

BEFORE THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

BOBBY LEWIS, MICHAEL DEL  
VECCHIO, DAVID F. DEL VECCHIO,  
PEGGY R. DEL VECCHIO, CHARLES  
CHILDREE, VICKI AMMONS, and  
MICHAEL LEBLEU,

Petitioners,

vs.

Docket No. 17-

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,

Respondent.



**REQUEST FOR HEARING**

Pursuant to Ala. Code § 22-22A-7(c) and Ala. Admin Code r. 335-2-1-.04, Petitioners submit this Request for Hearing to contest an administrative action of the Alabama Department of Environmental Management.

**I. Petitioners**

1. The names, mailing addresses, and telephone numbers of the Petitioners are as follows:

Bobby Lewis  
3019 Webb Road  
Dothan, AL 36303

Michael Del Vecchio  
151 Delvecchio Lane  
Dothan, AL 36303

David F. Del Vecchio  
202 Delvecchio Lane  
Dothan, AL 36303

Peggy R. Del Vecchio  
202 Delvecchio Lane  
Dothan, AL 36303

Charles Childree  
2748 Webb Road  
Dothan, AL 36301

Vicki Ammons  
2748 Webb Road  
Dothan, AL 36301

Michael LeBleu  
2947 Webb Road  
Dothan, AL 36303

## **II. Administrative Action Contested**

2. The administrative action of the Alabama Department of Environmental Management which is being contested is the modification of Solid Waste Disposal Facility Permit No. 35-06 issued to the City of Dothan on November 1, 2017.

## **III. Timeliness of Request**

3. This Request is deemed “filed” within 30 days after the Alabama Department of Environmental Management issued the modification of Solid Waste Disposal Facility Permit No. 35-06 because it was mailed by certified mail of the United States Postal Service on December 1, 2017 addressed as follows:

Environmental Management Commission  
P.O. Box 301463  
Montgomery, AL 36130-1463

Accordingly, the Request is timely and properly filed. Ala. Code § 22-22A-7(c)(1); Ala. Admin. Code r. 335-2-1-.04(1).

## **IV. Threatened or Actual Injuries Suffered**

4. A person is “aggrieved” if he has suffered a threatened or actual injury in fact, *i.e.*, he is somehow adversely affected by the contested agency action. Ala. Admin. Code r. 335-2-1-.02(b); *Alabama Dep’t of Env’tl Mgmt. v. Legal Env’tl Assistance Found., Inc.*, 973 So. 2d 369,

378 (Ala. Civ. App. 2007). The threatened or actual injuries suffered by the Petitioners by the modification of Permit No. 35-06 are described in the following short and plain statements:

Petitioner Bobby Lewis's property is approximately 70 feet from the City of Dothan Sanitary Landfill facility boundary and approximately 4,200 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Bobby Lewis to offensive odors for the next 15 to 20 years that lessens his food and water intake, upsets his appetite, causes him to experience nausea and vomiting, restricts his outdoor activities such as cooking and eating, and requires that he keep house windows closed. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies and buzzards, at and around Bobby Lewis's home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Bobby Lewis's property and to be deposited on his vehicle and outdoor furniture for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Bobby Lewis's sleep, conversation, television listening and telephone conversations. The expansion of the municipal solid waste landfill threatens to keep Bobby Lewis's property value depressed for the next 15 to 20 years.

Petitioner Michael Del Vecchio's property adjoins the City of Dothan Sanitary Landfill facility boundary and is approximately 275 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Michael Del Vecchio to offensive odors for the next 15 to 20 years that interfere with his sleep, preclude eating meals outdoors, and preclude playing outdoors with his

children. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies and buzzards, at and around Michael Del Vecchio's home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Michael Del Vecchio's property and to be deposited on his vehicle for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Michael Del Vecchio's sleep. The expansion of the municipal solid waste landfill threatens to keep Michael Del Vecchio's property value depressed for the next 15 to 20 years. Topographic and hydrologic alterations at and around the site of the municipal solid waste has caused new and increased flooding on my property.

Petitioners David and Peggy Del Vecchio's property adjoins the City of Dothan Sanitary Landfill facility boundary and approximately 1090 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject David and Peggy Del Vecchio to offensive odors for the next 15 to 20 years that interfere with their sleep, preclude eating meals outdoors, and preclude playing outdoors with his children. David Del Vecchio has acquired respiratory and sinus problems since living near the existing municipal solid waste landfill which are likely to continue after the expansion of the municipal solid waste landfill. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies, buzzards, and coyotes at and around David and Peggy Del Vecchio's home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto David and Peggy Del Vecchio's property and to be deposited on their vehicles for the next 15 to 20 years. The

expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with David and Peggy Del Vecchio's sleep. The expansion of the municipal solid waste landfill threatens to keep David and Peggy Del Vecchio's property value depressed for the next 15 to 20 years. Topographic and hydrologic alterations at and around the site of the expanded municipal solid waste landfill has caused new and increased flooding on David and Peggy Del Vecchio's property.

Petitioners Charles Childree's and Vicki Ammons' property is approximately 115 feet from the City of Dothan Sanitary Landfill facility boundary and approximately 2,600 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Charles Childree and Vicki Ammons to offensive odors for the next 15 to 20 years that lessen their food intake, upset their appetites, cause them to experience nausea and retch, restrict their outdoor activities such as cooking and eating, and requires that they keep house windows closed. Foul air from the expansion of the municipal solid waste landfill threatens to cause Charles Childree to suffer headaches and nosebleeds for the next 15 to 20 years. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies, buzzards, opossums, raccoons, and coyotes at and around Charles Childree's and Vicki Ammons' home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Charles Childree's and Vicki Ammons' property and to be deposited on their vehicles and in their swimming pool for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and

slamming tailgates during the next 15 to 20 years, that interferes with their enjoyment of property. The expansion of the municipal solid waste landfill threatens to keep Charles Childree's and Vicki Ammons' property value depressed for the next 15 to 20 years.

Petitioner Michael LeBleu's property is approximately 65 feet from the City of Dothan Sanitary Landfill facility boundary and approximately 4,180 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of municipal solid waste landfill threatens to subject Michael LeBleu to offensive odors for the next 15 to 20 years that lessen his appetite and fluid intake, cause him experience nausea and vomiting, and restrict his outdoor activities such as family get-togethers and outdoor cooking, and requires that they keep house windows closed. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as vultures, crows, hawks, coyotes, mosquitos, flies, dragon flies, rats, opossums, and raccoons at and around Michael LeBleu's home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Michael LeBleu's property and vehicles for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Michael LeBlue's sleep, conversation, television listening and telephone conversations.

#### **V. Allegations of Errors**

Petitioners allege that the Alabama Department of Environmental Management made the following errors in the modification of Solid Waste Disposal Facility Permit No. 35-06:

A. **Host Government Approval.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Code § 22-27-48(b) and Ala. Admin.

Code r. 335-13-5-.02(1)(a) because the City of Dothan did not submit approval of the application for modification of Solid Waste Disposal Facility Permit No. 35-06 by the Board of Commissioners of the City of Dothan in accordance with Ala. Code § 22-27-48.

B. **Wetlands.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.01(2)(c) because portions of the 20.6 acre lateral expansion of the Municipal Solid Waste Landfill Unit are located in wetlands.

C. **Hydrogeology Standards.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.11(2)(a) because the design of the Municipal Solid Waste Landfill Unit does not meet the requirements for the bottom elevation of the liner system.

D. **Discharges.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.01(2)(a) because portions of the facility are located so as to cause a discharge of pollutants into waters of the State in violation of the requirements of the Alabama Water Pollution Control Act, Ala. Code § 22-22-9(i)(3).

E. **Discharges.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.01(3) because the construction of portions of the facility will result in the discharge of pollutants into waters of the State in violation of the requirements of the Alabama Water Pollution Control Act, Ala. Code § 22-22-9(i)(3).

F. **Odors.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.22(3)(a) because operation of the Municipal Solid Waste Landfill Unit will cause the discharge of “odors” in such quantities and duration as

are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or will interfere with the enjoyment of life or property in violation of the requirements of the Alabama State Implementation Plan approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act. *See* 40 C.F.R. § 52.50 (Sections [Rules] 335-3-1-.02 and 335-3-1-.08).

G. **Odors.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.01(3) because operation of the Municipal Solid Waste Landfill Unit will cause the discharge of “odors” in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or will interfere with the enjoyment of life or property in violation of Ala. Admin. Code rs. 335-3-1-.08 and 335-3-1-.02.

H. **Fugitive Dust.** The modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code r. 335-13-4-.22(3)(a) because operation of the Municipal Solid Waste Landfill Unit will cause or permit the discharge of visible fugitive dust emissions beyond the property line of the solid waste disposal facility on which the emissions originate in violation of the requirements of the Alabama State Implementation Plan approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act. *See* 40 C.F.R. § 52.50 (Sections [Rules] 335-3-1-.02 and 335-3-4-.02).

I. **Cover Material.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to periodically cover Municipal Solid Waste Landfill (MSWLF) Units and Construction/Demolition-Inert Landfill (C/DLF) Units with materials other than “earth” if subsequently “approved” by the Department (without public notice and public



comment and without modification of Solid Waste Disposal Facility Permit No. 35-06) in violation of the Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-2(20), 22-27-2(23), and 22-27-2(32).

J. **MSWLF Cover Frequency.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to remove cover material from Municipal Solid Waste Landfill (MSWLF) Units each morning provided cover material remains in place at least one morning per week in violation of the Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-2(23), and 22-27-2(32) and Ala. Admin. Code rs. 335-13-4-.15, 335-13-4-.22(1)(a)1.

K. **C/DLF Cover Frequency.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to remove weekly cover material from Construction/Demolition-Inert Landfill (C/DLF) Units each week provided cover material remains in place at least once per month in violation of Ala. Admin. Code r. 335-13-4-.23(1)(a)1.

L. **Working Face Slope.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to compact solid waste on the working face of the Municipal Solid Waste Landfill (MSWLF) Unit and Construction/Demolition-Inert Landfill (C/DLF) Units on a face slope exceeding 4 to 1 (*e.g.*, a working face slope of 3 to 1 as provided in the City's permit application) if subsequently approved by the Department (without public notice and public comment, without modification of Solid Waste Disposal Facility Permit No. 35-06) without standards governing the Department's discretion.

M. **Final Cover Slope.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to construct a final cover system with a final slope of 3

to 1 for Municipal Solid Waste Landfill Unit cells 6, 7, and 8 pursuant to a variance from the 4 to 1 slope requirement of Ala. Admin. Code r. 335-13-4-.20(2)(c)2. that was granted in violation of Ala. Admin. Code r. 335-13-8-.02 because the City of Dothan's application does not include an assessment, with supporting factual information, of the impact that the variance will impose on the public health and the environment in the affected area and a concise factual statement of the reasons that non-compliance with the 4 to 1 slope requirement of Ala. Admin. Code r. 335-13-4-.20(2)(c)2. will not threaten the public health or unreasonably create environmental pollution.

N. **Liner Design.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to utilize an alternate liner design in violation of Ala. Admin. Code r. 335-13-4-.18(3)(h) because the City of Dothan's application does not include a demonstration that the alternate design ensures that the concentration values listed in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone at the relevant point of compliance.

O. **Groundwater Monitoring.** The modification of Solid Waste Disposal Facility Permit No. 35-06 incorrectly designates Monitoring Well 09 (MW-09) as an upgradient monitoring well capable of yielding groundwater samples from the first saturated zone that are representative of the quality of background groundwater that has not been affected by leakage from the "entire landfill" in violation of Ala. Admin. Code rs. 335-13-4-.14(b)(1) and 335-13-4-.27(2)(a)1.

P. **Unauthorized Dump.** The modification of Solid Waste Disposal Facility Permit No. 35-06 authorizes the creation and operation of a solid waste disposal site which does not

meet the regulatory provisions of the Solid Wastes and Recyclable Materials Management Act, including Ala. Admin. Code r. 335-13-5-.02(1)(a) (host government approval); Ala. Admin. Code r. 335-13-4-.01(2)(c) (wetlands); Ala. Admin. Code r. 335-13-4-.11(2)(a) (hydrogeology standards); Ala. Admin. Code r. 335-13-4-.01(2)(a) (discharges); Ala. Admin. Code r. 335-13-4-.01(3) (discharges); Ala. Admin. Code r. 335-13-4-.22(3)(a) (odors); Ala. Admin. Code r. 335-13-4-.01(3) (odors); Ala. Admin. Code r. 335-13-4-.22(3)(a) (fugitive dust); Ala. Code §§ 22-27-2(20), 22-27-2(23), and 22-27-2(32) (cover material); Ala. Code §§ 22-27-2(23), and 22-27-2(32) and Ala. Admin. Code rs. 335-13-4-.15 and 335-13-4-.22(1)(a)1. (MSWLF cover frequency); Ala. Admin. Code r. 335-13-4-.23(1)(a)1. (C/DLF cover frequency); Ala. Admin. Code r. 335-13-4-.20(2)(c)2. (final cover slope); Ala. Admin. Code r. 335-13-4-.18(3)(h) (liner design); Ala. Admin. Code rs. 335-13-4-.14(b)(1) and 335-13-4-.27(2)(a)1. (groundwater monitoring). The creation and operation of the solid waste disposal site authorized by the modification of Solid Waste Disposal Facility Permit No. 35-06 is a prohibited unauthorized dump. Ala. Code §§ 22-27-2(37) and 22-27-4(b).

**Q. Substantial Non-compliance.** The modification of Solid Waste Disposal Facility Permit No. 35-06 should be disapproved pursuant to Ala. Admin. Code r. 335-13-5-.02(5)(a) because the City of Dothan has owned or operated a facility in substantial non-compliance with Department regulations and statute, including but not limited to, the following:

Ala. Admin. Code r. 335-13-4-.22(3)(a) (unlawful air pollution);

Ala. Admin. Code r. 335-13-4-.01(3) (unlawful air pollution);

Ala. Admin. Code r. 335-3-1-.08 (unlawful air pollution)

Ala. Admin. Code r. 335-13-4-.01(2)(a) (unlawful discharges)

Ala. Admin. Code r. 335-13-4-.01(3) (unlawful discharges)

Ala. Code § 22-22-9(i)(3) (unlawful discharges)

Ala. Admin. Code r. 335-13-4-.22(k) (disposal of liquid and other unauthorized waste)

## **VI. Proposed Relief**

Petitioners propose that the Environmental Management Commission issue an order disapproving Solid Waste Disposal Permit No. 35-06 in its entirety because of any error identified in Section V., paragraphs A. through H, P and Q. If the Commission does not issue an order disapproving Solid Waste Disposal Permit No. 35-06 in its entirety as proposed, Petitioners propose that the Environmental Management Commission issue an order modifying Solid Waste Disposal Permit No. 35-06 as indicated in the following paragraphs:

### **SECTION II. GENERAL OPERATING CONDITIONS.**

\* \* \*

- H. Wetlands.** No landfill unit, including buffer zone, or portions thereof, shall be located in wetlands. This prohibition applies to all wetlands located within the 534 acre permitted area, including 11.88 acres of wetlands determined to be “jurisdictional wetlands” by the U.S. Army Corps of Engineers in its letter to the Permittee dated September 2, 2014, notwithstanding any permit issued by the U.S. Army Corps of Engineers to fill such wetlands.
- I. Waters.** The Permittee shall not discharge pollutants into waters of the State without first obtaining a permit therefor in accordance with Ala. Code § 22-22-9(i)(3). This prohibition applies to all waters of the State located within the 522.19 acre permitted area, including 11.88 acres of wetlands and 3,166 linear feet of perennial, intermittent, and ephemeral streams determined to be “jurisdictional waters” by the U.S. Army Corps of Engineers in its letter to the Permittee dated September 2, 2014, notwithstanding any permit issued by the U.S. Army Corps of Engineers to fill wetlands and waters.

### SECTION III. SPECIFIC MSW & C/D LANDFILL REQUIREMENTS.

\* \* \*

#### **E. Liner Requirements.**

\* \* \*

The Permittee ~~is approved to~~ shall construct ~~an alternate~~ a composite liner system for cells 6, 7, and 8. ~~The alternate liner consists of a 12 inch compacted clay layer with a maximum permeability of  $1 \times 10^{-5}$  cm/sec or less, a geosynthetic clay liner (GCL) with hydraulic conductivity of  $5 \times 10^{-9}$  cm/sec or less, a textured 60 mil High Density Polyethylene (HDPE) geomembrane, a double sided HDPE drainage net/filter fabric composite (Geocomposite), and a 12 inch thick drainage layer with a hydraulic conductivity of  $1 \times 10^{-3}$  cm/sec or greater~~ consisting of 2 feet of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec, overlain with a 60 mil thick High Density Polyethylene (HDPE) geomembrane and a 12 inch thick drainage layer with a minimum hydraulic conductivity of  $1 \times 10^{-2}$  cm/sec.

\* \* \*

- H. Cover Requirements.** The Permittee shall cover all wastes ~~as required by 335-13~~ with earth cover. The municipal solid waste disposal area shall be covered with a minimum of six inches of compacted earth at the conclusion of each day's activities. Daily cover shall not be removed. The construction and demolition waste disposal area shall be covered with a minimum of six inches of compacted earth at the conclusion of each week's activities. Weekly cover shall not be removed.

\* \* \*

- J. Daily Cells.** All waste shall be confined to an area as small as possible and spread to a depth not exceeding two feet prior to compaction, and such compaction shall be accomplished on a face slope not to exceed 4 to 1 ~~or as otherwise approved by ADEM~~. The Permittee has been granted a variance to operate two working faces. Two working faces have been approved as follows: the first for the placement of MSW waste and the second for the placement of Construction and Demolition waste. The working faces must be confined to as small an area as possible. (See Section X.2.).

**SECTION IV. GROUNDWATER MONITORING REQUIREMENTS.**

\* \* \*

TABLE 1 GROUNDWATER MONITORING WELLS		
Monitoring Well Number	Well Depth (feet)	Area Monitoring
UPGRADIENT/BACKGROUND MONITORING WELLS		
MW-09	90	Entire Landfill
MW-13	22	Entire Landfill
DOWNGRAIDENT MONITORING WELLS		
DW-02	44	Entire Landfill
DW-03	44	Entire Landfill
MW-10	20	Entire Landfill
MW-14	18	Entire Landfill
MW-15	25	Entire Landfill

**SECTION VIII. CLOSURE AND POST- CLOSURE REQUIREMENTS.**

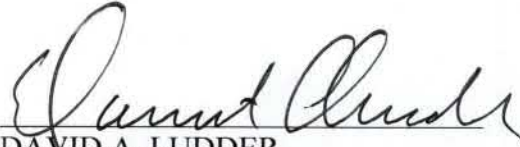
\* \* \*

- A. **Final Cover.** The landfill shall be closed in accordance with the approved application and 335-13. The Permittee is granted a variance from ADEM Rule 335-13-4-.20(2)(c)2. requiring that the maximum final grade of the final cover system shall not exceed 25 percent (4 to 1). The Permittee shall construct a final cover system with 3 to 1 final slopes for cells 6, 7, and 8 only. (See Section XL.)

**SECTION X. VARIANCES AND SPECIAL CONDITIONS.**

1. The Permittee is granted a variance from ADEM Rule 335-13-4-.20(2)(c)2. requiring that the maximum final grade of the final cover system shall not exceed 25 percent (4 to 1). The Permittee shall construct a final cover system with 3 to 1 final slopes for cells 6, 7, and 8 only. (See Section VIII.A.)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Ludder", written over a horizontal line.

DAVID A. LUDDER

Attorney for Petitioners

ASB-4513-E63D

Law Office of David A. Ludder, PLLC

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Tallahassee, Florida 32312-4208

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E-mail [DavidALudder@enviro-lawyer.com](mailto:DavidALudder@enviro-lawyer.com)


**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Request for Hearing has been served upon the following by United States Mail (postage prepaid) as follows:

Hon. Lance LeFleur, Director  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, AL 36130-1463

Hon. Mark Saliba, Mayor  
City of Dothan  
P.O. Box 2128  
Dothan, AL 36302

Done this 1st day of December, 2017.

  
David A. Ludder



