

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

ENVIRONMENTAL DEFENSE  
ALLIANCE and BOBBY LEWIS,

Petitioners,

vs.

Docket No.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,

Respondent.

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**REQUEST FOR HEARING**

Pursuant to Ala. Code § 22-22A-7(c) and ADEM Admin Code r.  
335-2-1-.04, Petitioners submit this Request for Hearing to contest the  
issuance of a rule or regulation by the Alabama Department of  
Environmental Management.

**I. Petitioners**

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

Environmental Defense Alliance  
1116 20th Street South #526  
Birmingham, AL 35205-2612  
(205) 718-7336

Bobby Lewis  
3019 Webb Road  
Dothan, AL 36303  
(334) 726-1700

## **II. Administrative Action Contested**

2. The administrative action of the Alabama Department of Environmental Management which is being contested is the amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a) issued by the Environmental Management Commission of the Alabama Department of Environmental Management on October 8, 2021 and attached hereto as **Exhibit A**.

## **III. Timeliness of Request**

3. This Request for Hearing is deemed “filed” within 45 days after the Environmental Management Commission of the Alabama Department of Environmental Management promulgated the amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a) because it was

mailed by certified mail of the United States Postal Service on November 22, 2021 addressed as follows:

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

Accordingly, the Request for Hearing is timely filed. Ala. Code 1975 § 22-22A-7(c)(2); ADEM Admin. Code r. 335-2-1-.04(3).

#### **IV. Allegations of Fact**

4. The Environmental Defense Alliance is a nonprofit, membership corporation. Its purpose is to conserve, preserve, protect, maintain, improve, and enhance human health and the environment on behalf of its members and the public. **Exhibit B** (Domestic Nonprofit Corporation Certificate of Formation).

5. To further the purpose of the Environmental Defense Alliance, the Alliance maintains and implements a government accountability program intended to ensure that agency decision-making is transparent, fair, rational, lawful and protective of human health and the environment. **Exhibit C** (Environmental Defense Alliance webpage).

6. The interests the Environmental Defense Alliance seeks to protect by filing this Request for Hearing is the protection of groundwater from contamination by municipal solid waste landfill units, the protection human health by preventing human exposures to groundwater contaminated by municipal solid waste landfill units, and the assurance that the groundwater protection requirements and restrictions applicable to municipal solid waste landfill units are rational, lawful and protective of human health and the environment.

7. On June 19, 2020, the president of the Environmental Defense Alliance granted membership in the Alliance to Bobby Lewis. **Exhibit D** (Letter from Michael William Mullen to Bobby Lewis (June 19, 2020)).

8. Bobby Lewis owns and resides on property located approximately 60 feet north of the City of Dothan Sanitary Landfill facility boundary and approximately 3,014 feet from the existing municipal solid waste landfill unit authorized by Solid Waste Disposal Facility Permit No. 35-06. **Exhibit E** (Map of City of Dothan Sanitary Landfill in relation to Lewis property).

9. There are 32 municipal solid waste landfills in the State of Alabama that are subject to the groundwater protection requirements and restrictions in ADEM Admin. Code r. 335-13-4-.11(2)(a). **Exhibit F** (Permitted Municipal Solid Waste Landfills in the State of Alabama (Rev. Dec. 3, 2020)).

10. Neither the errors alleged herein nor the relief requested herein requires the participation of individual members of the Environmental Defense Alliance.

11. On March 18, 1996, the Alabama Department of Environmental Management published notice of proposed amendments to ADEM Admin. Code div. 13. The notice stated that the amendments were to “[r]evis[e] Division 13 to incorporate changes which will update and clarify the existing regulations, correct typographical errors and reorganize portions of Rules which are not located in the applicable paragraphs or subparagraphs.” **Exhibit G** (Notice of Intended Action (Mar. 18, 1996)).

12. On March 18, 1996, the Alabama Department of Environmental Management published a Summary of

Regulations/Changes for the proposed amendments to ADEM Admin. Code div. 335-13. The Summary published in support of the proposed amendments to ADEM Admin. Code r. 335-13-4-.11 states that “[t]his Rule was changed to update and clarify the existing requirements. This Rule was also changed to add language which would address hydrogeology standards and to add the Sub-Rule titles.” **Exhibit H** (Summary of Regulations/Changes Proposed for Division 13, Solid Waste Program, ADEM Administrative Code (Mar. 18, 1996)).

13. The March 18, 1996 proposed amendments to ADEM Admin. Code r. 335-13-4-.11 were as follows (stricken matter to be deleted; underscored matter to be added):

335-13-4-.11 General Design Standards for Disposal Facilities

(1) General Standards.

335-13-4-.12 through 335-13-4-.20 provides standards for establishing a landfill unit providing that the siting standards of 335-13-4-.01 have been fully complied with to the satisfaction of the Department. Certain requirements contained in 335-13- 4-.~~12~~01 through 335-13-4-.20 may be enhanced or reduced by the Department as deemed necessary to comply with the Act and this Division.

(2) Hydrogeological Standards.

(a) For purposes of designing the bottom elevation of the cell or liner system, the applicant shall obtain a general estimate of ground water elevation. Such estimate shall be obtained by a measurement of ground water levels taken, at the option of the applicant, either during the calendar months of February, March and April, or alternatively, a measurement taken during the remaining months of the year. Having obtained a measurement during one of these described periods, the applicant shall design the facility so that the bottom elevation of the cell for unlined landfill units and the bottom elevation of the liner system for lined landfill units shall be a minimum of five feet (if measured during February, March or April) or ten feet (if measured during the remaining nine months) above the estimated ground water level beneath the landfill unit. Nothing herein shall prevent the Department from requiring an additional buffer as it may deem appropriate with respect to a particular site.

(b) When the geological and hydrological data so indicate, the Department may specify greater separation distances, a liner(s), or a leachate collection system, or combination of the above to protect the groundwater.

(c) When the geological and hydrological data so indicate, the Department may allow engineering controls to remove, divert, drain, or otherwise modify zones of saturation above the uppermost aquifer.

Author: Russell A. Kelly.

Statutory Authority: Code of Alabama 1975, §§ 22-27-3, 22-27-7.

History: November 18, 1981;

Amended: July 21, 1988; November 2, 1993-~~Xxxx~~ 1996.

**Exhibit I** (proposed amendments to ADEM Admin. Code r. 335-13-4-.11 (Mar. 18, 1996)).

14. On June 21, 1996, the Environmental Management Commission of the Alabama Department of Environmental Management adopted the following amendment to ADEM Admin. Code r. 335-13-4-.11 (stricken matter to be deleted; underscored matter to be added):

335-13-4-.11 General Design Standards for Disposal Facilities

(1) General Standards.

335-13-4-.12 through 335-13-4-.20 provides standards for establishing a landfill unit providing that the siting standards of 335-13-4-.01 have been fully complied with to the satisfaction of the Department. Certain requirements contained in 335-13-4-.~~1201~~ through 335-13-4-.20 may be enhanced or reduced by the Department as deemed necessary to comply with the Act and this Division.

(2) Hydrogeological Standards.

(a) For purposes of designing the bottom elevation of the cell or liner system, the applicant shall obtain a general estimate of ground water elevation. Such estimate shall be obtained by a measurement of ground water levels taken, at the option of the applicant, either during the calendar months of February, March and April, or alternatively, a measurement taken during the remaining months of the



year. Having obtained a measurement during one of these described periods, the applicant shall design the facility so that the bottom elevation of the cell for unlined landfill units and the bottom elevation of the liner system for lined landfill units shall be a minimum of five feet (if measured during February, March or April) or ten feet (if measured during the remaining nine months) above the estimated ground water level beneath the landfill unit. Nothing herein shall prevent the Department from requiring an additional buffer as it may deem appropriate with respect to a particular site.

(b) When the geological and hydrological data so indicate, the Department may specify greater separation distances, a liner(s), or a leachate collection system, or combination of the above to protect the groundwater.

(c) When the geological and hydrological data so indicate, the Department may allow engineering controls to remove, divert, drain, or otherwise modify zones of saturation above the uppermost aquifer.

See **Exhibit J** (Consent Order in S.A.V.E., Inc., et al. v. Ala. Dep't of Env'tl. Mgmt. EMC Docket No. 96-23, 1996 AL ENV LEXIS 12 (Oct. 15, 1996) ("On July 26, 1996 [sic: June 21, 1996], the Environmental Management Commission adopted changes in the ADEM Admin. Code, Division 13, Solid Waste Program Requirements.")).

15. On July 19, 1996, S.A.V.E., Inc., Rodney Benson, Jesse Willis, Jeanette Teel, and Douglas Scott filed a Request for Hearing to

contest the June 21, 1996 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a). See Exhibit J (Consent Order in S.A.V.E., Inc., et al. v. Ala. Dep't of Env'tl. Mgmt. EMC Docket No. 96-23, 1996 AL ENV LEXIS 12 (Oct. 15, 1996) (“The Petitioners . . . filed a Request for Hearing to contest changes in the Solid Waste Program Rules and Regulations on July 19, 1996.”)).

16. To resolve the contest of the June 21, 1996 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a), Petitioners S.A.V.E., Inc., Rodney Benson, Jesse Willis, Jeanette Teel, Douglas Scott and Respondent Alabama Department of Environmental Management stipulated that ADEM Admin. Code r. 335-13-4-.11(2)(a) may be modified to read as follows:

(2) Hydrogeology Standards.

(a) For purposes of designing the bottom elevation of the liner system, the applicant shall measure the ground water elevation at the location of the proposed cell or liner system. Such determinations shall be based on groundwater measurements taken in the area of the proposed cell or liner system as approved by the Department. At each measuring location, the applicant shall obtain a minimum of two measurements taken during each of the three consecutive months of February, March, and April with no two measurements taken within any twelve-day period. Having

obtained the measurements, the applicant shall design the facility so that the bottom elevation of the liner shall be a minimum of five feet above the highest measured groundwater level. The applicant shall submit to the Department all data known to exist concerning groundwater elevations at the landfill site and shall submit to the Department a location map showing all monitoring wells or piezometers and drilling logs for all monitoring wells or piezometers used to obtain any groundwater elevation data that is submitted. Nothing herein shall prevent the Department from requiring additional groundwater measurements or from requiring an additional buffer as it may deem appropriate with respect to a particular site.

**Exhibit J** (Consent Order in S.A.V.E., Inc., et al. v. Ala. Dep't of Env'tl. Mgmt., EMC Docket No. 96-23, AL ENV LEXIS 12 (Oct. 15, 1996)).

17. On September 17, 1996, the Hearing Officer recommended to the Environmental Management Commission of the Alabama Department of Environmental Management that it approve the modification of ADEM Admin. Code r. 335-13-4-.11(2)(a) as stipulated by Petitioners S.A.V.E., Inc., Rodney Benson, Jesse Willis, Jeanette Teel, Douglas Scott and Respondent Alabama Department of Environmental Management. **Exhibit J** (Consent Order in S.A.V.E., Inc., et al. v. Ala. Dep't of Env'tl. Mgmt. EMC Docket No. 96-23, 1996 AL ENV LEXIS 12 (Oct. 15, 1996)).

18. On October 15, 1996, the Environmental Management Commission of the Alabama Department of Environmental Management entered a Consent Order approving the modification of ADEM Admin. Code r. 335-13-4-.11(2)(a) as stipulated by Petitioners S.A.V.E., Inc., Rodney Benson, Jesse Willis, Jeanette Teel, and Douglas Scott and Respondent Alabama Department of Environmental Management. **Exhibit J** (Consent Order in S.A.V.E., Inc., et al. v. Ala. Dep't of Env'tl. Mgmt. EMC Docket No. 96-23 (Oct. 15, 1996), 1996 AL ENV LEXIS 12 (Oct. 15, 1996)). The adopted language of ADEM Admin. Code r. 335-13-4-.11(2)(a) provided:

(2) Hydrogeology Standards.

(a) For purposes of designing the bottom elevation of the liner system, the applicant shall measure the groundwater elevation at the location of the proposed cell or liner system. Such determinations shall be based on groundwater measurements taken in the area of the proposed cell or liner system as approved by the Department. At each measuring location, the applicant shall obtain a minimum of two measurements taken during each of the three consecutive months of February, March and April with no two measurements taken within any twelve-day period. Having obtained the measurements, the applicant shall design the facility so that the bottom elevation of the liner shall be a minimum of five feet above the highest measured groundwater level. The applicant

shall submit to the Department all data known to exist concerning groundwater elevations at the landfill site and shall submit to the Department a location map showing all monitoring wells or piezometers and drilling logs for all monitoring wells or piezometers used to obtain any groundwater elevation data that is submitted. Nothing herein shall prevent the Department from requiring additional groundwater measurements or from requiring an additional buffer as it may deem appropriate with respect to a particular site.

**Exhibit J** (Consent Order in S.A.V.E., Inc., et al. v. Ala. Dep't of Env'tl. Mgmt. EMC Docket No. 96-23 (Oct. 15, 1996), 1996 AL ENV LEXIS 12 (Oct. 15, 1996))). This language remained unchanged until the Environmental Management Commission of the Alabama Department of Environmental Management adopted amendments thereto on October 8, 2021.

19. The parties to the October 15, 1996 Consent Order intended to bestow the benefits of ADEM Admin. Code r. 335-13-4-.11(2)(a) as modified by the Environmental Management Commission of the Alabama Department of Environmental Management directly upon all citizens of the State, including members of the Environmental Defense Alliance, Bobby Lewis, and all other persons living near municipal solid waste landfill units in the State of Alabama.

20. On May 6, 2019, the Alabama Department of Environmental Management issued a renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 to the City of Dothan for the continued operation of an existing municipal solid waste landfill unit and the construction and operation of an expansion of the existing municipal solid waste management unit at City of Dothan Sanitary Landfill. **Exhibit K** (Solid Waste Disposal Facility Permit No. 35-06 (May 6, 2019)).

21. On June 4, 2019, Bobby Lewis and others filed a Request for Hearing to contest the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06. **Exhibit L** (Lewis v. Ala. Dep't of Env'tl. Mgmt., EMC Docket No. 19-06 (Request for Hearing filed June 4, 2019)).

22. Among the errors alleged by Lewis and others was that the the highest measured groundwater elevation at the location of the proposed cell or liner system was not properly determined by the applicant in accordance with the requirements of ADEM Admin. Code r. 335-13-4-.11(2)(a) (as modified on Oct. 15, 1996) and that the

applicant failed to demonstrate that the bottom elevation of the liner system is a minimum of five feet above the highest measured groundwater elevation as required by ADEM Admin. Code r. 335-13-4-.11(2)(a) (as modified on Oct. 15, 1996). **Exhibit M** (Lewis v. Ala. Dep't of Env'tl. Mgmt., EMC Docket No. 19-06 (Prehearing Order filed Aug. 14, 2019)).

23. After consideration of the evidence presented at an eight day hearing, the Hearing Officer appointed by the Environmental Management Commission of the Alabama Department of Environmental Management issued a "Report of Hearing Officer" containing findings of fact, conclusions of law, and recommendations to the Environmental Management Commission of the Alabama Department of Environmental Management. **Exhibit N** (Lewis v. Ala. Dep't of Env'tl. Mgmt., EMC Docket No. 19-06 (Report of Hearing Officer filed May 20, 2020)).

24. The Hearing Officer concluded that "[ADEM] Admin. Code r. 335-13-4-.11(a)(2) [sic: 335-13-4-.11(2)(a)] requires that the highest measured groundwater level shall be the highest measured level among

those measurements that include at least two measurements taken during each of the three consecutive months of February, March and April with no two measurements taken within any twelve-day period.” The Hearing Officer found that ADEM Admin. r. 335-13-4-.11 requires that the highest measured groundwater elevation at the location of a proposed cell or liner system be determined based on measurements made during “the wettest months of the year, normally expected to be February, March and April.” **Exhibit N** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06 (Report of Hearing Officer filed May 20, 2020)).

25. The Hearing Officer found that “[t]he City’s application for modification of Solid Waste Disposal Facility Permit No. 35-06 does not demonstrate that the City obtained groundwater elevation measurements in accordance with the methodology prescribed in [ADEM] Admin. Code r. 335-13-4-.11 (a)(2) [sic: 335-13-4-.11(2)(a)].” The Hearing Officer concluded that “the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 on May 6, 2019 was issued in violation” of ADEM rules and recommended that the



Environmental Management Commission disapprove Solid Waste Disposal Facility Permit No. 35-06 “without prejudice to the filing of a new application that includes a demonstration of compliance with [ADEM] Admin. Code r. 335-13-4-.11.” **Exhibit N** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06 (Report of Hearing Officer filed May 20, 2020)).

26. The Hearing Officer concluded that ADEM Admin. Code r. 335-13-4-.11(2)(a) requires that the elevation of the liner system shall be measured from the bottom of the liner system. The Hearing Officer concluded that Petitioners failed to carry their evidentiary burden of demonstrating that the application failed to demonstrate that there was a minimum of five feet of separation between the *bottom* elevation of the liner system and the highest measured groundwater elevation. **Exhibit N** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06 (Report of Hearing Officer filed May 20, 2020)).

27. In an Order dated June 1, 2020, the Environmental Management Commission of the Alabama Department of Environmental Management modified the findings and conclusions of

the Hearing Officer. **Exhibit O** (Lewis v. Ala. Dep't of Env'tl. Mgmt., EMC Docket No. 19-06 (Order entered June 12, 2020)).

28. The Environmental Management Commission of the Alabama Department of Environmental Management held that “[ADEM] Admin. Code r. 335-13-4-.11(2)(a) prescribes the methodology that applicants must use to demonstrate that there is a minimum of five feet of separation between the bottom of the liner system and highest measured groundwater level.” The Commission further held that “[ADEM] Admin. Code r. 335-13-4-.11(2)(a) requires that the highest measured groundwater level shall be the highest measured level among those measurements that include at least two measurements taken during each of the three consecutive months of February, March and April with no two measurements taken within any twelve-day period.” **Exhibit O** (Lewis v. Ala. Dep't of Env'tl. Mgmt., EMC Docket No. 19-06 (Order entered June 12, 2020)).

29. The Environmental Management Commission of the Alabama Department of Environmental Management found that “[t]he City’s application for modification of Solid Waste Disposal Facility

Permit No. 35-06 demonstrates that the City obtained groundwater elevation measurements in *substantial compliance* with the methodology prescribed in [ADEM] Admin. Code r. 335-13-4-.11 (a)(2) [sic: 335-13-4-.11(2)(a)].” **Exhibit O** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06 (Order entered June 12, 2020) (emphasis added).

30. The Environmental Management Commission of the Alabama Department of Environmental Management concluded that “[ADEM] Admin. Code r. 335-13-4-.11(a)(2) [sic: 335-13-4-.11(2)(a)] requires that the elevation of the liner system shall be measured from the *bottom* of the liner system.” **Exhibit O** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06 (Order entered June 12, 2020)).

31. The default composite liner system design prescribed by ADEM Admin. Code r. 335-13-1-.03(26) is “a system consisting of two components; the upper component must consist of a minimum 40 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec.” Design specifications for

the default composite liner system are prescribed in ADEM Admin. Code r. 335-13-4-.18(3)(a)-(g), including a requirement that the natural soil liner component of the default composite liner system must be a minimum of two feet measured after compaction. ADEM Admin. Code r. 335-13-4-.18(3)(d)2.

32. An alternative liner system design is authorized by ADEM Admin. Code r. 335-13-.18(h). Solid Waste Disposal Facility Permit No. 35-06 authorizes the City of Dothan to use two alternative liner system designs, one including a layer of 12 inches of compacted soil and the other a layer of 12 inches of compacted clay. **Exhibit K** (Solid Waste Disposal Facility Permit No. 35-06 (May 6, 2019)).

33. The Environmental Management Commission of the Alabama Department of Environmental Management held that “the Department’s issuance of the renewal and modification of Permit No. 35-06 complied with applicable statutes and regulations; [and] that “[t]he Environmental Management Commission of the Alabama Department of Environmental Management “approves the renewal and

modification of Permit No. 35-06[.]” **Exhibit O** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06 (Order entered June 12, 2020)).

34. On July 10, 2020, Lewis and others appealed the June 12, 2020 Order of the Environmental Management Commission of the Alabama Department of Environmental Management to the Montgomery County Circuit Court. **Exhibit P** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., No. 03-CV-2020-900877 (Montgomery County Cir. Ct.) (Notice of Appeal filed July 10, 2020)).

35. On February 2, 2021, the Montgomery County Circuit Court affirmed the June 12, 2020 Order of the Environmental Management Commission of the Alabama Department of Environmental Management. **Exhibit Q** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., No. 03-CV-2020-900877 (Montgomery County Cir. Ct.) (Final Order filed Feb. 2, 2021)).

36. On March 15, 2021, Lewis and others filed a notice of appeal of the Circuit Court’s affirmance of the Environmental Management Commission of the Alabama Department of Environmental Management’s June 12, 2020 Order approving the renewal and

modification of Solid Waste Disposal Permit No. 35-06 to the Alabama Court of Civil Appeals. **Exhibit R** (Lewis, et al. v. Ala. Dep't of Env'tl. Mgmt., et al., No. 03-CV-2020-900877 (Montgomery County Cir. Ct.) (Notice of Appeal filed Mar. 15, 2021)).

37. On July 18, 2021, the Alabama Department of Environmental Management published notice of proposed amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a). The notice stated that “[r]evisions to the ADEM Admin. Code div. 335-13 are being proposed to ensure consistency with State and Federal statutes and provide clarification of State requirements for the management of solid waste. These changes include updated language to conform to the revised statute for alternate cover material and minor technical revisions to provide better clarity on regulatory requirements or address regulatory concerns.” **Exhibit S** (Notice of Public Hearing July 18, 2021).

38. The Summary of Reasons/Changes published in support of the July 18, 2021 proposed amendments to ADEM Admin. Code r. 335-13-4-.11 states that the proposed amendments “[m]ade minor revisions

to hydrogeological standards for landfill design.” **Exhibit T** (Summary of Reasons/Changes July 18, 2021).

39. The July 18, 2021 proposed amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) were as follows (stricken matter to be deleted; underscored matter to be added):

(2) Hydrogeology Standards.

(a) For purposes of designing the bottom elevation of the ~~liner system~~ proposed cell, the applicant shall measure the groundwater elevation at the location of the proposed cell or liner system. Such determinations shall be based on groundwater measurements taken in the area of the proposed cell or liner system as approved by the Department. At each measuring location, the applicant shall obtain a minimum of two measurements taken during each of the three consecutive months of February, March and April, or as otherwise approved by the Department, with no two measurements taken within any twelve-day period. Having obtained the measurements, the applicant shall design the facility so that the bottom elevation of the proposed cell or liner system shall be a minimum of five feet above the highest measured groundwater level. The applicant shall submit to the Department all data known to exist concerning groundwater elevations at the landfill site and shall submit to the Department a location map showing all monitoring wells or piezometers and drilling logs for all monitoring wells or piezometers used to obtain any groundwater elevation data that is submitted. Nothing herein shall prevent the Department from requiring additional groundwater measurements or from requiring an

additional buffer as it may deem appropriate with respect to a particular site.

**Author:** Russell A. Kelly, S. Scott Story.

**Statutory Authority:** Code of Alabama 1975, §§ 22-27-3, 22-27-7.

**History:** November 18, 1981.

**Amended:** July 21, 1988; November 2, 1993; July 26, 1996; November 28, 1996.

**Amended:** Proposed: July 20, 2021.

**Exhibit U** (proposed amendments to ADEM Admin. Code div. 335-13 July 18, 2021).

40. On October 8, 2021, the Environmental Management Commission of the Alabama Department of Environmental Management adopted the proposed amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a). The language of rule, as amended on October 8, 2021, provides:

(2) Hydrogeology Standards.

(a) For purposes of designing the bottom elevation of the proposed cell, the applicant shall measure the groundwater elevation at the location of the proposed cell or liner system. Such determinations shall be based on groundwater measurements taken in the area of the proposed cell or liner system as approved by the Department. At each measuring location, the applicant shall obtain a minimum of two measurements taken during each of the three consecutive months of February, March



and April, or as otherwise approved by the Department, with no two measurements taken within any twelve-day period. Having obtained the measurements, the applicant shall design the facility so that the bottom elevation of the proposed cell or liner system shall be a minimum of five feet above the highest measured groundwater level. The applicant shall submit to the Department all data known to exist concerning groundwater elevations at the landfill site and shall submit to the Department a location map showing all monitoring wells or piezometers and drilling logs for all monitoring wells or piezometers used to obtain any groundwater elevation data that is submitted. Nothing herein shall prevent the Department from requiring additional groundwater measurements or from requiring an additional buffer as it may deem appropriate with respect to a particular site.

**Author:** Russell A. Kelly, S. Scott Story.

**Statutory Authority:** Code of Alabama 1975, §§ 22-27-3, 22-27-7.

**History:** November 18, 1981. **Amended:** Effective: July 21, 1988; **Amended:** Effective: November 2 , 1993; **Amended:** Effective: July 26, 1996; **Amended:** Effective: November 28, 1996; **Amended:** Filed: October 12, 2021; Effective: December 13, 2021.

See Exhibit A.

41. Prior to adoption of the October 8, 2021 amendment of ADEM Admin. Code r. 335-13-4-.11, neither the Alabama Department of Environmental Management nor Environmental Management Commission of the Alabama Department of Environmental Management sought or obtained the consent of S.A.V.E., Inc., Rodney

Benson, Jesse Willis, Jeanette Teel, or Douglas Scott to modify or vacate the October 15, 1996 Consent Order.

42. The October 8, 2021 amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a) which adds the language “or as otherwise approved by the Department” will allow the Alabama Department of Environmental Management to approve the determination of the “highest measured groundwater level” based on groundwater measurements taken outside the months of February, March, and April – normally expected to be the wettest months of the year when groundwater elevations are expected to be the highest. If determination of the “highest measured groundwater level” is based on groundwater measurements taken outside the months of February, March, and April, the determination may underestimate the highest groundwater level and thereby reduce the actual separation distance between the “the proposed cell or liner system” and highest groundwater level to less than the required five feet.

43. The October 8, 2021 amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a) which adds the language “or as otherwise approved

by the Department” also allows the Alabama Department of Environmental Management to approve the determination of the “highest measured groundwater level” based on two groundwater measurements taken within a twelve day period during any month. A reduction in the sampling interval will likely fail to capture variations in groundwater elevations that may occur during a month. If the determination of the highest measured groundwater level is based on groundwater measurements taken within a twelve day period when groundwater levels are lower than other periods of the month, the determination may underestimate the highest groundwater level and thereby reduce the actual separation distance between the “the proposed cell or liner system” and highest groundwater level to less than the required five feet.

44. The October 8, 2021 amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a) which adds the language “proposed cell” and “proposed cell or” allows the Alabama Department of Environmental Management to determine compliance with the required five feet of separation distance based on the bottom elevation of the proposed cell

or bottom elevation of the liner system. A “cell” is defined in ADEM Admin. Code r. 335-13-1-.03(18) as “a volume of compacted solid waste . . .” A “cell” does not include the liner system beneath the “cell.” The amendment permits a reduction in the separation distance between the highest measured groundwater level and the bottom of the liner system by as much as two feet or more (the depth of the liner system).

45. On October 8, 2021, the Alabama Court of Civil Appeals reversed the judgment of the Circuit Court and remanded the case to the Montgomery County Circuit Court with instructions “to conduct further proceedings consistent with this opinion.” **Exhibit V** (Lewis v. Ala. Dep’t of Env’tl. Mgmt., No. 2200431, 2021 Ala. Civ. App. LEXIS 108 (Ala. Civ. App. Oct. 8, 2021), application for reh’g filed (Oct. 22, 2021).

46. If the decision of the Alabama Court of Civil Appeals is not modified or reversed, Solid Waste Disposal Facility Permit No. 35-06 will be disapproved. In that event, the City of Dothan is likely to promptly submit a new application to the Alabama Department of Environmental Management for issuance of a solid waste disposal

facility permit for the City of Dothan Sanitary Landfill. That new application must demonstrate compliance with whatever requirements of ADEM Admin. Code r. 335-13-4-.11(2)(a) exist at the time.

47. Solid Waste Disposal Facility Permit No. 35-06 has a scheduled expiration date of May 5, 2024. **Exhibit K** (Solid Waste Disposal Facility Permit No. 35-06 (May 6, 2019)). Continued operation of the City of Dothan Sanitary Landfill after expiration of Permit No. 35-06 will require that the City of Dothan submit an application to the Alabama Department of Environmental Management for renewal of Solid Waste Disposal Facility Permit No. 35-06. That new application must demonstrate compliance with whatever requirements of ADEM Admin. Code r. 335-13-4-.11(2)(a) exist at the time.

48. “Groundwater flow direction inferred by groundwater depth measurements converted to elevations indicates general groundwater flow across the site [of the City of Dothan Sanitary Landfill] from the southwest to the northeast on the date of the measurements.” **Exhibit W** (Groundwater Monitoring and Statistical Analysis Report March

2021 Semi-annual Monitoring Event – City of Dothan Sanitary Landfill (TTL, May 12, 2021)).

49. Solid Waste Disposal Facility Permit No. 35-06 issued by the Alabama Department of Environmental Management to the City of Dothan on May 6, 2019 designates monitoring wells DW-02, DW-03, MW-09, MW-10, MW-14, MW-15, and MW-16 as “downgradient monitoring wells” for the 69.9-acre municipal solid waste landfill unit at the City of Dothan Sanitary Landfill. **Exhibit K** (Solid Waste Disposal Facility Permit No. 35-06 (May 6, 2019)). The monitoring wells are shown on **Exhibit X** (Potentiometric Surface Map – City of Dothan Sanitary Landfill (TTL, Mar. 22, 2021)).

50. Samples collected from monitoring wells during the March 2021 groundwater sampling event detected the presence of the following contaminants in the groundwater at the following downgradient monitoring wells:

DW-02	Barium, Cobalt, and Tetrachloroethylene
DW-03	Cobalt
MW-09	Cobalt, Benzene, Chlorobenzene, 1,1-Dichloroethane, and 1,4-Dichlorobenzene
MW-10	Barium, Cobalt, and Cadmium
MW-15	Cobalt

MW-17 Beryllium, Cobalt, Lead, Vanadium, Mercury,  
and Zinc

**Exhibit W** (Groundwater Monitoring and Statistical Analysis Report  
March 2021 Semi-annual Monitoring Event – City of Dothan Sanitary  
Landfill (May 12, 2021)).

51. The following contaminants in the groundwater at the  
following downgradient monitoring wells have been identified as being  
in concentrations that are “statistically significant increases” above  
concentrations in upgradient monitoring wells. **Exhibit W**

(Groundwater Monitoring and Statistical Analysis Report March 2021  
Semi-annual Monitoring Event – City of Dothan Sanitary Landfill (May  
12, 2021)).

DW-02	Barium and tetrachloroethylene
MW-09	Cobalt, Benzene, Chlorobenzene, 1,1-Dichloroethane, and 1,4-Dichlorobenzene
MW-10	Barium and Cadmium

52. There are four water wells that have been drilled on the  
property of Bobby Lewis. Three are currently operational, one of which  
is used as a supplemental potable water supply at his home. The  
fourth can be made operational with minimal effort.

## V. Threatened or Actual Injuries Suffered

53. Petitioners incorporate by reference paragraphs 4 through 52.

54. A person is “aggrieved” under Ala. Code 1975 § 22-22A-7(c) and entitled to a hearing to contest an administrative action of the Alabama Department of Environmental Management if he has suffered a threatened or actual injury in fact, i.e., he is somehow adversely affected by the contested administrative action. Ala. Dep’t of Env’tl Mgmt. v. Legal Env’tl Assistance Found. Inc., 973 So. 2d 369, 378 (Ala. Civ. App. 2007). See Ex parte Fowl River Protective Ass’n, 572 So. 2d 446 (Ala. 1990) (an adverse effect upon legal or equitable interests in land is not a necessary component of standing in the context of environmental law); Lewis v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 19-06, 2020 AL ENV LEXIS 6, at \* 22 (June 12, 2020) (“Petitioners . . . have established that they are aggrieved parties under Code of Alabama, 1975 § 22-22A-7(c), having shown that they suffer to some extent from the presence of the Landfill. \* \* \* \* Petitioners have established that they suffered or are likely to suffer adverse effects



from operation of the City of Dothan Sanitary Landfill authorized by the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (May 6, 2019)). Accordingly, Petitioners are considered aggrieved persons and are entitled to a hearing before the Environmental Management Commission to contest the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (May 6, 2019).”), aff’d Lewis v. Ala. Dep’t of Env’tl. Mgmt., No. 03-CV-2020-900877.00 (Montgomery County Circuit Ct. Feb. 2, 2021) (Final Order), rev’d on other grounds, No. 2200431, 2021 Ala. Civ. App. LEXIS 108 (Ala. Civ. App. Oct. 8, 2021), application for reh’g filed (Oct. 22, 2021).

55. ADEM Admin. Code r. 335-2-1-.02 defines “aggrieved” as “having suffered a threatened or actual injury in fact.” Ala. Dep’t of Env’tl. Mgmt. v. Legal Env’tl. Assistance Found., Inc., 973 So. 2d 369, 374 (Ala. Civ. App. 2007); Black Warrior Riverkeeper, Inc. v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 10-04, 2010 AL ENV LEXIS 3, at \*12 (June 25, 2010). “The [regulatory] definition of ‘aggrieved’ is derived from judicial decisions interpreting the same term in the Federal

Administrative Procedure Act. An actual or threatened injury in fact does not have to be an economic injury in fact.” **Exhibit Y** (Hearing Record – Alabama Department of Environmental Management’s Adoption of Rules of Procedure for Administrative Appeals of Department Actions and the Repeal of Amendment of Certain Existing Duplicative or Inconsistent Rules (April 15, 1983)). See, e.g., Ass’n of Data Processing Serv. Organizs., Inc., v. Camp, 397 U.S. 150, 153-54, 90 S. Ct. 827, 830 (1970) (injury to an interest giving rise to “aggrieved” status under 5 U.S.C. § 702 “may reflect ‘aesthetic, conservational, and recreational,’ as well as economic, values); Sierra Club v. Morton, 405 U.S. 727, 738, 92 S. Ct. 1361, 1368 (1972) (same).

56. An association can seek relief on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Black Warrior Riverkeeper, Inc. v. Ala. Dep’t of Env’tl. Mgmt., EMC Docket No. 05-01, 2006 AL ENV LEXIS 2, at \*12 (Feb. 4, 2006)

(citing Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc., 783 So. 2d 792, 795 (Ala. 2000) and Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977)).

57. The interests the Environmental Defense Alliance seeks to protect by filing this Request for Hearing (i.e., the protection of groundwater from contamination by municipal solid waste landfill units, the protection of human health by preventing human exposures to groundwater contaminated by municipal solid waste landfill units, and the assurance that the groundwater protection requirements and restrictions in ADEM Admin. Code r. 335-13-4-.11(2)(a) are rational, lawful and protective of human health and the environment) are germane to organization's purpose (i.e., to conserve, preserve, protect, maintain, improve, and enhance human health and the environment on behalf of its members and the public).

58. Neither the allegations of errors asserted below nor the relief requested below requires the participation of individual members of the Environmental Defense Alliance in this contest of the October 8, 2021 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a).

59. Bobby Lewis owns property near and lives near the City of Dothan Sanitary Landfill. The City of Dothan is required to periodically apply to the Alabama Department of Environmental Management for a solid waste disposal facility permit for the City of Dothan Sanitary Landfill.

60. A future application for a solid waste disposal facility permit for the City of Dothan Sanitary Landfill is required to demonstrate compliance with the requirements and restrictions of the then-existing provisions of ADEM Admin. Code r. 335-13-4-.11(2)(a).

61. The October 8, 2021 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) authorize the Alabama Department of Environmental Management to determine the “highest measured groundwater level” beneath the City of Dothan Sanitary Landfill based on measurements that are not obtained during each of the three consecutive months of February, March, and April and based on measurements taken within any twelve-day period during a month. These amendments are likely to result in a determination that the separation distance from the bottom of the proposed cell or liner system

is greater than the separation distance determined under the pre-amendment language of ADEM Admin. Code r. 335-13-4-.11(2)(a).

62. The October 8, 2021 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) authorize the Alabama Department of Environmental Management to determine compliance with the minimum five foot separation distance requirement based on the elevation of the “bottom of the proposed cell” (i.e., top of the liner system). These amendments are likely to result in a determination that the separation distance from the bottom of the proposed cell is greater than the separation distance determined under the pre-amendment language of ADEM Admin. Code r. 335-13-4-.11(2)(a).

63. Application of the October 8, 2021 amendments of ADEM Admin. Code r. 335-13-4-.11(2)(a) to future solid waste disposal facility permits issued by the Alabama Department of Environmental Management to the City of Dothan threatens to decrease the separation distance between the highest seasonal (February to April) groundwater level and bottom of the liner system to less than five feet and contribute to continued or increased contamination of groundwater

that is capable of contaminating the water wells used by Bobby Lewis at his property.

64. The October 8, 2021 amendments of ADEM Admin. Code r. 335-13-4-.11(2)(a) threaten to adversely affect the property rights and health of Bobby Lewis. Accordingly, Bobby Lewis would have standing to maintain this contest of the October 8, 2021 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) in their own right.

## VII. Allegations of Errors

### **A. The Environmental Management Commission of the Alabama Department of Environmental Management exceeded its statutory authority by adopting a rule which delegates to the Department the authority to establish requirements and restrictions respecting potential ground water contamination.**

65. Petitioners incorporate by reference paragraphs 4 through 52.

66. Ala. Code 1975 § 22-22A-5(3) provides that the Department is authorized to:

Acting through the Environmental Management Commission, adopt and promulgate rules, regulations, and standards for the department, and to develop environmental policy for the state.

67. Ala. Code 1975 § 22-22A-6(a)(2) provides that the Environmental Management Commission of the Alabama Department of Environmental Management has the following duty:

To establish, adopt, promulgate, modify, repeal, and suspend any rules, regulations, or environmental standards for the department which may be applicable to the state as a whole or any of its geographical parts;

68. Ala. Code 1975 § 22-27-12(2) provides that the Department may:

Adopt rules establishing requirements and restrictions for the management of solid waste . . . . The rules may include factors such as . . . the potential for contamination of . . . ground . . . waters . . . .

69. The Department may establish requirements and restrictions respecting the potential for contamination of ground waters from the management of solid waste only by rules promulgated by the Environmental Management Commission of the Alabama Department of Environmental Management.

70. The provisions of ADEM Admin. Code r. 335-13-4-.11(2)(a), as amended on October 8, 2021, delegate the authority to establish requirements or restrictions respecting the potential for groundwater

contamination to the Department (i.e., the Director or his delegates). These requirements or restrictions are (a) whether the highest measured groundwater level will be based on measurements taken during each of the three consecutive months of February, March and April or some other months; (b) whether the highest measured groundwater level will be based on two measurements taken more than twelve days apart during any month or some shorter period of time; and (c) whether the bottom elevation of a cell or bottom elevation of the liner system will be used to determine the separation distance to the highest measured groundwater level.

71. In Ex Parte Jones Manufacturing Company, Inc., 589 So. 2d 208 (Ala. 1991), the Court said:

An administrative regulation must be consistent with the statutes under which its promulgation is authorized. Ex parte City of Florence, 417 So. 2d 191 (Ala. 1982). \* \* \* A regulation cannot subvert or enlarge upon statutory policy. Jefferson County Bd. of Ed. v. Alabama Bd. of Cosmetology, 380 So. 2d 913 (Ala. Civ. App. 1980).

Id. at 210.

72. The delegation of authority to establish requirements or restrictions respecting the potential for groundwater contamination by



the Environmental Management Commission of the Alabama Department of Environmental Management to the Director or his delegates is inconsistent with Ala. Code 1975 § 22-27-12(2) and a subversion of the statutory policy that such requirements or restrictions be established by rules promulgated by the Environmental Management Commission of the Alabama Department of Environmental Management.

73. The provisions of ADEM Admin. Code r. 335-13-4-.11(2)(a), as amended on October 8, 2021, that delegate the authority to establish requirements or restrictions respecting the potential for groundwater contamination to the Director or his delegates are in excess of the authority granted to the Environmental Management Commission of the Alabama Department of Environmental Management by Ala. Code 1975 § 22-27-12(2).

**B. The Director of the Alabama Department of Environmental Management, and his officers, agents or employees to whom he has delegated his authority, do not have statutory authority to establish requirements and restrictions respecting potential ground water contamination.**

74. Petitioners incorporate by reference paragraphs 4 through 52.

75. Ala. Code 1975 § 22-22A-4(b) provides:

The department shall be under the supervision and control of an officer who shall be designated as the director of the Alabama Department of Environmental Management. \* \* \* The director shall employ such officers, agents and employees as he deems necessary to properly administer and enforce the programs and activities of the department and to fully implement the requirements of this chapter and the intent of the Legislature. All powers, duties and functions transferred to the department by this chapter, ***except those specifically granted to the Environmental Management Commission***, shall be performed by the director; provided that the director may delegate the performance of such of his powers, duties and functions, to employees of the department, wherever it appears desirable and practicable in fulfilling the policies and purposes of this chapter. \*\* \*

(Emphasis added).

76. Ala. Code 1975 § 22-27-12(2) requires that requirements and restrictions respecting potential groundwater contamination from the management of solid waste must be established by rule.

77. Ala. Code 1975 §§ 22-22A-5(3) and 22-22A-6(a)(2) specifically grant the power to adopt rules to the Environmental

Management Commission of the Alabama Department of Environmental Management.

78. Ala. Code 1975 § 22-22A-5(10) provides that the Department is authorized to:

Issue, modify, suspend, or revoke . . . permits.

79. Ala. Code 1975 § 22-27-12(2) provides:

The department may condition the issuance of a permit for any solid waste management or materials recovery facility upon the facility being consistent with applicable rules as are necessary to carry out the intent of this article and the department's responsibilities under this article.

80. The Director of the Alabama Department of Environmental Management, and other officers, agents and employees of the Department to whom the Director has delegated his authority, are authorized by Ala. Code 1975 § 22-27-12(2) to condition the issuance of permits consistent with rules adopted by the Environmental Management Commission of the Alabama Department of Environmental Management establishing requirements and restrictions respecting potential for contamination of ground waters from the management of solid waste. The Director and his delegates

are not authorized by Ala. Code 1975 § 22-27-12(2) to establish requirements and restrictions respecting potential for contamination of ground waters from the management of solid waste.

81. The provisions of ADEM Admin. Code r. 335-13-4-.11(2)(a) authorize the Director or his delegates to determine (a) whether the highest measured groundwater level will be based on measurements taken during each of the three consecutive months of February, March and April or some other months; (b) whether the highest measured groundwater level will be based on two measurements taken more than twelve days apart during any month or some shorter period of time; and (c) whether the bottom elevation of a cell or bottom elevation of the liner system will be used to determine the separation distance to the highest measured groundwater level.

82. In Ex Parte Jones Manufacturing Company, Inc., 589 So. 2d 208 (Ala. 1991), the Court said:

An administrative regulation must be consistent with the statutes under which its promulgation is authorized. Ex parte City of Florence, 417 So. 2d 191 (Ala.1982). An administrative agency cannot usurp legislative powers or contravene a statute. Alabama State Milk Control Bd. v. Graham, 250 Ala. 49, 33 So. 2d 11 (1947).

Id. at 210.

83. The power granted to the Director or his delegates by ADEM Admin. Code r. 335-13-4-.11(2)(a) to establish requirements and restrictions respecting potential groundwater contamination from the management of solid waste is inconsistent with Ala. Code 1975 § 22-27-12(2) and an usurpation of legislative powers.

84. The provisions of ADEM Admin. Code r. 335-13-4-.11(2)(a), as amended on October 8, 2021, that authorize the Director or his delegates to establish requirements or restrictions respecting potential for groundwater contamination from the management of solid waste are in excess of the authority granted to the Director and his delegates by Ala. Code 1975 § 22-27-12(2).

**C. The Environmental Management Commission of the Alabama Department of Environmental Management contravened the Consent Order approved in S.A.V. E., Inc., et al. v. ADEM.**

85. Petitioners incorporate by reference paragraphs 4 through 52.

86. Bobby Lewis and other persons adversely affected by the October 8, 2021 amendments of ADEM Admin. Code r. 335-13-4-.11(2)(a) are intended beneficiaries of the Consent Order entered by the Environmental Management Commission of the Alabama Department of Environmental Management in S.A.V.E., Inc. et al. v. ADEM, EMC Docket No. 96-23, on October 15, 1996.

87. The Environmental Management Commission of the Alabama Department of Environmental Management was not authorized to adopt the October 8, 2021 amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) without first obtaining the consent of other parties to the Consent Order entered by the Environmental Management Commission of the Alabama Department of Environmental Management in S.A.V.E., Inc. et al. v. ADEM, EMC Docket No. 96-23, on October 15, 1996 to modify or vacate the Consent Order.

**D. The Alabama Department of Environmental Management adopted the October 8, 2021 amendment of ADEM Admin. Code r. 335-13-4-.11(2)(a) without first publishing an accurate and complete summary of reasons for the proposed**

**amendment in violation of Ala. Code 1975 § 22-22A-8(a).**

88. Petitioners incorporate by reference paragraphs 4 through 52.

89. In addition to providing publication of notice of a public hearing on proposed amendments to rules, the Department is required to make available to the public a summary of reasons supporting the proposed amendments. Ala. Code 1975 § 22-22A-8(a). This requirement is a prerequisite to the valid adoption of rules.

90. The Department's summary of reasons supporting adoption of the proposed amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) is inaccurate and incomplete.

91. The Department's failure to publish an accurate and complete summary of reasons supporting the proposed amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) violates the requirements of Ala. Code 1975 § 22-22A-8(a) and renders the adoption of the amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a) invalid.

**VIII. Proposed Relief**

92. Petitioners propose that the Environmental Management Commission of the Alabama Department of Environmental Management issue an order disapproving the October 8, 2021 promulgation of the amendments to ADEM Admin. Code r. 335-13-4-.11(2)(a).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David A. Ludder".

David A. Ludder  
Attorney for Petitioners  
Law Office of David A. Ludder, PLLC  
9150 McDougal Ct.  
Tallahassee, Florida 32312-4208



**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

Done this 22nd day of November, 2021.



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David A. Ludder