires to buy or sell a brownfield property for the purpose of developing or redeveloping that brownfield property and who did not cause or contribute to the contamination at the brownfield property.

(pp) "Prospective purchaser" means a person who intends to purchase a qualifying property.

(qq) "Qualifying property" means a property which meets the criteria of 335-15-2-.01(1).

(rr) "Relatives" means persons who are, or formerly were, related by marriage or by consanguinity.

(ss) "Release" means any intentional or unintentional act or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including without limitation, the abandonment or discarding of barrels, containers, and other closed receptacles, of any solid waste, hazardous waste, hazardous constituent, petroleum products, or hazardous substance.

(tt) "Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediment) and debris that contain hazardous substances which are managed for implementation of the cleanup.

~~(uu) "Remediation level" means the concentration of a contaminant, and applicable control, that is protective of human health and the environment.~~

(~~vv~~uu) "Residential" means single family residences of one or more dwelling units, including accessory land, buildings or improvements incidental to such dwellings.

(~~ww~~vv)"Response Action" means those actions taken in the event of a release or threatened release of a hazardous waste, hazardous constituent, petroleum product, or hazardous substance into the environment to remove, or to prevent or minimize the release of hazardous waste, hazardous constituents, petroleum products, or hazardous substances so that they do not pose a threat to public health and/or the environment.

(~~xx~~ww) "Responsible person" means any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent, or hazardous substance at a property. This term specifically includes those persons described in §§107(a)(1) through 107(a)(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., Section 9601, et seq. This term specifically excludes those persons described in § 107(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C., Section 9601, et seq.

(~~yy~~xx) "Restricted use" means any use other than unrestricted residential use.

(~~zz~~yy) "Risk assessment" means the process used to determine the risk posed by contaminants that have been released into the environment at a site. The process includes a written site specific evaluation, encompassing, but not limited to, the identification of the contaminants present in the environmental media, the assessment of exposure and exposure pathways, the assessment of the toxicity of the contaminants present, the characterization of risks to humans, and the characterization of the impacts or risks to the environment.

(~~aaa~~zz) "Site" means any property or portion thereof, as agreed to and defined by the participant and the Department, which contains or may contain contaminants being addressed under this program.

(~~bbb~~aaa) "Source" means the point of origin of a suspected contaminant.

(~~ccc~~bbb) "Subsidiary" has the same meaning as in the 17 CFR 240.12b-2 (1 April 1996 Edition).

(~~ddd~~ccc) "Third party" means one not a party to an agreement or to a transaction but who may have rights therein.

(~~eee~~ddd) "Unrestricted residential use" means the designation of acceptable future use at a site for any and all activities associated with residential use at which the remediation levels, based on either background or standard residential exposure factors, shall have been attained throughout the site in all media.

(~~fff~~eee) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities.

(~~ggg~~fff) "Upper-bound lifetime cancer risk level" means a conservative estimate of the probability of one excess cancer occurrence in a given number of exposed individuals. For example, a risk level of 1×10^{-6} equates to the possibility of one additional cancer occurrence beyond the number of occurrences that would otherwise occur in one million exposed individuals, beyond the number of occurrences that would otherwise occur. Upper-bound lifetime cancer risk level is based on an assumption of continuous, lifetime exposure and is likely to overestimate true risk.

(~~hhh~~ggg) "Voluntary Cleanup Plan" means any plan approved under 335-15-4-.04 that describes in sufficient detail those actions planned to satisfy the cleanup requirements for the qualifying property.

(~~iii~~hhh) "Voluntary Cleanup Report" means a final report of the cleanup of the entire facility in accordance with the specifications in the approved cleanup plan.

(~~jjj~~iii) "Voluntary Property Assessment Plan" means a plan that has been approved by the Department under 335-15-4-.03 and describes in sufficient detail those actions planned to perform a risk assessment or identify applicable cleanup requirements for the property.

(~~kkk~~jjj) "Voluntary Property Assessment Report" means a report of the assessment and findings from a Voluntary Property Assessment which may include a recommendation for applying cleanup standards to the property.

(~~lll~~kkk) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama~~-~~,1975, § 22-30E-3.
History: May 16, 2002; **Amended:** Effective: November 25, 2004; **Amended:** Filed: February 28, 2020; Effective: April 13, 2020**;** Proposed: December 20, 2021.

335-15-3-.01 Purpose. To establish procedures necessary for the submission of a complete and accurate application package thereby facilitating timely and efficient processing and review. Application packages shall be submitted with the appropriate fees as specified in ADEM Admin. Code R. 335-1-6 (See Fee Schedule H). Applications may be submitted using ADEM Form 521 (Voluntary Cleanup Program Application). As appropriate, the application package may be submitted individually or in conjunction with the Vvoluntary Aassessment Pplan or Report, Vvoluntary Celeanup Plan or Report, or the Ceertification of Ceompliance.

Authors: Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, § 22-30E-5.
History: May 16, 2002; **Amended:** Effective: November 25, 2004; **Amended:** Filed: February 28, 2020; Effective April 13, 2020; **Amended:** Proposed: December 20, 2021.

335-15-3-.02 Application Package Submittal.

(1) Application Requirements. An application package submitted to the Department under 335-15-3 shall, at a minimum provide the following information in the form specified by the Department:

(a) Applicant description.

1. Full name of applicant;

2. Applicant's complete mailing address; and

3. Applicant's telephone number.

(b) The location of the property.

1. Street address and zip code;

2. Municipality or community;

3. County;

4. United States Geological Survey (USGS) 7.5 minute quadrangle with the site delineated; and

5. Longitude and latitude; and

6. Legal description of the property.

(c) Current ownership description.

1. Full name of owner;

2. Year(s) of ownership;

3. Current owner(s) name and title;

4. Current owner(s) address; and

5. Current owner(s) telephone number; and

6. Current owner(s) email address.

(d) Recent available history of the site. The application shall include a description, including time frames, of the current and past usage of the property, to the extent known or reasonably ascertainable.

(e) Property features. The application shall include the results of a property inspection, to include the presence of various property structures and features. The property inspection shall state the date of the inspection, and the name of the person conducting the inspection.

(f) Maps.

1. Legible property maps describing the locations of all units, structures, features, and potential sources of contamination. The maps shall be scaled and include:

(i) Location of all water bodies, ponds, springs, rivers and streams (including subterranean), estuaries, and wetlands;

(ii) Land use of contiguous properties and boundary lines;

(iii) Engineering structures such as drainage ways, diversion ditches, drain tiles, manholes, water lines, and sewers;

(iv) Highways, roads, roadcuts, paved or black-topped areas, and railroad lines;

(v) Outcrops, faults, caves, and sinkholes; and

(vi) Any other structures found during the preparation of the application.

2. The maps must include:

(i) An appropriate bar scale;

(ii) A north arrow; and

(iii) A legend.

(g) If applicable, request for a variance including such information as the applicant believes is relevant to the issuance of a variance under 335-15-2-.03(2).

(h) If applicable, a list of all orders, citations, and notices of violation to the applicant for any violations or alleged violations of environmental permits, laws and/or regulations. The applicant shall include a brief description of the violation(s) and the terms and status of any required remedial action(s) associated with the violations.

1. Any person signing a document under 335-15-3 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the

information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possible revocation of the limitations of liability and removal from the program."

2. Reserved.

(i) Provide any other information requested by the Department. The Department will review the application to verify that:

1. The application is complete; and

2. The applicant and the site meet the eligibility criteria set forth in 335-15-2-.01 and 335-15-2-.02 or is entitled to a variance as set forth in 335-15-2-.03.

(2) Property Use. The applicant shall be solely responsible for insuring that proposed use of the property will comply with all applicable zoning requirements.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Pamela W. Luckie; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, §§ 22-30E-2, 22-30E-4, 22-30-19, and 22-30-20.
History: May 16, 2002.
Amended: November 25, 2004; **Amended:** Proposed: December 20, 2021.

335-15-3-.03 Application Processing.

(1) Application Review. The Department shall review each application submitted for compliance with 335-15-3-.03(2). Upon completion of the initial review, the Department shall notify the applicant in writing whether the application is complete or deficient. If the application is incomplete or inaccurate, the Department:

(a) Shall request from the applicant any and all information necessary to correct the noted deficiencies;

(b) Shall notify the applicant of a date for submitting the necessary information; and

(c) May request any information necessary to clarify, modify, or supplement previously submitted material.

(2) Approval of Application. The Department shall approve an application once it is determined to be complete. An application is complete when the Department receives all required information identified in 335-15-3-.02.

(3) Disapproval of Application. An application may be disapproved if:

(a) It is ineligible under the Alabama Land Recycling and Economic Redevelopment Act Code of Alabama,-1975 § 22-30E and/or 335-15, or

(b) The applicant fails or refuses to correct deficiency(ies) in a timely manner.

(4) Non-Refundable Application Fee. The applicant is not entitled to a refund of the application fee for an application disapproved pursuant to 335-15-3.

(5) Application Resubmittal. An application that has been disapproved pursuant to 335-15-3-.03(3) may be submitted a second time without submission of an additional application fee. If an application is disapproved a second time, any subsequent resubmittal shall be accompanied by the appropriate application fee.

(6) Application Modification. If the applicant determines that any elements of an approved application must be modified, the applicant shall modify the approved application and submit the proposed modification for approval along with the appropriate fees.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Pamela W. Luckie; Crystal L. Collins.
Statutory Authority: Code of Alabama, 1975, §§ 22-30E-2 and 22-30E-4.

History: May 16, 2002; **Amended:** Effective: November 25, 2004; **Amended:** Filed: February 28, 2020; Effective: April 13, 2020. Amended: Proposed: December 20, 2021.

335-15-4-.01 Purpose. Establishes criteria for the submission of voluntary property assessment plans and other technical information, liability limitations, assessments, plans, cleanup requirements, and certification of compliance.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama ,1975, § 22-30E-9.
History: May 16, 2002.
Amended: November 25, 2004; **Amended:** Proposed: December 20, 2021.

335-15-4-.02 Limitation of Liability Qualifications.

(1) Limitation of liability criteria. To qualify for a limitation of liability as provided in Code of Alabama, 1975, §§ 22-30E-10(b), an applicant shall meet all the following criteria:

(a) The applicant shall not be a responsible person, as defined in 335-15-1-.02, at the qualifying property.

(b) Where the applicant is an individual, the individual shall not:

1. Be a relative by blood within the third degree of consanguinity or by marriage; or

2. Be an employee, shareholder, officer, or agent; or otherwise be affiliated with a current owner of the subject property or any responsible person on the subject property.

(c) Where the applicant is a corporation or other legal entity, the corporation must not:

1. Be a current or former subsidiary, division, parent company, or partner of a current owner; or

2. Be the employer or former employer of the current owner; or

3. Be any responsible person on the subject property.

(d) The limitation of liability provided by Code of Alabama, 1975, §§ 22-30E-10 shall be contingent upon the applicant's good faith implementation of the voluntary property assessment and/or voluntary cleanup plan as approved by the Department. Such limitation of liability shall not be applicable to any activities conducted on the qualifying property before the Department's approval of the voluntary property assessment plan, cleanup plan, or concurrence with a certification of compliance, whichever occurs first.

(2) Inability to meet limitation of liability criteria. Applicants who do not meet the criteria in 335-15-4-.02(1), shall qualify only for a limitation of liability upon acceptance by the Department of the certification of compliance for cleanup of the site.

(3) Revocation of limitation of liability. If the Department determines the assessment or cleanup is not being implemented in accordance with the approved plan, it will notify the applicant and give reasonable opportunity to correct the deficiency. Failure to correct noted deficiencies shall result in the revocation of the limitation of liability protection afforded by the Alabama Land Recycling and Economic Redevelopment Act.

(4) Fiduciary limitation of liability. A lender, including one serving as a trustee, personal representative, or in any other fiduciary capacity in connection with a loan, or a lender holding evidence of ownership of a

qualifying property primarily to protect a security interest, or as a result of foreclosure or a deed in lieu of foreclosure of a security interest, is entitled to the liability protection established in Code of Alabama, 1975 § 22-30E-9 if the lender meets each of the following requirements:

(a) The lender has not caused or contributed to a release of a contaminant at the qualified property;

(b) The lender seeks to sell, transfer, or otherwise divest the qualifying property at the earliest time; and

(c) The lender has not divested the borrower of, or otherwise engaged in, decision-making control of assessment or cleanup activities at the qualifying property or operations at the qualifying property or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the qualifying property;

(5) Extension of Limitation of Liability. The limitation of liability provided by Code of Alabama 1975 § 22-30E-10 shall extend to the heirs, assigns, and designees of the person to whom such limitation of liability is granted; provided, however, that, except as may be provided by Code of Alabama ,1975 § 22-30E-9(a) or § 22-30E-9(f), such extension of the limitation of liability shall not operate to absolve from liability any party deemed to be a responsible person on the qualifying property.

(6) Departmental Response to Release. Nothing in 335-15-4 shall limit the authority of the Department to take action in response to any release or threat of release of regulated substances.

(7) Preexisting And New Release Liability. Upon the Department's approval of a voluntary property assessment plan, voluntary cleanup plan, or a certification of compliance, an applicant who is not a responsible person at the qualifying property, shall not be liable to the state or any third party for costs incurred in the investigation or cleanup of, or equitable relief relating to, or damages resultant from, in whole or in part, a preexisting release at the qualifying property, including, but not limited to, any liability to the state for the cleanup of the property under Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Alabama, 1975, or a new release of a substance, constituent, or material which had been part of a preexisting release at the property, unless such new release results from noncompliance with an approved voluntary property assessment plan or voluntary cleanup plan or from the negligent, wanton, willful, or intentional conduct of the applicant.

(8) Regulatory Compliance and Limitation of Liability. If, during the course of the assessment and or remediation process, the site becomes an active industrial facility, the facility will then be responsible for maintaining compliance with all applicable state and federal regulations. The limitation of liability does not extend to:

(a) Release(s) as a result of new industrial activity occurring during the assessment and, or remediation phase of the cleanup;

(b) Activities not described in the voluntary cleanup assessment plan or the voluntary cleanup work plan(s); or

(c) Release(s) that occur after Departmental acceptance of certification of compliance.

Authors: Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Pamela L. Monaghan
Statutory Authority: Code of Alabama, 1975, §§ 22-30E-8, 22-30E-9, and 22-30E-10.
History: May 16, 2002.
Amended: November 25, 2004; **Amended:** Proposed: December 20, 2021.

335-15-4-.03 Voluntary Property Assessment Plans.

(1) Submission.

(a) After acceptance of the application by the Department as required in 335-15-3-.03, the applicant shall submit for approval, a complete and comprehensive Voluntary Property Assessment Plan for the site.

(b) If a property assessment has already been performed, a complete and representative Voluntary Property Assessment Report shall be submitted to the Department for review in accordance with 335-15-4-.03(8)(b).

(2) Content. A Voluntary Property Assessment Plan submitted by an applicant shall describe in sufficient detail those actions planned to develop information necessary to perform a risk assessment or identify applicable cleanup standards for the qualifying property utilizing requirements found in the Alabama Risk-based Corrective Action Guidance (ARBCA) Manual or other appropriate risk-based corrective action principles through the appropriate implementation of applicable response actions and/or land use controls. The plan should describe the methods to be used to determine the type(s) and the amount(s) of any contamination including the delineation of all soil and groundwater contamination discovered or known to exist on-site. Information previously submitted in the application package need not be resubmitted unless, during the assessment phase, information is discovered which is contrary to that information in the application package. Information submitted in the Voluntary Property Assessment Plan shall be submitted in a format consistent with the Alabama Environmental Investigation and Remediation Guidance (AEIRG).

(a) A Voluntary Property Assessment Plan submitted by a responsible party must delineate the horizontal and vertical extent of contamination in groundwater on-site and off-site beyond the property boundary. Such delineation of groundwater contamination shall be contained in a written report authored, signed and sealed by a qualified professional geologist or engineer licensed in the State of Alabama.

(b) A Voluntary Property Assessment Plan submitted by a non-responsible party must delineate the horizontal and vertical extent of contamination in groundwater on-site only. Such delineation of groundwater contamination shall be contained in a written report authored, signed and sealed by a qualified professional geologist or engineer licensed in the State of Alabama.

(3) Approval. The Department shall approve a complete Voluntary Property Assessment Plan within 60 days of submittal. The plan shall be considered approved if the Department fails to act within this timeframe.

(4) Implementation. Upon approval of the Voluntary Property Assessment Plan, the Department shall specify a time within which the

applicant shall implement the approved Voluntary Property Assessment Plan. The applicant shall implement the plan in accordance with the specified schedule.

(5) Loss of Limitation of Liability. If the Department determines activities at the property are not being implemented in accordance with the approved Voluntary Property Assessment Plan, it will notify the applicant and give reasonable opportunity to remedy the deficiencies. Failure to correct deficiencies will result in the loss of liability protections provided by Code of Alabama, 1975, § 22-30E-10. The applicant will be provided with written notification specifying the basis for making such determination.

(6) Modification. If the applicant determines that any element of an approved Voluntary Property Assessment Plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable cleanup requirements for the qualifying property, the applicant shall modify the approved plan and submit the proposed modification for approval.

(7) Termination. If the applicant determines that any element of an approved Voluntary Property Assessment Plan must be modified in order to terminate activities at the property, the applicant shall notify the Department and obtain approval of the proposed modification. Approval may be withheld only if the requested modification to terminate assessment activities would increase the risk to human health and the environment posed by the conditions at the property within a specified time.

(8) Voluntary Property Assessment Report.

(a) An applicant shall, upon completion of those activities specified in the Voluntary Property Assessment Plan, submit to the Department a report of the assessment and findings from the assessment, which may include a recommendation for applying cleanup requirements to the property.

(b) If an assessment has been conducted prior to submission of an application, all pertinent information from that assessment shall be incorporated in the Voluntary Property Assessment Report.

(c) When a Voluntary Property Assessment Report proposes an Environmental Covenant as the ~~sole and final~~appropriate remedy for the site, the Department will provide for public comment in accordance with 335-15-6-.02(1). The Voluntary Property Assessment Report and the draft Environmental Covenant shall be included in the Public Notice.

Authors: Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, § 22-30E-9.

History: May 16, 2002; **Amended:** Effective: November 25, 2004; **Amended:** Effective: September 19, 2006; **Amended:** Filed: February 28, 2020; Effective: April 13, 2020; **Amended**: Proposed: December 20, 2021.

335-15-4-.04 Voluntary Cleanup-Work Plans.

(1) Submission. An acceptable Voluntary Cleanup Plan shall describe in sufficient detail those actions necessary to return the property to residential quality use, or at a minimum include restrictions such as land use controls, if appropriate to, satisfy the cleanup requirements for the qualifying property.

(2) Content. The plan must identify those steps necessary to perform approved cleanup for the site. At a minimum, the cleanup plan must include:

(a) A description of the remediation at each area of known contamination;

(b) A description of the conduct of the cleanup at the facility;

1. A detailed description of the methods to be used during cleanup, including but not limited to, removing, transporting, treating, storing, or disposing of all remediation waste, identification of the type(s) of off-site solid and/or hazardous waste management unit(s) to be used, if applicable.

2. A detailed description of the steps needed to remove or decontaminate all hazardous residues and contaminated containment system components, equipment, structures, and soils during cleanup including, but not limited to:

(i) Procedures for cleaning equipment and removal of contaminated soils;

(ii) Methods for sampling and testing surrounding soils,

(iii) Criteria for determining the extent of remediation necessary to satisfy the cleanup requirements, and

(iv) An estimate of the expected year of cleanup for facilities that use trust funds to demonstrate financial assurance under 335-15-5-.02(b).

3. A detailed description of other activities necessary during or after the cleanup period to ensure compliance with the cleanup performance requirements. This description may include operation and maintenance, such as, but not limited to groundwater monitoring, leachate collection, and run-on and run-off control;

4. A schedule for cleanup of known areas of contamination. At a minimum, the schedule must include the total time necessary to remediate each known area of contamination and the time required for cleanup activities;

5. Provide proof of financial assurance in accordance with 335-15-5; and

6. An estimate of the expected year of cleanup for facilities that use trust funds to demonstrate financial assurance under 335-15-5-.02(b).

(c) An estimate of the maximum inventory of remediation wastes/contaminated media on-site during cleanup operations.

(d) A Voluntary Cleanup Plan submitted by a responsible party must provide for remediation of all contamination described in the property assessment report whether on-site or off-site beyond the property boundary.

(e) A Voluntary Cleanup Plan submitted by a non-responsible party must provide for remediation of all contamination described in the property assessment report on-site only.

(3) Modifications. The applicant may modify the approved cleanup plan at any time prior to the notification of cleanup by submitting a written request to the Department. The request for modification approval must include a copy of the amended cleanup plan.

(a) The applicant must modify the cleanup plan whenever:

1. Changes in operating plans or facility design affect the cleanup plan;

2. There is a change in the expected year of cleanup, if applicable;

3. Unexpected events encountered during cleanup require a modification of the cleanup plan; and/or

4. The applicant determines that it is necessary or advisable to make changes and/or deviations in cleanup requirements that affect either cleanup activities or the degree of remediation initially proposed.

(b) An applicant with an approved cleanup plan shall submit a request for modification to the Department at least 60 days prior to the proposed change in facility design or operation, or no more than 30 days after an unexpected event has occurred which has affected the cleanup plan.

(c) If at any time an applicant determines that any element of an approved voluntary cleanup plan must be modified in order to terminate activities at the property, the applicant shall notify the Department and obtain approval of the proposed modification which may be withheld only if the requested modification would increase the risk to human health and the environment posed by conditions at the property.

(4) Processing.

(a) Within 60 days of submittal, the Department shall either approve a complete or modified Voluntary Cleanup Plan, or request corrections to or disapprove the Voluntary Cleanup Plan. The plan shall be considered approved if the Department fails to act within this timeframe.

(b) The Department shall review for completeness every cleanup plan submitted for approval as required by 335-15-4-.04(4). Upon completing the review, the Department shall notify the applicant in writing whether the plan is complete. If the plan is incomplete, the Department:

1. Shall list the information necessary to make the plan complete;

2. Shall specify in the notice of deficiency a date for submitting the necessary information; and

3. Shall request any information necessary to clarify, modify, or supplement previously submitted material.

4. Disapprove the plan if requested information is not submitted in a timely fashion.

(c) Once a cleanup plan is determined to be complete, the Department will provide for public comment in accordance with 335-15-6-.02(1).

(5) Implementation of Voluntary Cleanup Plan.

(a) Upon the Department approval of a Voluntary Cleanup Plan, the applicant shall begin implementation. The Department's approval of a Voluntary Cleanup Plan shall in no way be construed as a guarantee, promise, or assurance that the Department will concur with the applicant's Certification of Compliance with the cleanup requirements.

(b) If at any time the applicant or the Department determines that any element of an approved Voluntary Cleanup Plan must be modified in order to develop the information necessary to perform a risk assessment or identify applicable cleanup standards for the qualifying property, the applicant shall modify the approved plan and obtain approval of the proposed modification.

(c) An applicant shall retain records of any test results, waste analyses, and determinations made in accordance with the Voluntary Property Assessment Plan and/or the Voluntary Property Cleanup Plan, as well as records of off-site disposal locations, waste types and quantities, for a period of three years.

(d) The applicant shall submit proof of financial assurance to implement the Voluntary Cleanup Plan, in such form as specified by the Department in 335-15-5-.02.

(6) Removal of Wastes and Decontamination or Dismantling of Equipment. Nothing in 335-15-4-.04 shall preclude the applicant from the removal of hazardous wastes, constituents, contaminants or pollutants and decontamination or dismantling equipment in accordance with an approved cleanup plan either before or after notification of cleanup, provided all appropriate manifesting records are maintained.

(7) Voluntary Cleanup Report.

(a) Submission. Within 60 days of completion of cleanup of the entire site, the applicant shall submit to the Department, by registered mail, a report that the site has been remediated in accordance with the specifications in the approved cleanup plan.

(b) Content. The report must detail the actions performed in accordance with the specifications in the approved cleanup plan. At a minimum, the cleanup report must include:

1. The information required by 335-15-4-.04(2).

2. Certification of Compliance.

(i) Within 60 days of completion of cleanup of each area of contamination and/or within 60 days of completion of cleanup of the entire site, the applicant shall submit to the Department, by registered mail, a certification of compliance that the area of contamination, unit, or site, as applicable, has been remediated in accordance with the specifications in the approved cleanup plan.

(ii) Certain information required by 335-15 involves the practice of engineering and/or land surveying, as those terms are defined in Code of Alabama 1975 §§ 34-11-1 to 34-11-37; and/or the practice of geology, as that term is defined in Code of Alabama 1975 §§ 34-41-1 to 34-41-24. It is the responsibility of any person preparing or submitting such information to ensure compliance with these laws and any regulations promulgated thereunder. All submissions, or parts thereof, which are required by State law to be prepared by a licensed engineer, land surveyor, or geologist, must include the engineer's, land surveyor's, and/or geologist's signature and/or seal, as required by the applicable licensure laws.

3. Restricted Use Property. For those properties that are cleaned up to requirements less stringent than those required for unrestricted residential use, the property owner shall comply with the requirements of 335-15-6-.03(3) within 60 days of the submission of the Certification of Compliance.

(8) Site Cleanup Prior to Submission of the Application. If site cleanup was conducted prior to submission of the application, all pertinent information from the original assessment and cleanup plans shall be incorporated into a Voluntary Property Assessment Report and Cleanup Report. The site is required to meet all requirements of 335-15 to be eligible for limitation of liability provisions cited in the Alabama Land Recycling and Economic Redevelopment Act.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; James L. Bryant; Vernon H. Crockett; Sonja B. Favors; Pamela W. Luckie;

Crystal L. Collins; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama,1975, § 22-30E-9.
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335-15-4-.05 Cleanup Requirements.

(1) ~~Remediation~~ Cleanup levels.

(a) The participant, with the concurrence of the Department, shall consider impacts to human health and the environment. In establishing cleanup ~~requirements~~standards, cleanup ~~remediation~~ levels may be based on specific requirements of relevant environmental laws or regulations (e.g., Clean Water Act, Clean Air Act, TSCA, RCRA, CERCLA, et al.), derived using the procedures outlined in Section 300.430(e)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), and/or based upon the results of a site-specific risk assessment.

(b) The Department may set cleanup levels that reflect current and future use scenarios for the property as follows:

1. A site shall be deemed to have met the requirements for unrestricted use if the cleanup levels are derived in a manner consistent with Department or Environmental Protection Agency guidelines for assessing human and environmental health risks from hazardous constituents.

2. For sites that do not achieve the unrestricted use classification, restrictions on site use shall be applied to achieve cleanup standards. Restrictions shall include, but are not limited to, land use controls. The restrictions imposed upon a site shall be media-specific and may vary according to site-specific conditions.

(2) Remedial Action Measures. Cleanup~~Remediation~~ levels for all media contaminated with hazardous constituents or hazardous wastes, that the applicant or the Department has reason to believe may have been released at the site shall be determined in accordance with 335-15-4-.05(3). Should the concentration of hazardous constituent(s) in an aquifer, surface water, soil, sediment or air exceed its ~~remediation~~ cleanup level, the Department may require the voluntary cleanup plan to include measures as necessary to protect human health and the environment.

(3) Risk Assessment. Cleanup~~Remediation~~ levels may be based upon a risk assessment that considers the site and all surrounding areas that may be impacted. This risk assessment must reflect current and future use scenarios.

(4) Property Use Considerations.

(a) A site shall be deemed to have met the requirements for unrestricted residential use if the ~~remedial~~ cleanup level(s) satisfy the following criteria:

1. Is derived in a manner consistent with ADEM/EPA guidelines for assessing human and environmental health risks from hazardous constituents;

2. Is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act (TSCA) Good Laboratory Practice Standards, or equivalent;

3. Represents for human health ~~remediation~~ cleanup levels to address carcinogens, a cumulative concentration associated with an excess upper bound lifetime cancer risk range of between 1×10^{-4} and 1×10^{-6} for carcinogens due to continuous constant lifetime exposure; and

4. Represents for human health ~~remediation~~ cleanup levels to address noncarcinogens, a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is without appreciable risk of deleterious effects during a lifetime.

(b) Applies appropriate restrictions on future use for sites that do not achieve the unrestricted use classification. Restrictions shall include, but are not limited to, institutional and/or engineering controls. The restrictions imposed upon a site will be media-specific and may vary according to site-specific conditions. All use restrictions shall be described in the Certification of Compliance.

Authors: Fred A. Barnes; Keith N. West, Lawrence A. Norris; Sonja B. Favors; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, § 22-30E-4.
History: May 16, 2002.
Amended: November 25, 2004; **Amended**: Proposed: December 20, 2021.

335-15-4-.06 Certification of Compliance-Letter of Concurrence.

(1) Certification of Compliance. When all requirements of an approved cleanup plan have been completed, the applicant shall submit to the Department a Certification of Compliance. A Certification of Compliance may also be submitted when an assessment based on an approved Voluntary Property Assessment Plan has been completed and no contamination discovered. The Department shall review all reports and the required Certification of Compliance submitted under 335-15-4-.06. The applicant or eligible successor must satisfactorily maintain the engineering controls, remediation systems, or if non-permanent institutional controls are utilized pursuant to an agreement, the Department may issue the applicant a "Letter of Concurrence" with conditions. The Department may authorize an applicant to conduct a phased response only when, in the Department's evaluation, the schedule is reasonable.

(2) "Letter of Concurrence". Upon concurrence by the Department, the Department shall issue to the applicant a "Letter of Concurrence".

(3) "Letter of Concurrence" with Conditions. For partial response actions, a "Letter of Concurrence" with conditions shall pertain only to the partial response action area and shall include a legal description of that area.

(4) Deed Records. The applicant shall comply with the requirements of ADEM Admin. Code 335-5.

(5) Revocation. The "Letter of Concurrence" may be revoked by the Department in the event that contamination posing an unacceptable risk to human health and the environment is discovered on site, or discovery is made that the submitted certification of compliance was based on information that was materially false, inaccurate or misleading.

(a) The applicant shall be notified in writing by certified mail of the proposed revocation.

(b) The applicant shall be given an opportunity to respond within 30 days upon receipt of the letter.

(c) Unacceptable response to the revocation letter will result in the reinstatement of any cleared deed notation and/or deed restriction until such time as the property is deemed to be in compliance.

(6) Sovereign Immunity. Issuance of the "Letter of Concurrence" does not constitute a waiver of sovereign immunity.

(7) Release from Liability. Upon the Department's approval of the submitted Certification of Compliance described in 335-15-4-.06, an applicant who is not a responsible person, as defined in 335-15-1-.02, at the qualifying property, shall not be liable to the state or any third party for costs incurred in the investigation or cleanup of, or equitable relief relating to, or damages

resultant from, in whole or in part, a preexisting release at the qualifying property, including, but not limited to, any liability to the state for the cleanup of the property under Title 22, Chapters 22, 27, 30, 30A, and 35 of the Code of Alabama 1975, or a new release of a substance, constituent, or material which had been part of a preexisting release at the property, unless such new release results from noncompliance with an approved Voluntary Property Assessment Plan or Voluntary Cleanup Plan or from the negligent, wanton, willful, or intentional conduct of the applicant.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Sonja B. Favors; Anna M. Ennis; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama ,1975, §§ 22-30E-5, 22-30E-9, and 22-30E-10.
History: May 16, 2002.
Amended: November 25, 2004 **Amended:** Filed: February 28, 2020; Effective: April 13, 2020; **Amended**: Proposed: December 20, 2021.

335-15-6-.01 Purpose.

(1) To provide a mechanism that allows for public participation in the Voluntary Cleanup Program in accordance with 335-15-4-.04(4)(c). ~~Cleanup plans for sites enrolled in the Program are placed on public notice allowing the general public the opportunity to comment.~~ The public notice informs the general public concerning matters of actual or perceived ~~possible~~ contamination and the proposed or implemented ~~possible~~ remediation ~~or revitalization~~ of previously contaminated sites.

(2) To compile a Voluntary Cleanup Inventory of existing sites undergoing voluntary cleanups and to provide a mechanism for the addition and removal of properties to the Voluntary Cleanup Inventory, including the procedures for inclusion in the deed records of the applicable probate court.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; Lynn T. Roper; M. Gavin Adams; Austin R. Pierce; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, § 22-30E-4.
History: May 16, 2002; **Amended:** Effective: November 25, 2004; **Amended:** Filed: February 28, 2020; Effective: April 13, 2019; **Amended:** Proposed: December 20, 2021.

335-15-6-.02 Public Participation.

(1) Public notification of cleanup. Once a ~~v~~Voluntary ~~c~~Cleanup ~~p~~Plan is determined to be complete, the Department will notify the public of the opportunity to submit written comments on the plan through the Department's website and request modifications to the plan no later than 30 days from the date of the notice. ~~provide the applicant and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice~~. It will also, in response to a legitimate request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a ~~v~~Voluntary ~~c~~Cleanup ~~p~~Plan. The Department will give public notice of the hearing at least 30 days before it occurs.

(2) Public notice procedures. Public notice of activities described in 335-15-6-.02(3) shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under 335-15-6-.02(2)(a) may waive his right to receive notice):

1. The applicant;

2. Persons who request in writing to be placed on a mailing list developed for the program:

(i) Including those who request in writing to be on the list;

(ii) Soliciting persons for area lists from participants in past voluntary cleanup proceedings in that area; and

(iii) Notifying the public of the opportunity to be put on the mailing list through ~~periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals~~the Department's website. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request; and

3. Governmental Agencies:

(i) To any unit of local government having jurisdiction over the area where the voluntary cleanup facility is located; and

(ii) To each State agency having any authority under State law with respect to the construction or operation of such facility.

(b) Publication of a notice ~~in a daily or weekly major local newspaper of general circulation. The newspaper advertisement should be located at a~~

~~spot in the paper calculated to give effective notice to the general public, and should be large enough to be seen easily by the reader.~~ shall be ~~-~~posted on the Department's website.

(3) Content. -All public notices issued under 335-15-6 shall contain the following information:

(a) Name and address of the office processing the voluntary cleanup action for which the notice is being given;

(b) Name and address of the applicant and, if different, of the site or activity regulated by the voluntary cleanup action;

(c) A brief description of the proposed cleanup action to be to be conducted at the site or activity described in the ~~v~~Voluntary eCleanup ~~a~~Application;

(d) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft application; and

(e) A brief description of the comment procedures, including a statement of procedures to request a hearing.

(4) Departmental Review. After considering all comments submitted during the public comment period and public hearing (if held), the Department will approve or disapprove the ~~v~~Voluntary eCleanup ~~p~~Plan within 30 days of the close of the comment period. In the event that the ~~v~~Voluntary eCleanup ~~p~~Plan is not approved, the Department shall provide the applicant with a statement of reasons for the denial. The applicant must modify the ~~v~~Voluntary eCleanup ~~p~~Plan or submit a new ~~v~~Voluntary eCleanup ~~p~~Plan for approval within 30 days after receiving such written statement. The Department will approve or modify this ~~v~~Voluntary eCleanup ~~p~~Plan in writing within 60 days of receipt. If the Director modifies the ~~v~~Voluntary eCleanup ~~p~~Plan, this modified ~~v~~Voluntary eCleanup ~~p~~Plan becomes the approved ~~v~~Voluntary eCleanup ~~p~~Plan. A copy of the modified ~~v~~Voluntary eCleanup ~~p~~Plan with a detailed statement of reasons for the modifications must be mailed to the applicant.

Authors: Fred A. Barnes; Keith N. West; Lawrence A. Norris; Stephen A. Cobb; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, § 22-30E-4.
History: May 16, 2002.
Amended: November 25, 2004; **Amended:** Proposed: December 20, 2021.

335-15-6-.03 Voluntary Cleanup Properties Inventory.

(1) Voluntary Cleanup Properties Inventory. Pursuant to Code of Alabama 1975, §§ 22-30E-4(b)(2) and 22-30E-4(b)(3), the Department shall compile and update as necessary an inventory of all qualifying properties for which a ~~v~~Voluntary ~~p~~Properties ~~a~~Assessment ~~p~~Plan and/or Report or a Voluntary ~~c~~Cleanup ~~p~~~~Plan~~ and/or Report has been approved by the Department. ~~-~~No later than July 1st of each year, the Department shall send a copy of the inventory with the properties listed by county to the clerk of each probate court of the state. The inventory shall be called the Voluntary Cleanup Properties Inventory. The inventory shall include all the following information:

(a) The name of the property or another description identifying the property.

(b) The location of the property.

(c) The name of the owner of the property at the time of the property's inclusion in the inventory.

(d) A general description of the ~~v~~Voluntary ~~p~~Property ~~a~~Assessment Plan and/or Report or ~~v~~Voluntary ~~c~~Cleanup ~~p~~Plan and/or Report.

(e) A property cleaned up to standards less stringent than those required for unrestricted residential use~~,~~ requires a description of the applicable values used and any use restrictions which are imposed.

(2) Placement on the Voluntary Cleanup Inventory. Upon the Department's approval of the ~~v~~Voluntary ~~p~~Property ~~a~~Assessment and/or the V~~v~~oluntary ~~c~~Cleanup ~~p~~Plan, the property shall be listed on the V~~v~~oluntary ~~c~~Cleanup ~~p~~Plan ~~p~~Properties ~~i~~Inventory as provided 335-15-6-.03(1).

(3) Restricted Use.

(a) The property owner of any property listed on the inventory which is designated as having been cleaned up to standards less stringent than those necessary for unrestricted residential use shall include the following notice in any deed, mortgage, deed to secure debt, lease, rental agreement, or other instrument given or caused to be given by the property owner which creates an interest in the property: "This property has been listed on the state's Voluntary Cleanup Properties Inventory and has been cleaned up to standards less stringent than those required for unrestricted residential use due to the presence of substances regulated under state law. Certain uses of this property may require additional cleanup. Contact the property owner or the Alabama Department of Environmental Management for further information concerning this property. This notice is provided in compliance with the Alabama Land Recycling and Economic Redevelopment Act."

(b) If warranted by further active or passive remediation that results in the reduction of contamination to unrestricted residential use levels, this notice may be removed in accordance with 335-15-6-.03(4).

(4) Unrestricted Use. Upon a written determination by the Department that a property has been cleaned up to standards suitable for unrestricted residential use, the notices required by 335-15-6-.03(1) shall be removed from the subject property records.

Authors: Lawrence A. Norris; Stephen A. Cobb; Vernon H. Crockett; Sonja B. Favors; Crystal L. Collins; Lynn T. Roper; Pamela L. Monaghan.
Statutory Authority: Code of Alabama, 1975, §§ 22-30E-4 and 22-30E-11.
History: May 16, 2002; **Amended:** Effective: November 25, 2004; **Amended:** Filed: February 28, 2020; Effective: April 13, 2020; **Amended:** Proposed: December 20, 2021.

Attachment 4

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

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

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

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

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

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [rules 335-1-1-.07/Departmental Forms, Instructions, and Procedures (Amend); 335-1-6-.07 (Fee Schedule E, H, and J)/Payment of Fees (Amend)] of the Department's Department's Administrative Division – General Administration Rules, administrative code

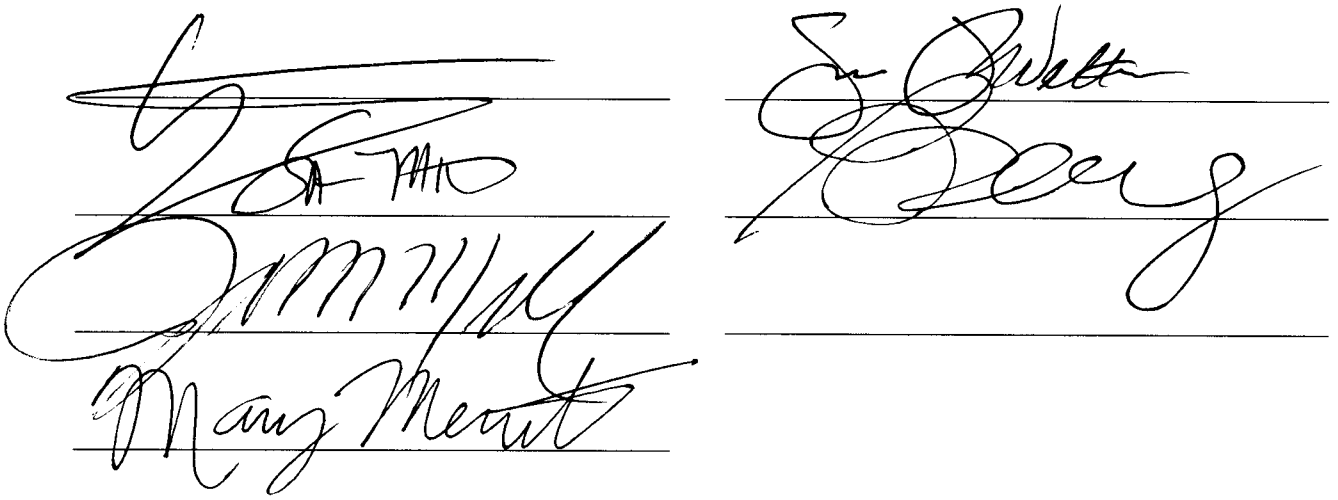
attached hereto, to become effective forty-five days, unless otherwise indicated, after filing with the Alabama Legislative Services Agency.

ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-1 – Administrative Division – General Administration Rules

IN WITNESS WHEREOF, we have affixed our signatures below on this 8th day of April, 2022.

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 8th day of April 2022.

Thomas P. Walters, Chair
Environmental Management Commission
Certified this 8th day of April 2022

335-1-1-.07 Departmental Forms, Instructions, and Procedures.

(1) Designation as the State Environmental Control Agency. The Department is the State Environmental Control Agency for the purposes of federal environmental law including the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended; the Federal Clean Water Act, 33 U.S.C. 1251 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. A 201 et seq., as amended. The Department is authorized to take all actions necessary and appropriate to secure the benefits of federal environmental laws. The Department operates in conformity with such federal laws, policies, and procedures, as provided in the Act.

(2) Policies and Procedures. The Commission, through the adoption of rules pursuant to Code of Alabama 1975, § 22-22A-7(c)(6), establishes environmental policies and procedures.

(3) Form and Instructions. The Director may require such forms within the rules as he deems necessary. The content of such forms and instructions for their completion may be prescribed by the Director including the changes of such from time to time. Federal forms as published by the Environmental Protection Agency may be used in lieu of state developed forms. Departmental forms prescribed by the Director shall be identified and numbered as follows:

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Specifications for Air Curtain Incinerators **M-1**	**17**
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Registration Form for the Construction, Installation, or Modification of an Incinerator **M-2**	**52**
Operating Permit Application Facility Identification Form **M-7**	**103**
Permit Application for Indirect Heating Equipment **M-3**	**104**
Permit Application for Manufacturing or Processing Operation **M-5**	**105**
Permit Application for Waste Disposal **M-2**	**106**
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Permit Application for Loading and Storage of Organic Compounds **M-2**	**108**
Permit Application for Volatile Organic Compound Surface Coating Emission Source **M-3**	**109**
Permit Application for Air Pollution Control Device **M-4**	**110**
Permit Application for Solvent Metal Cleaning **M-1**	**112**
Seal Gap Test Form **M-1**	**184**
Air Permit Application For Gasoline Dispensing Facilities **M-5**	**197**
Gasoline Transport Tank Truck Application **M-3**	**198**
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Bulk (Gasoline) Plant Application **M-2**	**331**
Emissions Statement Reporting Form **M-1**	**372**

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Exemption Claim Form for Cofired Combustors (Appendix H – Division 3) **M-1**	**374**
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Application for a Permit for the Construction for a Motel, Hotel, or Other Multi-Unit Development on a Property Intersected by the Construction Control Line in the Alabama Coastal Area **M-1**	**327**
Application for a Permit for the Construction of Single Family Dwellings, Duplexes, or Other Similar Structures on Properties Intersected by the Construction Control Line in the Alabama Coastal Area **M-1**	**328**
Application for Approval of a Non-Regulated Use in the Alabama Coastal Area Developments and Subdivisions of Property Greater than 5 Acres in Size **M-1**	**329**
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Alabama Recycling Fund Grant Application **M-~~21~~**	**9**

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Composting Facility Application	18
UST Annual Walkthrough Inspection Checklist Log **M~~32~~**	19
UST 3 Year Spill Prevention Equipment (Spill Bucket) Integrity Test Report (Hydrostatic and Vacuum Method) **M-~~32~~**	20
UST Alabama Tank Trust Fund Cost Proposal Part 1~~Form~~ **M-~~43~~**	31
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UST Annual Tank Gauge Test Report **M-1**	**565**
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Request for NPDES Permit Post-Mining Discharge Limitations (Coal	**451**

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Request for Release from NPDES Permit Monitoring and Reporting Requirements (Mining Operations) **M-3**	**452**
Request to Remove Subsurface Withdrawal from Discharge Structure (NPDES-Permitted Mining Operations) **M-2**	**453**
Request to Remove Treatment Basin/Pond or Other Discharge Structure (NPDES-Permitted Mining Operations) **M-3**	**454**
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SID Discharge Monitoring Report Form (Monthly)	**457**
SID Discharge Monitoring Report Form (Quarterly)	**458**
SRF Payment Request Form	**459**
Drinking Water - Surface Source Susceptibility Analysis Worksheet **M-1**	**461**
Toxicity Discharge Monitoring Report Form	**464**
Toxicity Test Report Summary	**465**
NPDES/SID/UIC Permit Transfer Agreement **M-32**	**466**
Drinking Water - Construction Permit Application **M-2**	**488**
Drinking Water – Modification Permit Application	**489**
Drinking Water - Renewal Permit Application **M-2**	**490**
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Notice of Intent–NPDES General Permit Number ALG890000 **M-65**	**498**
Notice of Termination – NPDES General Permit Number ALG890000 **M-43**	**499**
NPDES Noncoal/Nonmetallic Mining and Dry Processing Less than Five Acres Stormwater Inspection Report and BMP Certification **M-3**	**500**
NPDES ~~General Permit ALG890000 (~~Small Mining~~)~~ Noncompliance Notification Report **M-43**	**501**
Notice of Intent – NPDES General Permit ~~for Phase II Small Municipal Separate Storm Sewer Systems~~Number ALR040000 (MS4 Phase II) ~~ALNOI~~ **M-32**	**503**
Water and Wastewater Operator Exam Application **M-1**	**505**
Water and Wastewater Operator Experience Verification **M-1**	**506**
Water and Wastewater Reciprocal Application **M-1**	**507**
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Cooling Water Supplemental Information **M-2**	**510**
Permittee Registration Form for e-DMR/e-SSO **M-1**	**511**
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EDMR Daily Discharge Monitoring Report Form	**514**
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Supplemental Petroleum Application Information	**516**
Alabama Clean Vessel Act Grant Application	**517**
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Name of Forms	Form Number
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Documentation of Disability Related Needs	**533**
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Drinking Water - WTP Quarterly Report for the Disinfectants and Disinfection Byproducts Rule **M-2**	**547**
NPDES Individual Permit Application (Coalbed Methane Operations) **M-4**	**549**
Notice of Intent-UIC General Permit Number ALIG010000	**552**
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No Exposure Certification for Exclusion from NPDES Stormwater Permitting for Industrial Activities **M-1**	**555**
NPDES Mining and Preparation Plant Outfall Data for Metals, Cyanide, and Total Phenols	**567**

Author: Marilyn Elliott, Russell A. Kelly, Aubrey White, David Hutchinson, Brian C. Espy.
Statutory Authority: Code of Alabama 1975, §§ 22-22A-5, 22-22A-6, 22-22A-8, 41-22-4, 41-22-5.
History: Effective: August 1, 1988. **Amended:** Effective: August 1, 2002. **Amended:** Effective: January 23, 2003. **Amended:** Effective: August 4, 2004. **Amended:** Effective: January 10, 2006. **Amended:** Effective: July 11, 2006. **Amended:** Effective: November 14, 2006. **Amended:** Effective: January 22, 2008. **Amended:** Effective: January 19, 2009. **Amended:** Effective: January 19, 2010. **Amended:** Effective: January 18, 2011. **Amended:** Effective: November 29, 2011. **Amended:** Effective: November 27, 2012. **Amended:** Effective: May 27, 2014. **Amended:** Effective: July 28, 2015. **Amended:** Effective: August 5, 2016. **Amended:** Effective: October 6, 2017. **Amended:** Filed: October 23, 2018; Effective: December 7, 2018. **Amended:** Filed: February 28, 2020; Effective: April 13, 2020. **Amended:** Filed: December 31, 2020; Effective: February 15, 2021; **Amended:** Proposed: December 20, 2021.

335-1-6-.07 Payment of Fees.

(1) Payment of permit application/registration fees required under subparagraphs (1)(a) and (1)(b) or paragraph (2) of rule 335-1-6-.04 shall be included with the permit application/registration. No permit application shall be processed without payment of such fees.

(2) Any fee required under subparagraph (1)(c) of rule 335-1-6-.04 shall be billed to the applicant. Payment of such fee shall be made within thirty days of the invoice date. No final decision regarding the permit application shall be made until after payment of such fee. Failure to make payment as provided herein shall constitute cause for non-processing/denial of the permit application.

(3) Payment of fees required under rule 1-6-.05 shall be made within thirty days of the date of the invoice which the Department shall send to the person making the application or request or requiring the certificate.

(4) Payment of fees required under rule 335-1-6-.06 shall be included with the application for such license, variance or certification. No application shall be processed without payment of such fees.

(5) All fees paid pursuant to the requirements of this chapter shall be non-refundable.

(6) All fees and remittances shall be made payable to the Alabama Department of Environmental Management.

Author: Marilyn Elliott, Russell A. Kelly, Brian C. Espy.
Statutory Authority: Code of Alabama 1975, § 22-22A-5.
History: Effective: February 13, 1985; **Amended:** Effective: January 16, 1997; **Amended:** Effective: March 31, 1999; **Amended:** Effective: January 9, 2002; **Amended:** Effective: May 16, 2002; **Amended:** Effective: October 4, 2002; **Amended:** Effective: August 4, 2004; **Amended:** Effective: January 10, 2006; **Amended:** Effective: July 11, 2006; **Amended:** Effective: November 14, 2006; **Amended:** Effective: January 22, 2008; **Amended:** Effective: January 19, 2010; **Amended:** Effective: November 29, 2011; **Amended:** Effective: May 27, 2014; **Amended:** Effective: February 4, 2016; **Amended:** Filed April 24, 2018; Effective: June 8. 2018. **Amended:** Filed: June 25, 2019; Effective: August 9, 2019. **Amended:** Filed: February 28, 2020; Effective: April 13, 2020. **Amended**: Filed: December 15, 2020; Effective: February 15, 2021; **Amended:** Proposed: December 20, 2021.

FEE SCHEDULE H
BROWNFIELD REDEVELOPMENT AND VOLUNTARY CLEANUP PROGRAM

Non-Responsible Party Applicant

Type of Activity	Review Fee	Minor Modification	Major Modification
Application (1)	$5,060	$250	$500
With Variance	$16,855	NA	NA
Assessment Review(2)	$6,740	$1,680	$~~3,370~~2,570
Assessment Report	$4,260		
Cleanup Review(2)	$12,470	$1,680	$~~3,370~~2,570
Cleanup Report	$7,720		
Letter of Concurrence			
Unconditional	$1,680	NA	NA
Conditional	$4,210	NA	NA
Property Eligibility Determination (3)	$670	NA	NA

Responsible Party Applicant

Type of Activity	Associated Fee	Minor Modification	Major Modification
Application (1)	$5,060	$250	$500
With Variance	$16,855	NA	NA
Assessment Review(2)	$24,470	$2,770	$~~10,640~~9,840
Assessment Report	$10,520		
Cleanup Review(2)	$43,065	$2,770	$~~10,640~~9,840
Cleanup Report	$17,635		
Letter of Concurrence			
Unconditional	$1,680	NA	NA
Conditional	$4,210	NA	NA
Property Eligibility Determination (2)	$670	NA	NA

Additive Fees(4)

Public Notice(5)	$800

Groundwater Monitoring [6]	$1,000
Risk Assessment RM-1	$1,700
Risk Assessment RM-2	$4,350
Operation and Maintenance Plan[6]	$1,500

(1) Submittal of the appropriate application fee is required prior to the review of any plans, reports, and, or certifications.

(2) An Assessment and/or Cleanup Review fee is assessed when review of a plan and report is required as determined by the Department.

(3) Property eligibility determinations are valid for a period of one year from date of issuance.

(4) Additive fees are levied on the assessment or cleanup fees as applicable. Total fees due are a sum of assessment and/or cleanup fees and additive fees applicable to a given applicant.

(5) A Public Notice fee is assessed on any Plan or Report which proposes final cleanup remedy recommendations, such as removal of contaminants and/or an Environmental Covenant.

(6) These fees are assessed annually until required activities are complete and/or terminated by the Department.

(7) Fee is added to a Cleanup Review and/or Report fee, when an Operation and Maintenance (OAM) is required as a part of the approved remedy. Modification of OAM activities would require a modification of the Cleanup Report and submittal of required fees.

Attachment 5

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

In the matter of:	)	
	)	
Alabama Power Company,	)	
Petitioner,	)	EMC Docket No. 21-01
v.	)	
Alabama Department of	)	
Environmental Management,	)	
Respondent.	)	

ORDER

Before the Commission in the above appeal is the Hearing Officer's *Recommendation of Dismissal*. Based upon the record in the proceeding, including the parties' *Stipulation of Dismissal*, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Hearing Officer's *Recommendation of Dismissal* is hereby adopted; and

2. That pursuant to the adoption of the Hearing Officer's *Recommendation of Dismissal*, the Commission orders that the above appeal is dismissed with prejudice; and

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

4. That a copy of this Order along with a copy of the Hearing Officer's *Recommendation of Dismissal*, attached hereto as Exhibit "A," and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.

ISSUED this 8th day of April 2022.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 8th day of April 2022.

Thomas P. Walters, Chair
Environmental Management Commission
Certified this 8th day of April 2022

EXHIBIT A

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

ALABAMA POWER COMPANY	)	
	)	
Petitioner,	)	
	)	EMC Docket No. 21-01
v.	)	NPDES Permit No. AL0002879
	)	
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	
	)	
Respondent.	)	

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FEB 25 2022
ENV. MGMT. COMMISSION

RECOMMENDATION OF DISMISSAL

In consideration of the Stipulation of Dismissal filed by the parties to this appeal on February 23, 2022, the undersigned recommends to the Alabama Environmental Management Commission that the above-captioned appeal be dismissed with prejudice.

DONE this the 23rd day of February, 2022.

JAMES F. HAMPTON
Hearing Officer
Alabama Environmental Management Commission
4267 Lomac Street
Montgomery, Alabama 36106
Telephone: (334) 213-0213
Fax: (334) 213-0266
jfh@jamesfhampton.com

Attachment 6

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

In the matter of:	)	
	)	
Petition to Adopt ADEM Admin. Code Chap.	)	EMC Rulemaking Petition 22-01
335-2-4	)	
Petitioner – Environmental Defense Alliance	)	

MOTION

Move to deny the petition submitted by Petitioner, Environmental Defense Alliance, based upon the following grounds:

1. That alternative means of obtaining the same or similar relief are available to Petitioner;
2. Existing statutes, including the Alabama Open Records Act, already pertain to the Commission, rendering rulemaking unnecessary;
3. The views of the Director of the Department.

ORDER

This cause coming before the Environmental Management Commission pursuant to the above petition for rulemaking and having considered the petition and arguments supporting the petition and the views of the Director of the Alabama Department of Environmental Management and arguments supporting said views, it is hereby ORDERED:

1. That having given due consideration to the petition pursuant to ADEM Admin. Code R. 335-2-2-.05;

2. That the above motion is hereby adopted; and

3. That this action has been taken and this order issued by the Commission effective April 8, 2022; and

4. That a copy of this order shall be served upon the Petitioner and the Department either personally or by certified mail.

ISSUED this 8th day of April 2022.

APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

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 8th day of April 2022.

Thomas P. Walters, Chair
Environmental Management Commission
Certified this 8th day of April 2022