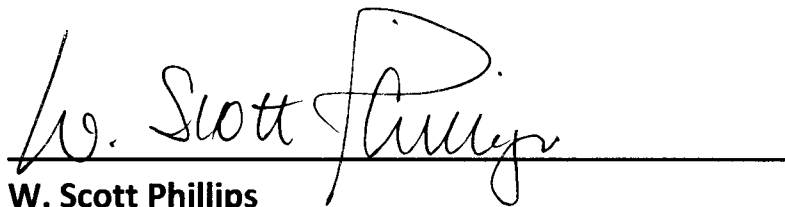


8/15/14

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 20, 2014**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on June 20, 2014.

A handwritten signature in black ink, reading "W. Scott Phillips", is written over a solid horizontal line. The signature is cursive and includes a large, stylized initial "P".

W. Scott Phillips

Vice Chair

Alabama Environmental Management Commission

Certified this 15th day of August 2014.

**Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 20, 2014**

**Convened: 10:58 a.m.
Adjourned: 12:55 p.m.**

Part A

**Transcript
Word Index**

Part B

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

Part A

Page 1

1 ALABAMA ENVIRONMENTAL MANAGEMENT
2 COMMISSION MEETING
3
4
5
6
7
8
9 ALABAMA DEPARTMENT OF ENVIRONMENTAL
10 MANAGEMENT
11 Alabama Room
12 1400 Coliseum Boulevard
13 Montgomery, Alabama 36110-2400
14 June 20, 2014
15 10:58 a.m.
16
17
18
19
20
21
22
23 Taken by: Victoria M. Castillo, CCR#17

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1 A P P E A R A N C E S
2
3 COMMISSION MEMBERS PRESENT:
4 W. Scott Phillips, Vice Chair
5 James E. Laier, Ph.D, P.E.
6 Terry D. Richardson, Ph.D.
7 Samuel L. Miller, M.D.
8 Robert L. Carson, Jr., D.V.M.
9 Mary J. Merritt
10
11 COMMISSION MEMBER NOT PRESENT:
12 H. Lanier Brown, II, Esquire, Chair
13
14 ALSO PRESENT:
15 Robert Tambling, EMC Legal Counsel
16 Debi Thomas, EMC Executive Assistant
17 Lance R. LeFleur, ADEM Director
18
19
20
21
22
23

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1 VICE CHAIR PHILLIPS: Good
2 morning. I want to call the meeting of the
3 Alabama Environmental Management Commission
4 to order. I want to acknowledge that we
5 have a quorum here today. Before we get
6 started, we have a lot of people here.
7 Some of you may have been here for the
8 first time. I just want to remind you if
9 you have a cell phone, please put it on
10 silent or off so it doesn't disrupt the
11 meeting today.
12 With that, we will move to
13 agenda item number two, consideration of
14 the meeting minutes of the Commission
15 meeting held on April 11th, 2014. I will
16 entertain a motion from the Commission
17 regarding the minutes.
18 DR. RICHARDSON: So moved.
19 MS. MERRITT: Second.
20 VICE CHAIR PHILLIPS: I have
21 a motion and a second to adopt the minutes
22 of the April 11th, 2014 Commission meeting
23 as distributed.

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1 Do I have any discussion?
2 (No response)
3 VICE CHAIR PHILLIPS: Being
4 no discussion, all in favor with the
5 motion, signify with the sign "aye."
6 (All Commission members
7 indicate "aye.")
8 VICE CHAIR PHILLIPS: Motion
9 carries. Thank you. Agenda item number
10 two, we will have the report from the
11 Director. Mr. Director.
12 MR. LeFLEUR: Good morning,
13 and welcome to all of you present for the
14 fifth of the six scheduled meetings of the
15 Alabama Environmental Management Commission
16 for Fiscal Year 2014. In today's report, I
17 will update you on the budget, and then
18 focus on several topics related to
19 Departmental results including: Updated
20 Resource Conservation and Recovery Act,
21 RCRA dashboards; Departmental Innovations;
22 announce EPA's granting primacy for another
23 Departmental program; and, finally,

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1 recognition of individual achievements by
2 staff members.
3 As for the Fiscal Year 2014
4 budget, we are now into the ninth month and
5 we continue to be on target with
6 anticipated revenues and expenditures in
7 both the State and Federal budget
8 components. As we prepare to enter the
9 final quarter of the current fiscal year,
10 there is no reason to believe that any
11 major change will occur in the Department's
12 finances before the new fiscal year.
13 In past meetings, we have
14 reviewed RCRA, air, and water dashboard
15 graphs. These reviews are intended to be a
16 regular part of my report to the
17 Commission. Having completed a full
18 rotation through the dashboards for all
19 three programs, it is now time to look at
20 updated RCRA dashboards again. Today, we
21 will review updates to the same type of
22 information presented previously.
23 These graphs are a little bit

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1 fuzzy, so I apologize for that. Alabama's
2 total hazardous waste universe of more than
3 5,000 facilities is broken down into four
4 categories: Treatment, storage and
5 disposal facilities, TSDFs -- shown in
6 purple -- large quantity generators, LQGs
7 -- shown in yellow -- small quantity
8 generators -- the blue portion -- and
9 others represented in orange.
10 As you may recall from last
11 summer when I introduced you to the RCRA
12 dashboards, the majority of the RCRA
13 regulated facilities in our state fall into
14 the small generator and "other"
15 categories. These facilities either
16 temporarily store small amounts of
17 hazardous material or simply transport
18 materials that are defined as hazardous.
19 This large number of small
20 facilities, however, represents a very
21 small fraction of the total hazardous waste
22 generated and managed in Alabama and
23 likewise represents a very small risk of

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1 environmental exposure.
2 By contrast, there are fewer
3 large generators of hazardous waste, but
4 they represent the vast majority of
5 hazardous material in the state.
6 Interestingly, since our last update, there
7 has been an increase in the number of
8 hazardous waste notifications received by
9 the Department from retail stores.
10 Pharmacies and big box stores --
11 which have now been categorized as large
12 quantity generators -- have begun to
13 routinely provide notice of hazardous waste
14 activity based on the management of expired
15 pharmaceuticals, such as nicotine patches.
16 In light of this trend, EPA has begun
17 information gathering for potential RCRA
18 regulations concerning retail operations.
19 These next dashboards will focus
20 on the large quantity generators which
21 represent the largest potential hazardous
22 waste risk.
23 On this second dashboard, you

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1 see a comparison of the percentage of
2 annual inspections coverage of large
3 quantity generators made in Alabama for the
4 period 2010 through year-to-date, 2014, to
5 the national standard of 20 percent
6 established by EPA. Although I refer to
7 this as year-to-date data, the 2014 data is
8 not realtime data, but rather is updated
9 periodically by EPA from
10 national enforcement -- a national
11 enforcement database.
12 Nevertheless, by year end that
13 bar will also exceed the 20 percent
14 standard by a significant margin. This
15 measure of the rate of inspections is one
16 of our grant commitments made each year to
17 EPA. If you look closely, you can see the
18 dotted blue line hovering around the 20
19 percent EPA standard. That dotted line is
20 the national average percentage of
21 inspections for all states.
22 As you can see, the ADEM RCRA
23 program consistently meets or exceeds the

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1 EPA 20 percent requirement and national
2 averages for the rate of inspections.
3 This third dashboard shows the
4 percentage of inspected large quantity
5 hazardous waste generator facilities that
6 were found to be in significant
7 noncompliance, S-N-C or SNC, with an
8 applicable state or federal requirement.
9 The percentages of these large facilities
10 found to be in significant noncompliance in
11 both Alabama and the nation are small,
12 thankfully.
13 For the past several years, ADEM
14 inspectors have been consistent with or
15 have slightly exceeded the national average
16 of other state inspectors in identifying
17 SNCs during facility inspections.
18 You see the red portion of this
19 slide representing the percentage of sites
20 where EPA participated with ADEM in the
21 inspection -- in the inspection is higher
22 than the other percentages shown. The
23 reason for this is that ADEM and EPA

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1 jointly inspect the small number of
2 facilities where there is either a high
3 probability or a history of significant
4 noncompliance.
5 This fourth slide is an activity
6 dashboard. It shows the number of
7 facilities with some type of enforcement
8 action. The graph is a comparison of
9 informal enforcement actions, including
10 Notices of Violation, to formal enforcement
11 actions, primarily Administrative and
12 Consent Orders. The yellow bar shows the
13 number of Alabama facilities with formal
14 enforcement actions, and the light blue bar
15 indicates the number of Alabama facilities
16 with informal enforcement actions.
17 As you can see, the number of
18 facilities with informal enforcement, such
19 as technical assistance, Warning Letters,
20 and NOV's is roughly twice the number of
21 those that receive Orders or litigation,
22 yet -- as shown on the previous slide --
23 our overall significant noncompliance rate

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1 is trending down and remains less than five
2 percent. This is consistent with the
3 recent compliance related research and the
4 Next Generation Compliance concept
5 discussed in the April Commission meeting.
6 To summarize, these dashboards
7 show: An increasing universe of hazardous
8 waste handling facilities, primarily in the
9 retail sector; the rate of inspections
10 continues to exceed national averages;
11 identification of facilities found to be in
12 significant noncompliance is on par with
13 national averages; and, the compliance
14 strategy adopted by the Department is
15 achieving the intended results. As has
16 been noted previously, the dashboards
17 presented today are just a few of the more
18 than 150 available on the EPA Web site.
19 I have previously reported to
20 you on the Department's budget and on its
21 performance, given that limited budget.
22 Periodically, I have reported on individual
23 programs such as recycling, work on

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1 impaired water bodies, and air programs
2 that have resulted in the attainment of
3 fine particle pollution standards for the
4 first time in 30 years for the entire
5 state.
6 These past reports were intended
7 to give the Commission and the people --
8 and the public -- excuse me -- a sense of
9 how the Department is using funding that is
10 49th in the nation to obtain results that
11 are in the top ten in the nation.
12 Today, I would like to address
13 the issue of what will be necessary for the
14 Department to continue to be one of the top
15 programs in the nation with the lowest
16 funding in the nation.
17 Clearly, something has enabled
18 the Department to position itself as a low
19 cost provider of high quality service.
20 Employing topnotch personnel, our greatest
21 asset, is certainly the starting point.
22 But how the efforts of those individuals
23 have been channeled is what converts the

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1 potential of those employees into results.
2 A critical component of past and
3 future success is the embracing of
4 innovation and the implementation of
5 forward leaning ideas. Because this
6 involves change, for many organizations,
7 especially public entities, this is a very
8 difficult process. At times, this process
9 can be doing something entirely new, while
10 at other times it may involve being an
11 early implementer of an idea developed
12 elsewhere. ADEM has used both.
13 This notion of innovation and
14 embracing of forward leaning ideas has been
15 applied in technical, operational,
16 organizational, communication, and other
17 activities. It has also been applied in
18 both the regulatory and non-regulatory
19 programs.
20 First, we will look at some of
21 the past and ongoing actions that have
22 already paid off in the form of improved
23 performance, including service to the

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1 environment through non-regulatory
2 programs. These next slides will cover the
3 categories one at a time.
4 In the category of improved
5 productivity and compliance, innovations
6 fall into the following two areas: Data
7 management and organizational and
8 operational changes.
9 First, data management. Like
10 many organizations, efficient data
11 management can result in eliminating the
12 requirement to enter data more than once,
13 which reduces costs, reduces the occurrence
14 of human error, and for a public entity
15 such as ADEM, also facilitates greater
16 transparency.
17 FileNet is the internally
18 accessible system for all documents that
19 allows the Department to be paperless.
20 eFile is a computer application that
21 identifies all FileNet documents related to
22 a given facility and makes them readily
23 accessible for both internal and external

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1 public, or have lowered costs. After
2 looking at the past and present, we will
3 then look at some of the innovations we
4 will be considering in the future. Before
5 beginning this group of slides, I ask your
6 indulgence with the large number of slides
7 and the amount of detail. While this could
8 have been spread out over two or three
9 reports, I think this will give you a
10 better idea of the scope and impact of
11 innovation at the Department. So please
12 bear with me.
13 This first slide outlines the
14 groups into which these innovative current
15 activities have been categorized based on
16 the primary type of benefit realized from
17 the innovation. Many innovations could
18 easily be included in several of these
19 categories. The categories are: Improved
20 productivity and compliance; reduced costs
21 from new technology; leveraging of
22 resources; improved public service through
23 non-regulatory programs; and, an improved

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1 use. EDMR is a system allowing direct
2 electronic entry of discharge monitoring
3 reports by the regulated entity which, in
4 turn, automatically feeds all databases
5 utilizing that information. The Laboratory
6 Information Management System, LIMS, is
7 another example of automatically
8 electronically feeding laboratory results
9 from many different pieces of lab equipment
10 into multiple databases.
11 All states are required to
12 submit large amounts of data to EPA. Many,
13 if not most states, must reformat
14 information and submit packages of data to
15 EPA. ADEM has been a leader in direct
16 streaming data without intermediate
17 reformatting and packaging.
18 The Department is among the
19 first state agencies to be converted to the
20 new statewide financial system that will
21 streamline everything from purchasing to
22 payroll.
23 Departmental organizational and

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1 operational changes have also had a
2 significant impact on both our productivity
3 and our ability to obtain compliance. At
4 the April 11, 2014 Commission meeting, I
5 reviewed the rationale for and the results
6 achieved from streamlining our inspection,
7 technical assistance, and enforcement
8 activities.

9 Embracing the Next Generation
10 Compliance program recently advocated by
11 EPA is a logical next step after the
12 streamlining activities of the Department
13 over the last several years.

14 A General Permit allows any
15 entity willing to abide by its conditions
16 to simply notify the Department of the
17 entity's intent to operate under such a
18 permit and then start complying with the
19 conditions. General permits save time and
20 resources for the regulated entity and the
21 Department.

22 GPS tracking of vehicles avoids
23 excessive motor pool costs. Having

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1 inspectors perform inspections for
2 combinations of air, water, and land
3 permits in the geographic area increases
4 productivity. ADEM's Concentrated Animal
5 Feeding Operation regulatory program has
6 been successful in obtaining voluntary
7 participation by facilities that are not
8 legally required to participate. The CAFO
9 program is so successful that EPA is
10 seeking to use many of its provisions in
11 the federal program.

12 Technology is being used to
13 lower costs. Using the Internet instead of
14 traditional telephone lines saves money and
15 provides many additional services. An
16 innovative way to avoid investing funds in
17 older generation computer equipment, while
18 still using applications tied to that
19 equipment, is to obtain service through
20 so-called virtual equipment that is at
21 another location. It may actually be
22 different computer equipment set up to
23 operate like the older generation

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1 equipment.

2 New rugged computer tablets,
3 suitable for rigorous field applications,
4 are now available and being used to enter
5 data in the field and have it automatically
6 distributed to the proper databases. When
7 possible, as existing laboratory equipment
8 becomes obsolete, it is being replaced with
9 the latest generation equipment capable of
10 doing multiple analyses simultaneously,
11 which reduces labor costs by more than the
12 added cost of the equipment.

13 The Department has been able to
14 find ways to leverage those resources that
15 are available to it. For example, the
16 initial funding of the State Revolving Fund
17 grants provided to the Department was used
18 to issue revenue bonds secured by low
19 interest loans to municipalities to build
20 water -- drinking water and waste water
21 infrastructure. The sale of such revenue
22 bonds made available more than three times
23 as much in loans to municipalities for

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1 infrastructure as would have otherwise been
2 available.

3 When funds were awarded to the
4 Department in a regional settlement with
5 TVA, the Department used the funds to
6 provide grants and low cost loans to public
7 waste water and drinking water systems in
8 the TVA service area for the purpose of
9 installing higher efficiency electric
10 motors.

11 The Non-Point Source Program
12 develops partnerships with water and soil
13 conservation districts and others to
14 combine funding and avoid overlap of
15 efforts. Municipalities have been
16 particularly hard hit in recent years with
17 strained budgets. Often community waste
18 water treatment facilities fall out of
19 compliance and funds are not available to
20 bring them back into compliance.

21 Alabama's Congressional
22 delegation, USDA, and others have come
23 together to assist financially strapped

<p style="text-align: right;">Page 21</p> <p>1 communities in finding funding to bring 2 their systems back into compliance with 3 ADEM permit conditions. 4 In some of the previous slides, 5 I have highlighted how innovations in 6 Departmental regulatory programs have been 7 improved -- have improved productivity and 8 compliance. Innovations in the 9 Department's non-regulatory programs have 10 also improved productivity and compliance 11 and have improved service to the public and 12 the environment as well. 13 As a public institution, ADEM 14 has an obligation to provide high quality 15 service to the public. This slide 16 identifies a few of the non-regulatory 17 innovations that have improved service to 18 the public. 19 Environmental Justice is a 20 concept that seeks to assure that no group 21 bears a disproportionate environmental 22 burden due to minority or low income 23 status. The Department has a program to</p>	<p style="text-align: right;">Page 23</p> <p>1 to an open door whenever issues arise. 2 Just as innovations have 3 improved service to the public in our 4 non-regulatory programs, innovations in 5 non-regulatory programs have also improved 6 the environment. 7 More than ever, Low Impact 8 Development and Green Infrastructure are 9 being recognized as critical elements to 10 having sustainable communities. The 11 Department, in cooperation with the Alabama 12 Cooperative Extension System, Auburn 13 University, and others, has developed a 14 comprehensive manual to show developers and 15 others how to do it. The manual is on the 16 ADEM Web site, and I believe a few computer 17 disks and paper copies are available on the 18 table in the lobby. 19 Our State Revolving Fund loan 20 program now gives LID/Green Infrastructure 21 projects increased weighting in any loan 22 eligibility analysis. Other innovative 23 programs that benefit the environment</p>
<p style="text-align: right;">Page 22</p> <p>1 reach out to disadvantaged communities 2 utilizing individual EJ coordinators in the 3 air, land, and water divisions. 4 In EJ communities the Department 5 provides targeted one-on-one training on 6 how to find out what is happening in their 7 county and how to file a complaint using 8 the automated eComplaint system. The 9 Department has built on the EPA EJ 2014 10 program to provide increased service to the 11 public. 12 The regulated public is offered 13 the convenience of electronic payments, 14 notification of intent to operate under 15 general permits, and even electronically 16 filling out permit applications online. 17 Municipalities -- municipalities can now 18 apply for drinking water and waste water 19 infrastructure loans year round rather than 20 only during a limited window once per 21 year. Outreach to students, the 22 environmental community, and industry is 23 now done on a planned schedule in addition</p>	<p style="text-align: right;">Page 24</p> <p>1 include the Non-Point Source Education 2 program, the Recycling Fund Grants program, 3 and the Scrap Tire Market Development 4 program. 5 As the last eight slides have 6 illustrated, there is a solid history of 7 using innovation to keep productivity up 8 and costs down, all the while generating 9 substantial benefits for public service and 10 the environment. This is part of the 11 answer to the question of how the 12 Department has been able to use a very 13 small budget to achieve its mission. The 14 next question is: What is in store for the 15 future? 16 Any time we try to look into the 17 future, it's a risky proposition. This 18 slide highlights some of the innovations we 19 will be considering to help us continue to 20 be a low cost provider of top tier 21 environmental regulation in the future. 22 Playing off the Department's 23 data management capabilities, we will be</p>

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1 embracing new applications of our current
2 eEnterprise expertise. ADEM has been and
3 will continue to press EPA to improve its
4 game in data systems. Replacing
5 deplorable, undersized, outdated facilities
6 in Mobile to position us to meet
7 challenges -- looming challenges unique to
8 the gulf coast area is a major initiative,
9 and it will require innovative methods of
10 funding.

11 If ever tightening carbon
12 emission targets are to be met, the energy
13 costs are to be -- and energy costs are to
14 be moderated, demand side initiatives will
15 be required. Water policy is an emerging
16 concern, not only in Alabama, but
17 throughout the nation.

18 An environmental water quality
19 model of Mobile Bay has been in development
20 for more than a decade, and we are now to
21 the point where it can be used to set more
22 precise permit limits throughout the bay
23 and its in-flowing watercourses.

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1 This allows us to assure water
2 quality without unnecessarily restricting
3 industrial development. Using a common
4 sense approach to environmental regulation,
5 we will seek to eliminate costly and
6 ineffective requirements, such as boutique
7 gasoline in the Birmingham area when
8 opportunities arise.

9 Another common sense initiative
10 is to help develop both the supply and
11 demand for recycled materials as a means to
12 increase recycling. Finally, ADEM seeks to
13 lead by example in forward leaning areas
14 such as reducing energy usage.

15 For the Department, there is an
16 added financial benefit to reducing
17 in-house energy usage. It will eliminate
18 the need for an expensive upgrade to our
19 uninterruptable power supply equipment.

20 Many of the activities shown in
21 these slides keep down costs, others
22 improve program outputs, others serve the
23 public, and some do all three. If we are

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1 to continue to be a low cost, high
2 performance organization, we must continue
3 to innovate and adopt forward leaning
4 initiatives.

5 On another matter, but related
6 to the quality of the Department's
7 programs, I am pleased to report that ADEM
8 has just been notified by EPA that the
9 Department has received full authorization
10 to administer the Federal Groundwater
11 Rule.

12 Alabama is the second state of
13 the eight southeastern states comprising
14 EPA Region 4 to be granted independent
15 program primacy over the federal rule. The
16 one other state in Region 4 that received
17 delegation, did so only by directly
18 referencing EPA's drinking water program,
19 rather than implementing its own program,
20 as is the case in Alabama. The
21 Department's Drinking Water program has a
22 long history of top performance, which is
23 reflected in this action by EPA.

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1 Dennis Harrison is the Chief of
2 our Drinking Water Branch. Stand up,
3 Dennis. You are so tall you don't even
4 need to stand up for everybody to see you.
5 Thank you for a job well done.

6 As noted earlier, our people are
7 our greatest asset, and I would like to
8 recognize some additional people for their
9 achievements. In the interest of time, I
10 cannot introduce all of the people who have
11 participated in outreach activities. But
12 those 57 who took on the extra workload of
13 reaching out to high school students in the
14 ADEM sponsored Earth Day activities are
15 listed on the display board in the lobby.
16 And I ask that those present in this
17 meeting today please stand up and be
18 recognized. Those of you who participated
19 in the Earth Day activities, I want to
20 applaud you-all.

21 (Audience applause)

22 MR. LeFLEUR: That was in
23 addition to their normal workload.

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1 Similarly, those 19 employees who took on
2 the extra workload to help fourth grade
3 students gain greater appreciation of
4 Alabama's water resources by participating
5 in Water Festivals around the state are
6 listed on the display board in the lobby.
7 And if any of you are present here today,
8 I'd like for you to please stand and be
9 recognized.
10 (Audience applause)
11 MR. LeFLEUR: The other 17
12 are still at their desks. Achieving the
13 formal designation of professional engineer
14 requires extensive education, on-the-job
15 experience, and rigorous testing. It's a
16 significant milestone in the professional
17 life of those pursuing a career in
18 engineering. It is my pleasure to
19 recognize two individuals in the Air
20 Division who have recently achieved that
21 milestone. Ryan Cowart and Paul Hansen,
22 are you with us today?
23 (Audience applause)

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1 MR. LeFLEUR: Well, we have
2 one. There's also motivation that he gets
3 a small raise as a result.
4 Once again, let me close with my
5 thanks to you for serving the state as
6 Commissioners of the Alabama Environmental
7 Management Commission and allowing me to
8 serve in this capacity.
9 If there are any questions, I
10 will be pleased to address them now.
11 VICE CHAIR PHILLIPS: Thank
12 you, Mr. Director. Do I have any questions
13 from anyone on the Commission?
14 (No response)
15 VICE CHAIR PHILLIPS: Thank
16 you, Mr. Director. Agenda item number
17 three is the report from the Commission
18 Chair. As you can see, I am the Vice Chair
19 and I am sitting here as Chair today. Our
20 Chairman was unable to attend and did not
21 provide me any report that he wanted to
22 provide, and I don't have anything at this
23 time.

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1 Agenda item number four, a
2 report and recommendations from the
3 Personnel Committee on the ADEM Director
4 performance evaluation for Commission
5 consideration. I will call on Chairman
6 Laier to provide the Committee report and
7 present the Committee's recommendations for
8 our consideration.
9 Chairman Laier.
10 MR. LAIER: Thank you. As
11 you may recall, in April of 2014 our
12 Commission Chair Brown directed the
13 Committee, our Personnel Committee, to
14 obtain feedback from members of ADEM, from
15 the Commission, from the public, and from
16 others regarding Director LeFleur's job
17 performance and to return today to the full
18 Commission with the consolidated feedback
19 on the recommendations that we would have
20 relative to our Director's performance.
21 At that time, it's important to
22 note, that Chairman Brown encouraged the
23 public to participate. Today our Committee

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1 met to review the comments, positive and
2 constructive, with respect to Director
3 LeFleur's performance. And at the
4 conclusion of our discussions, we voted
5 unanimously on four motions. Those motions
6 are being brought today before the full
7 Commission.
8 There was, in the beginning, a
9 very thorough assessment by every one of
10 our Committee members with respect to the
11 content of the comments that were brought
12 to us with respect to Director LeFleur's
13 performance. We adopted by vote a draft
14 summary of the written comments on ADEM
15 Director's Performance Evaluation. That's
16 important because the Board needs to have
17 that on file.
18 We had two -- I'm sorry -- three
19 additional motions. We recommended that
20 the Commission request that the State
21 Personnel Board, the Board, approve
22 placement of Director LeFleur in the state
23 paid pay plan at grade range 90, stage 15,

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1 and that the Commission requested that the
2 Board approve an increase in the Director's
3 pay grade -- pay salary per year to a
4 salary of \$152,618.40.
5 The second motion, we
6 recommended that the Commission approve the
7 participation of using pay -- pay range
8 grade 90 for salary levels of the ADEM
9 Director and with the stipulation that the
10 placing of Director LeFleur in the pay
11 range is approved by the Board.
12 And, third, we recommended that
13 the Commission authorize the Personnel
14 Committee Chair, that is me, to meet with
15 Director LeFleur regarding the Summary of
16 Written Comments on ADEM's Director and his
17 performance evaluation and to recommend the
18 recommendations of the Personnel Committee
19 adopted by the Commission and to accept the
20 Verification of the Understanding between
21 the Commission and the Director regarding
22 the results of the personnel evaluation.
23 So those are the items that we

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1 brought forth in a motion to be reviewed by
2 the full Committee, full Board.
3 VICE CHAIR PHILLIPS: Okay.
4 MR. LAIER: The end of the
5 year report.
6 VICE CHAIR PHILLIPS: Thank
7 you, Chairman Laier. At this time do I
8 have a motion or motions from the
9 Commission?
10 MS. MERRITT: I move that we
11 accept the motion that's come from the
12 Chair of the Personnel Committee. I motion
13 that we accept those motions.
14 VICE CHAIR PHILLIPS: Okay.
15 I have a motion to accept the four motions
16 from the Personnel Committee. Do I have a
17 second?
18 DR. RICHARDSON: Second.
19 VICE CHAIR PHILLIPS: I have
20 a motion and a second. Is there any
21 discussion from the Commission members?
22 DR. RICHARDSON:
23 Mr. Chairman, just for clarification, I

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1 want to make sure that we're not voting on
2 a motion on motions, that what we're doing
3 is voting on a motion to accept
4 recommendations put forth to this body from
5 the Committee.
6 VICE CHAIR PHILLIPS: Okay.
7 I will ask the --
8 MS. MERRITT: Correct,
9 right.
10 VICE CHAIR PHILLIPS: Okay.
11 That is the motion that is on the floor.
12 Thank you for the clarification.
13 So your second stands?
14 DR. RICHARDSON: Yes.
15 VICE CHAIR PHILLIPS: Any
16 additional discussion?
17 (No response)
18 VICE CHAIR PHILLIPS: There
19 being no additional discussion, everyone in
20 favor signify with the sign aye and raise
21 your hand.
22 (All Commissioners indicate
23 "aye.")

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1 VICE CHAIR PHILLIPS: All
2 opposed same sign.
3 (No response)
4 VICE CHAIR PHILLIPS: Motion
5 carries. Thank you. And thank you to the
6 Committee for all your work. We will pause
7 a moment while we sign the motion to be
8 carried.
9 Moving on to agenda item number
10 two, which is Phillips Truck and Scrap Tire
11 Removal versus ADEM; EMC docket number
12 12-01. I want to note that the Commission
13 would consider the petitioner's dismissal
14 of request for hearing, which is viewed as
15 a motion for voluntary dismissal of the
16 request for a hearing.
17 I will entertain a motion from
18 the Commission regarding the petitioner's
19 motion for voluntary dismissal of the
20 request for hearing at this time.
21 DR. MILLER: I move that we
22 grant the petitioner's motion for voluntary
23 dismissal.

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1 VICE CHAIR PHILLIPS: I have
2 a second?
3 DR. CARSON: Second.
4 VICE CHAIR PHILLIPS: I have
5 a motion and a second to grant the
6 petitioner's motion for voluntary dismissal
7 of the request for a hearing.
8 All in favor of that motion
9 signify with the sign aye.
10 (All Commissioners indicate
11 "aye.")
12 VICE CHAIR PHILLIPS: All
13 opposed same sign.
14 (No response)
15 VICE CHAIR PHILLIPS: Motion
16 carries. We will sign the order now.
17 Moving now to agenda item number
18 six, which is other business. Do we have
19 any other business from the Commission to
20 consider?
21 DR. LAIER: Yes, sir, I have
22 a --
23 VICE CHAIR PHILLIPS:

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1 Commissioner Laier.
2 DR. LAIER: I would like to
3 move that rule -- the Rule Committee study
4 and re-examine rule number 335-2-3-.05,
5 sections one through three, related to
6 requesting -- related to requests from
7 members of the public to appear before the
8 Commission to make public presentations.
9 I further move that the
10 Rulemaking Committee report back to the
11 Commission in full their findings and along
12 with any recommendations or adjustments as
13 needed to amend this rule.
14 DR. RICHARDSON: Second.
15 VICE CHAIR PHILLIPS: Yes, I
16 was trying to get all that. Well --
17 DR. LAIER: Here you go.
18 VICE CHAIR PHILLIPS: Okay.
19 I have a motion to refer to the Rulemaking
20 Committee re-examination and study of rule
21 335-2-3-.05, sections one through three,
22 and to further report back its findings to
23 the full Commission along with any

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1 recommendations as needed to amend the
2 rule, correct?
3 DR. LAIER: That's correct.
4 VICE CHAIR PHILLIPS: And I
5 have a second on that motion?
6 DR. RICHARDSON: That is
7 correct.
8 VICE CHAIR PHILLIPS: Any
9 discussion with Commission members?
10 (No response)
11 VICE CHAIR PHILLIPS: Okay.
12 With no discussion --
13 DR. MILLER: I have one
14 question.
15 VICE CHAIR PHILLIPS: Yes,
16 please.
17 DR. MILLER: When will that
18 report be expected to come back?
19 VICE CHAIR PHILLIPS: Very
20 good question. You have any thought on
21 that?
22 DR. LAIER: No, I haven't
23 given it any.

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1 VICE CHAIR PHILLIPS: I'm
2 the Chair of the Rulemaking Committee, so I
3 guess what I would -- I would ask of the
4 Commission is let us look at the content
5 and the process that we will use to do that
6 and to get back with the Chair and the full
7 Commission on what schedule we think we
8 could do that in. We will need help from
9 the Department, and Robert, you and Debi,
10 so we will need to look at what's
11 reasonable to get the right process in
12 place. Is that okay?
13 DR. MILLER: That sounds
14 good.
15 DR. CARSON: Maybe a report
16 by next meeting as to just preliminary
17 report?
18 VICE CHAIR PHILLIPS:
19 Progress report -- absolutely. We will
20 also provide a progress report by the next
21 meeting. But before that next meeting, we
22 will commit to get you a schedule and
23 process to get your feedback. Okay. So I

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1 have the motion. I have a second. We've
2 had discussion. Any further discussion to
3 come before the Commission?
4 (No response)
5 VICE CHAIR PHILLIPS: No
6 further Commission discussion. All in
7 favor of the motion as proposed and
8 seconded signify with the sign aye and
9 raise your hand.
10 (All Commissioners indicate
11 "aye.")
12 VICE CHAIR PHILLIPS: All
13 opposed same sign.
14 (No response)
15 VICE CHAIR PHILLIPS: Motion
16 carries. Debi, I know you don't have this
17 written up. So if you will get us
18 something so we get it, you know, over the
19 next week or so, so -- or however you want
20 to do that.
21 MS. THOMAS: It will be
22 reflected in the transcript if that will be
23 sufficient, and then I can follow through

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1 and let you-all know exactly --
2 VICE CHAIR PHILLIPS: Thank
3 you. Okay. Any other business to come
4 before the Commission?
5 (No response)
6 VICE CHAIR PHILLIPS: Okay.
7 We will move to agenda item number seven,
8 future business session. Just a reminder
9 that our next meeting is August 15th, 2014,
10 as always 11 a.m. in this conference room.
11 Everyone okay with that?
12 (No response)
13 VICE CHAIR PHILLIPS: Good.
14 Move to public comment periods. We have
15 four public comment requests. I'm going to
16 just state the requesting party and Chair
17 Brown's recommendation to the Commission
18 for each one of those, and then we will go
19 back and take a vote.
20 The first request is Benjamin
21 Eaton, resident of Uniontown on behalf of
22 Black Belt Citizens Fighting for Health and
23 Justice in Uniontown, Alabama. Chair Brown

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1 has recommended that the Commission grant
2 the request, subject to the limitation that
3 the presentation focus on how the city of
4 Uniontown's waste water treatment plant
5 offers lessons learned for future policy
6 consideration, rather than a presentation
7 on the status of Uniontown's Waste Water
8 Treatment Plant, which is subject to
9 ongoing litigation. So realize as a
10 Commission, that's what we're going to ask
11 that you agree to do and agree to hear that
12 comment period.
13 The second request is from
14 Nelson Brooke of Black Warrior Riverkeeper
15 on behalf of Black Warrior Riverkeeper,
16 Incorporated in Birmingham, Alabama. Chair
17 Brown has recommended that the Commission
18 also grant the request of Mr. Brooke,
19 subject to the limitation that the
20 presentation focus on education on the
21 issues presented by municipal waste water
22 treatment plants for future policy
23 considerations, rather than a presentation

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1 on the status of Uniontown Waste Water
2 Treatment Plant, which is the subject of
3 ongoing litigation.
4 Third request is from David
5 Ludder on behalf of the ADEM Reform
6 Coalition. Chairman Brown has recommended
7 that the Commission grant this request.
8 And the fourth and final request
9 is from Mitchell L. Reid on behalf of the
10 Alabama Rivers Alliance in Birmingham,
11 Alabama, and Chairman Brown has recommended
12 that the Commission grant this request.
13 Do I have a motion or motions
14 from the Commission?
15 DR. MILLER: I move that we
16 accept the Chairman's recommendations.
17 VICE CHAIR PHILLIPS: I have
18 a motion that we accept the Chairman's
19 recommendations for the four requests.
20 Do I have a second?
21 DR. LAIER: I second.
22 VICE CHAIR PHILLIPS: I have
23 a second. Any discussion of further --

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1 DR. RICHARDSON: Yes,
2 Mr. Chairman. Making sure that, again,
3 that the recommendation from the Chair
4 includes the limitations placed by the
5 Chair.
6 VICE CHAIR PHILLIPS: As
7 acting Chair, I will commit to listen
8 closely. And, please, any of you feel free
9 to do the same thing to remind the speaker
10 of the limitation. We also have a
11 limitation of time, I will remind the
12 Commission.
13 All right. Any other
14 discussion? Thank you for that.
15 (No response)
16 VICE CHAIR PHILLIPS: No
17 further discussion. All in favor of the
18 motion to grant the Chairman's
19 recommendations to hear the four requests
20 signify with the sign aye and raise your
21 hand.
22 (All Commissioners indicate
23 "aye.")

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1 VICE CHAIR PHILLIPS: All
2 opposed same sign.
3 (No response)
4 VICE CHAIR PHILLIPS:
5 Motions carry. Okay. Just a reminder, I
6 will repeat for each speaker as you get up
7 we have a ten-minute time limitation, and
8 some of you have limitations that have been
9 requested and approved by the Commission.
10 So I will remind you of that.
11 Mr. Eaton, are you in the room?
12 MR. EATON: Yes, sir.
13 VICE CHAIR PHILLIPS: Just a
14 reminder of the time limitation and that
15 your presentation focus on lessons learned
16 and not on the ongoing status of the waste
17 water treatment plant subject to the
18 ongoing litigation. Thank you for coming.
19 MR. EATON: Thank you,
20 Commissioners, for allowing me this
21 opportunity to give this presentation
22 concerning the waste water treatment plant
23 in Uniontown, Alabama. What we Black Belt

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1 Citizens Fighting for Health and Justice
2 hope to see from ADEM and the EMC in the
3 near future, ADEM should require all proper
4 tests before the property is purchased.
5 This will give the city an opportunity to
6 develop another alternative. This will be
7 a Justice Act.
8 ADEM should make sure all tests
9 are complete before the project begins,
10 especially a completed hydrogeologist
11 test. ADEM should allow the community an
12 opportunity to voice their concerns about
13 any project concerning the water and land.
14 Continuing, ADEM should make
15 sure the project have an independent
16 inspector, project manager, that reports
17 directly to the city and/or ADEM. ADEM
18 should be required to do an on-site review
19 of all project plans, not just a desk
20 review.
21 Also, part of ADEM's
22 responsibility should include a policy that
23 makes those that are at fault be

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1 responsible for correcting the problem at
2 their expense.
3 Continuing, all information
4 stated in a report should be verified by
5 ADEM, from the information presented by the
6 hydrogeologist test concerning spray field
7 number two, this site should never be used
8 for the sake of justice and the health of
9 mankind. So we ask that ADEM give us your
10 word that spray field number two will never
11 be used.
12 The citizens should never be put
13 in the position to provide the plan meets
14 requirements that are suitable for this
15 purpose or the application meets its
16 deadline time.
17 Continuing, all the statements
18 above are, they are, a form of injustice.
19 Being put in the position to do the work of
20 our agency, ADEM, is unheard of. Now we
21 ask for your help to fix this mess in
22 Uniontown. Black Belt Citizens Fighting
23 for Health and Justice ask: Does ADEM

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1 provide an advocate for Environmental
2 Justice for an Environmental Justice
3 community. We ask if those acts in
4 Uniontown would have happened in Hoover,
5 Alabama. We ask who is responsible for
6 Uniontown being in the situation they are
7 in today, an incomplete project and no
8 money? \$4.8 million gone.
9 Black Belt Citizens Fighting for
10 Health and Justice existence is to prevail
11 over this injustice act on this community
12 in the blackbelt area. I apologize.
13 Black Belt Citizens Fighting for Health and
14 Justice ask that a high level mechanical
15 waste water treatment plant that would
16 clean the water so it can be legally
17 discharged in a nearby stream.
18 We ask that ADEM compensate for
19 the environmental injustice done to
20 Uniontown by giving the \$4 million that
21 ADEM profited from its decision to permit
22 the coal ash to be disposed of in
23 Uniontown's landfill. That ends my

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1 presentation.
2 Any questions?
3 VICE CHAIR PHILLIPS: Thank
4 you, Mr. Eaton. Do we have any questions
5 from Commissioners? I have one question,
6 Mr. Eaton. Have you met with the
7 Department? Mr. Director, have you met
8 with Mr. Eaton?
9 MR. EATON: We have met many
10 times.
11 VICE CHAIR PHILLIPS: And
12 these things are the things that you
13 covered with him?
14 MR. EATON: We still have a
15 concern based on unsurety.
16 VICE CHAIR PHILLIPS: Okay.
17 The uncertainty of what moving forward
18 would be?
19 MR. EATON: Yes.
20 VICE CHAIR PHILLIPS:
21 Mr. Director, I'd ask you just to look at
22 what he's presented here and then get with
23 us and let us know what could -- can be

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1 done if anything.
2 MR. LeFLEUR: I will do
3 that.
4 VICE CHAIR PHILLIPS: Thank
5 you, Mr. Eaton. Thank you very much.
6 Request number two is from Mr. Brooke.
7 Mr. Brooke, if you will come forward.
8 Remember ten minutes limitation on lessons
9 learned for statewide policy that you have
10 requested to present to us.
11 MR. BROOKE: Thank you.
12 Thank you for the opportunity to speak on
13 this important issue. So there have been a
14 lot of lessons learned by, I think, ADEM
15 and our organization and the general public
16 in the Uniontown area over the history of
17 the lagoon, which is a waste water system
18 for the city of Uniontown over the past
19 several decades. And what I'm going to
20 attempt to do today is to highlight some of
21 those lessons so that hopefully that will
22 help inform future discussions and
23 decisions made regarding municipal waste

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1 water treatment.
2 VICE CHAIR PHILLIPS: And
3 will you do that kind of in the sense of
4 what policy might be something we should
5 consider as you do that? Can you make some
6 recommendations?
7 MR. BROOKE: I can certainly
8 attempt to do so.
9 VICE CHAIR PHILLIPS:
10 Great. Thank you.
11 MR. BROOKE: So the lagoon
12 in Uniontown is situated on the banks of a
13 very small tributary, Cottonwood Creek,
14 which is the head water tributary system to
15 Cottonwood Creek that feeds out into Big
16 Prairie Creek, and then ultimately into the
17 Black Warrior River system. And then the
18 spray field exists down to the south, and
19 that's where the waste water is being sent
20 to be discharged to groundwater.
21 And I think a policy
22 consideration with regard to how this plant
23 was set up would be to do what Mr. Eaton

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1 suggested and ensure that adequate
2 percolation can actually occur, that it
3 shows in spray field sites before ever
4 permitting or allowing it to happen.
5 And the lesson learned here is
6 that ADEM permitted the city of Uniontown
7 to discharge solely to groundwater through
8 a spray field. But since 1992 that spray
9 field has been failing and discharging into
10 the surface water of the United States,
11 with little to no abatement.
12 The other issue there is the
13 allowance of industry, local industry, to
14 discharge directly to a small municipal
15 lagoon treatment system without adequate
16 capacity to handle all of the input from
17 the town, rainwater infiltration, and the
18 addition of large inputs from local
19 industries.
20 The result being, large amounts
21 of untreated and partially treated waste
22 water being directly discharged in
23 violation of the permit to the tributary to

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1 Cottonwood Creek, and ultimately Cottonwood
2 Creek and down the stream and the Big
3 Prairie Creek and the Black Warrior River
4 for many years and the situation not being
5 adequately addressed for those ensuing many
6 years.
7 VICE CHAIR PHILLIPS: Not --
8 I don't want to cut you off on everything
9 that pops up in my head, but trying to stay
10 focused on the policy issues. Because
11 we've seen the slides, but help us
12 understand from a process that -- did the
13 complaint system fail? What could we do
14 differently that would prevent this in the
15 future?
16 MR. BROOKE: Well, the
17 lesson learned is not allowing the system
18 to operate with inputs that it can't
19 handle. This is happening across the
20 state. Systems being designed for a
21 certain capacity and then having to treat
22 far greater amount than they're designed to
23 handle.

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1 And in the ensuing years, the
2 lesson learned is that you have these raw
3 overflows and improperly treated
4 overflows. But in instead of ratcheting
5 back on those contributing industries in a
6 very aggressive way, the problem just
7 persists.
8 So up front there needs to be a
9 check and balance to keep it from
10 happening, but if it's realized that
11 there's a problem in the ensuing years,
12 then the agency needs to step in and
13 correct the problem instead of just
14 allowing it to continue for years on end.
15 VICE CHAIR PHILLIPS: Okay.
16 Thank you.
17 MR. BROOKE: So of course
18 this has many lessons learned for
19 communities downstream, local farmers,
20 fishermen, children, and, you know, not to
21 mention the wildlife, that depend on these
22 freshwater systems for their sustenance,
23 for clean water, for recreation. This has

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1 been an ongoing problem, and it's just a
2 severe travesty for the community and all
3 affected people downstream.
4 Another lesson learned is that
5 although many of these concerns have been
6 known for many years, the policy
7 consideration of stepping in to address a
8 problem when it's known to be ongoing,
9 there was an illegal bypass structure
10 situated at the lagoon, discharging
11 directly to this Cottonwood Creek tributary
12 for many years. I mean, all the way up
13 until -- this is an ADEM inspection picture
14 from 2011 where this is just a blatantly
15 illegal discharge to surface water without
16 a permit to do so.
17 And we've seen no enforcement
18 with regard to this overflow. I mean, that
19 was just allowed to go on. No fines
20 associated with that whatsoever. So the --
21 the message to the permitted entity, to the
22 municipality, is you can just blatantly
23 violate your permit and we will do little

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1 to nothing to hold you accountable for it.
2 And that's really the wrong message to be
3 sending to the regulating community.
4 Meanwhile, lessons learned big
5 time for downstream residents who are
6 learning about these problems with this May
7 and the lack of regulatory enforcement to
8 address the problem while they're, you
9 know -- they're downstream swimming and
10 fishing, and little known to them and the
11 water is tainted with sewage. Because the
12 regulatory policy of ADEM is if a
13 municipality which is discharging raw or
14 untreated waste water, either from its
15 treatment plant or via overflows from its
16 collection system, they are required to
17 notify the public. The permittee is
18 required to notify the public so that they
19 are aware that there is a public health
20 concern. This is not being enforced by
21 ADEM. This is not being enforced.
22 So we're talking about in some
23 cases daily overflows with no public

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1 spent over a period of time that took much
2 longer than it should have, and the problem
3 is still ongoing. And that's the lesson
4 learned is an inadequate system to ensure
5 that funds, precious little funds that are
6 hard to get, are properly administrated so
7 that these systems actually get the relief
8 and the local citizens get the relief that
9 they need.
10 This is a picture in December of
11 the ongoing overflows at the lagoon system
12 as it's being upgraded. And so the
13 consideration for policy is if the fix is
14 causing the problem to continue rather than
15 fixing it, then is it really a fix?
16 And Mr. Eaton brought up a
17 really good point. Back during the public
18 comment period, our organization and many
19 others commented on this permit on the
20 proposal to add a second spray field. And
21 we raised serious concerns at that
22 proposal, knowing that the ground in that
23 area does not adequately percolate into

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1 notification for years. So people are just
2 swimming in sewage downstream, and that's
3 completely out of hand.
4 So we fast forward to, thank
5 God, the USDA was able to provide some
6 funding finally, even though this problem
7 has been going on for decades, to
8 adequately fix this plant, once and for all
9 get it treated, sewage properly. The
10 oversight of that process by ADEM has been
11 abominable.
12 And the policy consideration
13 would be if this agency is going to
14 entertain an upgrade to a system and permit
15 it, that it be responsible for ensuring
16 that it's an adequate fix and that it's not
17 going to be a complete waste of public
18 dollars. And that's precisely what
19 happened. \$4.8 million have been totally
20 wasted in Uniontown, and the schedule for
21 the dispensing of those funds has not been
22 met.
23 So it's money wasted and money

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1 groundwater.
2 And we asked for maps of where
3 the new spray field was going to be, what
4 the plan entailed, had hydrotests been done
5 to ensure that it would work properly, and
6 what are the other considerations for
7 alternatives like spending the \$4.8 million
8 on actually building a state of the art
9 waste water treatment plant, which would
10 have been possible with those funds, to fix
11 the problem once and for.
12 All our comments were ignored,
13 and the spray field was continued on with
14 despite all the concerns, both locally from
15 our organization. And so that was back in
16 November of 2012. So we're going on over a
17 year and a half later. Unfortunately,
18 we're not seeing an end to the problem.
19 And, I mean, I think that's a
20 clear illustration that there's a major
21 problem in the way that the agency
22 administered this project that this
23 permit -- and has been overseeing this

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1 permit for many decades. It's basically a
2 permit that is designed to allow the
3 illegal discharges of sewage and surface
4 waters. And while there may be ongoing
5 enforcement, there were no fines instituted
6 and ridiculously long compliance histories.
7 And, once again, it's the wrong
8 message to send to the regulated community,
9 and it is a mere slap on the wrist, not an
10 actual deterrent, for future illegal
11 violations.
12 So we, like I said, have ongoing
13 recurring overflows also to Freetown Creek,
14 which is a tributary to Chilatchee Creek
15 and on down into the Alabama River near
16 Selma. It actually -- the map of this
17 Chilatchee Creek goes into the Alabama
18 River at a public use area. So, once
19 again, there are many people downstream
20 unknowingly swimming in improperly treated
21 sewage.
22 While we have found a few
23 reports of these ongoing overflows in the

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1 public file, in E-file in ADEM's server,
2 there are very few. Yet we know that this
3 problem is going on on a regular basis. A
4 permitted facility is required by your
5 regulations to notify the Department every
6 single time there's an illegal overflow
7 like this to surface waters. Every time.
8 And if they don't, then it's a violation of
9 their permit and of existing regulations,
10 and we're not seeing them being fined for
11 these ongoing problems and we're not seeing
12 the public notification that's required to
13 ensure the downstream citizens are aware of
14 what's going on.
15 There has been one public
16 notification that we know of that occurred
17 back in April of 2012. But, unfortunately,
18 it was attributed to a lift station issue
19 and an overflow, and it didn't adequately
20 address the ongoing and systemic overflows
21 that are actually the true source of all of
22 the contamination downstream.
23 So there is work being done out

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1 there, and clearly part of the fix is being
2 implemented. There are some engineering
3 designs being put in place, but, yet again,
4 the problem continues. Instead of
5 percolating into the ground, you can see
6 spray field number one is a massive lake.
7 This is an ADEM inspector's photograph from
8 back in last summer. So this water is just
9 ponding up out there and waiting. It is
10 not going to soak into the ground as it's
11 supposed to.
12 These spills are coming through
13 very inadequate -- and going directly into
14 Freetown Creek, and ultimately downstream
15 into the Chilatchee and Alabama River.
16 People live --
17 DR. MILLER: We've seen all
18 of these pictures. This is just rehash of
19 something --
20 MR. BROOKE: Sir, actually,
21 I presented in October of last year. These
22 pictures were not in my presentation. And
23 when I tried to present when you denied me

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1 this past April, you would have seen
2 these. But you -- this is the first
3 opportunity you've had to see these, unless
4 you have looked through the file yourself.
5 DR. MILLER: Well, of course
6 I've looked at the file itself, but I am
7 just telling you this is a rehash of stuff
8 we've already seen.
9 VICE CHAIR PHILLIPS: And I
10 would really like for you to keep it on --
11 DR. MILLER: This is
12 supposed --
13 MR. BROOKE: Enforcement --
14 VICE CHAIR PHILLIPS: You've
15 told us that. I've got it.
16 MR. BROOKE: I am just
17 flipping through them as quick as I can.
18 There's just a lot of pictures of all the
19 problems.
20 VICE CHAIR PHILLIPS: Then
21 keep moving.
22 MR. BROOKE: This has all
23 been made available to you, so of course

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1 you'll have a copy of my presentation.
2 This just illustrates that the overflows
3 have been going on for many, many years,
4 yet the problems persists as we speak.
5 So let me get through all of
6 these then. All right. So spray field
7 number two, designed in two segments on
8 either side of a tributary to the -- water
9 through as to Freetown Creek. And part of
10 the plan submitted, the design was for a
11 25-foot buffer on either side of this
12 creek.
13 But in correspondence we've seen
14 from ADEM, that's actually inadequate and
15 ADEM recommends 100. Unfortunately, ADEM
16 didn't notice that until the spray fields
17 had already been installed and everything
18 had been cleared, and they were in place
19 actually inside of 20 feet -- actually
20 inside of 25 feet of this tributary.
21 The perc test, as Mr. Eaton
22 outlines, had not been done, and so we
23 would reiterate definitely way more due

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1 diligence needs to be done to ensure that a
2 design such as this would be adequate
3 before funds are allowed to be spent on
4 it.
5 We talked to the USDA as well.
6 They were not willing to step in and say
7 the funds can't be used in a certain way.
8 They said that the plans were submitted to
9 ADEM. In the last meeting you-all told us
10 that's not your role, that that is the role
11 of the permittee. But clearly the
12 permittee was not up to the task, nor were
13 the engineers hired to do the job.
14 And so we have this problem with
15 a new spray field that has been installed
16 and site cleared that is not percolating.
17 And so we have standing water out there in
18 these cells that are hopefully never going
19 to be used, because this illustrates that
20 if used --
21 VICE CHAIR PHILLIPS: Bring
22 it to an end.
23 MR. BROOKE: -- the exact

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1 same problem will be occurring in spray
2 field number two. And so we are asking not
3 only that this plan be seriously
4 reconsidered, as we know it is being
5 because of the proposed pipe discharge to
6 the Black Warrior River, but we want to be
7 involved in the discussion and the
8 decisions that are going to be made to
9 ensure that future plans for this facility
10 are adequate to actually put an end to all
11 this mess. We hope that you-all will --
12 the Department will reach out to
13 Riverkeeper and to the local citizens and
14 let us have a voice at the table.
15 VICE CHAIR PHILLIPS: Thank
16 you. Any questions from the Commission?
17 DR. RICHARDSON: Mr. Brooks,
18 Chairman -- Director LeFleur frequently has
19 an open invitation extended to people like
20 yourself, Mr. Eaton, et cetera, to sit
21 down, have meetings, voice your concerns
22 one on one, talk to the Director privately,
23 say -- state what you need to state. Have

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1 you attended any of these meetings that he
2 has extended an open invitation?
3 MR. BROOKE: I attended one
4 back in the beginning and decided that it
5 wasn't going to be a fruitful avenue for
6 discussing specific facility details. It
7 was more of a generalized forum for
8 conversation and whatnot. I did talk to
9 him briefly, as I did some of you, after
10 the April meeting and the -- actually, not
11 the April meeting, the October meeting,
12 where I was informed that it was not ADEM's
13 duty to get involved in these sorts of
14 decisions.
15 So that to me pretty much said
16 that there wasn't an opportunity to discuss
17 that with the Director. However, we have
18 attempted to discuss it through proper
19 channels during the administrative
20 regulatory process. And as I said, our
21 concerns were overlooked.
22 DR. MILLER: Would you
23 describe what that proper channel was?

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1 MR. BROOKE: Well, when a
2 permit reissuance or modification is
3 proposed by the Department, it's put up for
4 public notice for a 30-day period. And we
5 routinely submit permit comments and
6 concerns during that time, and we very much
7 look forward to feedback and responses from
8 the Department in hopes that our concerns
9 and issues we bring forward will be
10 seriously considered and taken into account
11 in the permitting position.
12 And, unfortunately, we've raised
13 most of the concerns -- I still have today
14 way back during the comment period, and we
15 still ended up with a big mess.
16 DR. RICHARDSON: I am
17 confused. Is it your thinking that because
18 the decision didn't go the way you wanted
19 it to, that you think your comments were
20 ignored?
21 MR. BROOKE: Well, they
22 weren't responded to, so I would call that
23 being ignored. Usually if they're listened

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1 to, then we get a response to them.
2 DR. MILLER: Do you not
3 consider that filing a lawsuit and holding
4 Uniontown responsible for their failure to
5 live up to their permit requirements, you
6 don't consider that as any sort of punitive
7 action?
8 MR. BROOKE: A 2008 lawsuit
9 that levies zero fine and gives three years
10 from compliance --
11 DR. MILLER: This is the
12 lawsuit from 2012, Mr. Brooke. Apparently,
13 you're not aware of that. I don't know.
14 You must not be. And then are you going to
15 fine Uniontown? What are they going to pay
16 a fine with? Do you want to just shut down
17 their system and let them use the bathroom
18 in the yard?
19 MR. BROOKE: This is not an
20 issue about trying to keep poor people from
21 having adequate sanitation --
22 DR. MILLER: Just --
23 MR. BROOKE: -- this is

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1 about fixing a problem that your agency is
2 charged with administering.
3 DR. MILLER: I guess I'm not
4 quite following that. You think we're in
5 charge of administering and planning the
6 Uniontown -- we're in charge of providing a
7 permit with stated amounts of discharge.
8 We're not responsible and we cannot be
9 responsible for the design of the system.
10 I mean, do you really think that we can do
11 that?
12 MR. BROOKE: You don't
13 review plans for the permits that you
14 submit and okay them? I mean, that's my
15 understanding of what your agency does.
16 And then enforce the limitations set out in
17 the permit. What we haven't seen here is
18 adequate enforcement or moves to fix this
19 problem.
20 DR. MILLER: How are we --
21 MR. BROOKE: -- over 20
22 years.
23 DR. MILLER: How are we

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1 going to -- who are we going to fine? What
2 are we going to do? Tell me, just give me
3 some answers.
4 MR. BROOKE: It's a fine
5 question. If you're not going to fine them
6 and if your enforcement actions are not
7 going to bring about a fix to the problem
8 and compliance with the Clean Water Act,
9 then, yes, there's tons of question marks.
10 DR. MILLER: I agree.
11 MR. BROOKE: We're wondering
12 about the efficacy of the regulatory --
13 VICE CHAIR PHILLIPS: Hence
14 the reason we asked you to give us the
15 lessons learned on policy, so we appreciate
16 that. But do I have any more questions
17 from the Commission? I would like to --
18 I'd like to hear from the Director. I'd
19 like to get some feedback from what you
20 just said from the Department. So, if you
21 would --
22 MR. BROOKE: Thank you.
23 VICE CHAIR PHILLIPS: Let's

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1 see what the Director can tell us.
2 MR. LeFLEUR: I'd like to
3 address his last point first, if I may.
4 The Commission should be aware that over
5 the past two years the Department has met
6 on numerous occasions with EPA, USDA, the
7 mayor of Uniontown, the members of the
8 Uniontown City Council, the Uniontown
9 citizens groups, Congresswoman Terri
10 Sewell, the design engineers, the operating
11 engineers, and others regarding the
12 Uniontown Waste Water Treatment Plant.
13 On numerous occasions, including
14 one as recently as April 11th, 2014,
15 Mr. Brooke was invited to, but elected not
16 to, address the issue or attend meetings
17 with the Department and Uniontown
18 citizens.
19 I submit that the speaker today,
20 contrary to his representations, is, by his
21 own choice, uninformed on matters related
22 to the Uniontown Waste Water Treatment
23 Plant.

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1 There are many, many statements
2 that were made in this presentation that I
3 would like to take considerable issue
4 with. But suffice it to say that
5 Mr. Brooke is ill informed on the
6 regulatory process. He does not understand
7 what statutory authority the Department has
8 and the Commission has.
9 The Department is not
10 authorized, nor does it have the resources,
11 to design waste water treatment plants or
12 to review waste water treatment plant
13 designs any more than we do for the 600
14 other waste water treatment plants that are
15 out there or for any of the industries that
16 we issue permits for, thousands of other
17 industries.
18 He does not understand that the
19 responsibility for the design and operation
20 of waste water treatment plants lies solely
21 with either a city authority for waste
22 water treatment or the city fathers
23 themselves, the elected officials in that

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1 area.
2 The Department is responsible,
3 as was mentioned earlier, for setting
4 discharge limits; to inspect to see if
5 those limits have been met; and if they
6 have not been met, to undertake enforcement
7 action. That was done most recently --
8 well, not most recently, but beginning in
9 2005. That matter has been taken through
10 the normal required steps that are set out
11 in statutes in the law.
12 And we are now -- we now have a
13 matter pending before the circuit court.
14 That suit was filed, and this is -- I don't
15 want to get into a pending legal matter,
16 but the suit was filed in 2012 requesting a
17 temporary restraining order, a cease and
18 desist order, and order for contempt of a
19 consent decree that was entered into in
20 2005.
21 The municipality, as you well
22 know, is an impoverished community that has
23 almost no capability to raise funds to

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1 either pay for penalties or for upgrades to
2 their plant. The only way that they were
3 able to obtain any funding was over a
4 period of six years, seven years was
5 through work done by USDA, ADEM,
6 Congresswoman Sewell's office to obtain
7 grants and low interest long term loans.
8 Now, to imply that no
9 enforcement action has been taking place is
10 irresponsible, it is incorrect, and it is
11 clearly contradicted by the facts. His
12 representation that comments made at public
13 hearings or comment periods for permits are
14 not responded to is inaccurate. It is
15 wrong. All comments received on any permit
16 are responded to, 100 percent.
17 So I -- I can only say that
18 Mr. Brooke is either intentionally ill
19 informed or that he is unable to understand
20 what the duties and responsibilities set
21 out in statutes are for the Department and
22 the Commission, and I want to make that
23 very clear.

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1 VICE CHAIR PHILLIPS: Thank
2 you, Mr. Director. Do I have any questions
3 from the Commissioners?
4 DR. RICHARDSON:
5 Mr. Director, right as you began to speak,
6 you rattled off a list of ADEM
7 involvement. Would you quickly go over
8 that list again, right at the very
9 beginning?
10 MR. LeFLEUR: Well,
11 eventually -- the groups that we have met
12 with to work on this problem, we have gone
13 the extra mile in trying to help Uniontown
14 solve this problem. But the people, the
15 organizations that we have met with on
16 numerous occasions including EPA, USDA, the
17 mayor of Uniontown, members of the
18 Uniontown City Council, Uniontown citizens
19 groups, Congresswoman Terri Sewell, the
20 design engineers, the operating engineers,
21 and others.
22 DR. RICHARDSON: Would you
23 characterize ADEM's involvement with this

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1 particular involvement of this facility as
2 normal?
3 MR. LeFLEUR: No, I would
4 not. Our involvement has gone far beyond
5 what we normally do. If you want to draw
6 the analogy to we are an enforcement
7 agency, a regulatory agency. We set the
8 speed limits. We check to see if people
9 are obeying. And if they're not, we take
10 enforcement actions. We do not design
11 automobiles. We do not look to see if
12 their speedometer is working. We -- we are
13 charged with one responsibility, and that
14 is to set standards for discharges.
15 It is up to the community to
16 meet those requirements, and my heart goes
17 out to the people of Uniontown who have had
18 to deal with this situation for some period
19 of time. It truly does. But we must -- we
20 must operate under the authority that has
21 been granted to us by statutes. We cannot
22 take actions that involve us in things that
23 we are not authorized to be involved with.

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1 DR. MILLER: That would mean
2 we would be prohibited from determining
3 which kind of septic tank plant they would
4 have; we would have nothing to do with
5 whether they purchase land for a spray
6 field or not, things of that nature? Once
7 they got the grant, that was a local
8 responsibility. Am I understanding that
9 correct?
10 MR. LeFLEUR: Absolutely, it
11 is up to the community to determine how it
12 wants to meet those requirements.
13 DR. MILLER: They chose the
14 engineer. That has nothing to do with
15 ADEM.
16 MR. LeFLEUR: And when ADEM
17 receives plans with PE stamp on it, which
18 is what happened in Uniontown, in our -- in
19 our regulations -- and this has been made
20 clear to the mayor and everybody else over
21 there -- that the Department -- when those
22 plans are received, the Department and the
23 engineer agree the engineer takes

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1 responsibility for the performance of that
2 plant. Clearly, without question, the
3 engineer takes responsibility for the
4 performance of that plant.
5 VICE CHAIR PHILLIPS: Any
6 other questions?
7 (No response)
8 VICE CHAIR PHILLIPS: Thank
9 you, Mr. Director.
10 MR. LeFLEUR: Thank you.
11 VICE CHAIR PHILLIPS: Moving
12 to request number three. Mr. Ludder, would
13 you come forward.
14 MR. LUDDER: Good morning.
15 Thank you, Mr. Chairman.
16 VICE CHAIR PHILLIPS: Thank
17 you for being here.
18 MR. LUDDER: Commission, my
19 name is David Ludder, and I appear today on
20 behalf of the ADEM Reform Coalition. The
21 Coalition thanks you for allowing us the
22 opportunity to speak to you today about
23 Environmental Justice in Alabama.

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1 As its name implies, the ADEM
2 Reform Coalition, a mission of the Reform
3 Coalition, is to improve ADEM's efforts to
4 protect human health and the environment.
5 Today the Coalition would like to speak to
6 you about Environmental Justice policy. In
7 the ten minutes that we are allotted to
8 speak, we cannot address every aspect of
9 Environmental Justice, but what I would
10 like to do is describe to you a bit of the
11 history of Environmental Justice at ADEM,
12 why the current policy at ADEM will not
13 achieve effective results, and why it is
14 the EMC's responsibility to develop
15 Environmental Justice policy.

16 Hopefully you have a printout of
17 this presentation with a first page that
18 looks different than that. You should have
19 red dots illustrated on the map. Just
20 briefly, what this map shows is the base
21 map of census block groups from 2010 in
22 five different shadings of color. The
23 darker the shade, the higher the population

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1 inventory data and census data.
2 DR. MILLER: All right.
3 MR. LUDDER: This EPA's
4 definition of Environmental Justice, and as
5 highlighted there are two components: Fair
6 treatment and meaningful involvement.
7 Those are the two objectives of EPA's
8 Environmental Justice policy.
9 Meaningful involvement is
10 defined in this policy, and basically it
11 means that disadvantaged communities should
12 be encouraged and given the resources to be
13 involved in the process.
14 And this is -- you can -- you
15 can summarize this aspect as basically
16 education and outreach to disadvantaged
17 communities. Now, a good example of this
18 is that many poor communities, the
19 residents, you won't find that they
20 subscribe to newspapers that get notice of
21 ADEM -- where notices of ADEM actions are
22 published, or they don't have Internet
23 access where they can get on the Web

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1 of African Americans.
2 The red dots are -- represent
3 the 40 facilities, 40 air pollution
4 facilities, in Alabama, not -- I am sorry
5 -- not the 40, the top 40 air pollution
6 facilities in Alabama that according to
7 EPA's risk screening environmental
8 indicators model, emit the largest quantity
9 and toxicity of pollution.

10 So this is just a rough
11 demonstration of where the worst air
12 polluting facilities are and how they
13 relate to African American communities.
14 I'm not making any judgment about this is
15 bad or good. I'm just saying this is what
16 the data shows.

17 Going to the Environmental
18 Justice policy itself.
19 DR. MILLER: May I ask you
20 one question? Where did the data come
21 from?
22 MR. LUDDER: The original
23 base data comes from toxic release

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1 site -- ADEM's Web site and see what's
2 going on in their county. Therefore, there
3 needs to be some kind of outreach effort.
4 The next aspect of EPA's
5 definition is fair treatment, and this is
6 the one where -- or ADEM's Environmental
7 Justice policy fails to meet the mark.
8 Fair treatment means that
9 there -- that no community -- no group
10 should bear a disproportionate share of the
11 negative consequences resulting from an
12 activity that might be permitted by ADEM.
13 A little bit of the history of
14 Environmental Justice at ADEM. On August
15 24th, 2004 the ADEM Reform Coalition came
16 before this Commission and presented three
17 recommendations. They're listed here. One
18 was to amend the rules to require that ADEM
19 give notice, along with a notice of a
20 proposed permit -- notice to the community
21 of what the community demographics were, so
22 that the public would understand that this
23 facility is in a minority community.

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1 The second was to require the
2 creation of an Environmental Justice
3 division within ADEM that would collect the
4 demographic data, assess the exposures and
5 the risks to health, and employ a
6 toxicologist and other relevant staff.
7 And the third recommendation was
8 that ADEM support legislation to prevent
9 disproportional impacts on populations.
10 And over the years there have been multiple
11 bills introduced in the legislature to
12 address that issue. Frankly, I can't
13 recall one where ADEM supported it.
14 In September of 2004 members of
15 the ADEM Reform Coalition filed a petition
16 with this Commission asking it to publish
17 the data of demographics with each permit
18 notice. A very simple small step that we
19 thought might advance things.
20 How did we think it would
21 advance it? The public would learn about
22 the issue, would learn that there was a
23 minority community involved, and they might

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1 step forward and become more involved.
2 On November 19th of the same
3 year, this Commission denied that petition,
4 and basically the denial was based on the
5 strength of a comment by the only African
6 American on the Commission at that time,
7 and his comment was we need a programmatic
8 approach to Environmental Justice, not a
9 piecemeal approach and that what the ADEM
10 Reform Coalition proposed was just a
11 piecemeal approach.
12 In the 2005 and 2006 annual
13 report of the Department, the Department
14 acknowledges, as the white lettering
15 indicates, that Environmental Justice is
16 defined as fair treatment and meaningful
17 involvement. They acknowledge that that is
18 what Environmental Justice means, but then
19 they go on to say that ADEM's Environmental
20 Justice program is the latter, meaningful
21 involvement.
22 They don't address the fair
23 treatment aspect. The Department did

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1 appoint an Environmental Justice
2 coordinator on October 1st, 2006. That was
3 Elvin Lang. He retired on May 30th, 2009,
4 and his duties have been assigned to other
5 people.
6 In February of 2007 the Director
7 of ADEM advised this Commission that the
8 top priority of the new Environmental
9 Justice coordinator is education and
10 outreach. No mention of fair treatment.
11 In August of 2007, or about that time, ADEM
12 came out with an official definition of
13 Environmental Justice for ADEM.
14 And basically it is the
15 meaningful involvement aspect, not fair
16 treatment. In the 2008 annual report the
17 Department reiterates meaningful
18 involvement, not fair treatment.
19 Now, here is the first rub. The
20 powers of the Director are limited. They
21 are limited to doing all things except
22 those that are assigned specifically to
23 this Commission. The Director has no

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1 authority to do what this Commission is
2 required to do. And this Commission is
3 required to develop environmental policy
4 for the state. That is not the Director's
5 job. That is your job.
6 So I conclude from that -- from
7 that language, this Commission has the
8 exclusive authority to develop
9 environmental policy for the state,
10 including Environmental Justice policy.
11 The Director of ADEM acted unlawfully.
12 That is beyond his authority -- not -- not
13 in any way being bad or ill-willed, just
14 beyond his authority -- when he developed
15 and implemented ADEM's Environmental
16 Justice policy and Environmental Justice
17 definition. So that policy and that
18 definition are really unlawful.
19 And there is a requirement in
20 the code of Alabama that no state agency
21 shall expend money or incur any
22 obligations, except in accordance with
23 law. And I would suggest to you that if

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1 this agency expended money based on that --
2 based on the Environmental Justice policy
3 that he -- that the Director was not
4 authorized to adopt, that was not in
5 accordance with law.
6 So my recommendations are,
7 first, the Commission should develop an
8 Environmental Justice policy for the
9 state.
10 Second, an effective
11 Environmental Justice policy must not only
12 provide for meaningful involvement, but it
13 must also provide for fair treatment. That
14 is, it must provide that regulatory
15 decisions avoid the imposition of
16 disproportionate -- of a disproportion
17 share of negative consequences on
18 Environmental Justice communities.
19 And, third, perhaps the first
20 step in pushing this ball forward to
21 achieving fair treatment, is a methodology
22 or a practice of providing an assessment of
23 whether individual regulatory decisions

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1 will impose a disproportionate share of
2 negative consequences on Environmental
3 Justice communities.
4 The Department now makes some
5 assessment of whether permits will
6 adversely impact or impair human health, et
7 cetera, but what they don't do is assess
8 whether or not there is a disproportionate
9 burden on some communities. So that, I
10 think, is the first step toward achieving
11 fair treatment.
12 But, obviously, this Commission
13 has to develop a policy, and there are
14 certainly many policies, many iterations or
15 versions of policies, that could be
16 developed. The ADEM Reform Coalition
17 submitted to the Department in 2006 its
18 proposed agenda for Environmental Justice.
19 And I will be happy to provide that for
20 you, but it had six suggestions which might
21 be a starting point for the Commission.
22 But I would encourage this
23 Commission not to leave this meeting and do

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1 nothing. I encourage you to undertake
2 development of an Environmental Justice
3 policy that not only provides meaningful
4 involvement for Environmental Justice
5 communities, but also provides for fair
6 treatment so that those communities don't
7 have to bear a disproportionate burden.
8 That's my presentation, and I will take any
9 questions if you have any.
10 VICE CHAIR PHILLIPS: Thank
11 you, Mr. Ludder. Do we have any questions
12 from Commissioners? Dr. Richardson.
13 DR. RICHARDSON: Mr. Ludder,
14 you referred to ADEM's Environmental
15 Justice policy several times.
16 MR. LUDDER: Right.
17 DR. RICHARDSON: Would you
18 please state for me what the Environmental
19 Justice policy of ADEM is.
20 MR. LUDDER: It's outreach.
21 It's education based on the definition --
22 DR. RICHARDSON: Is it the
23 formal official policy, or is this the

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1 definition?
2 MR. LUDDER: There's a
3 definition of Environmental Justice, and
4 it's implemented with a policy of outreach
5 and education.
6 DR. RICHARDSON: What is
7 EPA's Environmental Justice policy?
8 MR. LUDDER: It was in one
9 of the slides that I presented, one of the
10 first slides.
11 VICE CHAIR PHILLIPS: While
12 you're looking at that, Dr. Richardson, I
13 do have a question. I'm probably the only
14 Commissioner that was here in 2004, and my
15 memory is not what it used to be. But I
16 noticed you have an excerpt from
17 Commissioner Hairston at the time on the
18 programmatic versus piecemeal.
19 Did you review the rest? I
20 intend to go back and review that record,
21 but I seem to recall the Commission asking
22 the Department to work with naming a
23 coordinator and getting something in

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1 place. Did you read that through?
2 MR. LUDDER: Actually, yes,
3 there was a decision, and it's in my notes,
4 but I didn't mention it. There was a
5 decision at that -- at that meeting where
6 our petition was denied that the Commission
7 said it endorsed the creation of the
8 establishment of a position of
9 Environmental Justice coordinator.
10 VICE CHAIR PHILLIPS: I
11 remember us doing something. I just -- I
12 will go back and look. Thank you, Dr. --
13 DR. RICHARDSON: No further
14 questions.
15 VICE CHAIR PHILLIPS: Any
16 other questions from the Commission?
17 DR. RICHARDSON: I would
18 like to give Director LeFleur the
19 opportunity --
20 VICE CHAIR PHILLIPS: I was
21 going -- thank you for beating me there. I
22 would also like to ask the Director to
23 respond to that for us, so that -- so that

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1 we don't leave here, Mr. Ludder, without
2 thinking about what the future holds.
3 MR. LeFLEUR: First, the
4 Environmental Justice program at the
5 Department is not a regulatory program. It
6 is not a regulatory program at the
7 Department, nor is it a regulatory program
8 at EPA. There was a suggestion in the
9 slides in the presentation just made by the
10 ADEM Reform Coalition that the Department
11 is required to provide public notice and
12 obtain Commission approval to utilize a
13 non-regulatory definition of Environmental
14 Justice.
15 There is no occasion where the
16 Department has ever sought public approval
17 to use the dozens of definitions that are
18 utilized in the Department. And the
19 suggestion that it is required, I can find
20 no basis in fact for that.
21 Secondly, to state that the
22 Director engaged in an unlawful act by
23 utilizing a definition developed by EPA is

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1 incorrect, and I believe it is
2 irresponsible.
3 Finally, the ADEM Reform
4 Coalition seems to be requesting that the
5 Department be prevented from addressing
6 Environmental Justice issues. And I
7 believe as a matter of good public policy
8 and in good conscience that recommendation
9 should not be honored. There is a
10 presumption in the presentation that was
11 just made that fair treatment is not a part
12 of activities related to Environmental
13 Justice that are undertaken by the
14 Department.
15 There -- fair treatment is a
16 hallmark of what we do in every program,
17 and to say that the fact that it was not
18 stated that there would be fair treatment,
19 I believe leaves the wrong impression that
20 the Department excludes fair treatment for
21 this community. That is inaccurate, and it
22 is not the proper impression to leave this
23 Commission or this meeting with.

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1 VICE CHAIR PHILLIPS: Thank
2 you, Mr. Director. Any questions of the
3 Director?
4 (No response)
5 VICE CHAIR PHILLIPS: Thank
6 you. Thank you, Mr. Ludder. The fourth
7 and final presentation for public comment
8 will be from Mr. Mitchell Reid on behalf of
9 the Alabama Rivers Alliance. Mr. Reid.
10 MR. REID: Gentlemen, and I
11 fully appreciate that I am standing at the
12 end of a long meeting before lunch.
13 VICE CHAIR PHILLIPS: It's
14 okay. You have the same ten minutes
15 though.
16 MR. REID: I feel like this
17 is a bit of an attempt to do legal
18 CrossFit, which is -- CrossFit was
19 something that was coming out while I was
20 in the military with the 82nd Airborne --
21 is get as much as you can into your workout
22 as fast as possible, and I'm going to
23 attempt to do that. And I'm going to

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1 deviate from my slides just briefly based
2 off of the early recommendation to take a
3 look at the public comment portion of these
4 meetings, and just to say that this is --
5 this is time-consuming -- and I know -- and
6 you have to sit up here and have to listen
7 to problems over and over and over again,
8 but this is vitally important to us.
9 Because we're the citizens of the state
10 that want to be part of the process and
11 want to have public access to the process
12 of protecting our waters and our streams.
13 And this is one of the very few
14 venues, frankly, that we have to address
15 decision-makers about things that we see in
16 our community. Yes, we take advantage of
17 the opportunity to meet with the Director
18 and to meet with his staff routinely. But
19 you -- as previously mentioned, you guys
20 set policy for the state. And so you are
21 our advocates as well, and that's why we're
22 here.
23 I come to you today to basically

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1 just give you an update from some actions
2 that we took back in 2010, and I think to
3 just give our side of the story. Because
4 in the previous meeting, Director LeFleur
5 mentioned this NPDES petition. And while
6 I've gone through his transcript and
7 record, I do think that it does leave a bit
8 of a misimpression as to what the
9 conclusions that Environment Management
10 Agency came up with, or at least maybe
11 didn't stress the significance of some of
12 the findings.
13 The Alabama Rivers Alliance is a
14 statewide nonprofit river protection
15 group. We have people who enjoy boating
16 and fishing and swimming. We also have
17 members who are part of the business
18 community. We have members who are part of
19 the waste water and water treatment
20 communities, both as individuals -- as
21 individuals, not as the utility
22 themselves. And our purpose basically is
23 just to protect the rivers of Alabama, the

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1 waters of Alabama.
2 And our goal, as you can see
3 here, is to achieve healthy rivers, healthy
4 people, and a healthy system of
5 government. And that's what I'm doing
6 here, I'm talking to my government
7 representatives. We have over 800 members
8 and 60 grassroot groups. The groups that
9 you see come before you today are actually,
10 in many cases, members of the Rivers
11 Alliance. Although, I'm not necessarily
12 speaking as a Riverkeeper. They are
13 members of our organization, or at least
14 our alliance.
15 The Alabama Water Agenda, which
16 I just handed to you, I won't go through
17 it. This is basically -- someone accused
18 us back in probably 2009, 2010 of having a
19 secret environmental agenda. We said,
20 Well, let's just go ahead and put that to
21 bed. So we published our agenda. These
22 are what we see as the big ticket items for
23 things that we can work on in the state

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1 that would make the environment of Alabama,
2 the waters of Alabama, better.
3 If we can get good enforcement
4 of the laws that we have, if we can get the
5 funding that we need -- and Director
6 LeFleur talks about that in every single
7 meeting -- if we can make sure that our
8 agencies are coordinating their
9 activities -- which includes not just ADEM
10 and the Surface Mining Commission or ADEM
11 and the Office of Water Resources, but ADEM
12 and EPA -- we can better protect our
13 environment.
14 And then my big job, frankly, is
15 to think of ways that we can develop
16 policies for the state that would better
17 protect the environment. Unfortunately,
18 I'm here talking about the first three and
19 not necessarily -- today -- and not
20 necessarily the big picture policies. I
21 would love to have a broader discussion
22 about water policy in Alabama.
23 I'm not going to read through

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1 all these slides. I'm sure you have a copy
2 of these, and they're very -- this is our
3 letter to Administrator Jackson back in
4 2010, which basically said, We've come to a
5 point after decades of work -- decades,
6 which I should say, didn't include Director
7 LeFleur at the helm of ADEM, did not
8 include Ms. Dean as the Chief of the Water
9 Division -- but, I guess, Chairman
10 Phillips, you were here at the time, and
11 the rest of you guys were coming on board
12 right as we filed the petition.
13 But basically the petition was
14 the result of a very real frustration that
15 we were not able to move the state forward
16 to what we thought was a fair enforcement
17 of the Clean Water Act, and that's where
18 the petition came from.
19 This is the letter that came
20 back to us and to ADEM on April 9th of
21 2014. Highlighted is just one of the
22 quotes. EPA conducted a four-year
23 comprehensive review of the state's

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1 environmental program based off of our
2 petition, based off of supplements that we
3 gave the petition, as it was starting to
4 get stale.
5 There has been some indication
6 that -- I mentioned in my letter to the
7 Chairman that this was an extraordinary
8 action, and it was. Asking the federal
9 government to step in and take over the
10 water pollution program for the state of
11 Alabama is not something that we want to
12 see. Because the best way to have water
13 pollution prevention is working with our
14 local communities and working with our
15 local state agencies.
16 The fact that we felt it
17 necessary to go to the EPA and say, Hey,
18 help us out here and step in and take a
19 look at this program, I think should
20 highlight how strongly we felt about this.
21 I, frankly, have better things to do than
22 go to Atlanta and work with EPA to try to
23 get them to enforce pollution laws in

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1 Alabama. It -- we were dead serious, and
2 we are continuing to review this response.
3 Some disclaimers real quickly.
4 This is informational. This is what we
5 have gleaned from the EPA's report. I
6 encourage you to take a look at it. It's a
7 lengthy document, but it has a lot of
8 discussion about where ADEM was in 2010,
9 where they've seen -- where EPA has seen
10 ADEM go, and where they see challenges
11 remaining. And I certainly am not going to
12 be able to cover all of that today.
13 VICE CHAIR PHILLIPS: I have
14 one question. Although we didn't get your
15 presentation until very shortly before the
16 meeting, I did read it. You have a
17 disclaimer at the bottom that says this is
18 solely your opinion, but everything I'm
19 hearing appears to be your representation
20 of the Rivers Alliance and the petitioner.
21 MR. REID: I am speaking --
22 the last disclaimer -- I'm speaking as the
23 Program Director of the Alabama Rivers

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1 Alliance. There were 13 organizations that
2 signed on as petitioners, and I, frankly,
3 cannot speak for any other petitioning
4 organization.
5 VICE CHAIR PHILLIPS: But
6 you are speaking as program director --
7 MR. REID: Of the Rivers
8 Alliance, and I --
9 VICE CHAIR PHILLIPS: That
10 was a little confusing.
11 MR. REID: I apologize for
12 that.
13 DR. RICHARDSON: Even though
14 your opinion does not represent the views
15 of the ARA?
16 MR. REID: I cannot speak
17 for the member organizations of the
18 Alliance. So for instance --
19 DR. RICHARDSON: Do your
20 views -- are -- what you are presenting, is
21 it your opinion or is it the views of the
22 ARA?
23 MR. REID: This is my

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1 opinion.
2 DR. RICHARDSON: Okay.
3 Thank you.
4 MR. REID: So don't take
5 from this -- so let me get to where we're
6 going with this disclaimer.
7 VICE CHAIR PHILLIPS: We
8 just wanted to make sure we knew who was
9 making the presentation.
10 MR. REID: Petitioners have
11 not yet made a determination on the
12 sufficiency of the EPA's response to the
13 petition. I am trying to present you what
14 I see out of that response, but I don't
15 want you to take from this that I am saying
16 the petitioners are dropping the issue or
17 that EPA has made the correct conclusions.
18 And I just want to be very clear about
19 that.
20 VICE CHAIR PHILLIPS: That's
21 why we wanted the clarity.
22 MR. REID: And I appreciate
23 that. So this is -- and I should say there

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1 are issues that EPA has said we're not
2 going to address because it frankly doesn't
3 have anything to with what we think -- what
4 EPA says that they think they should
5 address. So, for instance, you're not
6 going to see in here the Department's
7 responsibility to levy fines against
8 another state agency, because that is sort
9 of at the constitutional level and is part
10 of the response, but I'm not going to talk
11 about that. So please just don't expect to
12 see a rundown of 26 issues.
13 Noted improvements though -- and
14 there are several that EPA has said we've
15 seen very real improvements in the State
16 program. The data entry was one of the
17 first things that we said, and that's been
18 clarified quite a few times by Director
19 LeFleur as to how the communications
20 between the databases work and the agencies
21 processing that information into those
22 databases.
23 They said that prior -- you

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1 know, what we saw as a problem with
2 construction was large -- EPA said was
3 largely alleviated by the development of
4 the construction general permit, and so an
5 improved permit, EPA says, has taken a lot
6 of the questions that we raised off the
7 board.
8 The citizens' complaint process,
9 you guys have heard about that several
10 times, and, you know, I think has probably
11 been explained as well as possible. But
12 the Department has really redeveloped its
13 complaint process since 2010.
14 And then we've had -- this is
15 not necessarily a change in what ADEM has
16 done -- but there has been, as a response
17 to EPA, a clarification of what the
18 responsibilities of our municipalities are
19 and their authorities under state law,
20 which EPA asked ADEM for that
21 clarification. So where we said we were
22 reading in questions with the authorities
23 of our municipalities to carry out their

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1 responsibility for stormwater pollution,
2 ADEM provided a clarification, which now we
3 basically have to see if that plays out
4 over time.
5 These are areas that EPA says,
6 well, we see room for improvement, but ADEM
7 has demonstrated a good faith effort, and
8 we're not going to take the program from
9 them based off of this.
10 The processing of backlogs, I
11 think that that's understandable that EPA
12 is saying that we're not going to inspect
13 every single backlog permit to be filed
14 off. Our question in 2010 was a certainly
15 different question about the number of
16 backlogged permits than we see today. And
17 so we see that improvement over time.
18 And, again, I'm trying to sort
19 of speak through what EPA said. And I
20 should say, following the Director's
21 presentation in April, we actually went to
22 the EPA and asked them to come make this
23 presentation so that there was no question

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1 about what they were saying. And I would
2 refer any questions about their response
3 back to them. Evaluation --
4 VICE CHAIR PHILLIPS: What
5 was their response when you requested
6 that?
7 MR. REID: Their response
8 was we have given you a very detailed
9 response on paper, and I think that should
10 suffice.
11 DR. MILLER: So you're
12 asking us if we have questions to call the
13 EPA, is that what you just said?
14 MR. REID: If you have a
15 question about what EPA said as far as
16 improvements or these improvements, I will
17 certainly give my opinion about what we
18 want the Department to do. But if it has
19 to do with what EPA says their analysis is,
20 I would certainly contact the EPA.
21 VICE CHAIR PHILLIPS: You're
22 just saying you're not interpreting --
23 MR. REID: I'm not in that

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1 position. I can't speak for the EPA. And
2 then you can see the timely enforcement of
3 appropriate actions, appropriate
4 enforcement response to the SNCs that
5 Director LeFleur talked about earlier, the
6 timeliness of enforcement. And the page
7 numbers are from the EPA's response.
8 And then addressing the
9 noncompliance, which is -- these are areas
10 that they said that work needs to continue,
11 that we need to see more improvement, but
12 it's going to be part of our oversight
13 responsibility.
14 There are some issues that EPA
15 says we are not going to take the pressure
16 off. We're going to defer a decision over
17 whether to withdraw the program, and those
18 issues remain outstanding, according to the
19 EPA. And I'm going to go through them
20 now. Now, the verbiage here is taken from
21 the response. These are obviously multi-
22 page responses on each issue, but I think
23 these are the highlights.

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1 For calculating and recovering
2 the economic benefit --
3 VICE CHAIR PHILLIPS: And
4 the boldness that you put on here is
5 yours?
6 MR. REID: I added the bold.
7 All highlights are mine, yes, sir.
8 VICE CHAIR PHILLIPS: Is
9 this coming from the report that was
10 recently issued?
11 MR. REID: Yes, sir, on
12 April 9th, 2014. We see the concern with
13 how do we capture whether someone is
14 benefiting from pollution, and how do we --
15 how does that -- how is that reflected in
16 the penalty calculation? There's a long
17 discourse about how that had been reflected
18 in the past and EPA has seen as part of
19 their oversight and the communications
20 they've had with that.
21 EPA says that that's something
22 we're going to need to see to continue to
23 improve over time, it is a serious issue.

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1 Basically, does the polluter pay in
2 Alabama? The culpability of account,
3 that's not necessarily how much economic
4 benefit a polluter may have realized by
5 polluting the water. But if one person
6 accidentally -- excuse me?
7 VICE CHAIR PHILLIPS: You're
8 out of time, so just kind of bring it
9 into --
10 MR. REID: The culpability
11 is the amount of responsibility that a
12 polluter would hold. Looking at our
13 penalties to make sure that they are
14 consistent with past penalties, rather than
15 actually addressing the problem. And there
16 is a long discourse about how that fits in,
17 and I would reference you to the response.
18 Basically, in a sort of
19 overarching general adequacy of whether
20 ADEM's enforcement penalties are
21 sufficient. And this is a -- EPA decided
22 to take this out as a separate section and
23 combine several of the petition issues into

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1 one, so I think this bears looking at over
2 time.
3 I can't leave here without
4 talking about the resources that Director
5 LeFleur routinely mentions. The EPA gives
6 credit for the policy that you guys passed
7 in upping the permits fees as part of this
8 response. The problem they say is that --
9 and this is in the light of uncertainty --
10 is that enough? And what's -- what is that
11 going to do to the Department's ability to
12 continue these improvements and make these
13 changes that have been asked?
14 Our next steps, as I said
15 before, we are reviewing the response, and
16 we will make a determination on whether we
17 agree with EPA. And I'm not trying to
18 suggest that we made that yet. We will,
19 under this response though, continue to
20 work with EPA and ADEM to address these
21 issues that have been highlighted to see
22 how we can move this forward and make
23 enforcement of our -- and protection of our

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1 environment better in Alabama. There's
2 always a great quote from Adlai Stevenson.
3 Thank you for your time, and I appreciate
4 it.
5 VICE CHAIR PHILLIPS: Thank
6 you very much, Mr. Reid. Do I have any
7 questions from the Commissioners?
8 DR. RICHARDSON: I have one
9 comment. Mr. Reid, since you took
10 advantage of your time here to address the
11 Commission on the importance of the public
12 comment period, I -- I definitely
13 appreciate your comments, but I want you to
14 understand that it is the responsibility of
15 the members of this Commission to come to
16 this meeting prepared. That's very
17 difficult to do so when we receive
18 presentations less than -- well less than
19 24 hours before the meeting. I dare say
20 that will be given serious consideration in
21 the future as to whether the presenter will
22 be allowed to present or not. Please take
23 that and keep that in mind.

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1 MR. REID: I certainly
2 appreciate it. And I would say that in
3 preparing this response, I was responding
4 to a letter from Director LeFleur, which
5 was e-mailed to me yesterday -- mailed to
6 me through the mail yesterday, but e-mailed
7 to me yesterday. I felt that I had to take
8 the time to respond to his concerns,
9 obviously, so that I could provide a fair
10 analysis of what we were talking about.
11 VICE CHAIR PHILLIPS: Okay.
12 Thank you. Anybody else?
13 (No response)
14 VICE CHAIR PHILLIPS: All
15 right. Thank you very much, Mr. Reid. Do
16 I have a motion to adjourn?
17 DR. CARSON: So moved.
18 DR. LAIER: Second.
19 VICE CHAIR PHILLIPS: All in
20 favor?
21 (All Commission members
22 indicate "aye.")
23 VICE CHAIR PHILLIPS: Thank

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1 you very much.
2 (The meeting concluded at
3 12:55 p.m.)
4 *****
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Part B

Attachment Index

- Attachment 1 Agenda**
- Attachment 2 Resolution to request that the State Personnel Board (Board) approve placing Director LeFleur in the State Pay Plan Pay Grade Range 90 at Step 15 and that the Board approve an Increase for Director LeFleur to a per year salary of \$152,618.40 (Agenda Item 4)**
- Attachment 3 Order to grant the Petitioner's motion for voluntary dismissal (Agenda Item 5)**

Attachment 1

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: June 20, 2014
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON APRIL 11, 2014
2. REPORT FROM THE DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. REPORT AND RECOMMENDATIONS FROM THE PERSONNEL COMMITTEE ON THE ADEM DIRECTOR PERFORMANCE EVALUATION FOR COMMISSION CONSIDERATION
5. PHILLIPS TRUCK AND SCRAP TIRE REMOVAL V. ADEM, EMC DOCKET NO. 12-01

The Commission will consider Petitioner Phillips Truck and Scrap Tire Removal’s “Dismissal of Request for Hearing” which is viewed as a motion for voluntary dismissal of the request for hearing in this appeal concerning ADEM’s Administrative Order 12-061-ST issued on January 13, 2012, to Phillips Truck and Scrap Tire Removal, Gadsden, Alabama, Transporter Permit No. S0000038828.

6. OTHER BUSINESS
7. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

(The Requests from the public to address the Commission are attached to the agenda.)

Request 1

Benjamin Eaton, resident of Uniontown, on behalf of Black Belt Citizens Fighting for Health and Justice, Uniontown, Alabama

SUBJECTS: Several environmental issues of public interest and how the city of Uniontown’s Wastewater Treatment Plant offers lessons to be learned by the community and ADEM in addressing longstanding pollution issues in our communities. Presentation slides are titled “What we (BBCFHJ) hope to see from ADEM and the EMC in the near Future.” (Chair Brown will recommend that the Commission grant the Request subject to the limitation that the presentation focus on how the city of Uniontown’s Wastewater Treatment Plant offers lessons to be learned for future policy considerations, rather than a presentation on the status of the city of Uniontown’s Wastewater Treatment Plant which is the subject of ongoing litigation.)

Request 2

Nelson Brooke, Black Warrior Riverkeeper, on behalf of Black Warrior Riverkeeper, Inc., Birmingham, Alabama

SUBJECTS: Update on new developments and issues of concern to Black Warrior Riverkeeper, Inc. at the city of Uniontown’s Wastewater Treatment Plant and education on the larger issue of how ADEM and involved stakeholders can address some of the challenging issues presented by municipal wastewater treatment plants. Presentation slides are titled “ADEM and Citizen Stakeholders: The Challenges Presented by Wastewater Treatment Plants with Limited Funding – Lessons Learned: How to Avoid Another Uniontown.” (Chair Brown will recommend that the Commission grant the Request subject to the limitation that the presentation focus on education on the issues presented by municipal wastewater treatment plants for future policy considerations, rather than a presentation on the status of the city of Uniontown’s Wastewater Treatment Plant which is the subject of ongoing litigation.)

PUBLIC COMMENT PERIOD

(The Requests from the public to address the Commission are attached to the agenda.)

Request 3

David A. Ludder, Esq., on behalf of the ADEM Reform Coalition

SUBJECT: ADEM's current Environmental Justice policy.

Presentation slides are titled "Environmental Justice for All Alabama Citizens."

(Chair Brown will recommend that the Commission grant the Request.)

Request 4

Mitchell L. Reid, J.D., on behalf of the Alabama Rivers Alliance (ARA), Birmingham, Alabama

SUBJECT: Analysis of 2014 EPA response to ARA's 2010 NPDES Petition

(Chair Brown will recommend that the Commission grant the Request.)

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Birmingham, AL 35222
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edillard@blackwarriorriver.org
www.BlackWarriorRiver.org



May 2, 2014

H. Lanier Brown, II, Esq., Chairman
Environmental Management Commission
P.O. Box 301463
Montgomery, AL 36130-1463

Via electronic mail and fax

Re: Request to Address the Environmental Management Commission
June 20, 2014 Meeting



Dear Chairman Brown:

Please accept this letter as two separate requests to address the Environmental Management Commission ("EMC" or "Commission") at its regularly scheduled June 20, 2014 meeting.

Benjamin Eaton is a resident of Uniontown, Alabama as well as a member of Black Belt Citizens Fighting for Health and Justice, a nonprofit organization of concerned citizens in Uniontown, Alabama. He would like to address the Commission on several environmental issues of public interest. Mr. Eaton plans to follow up an October 2013 presentation that he made to the EMC about ongoing sewage treatment issues in his community, which was demonstrably of interest to the EMC since they asked many questions which prompted a robust public discussion at that time. His June 2014 presentation offers an informative "Part 2" to that October presentation and will focus on how the City of Uniontown's Wastewater Treatment Plant offers lessons to be learned by both the community and the Alabama Department of Environmental Management ("ADEM") in addressing longstanding pollution issues in our communities. These lessons learned can help ADEM and other stakeholders improve future outcomes in these circumstances.

Nelson Brooke is Riverkeeper at Black Warrior Riverkeeper, Inc., a nonprofit organization located in Birmingham, Alabama, whose mission is to protect and restore the Black Warrior River and its tributaries. The City of Uniontown is in the Black Warrior basin. Mr. Brooke also made an EMC presentation on issues raised by the City of Uniontown's Wastewater Treatment Plant that complemented Mr. Eaton's at the Commission's October 2013 meeting. At the June 2014 meeting, Mr. Brooke plans to present the EMC with an update on new developments and issues of concern to our

organization at the City of Uniontown's Wastewater Treatment Plant. Mr. Brooke's comments will present and provide education on the larger issue of how ADEM and involved stakeholders can address some of the challenging issues presented by municipal wastewater treatment plants that struggle to put together adequate funding and workable plans to meet compliance goals. Mr. Brooke's comments will be instructive not just for the specifics presented by the example of Uniontown, but also may inform the EMC and the public's larger perspective in addressing similar situations in the future.

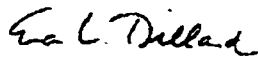
As was the case in October 2013, the two presentations will complement each other rather than provide duplicative or redundant information.

As you know, we do not agree that public comments on City of Uniontown's Wastewater Treatment Plant may be foreclosed by "ongoing litigation involving the Department" as stated previously.¹ See April 2, 2014 Letter to Chairman H. Lanier Brown, II from Eva L. Dillard. However, I want to assure you that neither presentation will mention, address or comment upon the 2008 Agreed Order of Consent between ADEM and Uniontown or ADEM's April 25, 2012 Amended Petition Seeking Finding of Contempt filed in the Circuit Court of Perry County.

The scheduling of each of these presentations is in the public interest, as they will educate and inform both the Commission and the public. Moreover, these presentations will support and contribute to the Commission's mission of developing appropriate environmental policy for the State.

As a courtesy to the Commission, both Mr. Eaton and Mr. Brooke are each happy to submit their slides to you in advance of the meeting so that Commission members may have an opportunity to prepare. Please know that I appreciate your kind consideration of these requests and look forward to hearing from you whether you plan to recommend that the EMC hear these public comments. Thank you.

Sincerely,

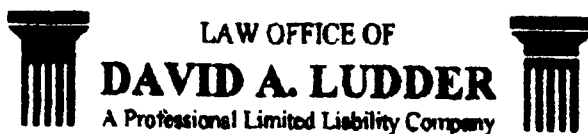


Eva Dillard
Staff Attorney

cc: Debi Thomas, EMC Executive Assistant

¹ Applicable regulation "discourages the members of the Commission from engaging in the non-deliberative discussion of any case or legal proceeding pending before the Commission, or of any decision by the Commission in a case or legal proceeding pending appeal before the Courts of this State" See Ala. Admin. Code r. 335-2-3-.05(3) (emphasis added). Neither Eaton nor Brooke wish to speak about a case or legal proceeding pending before the Commission or a decision by the Commission; they merely want to provide information and offer perspective to a public agency on topics of public interest.

**Robert D. Tambling, Chief
Environmental Section
Office of the Attorney General of Alabama**



May 13, 2014

Delivered via Facsimile & Electronic Mail

H. Lanier Brown, II, Esq., Chair
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-146

Re: Request of ADEM Reform Coalition to Speak at June 20, 2014 Meeting

Dear Chairman Brown:

The ADEM Reform Coalition requests that the Alabama Environmental Management Commission allow me, as an authorized representative of the Coalition, to address the Commission during the public comment portion of the Commission's June 20, 2014 meeting. The topic for discussion is ADEM's current Environmental Justice policy which the Coalition contends is both lacking in critical substance and in excess of ADEM's authority to develop and implement. A draft of the Coalition's presentation is attached and a final copy of the presentation will be provided in advance of the meeting.

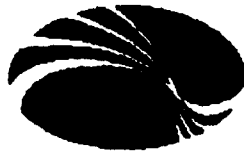
Please note that Environmental Justice is not the same as Title VI of the Civil Rights Act of 1964 or EPA's Title VI compliance program. This presentation will not address ADEM's Title VI obligations or any pending Title VI complaints against ADEM that have been filed with the U.S. Environmental Protection Agency. Moreover, this presentation will not address any specific regulated facilities.

I look forward to receiving your recommendation.

Sincerely,

David A. Ludder





Alabama Rivers Alliance
Water Is Life

June 6, 2014

H. Lanier Brown, II, Esq.
Chair
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-146

Deliver via Facsimile and Electronic Mail

Dear Chairman Brown



In accordance with Alabama Administrative Code Section 335-2-3-.05, this letter is a request to the Alabama Environmental Management Commission for approval to address the Commission during the public comment portion of the Commission's June 20, 2014, meeting. The topic of the discussion is EPA's "Consolidated Interim Response to Three Petitions to Withdraw Alabama's Authorization to Implement the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Program" dated April 9, 2014. On April 11, 2014, Director LeFleur discussed this report and presented the Departments reaction to the EPA response along with commentary that manifestly misrepresented both the positions and intentions of the Petitioners as well as the EPA's response. In light of the Director's statements and in the interest of fairness, it is critical that the Commission hear the other side of the story. Attached is ARA's analysis of the EPA's response which serves as the draft of my presentation. A final copy of the presentation will be provided in advance of the meeting.

Please note that this request is in keeping with the provisions of Alabama Administrative Code Sections 335-2-1-.26 and 335-2-3-.05(3). As there is no administrative or legal proceedings involving the Commission discussed in this presentation, allowing public participation on this topic cannot be considered Ex Parte communication. Allowing this presentation will not engage members of the Commission in non-deliberative discussion of any case or legal proceeding pending before the Commission, nor of any decision by the Commission in a case or legal proceeding pending appeal before any Court of the State. This request is in no way intended to be, nor will approval of this requests result in, a circumvention of any administrative or judicial procedure which specify the time and manner of presenting testimony, evidence, or comment to the Commission in a formal manner designed to provide due process to all parties.

Thank you for your consideration of this request and I look forward to your recommendation.

Sincerely,
Mitchell L. Reid, J.D.
Program Director
Alabama Rivers Alliance

Attachment 2

**ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION**

WHEREAS, the Alabama Environmental Management Commission (Commission) considered the Summary of Written Comments on ADEM Director Performance Evaluation and the following recommendations of the Personnel Committee:

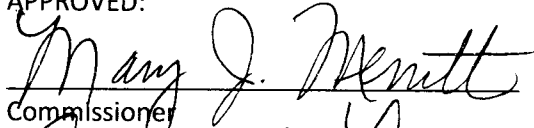
1. Recommend that the Commission request that the State Personnel Board (Board) approve placing Director LeFleur in the State Pay Plan Pay Grade Range (Pay Range) 90 at Step 15 and that the Commission request that the Board approve an increase for Director LeFleur to a per year salary of \$152,618.40.
2. Recommend that the Commission approve the practice of using Pay Range 90 for salary levels for the ADEM Director position with the stipulation that placing Director LeFleur in that Pay Range is approved by the Board.
3. Recommend that the Commission authorize the Personnel Committee Chair to meet with Director LeFleur regarding the Summary of Written Comments on ADEM Director Performance Evaluation and recommendations of the Personnel Committee adopted by the Commission and to execute the verification of understanding between the Commission and the Director regarding the results of the Performance Evaluation.

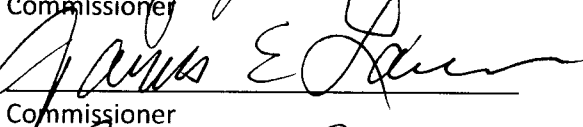
WHEREAS, the Commission hereby adopts the above recommendations of the Personnel Committee.

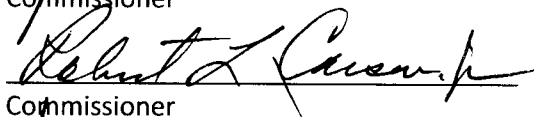
NOW THEREFORE, be it resolved that the Commission requests that the Board approve placing Director LeFleur in the Pay Range 90 at Step 15 and that the Board approve an increase for Director LeFleur to a per year salary of \$152,618.40.

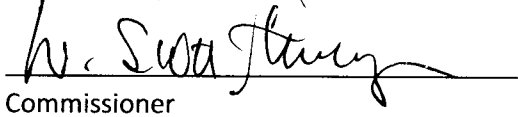
IN WITNESS WHEREOF, we have affixed our signatures below on this 20th day of June, 2014.

APPROVED:

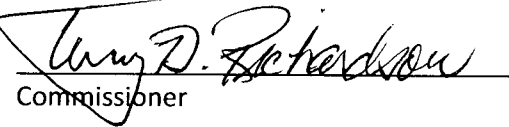

Commissioner


Commissioner


Commissioner


Commissioner


Commissioner


Commissioner

Commissioner

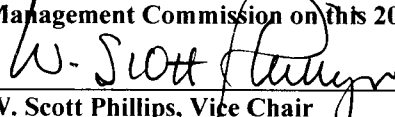
DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 20th day of June 2014.


W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 20th day of June 2014

Attachment 3

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of:)	
)	
Phillips Truck and Scrap Tire Removal,)	
Petitioner,)	
)	
vs.)	EMC Docket No. 12-01
)	
Alabama Department of)	
Environmental Management,)	
Respondent.)	

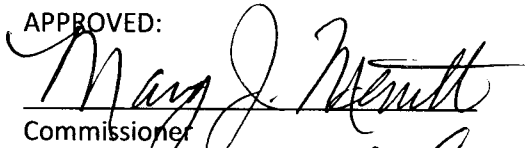
ORDER

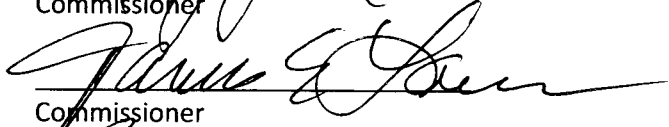
This cause having come before the Environmental Management Commission pursuant to the Petitioner's Dismissal of Request for Hearing, which is viewed as a motion for voluntary dismissal of the request for hearing, for the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner's motion for voluntary dismissal is hereby granted; and
2. That pursuant to granting the motion for voluntary dismissal, this request for hearing is hereby dismissed; and
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below; and
4. That a copy of the Order, along with a copy of the Petitioner's Dismissal of Request for Hearing, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.

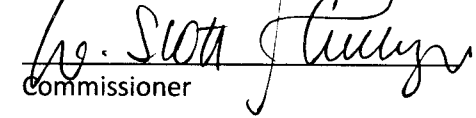
ISSUED this 20th day of June 2014.

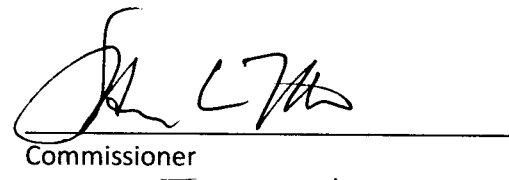
APPROVED:

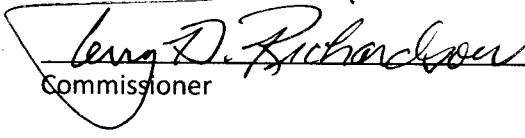

Commissioner


Commissioner


Commissioner


Commissioner


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Commissioner

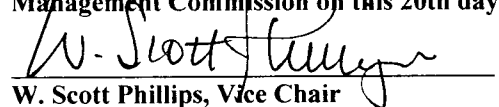
DISAPPROVED:

Commissioner

Commissioner

Commissioner

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 20th day of June 2014.


W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 20th day of June 2014

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

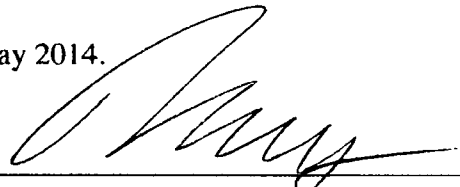
**Phillips Truck and Scrap Tire Removal
76 Tarpley Drive W
Gadsden, Etowah County, Alabama
Transporter Permit No. S0000039928
Order No. 12-061-ST**



DISMISSAL OF REQUEST FOR HEARING

COMES NOW, your Petitioner, Phillips Truck and Scrap Tire Removal, and hereby requests that its request for Hearing be dismissed as the parties have resolved this matter.

Respectfully submitted, this 5th day of May 2014.



Philip E. Miles

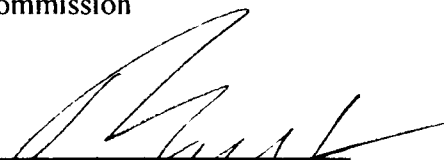
Law Office of Philip E. Miles, LLC
309 Broad Street
Gadsden, Al 35901
Telephone 256-543-9777
Facsimile 256-543-9770
Email: pemllc@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been placed in the U.S. Mail, first class, postage prepaid, on this 5th day of May 2014.

Alabama Department of Environmental Management
Attn: Wm. Gerald Hardy, Chief Land Division
Post Office Box 301463
Montgomery, Al 36130-1463

Alabama Environmental Management Commission
P O Box 301463
Montgomery, Al 36130



Philip E. Miles