

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

MICHAEL DEL VECCHIO, KARA
DEL VECCHIO, DAVID F. DEL
VECCHIO, PEGGY R. DEL
VECCHIO, WILLIAM R. NOVACK,
TARA NOVACK, ANTHONY
KEITH, and EMILY KEITH,

Petitioners,

vs.

Docket No. 25-

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Respondent.

_____ /

REQUEST FOR HEARING

Pursuant to Ala. Code 1975, § 22-22A-7(c) and Ala. Admin. Code r. 335-2-1-.04, Petitioners submit this Request for Hearing to contest an administrative action of the Alabama Department of Environmental Management (hereinafter, the “Department”) .

I. Petitioners

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

Michael Del Vecchio
151 Delvecchio Lane
Dothan, AL 36303
(334) 702-2937

Kara Del Vecchio
151 Delvecchio Lane
Dothan, AL 36303
(334) 702-2937

Peggy R. Del Vecchio
202 Delvecchio Lane
Dothan, AL 36303
(334) 790-8600

David F. Del Vecchio
202 Delvecchio Lane
Dothan, AL 36303
(334) 790-8600

Tara Novack
200 Delvecchio Lane
Dothan, AL 36303
(334) 701-8272

William R. Novack
200 Delvecchio Lane
Dothan, AL 36303
(727) 433-1837

Anthony Keith
2911 Saint Mark St.
Dothan, AL 36303
(334) 618-9501

Emily Keith
2911 Saint Mark St.
Dothan, AL 36303
(334) 718-9680

II. Administrative Action Contested

2. The administrative action of the Department which is being contested is the issuance (renewal and modification) of Solid Waste Disposal Facility Permit No. 35-06 on October 24, 2025 to the City of Dothan for the disposal of solid waste at the City of Dothan Sanitary Landfill.

The renewal authorizes the continued disposal of municipal solid waste in Cells L-1, L-2, L-3, and L-4 of an existing 49.7-acre municipal

solid waste disposal area located in an existing 78-acre solid waste management facility.¹

The modification authorizes the disposal of municipal solid waste in an “Existing Inactive MSW Cell L-6” of a new 20.5-acre municipal solid waste disposal area;² the future disposal of municipal solid waste in “Future MSW Cell L-7” and “Future MSW Cell L-8” of the new 20.5-acre municipal solid waste disposal area; and the disposal of construction and demolition solid waste in a new 14.1-acre construction and demolition

¹ Commencing on or about June 16, 2014, the City substantially reduced the daily and monthly volume of municipal solid waste disposed in Cells L-1, L-2, L-3, and L-4 of the existing 49.7-acre municipal solid waste disposal area located in the existing 78-acre solid waste management facility due to limited capacity. This substantial reduction has continued to the present day. During this time, the City contracted with a third party to transport the majority of the municipal solid waste generated within the City to a private landfill in Florida.

² Commencing on or about August 3, 2020 and continuing until April 1, 2022, the City disposed of municipal solid waste in Cell L-6 of a 20.6-acre municipal solid waste disposal area authorized by the modification of Solid Waste Disposal Facility Permit No. 35-06 issued by the Department on May 6, 2019. That permit modification was reversed by order of the Montgomery County Circuit Court. *Lewis v. Ala. Dep’t of Env’tl. Mgmt.*, No. CV-2020-900877.00 (Mar. 31, 2022) (Order on Remand). *See Lewis v. Ala. Dep’t of Env’tl. Mgmt.*, 363 So. 3d 1008 (Ala. Civ. App. 2021). After the modification of the 2019 permit was reversed by the Circuit Court, the City ceased disposal of municipal solid waste in Cell L-6. Hence, the label “Existing Inactive MSW Cell L-6.”

waste disposal area. The modification also authorizes an increase in the “permitted area” of the facility from 78-acres to 506.67 acres.

III. Timeliness of Request

3. This Request is deemed “filed” within 30 days after the Department issued the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 because it was mailed by certified mail of the United States Postal Service on November 22, 2025 addressed as follows:

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

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

IV. Threatened or Actual Injuries Suffered

4. The threatened or actual injuries suffered by the Petitioners as a result of the administrative action of the Department which is being contested are described as follows:

David F. Del Vecchio and Margaret R. Del Vecchio own and reside on 44 acres of property in the City of Dothan, Houston County, Alabama. Their property is approximately 1,310 feet from the southern boundary of

the existing 78-acre solid waste management facility; approximately 315 feet from the southern boundary of the new 20.5-acre municipal solid waste disposal area situated within the new 506.67-acre “permitted area;” and approximately 1,825 feet from the southern boundary of the new 14.1-acre construction and demolition solid waste disposal area situated within the 506.67-acre “permitted area.” Their property adjoins the southern boundary of the 506.67-acre “permitted area.”

Michael Del Vecchio and Kara Del Vecchio own and reside on 10.0 acres in the City of Dothan, Houston County, Alabama. Their property is approximately 1,310 feet from the southern boundary of the existing 78-acre solid waste management facility; approximately 380 feet from the southern boundary of the proposed new 20.5-acre municipal solid waste disposal area situated within the new 506.67-acre “permitted area;” and approximately 2,570 feet from the southern boundary of the new 14.1-acre construction and demolition solid waste disposal area situated within the new 506.67-acre “permitted area.” Their property adjoins the southern boundary of the new 506.67-acre “permitted area.”

William P. Novack and Tara Novack own and reside on 1.0 acre of property in the City of Dothan, Houston County, Alabama. Their property is approximately 1,950 feet from the southern boundary of the existing 78-acre solid waste management facility; approximately 980 feet from the southern boundary of the new 20.5-acre municipal solid waste disposal area situated within the new 506.67-acre “permitted area;” and approximately 2,840 feet from the southern boundary of a new 14.1-acre construction and demolition solid waste disposal area situated within the new 506.67-acre “permitted area.” Their property is approximately 645 feet from the southern boundary of the new 506.67-acre “permitted area.”

Anthony Keith and Emily Keith reside on 0.65 acre of property in the City of Dothan, Houston County, Alabama. Their property is approximately 2,400 feet from the southern boundary of the existing 78-acre solid waste management facility; approximately 2,415 feet from the southern boundary of the new 20.5-acre municipal solid waste disposal area situated within the new 506.67-acre “permitted area;” and approximately 4,620 feet from the southern boundary of a proposed new 14.1-acre construction and demolition solid waste disposal area situated

within the new 506.67-acre “permitted area.” The property on which Anthony Keith and Emily Keith reside is approximately 2,075 feet from southern boundary of the new 506.67-acre “permitted area.”

Despite the City’s application of six inches of soil cover on the working face of municipal solid waste disposed in the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area and despite the City’s implementation of a “100' Waste Buffer” around the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area, all Petitioners suffered frequent unpleasant odors from the City’s disposal of municipal solid waste disposal. The Petitioners characterized these odors as smelling like “garbage and chemicals,” “rotting food and meat and occasionally like chemicals,” “rotting garbage, sometimes like sewage, and sometimes like chemicals,” “really nasty, rotten smell,” “rotting garbage and sometimes a strong offensive chemical odor,” “nasty, rancid, putrid odors that smelled . . . like rotting garbage and sometimes a strong offensive chemical odor,” or “rotten garbage.” These odors have caused one of more Petitioners to suffer headaches,

dizziness, light-headedness, nasal drainage, sneezing, shortness of breath, burning eyes, nausea, and vomiting. They have caused several of the Petitioners to keep their house windows closed, operate air conditioners for longer periods of time, and avoid going outdoors. The odors have caused several Petitioners to cease engaging in outdoor activities (e.g., riding a four-wheeler and horse; having outdoor barbecues with family and friends; restoring an antique car; car washing; gardening; nature watching; playing with children; and hanging laundry on an outdoor clothes line). The odors caused most Petitioners not to sit on their porches at times and caused two Petitioners to convert their porch into a fully enclosed sunroom. The odors interfered with the enjoyment of life or property by all Petitioners.

Despite the City's implementation of a "100' Waste Buffer" around the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area, and use of all-weather access roads, all Petitioners observed frequent visible airborne dust (particulate matter) generated by vehicular traffic and heavy equipment operations at the existing 78-acre solid waste management facility and

Cell L-6 of the new 20.5-acre municipal solid waste disposal area traveling to their properties. This fine dust was deposited on their vehicles, porches, grill, lawn mower, patio furniture, driveways, and homes, often requiring cleaning. The dust has caused some Petitioners to suffer eye and skin irritation, to sneeze and sometimes cough. The dust has caused one Petitioner to refrain from hanging laundry outdoors.

Despite the City's application of six inches of soil cover on the working face of municipal solid waste disposed in the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area and despite the City's implementation of a "100' Waste Buffer" around the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area, all Petitioners have observed large numbers of "buzzards" (turkey vultures) congregating and foraging for food at the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area during their operation. These "buzzards" would travel to, roost on, and defecate on the Petitioners' houses, trees, fences, and automobiles. In addition,

Petitioners observed that excessive populations of “biting flies,” gnats, and mosquitos were present at their properties during operations at the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area. These avian and insect populations are potential vectors of disease-causing organisms to humans and domestic animals.

Several Petitioners experienced loud and disturbing noises from vehicle and equipment back-up alarms, slamming truck tailgates, and bulldozers and compactors operating at the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area. These noises would begin at 6:30 a.m. and continue all day. These noises were an annoyance to Petitioners and disrupted their peaceful enjoyment of their properties. The noises from slamming tailgates caused two Petitioners to awaken from sleep.

The continued disposal of municipal solid waste in Cells L-1, L-2, L3, and L-4 of the existing 78-acre solid waste management facility, the resumption of disposal of municipal solid waste in Cell L-6 of the new 20.5-acre municipal solid waste disposal area, and the future disposal of

municipal solid waste in Cells L-7 and L-8 of the new 20.5-acre municipal solid waste disposal area threatens to cause Petitioners the same harms that they have suffered during previous operations at the existing 78-acre solid waste management facility and Cell L-6 of the new 20.5-acre municipal solid waste disposal area. The future disposal of construction and demolition solid waste in the new 14.1-acre construction and demolition solid waste disposal area threatens to cause Petitioners to suffer airborne dust (particulate matter) generated by vehicular traffic and heavy equipment operations traveling to their properties. These harms are likely to continue for the operating life of these facilities which is decades.

V. Alleged Errors

5. The alleged errors made by the Department in the administrative action which is being contested are as follows:

- A. The Department exceeded its authority by approving a modification of Solid Waste Disposal Facility Permit No. 35-06 without first receiving the appropriate and necessary approval of the site of a new or modified existing solid waste management facility by the affected local governing body.**

Ala. Code 1975, § 22-27-48(b) provides:

The department may not consider an application for a modified permit for a facility unless the solid waste management site has received approval pursuant to this section by the affected local governing body. The department may not consider a permit application for a new facility unless the solid waste management site has received approval pursuant to Section 22-27-48.1 by the affected local governing body.

The Board of Commissioners of the City of Dothan, Alabama is the “affected local governing body” for purposes of the City of Dothan’s application to the Department for modification of Solid Waste Disposal Facility Permit No. 35-06. On July 5, 2023, the Board adopted Resolution No. 2023-210 which approved an approximately 506-acre “facility boundary.” Resolution No. 2023-210 did not approve the site of a proposed new or modified existing municipal solid waste management facility or the site of a proposed new or modified existing construction and demolition solid waste management facility. Instead, the Board approved an approximately 506-acre “facility boundary” that includes hundreds of acres on which no new or modified existing solid waste management facilities are proposed to be located. The Board did not discharge its duty to approve the site of a proposed new or modified existing solid waste

management facility.³ As a result, the Department did not receive the appropriate and necessary approval by the affected local governing body before considering and approving the City of Dothan’s application for a modification of Solid Waste Disposal Facility Permit No. 35-06. *Cf. Lewis v. Ala. Dep’t of Env’tl. Mgmt.*, 363 So. 3d 1008 (Ala. Civ. App. 2021) (the Environmental Management Commission exceeded its statutory authority when it approved a Department permit to modify Solid Waste Disposal Facility Permit No. 35-06 where the Board approved a 522-acre “facility boundary” rather than approve an “application for a modified permit for a facility” as required by Act No. 2006-534, § 1, Ala. Acts 2006 (eff. July 1, 2006)). Accordingly, the Department acted beyond its statutory authority in approving the modification of Solid Waste Disposal Facility Permit No. 35-06.

³ The Houston County Circuit Court affirmed the Board’s July 5, 2025 approval of a 522-acre “facility boundary.” *David F. Del Vecchio, et al. v. Bd. of Comm’rs of the City of Dothan, Ala.*, No. CV-2023-900255.00 (Mar. 5, 2025) (Order on Plaintiffs’ Motion to Strike Portions of Administrative Record, Plaintiff’s Motion to Strike Exhibits, Defendants’ Motion For Summary Judgment and Plaintiffs’ Motion for Summary Judgment), *aff’d*, No. CL-2025-0262, 2025 Ala. Civ. App. LEXIS 103 (Ala. Civ. App. Aug. 29, 2025), *cert. pending*, *Ex parte David F. Del Vecchio, et al.*, SC-2025-0822 (filed Oct. 28, 2025).

B. The Department exceeded its authority by approving a modification of Solid Waste Disposal Facility Permit No. 35-06 that increases the solid waste management facility size from 78 acres to 506.67 acres.

Ala. Code 1975, § 22-27-9(a) states:

The Department of Environmental Management shall be the agency with primary regulatory authority over the management of solid waste in the state, except for the collection and transportation of nonhazardous and nonmedical solid waste. *The department may exercise the regulatory authority over the permitting and operation of solid waste management facilities* necessary to enforce the requirement and purposes of this article.

(Emphasis added).

Ala. Code 1975, § 22-27-12 provides *inter alia*:

The department may do the following:

* * *

(2) Adopt rules establishing requirements and restrictions for the management of solid waste, excluding the collection and transportation of nonhazardous and nonmedical solid waste. The rules may include factors such as the characteristics of the solid waste, the potential for contamination of soils or ground and surface waters, the design and operation of management facilities, the financial capabilities of the applicant, soil and geological considerations, human health, and other environmental considerations. With respect to solid waste disposal or materials recovery facilities, the rules may also include factors such as the quantity, nature, and origin of solid

wastes and recovered materials to be managed. The department may condition the issuance of a *permit for any solid waste management* or materials recovery *facility* upon the facility being consistent with applicable rules as are necessary to carry out the intent of this article and the department's responsibilities under this article. Permits shall be issued for a period of time based on design life of the facility and may include renewal periods as determined by rules and not inconsistent with federal law.

(Emphasis added).

Ala. Code 1975, § 22-27-2(37) defines the term “solid waste management facility” as follows:

Any solid waste volume reduction plant, transfer station, material recovery facility, or *other facility, the purpose of which is the* storage, treatment, utilization, processing, *disposal*, or recovery of materials from solid waste, or any combination thereof.

(Emphasis added).

Ala. Code 1975, § 22-27-2(10) defines the term “facility” as follows:

All contiguous land, structures, and other appurtenances *used for the* processing, treatment, storage, or *disposal of solid waste*, or the recovery of recyclable materials from solid waste, whether or not authorized or permitted, including, but not limited to, waste disposal areas and waste disposed therein.

(Emphasis added).⁴

⁴ The word “used” is the past participle form of the verb “use.” See Bryan A. Garner, *Garner’s Modern English Usage* 1229 (5th ed. 2022) (A

Pursuant to the foregoing provisions, the Department is authorized to permit a “solid waste management facility.” A “solid waste management facility” includes:

- waste disposal areas and waste disposed therein;
- all contiguous land used for the disposal of solid waste;
- all structures used for the disposal of solid waste; and
- all other appurtenances used for the disposal of solid waste.

The Department has no authority to permit as a “solid waste management facility” land, structures, and other appurtenances that are not used for the disposal of solid waste.

past participle is “[a] nonfinite verb form ending usu. [usually] in -ed, -en, or -t . . . * * * [P]ast participles may function adjectively <proven fact> <used books>.”). The phrase “used for the . . . disposal of solid waste” is a participial phrase that functions as an adjective to describe each of the three nouns in the antecedent compound noun phrase – “land, structures, and other appurtenances.” *See id.* at 1231 (A participial phrase is “[a] phrase consisting of a participle and a modifier or complement and functioning as an adjective. • The phrase may appear before or after the subject.”); *United States v. Hendrickson*, 949 F.3d 95, 98-99 (3rd Cir. 2020) (the past participle “used” in the phrase “phone or other device used by a user of a commercial mobile service . . . in connection with such service” introduces a participial phrase that serves as an adjective to describe a type of device).

Solid Waste Disposal Facility Permit No. 35-06 authorizes a “total permitted area consist[ing] of approximately 506.67 acres with 74.1 acres permitted for MSW disposal operations and 14. 1 acres permitted for C&D disposal operations.” *Solid Waste Disposal Facility Permit No. 35-06* (issued Oct. 24, 2025).

The *Boundary Survey of Dothan Landfill* shows a 207.342-acre parcel of land east of Ennis Road (designated as “New Parcel 1”) and a 298.330-acre parcel of land west of Ennis Road (designated as “New Parcel 2”). *Boundary Survey of Dothan Landfill, Major Modification Plans – City of Dothan*, Sheet 1 (Apr. 24, 2023). The aggregate acreage of these two parcels is approximately 506.67 acres.

The *Facility Layout* and *Waste Disposal Layout* depict four existing municipal solid waste disposal cells in the 298.330-acre parcel of land west of Ennis Road: L-1 (10.1 acres), L-2 (9.6 acre), L-3 (15.0 acres) and L-4 (15.0 acres). *Facility Layout, Major Modification Plans*, Sheet C-102 (rev. Apr. 25, 2023); *Waste Disposal Layout, Major Modification Plans*, Sheet C-103 (rev. Apr. 25, 2023). The aggregate acreage of Cells L-1, L-2, L-3, and L-4 is 49.7 acres. The *Facility Layout* and *Waste Disposal Layout*

depict one “inactive” construction and demolition waste disposal cell in the 298.330-acre parcel of land west of Ennis Road: Cell L-5 (3.9 acres). The aggregate acreage of Cells L-1, L-2, L-3, L-4 and L-5 is 53.6 acres. These Cells, together with contiguous lands, structures, and other appurtenances used for the disposal of solid waste, comprise the existing 78-acre solid waste management facility.

The *Facility Layout* and *Waste Disposal Layout* depict three new municipal solid waste disposal cells in the 298.330-acre parcel of land west of Ennis Road: an “Existing Inactive MSW Cell L-6” (8.3 acres); and a “Future MSW Cell L-7” (7.1 acres) and “Future MSW Cell L-8” (5.1 acres). The aggregate acreage of Cells L-6, L-7, and L-8 is 20.5 acres.

The *Facility Layout* and *Waste Disposal Layout* depict a new 14.1-acre construction and demolition waste disposal area in the 298.330-acre parcel of land west of Ennis Road.

The *Facility Layout* depicts a number of areas in the 298.330-acre parcel of land west of Ennis Road that do not include any proposed new or modified existing solid waste management facilities, or lands, structures, or other appurtenances used for the disposal of solid waste. These areas

include those designated as “Delineated Wetland,” “100' Wetland Buffer,” “100' Waste Buffer,” “100' APCO Easement,” two “Closed Landfill[s],” and an “Active Borrow Material Area.”

The *Facility Layout* does not depict any proposed new or modified existing solid waste management facilities, or lands, structures, or other appurtenances used for the disposal of solid waste, in the 207.342-acre parcel of land east of Ennis Road.

Accordingly, the Department exceeded its statutory authority by issuing a modification of *Solid Waste Disposal Facility Permit No. 35-06* that increased the “permitted area” from 78 acres to 506.67 acres.

C. The City’s application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-5-.02(2)(a)3.

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-5-335-13-5-.02(a)3. provides:

The name and mailing address of all property owners whose property, per county tax records, is adjacent to the site shall be submitted as part of a renewal application.

Ala. Admin. Code r. 335-13-5-.06(3)(d) provides:

For those modifications subject to the provisions of 335-13-5-.03 for public notice that may require a public hearing under 335-13-5-.04, the name and mailing address of all property owners whose property, per county tax records, is adjacent to the site shall be submitted as part of the permit modification application.

On March 17, 2025, the consulting engineering firm for the City of Dothan's application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (CDG, Inc., n/k/a Three Notch Group, Inc.), submitted to the Department an adjacent landowner map and listing. The listing purports to include of the names, addresses, and parcel numbers of landowners adjacent to the then-proposed 506.67-acre facility boundary of the Dothan Sanitary Landfill as of March 10, 2025 per county tax records. This map and listing are included in the City of Dothan's application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06.

This adjacent landowner listing includes the following:

Land Owner across Webb Rd. from Landfill				
Number	Name	Adress	Parcel Number	Date Checked
26	DAVIS BEVERLY & GLYNN	136 LAKESIDE DR DOTHAN, AL 36301	1002092000002003	3/10/2025
29	WILLIAMS DANNY D	2887 WEBB RD DOTHAN, AL 36303	1003084000001011	3/10/2025

At some time subsequent to March 17, 2025 and before June 25, 2025, the Department acquired a second adjacent landowner list. This list purports to include the names, addresses, and parcel numbers of landowners adjacent to the then-proposed 506.67-acre facility boundary of the Dothan Sanitary Landfill as of June 5, 2025 per county tax records.

This adjacent landowner list includes the following:

Land Owner across Webb Rd. from Landfill				
Number	Name	Address	Parcel Number	Date Checked
26	DAVIS BEVERLY & GLYNN	136 LAKESIDE DR DOTHAN, AL 36301	1002092000002003	6/5/2025
29	WILLIAMS DANNY D	2887 WEBB RD DOTHAN, AL 36303	1003084000001011	6/5/2025

Beverly Davis and Glynn Davis have owned and resided on their property at 212 Lewis Drive, Dothan, Alabama since before October 1, 2024.⁵ The property has a Parcel Number of 10-02-09-2-000-002.003. They claimed homestead exemption for 212 Lewis Drive, Dothan, Alabama during the 2024 and 2025 tax years. The name and address for

⁵ Beverly and Glynn Davis acquired the property on January 15, 1982. *Warranty Deed, Jointly for Life with Remainder to Survivor*, Deed Book 285, Pages 791-93, Office of Judge of Probate, Houston County, Alabama. Brian Davis was added to the deed on April 4, 2023. *Warranty Deed – Joint Tenants with Right of Survivorship*, Deed Book 897, Pages 421-23, Office of Judge of Probate, Houston County, Alabama.

Parcel Number 10-02-09-2-000-002.003 on file with the Houston County Revenue Commissioner in October 2023 was as follows:

DAVIS BEVERLY & GLYNN
212 LEWIS DR
DOTHAN, AL 36301

The name and address for Parcel Number 10-02-09-2-000-002.003 on file with the Houston County Revenue Commissioner in October 2024 was as follows:

DAVIS BEVERLY & GLYNN
212 LEWIS DR
DOTHAN, AL 36301

The name and address for Parcel Number 10-02-09-2-000-002.003 on file with the Houston County Revenue Commissioner in October 2025 was as follows:

DAVIS GLENN & BEVERLY & BRIAN
212 LEWIS DR
DOTHAN, AL 36301

Danny D. Williams has owned his property at ²⁸⁸⁷~~2851~~ Webb Road, Dothan, Alabama since October 13, 2005.⁶ The property has a Parcel

⁶ Danny D. Williams acquired the property on October 13, 2005. *Warranty Deed*, Deed Book 631, Pages 48-49, Office of Judge of Probate, Houston County, Alabama.

Number of 10-03-08-4-000-001.011. The name and address for Parcel Number 10-03-08-4-000-001.011 on file with the Houston County Revenue Commissioner in October 2024 was as follows:

WILLIAMS DANNY D
1300 US HWY 431 APT 6
ABBEVILLE, AL 36310

The name and address for Parcel Number 10-03-08-4-000-001.011 on file with the Houston County Revenue Commissioner in October 2025 was as follows:

WILLIAMS DANNY D
1300 US HWY 431 APT 6
ABBEVILLE, AL 36310

The City of Dothan's application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 does not demonstrate compliance with Ala. Admin. Code rs. 335-13-5-.02(a)3. and 335-13-5-.06(3)(d). Accordingly, the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 was issued by the Department in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

D. The Department issued Solid Waste Disposal Facility Permit No. 35-06 without first complying with the minimum requirements and procedures in Ala. Admin. Code r. 335-13-5-.03(1)(b)5.

Ala. Admin. Code r. 335-13-5-.01 provides that “Rules 335-13-5-.02 through 335-13-5-.07 establish the minimum requirements and procedures for obtaining a solid waste landfill permit . . .” Ala. Admin. Code r. 335-13-5-.03 provides:

(1) Notice Requirements.

(a) The Department shall provide notice and an opportunity for a public hearing and comment on any solid waste landfill unit, composting facility or CCR facility permit initial issuance, renewal, a modification listed in 335-13-5-.06(1), 335-13-5-.06(2)(b), or 335-13-5-.06(4)(b)2. to the facility permit, or if otherwise determined necessary to meet the requirements of this Division.

(b) The following procedures shall be observed:

1. The Department shall send a copy of the notice to persons on a mailing list developed by:

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

(ii) Notifying the public of the opportunity to be put on the mailing list through the Department’s website, periodic publication in the public press and in such publications as

regional and state funded newsletters, environmental bulletins, or state law journals (the Director may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to such a request);

2. The Department shall notify interested and potentially interested persons of the proposed permit action for a solid waste landfill, composting or CCR facility by posting a notice to the Department's website. The draft permit action shall be posted on the website for the duration of the public comment period.

3. The notice shall be given not less than 35 days prior to the proposed issuance of a permit action.

4. The notice shall contain the specific type and nature of the solid waste landfill, composting or CCR facility, the type of waste to be disposed or accepted, as applicable, the owner or operator requesting the permit action, and the descriptive location of the solid waste landfill, composting or CCR facility, address and telephone number of the Department, and how the public may submit comments and request a public hearing on the proposed permit action.

5. *The Department shall send by certified mail, a written copy of the public notice to landowners adjacent to the subject solid waste landfill, composting or CCR facility at the address as indicated on county tax records and provided by the*

applicant as part of the permit application. The list and addresses of adjacent land owners, as provided in the permit application, shall be verified and/or updated by the applicant and such documentation shall be provided to the Department within 90 days prior to the public notice date. Documentation that notice was sent shall include copies of the signed receipts of certified mail delivery or a copy of any returned certified mail item, that is refused or otherwise undeliverable.

(2) Departmental Action. After the comment period closes, the Department shall review, consider and respond to all public comments received by the close of the comment period and take one of the following actions:

(a) Deny the permitting action, stating in writing the reasons for denial and informing the person requesting the permitting action of appeal procedures in chapter 335-2-1;

(b) Issue the permitting action if the application complies with this Division; or

(c) Require additional information or additional elements of design for the facility. If required, the applicant must specify procedures for inclusion into the permit of any additional information prior to issuance of the permit action.

(Emphasis added).

The Department is not authorized to renew or modify a permit for a solid waste landfill without first complying with the notice requirements

of Ala. Admin. Code r. 335-13-5-.03(1)(b)5. Strict compliance with the plain and unambiguous notice requirements of Ala. Admin. Code r. 335-13-5-.03(1)(b)5. is required. *Cf. Kennon & Assocs., Inc.*, 492 So. 2d 312, 317 (Ala. 1986) (“In this jurisdiction, we have insisted on strict compliance with procedural requirements contained in statutes and regulations adopted pursuant to the enabling statutes.”); *Ex parte Buck*, 256 So. 3d 84, 92 (Ala. Civ. App 2017) (quoting *City of Mobile v. Cardinal Woods Apts., Ltd.*, 727 So. 2d 48, 54 (Ala. 1999), in turn quoting, *Kennon*, 492 So. 2d at 318). Substantial compliance with notice requirements is not sufficient. *Ex parte Bedingfield*, 782 So. 2d 290, 293-94 (Ala. 2000); *Ex parte Buck*, 256 So. 3d at 96. It is immaterial whether any person is prejudiced by the failure to comply with notice requirements. *Ex parte Buck*, 256 So. 3d at 93 (quoting *Cardinal Woods, supra*, in turn quoting *Kennon, supra*). See *Sierra Club v. Johnson*, 436 F.3d 1269, 1275-79 (11th Cir. 2006) (plaintiff with actual notice had standing to raise defects in notice to others).

Beverly Davis and Glynn Davis have owned and resided on their property at 212 Lewis Drive, Dothan, Alabama since before October 1,

2024.⁷ The property has a Parcel Number of 10-02-09-2-000-002.003. They claimed homestead exemption for 212 Lewis Drive, Dothan, Alabama during the 2024 and 2025 tax years. The name and address for Parcel Number 10-02-09-2-000-002.003 on file with the Houston County Revenue Commissioner in October 2023 was as follows:

DAVIS BEVERLY & GLYNN
212 LEWIS DR
DOTHAN, AL 36301

The name and address for Parcel Number 10-02-09-2-000-002.003 on file with the Houston County Revenue Commissioner in October 2024 was as follows:

DAVIS BEVERLY & GLYNN
212 LEWIS DR
DOTHAN, AL 36301

The name and address for Parcel Number 10-02-09-2-000-002.003 on file with the Houston County Revenue Commissioner in October 2025 was as follows:

DAVIS GLENN & BEVERLY & BRIAN
212 LEWIS DR
DOTHAN, AL 36301

⁷ See *supra* note 5.

The Department sent notice of a public hearing (scheduled on May 22, 2025) and public comment period (ending May 29, 2025) on the Department's proposed permit action to renew and modify Solid Waste Disposal Facility Permit No 35-06 by certified mail (No. 9489 0090 0027 6598 2623 45) to Beverly and Glynn Davis on April 16, 2025. The envelope containing the notice was addressed as follows:

BEVERLY & GLYNN DAVIS
136 LAKESIDE DRIVE
DOTHAN, AL 36301

The envelope and notice were returned to the Department by the United States Postal Service on April 29, 2025 marked as follows:

Not Deliverable as Addressed
Unable to Forward

The Department sent notice of a public hearing (scheduled on July 31, 2025) and public comment period (ending July 31, 2025) on the Department's proposed permit action to renew and modify Solid Waste Disposal Facility Permit No 35-06 by certified mail (No. 9489 0090 0027 6598 6482 31) to Beverly and Glynn Davis on June 25, 2025. The envelope containing the notice was addressed as follows:

BEVERLY & GLYNN DAVIS
136 LAKESIDE DRIVE
DOTHAN, AL 36301

The envelope and notice were returned to the Department by the United States Postal Service on July 8, 2025 marked as follows:

Not Deliverable as Addressed
Unable to Forward

Beverly and Glynn Davis did not receive notice from the Department of the May 22, 2025 or July 31, 2025 public hearings and public comment periods on the Department's proposed permit action to renew and modify Solid Waste Disposal Facility Permit No 35-06. Their correct mailing address (212 Lewis Dr., Dothan, AL 36301) was available from the Houston County Revenue Commissioner's website since October 2023.

Danny D. Williams has owned his property at ²⁸⁸⁷~~2851~~ Webb Road, Dothan, Alabama since October 13, 2005.⁸ The property has a Parcel Number of 10-03-08-4-000-001.011. The name and address for Parcel Number 10-03-08-4-000-001.011 on file with the Houston County Revenue Commissioner in October 2024 was as follows:

⁸ *See supra* note 6.

WILLIAMS DANNY D
1300 US HWY 431 APT 6
ABBEVILLE, AL 36310

The name and address for Parcel Number 10-03-08-4-000-001.011 on file with the Houston County Revenue Commissioner in October 2025 was as follows:

WILLIAMS DANNY D
1300 US HWY 431 APT 6
ABBEVILLE, AL 36310

The Department sent notice of a public hearing (scheduled on May 22, 2025) and public comment period (ending May 29, 2025) on the Department's proposed permit action to renew and modify Solid Waste Disposal Facility Permit No 35-06 by certified mail (No. 9489 0090 0027 45 6598 2623 ~~76~~) to Danny D. Williams on April 16, 2025. The envelope containing the notice was addressed as follows:

WILLIAMS DANNY D
2887 WEBB RD
DOTHAN, AL 36303

The United States Postal Service reported the certified mail disposition as follows:

Delivered, To Original Sender
May 12, 2025, 8:03 am
MONTGOMERY, AL 36119-0000

The Department sent notice of a public hearing (scheduled on July 31, 2025) and public comment period (ending July 31, 2025) on the Department's proposed permit action to renew and modify Solid Waste Disposal Facility Permit No 35-06 by certified mail (No. 9489 0090 0027 6598 6482 62) to Danny D. Williams on June 25, 2025. The envelope containing the notice was addressed as follows:

WILLIAMS DANNY D
2887 WEBB RD
DOTHAN, AL 36303

The United States Postal Service reported the certified mail disposition as follows:

Delivered, To Original Sender
August 18, 2025, 8:06 am
MONTGOMERY, AL 36119-0000

Danny D. Williams did not receive notice from the Department of the May 22, 2025 or July 31, 2025 public hearings and public comment periods on the Department's proposed permit action to renew and modify Solid Waste Disposal Facility Permit No 35-06. His correct mailing address

(1300 US Hwy 431 Apt 6, Abbeville, AL 36310) was available from the Houston County Revenue Commissioner's website since October 2024.

Accordingly, the Department issued Solid Waste Disposal Facility Permit No. 35-06 without first complying with the minimum requirements and procedures in Ala. Admin. Code r. 335-13-5-.03(1)(b)5. for issuing a solid waste landfill permit.

E. The City's application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-4-.18(3)(h).

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.18(3)(h) provides *inter alia*:

An alternate liner design may be approved by the Department provided that:

1. The owner or operator demonstrates that the alternate design ensures the concentration values listed in Table 1 of this rule will not be exceeded in the first saturated zone at the relevant point of compliance, as specified by the Department under 335-13-4-.27(2)(a)3.

The City's application to modify Solid Waste Disposal Facility Permit No. 35-06 does not include a demonstration that the alternate liner

design for the new 20.5-acre municipal solid waste disposal area ensures that the concentration values listed in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone at the relevant point of compliance. Accordingly, the modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

F. The City's application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-4-.01(3).

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.01(3) provides:

Other Requirements. Solid Waste Disposal Facilities must comply with any other applicable *State* or Federal rules, laws, *regulations* or other requirements.

(Emphasis added).

Ala. Admin. Code r. 335-3-1-.08 provides:

No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

Ala. Admin. Code r. 335-3-1-.02(e) provides:

“Air Pollution” shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby.

Ala. Admin. Code r. 335-3-1-.02(d) provides:

“Air Contaminant” shall mean any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source.

Ala. Admin. Code r. 335-3-1-.02(ss) provides:

“Odor” shall mean smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.

The City’s application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc., April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024). These documents do not identify the use of daily cover of municipal solid waste as a means to achieve compliance with Ala. Admin.

Code rs. 335-13-4-.01(3) and 335-3-1-.08. However, in the City’s *Operation Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024), the City states:

7.3.2.1 DAILY COVER FOR MSW DISPOSAL

At the conclusion of each working day, the Landfill Operator shall cover the general working face of the landfill with a minimum of six inches of compacted earth cover. The earth cover shall be excavated from on- site and shall have sufficient clay content to provide a seal over the waste when compacted. The earthen cover material will be placed and compacted to a minimum depth of six inches to control disease vectors, fire, odors, blowing litter, and scavenging.

Operations Manual, Sections 7 and 9 (CDG, Inc., rev. July 15, 2024), Section 7.3.2.1. Elsewhere, the same *Operations Manual* states that “six inches of earthen cover will be used to cover the open face [of the municipal solid waste disposal cells] daily.” *Id.*, 7.5.2.

The historical application of this minimum soil cover depth at the working face of the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not achieve compliance with rs. 335-13-4-.01(3) and 335-3-1-.08. *See supra* pp. 7-8.

Ala. Admin. Code r. 335-13-4-.12(2)(f) provides:

Buffer zones, screening and other aesthetic control measures. Buffer zones around the perimeter of the landfill unit shall be a minimum of 100 feet in width measured in a horizontal plane. No disposal or storage practices for waste shall take place in the buffer zone. Roads, access control measures, earth storage, and buildings may be placed in the buffer zone.

The City's application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc., April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024), neither of which identify the use of a 100' buffer zone as a means to achieve compliance with Ala. Admin. Code rs. 335-13-4-.01(3) and 335-3-1-.08. Nevertheless, the *Facility Layout* and *Waste Disposal Layout* included in *Major Modification Plans*, Sheets C-102 and C-103 (CDG, Inc., rev. Apr. 25, 2023), show the presence of a "100' Waste Buffer" surrounding the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area.

The historical provision of a 100' buffer zone surrounding the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not achieve compliance Ala. Admin. Code rs. 335-13-4-.01(3) and 335-3-1-.08. *See supra* pp. 7-8.

Moreover, the City of Dothan's application does not demonstrate that the negligible dispersion of odors in the "100' Waste Buffer" around the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and the 20.5-acre municipal solid waste disposal area will achieve compliance with rs. 335-13-4-.01(3) and 335-3-1-.08. *See supra* pp. 7-8. The new 20.5-acre municipal solid waste disposal area and its "100' Waste Buffer" are closer to the properties of several Petitioners than is the existing 78-acre solid waste management facility and its "100' Waste Buffer." Given the closer proximity of waste disposal operations to the Petitioners' properties, the "100' Waste Buffer" will not result in sufficient dispersion of odors to achieve compliance with Ala. Admin. Code rs. 335-13-4-.01(3) and 335-3-1-.08.

Neither six inches of daily soil cover of municipal solid waste on the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and in the new 20.5-acre municipal solid waste disposal area, nor a "100' Waste Buffer" around the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and

new 20.5-acre municipal solid waste disposal area demonstrate compliance with Ala. Admin. Code rs. 335-13-4-.01(3) and 335-3-1-.08.

Accordingly, the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

G. The City's application fails to demonstrate compliance with Ala. Admin. Code r. Ala. Admin. Code r. 335-13-4-.22(3)(a): Odor.

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.22(3)(a) provides:

Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to Section 110 of the Clean Air Act, as amended.

40 C.F.R. Part 52, Subpart B sets forth the State Implementation Plan for the State Alabama approved by the Administrator of the U.S. Environmental Protection Agency under Section 110 of the Clean Air Act.

Section 52.50 thereof incorporates by reference Ala. Admin. Code r. 335-3-4-.08 which provides:

No person shall permit or cause air pollution, as defined in Rule 335-3-1-.02(1)(e) of this Chapter by the discharge of any air contaminant for which no ambient air quality standards have been set under Rule 335-3-1-.03(1).

Also incorporated in Section 52.50 is Ala. Admin. Code r. 335-3-1-.02(e) provides:

“Air Pollution” shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby.

Also incorporated in Section 52.50 is Ala. Admin. Code r. 335-3-1-.02(d) which provides:

“Air Contaminant” shall mean any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source.

Also incorporated in Section 52.50 is Ala. Admin. Code r. 335-3-1-.02(ss) which provides:

“Odor” shall mean smells or aromas which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the

upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Odor and smell are used interchangeably herein.

The City's application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc., April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024). These documents do not identify the use of daily cover of municipal solid waste as a means to achieve compliance with Ala. Admin. Code r. 335-13-4-.22(3)(a) and 40 C.F.R. § 52.50. However, in the City's *Operation Manual* (revised July 15, 2024), the City states:

7.3.2.1 DAILY COVER FOR MSW DISPOSAL

At the conclusion of each working day, the Landfill Operator shall cover the general working face of the landfill with a minimum of six inches of compacted earth cover. The earth cover shall be excavated from on- site and shall have sufficient clay content to provide a seal over the waste when compacted. The earthen cover material will be placed and compacted to a minimum depth of six inches to control disease vectors, fire, odors, blowing litter, and scavenging.

Operations Manual, Sections 7 and 9 (CDG, Inc., July 15, 2024), Section 7.3.2.1. Elsewhere, the same *Operations Manual* states that “six inches

of earthen cover will be used to cover the open face [of the municipal solid waste disposal cells] daily.” *Id.*, Section 7.5.2.

The historical application of this minimum soil cover depth at the working face of the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not achieve compliance with Ala. Admin. Code r. 335-13-4-.22(3)(a) and 40 C.F.R. § 52.50. *See supra* pp. 7-8.

The City’s application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc., April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024) neither of which identify the use of a 100' buffer zone as a means to achieve compliance with Ala. Admin. Code r. 335-13-4-.22(3)(a) and 40 C.F.R. § 52.50. Nevertheless, the *Facility Layout* and *Waste Disposal Layout* included in *Major Modification Plans*, Sheets C-102 and C-103 (rev. Apr. 25, 2023), show the presence of a “100' Waste Buffer” surrounding the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area.

The historical provision of a 100' buffer zone surrounding the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not achieve compliance Ala. Admin. Code r. 335-13-4-.22(2)(a) and 40 C.F.R. § 52.50. *See supra* pp. 7-8.

Moreover, the City of Dothan's application does not demonstrate that the negligible dispersion of odors in the "100' Waste Buffer" around the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and the 20.5-acre municipal solid waste disposal area will achieve compliance with Ala. Admin. Code r. 335-13-4-.22(2)(a) and 40 C.F.R. § 52.50. *See supra* pp. 7-8. The new 20.5-acre municipal solid waste disposal and its "100' Waste Buffer" are closer to the properties of several petitioners than is the existing 78-acre solid waste management facility and its "100' Waste Buffer." Given the closer proximity of waste disposal operations to the Petitioners' properties, the "100' Waste Buffer" will not result in sufficient dispersion of odors to achieve compliance with Ala. Admin. Code r. 335-13-4-.22(2)(a) and 40 C.F.R. § 52.50.

Neither six inches of daily soil cover of municipal solid waste on the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area, nor a “100' Waste Buffer” around the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(2)(a) and 40 C.F.R. § 52.50.

Accordingly, the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

H. The City’s application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d).

Ala. Admin. Code rs. 335-13-5-.03(2)(b) and 335-13-5-.04(3)(b) provide that the Department may issue a permit only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.22(2)(d) provides that “[m]easures shall be taken to

prevent the breeding or accumulation of disease vectors” at municipal solid waste landfills. (Emphasis added).⁹

Language used in an administrative regulation should be given its natural, plain, ordinary, and commonly understood meaning, just as language in a statute. *E.g.*, *Burton v. Hawkins*, 364 So. 3d 962, 975 (Ala. 2022); *Ex parte Wilbanks Health Care Servs.*, 986 So. 2d 422, 427 (Ala. 2007); *Black Bear Sols., Inc. v. State Dep’t of Educ.*, 330 So. 3d 840, 847 (Ala. Civ. App. 2021). The common meaning of the word “prevent” is “[t]o preclude the occurrence of (an anticipated event, state, etc.); to render (an intended, possible, or likely action or event) impractical or impossible by anticipatory action; to put a stop to,” *Prevent*, Oxford English Dictionary, https://www.oed.com/dictionary/prevent_v?tab=meaning_and_use#28272033 (last visited Nov. 17, 2025); “to keep from happening or existing,” *P r e v e n t*, M e r r i a m - W e b s t e r . c o m D i c t i o n a r y , <https://www.merriam-webster.com/dictionary/prevent> (last visited Nov.

⁹ “Disease vectors” are defined as “organism[s] that [are] capable of transmitting a disease from one host to another.” Ala. Admin. Code r. 335-13-1-.03(38). See 40 C.F.R § 258.22(b) (“disease vectors means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans”).

17, 2025); “[t]o keep from happening; avert,” *Prevent*, The American Heritage Dictionary of the English Language, <https://ahdictionary.com/word/search.html?q=prevent> (last visited Nov. 10, 2025). *See Fowler v. United States*, 563 U.S. 668, 675, 131 S. Ct. 2045, 2050-51 (2011) (applying the Oxford English Dictionary Online definition of “prevent”).

The City’s application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc., April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024), neither of which identify the measures it will use to achieve compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d). However, in the City’s *Operation Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024), the City states:

7.5.2 VECTOR CONTROL

Vector control at the landfill shall be the responsibility of the Landfill Operator. *Daily cover shall be used in the municipal solid waste disposal area to prevent the transmission of disease by vectors. Six inches of earthen cover will be used to cover the working face daily.* Wastes that could encourage vector breeding shall not be left uncovered at the site. Areas where stagnant water accumulates will be regraded to encourage runoff.

Operation Manual, Sections 7 and 9 (CDG, Inc., rev. July 15, 2024) (emphasis added).

The historical application of this minimum soil cover depth at the working face of the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not *prevent* the accumulation and breeding of disease vectors. *See supra* at pp. 9-10.

The City's application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc., April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024), neither of which identify the use of a 100' buffer zone as a means to achieve compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d). Nevertheless, the *Facility Layout* and *Waste Disposal Layout* included in *Major Modification Plans*, Sheets C-102 and C-103 (rev. Apr. 25, 2023), show the presence of a "100' Waste Buffer" surrounding the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area.

The historical provision of a 100' buffer zone surrounding the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not prevent the accumulation and breeding of disease vectors. *See supra* pp. 9-10.

Neither six inches of daily soil cover of municipal solid waste on the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area, nor a “100' Waste Buffer” around the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(2)(d). *See supra* pp. 9-10. Accordingly, the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

I. The City's application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-4-.22(3)(a): Fugitive Dust.

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.22(3)(a) provides:

Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to Section 110 of the Clean Air Act, as amended.

40 C.F.R. Part 52, Subpart B sets forth the State Implementation Plan for the State Alabama approved by the Administrator of the U.S. Environmental Protection Agency. Section 52.50 thereof incorporates by reference Ala. Admin. Code r. 335-3-4-.02(2) which provides:

Visible Emissions Restrictions Beyond Lot Line. No person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.^[10]

¹⁰ Although Ala. Admin. Code r. 335-3-4-.02(2) was invalidated by the Alabama Supreme Court on State constitutional grounds, *Ross Neely Express, Inc. v. Ala. Dep't of Env'tl. Mgmt.*, 437 So. 2d 82 (Ala. 1983), it remains part of the State Implementation Plan for the State of Alabama approved by the U.S. Environmental Protection Agency. The decision by

The City's application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, Inc.,

the Alabama Supreme Court does not revise the State Implementation Plan without approval of the revision by the U.S. Environmental Protection Agency. *See* 40 C.F.R. § 51.105 (“Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.”); 42 U.S.C. § 7416 (“if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section”); *Sierra Club v. TVA*, 430 F.3d 1337, 1346 (11th Cir. 2005) (ADEM interpretation of rule and adoption of rule revision does not revise SIP without EPA approval); *United States v. Ford Motor Co.*, 814 F.2d 1099, 1103 (6th Cir. 1987) (“State courts thus lack the authority to invalidate EPA-approved SIPs on infeasibility grounds” and “invalidation of a SIP on technical grounds by a state court . . . cannot be given effect, because . . . revisions and variances of properly promulgated SIPs require EPA approval”); *League to Save Lake Tahoe, Inc. v. Trounday*, 598 F.2d 1164, 1166 n.2 (9th Cir. 1979) (State law changes do not revise SIP without EPA approval); *Safe Air for Everyone v. United States EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007) (“the SIP became federal law, not state law, once EPA approved it, and could not be changed unless and until EPA approved any change”); *Train v. Natural Res. Def. Council, Inc.*, 421 U.S. 60, 92, 95 S. Ct. 1470, 1488 (1975) (“[A] polluter is subject to existing requirements until such time as he obtains a variance, and variances are not available under the revision authority until they have been approved by both the State and the Agency”); *Gen. Motors Corp. v. United States*, 496 U.S. 530, 540, 110 S. Ct. 2528, 2533 (1990) (“There can be little or no doubt that the existing SIP remains the ‘applicable implementation plan’ even after the State has submitted a proposed revision”).

April 2023) and *Operations Manual, Sections 7 and 9* (CDG, Inc., rev. July 15, 2024). neither of which identify the measures it will use to achieve compliance with Ala. Admin. Code r. 335-3-4-.02(2) and 40 C.F.R. § 52.50. Nevertheless, the *Facility Layout* and *Waste Disposal Layout* included in *Major Modification Plans*, Sheets C-102 and C-103 (rev. Apr. 25, 2023), show the presence of a “100' Waste Buffer” surrounding the existing 78-acre solid waste management facility and new 20.5-acre municipal solid waste disposal area.

The historical provision of a 100' buffer zone surrounding the municipal solid waste disposal cells in the existing 78-acre solid waste management facility and Cell L-6 in the new 20.5-acre municipal solid waste disposal area has demonstrated that it does not prevent the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate. *See supra* pp. 8-9.

The City of Dothan’s application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 does not include any provisions that demonstrate compliance with Ala. Admin. Code r. 335-3-4-.02(2) and 40 C.F.R. § 52.50. Accordingly, the renewal and modification of Solid Waste

Disposal Facility Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

J. The City's application fails to demonstrate compliance with Ala. Admin. Code r. 335-13-4-.12(2)(a): Determination of groundwater elevation measurements.

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.12(2)(a) provides:

For purposes of designing the bottom elevation of the proposed cell, *the applicant shall measure the groundwater elevation at the location of the proposed cell or liner system.* Such determinations shall be based on groundwater measurements taken in the area of the proposed cell or liner system as approved by the Department. *At each measuring location, the applicant shall obtain a minimum of two measurements taken during each of the three consecutive months of February, March and April, or as otherwise approved by the Department, with no two measurements taken within any twelve day period.* Having obtained the measurements, the applicant shall design the facility so that the bottom elevation of the proposed cell or liner system shall be a minimum of five feet above the highest measured groundwater level. The applicant shall submit to the Department all data known to exist concerning groundwater elevations at the landfill site and shall submit to the Department a location map showing all monitoring wells or piezometers and drilling logs for all monitoring wells or piezometers used to obtain any groundwater elevation data

that is submitted. Nothing herein shall prevent the Department from requiring additional groundwater measurements or from requiring an additional buffer as it may deem appropriate with respect to a particular site.

(Emphasis added).

The City's application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 includes an *Operations Manual* (CDG, April 2023). The *Manual* includes an *Updated Report of Hydrogeological Evaluation* (TTL, Aug. 15, 2022) at Appendix 2.5 which provides:

5.2 Elevation of First Saturated Zone

* * * Based on historical groundwater measurements recorded in piezometers/monitoring wells from September 2013 through March 2018, the potentiometric surface of the Lisbon in the area of the [MSW] Landfill Expansion generally ranges in elevation from approximately 234 to 250 feet AMSL(above mean sea level),

Updated Report of Hydrogeological Evaluation (TTL, Inc., April 15, 2022), Section 5.2.

Figure 5: Seasonal High Groundwater Elevation Potentiometric Surface Maps (TTL, Inc., May 11, 2022), included in *Updated Report of Hydrogeological Evaluation* (TTL, Inc., April 15, 2022) at Appendix 2.5 of the City of Dothan's *Operations Manual* (CDG, Inc., April 2023), purports

to show three wells in the location of the proposed liner system of the new 20.5-acre municipal solid waste disposal area: MW-12, PZ-22, and PZ-21. Of these three wells, the City obtained a minimum of two groundwater elevation measurements taken during each of the three consecutive months of February, March and April at MW-12 only (during 2014). One groundwater elevation measurement location is insufficient to determine the groundwater elevation at the location of the liner system beneath the 20.5-acre municipal solid waste disposal area.

The “SEASONAL HIGH GROUNDWATER ELEVATION” measurements shown in Figure 5 for MW-12, PZ-21, and PZ-22 were derived from the ground water elevation measurements reported in Table 2: GROUNDWATER ELEVATION DATA & TIMELINE, included in *Updated Report of Hydrogeological Evaluation* (TTL, Inc., April 15, 2022) at Appendix 2.5 of the City of Dothan’s *Operations Manual* (CDG, Inc., April 2023). The “SEASONAL HIGH GROUNDWATER ELEVATION” measurements at PZ-21 and PZ-22 reflected in Figure 5 were not taken during the consecutive months of February, March, and April.

FIGURE 1: CROSS SECTION LOCATION MAP (TTL, Inc., July 25, 2024) included as Attachment 4 to a July 31, 2024 letter from TTL, Inc. to Jarred Kelly, Chief of the Solid Waste Engineering Section of the Land Division at the Department, purports to show seven wells used to determine the groundwater elevation at the location of the new 14.1-acre construction and demolition disposal area: MW-10, DW-3, PZ-1, PZ-7, PZ-9, PZ-14, and PZ-22. None of these wells are located at the new 14.1-acre construction and demolition solid waste disposal area. The “HIGH-WATER LEVELS OF RECORD” for these wells are reflected in Table 2: Summary of High-Water Levels of Record in Wells & Piezometers Area of Proposed C& D Landfill Expansion, included as Attachment 2 to a July 31, 2024 letter from TTL, Inc. to Jarred Kelly, Chief of the Solid Waste Engineering Section of the Land Division at the Department. The groundwater elevation measurements reflected in Table 2 were derived from the ground water elevation measurements reported in Table 1: Summary of Historical Groundwater Elevations for Wells & Piezometers in Area of Proposed C&D Landfill Expansion, none of which were taken during the three consecutive months of February, March and April.

Code of Alabama 1975, § 22-27-12 defines the powers of the Department with respect to the adoption of rules for the management of solid waste. It states, in part, that the Department may:

(2) Adopt rules establishing requirements and restrictions for the management of solid waste, excluding the collection and transportation of nonhazardous and nonmedical solid waste. The rules may include factors such as the characteristics of the solid waste, the potential for contamination of soils or ground and surface waters, the design and operation of management facilities, the financial capabilities of the applicant, soil and geological considerations, human health, and other environmental considerations. With respect to solid waste disposal or materials recovery facilities, the rules may also include factors such as the quantity, nature, and origin of solid wastes and recovered materials to be managed. The department may condition the issuance of a permit for any solid waste management or materials recovery facility upon the facility being consistent with applicable rules as are necessary to carry out the intent of this article and the department's responsibilities under this article. Permits shall be issued for a period of time based on design life of the facility and may include renewal periods as determined by rules and not inconsistent with federal law.

(Emphasis added).

All Department rules must be adopted by the Environmental Management Commission pursuant to Ala. Code 1975, §§ 22-22A-5(2) to -22A-5(3), and 22-22A-8(a). Department officials are expressly not authorized to perform the powers, duties, and functions of the

Commission. Ala. Code 1975, § 22-22A-4(b). Thus, the Commission alone may adopt rules establishing requirements and restrictions for the management of solid waste. The Legislature did not authorize the Commission to sub-delegate its power to establish requirements and restrictions for the management of solid waste to the Department or its officials. Nevertheless, the Commission adopted language in Ala. Admin. Code r. 335-13-4-.12(2)(a) (*i.e.*, “*or as otherwise approved by the Department*”) which sub-delegates the Commission’s power to establish acceptable groundwater elevation measurement time periods other than during each of the three consecutive months of February, March and April to the Department. Moreover, the language confers unbridled discretion on the Department to accept groundwater elevation measurements taken at any time. Accordingly, the sub-delegation language is unlawful and void. Absent this unlawful and void sub-delegation language, a minimum of two groundwater elevation measurements must be taken during each of the three consecutive months of February, March and April, with no two measurements taken within any twelve day period.

The City's application to modify Solid Waste Disposal Facility Permit No. 35-06 does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.12(2)(a) with respect to groundwater elevation measurements at the new 20.5-acre municipal solid waste disposal area and new 14.1-acre construction and demolition disposal area. Accordingly, the permit was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

K. Failure of the application demonstrate compliance with Ala. Admin. Code r. 335-13-4-.12(2)(a): Determination of bottom elevation of the proposed cell or liner system.

Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) provide that a permit may be issued only if the application demonstrates compliance with Ala. Admin. Code div. 335-13. Ala. Admin. Code r. 335-13-4-.12(2)(a) provides:

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

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

(Emphasis added). Ala. Admin. Code r. 335-13-4-.12(2)(a) requires that there be a minimum separation of five feet between the highest seasonal groundwater elevation and the *bottom* of the liner system beneath the new 20.5-acre municipal solid waste disposal area.

The liner system beneath the new 20.5-acre municipal solid waste disposal area includes from top to bottom: a Drainage Layer; a Doubled-sided Geocomposite Liner; a textured High Density Polyethylene(HDPE) Geomembrane Liner; a Geosynthetic Clay Liner; and a Compacted Clay Layer. *See Major Modification Plans*, Sheet C-802 (CDG, Inc., Mar. 21,

2023); *Solid Waste Disposal Facility Permit No. 35-06*, Section III, E (ADEM, Oct. 24, 2025).

The City’s application includes *Major Modification Plans*, Sheet C-401 (CDG, Inc., rev. July 30, 2024). Sheet 401 purports to show three cross sections (*i.e.*, Cross Sections A – A', B – B', C – C') of the subsurface beneath the new 20.5-acre municipal solid waste disposal area, including the separation distances between the elevations of “Seasonal High Groundwater” and “Top of Compacted Clay Liner.”¹¹ These cross sections do not show the elevation of the *bottom* of the liner system or the separation distances between “Seasonal High Groundwater” and *bottom* of the liner system as required by Ala. Admin. Code r. 335-13-4-.12(2)(a). Accordingly, the City’s application for modification of Solid Waste Disposal Facility Permit No. 35-06 does not demonstrate compliance with Ala. Admin. Code r. 335-13-4-.12(2)(a) and Solid Waste Disposal Facility

¹¹ Cross Sections A – A', B – B', C – C' do not include the elevations of “Seasonal High Groundwater” and bottom of the liner system at the location of MW-12 – the only well for which there is groundwater elevation data taken during the three consecutive months of February, March, and April.

Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3).

Relief Requested

6. Petitioners propose that the Environmental Management Commission issue an order disapproving Solid Waste Disposal Facility Permit No. 35-06 in its entirety because of the alleged errors identified herein.

Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that the foregoing Request for Hearing was mailed by certified mail (No. 7016 3010 0000 6309 1616) of the United States Postal Service addressed to:

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

Done this 22nd day of November, 2025.



David A. Ludder

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request for Hearing has been served upon the following by placing the same with the United State Postal Service (postage prepaid) addressed as follows:

Hon. Edward F. Poolos, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

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

Done this 22nd day of November, 2025.



David A. Ludder