

# Landfill Expansion: Alabama Appellate Court Addresses Application of Groundwater Requirements



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The Court of Appeals of Alabama (“Court”) addressed in a December 13th opinion a challenge to a Alabama Department of Environmental Management (“ADEM”) decision to grant a permit allowing the expansion and modification of a solid waste landfill. See *Gipson v. Alabama Department of Environmental Management*, 2019 WL 6798567.

Several individuals (“Petitioners”) challenged the renewal and modification of the landfill’s Solid Waste Permit arguing it violated certain ADEM Rules.

The Petitioners argued that the landfill did not comply with the groundwater requirements established for landfills by the ADEM rules.

ADEM rules require that a landfill be designed so that the bottom elevation is a minimum of five feet (if measured during February, March, or April) or ten feet (if measured during the remaining nine months) above the estimated groundwater level beneath the landfill. Further, the rules define “groundwater” as “water below the land surface in the zone of saturation.” The “saturated zone” is defined as “that part of the earth’s crust in which all voids are filled with water.”

ADEM interpreted this provision to mean that in order for a zone to be saturated it must be 100% filled with water. Also, even if water is present it must be interconnected and constitute a continuous zone of saturation.

ADEM reasoned that the rule’s purpose is to prevent the spread of contaminants. If the groundwater is not interconnected and continuous, contaminants cannot spread.

The possibility that groundwater was within the zone was admitted., However, there was not a sufficient showing of interconnectedness or the existence of a well that was 100% saturated. Therefore, the Petitioner’s appeal failed.

A copy of the decision can be downloaded [here](#).