

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

In the Matter of:

PETITION TO ADOPT ADEM
ADMIN. CODE CHAP. 335-2-4

Environmental Defense Alliance,

Petitioner.

_____ /

PETITION TO ADOPT ADEM ADMIN. CODE CHAP. 335-2-4

I. Introduction

1. This petition proposes the adoption of a new ADEM Admin.
Code chap. 335-2-4.

II. Petitioner

2. The Petitioner is as follows:

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

All communications with the Environmental Defense Alliance shall be
directed to its undersigned attorney.

III. Statement of Interests

3. The Environmental Defense Alliance is a non-profit corporation that uses law and policy to protect human health and the environment on behalf of the public and its members. The Alliance administers a program to ensure that agency decision-making is transparent, fair, rational, lawful and protective of human health and the environment. The failure of past and present members of the Environmental Management Commission of the Alabama Department of Environmental Management to maintain and preserve records pertaining to the business, affairs and transactions of their offices impairs the transparency of decision-making by the Commission and Alabama Department of Environmental Management and hinders the Alliance's and public's ability to determine if such decision-making is fair, rational, lawful, and protective of human health and the environment.

IV. Proposed Adoption of ADEM Admin. Code chap. 335-2-4

4. Petitioners request that the Commission adopt a new ADEM Admin. Code chap. 335-2-4 as indicated below:

CHAPTER 335-2-4 MAINTENANCE, PRESERVATION, AND AVAILABILITY OF RECORDS

TABLE OF CONTENTS

335-2-4-.01 Definitions

335-2-4-.02 Duty to maintain, preserve, and make available records.

335-2-4-.01 Definitions. For purposes of this Chapter, the following words, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) “Commission” means the Environmental Management Commission of the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, § 22-22A-6.

(b) “Department” means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, § 22-22A-4.

(c) “person” means any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, or other legal entity or other business organization or any governmental entity, and any successor, representative, agent, or agency of the foregoing.

(d) “record(s)” means “official record(s)” as that term is used in r. 335-1-1-.06(1), “public record(s)” as defined in Code of Alabama 1975, § 41-13-1, and “public writing(s)” as

defined by judicial interpretation of Code of Alabama 1975, § 36-12-40.

335-2-4-.02 Duty to maintain, preserve, and make available records. Each member of the Commission shall:

(a)(1) maintain and preserve all records in his or her possession, control, or custody for the duration of his or her term of office on the Commission and three years thereafter; or

(2) transmit all records in his or her possession, control, or custody promptly after creation or receipt, but not more than thirty (30) days thereafter, to the Commission's office in Montgomery; and

(b)(1) make a written demand on his or her predecessor in office for all records in the possession, control, or custody of the predecessor in office; and

(2) transmit all records received from his or her predecessor in office to the Commission's office in Montgomery within thirty (30) days after receipt thereof; and

(c) make available for inspection and copying by any citizen all records except those identified in r. 335-1-1-.06(2) or subject to a recognized evidentiary privilege.

Author:

Statutory Authority: Code of Alabama 1975, §§ 22-22A-8, 41-22-4.

History:

V. Statutory Duties and Authorities

5. Ala. Code 1975 § 36-12-2 imposes the following duties on public officers, including members of the Environmental Management Commission of the Alabama Department of Environmental Management:

All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction.^[1]

¹ See, e.g., Ala. Dep’t of Env’tl. Mgmt. Records Disposition Authority, State Records Comm’n (Jan. 25, 2001) at 16, https://archives.alabama.gov/officials/rdas/environmental_management_rda.pdf (“Alabama law requires public officials to create and maintain records that document the business of their offices. These records must be protected from “mutilation, loss, or destruction,” Records must be kept in accordance with auditing standards approved by the Examiners of Public Accounts (Code of Alabama 1975 § 36-12-2, § 36-12-4, and § 41-5-23).”); Email, State Records Comm’n, <https://archives.alabama.gov/officials/Email.html> (accessed Mar. 8, 2022) (“Public officials are legally obligated to create and maintain records that adequately document agency business.”); *id.* (“The retention of email is dependent upon the content of the email, not where the email account resides. Alabama law stipulates that any document is a government record when it is created by a government employee in the course of conducting public business – not limited to those only created and/or stored on government property.”); What about

6. Ala. Code 1975 § 41-13-21 provides *inter alia*:

No state officer or agency head shall cause any state record to be destroyed or otherwise disposed of without first obtaining approval of the State Records Commission; . . .^[2]

7. Ala. Code 1975 § 13A-10-12(a) provides inter alia:

A person commits the crime of tampering with governmental records if:

* * *

Government Email?, For the Record Blog Post, State Records Comm’n (Oct. 30, 2018), <https://fortherecordalabama.blog/2018/10/30/what-about-government-email/> (accessed Mar. 8, 2022) (“Alabama law stipulates that any document is a government record when it is created by a government employee in the course of conducting public business — not just those documents created with and/or stored on government property. If an employee is engaging in government activities with his or her personal email account, those emails are government records.”); Op. to Hon. Oliver Kitchens, Atty. for Randolph County Hosp. Ass’n, No. 97-00235, 248 Op. Atty Gen. Ala. 26, 1997, Ala. AG LEXIS 31 (July 15, 1997) (A board which has no specific office or physical facility is responsible for determining where, and by whom, its records shall be kept. They should be kept where they will be reasonably accessible to those persons who need to consult them or have a right to see them. They should be under the supervision of a responsible person selected by the board.).

² The State Records Commission last approved a Records Disposition Authority (RDA) for ADEM on January 25, 2001. https://archives.alabama.gov/officials/rdas/environmental_management_rda.pdf. The RDA provides that minutes of Environmental Management Commission meetings and rules adopted by the Environmental Management Commission are permanent records that must be retained and may never be destroyed. Background and reference materials for rules must be retained for five years after the rules are superseded, amended, or cancelled. Administrative hearing case files must be retained for ten years after final disposition of the case. General correspondence/memoranda and telephone logs must be retained for three years after the end of the fiscal year in which the records were created.

(2) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes or otherwise substantially impairs the verity or availability of any governmental record;

* * *

8. Ala. Code 1975 § 36-12-4 imposes the following duties on public officers, including members of the Environmental Management Commission of the Alabama Department of Environmental Management:

All public officers and servants of this state shall turn over to their successors in office, together with a list thereof, all current books, papers and documents pertaining to the business, affairs or transactions of their office, taking a receipt therefor, which said receipt shall also contain a list of all such books, papers and documents.^[3]

9. Ala. Code 1975 § 36-12-20 imposes the following duties on public officers, including members of the Environmental Management Commission of the Alabama Department of Environmental Management:

³ See Ala. Dep't of Env'tl. Mgmt. Records Disposition Authority, State Records Comm'n (Jan. 25, 2001) at 16, https://archives.alabama.gov/officials/rdas/environmental_management_rda.pdf ("records must be protected from 'mutilation, loss, or destruction,' so that they may be transferred to an official's successor in office and made available to members of the public.").

In all cases in which it is not otherwise expressly provided, when any office is vacated, except by the death of the incumbent, all books, papers, property and money belonging or appertaining to such office shall, on demand, be delivered over to the qualified successor.

10. Ala. Code 1975 § 13A-10-12(a) provides inter alia:

A person commits the crime of tampering with governmental records if:

* * *

(3) Knowing he lacks the authority to retain a governmental record he refuses to deliver up the record in his possession upon proper request of a person lawfully entitled to receive such record for examination or other purposes.

11. Ala. Code 1975 § 36-12-40 provides inter alia:

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. * * *^[4]

⁴ In Stone v. Consolidated Publishing Company, 404 So. 2d 678, 681 (Ala. 1981), the Court held that “the ‘public writing’ spoken of in Code 1975, § 36-12-40, is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens.” See Email, State Records Comm’n, <https://archives.alabama.gov/officials/Email.html> (accessed Mar. 8, 2022) (“Email records are subject to the same legal requirements regarding access as any of the agency’s other government records, as governed by Alabama’s open records law (Code of Alabama 1975, § 36-12-40)”).

12. Ala. Code 1975 § 13A-10-12(a) provides inter alia:

A person commits the crime of tampering with governmental records if:

* * *

(3) Knowing he lacks the authority to retain a governmental record he refuses to deliver up the record in his possession upon proper request of a person lawfully entitled to receive such record for examination or other purposes.

13. Ala. Code 1975 § 41-22-4 imposes the following duties on agencies of the State, including the Alabama Department of Environmental Management and Environmental Management Commission of the Alabama Department of Environmental Management:

(a) In addition to the other rulemaking requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

* * *

14. Ala. Code 1975 § 8-1A-18(a)(1) provides:

[E]ach governmental agency of the State that has rulemaking authority reviewable under Section 41-22-23 may determine by rule whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.^[5]

15. Ala. Code 1975 § 22-22A-6(a) provides inter alia:

There is hereby created a seven member Environmental Management Commission of the Alabama Department of Environmental Management which shall have the following duties:

* * *

(2) 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;

VI. Evidence, Data, and Information Supporting Proposed Rules

16. The Environmental Management Commission of the Alabama Department of Environmental Management was created on

⁵ See, e.g., Op. to Hon. Beth Chapman, Sec'y of State, No. 2009-084, 295 Op. Atty Gen. Ala. 34, 2009 Ala. AG LEXIS 73 (June 23, 2009) (Ala. Code 1975 § 8-1A-18 authorizes the Secretary of State to promulgate rules applicable to online voter registration).

October 1, 1982. It is composed of seven members. Each commissioner is appointed for a six year term and may be reappointed to serve no more than a total of eighteen years.⁶

17. Since its creation, many individuals have been appointed to serve as members of the Environmental Management Commission of the Alabama Department of Environmental Management.

18. During their tenures on the Environmental Management Commission of the Alabama Department of Environmental Management, many members of the Commission have created or received records, including electronic messages, documents, files, papers, letters or copies of letters, pertaining to the business, affairs or transactions of their office. These records often include exchanges with other commissioners, public officials, officials and employees of the Alabama Department of Environmental Management, regulated entities and parties, and the public regarding the business and activities of the Commission and the Department. No requirement or

⁶ The current commissioners are Thomas P. Walters, P.E. (Chair), John (Jay) H. Masingill, III (Vice Chair), Samuel L. Miller, M.D., Kevin McKinstry, H. Lanier Brown, II, Esq., Ruby L. Perry, D.V.M., and Mary J. Merritt. See Meet the Alabama Environmental Management Commission, <https://adem.alabama.gov/commission/MeetTheADEMCommission.pdf> (**Exhibit A**).

formalized practice exists to ensure the maintenance, preservation, and availability of these records.

19. Commissioners have resigned or otherwise vacated their offices without turning over to their successors in office records in their possession, control, or custody pertaining to the business, affairs or transactions of their office in violation of Ala. Code 1975 § 36-12-4. The appointed successors in office have not demanded that such records be delivered over to them as authorized by Ala. Code 1975 § 36-12-20.

20. Commissioners have not always maintained and preserved records and have been unable to make them available to the public.⁷

VII. Other Factors for Consideration

21. The proposed rules are a constitutional exercise of the Department's authority to adopt rules implementing the Alabama Administrative Procedures Act, Uniform Electronic Transactions Act, and Alabama Environmental Management Act. There is no constitutional impediment to the adoption of the proposed rules. The

⁷ See, e.g., Defendant Houston Lanier Brown II's Amended Response to Plaintiffs' First Set of Interrogatories, Environmental Defense Alliance and GASP, d/b/a Gasp v. Houston Lanier Brown, II, No. 03-cv-2020-900664 (Montgomery County Cir. Ct. executed Nov. 5, 2021) (**Exhibit B**).

Department is authorized to adopt the proposed rules by Ala. Code 1975 §§ 41-22-4, 8-1A-18, and 22-22A-8.

22. The proposed rules will promote the express legislative intent and purposes of the Alabama Administrative Procedure Act, See Ala. Code 1975 § 41-22-2(the purposes of the Alabama Administrative Procedure Act are to increase public accountability of administrative agencies [and] increase public access to governmental information). The proposed rules will promote the express legislative intent and purposes of the Alabama Environmental Management Act. See Ala. Code 1975 §§ 22-22A-2 (the purposes of the Alabama Environmental Management Act are “to respond to the needs of its . . . citizens,” “to improve services to the citizens of the state,” and “to insure that government is responsive to the needs of the people.” The proposed rules will also promote the legislative intent and purposes of Ala. Code 1975 §§ 36-12-4, 36-12-40, and 41-22-4.

23. The evidence, data, and information submitted herein is substantive, credible and relevant and reasonably supports the adoption of the proposed amendment.

24. On February 15, 2019, the Petitioner made a presentation to the Alabama Environmental Management Commission of the Alabama Department of Environmental Management informing the commissioners of their duties under Alabama statutes to maintain and preserve records to ensure their availability to citizens.⁸ Subsequent to February 15, 2019, neither the Commission nor the Director of the Alabama Department of Environmental Management has undertaken any measures to ensure that records in the possession, control, or custody of members of the Commission pertaining to the business, activities, transactions and affairs of their public offices are maintained, preserved, and made available to the public.

25. Alternative means of obtaining the same or similar relief are not presently available and have not in the recent past been made available to the Petitioner.

26. The proposed rules will implement the express requirements of Ala. Code 1975 §§ 8-1A-18, 36-12-4, 36-12-40, and 41-22-4.

⁸ Minutes, Env'tl. Mgmt. Comm'n Meeting, Feb. 15, 2019) (**Exhibit C**); Handout (Feb. 15, 2019) (**Exhibit D**); Video at https://youtu.be/_TEqbzG-wnQ.

VIII. Disposition of Petition

27. ADEM Admin. Code r. 335-2-2-.06 provides:

Disposition of Petition. Within sixty days after a petition is filed with the Commission in accordance with Rule 335-2-2-.04, the Commission shall do one of the following, provided however, that upon written notice to the petitioner, such sixty day period may be extended for not more than thirty days if the Commission's next regularly scheduled meeting is not within said sixty day period:

(a) initiate rule-making proceedings in accordance with Code of Alabama 1975, §§ 22-22A-8 and 41-22-5, as amended; or

(b) deny the petition in writing on the merits stating the reasons therefor.

Respectfully submitted,



David A. Ludder
Attorney for Petitioner
Environmental Defense Alliance

Address and Phone:
Law Office of David A. Ludder, PLLC
9150 McDougal Ct.
Tallahassee, FL 32313-4208
Tel. (850) 386-5671

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Petition was delivered by U.S. Mail as certified, return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered, to:

Chairman
Environmental Management Commission
c/o Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110

Done this 9th day of March, 2022.



David A. Ludder
Attorney for Petitioner

Meet The Alabama Environmental Management Commission

The Alabama Environmental Management Commission was established with the passage of the Alabama Environmental Management Act in 1982. The Act outlines specific duties for the Commission that include:

- Establishing rules, regulations, and environmental standards
- Developing environmental policy
- Hearing appeals of administrative actions
- Selecting the ADEM Director

Samuel L. Miller - Physician



Samuel L. Miller, M.D., serves as Chairman of the Alabama Environmental Management Commission (AEMC) and has served as a member of the AEMC in the Physician position since October 2010. Dr. Miller earned a B.S. in Physical Therapy from the University of Alabama in Birmingham (UAB), an M.D. from UAB, completing his medical internship at the Carroway Methodist Medical Center in Birmingham and his residency in orthopedic surgery at UAB. Dr. Miller retired with 26 years of experience as a Board of Orthopedic

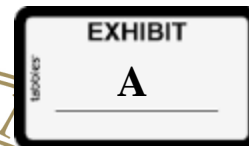
Surgery certified orthopedic surgeon, having been affiliated with hospitals in Montgomery and Prattville, and a surgical center. He is currently a board member for Baptist Medical Center Montgomery and has served as the president and a board member for Montgomery Surgery Center. He is a current and past member of six state and national medical associations. Dr. Miller is a current member of the Governor's Health Information Exchange Commission. He is a member of the Executive Leadership Team at St. James United Methodist Church and a former board member for medical affairs for the United Methodist Volunteers in Missions which serves 16 southeastern states. Endorsed by the Medical Association of the State of Alabama to serve on the AEMC, Dr. Miller brings the viewpoint of a respected physician that has held numerous leadership positions to matters considered by the Commission.

H. Lanier Brown, II - Attorney



H. Lanier Brown, II, serves as Vice Chair of the Alabama Environmental Management Commission (AEMC) and has served as a member of the AEMC in the Attorney position since April 2009. Mr. Brown received a B.S. degree in Economics from the University of Alabama in Birmingham and his law degree from the University of Alabama School of Law. Mr. Brown is a member and defense trial attorney in the Birmingham law firm Watkins & Eager, PLLC, practicing in the areas of automotive and product liability and

commercial, construction, employment and labor, healthcare, insurance, tort, and general litigation. He is a veteran lecturer on product and medical liability issues at local and national seminars. He is a member of six professional law associations and serves as an Adjunct Professor of Trial Advocacy at the University of Alabama School of Law. He was listed as one of "The Best Lawyers in America" for personal injury and product liability litigation in *Birmingham Magazine* and *Alabama Super Lawyers*. Mr. Brown brings highly respected legal experience and expertise to the Commission.



John (Jay) H. Masingill, III - Certified by National Ground Water Association Certification Program/ Professional Geologist



John (Jay) H. Masingill, III was named to the Commission in the Certified by National Ground Water Association Certification Program/Professional Geologist position in June 2018. Mr. Masingill holds a B.S. and M.S. in Geology from the University of Alabama. After service in the military, he began his professional career in 1974 as a Geologist in the Water Resources Division of the Geological Survey of Alabama and in 1976 took a position as a Geologist with the State Oil and Gas Board of Alabama. He left state

service to work as a Geologist for Tom Joiner and Associates, returning to the State Oil and Gas Board of Alabama in 1982 to serve as Assistant Oil and Gas Supervisor. He worked in that position for 28 years before retiring in 2010. In his role as Assistant Oil and Gas Supervisor, he supervised the Board's statewide oversight inspection program for oil and gas drilling, production, and plant processing operations and the geological and engineering technical review of docket items set for hearing before the Board. He worked in concert with the Board's attorney to construct legal and technical evidentiary based written orders reflecting Board hearing decisions. Prior to retirement, he held memberships in the American Association of Petroleum Geologists, the Alabama Geological Society, and was a licensed Professional Geologist in the state of Alabama. He is a current member and past chair of the University of Alabama Geological Advisory Board. In addition, he served over 25 years as chair of one of the University of Alabama's premier student awards, the John Ramsey Award. He is a past Boy Scout and Venture Scout Leader and a former member of the Administrative Board and Chair of Youth Ministries at First United Methodist Church Tuscaloosa. Mr. Masingill brings to the Commission expertise in geology and geologically-related issues and a first-hand perspective from within a state agency.

Kevin McKinstry - Biologist/Ecologist



Kevin McKinstry was appointed to the Commission in the Biologist/Ecologist position in October 2018. Mr. McKinstry holds a B.S. in Forest Resources and Conservation from the University of Florida. He is a Certified Wildlife Biologist™ and has been employed with The Westervelt Company in Demopolis and Tuscaloosa, Alabama since 1989. He is currently the Recreation Manager for The Westervelt Company having previously served as manager of a network of international sporting lodges and manager of

hunting leases for Westervelt's 500,000 acres of managed property. Prior to Westervelt he worked at Kirchman Corporation Lake "X" Ranch in St. Cloud, Florida as a Certified Wildlife Biologist and at the Florida Game and Freshwater Fish Commission as a Wildlife Specialist. He has expertise in strategic natural resource management, team leadership and development, project management, budgeting and finance, conflict resolution, staff development, marketing, and networking. He is affiliated with numerous wildlife organizations including the Wildlife Federations in Alabama, Georgia, and Mississippi, Safari Club International, the Wildlife Society, American Forest and Paper Association, The Quality Deer Management Association, National Deer Alliance, and National Wild Turkey Federation. He has served on the Board of Directors of the Alabama Wildlife Federation since 2017 and been the Vice Chairman of the Georgia Wildlife Federation Board of Directors since 2017. Mr. McKinstry brings the perspective of an experienced biologist and manager to the Commission.

Dr. Ruby L. Perry, D.V.M. - Chemist/Veterinarian



Ruby L. Perry, D.V.M. was appointed to the Commission in the Chemist/Veterinarian position in October 2018. Dr. Perry received a B.S. in Animal and Poultry Science and a Doctor of Veterinary Medicine (D.V.M.) degree from Tuskegee University. She also holds a M.S. in Microbiology from Michigan State University. She completed the veterinary radiology residency at Michigan State University and is the first African American female board-certified veterinary radiologist in the American College of Veterinary

Radiology (ACVR). Dr. Perry was on the faculty at Michigan State University for 20 years and received tenure as an associate professor of veterinary radiology before returning to Tuskegee University in 2007. She is currently completing the Ph.D. degree in Educational Leadership. She was appointed as interim dean in May of 2014 and dean in May of 2015 in the College of Veterinary Medicine at Tuskegee University. Participation in various leadership programs has afforded her opportunities to serve in a variety of leadership positions. She served as program coordinator for the American College of Veterinary Radiology, section chief of Veterinary Radiology in the College of Veterinary Medicine at Michigan State University, acting chair of the Department of Small Animal Medicine, Surgery and Radiology at Tuskegee University, interim chief of staff in the Office of the President at Tuskegee University, Associate Dean for Academic Affairs at Tuskegee University, Vice-Provost of Undergraduate Education at Tuskegee University, and two-term president of the Tuskegee Veterinary Medical Alumni Association. Dr. Perry has received various honors and awards in teaching and leadership. She has served on many committees in the academic enterprise, in her specialty as a veterinary radiologist, and actively engaged in the tripartite mission in higher education of teaching, research and instruction. Dr. Perry brings academic and leadership expertise in veterinary medicine and education to the Commission.

Mary J. Merritt - At-Large



Mary J. Merritt was named to the Alabama Environmental Management Commission (AEMC) in the At-Large position in August 2012 by Governor Robert Bentley. Mrs. Merritt is a graduate of the Alabama Aviation Technical College and earned a Criminal Justice Certification from Enterprise State Junior College. She has 25 years of experience in real estate sales and is involved with numerous real estate associations including the Alabama Association of Realtors where she currently holds the position of State Director.

Mrs. Merritt is also a member of the Women's Council of Realtors, National Association of Realtors, and Wiregrass Board of Realtors (former President). Mrs. Merritt has more than 30 years of experience as the co-owner of C & M Income Tax, Bookkeeping and Payroll business in Enterprise. As an active member of her community she has served with the Enterprise Chamber of Commerce since 2003 and is currently the President of the organization. She is a member and past President of the social club Club Yesepoch, Inc. and chairs the outreach ministry for Beth-El Faith Church. Mrs. Merritt's dealings with the public in the real estate market, her small business experience, and her community involvement bring to the Commission valuable insight into the lives and experiences of many of Alabama's citizens.

Thomas P. Walters - Professional Engineer



Thomas P. Walters, P.E. was appointed to the Commission in the Professional Engineer position in August 2018. Mr. Walters holds a B.S. and M.S. in Civil Engineering from Tennessee Technological University. He is a retired engineer who spent his entire 37-year professional career with CH2M HILL (now Jacobs). He is a licensed Professional Engineer in Florida and Alabama. Before moving to Montgomery in 1984, he worked in CH2M's Gainesville, Florida office for 3-1/2 years.

Throughout his career he worked on a variety of projects but primarily focused on water and wastewater treatment for municipalities in the Eastern United States, especially in the Southeastern states. At CH2M, he was well-known for his project management expertise and held a number of line management positions focused on project delivery and operations. Prior to his retirement in March 2018, he served as the Global Project Delivery and Quality Director for CH2M's private client sector which included a portfolio of over 3,000 projects across the globe. He has been an active member of the Alabama-Mississippi Section of American Water Works Association (AWWA) since 1981 and has held a vast number of positions in the organization, including serving as the Section representative on AWWA's Board of Directors. He has also been involved in his community as a coach in a variety of youth sports, a member of the Southeast YMCA Board of Directors, neighborhood association president, and a member of his church's building committee. Mr. Walters brings to the Commission an abundance of first-hand experience and knowledge in engineering related to environmental issues.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ENVIRONMENTAL DEFENSE
ALLIANCE and GASP, d/b/a Gasp,

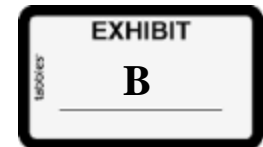
Plaintiffs,

v.

HOUSTON LANIER BROWN, II,
in his official capacity as a member of the
Alabama Environmental Management
Commission,

Defendant.

03-CV-2020-900664



**DEFENDANT HOUSTON LANIER BROWN, II'S AMENDED RESPONSE TO
PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant Houston Lanier Brown, II, in his official capacity as a member of the Environmental Management Commission ("EMC") of the Alabama Department of Environmental Management ("ADEM"), responds to Plaintiffs' First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Defendant objects to this discovery to the extent that it seeks publicly available information or information previously provided to, otherwise in the possession of, or reasonably available to Plaintiffs.

2. Defendant objects to this discovery to the extent that it is overly broad, vague, ambiguous, unduly burdensome, or not reasonably calculated to lead to the discovery of relevant information or admissible evidence.

3. The following responses are based upon information presently available to the Defendant, which Defendant believes to be correct. The responses are made without prejudice to

Defendant's rights to rely upon other subsequently discovered documents and information. Any supplementation will be made in accordance with the *Alabama Rules of Civil Procedure*.

RESPONSE TO INTERROGATORIES

Subject to and expressly reserving the foregoing general objections and reservation noted above, which are hereby expressly incorporated into Defendant's responses below, the Defendant responds as follows:

1. Did you send any electronic mail messages to W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson or to you from Joel Iverson Gilbert, W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson or receive any electronic mail messages from W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site during the calendar years of 2013 through 2019? If the answer is yes, please state the last known person or entity to have possession, custody, or control of the electronic mail messages and their last known location.

Response: Yes. However, Mr. Brown has searched for but did not locate any emails responsive to this interrogatory. Any emails responsive to this request would have been sent or received through Mr. Brown's account at Huie, Fernambucq & Stewart, LLP. Huie, Fernambucq & Stewart, LLP is the last known entity to have control of Mr. Brown's account and is located at 3291 US Highway 280, Suite 200, Birmingham, AL 35243.

2. Do you have possession, custody, or control of any electronic mail messages, in printed or digital format, from you to W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson or to you from W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site sent or received during the calendar years of 2013 through 2019?

Response: Mr. Brown has searched for but did not locate any emails responsive to this interrogatory.

3. Did you send any electronic mail messages to Joel Iverson Gilbert or receive any electronic mail messages from Joel Iverson Gilbert concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site during the calendar years of 2013 through 2019, including February 16, 2015, July 23, 2015, February 7, 2016, March 2, 2016, and April 14, 2016? If the answer is yes, please state the last known person or entity to have possession, custody, or control of the electronic mail messages and their last known location.

Response: Yes. However, Mr. Brown has searched for but did not locate any emails responsive to this interrogatory. Any emails responsive to this request would have been sent or received through Mr. Brown's account at Huie, Fernambucq & Stewart, LLP. Huie, Fernambucq & Stewart, LLP is the last known entity to have control of Mr. Brown's account and is located at 3291 US Highway 280, Suite 200, Birmingham, AL 35243.

4. Do you have possession, custody, or control of any electronic mail messages, in printed or digital format, from you to Joel Iverson Gilbert or to you from Joel Iverson Gilbert concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site sent or received during the calendar years of 2013 through 2019, including February 16, 2015, July 23, 2015, February 7, 2016, March 2, 2016, and April 14, 2016?

Response: Mr. Brown has searched for but did not locate any emails responsive to this interrogatory.

5. Did you send any letters or correspondence, in handwritten, printed or digital format, to Joel Iverson Gilbert, W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson or to you from Joel Iverson Gilbert, W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson or receive any letters or correspondence from Joel Iverson Gilbert, W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site during the calendar years of 2013 through 2019? If the answer is yes, please state the last known person or entity to have possession, custody, or control of the letters or correspondence and their last known location.

Response: Mr. Brown does not recall sending or receiving any letters or correspondence responsive to this interrogatory.

6. Do you have possession, custody, or control of any letters or correspondence, in handwritten, printed or digital format, from you to Joel Iverson Gilbert, W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson or to you from Joel Iverson Gilbert, W. Scott Phillips, Onis "Trey" Glenn, III, concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site sent or received during the calendar years of 2013 through 2019?

Response: Mr. Brown has searched for but did not locate any letters or correspondence responsive to this interrogatory.

7. Did you prepare any notes or summaries of telephone conversations, in handwritten, printed or digital format, between you and W. Scott Phillips, Onis "Trey" Glenn, III,

or David L. Roberson, concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site which took place during the calendar years of 2013 through 2019? If the answer is yes, please state the last known person or entity to have possession, custody, or control of the notes or summaries of telephone conversations and their last known location.

Response: Mr. Brown does not recall preparing any notes or summaries of telephone conversations responsive to this interrogatory.

8. Do you have possession, custody, or control of any notes or summaries of telephone conversations, in handwritten, printed or digital format, between you and W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson, concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site which took place during the calendar years of 2013 through 2019?

Response: Mr. Brown has searched for but did not locate any notes or summaries of telephone conversations responsive to this interrogatory.

9. Did you prepare any notes or summaries of telephone conversations, in handwritten, printed or digital format, between you and Joel Iverson Gilbert concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site which took place during the calendar years of 2013 through 2019, including January 8, 2015, January 26, 2015, February 18, 2015, and February 19, 2015? If the answer is yes, please state the last known person or entity to have possession, custody, or control of the notes or summaries of telephone conversations and their last known location.

Response: Mr. Brown does not recall preparing any notes or summaries of telephone conversations responsive to this interrogatory.

10. Do you have possession, custody, or control of any notes or summaries of telephone conversations, in handwritten, printed or digital format, between you and Joel Iverson Gilbert, concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site which took place during the calendar years of 2013 through 2019, including January 8, 2015, January 26, 2015, and February 19, 2015?

Response: Mr. Brown has searched for but did not locate any notes or summaries of telephone conversations responsive to this interrogatory.

11. Did you prepare any notes or summaries of meetings, in handwritten, printed or digital format, between you and W. Scott Phillips, Onis "Trey" Glenn, III, or David L. Roberson, concerning, in whole or in part, the 35th Avenue Site or Pinson Valley Neighborhood Site which took place during the calendar years of 2013 through 2019, including February 18, 2015? If the

ADDRESS OF COUNSEL:

Office of the Attorney General

P.O. Box 300152

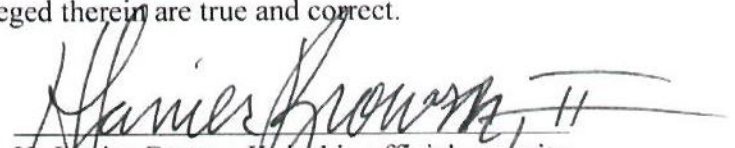
Montgomery, AL 36130

Telephone: (334) 242-7300

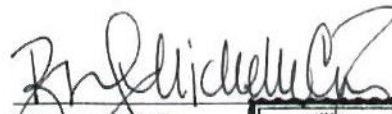
Email: Zack.Wilson@AlabamaAG.gov

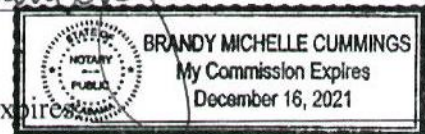
STATE OF ALABAMA)
JEFFERSONCOUNTY)

Before me, a Notary Public in and for the State of Alabama, personally appeared H. Lanier Brown, II, who, being by me first duly sworn, deposes and says on oath that he has read the foregoing Amended Response to Plaintiffs' First Set of Interrogatories and avers, that to the best of his knowledge and recollection, that the facts alleged therein are true and correct.


H. Lanier Brown, II, in his official capacity
as a member of the Alabama Environmental
Management Commission

Subscribed and sworn to before me this 5th day of November, 2021.


Notary Public
State of Alabama
My commission expires



CERTIFICATE OF SERVICE

I hereby certify that an exact copy of this document was served upon the attorneys and/or parties of record via U.S. Mail, postage prepaid and properly addressed as follows:

Haley Colson Lewis, Esq.
2320 Highland Avenue South, Suite 270
Birmingham, AL 35205
Email: haley@gaspgroup.org

David A. Ludder, Esq.
Law Office of David A. Ludder, PLLC
9150 McDougal Court
Tallahassee, FL 32312
Email: davidaludder@enviro-lawyer.com

On this the 5th day of November, 2021.


/s/ Zackary D. Wilson
Zackary D. Wilson (WIL471)
Assistant Attorney General



4/16/19

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 15, 2019**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on February 15, 2019.



Samuel L. Miller, Chair

Alabama Environmental Management Commission

Certified this 12th day of April 2019.

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 15, 2019**

**Convened: 11:05 a.m.
Adjourned: 12:09 p.m.**

Part A

**Transcript
Word Index**

Part B

**Attachment Index
Attachment 1
Attachment 2
Attachment 3
Attachment 4**

Part A

Page 1	Page 3
<p>1 ALABAMA ENVIRONMENTAL MANAGEMENT</p> <p>2 COMMISSION MEETING</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT</p> <p>10 Alabama Room</p> <p>11 1400 Coliseum Boulevard</p> <p>12 Montgomery, Alabama, 36110-2400</p> <p>13 February 15, 2019</p> <p>14 11:05 a.m.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Taken by: Victoria M. Castillo, ACCR No. 17</p>	<p>1 (WHEREUPON, proceedings began at</p> <p>2 11:05 a.m.)</p> <p>3 DR. MILLER: I'm going to call</p> <p>4 the meeting to order, so let's begin with Item</p> <p>5 No. 1. We're here to consider the minutes from</p> <p>6 the last meeting. And surely everybody has read</p> <p>7 over these minutes, which have been circulated.</p> <p>8 Do I have a motion that we accept</p> <p>9 the minutes as written?</p> <p>10 DR. PERRY: I move that we</p> <p>11 accept the minutes as written.</p> <p>12 MR. MASINGILL: I second.</p> <p>13 DR. MILLER: Is there any</p> <p>14 discussion?</p> <p>15 (No response)</p> <p>16 DR. MILLER: If not, all in</p> <p>17 favor please say "aye."</p> <p>18 (All Commissioners respond with</p> <p>19 "aye.")</p> <p>20 DR. MILLER: All opposed, "no."</p> <p>21 (No response)</p> <p>22 DR. MILLER: The ayes have it.</p> <p>23 Our next item is the report from</p>
Page 2	Page 4
<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 COMMISSION MEMBERS PRESENT:</p> <p>4 Samuel L. Miller, M.D., Chair</p> <p>5 John E. Masingill, III</p> <p>6 Kevin McKinstry</p> <p>7 Mary J. Merritt</p> <p>8 Ruby L. Perry, D.V.M.</p> <p>9 Thomas P. Walters, P.E.</p> <p>10</p> <p>11 COMMISSION MEMBER NOT PRESENT:</p> <p>12 E. Lanier Brown, II, Esquire, Vice Chair</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15 Robert Tambling, AEMC Legal Counsel</p> <p>16 Kayla A. Currie, AEMC Legal Counsel</p> <p>17 Dabi Thomas, AEMC Executive Assistant</p> <p>18 Lance R. LeFleur, ADEM Director</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>1 Mr. LeFleur, our ADEM Director.</p> <p>2 MR. LEFLEUR: Good morning.</p> <p>3 Welcome to the third meeting of the Alabama</p> <p>4 Environmental Management Commission for fiscal</p> <p>5 year 2019. Today's report will: update you on</p> <p>6 the Department's funding for this fiscal year and</p> <p>7 plans for fiscal year 2020; describe activities</p> <p>8 of the Land Division, including an analysis of</p> <p>9 the Department's Hazardous Waste program using</p> <p>10 EPA dashboards; follow up on several issues</p> <p>11 raised by citizens in the December Commission</p> <p>12 meeting; and, recognize an accomplishment by one</p> <p>13 of our personnel.</p> <p>14 We are four months into fiscal year</p> <p>15 2019 and on target with funding and expenditures.</p> <p>16 It appears the trends of nearly flat revenues and</p> <p>17 the need for increased expenditures to cover</p> <p>18 already imbedded inflation, unfunded state and</p> <p>19 federal mandates, and upgrades to several large</p> <p>20 software systems are continuing. Future gains in</p> <p>21 efficiency are not anticipated to be able to</p> <p>22 overcome the emerging funding gap. Increased</p> <p>23 fees from the regulated industries are not a</p>

Pages intentionally omitted

Page 33

1 that we acknowledge that the petitioner Invictus
2 Energy has withdrawn a request for a hearing on
3 EMC Docket No. 18-05.
4 Along with that, we note that on
5 February 14th, yesterday, Alabama Treatment and
6 Energy Company filed a withdrawal of their motion
7 to grant an 180-day stay for compliance with an
8 administrative order.
9 The next item is Danny Clements
10 Builder versus ADEM, Docket No. 18-07, an NPDES-
11 related matter. We have all been circulated the
12 Hearing Officer's report on this matter, and we
13 would open up the conversation for any discussion
14 prior to a motion.
15 (No response)
16 DR. MILLER: If there is none,
17 then do I hear a motion from the Commission
18 regarding the report of the Hearing Officer?
19 MR. MASINGILL: Move to adopt
20 the report of the Hearing Officer.
21 DR. MILLER: Is there a second?
22 DR. PERRY: Second.
23 DR. MILLER: All right. Any

Page 34

1 further discussion?
2 (No response)
3 DR. MILLER: If not, I will call
4 for the question. All in favor of the motion
5 please say "aye."
6 (All Commissioners respond with
7 "aye.")
8 DR. MILLER: All opposed?
9 (No response)
10 DR. MILLER: None? The "ayes"
11 have it.
12 (All Commissioners sign the
13 adoption.)
14 DR. MILLER: All right. I know
15 of no other business in front of the Commission
16 for this meeting. I will note that our next
17 Commission meeting is scheduled for April 12th,
18 2019, which is kind of odd in that it's moved
19 back a week, looks like to me.
20 MS. THOMAS: I think it had to
21 do with Good Friday.
22 DR. MILLER: Okay. I wasn't
23 aware when Good Friday was. I apologize for

Page 35

1 that.
2 All right. Now, we've had two
3 requests for three-minute presentations to the
4 Commission this morning. Our first one is
5 Mr. David Ludder.
6 And, Mr. Ludder, please come forward
7 and limit your comments to three minutes, please.
8 MR. LUDDER: Thank you,
9 Mr. Chairman, members of the Commission. My name
10 is David Ludder. I represent the Environmental
11 Defense Alliance, and I'm here today to present
12 you with some new information on the issue of
13 e-mails. At the last meeting of the Commission,
14 your attorney, Mr. Tambling, informed you-all
15 that he was not aware of any statutes or other
16 legal authority that would authorize an agency in
17 any way to restrict or regulate how its members
18 are allowed to use their own personal -- their
19 own private personal e-mail accounts. He then
20 said: So for that reason alone, I would
21 recommend that the Commission not take any action
22 on this proposal. I think Mr. Ludder's best
23 recourse would be to take this matter up with the

Page 36

1 legislature and have them pass a law requiring it
2 if they so desire. Chairman Miller said: I
3 guess the answer, Mr. Ludder, would be go to the
4 legislature and get them to pass it.
5 Well, not being satisfied with that
6 response, I went back to my office and did some
7 research and found that the legislature has
8 already addressed the issue in the Uniform
9 Electronic Transactions Act. In that act, the
10 legislature gave every state agency that has
11 authority to adopt rules -- shouldn't say
12 "every," most state agencies. You are not
13 excepted. If you have authority to adopt rules,
14 you may adopt rules governing the manner in which
15 electronic records shall be sent, received, and
16 stored, and you may specify the systems
17 established for such purposes.
18 So you do have the authority to
19 adopt rules regarding the use of e-mail systems
20 and the storage of e-mail. In other words, you
21 could require that all members of this Commission
22 use a state e-mail address and that all e-mails
23 be stored on a state system rather than a

Page 37

1 personal system. That is -- that statute is
2 Exhibit 1A in the handout that I provided.
3 Exhibit 1B is an attorney general's
4 opinion interpreting that statute. And in that
5 opinion, the attorney general said the secretary
6 of state has authority to promulgate rules
7 applicable to online voter registration, where
8 otherwise the secretary of state statutes did not
9 speak to online activity. The attorney general
10 concluded that this statute gave the secretary of
11 state that authority.
12 A couple of other items I wanted to
13 address regarding e-mails. Exhibit 2A and 2B, 2D
14 and 2C impose requirements on public officers
15 such as yourselves not to destroy or dispose of
16 any public records that you have in your
17 possession. That includes e-mails that discuss
18 business -- government activity. What that means
19 is that you can't hit the delete button on your
20 computer for a government e-mail without
21 violating these provisions. If you intentionally
22 hit that delete button, you have committed a
23 crime.

Page 38

1 So wouldn't it be easier to make
2 sure that all those e-mails are generated and
3 stored in a state system where you don't have to
4 be worried about that? At the very least, you
5 had better maintain a backup system for all those
6 e-mails.
7 Exhibit 2A is a statute which says
8 that public officers shall accurately keep in and
9 for their respective offices or places of
10 business all records that will afford full and
11 detailed information in reference to the
12 activities or business carried out by such
13 officer.
14 I note that -- well, this statute
15 was probably written back in 1923. So at that
16 time agencies probably hadn't developed very far,
17 and public officers probably didn't have -- often
18 didn't have a central office such as you have
19 here. But in that statute, it requires that the
20 public records be kept in offices or places of
21 business of those public officers.
22 Exhibit 2B is an attorney general's
23 opinion interpreting that statute. And in that

Page 39

1 case the agency did not have a central office.
2 And the question was: Where do we keep public
3 records if we don't have a central office? The
4 attorney general responded that they should be
5 kept where they will be reasonably accessible to
6 those persons who need to consult them and have a
7 right to see them. That's the public. They
8 should be under the supervision of a responsible
9 person selected by the board.
10 You already have that. You have a
11 central facility here. You have a responsible
12 person who can manage those records. That's
13 where they should be kept. Now, if you were to
14 ask the attorney general for a formal opinion
15 today, I suspect he would say your records should
16 be kept here at the central office where they can
17 be accessed by the public. But you haven't asked
18 for a formal attorney general's opinion. An
19 opinion from Mr. Tambling, while I'm sure he
20 exercises his best judgment, is not a formal
21 opinion from the attorney general.
22 Now, the -- or two more things I
23 wanted to mention were that there are several

Page 40

1 sections in the code that talk about public
2 records of former public officials. Exhibits 2E,
3 2F, and 2G address those. 2E says: When a
4 public official vacates his office, he has to
5 turn over all public records to his successor.
6 Exhibit 2F says that: The successor
7 to a person who has vacated their office has the
8 right to demand of the predecessor in office that
9 he turn over public records. And 2G says: If a
10 person dies in public office, the successor to
11 that office can demand of any person who has
12 custody of those records that they turn over
13 those public records.
14 Now, I imagine -- well, I won't
15 imagine. Mr. Miller, I believe your predecessor
16 in office was Conrad Pierce. I could be wrong.
17 I believe that's the case. Did he turn over his
18 public records to you as his successor in office?
19 DR. MILLER: No.
20 MR. LUDDER: Mr. Walters, you're
21 the professional engineer. James Laier was your
22 predecessor. Did he turn over any public records
23 to you?

Page 41

1 MR. WALTERS: No.
2 MR. LUDDER: Right. Did either
3 of you or any of you ask your predecessors to
4 turn over to you any public records in their
5 custody?
6 MR. WALTER: No.
7 MR. LUDDER: That's something
8 that ought to be done as a matter of course.
9 These are public records. They're going to be
10 lost forever if you don't do what the statute
11 suggests that you do.
12 Lastly, Exhibits 3A and 3B are
13 publications of the Department of Archives and
14 History. That department is responsible for
15 advising agencies about records management, and
16 it's responsible for collecting and keeping
17 public records once they're use has kind of been
18 minimized. But they do provide advice to
19 agencies. I would certainly encourage you to
20 contact them about your e-mails.
21 In these two documents, Exhibit 3A
22 and 3B, they both say that they encourage
23 official government e-mail accounts to be used in

Page 42

1 the conduct of public business. Of course they
2 can't require it, but they do encourage it for
3 obvious reasons. These are public records. They
4 have to be preserved. They go through pretty
5 extensive detail about the fact that e-mails are
6 indeed public records. And as long as they
7 address government activity, they are public
8 records.
9 When I say "public records," I'm not
10 talking about records that are exempt -- well, I
11 am talking about all public records. But calling
12 something a public record does not mean it's not
13 exempt from disclosure. It can still be exempt
14 from disclosure. But regardless of whether it's
15 exempt, it's a public record and has to be
16 maintained, preserved, not destroyed. So don't
17 hit the delete button; you may be committing a
18 crime.
19 Thank you. And if there's any
20 questions, I will be happy to take them.
21 DR. MILLER: Thank you,
22 Mr. Ludder.
23 Next we have a Haley Lewis

Page 43

1 representing Gasp.
2 MS. LEWIS: Good morning,
3 Commissioners. Thank you for the time to speak
4 to you. As you mentioned, I'm Haley Lewis. I
5 work for an organization called Gasp, and you
6 heard from our director, Michael, at the last --
7 at the December meeting. And I'm here today to
8 bring some new information regarding a topic
9 Michael discussed with you. And just to refresh
10 your memory, we asked -- we renewed our request
11 from 2014, which is to advise the Director that
12 his position on the National Priority listing --
13 hence force, I will say "NPL" for ease of it
14 coming out of my mouth -- is wrong.
15 After reviewing the meeting minutes
16 from the December meeting, I'd like to address
17 several issues I noticed that were raised by
18 Dr. Miller, Commissioner Brown, Director LeFleur,
19 and a member of the ADEM staff. I also have a
20 letter today that I will give you when I am done
21 presenting that goes way more in-depth on these
22 points that I'm making. They are all
23 evidence-based arguments that are based in a

Page 44

1 strong legal analysis of Gasp's position that the
2 35th Avenue site should be listed on the NPL.
3 First and foremost, we must discuss
4 the history of the proposed listing of the 35th
5 Avenue site on the NPL as it is grounded in facts
6 in evidence. Commissioner Brown made a statement
7 in December: Whatever action we take must be
8 based on whether there is a risk to public
9 health. I'm sure you-all are aware of ADEM's
10 mission and for what the EMC is charged with.
11 Nowhere enumerated in that mission or the duties
12 of the EMC is public health mentioned. The
13 environment, however, is mentioned several times.
14 So I will first raise that point.
15 Secondly -- I have no idea how to
16 get this where you guys can see it for a long
17 period of time. But this is what I will be
18 referring to as "the rule." It is
19 40 CFR 300.425(c). I will set it here knowing
20 that you guys probably can't read it from the
21 floor.
22 As Michael mentioned to you-all in
23 December, only one element of these two need to

Pages intentionally omitted

Attachment 1

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 15, 2019

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

<u>ITEM</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on December 14, 2018**	2
2. Report from the ADEM Director	2
3. Report from the Commission Chair	2
4. Consideration of proposed amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations	2
5. <u>Invictus Energy, Inc. v. ADEM</u> EMC Docket No. 18-05	2
6. <u>Alabama Treatment and Energy Company, Inc. v. ADEM</u> EMC Docket No. 18-06	2
7. <u>Danny Clements Builder, Inc. v. ADEM</u> EMC Docket No. 18-07 (NPDES-Related Matter)	3
8. Other business	3
9. Future business session	3
PUBLIC COMMENT PERIOD	3
Brief statements by members of the public registered to speak	3

* 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 DECEMBER 14, 2018
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PROPOSED AMENDMENTS TO ADEM ADMINISTRATIVE CODE 335-14, HAZARDOUS WASTE PROGRAM REGULATIONS

The Commission will consider proposed amendments to ADEM Administrative Code 335-14, Hazardous Waste Program Regulations. Revisions to Division 14 Code are being proposed to maintain the program's authorized status, to adopt new rules published by EPA, and to make typographical and grammatical corrections. The first of the new rules published by EPA proposed for adoption is the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule. This rule amends existing regulations regarding the export and import of hazardous wastes from and into the United States. The second is the Hazardous Waste Electronic Manifest System User Fee Rule, and is the second in a series of new rules that implement the national electronic manifest system. The third rule is the Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, promulgated in Response to vacatures ordered by the United States Court of Appeals for the District of Columbia Circuit. The Department held a public hearing on the proposed amendments on December 7, 2018.

5. INVICTUS ENERGY, INC. V. ADEM, EMC DOCKET NO. 18-05

The Commission will acknowledge for the record Petitioner Invictus Energy, Inc.'s withdrawal of the request for hearing in this matter.

6. ALABAMA TREATMENT AND ENERGY COMPANY, INC. V. ADEM, EMC DOCKET NO. 18-06

The Commission will consider Petitioner Alabama Treatment and Energy Company, Inc.'s *Motion to Stay 180-Day Deadline for Compliance With Administrative Order*. Respondent ADEM filed an *Objection to Request for Stay of 180-Day Deadline for Compliance With Administrative Order*. The subject of the motion to stay and the appeal/request for hearing is ADEM Administrative Order No. 18-067-HW issued on May 16, 2018, to Invictus Energy, Inc. and Alabama Treatment and Energy Company, Inc., Fort Mitchell, Russell County, Alabama, EPA Identification No. ALR000005322.

7. DANNY CLEMENTS BUILDER, INC. V. ADEM, EMC DOCKET NO. 18-07 (NPDES-RELATED MATTER)

The Commission will consider the *Report of Hearing Officer*, which includes Findings of Fact, Conclusions of Law and Recommendation. The subject of the appeal/request for hearing is ADEM Administrative Order No. 18-083-LD issued on June 21, 2018, to Danny Clements, Danny Clements Builder, Inc., Clements Eastchase, Montgomery, Montgomery County, Alabama, FID 59204, Unpermitted Site.

8. OTHER BUSINESS

9. FUTURE BUSINESS SESSION

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.

1. **AEMC has statutory authority to adopt rules prescribing the manner in which members' electronic mail is sent, received, and stored.**

Exhibit 1A (Ala. Code 1975 § 8-1A-18):

Any governmental agency of the State that has rulemaking authority reviewable under 41-22-23 may determine by rule the manner in which electronic records shall be sent, received, and stored and may specify the systems established for such purposes.

Exhibit 1B (Ala. A.G. Op. 2009-084):

Ala. Code § 8-1A-18 authorizes the Secretary of State to promulgate rules applicable to online voter registration.

2. **Public officers shall keep, protect, preserve and ensure availability of records.**

Exhibit 2A (Ala. Code 1975 § 36-12-2):

Public officers shall accurately keep in and for their respective offices or places of business all records that will afford full and detailed information in reference to the activities or business carried on by such officer.

all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction.

Exhibit 2B (Ala. A.G. Op. 1997-235):

A board which has no specific office or physical facility is responsible for determining where, and by whom, its records shall be kept. They should be kept where they will be reasonably accessible to those persons who need to consult them or have a right to see them. They should be under the supervision of a responsible person selected by the board.

Exhibit 2C (Ala. Code 1975 § 41-13-21):

No state officer cause any state record to be destroyed or otherwise disposed of without first obtaining approval of the State Records Commission

Exhibit 2D (Ala. Code 1975 § 13A-10-12):

Intentional destruction, mutilation, removal, or substantial impairment of the availability of a governmental record is a Class A misdemeanor.

The refusal to deliver up a governmental record in possession of a person upon proper request of a person lawfully entitled to receive such record for examination or other purposes is a Class A misdemeanor.

Exhibit 2E (Ala. Code 1975 § 36-12-4):

All public officers of this state shall turn over to their successors in office, together with a list thereof, all current books, papers and documents pertaining to the business, affairs or transactions of their office

Exhibit 2F (Ala. Code 1975 § 36-12-20):

when any office is vacated, except by the death of the incumbent, all books, papers, property and money belonging or appertaining to such office shall, on demand, be delivered over to the qualified successor

Exhibit 2G (Ala. Code 1975 § 36-12-26):

Upon the death of a person holding office, the qualified successor to such office may demand such books, papers or property from the person having the same in his possession

3. **Alabama Department of Archives and History Recommendations**

One of the Alabama Department of Archives and History's central missions is to aid state and local governments in the management of their records. Staff from the Alabama Department of Archives and History work with state and local agencies on records and information management and on the preservation of permanent records. It also conducts free on-site visits for assistance and training.

Exhibit 3A ("Email"):

The use of official government email accounts is encouraged for the conduct of public business.

Public officials are legally obligated to create and maintain records that adequately document the activities or business carried on by such officials.

Email records are subject to the same legal requirements regarding access, preservation and retention as any other governmental records.

Exhibit 3B ("What about Government Email" blog post):

Records created or received by a public officer while engaging in government activity using a personal email account are government records. "This is one reason that the use of official government email accounts is encouraged when conducting public business."

Email records are subject to the same legal requirements regarding access and retention as any other governmental records.

Alabama Statutes



Title 8. COMMERCIAL LAW AND CONSUMER PROTECTION

Chapter 1A. UNIFORM ELECTRONIC TRANSACTIONS ACT

Current through Act 579 of the 2018 Legislative Session

§ 8-1A-18. Acceptance and distribution of electronic records by governmental agencies

- (a) Except as otherwise provided in subsection (f) of Section 8-1A-12, the Alabama Supreme Court and any other court or judicial official or entity with rulemaking authority and **each governmental agency of this state with rulemaking authority** reviewable under Section 41-22-23 **may determine by rule whether, and the extent to which, it will** send and accept electronic records and electronic signatures to and from other persons and otherwise **create, generate, communicate, store, process, use, and rely upon electronic records** and electronic signatures.
- (b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, **may specify** each of the following:
 - (1) **The manner and format in which the electronic records shall be created, generated, sent, communicated, received, and stored and the systems established for those purposes.**
 - (2) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature shall be affixed to the electronic record, and the identity of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process.
 - (3) **Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.**
 - (4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.
- (c) Except as otherwise provided in subsection (f) of Section 8-1A-12, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.



2009-084

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

June 23, 2009

TROY KING
ATTORNEY GENERAL

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MONTGOMERY, AL 36130
(334) 242-7300
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Honorable Beth Chapman
Secretary of State
State Capitol - Suite S-105
600 Dexter Avenue
Montgomery, Alabama 36130-4650

Secretary of State – Electronic Signature
– Uniform Electronic Transactions Act –
Voter Registration – Rules and
Regulations

The Secretary of State is authorized under section 17-3-1 of the Code of Alabama to promulgate rules and regulations regarding voter registration. Because the Secretary of State is authorized to promulgate rules regarding voter registration, the Uniform Electronic Transactions Act authorizes the Secretary of State to promulgate rules that would allow the development and use of an online voter registration system.

Dear Secretary Chapman:

This opinion of the Attorney General is issued in response to your request.

QUESTION

As Secretary of State, am I authorized under the Uniform Electronic Transactions Act to promulgate rules that would allow the development and use of an online voter registration system for qualified overseas members of the

military and overseas defense contractors, as well as their eligible overseas family members?

FACTS AND ANALYSIS

Alabama's adoption of the Uniform Electronic Transactions Act ("UETA") is codified at section 8-1A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 8-1A-1 to 8-1A-20 (2002). The majority of the act relates to transactions where the government acts as a commercial party. *See* ALA. CODE § 8-1A-3 (2002) ("Scope"). By contrast, sections 8-1A-17 through 8-1A-19 allow governmental agencies with rulemaking authority to create and process electronic records in other circumstances. Specifically, section 8-1A-18(a) states, in pertinent part, as follows:

(a) Except as otherwise provided in subsection (f) of Section 8-1A-12, the Alabama Supreme Court and any other court or judicial official or entity with rulemaking authority and ***each governmental agency of this state with rulemaking authority reviewable under Section 41-22-23 may determine by rule whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.***

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify each of the following:

(1) ***The manner and format in which the electronic records shall be created, generated, sent, communicated, received, and stored and the systems established for those purposes.***

(2) If electronic records must be signed by electronic means, the type of

electronic signature required, the manner and format in which the electronic signature shall be affixed to the electronic record, and the identity of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process.

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

ALA. CODE § 8-1A-18(a) (2002). Pursuant to section 17-3-1 of the Code of Alabama, the Secretary of State has the authority to promulgate rules and regulations regarding voter registration. *See* ALA. CODE § 17-3-1 (2006) (“[t]he Secretary of State may promulgate rules for the receipt of applications for registration and the expedient administration of those applications. . . .”). Accordingly, it is the opinion of this Office that section 8-1A-18 gives the Secretary of State authority to promulgate rules applicable to online voter registration.

This interpretation is further supported by a review of the relevant Official Comments that follow section 8-1A-19 of the Code. The UETA was model legislation that was offered for consideration of state legislatures nationwide. Sections 17-19 of the UETA were optional provisions for the states to consider. Alabama chose to make minor changes to these sections and to codify them as sections 8-1A-17 through 8-1A-19. The Official Comment to the proposed model act, sections 17-19 state, in pertinent part, as follows:

1. Sections 17-19 have been bracketed as optional provisions to be considered for adoption by each State. Among the barriers to electronic commerce are barriers which exist in the use of electronic media by state governmental

agencies . . . whether among themselves or in external dealing with the private sector. In those circumstances where the government acts as a commercial party, e.g., in areas of procurement, the general validation provisions of this Act will apply. That is to say, the government must agree to conduct transactions electronically with vendors and customers of government services.

However, there are other circumstances when government ought to establish the ability to proceed in transactions electronically. Whether in regard to records and communications within and between governmental agencies, or with respect to information and filings which must be made with governmental agencies, these sections allow a State to establish the ground work for such electronicization.

2. *The provisions of Sections 17-19 are broad and very general.* In many States they will be unnecessary because enacted legislation designed to facilitate governmental use of electronic records and communications is in place. However, in many States broad validating rules are needed and desired. Accordingly, this Act provides these sections as a baseline.

. . .

3. *The provisions in Sections 17-19 are broad and general to provide the greatest flexibility and adaptation to the specific needs of the individual States.* The differences and variations in the organization and structure of governmental agencies mandate this approach. . . .

4. *Section 17 authorizes state agencies to use electronic records and electronic signatures generally for intra-governmental purposes, and to convert written records and manual signatures to electronic records and*

Honorable Beth Chapman
Page 5

electronic signatures. . . . It also authorizes the destruction of written records after conversion to electronic form.

5. *Section 18 broadly authorizes state agencies to send and receive electronic records and signatures in dealing with non-governmental persons. . . .*

ALA. CODE § 8-1A-19 Official Comment (2002) (emphasis added).

CONCLUSION

The Secretary of State is authorized under section 17-3-1 of the Code of Alabama to promulgate rules and regulations regarding voter registration. Because the Secretary of State is authorized to promulgate rules regarding voter registration, the Uniform Electronic Transactions Act authorizes the Secretary of State to promulgate rules that would allow the development and use of an online voter registration system.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in black ink, reading "Brenda F. Smith". The signature is written in a cursive style with a large, stylized "B" and "S".

BRENDA F. SMITH
Chief, Opinions Division

TK/MMG
813415/131030

§ 36-12-2. Public officers and servants to accurately maintain and preserve from loss, destruction, etc., complete books, papers, files, etc.



Alabama Statutes

Title 36. PUBLIC OFFICERS AND EMPLOYEES

Chapter 12. MAINTENANCE, USE, ETC., OF PUBLIC PROPERTY, RECORDS, ETC

Article 1. General Provisions

Current through Act 579 of the 2018 Legislative Session

§ 36-12-2. Public officers and servants to accurately maintain and preserve from loss, destruction, etc., complete books, papers, files, etc

All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction.

Cite as Ala. Code § 36-12-2 (1975)

History. Acts 1915, No. 237, p. 287, § 1; Code 1923, §2690; Code 1940, T. 41, §139.

OFFICE OF THE ATTORNEY GENERAL



97-00235

EXHIBIT

2B

BILL PRYOR
ATTORNEY GENERAL
STATE OF ALABAMA

JUL 25 1997

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable Oliver Kitchens
Attorney, Randolph County
Hospital Association
108 West Point Street, Suite I
Roanoke, AL 36274

County Hospital Associations
- Boards of Directors -
Sunshine Law - Public Records
- Hospitals

County hospital association
board of directors respon-
sible for maintaining its
records at an appropriate
location under supervision
of a responsible person
designated by the board.

Dear Mr. Kitchens:

This opinion of the Attorney General is issued in
response to your request.

QUESTIONS

1. Since the Randolph County Hospi-
tal Association does not have an office or
place of business, where should the records
and minutes of the Association be kept? By
whom should these records be kept?

2. As the Directors of the Asso-
ciation have, pursuant to ALA. CODE
§ 22-21-52 (1975) appointed for each
hospital and clinic a separate executive
committee, may the records and minutes of
each executive committee be maintained at
their own separate facilities, or should
all records and minutes of these committees

and the Association Directors be kept together?

FACTS, LAW, AND ANALYSIS

The Randolph County Hospital Association, Inc., is a public entity organized in 1949 pursuant to ALA. CODE §§ 22-21-50 through 22-21-57 (1975) (all cites are to the CODE). It is responsible for two hospitals and several clinics. As required by the statute, the Association is governed by a Board of Directors. In addition, each hospital and clinic has a separate board, as authorized by § 22-21-52. The statute refers to a separate executive committee for each entity. As we understand the facts, these executive committees are referred to locally as "Little Boards of Directors" or "Little Boards," while the Board of the Association is referred to as the "Big Board."

While the several hospitals and clinics each have their own physical facilities, the Association itself has no specific office or physical facility. Its meetings are held at banquet rooms, restaurants, hospital dining rooms, and other facilities that are open and available to the public.

Your questions arise because § 36-12-2 requires that the records of the Association, such as the minutes thereof, be kept at its office or place of business. Specifically, § 36-12-2 provides:

All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction.

As a practical matter, the Hospital Association has records, and these records must be stored, protected, and maintained by someone, at some place. It is one of the responsibilities of the Board of Directors to determine where, and by whom, its records are to be kept. These records should be kept where they will be protected and preserved, and where they will be reasonably accessible to those persons who need to consult them or have a right to see them. They should be under the supervision of a responsible person selected by the Board.

The Board should consult with the Local Public Records Commission at the State Department of Archives and History regarding disposition of records no longer needed in the day-to-day operation of the Association.

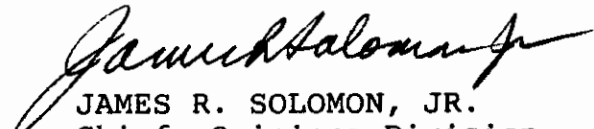
CONCLUSION

The maintenance of the records of the County Hospital Association is the responsibility of the Board of Directors of the Association. The Board may designate a responsible person and an appropriate location to be the office at which the records of the Association are to be maintained. Such an office should be reasonably accessible to persons who have a right to consult these records. Likewise, the records of subsidiary organizations may be maintained at appropriate and accessible locations under the supervision of a responsible person.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Philip C. Davis of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

BP/PCD/jho
K7.97/OP

§ 41-13-21. State Records Commission to make determination as to state records to be preserved or destroyed, etc., after or without microfilming; classification of records; state officers, etc., not to cause destruction, etc., of records without prior approval of commission; Supreme Court to determine disposition of court records.



Alabama Statutes

Title 41. STATE GOVERNMENT

Chapter 13. PUBLIC RECORDS

Article 2. State and Local Government Records Commissions

Current through Act 579 of the 2018 Legislative Session

§ 41-13-21. State Records Commission to make determination as to state records to be preserved or destroyed, etc., after or without microfilming; classification of records; state officers, etc., not to cause destruction, etc., of records without prior approval of commission; Supreme Court to determine disposition of court records

The State Records Commission shall be charged with the responsibility of determining which state records shall be permanently preserved because of historical value, which state records may be destroyed or otherwise disposed of after they have been microfilmed and which state records may be destroyed or otherwise disposed of without microfilming. The commission may classify the different types of records accordingly.

No state officer or agency head shall cause any state record to be destroyed or otherwise disposed of without first obtaining approval of the State Records Commission; provided, however, that records of the courts within the Unified Judicial System may be disposed of in the manner and in accordance with such procedures as may be prescribed by rule of the Supreme Court, after consultation with the State Records Commission. Any such retention schedule prescribed by rule of the Supreme Court pertaining to records of the Unified Judicial System shall be deemed sufficient authorization for disposal and shall supersede any prior retention schedule with respect to such records, other provisions of the law to the contrary notwithstanding.

Cite as Ala. Code § 41-13-21 (1975)

History. Acts 1955, No. 565, p. 1226, §6; Acts 1967, No. 425, p. 1095; Acts 1980, No. 80-636, p. 1202.

§ 13A-10-12. Tampering with governmental records.

Alabama Statutes

Title 13A. CRIMINAL CODE

Chapter 10. OFFENSES AGAINST PUBLIC ADMINISTRATION

Article 1. Obstruction of Public Administration

Current through Act 579 of the 2018 Legislative Session

§ 13A-10-12. Tampering with governmental records

- (a) A person commits the crime of tampering with governmental records if:
- (1) He knowingly makes a false entry in or falsely alters any governmental record; or
 - (2) **Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes or otherwise substantially impairs the verity or availability of any governmental record;** or
 - (3) **Knowing he lacks the authority to retain a governmental record he refuses to deliver up the record in his possession upon proper request of a person lawfully entitled to receive such record for examination or other purposes.**
- (b) Tampering with governmental records is a Class A misdemeanor.

Cite as Ala. Code § 13A-10-12 (1975)

History. Acts 1977, No. 607, p. 812, §4555.

§ 36-12-4. Public officers and servants to deliver current papers, books, etc., to successors in office.



Alabama Statutes

Title 36. PUBLIC OFFICERS AND EMPLOYEES

Chapter 12. MAINTENANCE, USE, ETC., OF PUBLIC PROPERTY, RECORDS, ETC

Article 1. General Provisions

Current through Act 579 of the 2018 Legislative Session

§ 36-12-4. Public officers and servants to deliver current papers, books, etc., to successors in office

All public officers and servants of this state shall turn over to their successors in office, together with a list thereof, all current books, papers and documents pertaining to the business, affairs or transactions of their office, taking a receipt therefor, which said receipt shall also contain a list of all such books, papers and documents.

Cite as Ala. Code § 36-12-4 (1975)

History. Acts 1915, No. 237, p. 287, § 4; Code 1923, §2693; Code 1940, T. 41, §142.

§ 36-12-20. Papers, property, etc., to be delivered to successor upon vacation of office.

Alabama Statutes



Title 36. PUBLIC OFFICERS AND EMPLOYEES

Chapter 12. MAINTENANCE, USE, ETC., OF PUBLIC PROPERTY, RECORDS, ETC

Article 2. Recovery of Papers, Property, etc., by Successors to Office

Current through Act 579 of the 2018 Legislative Session

§ 36-12-20. Papers, property, etc., to be delivered to successor upon vacation of office

In all cases in which it is not otherwise expressly provided, when any office is vacated, except by the death of the incumbent, all books, papers, property and money belonging or appertaining to such office shall, on demand, be delivered over to the qualified successor.

Cite as Ala. Code § 36-12-20 (1975)

History. Code 1852, §154; Code 1867, §193; Code 1876, §206; Code 1886, §301; Code 1896, §3133; Code 1907, §1549; Code 1923, §2683; Code 1940, T. 41, §132.

§ 36-12-26. Proceedings for recovery of papers, property, etc., by successor to office upon death of incumbent, etc.



Alabama Statutes

Title 36. PUBLIC OFFICERS AND EMPLOYEES

Chapter 12. MAINTENANCE, USE, ETC., OF PUBLIC PROPERTY, RECORDS, ETC

Article 2. Recovery of Papers, Property, etc., by Successors to Office

Current through Act 579 of the 2018 Legislative Session

§ 36-12-26. Proceedings for recovery of papers, property, etc., by successor to office upon death of incumbent, etc

If any person holding any office in this state dies or his office in any way becomes vacant and any books, papers or property belonging or appertaining to such office come into the possession of any person, the qualified successor to such office may, in the manner before prescribed in Sections 36-12-20 through 36-12-25, demand such books, papers or property from the person having the same in his possession; and, on the same being withheld, an order may be obtained and the person charged may, in like manner, make oath of the delivery of all such books, papers and property that ever came into his possession; and, in case of his failure to make such oath and to deliver up the books, papers or property so demanded, such person shall be committed to jail and a search warrant may be issued and the books, papers, or property seized by virtue thereof and delivered to the plaintiff, as prescribed in Sections 36-12-20 through 36-12-25.

Cite as Ala. Code § 36-12-26 (1975)

History. Code 1852, §160; Code 1867, §199; Code 1876, §212; Code 1886, §307; Code 1896, §3139; Code 1907, §1555; Code 1923, §2689; Code 1940, T. 41, §138.

Alabama Department of Archives and History



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Email

Electronic Records

File Naming

File Formats

Digital Photographs

Email

Websites

- Government records, including email:
 - Facilitate efficient conduct of government programs and services
 - Ensure effective management of government information
 - Provide adequate documentation of government activities
- Public officials are legally obligated to create and maintain records that adequately document agency business (Code of Alabama 1975, § 36-12-2).
 - Email is an important communication tool for conducting government business in the State of Alabama.
- The use of official government email accounts is encouraged for the conduct of public business.
 - Alabama issues a professional e-mail account for each new employee and public official.
- The retention of email is dependent upon the content of the email, not where the email account resides.
 - Alabama law stipulates that any document is a government record when it is created by a government employee in the course of conducting public business - not limited to those only created and/or stored on government property. (Code of Alabama 1975, § 41-13-1).
- Alabama Employee Handbook states:
 - “all electronic communications are expected to comply with relevant Federal and State laws as well as State policies and standards formulated to ensure the integrity and availability of e-mail system resources.”
- Email messages are subject to the same retention requirements as the same type of records in another format or medium.
 - Government e-mail messages must be retained and disposed of according to the records disposition authority (RDA) approved by the appropriate records commission for that agency (Code of Alabama 1975, §§ 41-13-21 and 41-13-23).

- Record retention is dependent on the information in the record, not the format.
- Intentionally destroying, mutilating, removing, or altering a record can be a Class A Misdemeanor, punishable by up to one year in prison and a \$6,000 fine. (Code of Alabama 1975, §§ 13A-5-7 and 13A-5-12).
- Email records are subject to the same legal requirements regarding access as any of the agency's other government records, as governed by Alabama's open records law (Code of Alabama 1975, § 36-12-40).

"We tell the story of the people of Alabama by preserving records and artifacts of historical value and promoting a better understanding of Alabama history."

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What about Government Email?

OCTOBER 30, 2018 ~ FORTHERECORDADAH

Can you imagine being able to conduct government business in the State of Alabama without the use of email? In general, public officials are legally obligated to create and maintain records that adequately document agency activities. These government records – including email – facilitate the efficient conduct of government programs and services; ensure effective management of government information; and provide documentation of government business. Considering this, what rules and best practices apply to email when it comes to managing and retaining government records?

Let's define government email. The state of Alabama issues a professional e-mail account for each new employee and public official. However, Alabama law stipulates that *any* document is a government record when it is created by a government employee in the course of conducting public business – not just those documents created with and/or stored on government property. If an employee is engaging in government activities with his or her personal email account, those emails are government records. This is one reason that the use of official government email accounts is encouraged when conducting public business.

How long must email be maintained by government agencies? It depends. Email itself is not a record type but a format. Because records retention relies on the information in a record and not on the format, agencies cannot apply one retention to all email messages.

Government email messages must be retained and disposed of according to the [Records Disposition Authority \(RDA\)](#) approved by the appropriate records commission for that agency. For example, if your agency's RDA requires grant project files to be maintained "six years after submission of the final federal financial report," then email associated with the grant project file would have that same six-year retention. Email messages are subject to the same retention requirements as the same type of records in another format or medium. Keep in mind that the retention of email is dependent upon the content of the email, not where the email account resides.

Email records are also subject to the same legal requirements regarding access as an agency's other government records, as established by Alabama's open records law. Because email created in the conduct of state or local business is public record and rarely subject to restrictions, written communications should be articulated clearly and professionally, leaving banter to the break room.

SEARCH