Statement of

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Alabama Environmental Council

Before the

U.S. House Committee on Transportation and Infrastructure

Subcommittee on Water Resources and Environment

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Introduction:

Chairwoman Eddie Bernice Johnson, Ranking Member John Boozman, and members of the committee. I appreciate the opportunity to travel from Alabama to share comments with you at this important hearing. I also appreciate the previous hearings related to the coal ash spill at the Tennessee Valley Authority's (TVA) Kingston Fossil Plant. I recognize that previous meetings were mostly about the spill and subsequent cleanup and I appreciate this hearing bringing in more discussion about the disposal in Alabama at the Arrowhead Landfill in Perry County.

I agree with Commissioner Turner that this has resulted in a windfall for Perry County and a number of local communities. However, I do not share his enthusiastic opinion. And neither do a number of people in Alabama. In fact, when I attended a brief meeting in Uniontown in Perry County on September 16th, I heard a lot of residents of Perry County that still had a lot of questions about this disposal and "windfall." Residents seemed not to have had all their fears and concerns answered to alleviate their anxiety. In fact, it appeared to me that there were more questions than there were answers and it doesn't seem to have subsided. Within the last month, a number of residents have come forward with health concerns that did not seem to be present before the disposal began.

I am here to bring a number of concerns to your attention that need to be evaluated before this disposal continues any further:

1. How can removal of Coal Ash in Roane County be performed with such a deliberate containment process to prevent air-borne exposure and yet the exact opposite is true in Perry County?
2. How can individual elements like heavy metals and other toxic substances be listed as hazardous when considered individually, yet considered non-hazardous Solid Waste when contained within Coal Ash?
3. Are all regulations pertaining to Superfund sites being followed according to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)?
4. Are the Operating Permit's Groundwater Monitoring Parameters adequate to Protect Public Health and the Environment in Perry County? Without proper

regulations concerning disposal of Coal Ash Waste in Alabama, a "verbal" commitment by ADEM to "increased monitoring of the site than usual landfill permitting" is inadequate.

5. How can the Perry County Landfill be found in compliance of "all applicable State requirements" and "does not currently have any relevant violations..." when it is discharging leachate without a required state permit to the Marion Wastewater Treatment Plant without a required state permit and when that plant that has been in violation of its NPDES Permit No AL0023809 since August 2003?
6. Why has the hydrological characterization of the landfill site not received careful scrutiny before millions of tons of hazardous substances were allowed to be added to the landfill, particularly in view of evidence that monitoring wells contained elevated levels of pollutants?
7. Why do operating permit's post-closure requirements fail to require at least 30 years of post-closure monitoring to protect the residents when Perry County Associates are long gone?
8. Are Solid Waste Disposal Act regulations being enforced and is the Coal Ash waste being "stored separately from the other material there" as reported in Mr. Tom Kilgore's written statement on July 28, 2009 before this committee?
9. Are all Clean Air Act regulations being enforced and monitored to protect public health from exposure?
10. Why has this not been identified as an Environmental Justice issue with extra agency support to local communities? When waste is being collected in a mostly affluent, white Roane County and being disposed in a mostly poor, African-American Perry County, this action should be labeled the injustice that it is.
11. Have EPA, ADEM, TVA, and Perry County & Associates attempted to alleviate all concerns and questions to Perry County citizens who continue to suffer through the worst environmental disaster in US history?

I would not have served the citizens of Alabama to the best of my ability had I not asked these questions. Please understand that these comments and questions have been collected in a short period of time and may not reflect the full environmental and

public health impacts of this disposal plan. However, many think there is enough reason for this plan to be further scrutinized and reviewed before allowing the toxic waste to continue to be dumped on the people of Perry County, Alabama.

I look forward to the good work of this committee to answer these questions alleviating all concerns for citizens of Perry County, Alabama and other citizens across our great state. Thank you for the opportunity to address this committee and I look forward to your questions.

<u>In Depth Comments on Questions:</u>

1. *How can removal of Coal Ash in Roane County, TN be performed with such a deliberate containment process to prevent air-borne exposure and yet the exact opposite be true in Perry County, AL?*

In reviewing Mr. Kilgore's past testimony, reviewing operating procedure and through visible observations of activities being implemented on the ground in Roane County, TN, compared to the procedures for disposal of the same Coal Ash in Perry County, AL, it is easy to see that precautions are not the same. In Roane County, it appears that all precautions are being taken to keep the Coal Ash from having any negative airborne impacts to the surrounding community. Yet, that is not the case in Perry County where the Coal Ash is being deposited and left open to have a devastating impact on local residents near the landfill.

317 Uniontown Residents live within one half mile of the landfill with another 3,500 plus within 5 miles. "The EPA is allowing the transport of millions of tons of a hazardous substance, namely coal ash, to a state that has *no* regulations governing the disposal of the waste. Yet it is the EPA's responsibility to ensure that the residents of Uniontown are protected from both short-term and long-term exposure to the hazardous constituents of the TVA coal ash. The current operating permit of the Arrowhead Landfill, however, is deficient in critical areas, and these deficiencies potentially place this community at risk..."

"In line with the recommendations set forth in the Duke Study, the TVA's remediation activities at the Kingston disaster site have focused directly on preventing the spilled ash from becoming airborne. According to TVA officials, an aggressive dust suppression and control program has been implemented that includes the use of road vacuums and water trucks to suppress dust generation by vehicle traffic, wetting ash areas with truck-mounted water cannons, and establishing vegetative cover for longer-term dust management. Also according to the TVA, a comprehensive air-monitoring program has been established in the spill area. Residents of Perry County are potentially exposed to the same dangerous ash as the Tennessee residents, and they deserve at least a commensurate, if not greater level of protection, because those residing near the final disposal site—the Arrowhead Landfill—face a much longer-term health threat. To establish a commensurate level of protection, the EPA should require, in an amendment to the AOC, that disposal of coal ash be terminated at any landfill that does not guarantee adequate control of fugitive dust. (October 27, 2009 Letter to Stan Meiburg, from Concerned Citizens of Perry County and Earthjustice)

2. *How can individual elements like heavy metals and other toxic substances be listed as hazardous when considered individually, yet considered non-hazardous Solid Waste when contained within Coal Ash?*

"The threat to human health from inhalation of the coal ash released from the Kingston facility has been recently examined by scientists from Duke's Nicholas School of the Environment, Duke's Pratt School of Engineering, the Duke Comprehensive Cancer Center, and the Georgia Institute of Technology. Their double-blind, peer reviewed study was published on August 15, 2009 in the journal *Environmental Science and Technology. (See* Ruhl, L. Vengosh, A, Dwyer, G. Hsu-Kim, H, Deonarine, A, Bergin, M., Kravchenko, J.) Survey of the Potential Environmental and Health Impacts in the Immediate Aftermath of the Coal Ash Spill in Kingston, Tennessee. (*Environ.Sci. Technol.* **2009**, *43*(22), 6326–6333.) This study examined the potential human health impacts from inhalation of the coal ash released from the TVA plant. According to the authors, the study "highlights the high probability of atmospheric resuspension of fine fly

ash particulates, which are enriched in toxic metals and radioactivity, and could have a severe health impact on local communities and workers."

"In the study, the scientists analyzed the toxic elements of the TVA coal ash that is currently being disposed at the Arrowhead Landfill. Their analysis of ash samples revealed that the Kingston ash contains high levels of toxic metals and radioactivity, including 75 parts per million of arsenic, 150 parts per billion of mercury, and 8 picocuries per gram of total radium. According to the study, the high concentrations of trace metals and radioactivity in the bulk TVA coal ash "are expected to magnify, as fine fractions of fly ash (which may be re-suspended and deposited in the human respiratory system) are typically 4-10 times enriched in metals relative to the bulk ash and the coarse size fraction." In addition, the study notes that the "toxic metal content in coal ash, the sizes of fly ash particulates, and the ionizing radiation (IR) exposure (both incorporated and external) may act synergistically or, less frequent, antagonistically, affecting human health directly (predominantly through inhalation of contaminated air)."

"The study also notes that coal ash is a Group I human carcinogen associated with increased risks of skin, lung, and bladder cancers. Arsenic and radium exposures in humans are associated with increased risks of skin, lung, liver, leukemia, breast, bladder, and bone cancers for exposure predominantly due to chronic ingestion or chronic inhalation, with the dose-response curve dependent on location, sources, and population susceptibility and/or tolerance. The study states that coal ash particulates: affect lung epithelial and red blood cells in animal studies and human in vitro models, causing inflammation, changing the sensitivity of epithelia, altering immunological mechanisms and lymphocyte blastogenesis, and increasing the risk of cardiopulmonary disease (e.g., pulmonary vasculitis/hypertention). Individuals with pre-existing chronicobstructive pulmonary disease, lung infection, or asthma are more susceptible to the coal ash affliction. Several epidemiological studies have proved the significant health hazards (such as enhanced risk for adverse cardiovascular events) of fine-particulate air pollution for individuals with type II diabetes mellitus and people with genetic and/or disease-related susceptibility to vascular dysfunction, who are a large part of the population.

"Lastly, in addition to the threats posed by inhalation of trace metals such as arsenic and lead, the study also identifies risk from inhalation of radium in the Kingston ash: Radium-226 and 228Ra, which are the main sources of low-dose IR exposure in coal ash, can remain in the human lung for several months after their inhalation, gradually entering the blood circulation and depositing in bones and teeth with this portion remaining for the lifetime of the individual. When inhaled, the radionuclides can affect the respiratory system even without the presence of the other coal ash components. Thus, the airborne particles containing radioactive elements inhaled by cleanup workers of the nuclear accident at the Chernobyl nuclear power plant caused bronchial mucosa lesions, in some cases preneoplastic, with an increased susceptibility to the invasion of micro organisms in bronchial mucosa. Consequently, the combined radioactivity of coal ash at the TVA spill, together with other enriched trace metals such as Ni, Pb, and As, may increase the overall health impact in exposed populations, depending on duration of exposure, and particularly for susceptible groups of the population.

"Thus, it is imperative that the landfill permit and the AOC require that adequate safeguards be established to eliminate or minimize exposure to airborne coal ash from disposal operations." (October 27, 2009 Letter to Stan Meiburg, from Concerned Citizens of Perry County and Earthjustice)

3. *Are all regulations pertaining to Superfund sites being followed according to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)?*

"CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), requires that "[i]n the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with . . . all applicable State requirements." Pursuant to CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, on January 16, 2008, EPA "made an affirmative determination of acceptability for the receipt of [CERCLA] wastes at the Perry County

Associates Landfill (PCA Landfill) located along Cahaba Road at Route 2, Box 110A in Uniontown, Alabama." This determination was based on representations by the Alabama Department of Environmental Management that the landfill "does not *currently* have any relevant violations..." (Emphasis added). EPA noted that this determination is subject to rescission.

Perry County Associates, LLC violation of Alabama Admin. Code Chap. 335-3-1

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).

"Air Pollution" means "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 . . .." Ala. Admin. Code R. 335-3-1-.02(1)(e). "Air Contaminant" means "any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source." Ala. Admin. Code R. 335-3-1-.02(1)(d). "Odor" means "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." Ala. Admin. Code R. 335-3-1-.02(1)(ss).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea

and vomiting. Thus, Perry County Associates, LLC is permitting or causing air pollution in violation of Ala. Admin. Code R. 335-3-1-.08. Accordingly, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-3-1-.08 and the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded.

Perry County Associates, LLC violation of the Alabama Water Pollution Control Act

Ala. Code § 22-22-9(g) provides:

> It shall be the duty of the commission to receive and examine applications, plans, specifications and other data and to issue permits for the discharge of pollutants, industrial wastes entering directly or through a municipal or private treatment facility and other wastes into the waters of the state, stipulating in each permit the conditions under which such discharge may be permitted.

Ala. Code § 22-22-9(i)(3) provides:

> Every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.

Since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. Perry County Associates, LLC has not obtained a permit from the Alabama Department of Environmental Management as required by the above-referenced statutory provisions to discharge pollutants directly or through a municipal or private treatment facility into waters of the State. Thus, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Code §§ 22-22-9(g) and 22-22-9(i)(3). Accordingly, the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded.

Perry County Associates, LLC violation of Alabama Admin. Code Chap. 335-6-5

Ala. Admin. Code R. 335-6-5-.04(2) provides:

No significant industrial user shall introduce pollutants into publicly owned treatment works without having first obtained a valid State Indirect Discharge (SID) Permit from the Department.

Perry County Associates, LLC qualifies as a "significant industrial user" under one or more of the provisions identified in Ala. Admin. Code R. 335-6-5-.02(oo).

Since July 14, 2008, Perry County Associates, LLC has been discharging pollutants contained in leachate generated at the Perry County Associates LLC Landfill, through the Marion Wastewater Treatment Plant, into Rice Creek, a water of the State. Perry County Associates, LLC has not obtained a State Indirect Discharge (SID) Permit therefor from the Alabama Department of Environmental Management as required by the above-referenced rules. Thus, the Perry County Associates LLC Landfill is not operating in compliance with Ala. Admin. Code R. 335-6-5-.04(2). Accordingly, the January 16, 2008 determination of acceptability granted by EPA under CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440 should be rescinded. (December 7, 2009 David Ludder Petition to Rescind Determination that the Perry County Associates, LLC Landfill is Acceptable for the Receipt of CERCLA Waste)

4. *Are the Operating Permit's Groundwater Monitoring Parameters adequate to Protect Public Health and the Environment in Perry County?*

Groundwater monitoring parameters for the Arrowhead Landfill do not include several contaminants found commonly in leachate generated by coal ash disposal. According to Table IV.3 of the Permit Modification for the Arrowhead Landfill, the parameters to be monitored on a semi-annual basis are those parameters listed in Appendix I of Chapter 335-13-4 of the Alabama Administrative Code. These parameters do *not* include boron, manganese, molybdenum or sulfate, four very common coal ash pollutants. *See* U.S. Environmental Protection Agency, Report to Congress on the

Wastes from the Combustion of Fossil Fuels, March 1999 at 3-17. In fact, EPA's list of 67 "damage cases," defined as sites contaminated by coal combustion waste, include 38 sites contaminated by sulfate, 24 sites contaminated by manganese, 10 sites contaminated by boron, and 3 sites contaminated by molybdenum. *See* U.S. EPA, Coal Combustion Waste Damage Case Assessments, July 2007. Lastly, the EPA's draft Human Health and Ecological Risk Assessment for Coal Combustion Wastes (July 2007) specifically identified elevated risk to human health and the environment from the leaching of both boron and molybdenum from coal ash landfills. *Id.* at ES 1-2. We therefore request that the AOC be amended to require that any landfill accepting coal ash provide baseline data for these pollutants, sample for these additional parameters, and perform monitoring quarterly rather than semi-annually for all contaminants. (October 27, 2009 Letter to Stan Meiburg, from Concerned Citizens of Perry County and Earthjustice)

Without proper regulations concerning disposal of Coal Ash Waste in Alabama, a "verbal" commitment by ADEM to "increased monitoring of the site than usual landfill permitting" is inadequate.

5. *How can the Perry County Landfill be found in compliance of "all applicable State requirements" and "does not currently have any relevant violations..." when it is discharging leachate without a required state permit to the Marion Wastewater Treatment Plant without a required state permit and when that plant that has been in violation of its NPDES Permit No AL0023809 since August 2003?*

As brought to the attention of Stanley Meiburg, Acting Regional Administrator, EPA Region IV by the Cahaba River Society, "We are very concerned that the City of Marion Waste Water Treatment Plant (WWTP) may not be adequately capturing heavy metals from the very large volume of leachate from the Arrowhead Landfill in Perry County." (November 23, 2009 Letter from Cahaba River Society to Mr. Stanley Meiburg) And, as found on the Enforcement & Compliance History Online (ECHO,) Ammonia levels have been exceedingly high before the deposits, and have increased again recently. (http://www.epa-echo.gov/echo/compliance_report_water_icp.html)

The City of Marion was sued by the State for such violations on April 9, 2008. *State of Alabama ex rel Troy King v. City of Marion*, Case No. 53-CV-2008-900016. That lawsuit remains pending.

Until the Marion WWTP is brought into compliance, deposition of this "wet" material should not be allowed in the Arrowhead Landfill in Perry County.

6. *Why has the hydrological characterization of the landfill site not received careful scrutiny before millions of tons of hazardous substances were allowed to be added to the landfill, particularly in view of evidence that monitoring wells contained elevated levels of pollutants?*

The operating record of the Arrowhead Landfill does not contain documents indicating that there has been a full and accurate characterization of groundwater flow and the interconnections to groundwater and surface water in the vicinity of the landfill. Groundwater data and maps supplied by the operator are conflicting and fail to provide a full and accurate description of the area's hydrogeology. Further, the operator's baseline (background) monitoring of the groundwater and surface water is wholly insufficient to determine baseline conditions. Lastly the number of monitoring wells is insufficient and the few wells existing are poorly placed to identify contamination from the landfill. A full investigation into the local hydrogeology is necessary so that regulators can determine baseline conditions and an appropriate groundwater and surface water monitoring system.

7. *Why do operating permit's post-closure requirements fail to require at least 30 years of post-closure monitoring to protect the residents when Perry County Associates are long gone?*

According to Section VIII of the Permit Modification for the Arrowhead Landfill, the length of the period of post-closure groundwater and surface water monitoring is left to the discretion of the Alabama Department of Environmental Management (ADEM). It is essential, however, for the protection of the community that at least 30 years of post closure groundwater and surface water monitoring be required at the Arrowhead

Landfill. According to the EPA's Human Health and Ecological Risk Assessment for Coal Combustion Wastes; the risk of leachate migration and contamination of underlying groundwater increases with time. Therefore monitoring must continue for a substantial period after disposal ends to make sure that pollutants do not migrate from the landfill and contaminate the underlying groundwater or surface water. According to the operating permit and Alabama regulations, the ADEM has authority to decrease the length of the post-closure care period. *See* ADEM Rule 335-13-4-.20(3)b. While 30 years is the standard period of post-closure monitoring for non-hazardous waste, it would be preferable to monitor the wells in perpetuity, unless it can be demonstrated that monitoring is no longer necessary to protect human health and the environment. Thus the EPA should amend the AOC to permit coal ash disposal only at a landfill that provides sufficient long-term post-closure monitoring.

Further, according to an August 19, 2009 memorandum from Wesley S. Edwards of ADEM's Hydrogeology Section, Groundwater Branch to Phillip D. Davis, Chief of ADEM's Solid Waste Branch, groundwater monitoring at the landfill has already resulted in a statistically significant increase (SSI) for concentrations of barium in two of the landfill's down gradient monitoring wells. *See* ADEM Memorandum. There is nothing in the record that indicates that the Arrowhead Landfill owner or operator has submitted the notice required by state regulations or that enhanced "assessment monitoring" has been initiated to determine the extent of the elevated barium. In view of the ADEM's determination that groundwater contamination may already be occurring, it is essential that adequate monitoring be immediately required and that the period of monitoring be sufficient to detect contamination over the long-term. The EPA should investigate whether the landfill is in compliance with ADEM regulations that require specific measures be taken by the operator of the landfill following the determination of a SSI. *See* ADEM Rule 335-13-4-27. (October 27, 2009 Letter to Stan Meiburg, from Concerned Citizens of Perry County)

8. *Are Solid Waste Disposal Act regulations being enforced and is the Coal Ash waste being "stored separately from the other material there" as reported in Mr. Tom Kilgore's written statement on July 28, 2009 before this committee?*

Pursuant to the Solid Waste Disposal Act § 4004(a), 42 U.S.C. § 6944(a), EPA promulgated criteria for the operation of municipal solid waste landfills. Among these criteria is the following:

Owners or operators of all MSWLFs must ensure that the units 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. § 258.24(a). Failure to comply with this criterion makes a landfill a prohibited "open dump." Solid Waste Disposal Act § 4005(a), 42 U.S.C. § 6945(a), and 40 C.F.R. § 258.1(g) and (h).

Pursuant to Clean Air Act § 110, 42 U.S.C. § 7410, the State of Alabama adopted and EPA approved, Ala. Admin. Code R. 335-3-1-.02 and 335-3-1-.08 as part of the State Implementation Plan for Alabama. 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).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea and vomiting. Accordingly, Perry County Associates, LLC is permitting or causing air pollution in violation of the State Implementation Plan for Alabama and in violation of 40 C.F.R. § 258.24(a). Thus, Perry County Associates, LLC is operating a prohibited "open dump" in violation of the Solid Waste Disposal Act. (David Ludder)

9. *Are all Clean Air Act regulations being enforced and monitored to protect public health from exposure?*

Pursuant to Clean Air Act § 110, 42 U.S.C. § 7410, the State of Alabama adopted and the U.S. Environmental Protection Agency (EPA) approved, Ala. Admin. Code R. 335-3-1-.02 and 335-3-1-.08 as part of the State Implementation Plan for Alabama. 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).

"Air Pollution" means "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 . . .." Ala. Admin. Code R. 335-3-1-.02(1)(e). "Air Contaminant" means "any solid, liquid, or gaseous matter, any odor, or any combination thereof, from whatever source." Ala. Admin. Code R. 335-3-1-.02(1)(d). "Odor" means "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." Ala. Admin. Code R. 335-3-1-.02(1)(ss).

Since July 2009, Perry County Associates, LLC has been operating the Perry County Associates, LLC Landfill in such manner as to permit or cause the presence of one or more contaminants, including odors, in the outdoor atmosphere which are injurious to human health and welfare, interfere with the enjoyment of life and property, are unpleasant to persons, tend to upset appetite, lessen food intake, interfere with sleep, produce irritation of the upper respiratory tract, and cause dizziness, headache, nausea and vomiting. Accordingly, Perry County Associates, LLC is permitting or causing air

pollution in violation of Ala. Admin. Code R. 335-3-1-.08, the State Implementation Plan for Alabama, and the Clean Air Act. (David Ludder)

10. *Why has this not been identified as an Environmental Justice issue with extra agency support to local communities? When waste is being collected in a mostly affluent, white Roane County and being disposed in a mostly poor, African-American Perry County, this action should be labeled what it is.*

Section 2-2 of Executive Order 12898 directs each Federal agency to conduct its programs

> "that substantially affect human health or the environment in a manner that ensures that such programs... do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies and activities because of their race color or national origin."

See Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (February 16, 1994).

11. *Have the EPA, ADEM, TVA, and Perry County and Associates attempted to alleviate all concerns and questions to Perry County citizens who continue to suffer through the worst environmental disaster in US history?*

As Rev. James R. Murdock, President of the Concerned Citizens of Perry County and resident of Uniontown, AL told me on Monday, December 7, 2009,

> "We don't want it, we don't need it, and we wish they'd stop sending it to us."

Mr. Murdock and his wife are suffering from respiratory illness that they feel is directly attributable to the disposal of Coal Ash at the Perry County Landfill. Numerous other residents of Perry County feel the same way. They are experiencing illness and ill-effect that were not present before the disposal began.

Conclusion:

My intention was to bring these questions to this committee and seek the answers that many in Alabama have been asking for some time. This has been an emergency action that was not planned. However, many would say that judgment was made too swiftly and proper procedures were not followed resulting in a continuation of this disaster. Please make every attempt to answer these questions as you seek to conclude these hearings.