Dear Committee Members:

I received a copy of the 7/30/18 letter to the AEMC personnel committee on Black Warrior Riverkeeper letterhead (BWRK letter) with eleven organizations (collectively “the Groups”) listed as concurring.

The BWRK letter is riddled with numerous, demonstrably false, mean-spirited statements, and with unsupported, strident, negative innuendo, which impugn my good name and character and reflect negatively on the Department. With this response letter, I will seek to set the record straight. I hope that my letter will be available to any other parties who may have received the BWRK letter.

The BWRK letter appears to have five focus areas comprising 23 paragraphs. The following will address each area of focus followed by responses to the related BWRK comments, which will be done sequentially by the unnumbered paragraphs, and will include a reference to the page on which the paragraph appears.

- ADEM Non-Concurrence with EPA’s Proposed Superfund listing of 35th Avenue site in Birmingham and Supposed Failure to Maintain Independence Based on a Recent Trial

ADEM has been delegated the responsibility of determining whether to concur that a contaminated site in Alabama meets the scientific and regulatory criteria for being designated as a Superfund site. The signatories to the BWRK letter did not agree with ADEM’s determination not to concur with EPA’s proposed listing based on: lack of any scientific data supporting EPA’s proposed listing, counter indicating health studies, no clear path to clean up, and a more promising option available to clean up such contamination as did exist on the site. ADEM has made a number of similar determinations over the years and is required to make them based on objective criteria rather than what is popular.

I and several individuals related to the Department recently testified at a high profile U.S. v. Gilbert et al. trial in Birmingham. Numerous issues surrounding the proposed Superfund listing by EPA were highlighted in the trial including ADEM’s actions during the timeline covered by the trial. The trial revealed that Oliver Robinson was one part of a campaign by Joel Gilbert to pressure ADEM. As documented at the trial, Joel Gilbert used the Alabama legislature, the Governor’s Office, the Alabama Attorney General’s Office, Oliver Robinson, the previous director of ADEM, and others to apply pressure on ADEM.
ADEM did its job in the face of substantial pressure when many others failed to do theirs. ADEM should not be vilified for its work.

**Paragraph 2; (pages 1-2):**

Since 1989, EPA has overseen activities under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at what became known as the 35th Avenue proposed Superfund site. On 4/2/14, ADEM first became aware of EPA’s intent to consider proposing 35th Avenue for listing on the National Priorities List (NPL) also called the Superfund list. At that time, EPA inquired whether ADEM would concur if a listing was proposed. Due to EPA’s lead, ADEM did not have the necessary information to concur or not concur in EPA’s consideration of the possible NPL listing.

In the attached letter dated 6/11/14, ADEM responded to EPA’s inquiry about the possible listing. In that letter ADEM notified EPA that ADEM would not stand in the way of listing if: i.) EPA prevailed in an action against a responsible party, ii.) a potentially responsible party willing to clean up the site was identified, or; iii.) the Alabama legislature were to appropriate the funds necessary for the State to provide the required 10% match for a Superfund led clean up. None of those conditions were satisfied at the time of the letter, nor are any of them satisfied today.

After a conversation with the then EPA Region 4 Administrator, Heather McTeer-Toney, I clarified to her that the 6/11/14 letter should not be construed as ADEM concurrence. When, on 9/16/14, ADEM became aware of EPA’s intent to suddenly actually propose NPL listing after many years with no action, I sent the then U.S. EPA Administrator, Gina McCarthy, an email (attached) setting forth a list of reasons why ADEM did not concur in the proposed listing. [For additional reasons why ADEM did not concur in the listing please see attached 1/23/15 correspondence to Dr. Propst at GASP.]

At the request of Governor Bentley, I sent a letter to EPA seeking to preserve whatever rights the State might have to require EPA to comply with EPA procedures set out in what is known as the “Fields Memo”. While ADEM considered any misstep by EPA in complying with the Fields Memo an easily curable error by EPA, the letter did not impact the science or regulations that dictate when a site should be listed on the NPL. I viewed sending the letter as an accommodation to the Governor. Documents later confirmed that the letter the Governor requested I send was drafted by Joel Gilbert – a fact unbeknownst to me at the time.

**Paragraph 3; (page 2):**

The underlined supposed quote appears to be taken from media coverage of the trial and, not from the trial transcript. The transcript, when it becomes available, will show that when asked if it was not uncommon for legislators and others to sign letters drafted by lobbyists and others I answered “yes”. I did not indicate I sign such letters. The statement second-handly attributed to me is incorrect.

**Paragraph 4; (page 2):**

It is in the interest of the people of Alabama for their environmental regulatory agency to reach out to all parties that may have an interest in its work. That includes citizens, environmental activist groups, regulated entities, elected leaders, and other local, state, and federal agencies. To not do so because one
of those groups does not want the others to be heard would seriously undermine the effectiveness and the integrity of the agency. ADEM should hear all points of view and be fully informed on environmental matters in Alabama. See also responses to Paragraphs 8 & 10 below.

- **Disclosure of GASP 12/12/14 Presentation and Supposed Bias in Handling of SSO Rulemaking Petition**

Like all governmental agencies, any document received by ADEM that is not protected by virtue of being enforcement confidential, business confidential, deliberative, etc. is available to the public. The signatories of the BWRK letter claim I or employees of ADEM disclosed the proposed GASP presentation prior to the 12/12/14 AEMC meeting where it was to be presented. Although not restricted from doing so, neither I nor any employee of ADEM disclosed the presentation to or discussed the presentation with any party other than the AEMC.

**Paragraph 5; (page 2):**

Trial documents contain no indication that any person at ADEM, myself included, provided the GASP proposed presentation (which was a public document) to anyone outside the Department.

**Paragraph 6; (page 2-3):**

I did not, nor am I aware of any of my staff having communicated and/or discussed the proposed presentation submitted by GASP with anyone other than members of the EMC. To that point, it is wholly appropriate and necessary for the Director to brief Commissioners on matters that may come before the EMC.

**Paragraph 7; (page 3):**

See response to Paragraph 6 above. There is no basis for the reckless accusation that I or any member of my staff in any way communicated with any party other than the EMC members directly regarding the GASP presentation. Additionally, the Groups provide no support for their assumption regarding “talking points.” In reality, I was wholly unaware of any talking points prepared by any party outside of ADEM.

**Paragraph 8; (page 3):**

ADEM representatives have actively participated in numerous Federal Inter-Agency Work Group meetings that involved local area residents and have also engaged with EPA at many local residents’ meetings. Likewise, ADEM has interacted with the Birmingham mayor and city council members regarding 35th Avenue.

The statement that the Groups have not been offered access to ADEM is utterly false. Since 2010, two to three times per year every environmental organization in Alabama has been individually invited in writing to a meeting with ADEM leadership to discuss any topic, other than active litigation. The environmental groups set the agenda for those meetings. I frequently notify every environmental organization in writing that I am available every month on a first-come-first-served basis to meet one-on-one to discuss any topic – something I have not done with regulated industries or any other group. The bottom line is that
environmental activist organizations have been invited to interact with ADEM on dozens of occasions. See several of the written invitations as well as a meeting attendee list attached.

Regarding the Groups' reference to Steve McKinney's "access," this can only refer to the frequent conversations that took place during the BP Oil Spill in 2010, when he was retained by the Governor's Office and received regular briefings in that capacity.

**Paragraph 9; (page 3-4):**

See responses to Paragraphs 4, 5, 6, and 7 above. I was unaware of any parties other than the proposed presenter, ADEM, and the EMC having a copy of the proposed presentation. Again, the Groups provide no basis for the reckless allegations that I was in some way involved in a real or imagined subterfuge, *because there is no basis.*

**Paragraph 10; (page 4):**

See response to Paragraph 4 above. To put the Groups' comment into context, the Department met with the Petitioners to discuss the potential rule changes before the Petition was filed. At that meeting, the Department clearly expressed to the Petitioners that because the potential rule changes would directly affect wastewater utilities, those wastewater utilities would need to be brought into the discussion.

Once the Petition was filed, the Department did as it said it would and obtained information from stakeholders who would be affected by the rule change. The Petition, a public document, was placed on the eFile system, which is accessible to any interested party. Departmental staff specifically contacted utilities that were *referenced in the Petition,* as well as associations that represent wastewater utility systems. The Department was transparent in its review of other positions, as the position papers from other stakeholders were included as an attachment in the Views of the Director on the Petition.

With respect to the Groups' assertions about the SSO Notification Procedures meeting in December 2017, there is an "innocent explanation." The Department invited several representatives of associations that represent wastewater systems, in addition to several other wastewater representatives who were specifically requested by the Petitioners. (See attached emails.) Again, these parties were invited to facilitate discussion regarding benefits and obstacles of specific SSO public notification procedures, so that varying points of view would be heard. A summary of all activities to that date regarding SSOs, including the Petition, was distributed at the meeting, without objection by any attendee.

ADEM's comprehensive notes of the meeting (attached) were supplied to all interested environmental organizations for discussion at the next ADEM/Environmental Organizations meeting, which was held on April 20, 2018. Although requested by ADEM, no notes from other parties were made available to ADEM. Contrary to the allegation of ADEM's interest in "shutting down the discussion," the notes make it very clear all parties were heard.

It was absolutely appropriate for wastewater utility representatives to attend the meeting for the reasons listed above, and also because the environmental organizations had previously met with ADEM representatives without wastewater utility representatives present.
Paragraph 11; (page 4):
ADEM has appropriately responded to all public records requests. If there are concerns regarding the handling of public records requests by the Alabama Attorney General those should be taken up with the AG's office.

Paragraph 12; (page 4):
The condemnation without supporting facts is noted.

- **Pending Litigation Related to ADEM Internal Procedures for Investigating Discrimination Complaints**
  This group of comments is part of an ongoing effort by an attorney to have pending litigation decided in the media rather than court. ADEM will not comment on litigation until the court acts.

Paragraphs 13-19; (pages 4-6):
The matters related to ADEM changing its internal procedure for investigating discrimination complaints is currently in litigation and may be addressed at a later time.

- **Director's Failure to Lobby the Legislature for Funding**
  ADEM performs at a very high level with existing funding. The Alabama legislature is well informed regarding ADEM funding. The legislature sets State priorities by executing its statutory obligation to appropriate revenues of the State.

Paragraphs 20 & 21; (page 6):
You are well aware that ADEM funding is the lowest per capita in the nation. As I have previously reported, by any objective measure, ADEM performance is among the highest in the nation. Can we do more with more funding? Yes. However, the taxpayers of Alabama and those who care about the environment can be pleased that every funding dollar is being used effectively. It is also worth noting that ADEM has submitted General Fund budget requests in excess of $7 million for each of the past two years.

- **Director's Failure to Seek Funding Through Increased Penalties**

Paragraph 22; (page 6-7):
As I have previously reported, compliance and enforcement results compared to all other states show Alabama at or near the top in every category, which speaks for itself. ADEM penalties and fines are comparable to other states in our region and the nation. Increasing penalties and fines as a funding mechanism is not wise policy for a regulatory agency any more than it is for a town to set up a speed trap to fund itself. Penalties and fines should and do reflect the factors set out in Alabama statutes.
Conclusion

Paragraph 23; (page 7):

Individuals should have their performance assessed on facts, not on unfounded allegations, innuendo, personal opinions, or whether they did the popular thing.

In closing, I want to assure you that the public employees at ADEM, including myself, take ADEM’s mission very seriously, and the Department takes pride in conducting business fairly and by the book. Unlike the signatories to the BWRK letter, every ADEM employee, including me, is accountable for his or her statements and actions. As the preceding shows, nearly every paragraph of the BWRK letter contains false, misleading, and unsupported statements. It is clear that the Groups seek to use the media and social media to personally attack my good name and character, as well as the integrity of ADEM. The public records of the agency and the U.S. v. Gilbert et al. trial record speak for themselves.

I would be pleased to further discuss these matters that reflect on my good name and character with the Personnel Committee in executive session if the committee wishes.

Sincerely,

Lance R. LeFleur
Director

Attachments:

7/30/18 letter to AEMC Personnel Committee from 11 Environmental Organizations [with paragraph numbering added]
6/11/14 letter to Heather McTeer-Toney, Regional Administrator, US EPA Region 4 from LeFleur
9/16/14 email to Gina McCarthy, Administrator, US EPA from LeFleur
1/23/15 letter to Stacie M. Propst, PhD, Executive Director, GASP from LeFleur
04/06/18, 08/02/17, 10/11/16, 06/01/16 emails to Environmental Organizations from LeFleur
6/25/10 – 4/20/18 Collective Roster of Attendees at ADEM Meetings with Environmental Groups
11/16/17 – 06/31/18 emails to Daphne Lutz, Industrial / Municipal Branch Chief, various emails related to SSO Meeting

12/15/17 ADEM's Consolidated Notes from 12/15/17 SSO Meeting
July 30, 2018

Personnel Committee
Environmental Management Commission
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, AL 36130

Via electronic mail only to aemc@adem.alabama.gov

Re: Performance Evaluation of ADEM Director Lance LeFleur

Dear Committee:

Please consider these comments as part of your evaluation of the performance of Alabama Department of Environmental Management ("ADEM") Director Lance LeFleur. Sworn testimony in the public corruption case of U.S. v. Gilbert, et al., No. 2:17-cr-00419-AKK-TMP (N. D. Ala. 2018) has revealed bias and corruption at both the Environmental Management Commission ("EMC") and ADEM.¹ Public trust in both institutions has been severely eroded over the past weeks. In order to repair that trust, there must be new leadership at ADEM. When an organization like ADEM stumbles, its director must take responsibility. Director LeFleur has failed to lead the Department in a manner that advances the mission of ADEM "to assure for all citizens of the State a safe, healthful and productive environment." He must resign or be terminated.

Director's Failure to Maintain Department's Independence and Integrity

The trial of U.S. v. Gilbert, et al has revealed many disturbing things, but none more disturbing than the failures of the Director and ADEM to separate their interests from those whom they regulate. Instead of carefully weighing all the evidence and allowing the Department to make decisions that would protect the health and safety of North Birmingham residents, Director LeFleur’s testimony at trial shows how he failed not only those residents but his job. He apparently did not express opposition to EPA’s efforts to clean up toxic pollution at the 35th Avenue Superfund Site in North Birmingham until

¹ Because these comments are directed to Director LeFleur’s evaluation, this is not an appropriate forum to discuss EMC members who are also tainted by trial testimony. We remain deeply concerned about what the testimony has revealed about the operations of the EMC and ADEM. We will ask for the resignation of any involved EMC members separately.
lawyer Joel Gilbert and lobbyists David Roberson and Trey Glenn, among others, began to exert pressure on behalf of their clients Balch & Bingham and/or Drummond Co. When Governor Bentley and the EMC joined in, the Director succumbed to that pressure and began to publicly and actively oppose EPA’s efforts. Even worse, he sent a letter to EPA in his capacity as Director opposing EPA’s cleanup in North Birmingham. Although trial testimony indicates that Director LeFleur may not have known this, the letter he sent was drafted at least in part by Gilbert, whose client Drummond Company, had the most to lose if EPA expanded the cleanup and placed the 35th Ave. site on the National Priorities List. Gilbert apparently routed the draft letter through Governor Bentley’s office, which then sent it to Director LeFleur to send.

Director LeFleur testified that it was not uncommon for lobbyists/consultants to draft letters for him to sign — and that he sees nothing wrong with the practice. It is beyond wrong: the trial testimony in U.S. v. Gilbert, et al persuasively provides the “why.” The Director unwittingly took a letter resisting EPA’s efforts to clean up toxic neighborhoods in North Birmingham — written by a lawyer for a potentially responsible party — and slapped it on ADEM letterhead over his signature before sending it to EPA as ADEM’s considered position. And he apparently thinks that actions like this one are acceptable for an ADEM director.

We could not disagree more. The closeness of the relationship between the Director and those he is supposed to regulate should disqualify him from this important position of public service. He is ultimately answerable not to Drummond Co. or Balch & Bingham, but to the citizens of Alabama, for whom he is supposed to ensure a safe, healthful and productive environment. As a result of testimony at this trial, public confidence in ADEM and other institutions of government has plummeted. In light of this fact, the Director and the Commission must know it is time to make significant changes at ADEM.

Leak of Proposed Public Presentation(s)

Like many groups who appear frequently before the EMC, the undersigned were disappointed, but not entirely surprised, to learn that Director LeFleur and ADEM were part of a leak of a planned EMC public presentation. Ala. Admin. Code r. 335-2-3-.05(2) provides in pertinent part that “[i]n order for the Commission to be better prepared on the subjects to be discussed, members of the public wishing to make presentations at regularly scheduled Commission meetings must first submit to the Commission Office a written request along with a description of their presentation.” (Emphasis added.)

Testimony and evidence offered in U.S. v. Gilbert indicates that Director LeFleur and his staff, along with others, communicated and/or discussed a proposed presentation submitted by Gasp, with parties outside the Department, and subsequently discussed the substance of that proposal. Gasp is an environmental nonprofit whose mission is to reduce air pollution through education and advocacy. Gasp made a timely request to the EMC to address the Commission about expanding the North Birmingham 35th Avenue Superfund Site and placing it on EPA’s National Priorities List. Gasp provided the EMC...
with a copy of the presentation prior to the December 12, 2014 meeting so that they might be better informed, just as the regulation prescribes.

At least one member of the EMC, together with Director LeFleur and/or his staff abused the purpose and intent of this regulation. The presentation was communicated directly to affected industry and their lawyers. Without attribution or disclosure, these biased individuals were allowed to selectively attack and rebut Gasp’s presentation behind the scenes, before it was even delivered to the public. It was wrong to give them advance copies of the presentation for these purposes. It was even worse to allow them what appears to be secret access to ADEM and the Commission to have their questions and rebuttal points aired as if they originated with the Department and the Commission. There is no suggestion that the EMC or ADEM solicited or neutrally evaluated all available information and reached a considered decision. They apparently took talking points directly from the industry’s lawyer and uncritically adopted them as their own.

More than just violating traditional notions of fair play and transparency, these actions reflect poorly on the judgment of the Director and the Department. These actions reinforce the appearance of favoritism and bias on the part of the Director and ADEM. There is no indication that the Director or his staff reached out similarly to residents of North Birmingham or any other potentially affected parties. Members of the undersigned organizations have been presenting to the EMC for years. We have never been offered similar access, notice or advantage when a presentation or issue that affects our mission or interests is offered. Knowing that public presentations may be secretly shared and deconstructed in this way has had a chilling effect on the willingness of members of the public to bring their concerns to the EMC or ADEM. This is especially true when the public is not given a similar opportunity to rebut the positions of the industries that may be targeted by the presentations. We lack the absolute access of industry leaders like Drummond Vice-president David Roberson, who testified that "speaking in public [before the EMC] does not help" and you must go directly to the bosses instead. We similarly lack the access of Steven McKinney, another Balch & Bingham attorney and defendant in the public corruption case, with whom Director LeFieur frequently spoke about “non-confidential” matters that might affect Balch clients. Public participation and involvement, which is the bedrock of U.S. environmental laws, has been dealt a stunning blow in Alabama.

We can all agree that there are important and sometimes contentious environmental issues confronting Alabama. We can also agree that these issues have different perspectives and constituencies; these views should all be aired publicly and debated robustly. All data should be reviewed and considered. However, we look to the Director and the Department to be the honest broker in these matters. We do not ask for a directed outcome, but we do ask for a fair shot and a level playing field. The testimony in U.S. v. Gilbert suggests that fair play or neutrality at ADEM is currently a myth. The Director and the Department have broken trust not just with us, but with the public that ADEM is supposed to serve. A group worried about health consequences in a poor, polluted area wanted to present information to state regulators about appropriate cleanup in the area --- and the presentation
was sent straight to a lawyer who represented one of the companies most likely responsible for the pollution. The Director knew this and did not blow the whistle. Secretly sharing information with favored parties, then allowing their point of view to masquerade as the EMC's or ADEM's is beyond wrong. This subterfuge occurred outside the public view and was only exposed by a criminal prosecution where Director LeFleur and others were subpoenaed to testify.

We also note that, in response to a document request made relative to a Petition to Improve Public Notification of Sanitary Sewer Overflows (ADEM Admin. Code r. 335-6-6-.12), it appears that ADEM staff reached out to some number of wastewater treatment operators via telephone about the Petition. But for the email replies of some of these operators, there would be no record of this request. During the December 2017 sewage public notification roundtable, it was clear that a select number of operators were asked to participate, and there was a preconceived plan to lobby against the Petition to maintain the notification status quo. Director LeFleur appeared to be more interested in shutting down the discussion over what kind of public notification was desirable and practicable, rather than be the neutral convener of the parties for a constructive discussion. There is no record of how the Petition was presented to these operators or how they were chosen; there was little disclosed about what information they may have received. If this contact was in the regular course of ADEM’s operations, why wasn’t it done via email and why did only select operators appear to be notified?

While there could be an innocent explanation, the bias made public in U.S. v. Gilbert calls into question both the context and propriety of these contacts. We will be updating this document request because it appears, due to testimony in U.S. v. Gilbert, that documents responsive to an Open Records request submitted by The Birmingham News were wrongfully withheld by the Alabama Attorney General’s Office. Because some of the same personnel are involved, we want to make sure that all documents responsive to any Open Records requests by the undersigned were actually turned over.

We believe all of these actions should be condemned and carefully considered in evaluating the Director’s job performance, as he leads ADEM. Regardless of whether Director LeFleur’s tenure at ADEM ends, we ask the EMC to authorize a neutral, independent investigator to determine whether the actions revealed by U.S. v. Gilbert are an isolated event or represent routine practice at the EMC and ADEM. We ask the EMC to share the method and the results of this investigation with the public in order to begin the process of restoring the public’s trust. Finally, we ask the EMC to implement any procedures as necessary that will ensure that this kind of dishonesty and favoritism ends.

Director’s Failure to Promulgate Required Policies

Federal regulation prohibits a recipient of financial assistance from the U.S. Environmental Protection Agency (“EPA”) from using criteria or methods of administering its programs or activities that subject individuals to discrimination because of their race or color, among other things. 42 U.S.C. § 2000; 40 C.F.R. § 7.35(b). Each recipient of the EPA's financial assistance (including ADEM) is
required to adopt grievance procedures to assure the prompt and fair resolution of complaints that allege a violation of that regulation. 42 U.S.C. § 2000; 40 C.F.R. § 7.90(a). To comply with the requirement that ADEM adopt grievance procedures, Director LeFleur, together with at least one of his predecessors, developed and adopted a document entitled "Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" on or about October 18, 2004, and another document entitled "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process" on or about April 12, 2016.

Even though these documents are "rules," as defined in Ala. Code § 41-22-3(9), they were adopted without substantial compliance with the notice and comment requirements of the Alabama Administrative Procedure Act, Ala. Code § 41-22-1 et seq., and the notice and hearing requirements of the Alabama Environmental Management Act, Ala. Code § 22-22A-1 et seq. In 2017 when these rules were challenged as invalid, the Director chose to defend the challenge on lack of standing. He apparently considered no alternate strategy or "Plan B" to protect the Department in the likely event his defense was unsuccessful. The Alabama Civil Court of Appeals ruled against the Department on January 18, 2018, holding that affected members of the public had standing to challenge the rules.

While the wisdom of fighting the challenge is debatable, the Department’s failure to prepare for the loss of that challenge is not. Even though the Court ruled in January on the standing issue, the Department waited until June 5 to withdraw the challenged policy, which effectively rescinds ADEM’s discrimination grievance procedures. Currently there are no procedures and there has been no public indication of rulemaking to replace them. Millions of dollars in EPA grant funds hang in the balance.

On July 2, 2018, EPA’s Office of Civil Rights opened an investigation into whether ADEM “is complying with the regulatory requirement” under federal civil rights laws, and “specifically whether ADEM has adopted grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the regulation.” ADEM receives the majority of its operating funds from the EPA; without a properly developed and implemented grievance procedure, that funding is now at risk.

Ensuring that ADEM complies with requirements of state and federal law and providing the public with valid policies to combat discrimination should have been key priorities for Director LeFleur and the Department. Evidently they were not. We urge the EMC to work with the ADEM Director to ensure that this issue is quickly and decisively addressed through valid rulemaking.

Hand in hand with valid rulemaking, the EMC and the Director must ensure that ADEM obtains any necessary legislative authority to comply with other EPA regulations. For example, 40 C.F.R. § 7.35(b) requires that EPA financial assistance recipients, including ADEM, “shall not use criteria or methods of administering its programs or activities which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex . . . .” However, the Alabama Legislature has not granted ADEM the authority to consider whether a permit will “have the effect of
subjecting individuals to discrimination because of their race, color, national origin, or sex.” See e.g., 
Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17; Alabama Air 
Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23; Alabama Solid Wastes and Recyclable 
Materials Management Act, Ala. Code §§ 22-27-1 to 22-27-18. Absent additional authority from the 
legislature, ADEM cannot develop, adopt, and implement policies and procedures to ensure compliance 
with 40 C.F.R. § 7.35(b). See Holmes v. Alabama Department of Environmental Management, EMC 
1998). Absent compliance, ADEM again risks losing its top funding source.

Rather than passively wait for an EPA investigation or further litigation, a director must take 
proactive measures to ensure that the Department has all necessary legal authority to meet EPA’s 
funding requirements. Delay invites the substantial risk of litigation, another EPA investigation, or the 
catastrophic loss of the Department’s federal funding. Director LeFleur’s failure in this regard reflects 
poorly on his job performance and should be considered in the EMC’s evaluation.

Director’s Failure to Lobby Legislature for Adequate Funding

ADEM ranked dead last in per capita funding among state environmental agencies in a 
recent study published by the Environmental Council of States. The survey found ADEM received 
an average of just $10.85 per person, per year from 2013 to 2015. Mississippi, Tennessee, Georgia 
and Florida’s general funds all contribute millions to their state environmental agencies. In recent 
years, ADEM has received little from the state’s General Fund and in one year actually had to return 
money (earmarked for scrap tire cleanup) to the General Fund. This lack of funding has real world 
consequences for the state; for example, the Department lacked the necessary resources to respond to 
the Colonial Pipeline diesel spill in 2016 and had to turn over emergency response to EPA.

Part of the Director’s job is to make the public case for the adequate funding of his agency. 
The Director must do more than give a bleak picture of the Department’s funding every year. As 
ADEM’s leader, he or she must be an advocate for its full funding by the Legislature. We urge the 
EMC to ensure that ADEM’s Director does more than lobby behind the scenes. Where the adequate 
funding of ADEM is concerned, he must be prepared to make the case for full funding to the public 
who elects these representatives.

Director’s Failure to Incentivize Enforcement as a Necessary and Meaningful Compliance and 
Funding Initiative

Director LeFleur often talks of the importance of collaboration, not enforcement, as a means 
to foster permit compliance among permittees. The problem is, a lack of aggressive inspections,

investigations, and enforcement sends the wrong message to the Department’s permittees. When permittees’ interactions with ADEM after permit noncompliance involve warning letters, notices of violation, long compliance schedules, and nominal fines rather than meaningful enforcement actions, the message ADEM sends is clear. Occasional enforcement is a cost of doing business and is cheaper than investing in compliance. Deterrence of future violations lost, as is a financial opportunity for the state. If ADEM had a director that prioritized effective enforcement, the Department could levy millions of dollars of fines every year. Those fines go to the General Fund and could be a bargaining chip for the Director to demand adequate funding for ADEM’s operations.

Conclusion

ADEM’s mission is “to assure for all citizens of the State a safe, healthful and productive environment.” Director LeFleur has failed to lead ADEM in a manner that advances that mission. He must resign or be terminated. When the EMC puts together the appropriate search committee for his replacement, we ask that at least one representative from the undersigned organizations be a part of that committee.

Thank you for consideration of our comments. We look forward to your response.

Sincerely,

Black Warrior Riverkeeper
Alabama Rivers Alliance
Cahaba River Society
Cahaba Riverkeeper
Choctawhatchee Riverkeeper
Environmental Defense Alliance
Friends of Hurricane Creek
Friends of the Locust Fork River
Gasp
Little River Waterkeeper
Tennessee Riverkeeper

cc: Lance LeFleur, Director
    ADEM
    Trey Glenn, Administrator
    USEPA Region 4
Ms. Heather McTeer Toney  
Regional Administrator, US EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3104

RE: Proposed NPL Listing  
35th Avenue Site, Birmingham (Jefferson County), AL

Dear Ms. Toney:

As indicated in the attached letter, the Alabama Department of Environmental Management (ADEM) has been designated by Governor Robert Bentley to represent the State of Alabama in issues concerning the potential listing of the 35th Avenue Site (Site) in Birmingham on the National Priorities List (NPL). ADEM does not object to EPA’s proposal to list the Site on the NPL provided EPA is able to reach an agreement with the potentially responsible parties (PRPs) to provide adequate funding for the cleanup efforts. However, should EPA be unable to reach an agreement or prevail in an enforcement action to compel a responsible party for the funding of the remediation, thus resulting in the Agency proceeding with a “fund-lead” cleanup under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), ADEM’s support for such a listing would be contingent on having funding available to cover the State’s share of the cleanup costs. Currently, no such funding source exists.

As the listing process progresses, please feel free to coordinate with Mr. Chip Crockett of the ADEM Land Division at 334-270-5627 or via e-mail at vhc@adem.state.al.us.

Sincerely,

Lance R. LeFleur  
Director

LRL/VHC/ghe

Attachment
Dear Ms. Toney:

By letter of April 2, 2014, your office contacted the Alabama Department of Environmental Management ("ADEM") concerning potential listing of the 35th Avenue Site located in Northern Birmingham, Alabama, on the National Priorities List and solicited the State's position on the proposed listing. EPA's letter asked for a response from the Governor or a delegated representative. ADEM has worked closely with EPA in the evaluation of the Site throughout the assessment process. Accordingly, I am delegating authority to ADEM to provide comments to EPA on behalf of the State concerning the proposed listing. The Department will be providing a response to you regarding this matter in the near future.

Sincerely,

Robert Bentley
Governor

cc: Lance R. LeFleur, Director, Alabama Department of Environmental Management
Franklin E. Hall, Director, Superfund Division
Phillip Davis, Director, Land Management Division
Roper, Lynn T

From: LeFleur, Lance R
Sent: Tuesday, September 16, 2014 3:49 PM
To: Elliott, Marilyn; Davis, Phil
Subject: FW: 35th Avenue Birmingham NPL listing

From: LeFleur, Lance R
Sent: Tuesday, September 16, 2014 12:46 PM
To: 'McCarthy.Gina@EPA.gov'; 'McTeertoney.heather@Epa.gov'; 'Gwendolyn KeyesFleming'
Subject: FW: 35th Avenue Birmingham NPL listing

Cc. to Governor Robert Bentley

From: LeFleur, Lance R
Sent: Tuesday, September 16, 2014 12:43 PM
To: 'McCarthy.Gina@EPA.gov'; 'McTeertoney.heather@Epa.gov'; Gwendolyn KeyesFleming
(KeyesFleming.Gwendolyn@epamail.epa.gov)
Subject: 35th Avenue Birmingham NPL listing

Administrator McCarthy

It came to the attention of the Alabama Department of Environmental Management (ADEM) this morning that EPA will announce today at 1:00 p.m. CDT, and it will be published in the Federal Register on Thursday, September 18, 2014, that EPA is proposing a listing on the National Priorities List for the 35th Avenue, Birmingham, Alabama site. EPA did not consult with or notify ADEM of this intended action until just hours before announcing it to the public. This is a most egregious breach of protocol in the long established working arrangement between ADEM and EPA.

In a letter dated April 2, 2014 EPA requested the State of Alabama concur in a listing on the NPL. In my June 11, 2014 response directed to Regional Administrator McTeer-Toney, EPA was informed the State DID NOT CONCUR in the proposed listing. The State DOES NOT CONCUR in the proposed listing for numerous reasons including:

1. ADEM has not been provided the Hazard Ranking System documentation that was requested by the Department, so there is no scientific basis on which the Department can make a determination on whether to concur in a listing.
2. The air and land studies performed by the U. S. Agency for Toxic Substances and Disease Registry (ATSDR) within the Centers for Disease Control determined there is no public health hazard at the 35th Avenue site and therefore the studies do not support listing on the NPL.
3. A recently completed study by the Jefferson County Department of Health determined there is no increased incidence of cancers in the 35th Avenue area and therefore it does not support listing on NPL.
4. ADEM is aware of no scientific or epidemiological data related to contamination at the 35th Avenue site that is consistent with listing on NPL due to a significant threat to public health.
5. EPA has not prevailed in any enforcement action against any Responsible Party and no Potentially Responsible Party has volunteered to cleanup such contamination as may exist on the site, therefore, there is no clear path to removing any contamination.

In the strongest terms possible I wish to voice my disappointment in this action by EPA.

Lance R. LeFleur

Director

Cc: Governor Robert Bentley
January 23, 2015

Stacie M. Propst, PhD
Executive Director, GASP
732 Montgomery Hwy #405
Birmingham, Alabama 35216

Dear Dr. Propst:

Thank you for your comments at the December 12, 2014 Alabama Environmental Management Commission (AEMC) meeting, for your follow up letter to me dated January 12, 2015 [copy attached], and for copying me with your January 12, 2015 letter to AEMC Chairman Brown and other members of the Commission [copy attached].

I am pleased to respond to the points you raised in your correspondence to the AEMC and to me. As noted in the December Commission meeting, in the future I would also be pleased to discuss these matters directly with you and perhaps resolve some of your concerns more efficiently.

With your indulgence I will address the points as made in your January 12, 2015 letter to Chairman Brown first:

1. You correctly point out that EPA has expressed concern about various potential pathways for contamination at the North Birmingham site; however, the fact remains that the site was proposed for listing on the National Priorities List (NPL) based solely on soil contamination as was represented to the Commission. ADEM did not and does not, at this time, take issue with the EPA HRS Documentation Record.

2. Your confusion about whether a Responsible Party (RP) for contamination at the North Birmingham site has been identified is understandable in light of the EPA document referenced in your letter to Chairman Brown. The document you referenced contains an error in two references to “responsible parties.” The sentence immediately preceding your quotation references “…potentially responsible parties (PRPs).” The paragraph immediately following your quotation reference states in part “Superfund Enforcement is in the process of identifying additional PRPs and evaluating evidence related to the already identified PRPs.”

The incorrect reference to “responsible parties” in the EPA document has been reported to EPA and EPA has stated that the error will be corrected. I will notify you when the correction appears on EPA’s website.

The difference between a potentially responsible party (PRP) and a responsible party (RP) is important to understand. A responsible party is legally obligated to clean up a site, whereas a potentially responsible party is simply a party that could possibly be obligated to clean up a site in the future.
Finally, you are correct that EPA acted under its RCRA authority initially while in the North Birmingham area and then sometime later elected to also act under its CERCLA authority. No representation was made as to how fast or slow EPA would act in the future but rather that EPA has been on the site for an extended period and any data collected during that time was not made available to ADEM before EPA proposed the NPL listing.

3. A closer reading of the transcript of the December 12, 2014 AEMC meeting [copy attached], will confirm that the statement regarding cleanup of the site was “MR LeFLEUR: ... we would like to see a productive path to assisting these people, and that’s what we are proposing to do.” [see the December 12, 2014 AEMC meeting transcript page 76 line 22 through page 77 line 2] rather than anything similar to your stated paraphrasing of the comments.

Your statement that “This was highly confusing considering the state’s position that it cannot afford a cost-share of 10% for the clean-up but at some earlier date offered to finance 100% of it.” is incorrect in two respects. First, ADEM has repeatedly stated that, given that there is no demonstrated human health hazard, funding of the 10% cost share by the legislature will likely not be possible [for example, see page three of the attached January 13, 2015 comment letter to EPA on the proposed NPL listing]. At no time in the transcript of the response to your comments or otherwise has there been a reference by ADEM to the State’s inability to “afford” a cost-share. Second, ADEM has repeatedly stated that there are more effective alternatives than listing on NPL [for example, see page three of the attached January 13, 2015 comment letter to EPA on the proposed NPL listing referencing Anniston, AL and Spartanburg, SC sites]. At no time in the transcript of the response to your comments or otherwise has there been an offer by ADEM or the State to “finance 100%” of the cost of cleanup. Please also see the response to paragraph 3 of your January 12, 2015 letter to me below.

4. Thank you for providing data showing that Jefferson County has the third highest rate for cancers for all races and the fourth highest rate for cancer among the black population in Alabama. It appears that the Jefferson County Department of Health (JCDH) study titled “Comparison of the Ten-Year Death Rates and Birth Outcomes for the Collegeville/Fairmont/Harriman Park Communities and the Rest of Jefferson County 2000-2009” used the same Alabama Statewide Cancer Registry data source as the report you provided. The JCDH study simply differentiated between the North Birmingham area and the rest of Jefferson County.

It is possible that the Alabama Department of Public Health (ADPH) may be interested in the study you suggest to determine if there is any causal basis for the higher rates of cancer in Jefferson County. ADPH may also be interested in a similar study for those counties in Alabama with cancer rates even higher than Jefferson County.

5. Until credible data invalidating the ATSDR findings is available, ADEM must rely on the published findings of ATSDR which is an agency within the United States Centers for Disease Control.

As was noted at the December 12, 2014 AEMC meeting in the response to your comments, the UAB research you referenced was addressed with the following: “MR LeFLEUR: There’s a UAB study that was referenced also and that study clearly indicates
that there are increased incidents of some ailments in the area. It did indicate, though, that other factors needed to be studied. Things that are normally associated with impoverished communities, such as alcohol, tobacco, drug use, prenatal care, things such as that. But there are obviously problems here. The question is what is the cause of those problems and how can they best be addressed?'' [see the December 12, 2014 AEMC meeting transcript page 70 line 14 through page 71 line 4] Page 7 of the UAB study you referenced was the basis for the preceding statement in the transcript.

6. The Duke and Pittsburgh Universities study you reference indicates that home values increase only if there is either a perception that the site will be cleaned up or the cleanup process has actually been completed [see pages 6-9 and 19]. Given that EPA has not reached any agreement with the potentially responsible parties to remediate the site nor has it filed an enforcement action to compel PRPs to pay for cleanup activities and the State has not agreed to provide matching funds to allow Superfund funding, there is no clear path that leads to cleanup. With no clear path to cleanup, as indicated in the Duke and Pittsburgh Universities study, home values can be expected to decline.

The Duke and Pittsburgh Universities study was the basis for the statement “MR. LeFLEUR: And your last point is one that needs to be understood by folks, that putting it on NPL does not help people. Cleanup helps people. Putting it on the list without the prospect of cleanup, which there is no prospect right now, or limited prospect, without that prospect of cleanup works to the disadvantage of the people in that area rather than the advantage. Now, if it ultimately is cleaned up, then people certainly are better off both financially and to the degree that there’s a health impact already, health wise. But having it on the NPL in and of itself does nothing to help people.” [see the December 12, 2014 AEMC meeting transcript page 78 line 18 through page 79 line 10]

The following addresses the points made in your January 12, 2015 letter to me.

Second Paragraph:

ADEM did not request authority to remediate the 35th Avenue site. In 1996 when ADEM first received delegation of Resource Conservation and Recovery Act (RCRA) corrective action authority, ADEM informally discussed authority to oversee corrective action on the Walter Energy (then Sloss Industries) RCRA site as such authority had, at that time, been granted to ADEM on other sites. EPA had initiated a RCRA inspection and enforcement action on the site in 1989. EPA did not grant ADEM authority over the corrective action at the Walter Energy/Sloss site [see attached March 5, 2000 correspondence].

Much of the subsequent communication between ADEM and EPA concerning RCRA corrective action authority at Walter Energy/Sloss was verbal between the ADEM Land Division Chief and the EPA Region 4 counterpart until ADEM formally requested the lead on the on-site RCRA corrective action at Walter Energy on March 30, 2012 [see attached correspondence]. EPA declined ADEM’s request on May 17, 2012 [see attached correspondence].

ADEM did not request CERCLA authority over the 35th Avenue site because CERCLA authority cannot be delegated since it is an authority solely granted to EPA by statute. ADEM did request that, in lieu of the CERCLA action if commenced in 2009, EPA defer
to a cleanup plan to be developed by ADEM, potentially responsible parties, and others similar to a plan that was implemented in the Anniston, AL lead contamination cleanup.

Third Paragraph:

ADEM is encouraging EPA to embrace an approach that ADEM considers a more effective alternative to NPL listing [for example, see page three of the attached January 13, 2015 comment letter to EPA on the proposed NPL listing where the Anniston, AL and Spartanburg, SC projects are referenced]. Please see the response to item 3 of your letter to Chairman Brown above for a discussion of your question regarding the State paying either 10% or 100% of the cost of cleanup.

Fourth Paragraph:

Please see the response to item 2 of your letter to Chairman Brown above for a discussion of your comment regarding responsible parties.

I reiterate my invitation for you to contact me directly to discuss any questions or concerns you may have and perhaps address matters more efficiently. I also would be pleased if you would join me, other ADEM representatives, and other members of the environmental community for our next regularly scheduled meeting on April 17, 2015 following the AEMC meeting.

Sincerely,

Lance R. LeFleur
Director

Attachments: (7)
1/12/15 Propst letter to AEMC
1/12/15 Propst letter to LRL
1/13/15 ADEM comment letter to EPA on proposed NPL listing
Draft transcript of 12/12/14 AEMC meeting
3/5/00 correspondence from EPA to ADEM related to RCRA delegation in North Birmingham
3/30/12 correspondence from ADEM to EPA related to RCRA delegation in North Birmingham
5/17/12 correspondence from EPA to ADEM related to RCRA delegation in North Birmingham
It is my pleasure to invite all interested environmental organizations and stakeholders to a meeting with me and senior management of ADEM at 1:00 p.m. on April 20, 2018 following the Alabama Environmental Management Commission meeting at our offices in Montgomery. A conference call connection can be provided if anyone would like to participate by phone. Please contact Laura Cranage at 334/271-7700 by April 18th if you wish to have the conference call option made available.

Cindy Lowry at Alabama Rivers Alliance will be contacting everyone on the distribution list requesting agenda suggestions. Please give this some thought. She will compile the suggestions and send out the final agenda in the near future.

Please be reminded that I am available for monthly one-on-one meetings with any group or individual on a first come, first served basis to discuss any topic of your choosing with the exception of pending legal matters.

I do hope you will be able to participate and I look forward to seeing you on April 20th.
It is my pleasure to invite all interested environmental organizations and stakeholders to a meeting with me and senior management of ADEM at 1:00 p.m. on August 18, 2017 following the Alabama Environmental Management Commission meeting at our offices in Montgomery. A conference call connection can be provided if anyone would like to participate by phone. Please let Laura Cranage at 334/271-7700 know by August 16th if you wish to have the conference call option made available.

Cindy Lowry at Alabama Rivers Alliance will be contacting everyone on the distribution list requesting agenda suggestions. As a starting point Cindy has suggested using several topics developed for the April 21, 2017 meeting that was cancelled when the Commission meeting ran long. Please give this some thought. She will compile the suggestions and send out the final agenda in the near future.

In light of the recent interest in public notification of Sanitary Sewer Overflows, this meeting is a good opportunity for all those interested to engage with the Department on that issue.

Finally, please be reminded that I am available for monthly one-on-one meetings with any group or individual on a first come, first served basis to discuss any topic of your choosing with the exception of pending legal matters.

I do hope you will be able to participate and I look forward to seeing you on August 18th.
Laura Cranage
Office of the Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110
334.271.7710
From: Echols, Gisele
to: Cranage, Laura

It is my pleasure to invite all interested environmental organizations and stakeholders to a meeting with me and senior management of ADEM at 1:00 p.m. on October 21 at our offices in Montgomery. A conference call connection can be provided if anyone would like to participate by phone. Please let Gisele Echols know by October 18th if you wish to have the conference call option made available.

Cindy Lowry at Alabama Rivers Alliance has contacted everyone on the distribution list requesting agenda suggestions. She has compiled the suggestions and will be sending out the agenda in the near future. I have requested that an agenda item be included to solicit thoughts on how the communication between ADEM and the environmental community might be improved. Please give this some thought and bring ideas to the meeting or send them directly to me.

Also, please be reminded that I am available for monthly one-on-one meetings with any group or individual on a first come, first served basis to discuss any topic of your choosing with the exception of pending legal matters.

I do hope you will be able to participate and I look forward to seeing you on October 21st.

Laura Cranage
It is my pleasure to invite all interested parties to a meeting on June 17, 2016 at 1:00 p.m. following the 11:00 a.m. Alabama Environmental Management Commission meeting. At our last meeting in December of 2015, we experimented with three new agenda items. Two were case studies and one was titled “Sharing Time.” One case study consumed nearly all of the meeting so we did not get around to the second case study or the “Sharing Time.”

The case study we were able to discuss was a study of an enforcement action in the Birmingham area. The objective was to analyze that enforcement action to see if it could provide insight to other enforcement actions elsewhere in the State. We walked through many of the steps in the process and addressed the initial report of discharges, the department’s response, the responsibilities of the department and other state agencies, the timing of various steps, external impressions and communications, etc. involved in the enforcement action. The case study appeared to be a credible first effort.

Due to limited time, the second case study was not able to be addressed. Likewise, the agenda item “Sharing Time,” which was intended to be a discussion by each organization represented of its mission, philosophy, and how it approaches its work was not able to be addressed.

At the suggestion of several participants, Cindy Lowry has agreed to poll members of the environmental community for agenda items for our June 17th meeting. The second case study and “Sharing Time” might be considered as agenda items. Additional case studies might also be considered including: other enforcement actions; how a specific rule was developed; what was involved in developing a specific TMDL; how a landfill was sited and permitted; how a decision was made to undertake or not undertake an enforcement action; etc. Cindy will be contacting you in the near future for your ideas.
I look forward to our meeting on June 17th.

Gisele H. Echols
Office of the Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110
334.271.7710
Collective Roster from ADEM Meetings with Environmental Groups

6/25/10, 10/15/10, 2/18/11, 6/30/11, 12/09/11, 6/15/12, 12/14/12,
04/19/13, 8/16/13, 12/03/13, 4/11/14, 8/06/14, 4/17/15, 8/21/15, 12/18/15
6/17/16, 10/21/16, 8/18/17, 4/20/18
*ARC Enforcement Meetings 03/28/12, 04/25/12
Participated by Phone

Alabama Clean Water Partnership:
Allison Jenkins – 04/19/13

Alabama Coastal Foundation:
Mark Berte – 12/09/11, 12/14/12

Alabama Department of Transportation – ALDOT:
Kerry NeSmith – 6/17/16, 8/18/17
Stacey Glass – 6/17/16

Alabama Environmental Council:
Alan Gurganus – 12/03/13
Haley Colson – 8/16/13
Michael Churchman – 08/06/14

Alabama River Alliance (1997):
Adam Johnston – 12/18/15
Cindy Lowry – 10/15/10, 12/09/11, 6/15/12, 12/14/12, 6/19/13, 4/17/15, 8/21/15, 12/18/15, 6/17/16,
10/21/16, 8/18/17, 4/20/18
Kelly Marshall - 12/18/15
Martha Hunter – 6/17/16, 8/18/17
Mitch Reid – 6/25/10, 10/15/10, 2/18/11, 6/30/11, 12/09/11, 12/14/12, 04/19/13, 12/03/13,
8/06/14, 4/17/15, 8/21/15, 12/18/15, 6/17/16, 10/21/16
Rob Howell – 6/15/12
Curt Chaffin – 4/20/18

Alabama Water Watch:
Eric Reutebach – 12/14/12, 8/16/13
Mona Dominguez – 12/03/13

AL.com
Dennis Pillion – 10/21/16, 4/20/18

Attorney:
Mike Cole – 6/17/16

Black Belt Citizens Fighting for Health and Justice (B.B.C.F.H.J.):
Ellis Long – 4/11/14, 8/06/14, 4/17/15
Mary Schaeffer – 8/06/14, 4/17/15
Black Warrior Riverkeeper (2001):
   Charles Scribner – 6/25/10
   Eva Dillard – 10/15/10, 6/30/11, 03/28/12*, 04/25/12*, 06/15/12, 12/14/12, 8/18/17
   Kyle Williams – 6/30/11
   Nelson Brooke – 6/25/10
   Wil Hester – 6/15/12

Cahaba Riverkeeper:
   David Butler – 12/18/15
   Myra Crawford – 6/25/10, 2/18/11, 6/30/11, 12/09/11, 03/28/12*, 04/25/12*, 12/14/12,
   4/17/15, 12/18/15, 8/18/17

Cahaba River Society (1988):
   Beth Stewart – 2/18/11, 12/09/11, 6/15/12, 12/14/12, 4/19/13, 12/03/13*, 6/17/16
   Randy Haddock – 6/30/11, 12/09/11, 12/03/13*, 08/21/15, 4/20/18
   Tricia Sheets – 10/15/10, 3/28/12*, 4/25/12*

Chattahoochee River Warden:
   Jenn Collins – 4/19/13
   Roger Martin – 12/09/11, 4/19/13, 8/16/13, 12/03/13, 08/06/14

Choctawhatchee Riverkeeper (2006):
   Michael Mullen – 6/25/10, 10/15/10, 2/18/11, 6/30/11, 12/09/11, 3/28/12*, 4/25/12*, 6/15/12,
   12/14/12, 12/03/13, 8/06/14*, 4/17/15, 8/21/15, 12/18/15, 6/17/16,
   10/21/16, 8/18/17

City of Prichard:
   Lorenzo Martin - 8/18/17*

Conservation Alabama (1999):
   Adam Snyder – 6/25/10, 10/15/10, 2/18/11, 6/30/11, 12/09/11, 6/15/12, 12/14/12, 04/19/13
   Jillian Theibert – 6/15/12, 12/14/12, 04/19/13
   Ryan Parker – 6/15/12

Coosa Riverkeeper:
   Frank Chitwood – 4/17/15

Educator:
   Sherry Wood (Birmingham) – 6/17/16

Friends of Hurricane Creek:
   John Wathen – 12/09/11, 12/03/13

Lagniappe:
   Jason Johnson – 8/21/15

Lake Watch of Lake Martin (1991):
Dick Bronson – 10/15/10, 6/30/11, 12/09/11, 12/14/12, 4/19/13, 8/16/13, 12/03/13, 8/06/14, 6/17/16
Kathryn Braund – 08/06/14

David Ludder – 6/25/10, 10/15/10, 2/18/11, 6/30/11, 12/09/11, 3/28/12*, 4/25/12*, 12/14/12, 12/03/13, 08/06/14

League of Women Voters of Alabama:
Barbara Caddell – 8/21/15

Leinkauf Historic District – Mobile:
Suzanne Schwartz – 6/17/16

Lewis Farm:
B. Lewis – 12/18/15
M. Lewis – 12/18/15

Little River WaterKeeper (One world Adventure):
Bill Shugart – 8/18/17

Little Lagoon Preservation Society:
Barney Gass – 4/19/13, 12/03/13, 4/17/15

Logan-Martin Lake Protection Association - LMLPA:
Isabella Trussell – 8/16/13, 12/03/13, 4/11/14, 8/06/14, 4/17/15, 10/21/16, 8/18/17, 4/20/18
Linda Ruethermann – 6/17/16, 8/18/17

Mobile Bay NEP:
Christian Miller - 8/18/17

Mobile Baykeeper (1997):
Casi Callaway – 2/18/11, 6/30/11, 12/09/11, 6/15/12, 12/14/12, 4/19/13, 8/16/13, 8/21/15, 4/20/18
Donna Jordan – 6/25/10, 2/18/11, 6/30/11, 12/09/11, 6/15/12, 12/14/12, 4/19/13, 12/03/13, 08/06/14
Jason Kudulis – 8/21/15, 6/17/16
Michele Finn - 12/03/13
Molly Wallace – 6/25/10
Stefanie Christensen – 8/16/13
Cade Kistles – 8/18/17

Mobile Environmental Justice Action Coalition – MEJAC:
Aundray Tucker – 6/17/16
Chele Fury – 8/21/15
David Underhill – 8/21/15
Herb Wagner – 8/21/15
Lelia Lowe – 8/21/15, 12/18/15
Mary Moorer – 8/21/15
Ramsey Sprague – 8/21/15, 6/17/16

One World Adventure:
Angie Shugart – 8/18/17

Operation Home Care:
Jackie Antalan – 04/11/14

P.O.E.T.
Clara Curtis – 12/14/12
Sandy Sandlin – 12/14/12

Prichard Citizen:
Lorenzo Martin – 6/17/16

Save Our Saugahatchee:
Jack Walls – 12/03/13

Sierra Club:
Bob Hastings – 8/21/15
Carol Adams-Davis – 8/21/15, 12/18/15, 6/17/16, 10/21/16
Glen Coffee – 8/21/15, 04/20/18

Southern Environmental Law Center – SELC:
Sarah Stokes – 8/21/15, 12/18/15

The Nature Conservancy:
Kel lyn Garrison – 8/16/13
Mitch Reid – 4/20/18

Uniontown Cares:
Chameka Randall – 4/11/14, 8/06/14
Linda Caldwell – 4/11/14
Lu venia Thomas – 8/06/14

Uniontown Citizen:
Ruby Sanders – 4/11/14, 8/06/14

Unitarian Universalist Fellowship of Montgomery - UUFM:
Jimmie Ilachild – 6/17/16

We Matter 8 Mile:
Carletta Davis – 8/18/17

Weeks Bay Foundation:
Yael Girard – 12/18/15

Page 4 of 4
-----Original Message-----
From: Lutz, Daphne Y
Sent: Thursday, November 16, 2017 2:15PM
To: Anderson, Emily D <EDA@adem.alabama.gov>; Dean, Glenda <GLD@adem.alabama.gov>
Subject: FW: Stake holder invitation

-----Original Message-----
From: LeFieur, Lance R
Sent: Monday, November 13, 2017 11:06 AM
To: Elliott, Marilyn <MGE@adem.alabama.gov>; Dean, Glenda <GLD@adem.alabama.gov>; Kelly, Russell <RAK@adem.alabama.gov>; Lutz, Daphne Y <DLutz@adem.alabama.gov>
Cc: Cranage, Laura <LCranage@adem.alabama.gov>
Subject: FW: Stake holder invitation

-----Original Message-----
From: CREEKKEEPER [mailto:hccreekkeeper@gmail.com]
Sent: Monday, November 13, 2017 10:19 AM
To: LeFieur, Lance R; Jarrod Milligan
Subject: Stake holder invitation

Mr. LeFieur,
Please send an invitation to the City of Tuscaloosa sewer department, Jarrod Milligan for the Dec. 15 stake holder meeting.

Tuscaloosa has made significant progress in the notification process.

--
John L. Wathen,
Hurricane Creekkeeper
Friends of Hurricane Creek

Creekkeeper is a member of
Waterkeeper Alliance
www.waterkeeper.org

Who has the authority to say someone else is not being a good steward of the environment?

Anyone who notices
Mr. Hyland and Mr. Milligan,

Mobile Baykeeper and the Hurricane Riverkeeper have requested that ADEM extend an invitation to the Mobile Area Water & Sewer Service and the City of Tuscaloosa’s Sewer Department to attend the upcoming Environmental Advocacy Group Meeting at ADEM on December 15, 2017. The agenda will include SSO public notification procedures and your participation will allow varying viewpoints from multiple stakeholders. The Department has also invited several associations that represent municipalities. For your reference, attached is the Petition which several of the Environmental Groups previously submitted to our commission and our Director’s views. Prior to the meeting, you should receive confirmation of the meeting date and time and an agenda. If you have any questions or need any additional information, please do not hesitate to contact me.

Thank you,

Daphne Y. Lutz, P.E.
Industrial / Municipal Branch, Chief
Water Division
Alabama Department of Environmental Management
dlutz@adem.alabama.gov (Please Note New Email Address)
(334) 270-5602

**Did you know you can submit your DMRs and SSOs online using our newly enhanced E2 DMR/SSO Reporting System? To sign up and learn more, please visit the Department’s E2 Reporting System webpage here.**
LeFleur, Lance R

From: LeFleur, Lance R  
Sent: Thursday, December 14, 2017 1:16 PM  
To: Elliott, Marilyn; Dean, Glenda; Kelly, Russell; Espy, Schuyler K  
Subject: FW: Sewage Spill Public Notification Stakeholder Roundtable December 15

Importance: High

From: ADEM Director Lance LeFieur  
Sent: Thursday, December 14, 2017 12:47 PM  
To: LeFieur, Lance R <llefleur@adem.alabama.gov>; Elliott, Marilyn <MGE@adem.alabama.gov>  
Subject: FW: Sewage Spill Public Notification Stakeholder Roundtable December 15

Laura Cranage  
334.271.7710

From: Eva Dillard [mailto:edillard@blackwarriorriver.org]  
Sent: Thursday, December 14, 2017 12:27 PM  
To: ADEMs Director Lance LeFleur <director@adem.alabama.gov>  
Subject: RE: Sewage Spill Public Notification Stakeholder Roundtable December 15

Dear Director:

The following petitioners are confirmed to attend tomorrow:

Black Warrior Riverkeeper (Nelson Brooke and Eva Dillard)
Cahaba Riverkeeper (Myra Crawford)
Coosa Riverkeeper (Frank Chitwood)
Little River Waterkeeper (Either Bill or Angie Shugart)
Mobile Baykeeper (Casi Calloway and Cade Kistler)
Alabama Rivers Alliance (Cindy Lowry and Martha Hunter)

While Hurricane Creekkeeper John Wathen has not confirmed, I know he is interested in attending and will be there if he can.

Michael Mullen is unable to attend, but would love to participate via telephone if the Department sets up a line.
We also expect representatives of Jefferson County, the City of Moundville, the City of Tuscaloosa and MAWSS to also attend.

Thank you – looking forward to talking tomorrow. Best, Eva

From: ADEM Director Lance LeFleur [mailto:director@adem.alabama.gov]
Sent: Friday, December 08, 2017 2:55 PM
To: Eva Dillard
Subject: RE: Sewage Spill Public Notification Stakeholder Roundtable December 15

You are correct. The meeting is scheduled for 1:00 in the main meeting room. If it is convenient a list of the petitioner attendees would be appreciated.

From: Eva Dillard [mailto:edillard@blackwarriorriver.org]
Sent: Thursday, December 07, 2017 2:07 PM
To: ADEM Director Lance LeFleur <director@adem.alabama.gov>
Subject: Sewage Spill Public Notification Stakeholder Roundtable December 15

Dear Director:

The petitioners are looking forward to the roundtable next Friday. Can you confirm the time and location? We are assuming 1:00 pm in the main meeting room where the EMC meetings are conducted, but I wanted to be sure. Thank you. In addition, would you like a list of attendees from the petitioners? Just let me know how we can help. Best, Eva

Eva Dillard
Staff Attorney
Black Warrior Riverkeeper
(205) 458-0095 [tel]
(205) 458-0094 [fax]
www.BlackWarriorRiver.org
LeFleur, Lance R

From: Lutz, Daphne Y
Sent: Thursday, December 14, 2017 9:14 AM
To: 'denarudd@jccal.org'
Cc: Anderson, Emily D; Dean, Glenda
Subject: December 15, 2017 SSO Public Notification Procedures Meeting
Attachments: 4-21-17 EMC Meeting - Agenda Item 5 - EMC Rule. Pet. 17-03 - Views of th....pdf;
Conservation Groups Petition for Rulemaking (Combined) 3-7-17.pdf

David,

The SSO Public Notification Procedures Meeting, which is occurring during the normally scheduled date and time of the Environmental Group meeting with the ADEM Director, information is as below:

Location: ADEM – 1400 Coliseum Boulevard, Montgomery (Main Hearing Room)
Date: December 15, 2017
Time: 1 PM

The only agenda item scheduled for this meeting is SSO Public Notifications. Please note that this meeting is not an AEMC Rules Committee meeting; however, it is anticipated that the Chairman of the Rules Committee will be in attendance for information. If you have any questions, please do not hesitate to contact me.

For your reference, attached is the Petition which several of the Environmental Groups previously submitted to our commission and our Director’s views. If you have any questions or need any additional information, please do not hesitate to contact me.

Daphne Y. Lutz, P.E.
Industrial/Municipal Branch, Chief
Water Division
Alabama Department of Environmental Management
dlutz@adem.alabama.gov (Please Note New Email Address)
(334) 270-8602

ADEM

Did you know you can submit your DMRs and SSOs online using our newly enhanced E2 DMR/SSO Reporting System? To sign up and learn more, please visit the Department’s E2 Reporting System webpage here.
Hi Lance,

Thank you for the opportunity to provide names of willing participants in the Sewer Right to Know discussion you are hosting on December 15th. Charles Hyland, copied here, is willing to serve as the director of Mobile Area Water & Sewer Service.

Mobile Baykeeper will also happily be in attendance. Thanks again for moving this forward. We look forward to working with you.

Casi (kc) Callaway
Executive Director & Baykeeper
Mobile Baykeeper
450-C Government Street
Mobile, Alabama 36602
o. 251-433-4229
c. 251-209-4253
callaway@mobilebaykeeper.org

Clean Water.
Clean Air.
Healthy Communities.
Thank you for agreeing to represent your respective associations at the upcoming December 15, 2017, Environmental Advocacy Group Meeting at ADEM. There will be discussion regarding SSO public notification procedures and your participation will allow varying viewpoints from multiple stakeholders. For your reference, attached is the Petition which several of the Environmental Groups previously submitted to our commission and our Director’s views. Prior to the meeting, you should receive confirmation of the meeting date and time and an agenda. If you have any questions or need any additional information, please do not hesitate to contact me.

Mike – I didn’t speak with you directly, but Kathy mentioned that you may attend in lieu of, or with her at the meeting.

Thank you,

Daphne Y. Lutz, P.E.
Industrial / Municipal Branch, Chief
Water Division
Alabama Department of Environmental Management
dlutz@adem.alabama.gov (Please Note New Email Address)
(334) 270-5602

Did you know you can submit your DMRs and SSOs online using our newly enhanced E2 DMR/SSO Reporting System? To sign up and learn more, please visit the Department’s E2 Reporting System webpage here.
Laura Cranage  
334.271.7710

From: Eva Dillard [mailto:edillard@blackwarriorriver.org]  
Sent: Tuesday, November 07, 2017 2:47 PM  
To: ADEM Director Lance LeFleur <director@adem.alabama.gov>  
Cc: Thomas, Debi <aemc@adem.alabama.gov>  
Subject: Sewage Public Notification Stakeholder Roundtable December 15

Dear Director LeFleur:

With respect to the referenced meeting, it is my understanding that the Department will be issuing invitations to municipal and plant stakeholders, and that if any of the Petitioners have specific stakeholders they would like for you to invite, they should provide those names directly to you. Please let me know if that is correct. Also, many of the individual Petitioners plan to participate in the roundtable; would it be at all helpful for me to get a headcount or list of attendees to you prior to the meeting? Just let me know what might be helpful. Best, Eva

Eva Dillard  
Staff Attorney  
Black Warrior Riverkeeper  
(205) 458-0095 [tel]  
(205) 458-0094 [fax]  
www.BlackWarriorRiver.org
Consolidated Notes from December 15, 2017 SSO Meeting

Eva Dillard – Black Warrior Riverkeeper

- Summary of environmental group concerns – see handout “Improving Public Notification of Sewage Spills”.
- Some people who need to be notified have no boat (boat launch signage) and no cell phone
- Need local obligation not just ADEM.
- Offered the proposed rulemaking as a “baseline” notification standard.
- Environmental group “did a lot of investigation” before coming up with petition, spoke with a number of stakeholders.
- Believe petition notification procedures can be accomplished at low or no cost.
- Concede some systems are doing a better job but environmental groups want to “lift up the under performers”.
- ADPH does not have the resources to meet its obligations [ADPH does not have the resources to do the public notifications for all systems/events.]
- No program of notification will be perfect but status quo needs to be improved.
- In the public notification plan there should be a prioritization on who should be notified.
- Perhaps consider providing notices by waterbodies impacted.

Buddy Morgan – Montgomery Waterworks

- Testing of DNA in e-coli samples from waterbody shows 1% is from human source. Would like to see evidence that SSOs are actually causing adverse health impacts, i.e., that people are actually getting in water polluted by SSOs and getting sick.
- Need to evaluate what an SSO notification system seeks to accomplish.
- Prescriptive notification requirements will be very burdensome on small systems.
- Biggest cause of SSOs is grease – 80%. Fats, Oil and Grease (FOG) Programs and public outreach needed to address. Environmental groups could help with outreach.
- First priority is to fix SSO.
- Municipal waste water treatment plants just want to know who to notify.
- There has been a lot of work on SSO issue on national level and Buddy has been a participant. There are many longstanding, unresolved SSO issues.
- Cities have unique problems.
- The violation isn’t the SSO, but how the SSO is reported is the violation [ADEM personnel dispute this statement].
- The focus should be on highest priority SSOs.
- Costs to maintain existing collection systems is very large (1/3 of budget?) and still can’t stop many SSOs.
- Should consider what triggers notification obligation and who will be impacted.
- If SSO occurs in area far from humans like a swamp then no need for notification.
- The crew members that respond to SSOs are among his healthiest employees which calls into question the claim of public health hazard.
- Dry weather and wet weather SSOs are different and dry weather SSOs are bigger problem
- Wet weather SSOs are diluted and have less of a potential for impacts.
- Montgomery Waterworks reports all SSOs regardless of size and potential impacts.
Casi (KC) Calloway – Mobile Baykeeper

- Wants a text notification system.
- Wants notification for specific waterbodies rather than by county.
- There are lots of good ways to notify the public, need to find the best way to reach the most people.
- Critical of current ADEM regulations because they are vague “notify somebody”.
- Need to put regulations in place to get to who needs to be notified and how to notify.
- Mobile Baykeeper believes it is doing a great job watching and notifying.
- Might be able to use the ADEM rules already in place but need to get to how to notify.
- Consider “layered” communication, pick two out of five or so options for notification (By service population? By size/location of SSO?).
- Existing ADEM email alerts are for the entire county which is a large area for those on the coast. Would prefer email notifications by named waterbody.

Jim Miller – AL/MS AWWA

- Any notification system needs to give good value for small systems.
- Reminder that waste water treatment plants remove pollution they don’t create pollution.
- Any notification system must be practical.
- The industry is experiencing a big problem with turnover through retirements, fewer applicants interested in industry, transfers to larger systems.
- There are severely limited resources for training and other similar expenditures e.g. costly notification systems.
- Notification technology is a limiting factor for small systems.
- SSO Response Plans are a responsible next step, but not in regulation, in NPDES permits allowing flexibility.

Cade Kistler – Mobile Baykeeper

- He works hard and has tested undiluted SSO and has become ill himself from contact with an SSO.
- Having 24 hours to notify the public is too long and a problem.
- Would like to have source data.
- Too many SSO notifications for “soccer moms” to be able to handle (tied to idea of smaller notification units?)

Myra Crawford – Cahaba Riverkeeper

- The children playing under the dam overflow in the photo accompanying the petition are her grandchildren and one got sick.
- ADPH must come to the table on this issue because SSOs are a public health concern. No signage was present although an SSO occurred upstream.
Frank Eskridge – City of Athens Utilities Water Services
- Operator turnover is a big problem.
- Each system is different. Athens includes 400 miles of collection lines, and problems can occur at any point.
- Regulations that may work today may not work in the future so handle notification outside regulations.
- The cost of regulation is a problem.
- Agree that public should be notified, but don’t want regulations that have a knife edge and create a trip wire for litigation.
- An SSO response plan is good and many systems have a plan [some not in written form].
- SSO response plans should be tailored to the individual system situation.
- Regulation is not a good way to set plans.

Calressia Clark – Mobile Area Water and Sewer System
- Limited resources is a big issue for waste water treatment facilities. It is already especially difficult to meet the 24 hour notification requirement on weekends/holidays and outside typical work hours because limited staff is working to fix any SSO.

Mike Mullen – Choctawhatchee Riverkeeper
- All waste water systems are not the same so tailor plans to the system and the situation.
- Need to identify middle ground [on rulemaking or appropriate notification?].
- Not all notifications are appropriate for all SSOs, so scale notification to priority level, e.g. high priority gets media notification.

Mike Baumgartner – Alabama Rural Water Association
- ADPH should only get involved when situation warrants their involvement.
- Plant operators should not be required to undertake work other than operating the plant [not get involved with health or public notice duties].
- Small facilities have extremely severe resource issues (often with an operator that could be 50 miles away)
- ADPH should be the lead on public notification.
- Because of such limited resources, it will be difficult for some small systems to even develop a written sewer overflow response plan. They will need assistance.

Ed Turner – Anniston Waterworks
- There would be great benefit in promoting better public education regarding SSOs [and importance of waste water treatment?].
- Agreed that operator turnover is an issue.

Scott Cummings – Hazen & Sawyer (consultants)
- SSO response plans should be local because locals know the systems and the affected communities better than anyone.
- First priority is to fix SSO.
- Plans must be customized and not a “one size fits all” but a template for small utilities would be useful.
Cindy Lowry – Alabama Rivers Alliance
- Have ADPH involved in SSO response plans.

Craig Thorpe – City of Tuscaloosa
- It would be a waste of resources to have the local systems duplicate what ADEM already does with SSO notifications.
- Tuscaloosa is investigating a private sector notification product to design a notification system that is tailored to Tuscaloosa.

Amy Whitson - City of Tuscaloosa
- Need to identify points of contact and follow flows.

Lynn Ford – ADEM
- Reviewed ADEM website SSO and other water related information sources.
- Responding to Frank Chitwood: Depending on environmental group website capabilities, ADEM SSO map can be embedded rather than linked (to eliminate the “extra step” of going through ADEM website).
- Topo map feature can be used to judge direction of SSO flow.

Other ADEM comments
- Investigating text notification option – cost is an important factor.
- ADEM consulting with regulated entities and developing permit language requiring a Sewer Overflow Response Plan.
- ADEM will begin incorporating the language requiring a Sewer Overflow Response Plan into applicable permits; environmental groups can review the language during public notice period for those permits.
- Distributed list of “ADEM’s SSO Related Activities (updated 12-13-17)”.
- Environmental organizations, ADPH and any other interested party can link to any information on ADEM website including SSO interactive map.
- ADPH will be invited to future SSO meetings.
- Terry Richardson chairman of the AEMC Rules Committee will convene a meeting of Rules Committee to discuss possible recommendation on SSO rulemaking when third member is named; anticipates hearing from all stakeholders at that meeting.