BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

Ex. 6 Personal Privacy (PP)

Petitioners,

vs. Docket No. 19-

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Respondent.
_____/

**REQUEST FOR HEARING**

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

**I. Petitioners**

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

Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

## II. Administrative Action Contested

2. The administrative action of the Alabama Department of Environmental Management which is being contested is the renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 issued to the City of Dothan on May 6, 2019.

## III. Timeliness of Request

3. This Request is deemed "filed" within 30 days after the Alabama Department of Environmental Management 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 June 4, 2019 addressed as follows:

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

Accordingly, the Request is timely and properly 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. A person is "aggrieved" under Ala. Code 1975 § 22-22A-7(c) and entitled to a hearing to contest an administrative action of the Alabama Department of Environmental Management if he has suffered a threatened or actual injury in fact, *i.e.*, he is somehow adversely

affected by the contested administrative action. Ala. Admin. Code r. 335-2-1-.02(b); *Alabama Dep't of Envt'l Mgmt. v. Legal Envt'l Assistance Found., Inc.*, 973 So. 2d 369, 378 (Ala. Civ. App. 2007). The "case or controversy" and prudential standing requirements applicable in judicial proceedings are not applicable in proceedings under Ala. Code 1975 § 22-22A-7(c). *See ABC Coke v. GASP*, 233 So. 3d 999, 1004-06 (Ala. Civ. App. 2016) (The "case or controversy" and prudential standing requirements applicable in judicial proceedings are not applicable to requests for hearings filed by persons aggrieved by administrative actions of the Jefferson County Department of Health). The threatened or actual injuries suffered by the Petitioners by the renewal and modification of Permit No. 35-06 are described in the following short and plain statements:

**A.** Ex. 6 Personal Privacy (PP) s owns and resides on property located approximately 60 feet from the new City of Dothan Sanitary Landfill facility boundary and approximately 2956 feet from the 20.6-acre expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Bobby Lewis to offensive odors for the next 15 to 20 years that lessens his food and water intake, upsets his appetite, causes him to experience nausea and vomiting, restricts his outdoor activities such as cooking and eating, and requires that he keep house windows closed and operate an air conditioner. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies and buzzards, that migrate onto Ex. 6 Personal Privacy (PP) property and to expose him to infectious agents and disease. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) property and to be deposited on his vehicle and outdoor furniture for the next 15 to 20

years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Ex. 6 Personal Privacy (PP) sleep, conversation, television listening and telephone conversations. The expansion of the municipal solid waste landfill threatens to keep Bobby Lewis's property value depressed for the next 15 to 20 years.

**B.** **Ex. 6 Personal Privacy (PP)** owns and resides on property that adjoins the new City of Dothan Sanitary Landfill facility boundary and is approximately 303 feet from the 20.6-acre expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Ex. 6 Personal Privacy (PP) to offensive odors for the next 15 to 20 years that interfere with his sleep, preclude eating meals outdoors, and preclude playing outdoors with his children. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies and buzzards, that migrate onto Ex. 6 Personal Privacy (PP) property and to expose him and his family to infectious agents and disease. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Ex. 6 Personal Privacy (PP) property and to be deposited on his vehicle for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) sleep. The expansion of the municipal solid waste landfill threatens to keep Ex. 6 Personal Privacy (PP) property value depressed for the next 15 to 20 years. Topographic and hydrologic alterations at and around the site of the municipal solid waste landfill has caused new and increased flooding on his property.

C. Ex. 6 Personal Privacy (PP) own and reside on property that adjoins the new City of Dothan Sanitary Landfill facility boundary and is approximately 238 feet from the 20.6-acre expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Ex. 6 Personal Privacy (PP) to offensive odors for the next 15 to 20 years that interfere with their sleep, preclude eating meals outdoors, and preclude playing outdoors with his children. Ex. 6 Personal Privacy (PP) has acquired respiratory and sinus problems since living near the existing municipal solid waste landfill which are likely to continue after the expansion of the municipal solid waste landfill. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies, buzzards, and coyotes that migrate onto Ex. 6 Personal Privacy (PP) property and to expose them to infectious agents and disease. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Ex. 6 Personal Privacy (PP) property and to be deposited on their vehicles for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Ex. 6 Personal Privacy (PP) sleep. The expansion of the municipal solid waste landfill threatens to keep Ex. 6 Personal Privacy (PP) property value depressed for the next 15 to 20 years. Topographic and hydrologic alterations at and around the site of the expanded municipal solid waste landfill has caused new and increased flooding on Ex. 6 Personal Privacy (PP) property.

D. Ex. 6 Personal Privacy (PP) owns and resides, with his wife, Ex. 6 Personal Privacy (PP) on property located approximately 732 feet from the new City of Dothan Sanitary Landfill facility boundary and approximately 925 feet from the 20.6-acre expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Ex. 6 Personal Privacy (PP) to offensive odors for the next 15 to 20 years that interfere with their sleep, preclude eating meals outdoors, preclude outdoor gatherings of family and friends, preclude working in the yard or on vehicles, and require windows to be closed. Ex. 6 Personal Privacy (PP) has suffered sinus problems since living near the existing municipal solid waste landfill which are likely to continue after the expansion of the municipal solid waste landfill. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies, buzzards, coyotes and raccoons that can migrate onto the Ex. 6 Personal Privacy (PP) property and expose the Novacks to infectious agents and disease. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Ex. 6 Personal Privacy (PP) property and to be deposited on the Ex. 6 Personal Privacy (PP) vehicles for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with the Ex. 6 Personal Privacy (PP) sleep, watching of television, and telephone communication. The expansion of the municipal solid waste landfill threatens to keep Ex. 6 Personal Privacy (PP) property value depressed for the next 15 to 20 years. Topographic and hydrologic alterations at and around the site of the expanded municipal solid waste landfill has caused new and increased flooding on Ex. 6 Personal Privacy (PP) property.

E. Ex. 6 Personal Privacy (PP) owns and resides on property that is located approximately 663 feet from the existing City of Dothan Sanitary Landfill facility boundary and approximately 2026 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) to offensive odors for the next 15 to 20 years that preclude outdoor barbeques and require her to stay indoors as much as possible with windows and doors closed. Ex. 6 Personal Privacy (PP) has suffered sinus problems from breathing the foul air from the existing municipal solid waste landfill which are likely to continue after the expansion of the municipal solid waste landfill. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies, buzzards and other black birds, raccoons, and opossums that can migrate onto her property and expose her to infectious agents and disease. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Ex. 6 Personal Privacy (PP) property and to be deposited on her property during the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years that interferes with Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) enjoyment of life and property. The expansion of the municipal solid waste landfill threatens to keep Ex. 6 Personal Privacy (PP) property value depressed for the next 15 to 20 years.

## V. Allegations of Errors

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

**A. Modification of expired permit.** Ala. Admin. Code r. 335-13-5-.02(2) provides that "[s]olid waste disposal permits obtained in compliance with this Division shall be valid for the design life of the facility or as otherwise determined by the Department, but no longer than a period of five years. * * *. Permit No. 35-06, previously issued on October 21, 2013, bears an expiration date of October 20, 2018. Ala. Code 1975 § 41-22-19(b) provides that "[w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire . . .." Section I. E. 3. of previous Permit No. 35-06 provides that "[t]his permit and all conditions therein will remain in effect beyond the permit's expiration date if the Permittee has submitted a timely, complete application as required by Section I. E. 2., and, through no fault of the Permittee, ADEM has not made a final decision regarding the renewal application." Ala. Admin. Code r. 335-13-5-.02(2) provides that "[r]equest for extension, renewal, or a new permit for any landfill unit shall be filed with the Department by the operating agency at least 180 days prior to the expiration date for existing permits or the proposed construction date for new facilities." Section I. E. 2. of previous Permit No. 35-06 provides that "[i]f the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The renewal application must be submitted to ADEM at least 180 days before this permit expires." Ala. Admin. Code r. 335-13-5-.02(1)(a)-(e) specifies the documents and information that must be submitted to the Department "in order to request a permit" for an existing or proposed landfill unit. The City of Dothan did not submit a complete application, as described in Ala. Admin. Code r. 335-13-5-.02(1)(a)-(e), for renewal and modification of previous Permit No. 35-06 to the Department at least 180 days before the

expiration date of previous Permit No. 35-06. Accordingly, previous Permit No. 35-06 expired on October 20, 2018 and renewal and modification of previous Permit No. 35-06 was not authorized.

**B. Host government approval of application for modified permit.** Ala. Code 1975 § 22-27-48(b) provides that "[t]he department may not consider an application for a modified permit for a facility unless such application has received approval pursuant to this section by the affected local governing body." Ala. Admin. Code r. 335-13-5-.02(1)(a) provides that the applicant shall submit to the Department "[d]ocumentation of host government approval, as provided in the Code of Alabama 1975, § 22-27-48 . . .." 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, including Ala. Admin. Code r. 335-13-5-.02(1)(a). The modification of Permit No. 35-06 was issued in violation of Ala. Code 1975 § 22-27-48(b) and Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the application did not include documentation that the application for modification of Permit No. 35-06 was approved by the Board of Commissioners of the City of Dothan in accordance with Ala. Code 1975 § 22-27-48 in violation of Ala. Admin. Code r. 335-13-5-.02(1)(a).

**C. Host government approval of application for new facility permit.** Ala. Code 1975 § 22-27-48(b) provides that "[t]he department may not consider an application for a new facility unless the application has received approval pursuant to Section 22-27-48.1 by the affected local governing body." Ala. Admin. Code r. 335-13-5-.02(1)(a) provides that the applicant shall submit to the Department "[d]ocumentation of host government approval, as provided in the Code of Alabama 1975, § [22-27-48.1]." 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, including Ala. Admin. Code r. 335-13-5-.02(1)(a). Permit No. 35-06 was issued in violation of Ala. Code 1975 § 22-27-48(b) and Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the application did not include documentation that the application for issuance of Permit No. 35-06 was approved by the Board of Commissioners of the City of Dothan in accordance with Ala. Code 1975 § 22-27-48.1 in violation of Ala. Admin. Code r. 335-13-5-.02(1)(a) .

**D. Wetlands.** Ala. Admin. Code r. 335-13-4-.01(2)(c) provides that "[l]andfill units including buffer zones shall not be permissible in wetlands . . .." 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, including Ala. Admin. Code r. 335-13-4-.01(2)(c). The modification of Permit No. 35-06 was issued in violation of rs. 335-13-5-.03(2) and 335-13-5-.04(3) because 2.25 acres of wetlands in the 20.6-acre expansion of the municipal solid waste landfill are located in wetlands in violation of Ala. Admin. Code r. 335-13-4-.01(2)(c).

**E. Hydrogeology standards**. Ala. Admin. Code r. 335-13-4-.11(2)(a) provides that the liner system of a proposed landfill cell shall be a minimum of five feet above the highest measured groundwater level and that the highest measured groundwater level shall be determined from groundwater measurements taken in the area of the proposed cell or liner system which shall include "a minimum of two measurements taken during each of the three consecutive months of February, March and April with no two measurements taken within any twelve-day period." 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, including Ala. Admin. Code r. 335-13-4-.11(2)(a). The modification of Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the highest groundwater level below the liner system for proposed cells 6, 7 and 8 in the 20.6-acre expansion of the municipal solid waste landfill was not properly determined and fails to demonstrate that the bottom elevation of the liner system is a minimum of five feet above the highest measured groundwater level in violation of Ala. Admin. Code r. 335-13-4-.11(2)(a).

**F. Odors (SIP).** Ala. Admin. Code r. 335-13-4-.22(3)(a) requires that "[o]wners 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." The Alabama State Implementation Plan approved by the Administrator of the U.S. Environmental Protection Agency prohibits the discharge of any contaminant, including "odors," in such quantities and duration as are, or tend to be, injurious to human health or welfare or will interfere with the enjoyment of life or property. 40 C.F.R. § 52.50 (Section [sic: Rule] 335-3-1-.08). 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, including Ala. Admin. Code r. 335-13-4-.22(3)(a). The renewal and modification of Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because operation of the landfill under the conditions included in Permit No. 35-06 will cause the discharge of "odors" in such quantities and duration as are, or tend to be, injurious to human health or welfare or will interfere with the enjoyment of life or property in violation of Ala. Admin. Code r. 335-13-4-

.22(3)(a) and the Alabama State Implementation Plan approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act.

**G. Odors (State Law)**. Ala. Admin. Code r. 335-13-4-.01(3) requires that "Solid Waste Disposal Facilities must comply with any other applicable State or Federal rules, laws, regulations or other requirements." Ala. Admin. Code rs. 335-3-1-.08 prohibits the discharge of air contaminants, including odors, in such quantities and duration as are, or tend to be, injurious to human health or welfare or will interfere with the enjoyment of life or property. 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, including Ala. Admin. Code r. 335-13-4-.01(3). The renewal and modification of Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because operation of the landfill under the conditions included in Permit No. 35-06 will cause the discharge of "odors" in such quantities and duration as are, or tend to be, injurious to human health or welfare or will interfere with the enjoyment of life or property in violation of Ala. Admin. Code r. 335-3-1-.08.

**H. Fugitive Dust**. Ala. Admin. Code r. 335-13-4-.22(3)(a) requires that "[o]wners 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." The Alabama State Implementation Plan approved by the Administrator of the U.S. Environmental Protection Agency prohibits the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate. 40 C.F.R. § 52.50 (Section [sic: Rule] 335-3-4-.02). 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, including Ala. Admin. Code r. 335-13-4-.22(3)(a). The renewal and modification of Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because operation of the landfill under the conditions included in Permit No. 35-06 will cause or permit the discharge of visible fugitive dust emissions beyond the property line of the solid waste disposal facility on which the emissions originate in violation of Ala. Admin. Code r. 335-13-4-.22(3)(a) and the Alabama State Implementation Plan approved by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act.

**I. Disease Vectors.** 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. If determined necessary by the Department or the State Health Department, additional disease vector control measures shall be conducted." Ala. Admin. Code r. 335-13-4-.22(1)(a)1. provides that all waste shall be covered with "[a] minimum of six inches of compacted earth or alternative cover material . . . at the conclusion of each day's operation to control disease vectors . . .." Ala. Admin. Code r. 335-13-4-.22(3)(b) provides that "[n]otwithstanding this rule, additional requirements for operating and maintaining a MSWLF may be imposed by the Department, as deemed necessary, to comply with the Act and this Division." 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, including Ala. Admin. Code rs. 335-13-4-.22(2)(d), 335-13-4-.22(1)(a)1., and 335-13-4-.22(3)(b). The renewal and modification of Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because operation of the municipal solid waste landfill under the

conditions included in Permit No. 35-06 will allow the breeding and accumulation of disease vectors in violation of Ala. Admin. Code rs. 335-13-4-.22(2)(d).

**J. Cover Material (MSWLF).** Ala. Code 1975 § 22-27-2(23) provides that "[a] municipal solid waste landfill is a sanitary landfill." Ala. Code 1975 § 22-27-2(32) provides that a sanitary landfill is "[a] controlled area of land upon which solid waste is deposited and is compacted and covered with compacted earth each day as deposited . . .." The modification of Permit No. 35-06 provides that "[t]he Permittee shall cover all wastes as required by 335-13. The municipal solid waste disposal area shall be covered at the conclusion of each day's activities." Permit No. 35-06, Section III. H. The modification of Permit No. 35-06 also provides that "[t]he Permittee shall operate and maintain the disposal facility consistent with the Application, this permit, and 335-13." Permit No. 35-06, Section II. A. Ala. Admin. Code r. 335-13-4-.22(1)(a)1. provides that "[a] minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each day's operation . . .." The City of Dothan's permit application states: "At the conclusion of each working day, the Landfill Operator shall cover the general working face of the landfill with a minimum of 6-inches of compacted earth cover or an approved alternate daily cover material. * * * Spray on, polymer-based materials, or reusable geosynthetic covers may be used for alternate daily cover material. Requests for the use of an ADC will be submitted to ADEM for approval. * * *" Operations Manual for Dothan Landfill, Section 7.2. Permit No. 35-06 authorizes daily cover of solid wastes disposed of in the 20.6-acre municipal solid waste landfill expansion with materials other than "earth" (if approved by the Department without public notice

and public comment and without modification of Permit No. 35-06) in violation of Ala. Code 1975 § 22-27-2(32). [Note: The question of whether alternative cover materials are authorized by law is the subject of *Smith v. LeFleur*, No. 2180375 (Ala. Civ. App. appeal docketed Jan. 31, 2019)].

**K. Cover Material (C/DLF).** Ala. Code 1975 § 22-27-2(20) provides that a landfill is "[a] method of compaction and earth cover of solid wastes other than those containing garbage or other putrescible wastes, including, but not limited to, tree limbs and stumps, demolition materials, incinerator residues, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis." The modification of Permit No. 35-06 provides that "[t]he Permittee shall cover all wastes as required by 335-13. * * * The construction and demolition waste disposal area shall be covered at the conclusion of each week's activities." Permit No. 35-06, Section III. H. The modification of Permit No. 35-06 also provides that "[t]he Permittee shall operate and maintain the disposal facility consistent with the Application, this permit, and 335-13." Permit No. 35-06, Section II. A. Ala. Admin. Code r. 335-13-4-.23(1)(a)1. provides that "[a] minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each week's operation . . .." The City of Dothan's permit application states: "A minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, tarps, tire chips, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each week's operation . . .." Operations Manual for Dothan Landfill, Section 8.1. Permit No. 35-06 authorizes weekly cover of solid wastes disposed of in the

proposed construction/demolition landfill with materials other than "earth" (if approved by the Department without public notice and public comment and without modification of Permit No. 35-06) in violation of Ala. Code 1975 § 22-27-2(20). [Note: The question of whether alternative cover materials are authorized by law is the subject of *Smith v. LeFleur*, No. 2180375 (Ala. Civ. App. appeal docketed Jan. 31, 2019)].

**L. Cover Frequency (MSWLF).** Ala. Code 1975 § 22-27-2(23) provides that "[a] municipal solid waste landfill is a sanitary landfill." Ala. Code 1975 § 22-27-2(32) provides that a sanitary landfill is "[a] controlled area of land upon which solid waste is deposited and is compacted and covered with compacted earth each day as deposited . . .." Ala. Admin. Code r. 335-13-4-.22(1)(a)1. provides that all waste disposed of in a municipal solid waste landfill shall be covered with "[a] minimum of six inches of compacted earth or alternative cover material . . . at the conclusion of each day's operation . . . or as otherwise approved by the Department." The modification of Permit No. 35-06 provides that "[t]he Permittee shall cover all wastes as required by 335-13. The municipal solid waste disposal area shall be covered at the conclusion of each day's activities." Permit No. 35-06, Section III. H. In a guidance memorandum dated October 6, 2011, the Department acknowledges "a common industry practice of 'peeling back' the cover layer each morning in order to save air space and/or cover material." The guidance memorandum states that "peeling back" the cover layer each morning is permissible provided that "MSW landfills are required to leave cover material in place at least once per week." In accordance with the Department's guidance memorandum, Permit No. 35-06, Section III. H. permits "peeling back" of daily cover of wastes at the municipal solid waste disposal area provided that the cover material is left in place at least once per week. The guidance

memorandum subverts the statutory policy of daily cover with earth enunciated in Ala. Code 1975 § 22-27-2(32) and therefore exceeds the statutory authority granted to the Department. Moreover, this guidance memorandum is a statement of general applicability that implements, interprets, or prescribes law or policy and may not be invoked by the Department for any purpose until the Department has given all notices required by Ala. Code 1975 § 41-22-5. Ala. Code 1975 § 41-22-4(b). Permit No. 35-06, Section III. H. is unlawful because it is based on an unlawful interpretation of Ala. Admin. Code r. 335-13-4-.22(1)(a)1.

**M. Cover Frequency (C/DLF).** Ala. Admin. Code r. 335-13-4-.23(1)(a)1. provides that all waste shall be covered with "[a] minimum of six inches of compacted earth or alternative cover material . . . at the conclusion of each week's operation . . . or as otherwise approved by the Department." The modification of Permit No. 35-06 provides that "[t]he Permittee shall cover all wastes as required by 335-13. * * * The construction and demolition waste disposal area shall be covered at the conclusion of each day's activities." Permit No. 35-06, Section III. H. In a guidance memorandum dated October 6, 2011, the Department states that "peeling back" the cover layer each week is permissible provided that "C&D landfills are required to leave cover material in place at least once per month." In accordance with the Department's guidance memorandum, Section III. H. permits "peeling back" of weekly cover of wastes at the construction/demolition waste disposal area provided that the cover material is left in place at least once per week. The guidance memorandum is a statement of general applicability that implements, interprets, or prescribes law or policy and may not be invoked by the Department for any purpose until the Department has given all notices required by Ala. Code 1975 § 41-22-5.

Ala. Code 1975 § 41-22-4(b). Section III. H. of Permit No. 35-06 is unlawful because it is based on an unlawful interpretation of Ala. Admin. Code r. 335-13-4-.23(1)(a)1.

**N. Discharges**. Ala. Admin. Code r. 335-13-4-.01(2)(a) provides that "[a] facility shall not cause a discharge of pollutants into waters of the State, including wetlands, that is in violation of the . . . Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 to 22-22-14 . . .." Ala. Code 1975 § 22-22-9(i)(3) requires that every person obtain a permit before discharging any new or increased pollution into waters of the State. 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, including Ala. Admin. Code r. 335-13-4-.01(2)(a). The renewal and modification of Permit No. 35-06 was issued in violation of Ala. Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because portions of the facility are located so as to cause the addition of approximately 11,000 cubic yards of sand-clay materials ("structural fill") into waters of the State, including 2.25 acres of wetlands, 890 linear feet of ephemeral streams, and 270 linear feet of intermittent streams, without a permit in violation of Ala. Code 1975 § 22-22-9(i)(3) and Ala. Admin. Code r. 335-13-4-.01(2)(a).

**O. Discharges**. Ala. Admin. Code r. 335-13-4-.01(3) provides that "Solid Waste Disposal Facilities must comply with any other applicable State or Federal rules, laws, regulations or other requirements." Ala. Code 1975 § 22-22-9(i)(3) requires that every person obtain a permit before discharging any new or increased pollution into waters of the State. 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 complies with Ala. Admin. Code div. 335-13, including Ala. Admin. Code r. 335-13-4-.01(3). The renewal and modification of Permit No. 35-06 was issued in violation of Ala.

Admin. Code rs. 335-13-5-.03(2) and 335-13-5-.04(3) because the construction of portions of the facility will result in the addition of approximately 11,000 cubic yards of sand-clay materials ('structural fill") into waters of the State, including 2.25 acres of wetlands, 890 linear feet of ephemeral streams, and 270 linear feet of intermittent streams, without a permit in violation of Ala. Code 1975 § 22-22-9(i)(3) and Ala. Admin. Code r. 335-13-4-.01(3).

**P. Working Face Slope (MSWLF).** Ala. Admin. Code rs. 335-13-4-.22(1)(b) provides that "[a]ll waste shall be confined to as small an area as possible and spread to a depth not exceeding two feet prior to compaction, and such compaction shall be accomplished on a face slope not to exceed 4 to 1 (25%) or as otherwise approved by the Department." 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, including Ala. Admin. Code r. 335-13-4-.22(1)(b). The modification of Permit No. 35-06 provides that compacted waste "shall be accomplished on a face slope not to exceed 4 to 1 or as otherwise approved by ADEM." Permit No. 35-06, Section III. J. Modification of Permit No. 35-06 also provides that "[t]he Permittee shall operate and maintain the disposal facility consistent with the Application, this permit, and 335-13." Permit No. 35-06, Section II. A. The Application provides for a face slope of 3 to 1. Operations Manual for Dothan Landfill, Section 7.4. To the extent that the modification of Permit No. 35-06 approves a 3 to 1 face slope as requested in the Application, it was issued in violation of Ala. Admin. Code r. 335-13-4-.22(1)(b) because the application does not demonstrate that a 3 to 1 slope will achieve the purpose of the 4 to 1 slope requirement.

**Q. Liner Design**. Ala. Admin. Code r. 335-13-4-.18(3)(h) provides that "[a]n 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." 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, including Ala. Admin. Code r. 335-13-4-.18(3)(h). The modification of Permit No. 35-06 authorizes an alternate liner design for cells 6, 7 and 8 in the 20.6-acre municipal solid waste landfill expansion. Permit No. 35-06, Section III. E. The modification of Permit No. 35-06 was issued in violation of 335-13-5-.03(2) and 335-13-5-.04(3) because the application does not include a demonstration that the alternate design ensures that the concentration values listed in Table 1 of Ala. Admin. Code r. 335-13-4-.18 will not be exceeded in the first saturated zone at the relevant point of compliance. In addition, the hydraulic conductivity of the 12-inch thick drainage layer ("$1\times10^{-3}$ cm/sec or greater") is incorrect in Permit No. 35-06, Section III. E.

**R. Unauthorized Dump.** The creation, contribution to, and operation of an "unauthorized dump" is prohibited by Ala. Code 1975 §§ 22-27-4(b) and 22-27-10(b). Ala. Code 1975 § 22-27-2(37) provides that an "unauthorized dump" includes "any solid waste disposal site which does not meet the regulatory provisions of this article." *See* Ala. Admin. Code r. 335-13-1-.03(140) (same). The modification of Permit No. 35-06 authorizes a disposal site which does not meet the regulatory provisions of Ala. Code 1975, Title 22, Chapter 27, Article 1 as described hereinabove. The modification of Permit No. 35-06 was issued in violation Ala. Code 1975 §§ 22-27-4(b) and 22-27-10(b) because the permit authorizes the creation, contribution to, or operation of an "unauthorized dump."

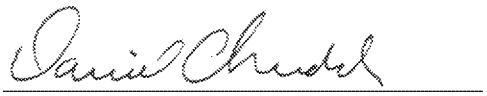
**S. Nuisance and Inconsistency.** Ala. Admin. Code r. 335-13-5-.05(1)(e) authorizes the Department to deny an application for a permit if "[t]he design operations creates a nuisance or is inconsistent with the Act or this Division." The application for modification of Permit No. 35-06 should be denied pursuant to Ala. Admin. Code r. 335-13-5-.05(1)(e) because the design operation of the solid waste disposal facility will create a nuisance and is inconsistent with the Solid Wastes and Recyclable Materials Management Act and Ala. Admin. Code div. 335-13 as described hereinabove.

**T. Discriminatory Effects.** The Department has adopted a "Nondiscrimination Statement" which provides that the Department "does not discriminate on the basis of race . . . in the administration of its programs or activities, in accordance with applicable laws and regulations." The City of Dothan Sanitary Landfill will serve populations in the City of Dothan (population 65,496 / 32.5% Black), Houston County (population 88,787 / 24.60% Black), and the City of Headland (population 4,510 / 27.5% Black). The total population within 1.0 mile of the center point of the 20.6-acre expansion of the municipal solid waste landfill (Lat. 31.235623, Lon. -85.350889) authorized by the modification of Permit No. 35-06 is 547. Of that population, 485 / 89% are Black. The adverse effects arising from the renewal and modification of Permit No. 35-06 (offensive odors, disease vectors, fugitive dust, noise, reduced property values) will have a disparate and discriminatory impact on persons of the Black race. The renewal and modification of Permit No 35-06 contravenes the Department's "Nondiscrimination Statement."

## VI. Proposed Relief

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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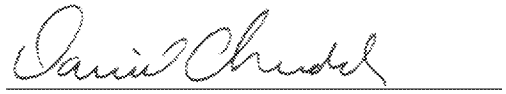
**CERTIFICATE OF SERVICE**

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

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

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

Done this 4th day of June, 2019.



David A. Ludder