

6/25/19

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
April 12, 2019**

**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 April 12, 2019.**



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**Samuel L. Miller, Chair**  
**Alabama Environmental Management Commission**

**Certified this 21st day of June 2019.**

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**April 12, 2019**

**Convened: 11:01 a.m.**  
**Adjourned: 11:42 a.m.**

**Part A**

**Transcript**  
**Word Index**

**Part B**

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**Attachment 4**

**Part A**

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1                   ALABAMA ENVIRONMENTAL MANAGEMENT  
2                                   COMMISSION MEETING  
3  
4  
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7  
8  
9   ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
10                                   Alabama Room  
11                                   1400 Coliseum Boulevard  
12                                   Montgomery, Alabama, 36110-2400  
13                                   April 12, 2019  
14                                   11:01 a.m.  
15  
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17  
18  
19  
20  
21  
22  
23 Taken by: Victoria M. Castillo, ACCR No. 17

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1                   (WHEREUPON, proceedings began at  
2                   11:01 a.m.)  
3                   DR. MILLER: Well, we have a  
4 quorum, so let's call the meeting to order.  
5 Thank you for coming to our April 12th meeting of  
6 the Environmental Management Commission. First  
7 item on our agenda is to consider the minutes  
8 from the February 15th meeting. I assume  
9 everybody's had a chance to look those over, and  
10 I will accept the motion to adopt or reject those  
11 minutes.  
12                   DR. PERRY: Move to adopt the  
13 minutes of the February 15, 2019 Commission  
14 meeting as circulated.  
15                   DR. MILLER: A second?  
16                   MR. McKINSTRY: Second.  
17                   DR. MILLER: Is there any  
18 further discussion?  
19                   (No response.)  
20                   DR. MILLER: If not, let's call  
21 for the question. All in favor of adopting the  
22 minutes from February 15th, 2019, signify by  
23 saying "aye."

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1                   A P P E A R A N C E S  
2  
3 COMMISSION MEMBERS PRESENT:  
4                   Samuel L. Miller, M.D., Chair  
5                   John H. Masingill, III  
6                   Kevin McKinstry  
7                   Ruby L. Perry, D.V.M.  
8                   Thomas P. Walters, P.E.  
9  
10 COMMISSION MEMBER NOT PRESENT:  
11                   H. Lanier Brown, II, Esquire, Vice Chair  
12                   Mary J. Merritt  
13  
14 ALSO PRESENT:  
15                   Robert Tambling, AEMC Legal Counsel  
16                   Debi Thomas, AEMC Executive Assistant  
17                   Lance R. LeFleur, ADEM Director  
18  
19  
20  
21  
22  
23

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1                   (All Commission members signify  
2                   with "aye.")  
3                   DR. MILLER: All opposed?  
4                   (No response.)  
5                   DR. MILLER: Ayes have it.  
6                   We'll call on Director LeFleur at  
7 this point for his report.  
8                   DIRECTOR LEFLEUR: Good morning  
9 and welcome to the fourth meeting of the  
10 Environmental Management Commission for fiscal  
11 year 2019. Today's report will update you on the  
12 Department's funding for this fiscal year; review  
13 several important planned upgrades to facilities  
14 and operating software systems; report on the  
15 Department's Environmental Justice activities;  
16 recognize one of our personnel; and, report on  
17 some current events.  
18                   We are halfway through FY 2019 and  
19 on target with funding and expenditures. We're  
20 working with the Governor's Office and the state  
21 legislature to seek an increase in the  
22 Department's General Fund appropriation from the  
23 current \$575,000 to \$4 million beginning in



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1 fiscal year 2020. The General Fund budget that  
2 passed the House earlier this week includes a  
3 line item for funding ADEM at \$4 million. The  
4 House budget will now go to the Senate for  
5 consideration. There appears to be broad support  
6 for the Department's budget request.  
7       On the federal side, an FY 2019  
8 budget has been enacted for EPA that includes  
9 funding for the States. The FY 2019 funding  
10 level for all states is essentially the same as  
11 it has been each year since 2010.  
12       If the requested \$4 million State  
13 General Fund appropriation is granted, the  
14 Department's total funding from our three sources  
15 (fees, State General Fund, and federal  
16 appropriations) combined will maintain our  
17 position of dead last in per capita funding among  
18 all states in the nation as it has been since  
19 2013. With the increased State General Fund  
20 appropriation, the Department is committed to  
21 maintaining the top ten performance level it has  
22 exhibited for many years despite its lowest  
23 ranked funding.

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1       In order to maintain top  
2 performance, we must make investments in the  
3 long-term future of the Department. Making those  
4 investments requires strategically using all  
5 available resources. Today I will give you a  
6 brief update on the status of upgrading our  
7 physical facilities and moving automation to a  
8 higher level. Our physical facilities here in  
9 Montgomery are in excellent condition and will  
10 serve our needs for the foreseeable future. That  
11 is not the case for our field offices in Mobile  
12 and Birmingham.  
13       Since February 2013, you have been  
14 receiving reports on the need to replace the  
15 deplorable physical facilities in Mobile housing  
16 our Field Office and the Coastal Program. It has  
17 been a painfully slow process, but I'm pleased to  
18 report a very significant milestone. On March  
19 29, 2019, the Federal RESTORE Council approved  
20 \$5.9 million to fund the new facility in Mobile.  
21 There are still federal grant forms to be  
22 completed, but we anticipate being able to enter  
23 into contracts for the purchase of a site and

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1 architectural and engineering services shortly  
2 after June 1, 2019. The identified site is on  
3 South Broad Street in Mobile about two miles from  
4 our current field office facility and nine miles  
5 closer to water access than our current Coastal  
6 Program facility. It has easy access to  
7 Interstate 10 and a boat launch point next to the  
8 nearby U.S. Coast Guard station. Based on a  
9 study of the current and projected workload, it  
10 will be near the center of our service area.  
11       A Request for Qualifications (RFQ)  
12 for Architectural and Engineering Services was  
13 issued in conjunction with the Alabama Building  
14 Commission. The four-week response period closed  
15 March 22nd. Six organizations responded to the  
16 RFQ, and a selection will be announced prior to  
17 June 1st. As with all State agency construction,  
18 our project will receive oversight by the Alabama  
19 Building Commission. Additionally, our Field  
20 Operations Division and Permits and Services  
21 Division, as well as the  
22 architectural/engineering contractor will be  
23 providing oversight.

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1       When completed, this new facility  
2 will replace the two woefully substandard  
3 facilities in Mobile housing the Field Office and  
4 Coastal Program with a single facility designed  
5 to allow the Department to accomplish its mission  
6 today and in the future.  
7       The Department is also undertaking  
8 the final phase in upgrading the Birmingham Field  
9 Office. The upgrade involves rationalizing and  
10 modernizing the laboratory facilities. Several  
11 lab functions previously performed in the  
12 Birmingham Field Office have been relocated to  
13 the Montgomery lab, where there is available  
14 capacity, without any loss of efficacy. The  
15 estimated \$800,000 investment will result in  
16 increased efficiency. Outdated equipment,  
17 including analytical instruments, heating,  
18 ventilation and air-conditioning, lab benches,  
19 and storage will be moved, replaced, or  
20 refurbished.  
21       As was noted in the February  
22 Commission meeting, it's now the time in the life  
23 cycle of our computer software systems to upgrade



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1 in order to optimize the automation that allows  
2 us to do more with less. Over an anticipated  
3 three-to-four year span, we will be doing  
4 software upgrades in nearly all our major  
5 programs. Vendor interviews have taken place,  
6 vendor references have been checked, input from  
7 the Alabama Office of Information Technology has  
8 been obtained, and potentially impacted division  
9 and branch personnel are being included as an  
10 integral part of the review and selection  
11 process. A vendor will be selected within the  
12 next 90 days. A portion of the requested State  
13 General Fund appropriation will be used to  
14 implement these software upgrades.

15 The new Mobile Field Office, the  
16 Birmingham Field Office upgrades, and the planned  
17 software upgrades are critical investments that  
18 will position the Department to continue high  
19 performance well into the future. I am pleased  
20 these investments can be made in a financially  
21 sound and advantageous manner despite our  
22 severely limited funding.

23 Future reports to the Commission

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1 will keep you abreast of progress on each of  
2 these endeavors.

3 The Commission has expressed an  
4 ongoing interest in the Environmental Justice,  
5 often referred to as "EJ," activities, of the  
6 Department. It's now part of the reporting  
7 routine to regularly update you on those  
8 activities, which is the main focus of today's  
9 report. ADEM engages in many outreach activities  
10 with the general public; however, today's report  
11 identifies enhanced activities of the Department  
12 aimed at minority and low-income populations in  
13 specific areas of Alabama, identified as "EJ  
14 areas" or "EJ communities." It may be helpful to  
15 review a brief history of how the Environmental  
16 Justice initiative came about, how it's  
17 implemented, what constitutes an EJ area, and  
18 ADEM's commitment to the concept.

19 The formal concept of Environmental  
20 Justice came about through a 1994 Presidential  
21 Executive Order to address perceived  
22 environmental burdens borne by low-income and  
23 minority populations.

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1 Unlike the Civil Rights Act, which  
2 is a federal law, the Presidential Executive  
3 Order is not a law and is only binding on certain  
4 identified federal agencies, including EPA, in  
5 the Executive Branch of the federal government.

6 An EJ program is totally voluntary  
7 for states.

8 EJ areas are defined as those census  
9 blocks in Alabama with a non-white population of  
10 greater than 50 percent and those census blocks  
11 with a median household income below 120 percent  
12 of the poverty level.

13 ADEM has determined that EJ is a  
14 worthy concept and has taken a number of  
15 voluntary actions during the past ten years in  
16 order to confirm the fair treatment of minority  
17 and low-income communities, including adapting  
18 and implementing a number of EPA's EJ program  
19 activities.

20 Looking at the ADEM EJ program, we  
21 begin by highlighting that ADEM has dedicated the  
22 necessary human resources to make our EJ efforts  
23 successful.

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1 EJ Coordinators have been designated  
2 in our Air, Land, Water, and Permits and Services  
3 Divisions.

4 Because of the importance of this  
5 effort, the Coordinators' EJ activities are  
6 overseen by the Deputy Director. The Deputy  
7 Director meets with the Coordinators regularly to  
8 manage activities and assess progress. The  
9 personnel assigned to coordinate EJ activities  
10 receive the specialized training necessary to be  
11 effective in their work. The ongoing training  
12 often involves EPA-sponsored programs.

13 In 2016, EPA updated its 2014  
14 strategic plan for Environmental Justice with an  
15 EJ 2020 Action Agenda. ADEM has updated its EJ  
16 program to incorporate much of EPA's revised EJ  
17 2020 plan.

18 The three main goals of the EPA EJ  
19 2020 plan are incorporated in the ADEM EJ  
20 program. They are:

21 First, deepening EJ practices to  
22 improve the health and environment of  
23 overburdened communities. This includes engaging



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1 those communities in rulemaking, permitting, and  
2 compliance issues, as well as employing  
3 innovative tools to communicate with all  
4 stakeholders.  
5       Second, working with various  
6 partners to expand our positive impact within  
7 overburdened communities. This involves working  
8 with our state government and local governments,  
9 federal agencies -- primarily EPA -- and  
10 non-governmental community organizations.  
11       And, third, demonstrating progress  
12 on significant environmental justice challenges,  
13 with particular emphasis in the areas of lead  
14 disparities, drinking water quality, air quality,  
15 and hazardous waste sites. This is the area  
16 where ADEM has for some time been out ahead of  
17 EPA.  
18       While ADEM's EJ program includes the  
19 major EPA EJ 2020 goals, ADEM goes well beyond  
20 EPA in measuring actual results.  
21       The Department has for some time  
22 invested in EJ initiatives that go above and  
23 beyond what even EPA has done.

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1       In addition to training our assigned  
2 EJ Coordinators, as noted earlier, for the last  
3 ten years the Department has provided formal  
4 environmental justice training for every member  
5 of our staff.  
6       For a number of years, the  
7 Department has also been tracking what  
8 environmental results have actually been achieved  
9 in EJ communities. In its EJ 2020 plan, EPA is  
10 now also beginning to track results. It is  
11 worthwhile to note that the twelve EJ program  
12 metrics ADEM tracks have concentrations between  
13 65 and 100 percent in, or abutting, EJ  
14 communities.  
15       Our EJ areas have: 65 percent of the  
16 recipients of special compliance assistance for  
17 aboveground storage tanks, 66 percent of scrap  
18 tire cleanups, 73 percent of illegal dump  
19 cleanups from the Department's Solid Waste Fund  
20 for innocent landowners, 76 percent of fish  
21 tissue sampling stations, 77 percent of  
22 brownfields cleaned up, 85 percent of the air  
23 monitoring sites, 93 percent of the non-point

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1 source pollution control project awards, 94  
2 percent of the waterbodies with Total Maximum  
3 Daily Load Limits, 95 percent of our water  
4 quality sampling stations, 96 percent of the  
5 assessed waterbodies, 96 percent of the stream  
6 miles with TMDLs, and 100 percent of the diesel  
7 retrofit grants.  
8       In addition to the formal EJ  
9 training and tracking actual results, the  
10 Department gives extra ranking weight to EJ areas  
11 when prioritizing which unauthorized dump sites  
12 are to be cleaned up, eligibility for partial  
13 principal forgiveness in the drinking water State  
14 Revolving Fund loan program, and other programs.  
15       The Department has also gone beyond  
16 activities that can be measured quantitatively  
17 with a number of EJ-related programs such as  
18 increased community meetings and listening  
19 sessions -- especially during high-interest  
20 permitting activity -- focusing on brownfield  
21 redevelopment in low-income and minority areas of  
22 Alabama, special compliance assistance to local  
23 government in EJ areas, targeted health and

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1 education initiatives in EJ areas, and extra  
2 efforts to recruit minority science and  
3 engineering students -- to name a few.  
4       As you have seen, the Department is  
5 involved in many efforts relating to  
6 environmental justice. Personnel are assigned to  
7 coordinate the Department's EJ activities which  
8 incorporate the goals set out in the  
9 EPA-developed EJ 2020 Action Agenda, but also go  
10 above and beyond what EPA does. ADEM EJ  
11 activities are systematic, focused, and results  
12 oriented. These efforts are not mandated by  
13 statute or regulation.  
14       Copies of an outline of ADEM's  
15 Environmental Justice activities, along with a  
16 reference copy of the more detailed compilation  
17 of the Department's broader community outreach  
18 activities included in a booklet titled  
19 "Community Engagement" are available on the table  
20 in the lobby for review. The booklet is a living  
21 document subject to update and input from  
22 interested parties. The electronic version of  
23 Community Engagement is available on the homepage



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1 of the Department's website.  
2 Yesterday ADEM held its Earth Day  
3 commemoration. Earth Day has been around since  
4 1970. Each year since 2012, we have taken the  
5 opportunity to bring in Junior High and High  
6 School students to stimulate their interest in  
7 the environment, science, and engineering. This  
8 year 66 of our employees participated in setting  
9 up and interacting with the students at 20  
10 stations showing everything from biological  
11 sample collection to air monitoring to how a  
12 Geoprobe works and many other Departmental  
13 activities. We also announced the results of the  
14 interschool recycling challenge, where schools  
15 competed to see which student body collected the  
16 most recyclables. Cash prizes were awarded to  
17 the four schools with the highest recycled  
18 material totals. As you will see in the photos  
19 displayed in the lobby, the kids were fully  
20 engaged and I can confirm they had a good time.  
21 Our employees are our most valuable  
22 resource and their professional development is  
23 important to our success, which makes

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1 professional development an important  
2 Departmental objective. I'm pleased to recognize  
3 Austin Pierce in our Land Division -- please  
4 stand -- who has reached that significant  
5 milestone of having earned the designation  
6 "Professional Engineer." Congratulations.  
7 (Audience applause.)  
8 DIRECTOR LeFLEUR: At the  
9 February Commission meeting, the GASP  
10 environmental organization delivered a letter  
11 addressed to Commission Chair Miller, Vice-Chair  
12 Brown, and me, as Director, seeking to have ADEM  
13 concur in the proposed listing of the 35th Avenue  
14 site in north Birmingham on the National  
15 Priorities List. GASP also made an oral  
16 presentation covering several points in the  
17 letter. A detailed response to the letter and  
18 presentation was prepared and that is available  
19 to any interested party on the ADEM website by  
20 selecting the "eFile" icon and then selecting the  
21 "Director's Correspondence" option.  
22 Finally, I'm pleased to report  
23 continued success by our attorneys in the Office

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1 of General Counsel in obtaining favorable court  
2 rulings and dismissals upholding actions by ADEM  
3 and the Commission in several lawsuits brought by  
4 Florida-based Attorney David Ludder. The appeal  
5 of the Arrowhead Landfill permit renewal in  
6 Alabama Circuit Court was denied, the action in  
7 Alabama Circuit Court challenging the  
8 Department's authority to designate alternate  
9 daily cover for landfills was denied, and the  
10 action in Alabama Circuit Court seeking to  
11 invalidate ADEM's procedure for investigating  
12 discrimination claims was dismissed. Mr. Ludder  
13 has appealed the alternate daily cover court  
14 ruling and re-filed the action seeking to  
15 invalidate ADEM's procedure for investigating  
16 discrimination claims.  
17 That concludes my report. I will be  
18 pleased to answer any questions you have.  
19 DR. MILLER: Does anybody have  
20 any questions?  
21 (No response.)  
22 DR. MILLER: Thank you,  
23 Director.

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1 Our next item is a Report from the  
2 Commission Chair, and at this point I have  
3 nothing to report.  
4 Item 4 on our agenda is Chad Johnson  
5 versus ADEM, EMC Docket No. 19-04. We are going  
6 to consider the Hearing Officer's Recommendation  
7 of the Dismissal. The Hearing Officer has  
8 recommended dismissal based on the consideration  
9 of ADEM's Motion to Strike and Dismiss and the  
10 apparent abandonment by the Petitioner to the  
11 alleged appeal.  
12 We at this point need to either  
13 adopt or reject the Hearing Officer's Report. Do  
14 I have a motion either way?  
15 MR. WALTERS: I move to adopt  
16 the Hearing Officer's Order of Recommending  
17 Dismissal.  
18 DR. MILLER: Is there a second?  
19 MR. MASINGILL: Second.  
20 DR. MILLER: All right. Is  
21 there any further discussion regarding this  
22 motion?  
23 (No response.)



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1 DR. MILLER: If not, let's call  
 2 for the question. All in favor of recommending  
 3 dismissal as proposed by the Hearing Officer to  
 4 be signified by saying "aye."  
 5 (All Commission members signify  
 6 with "aye.")  
 7 DR. MILLER: All opposed, "no."  
 8 (No response.)  
 9 DR. MILLER: The motion passes.  
 10 Agenda Item No. 5 is Wynlake  
 11 Development, LLC, versus ADEM, Docket 18-03. At  
 12 this point we need to consider the report of the  
 13 Hearing Officer of the appeal of the Wynlake  
 14 Development Group. I think at this point the  
 15 best way to summarize this would be that the  
 16 Hearing Officer has agreed with everything that  
 17 ADEM has said regarding the Wynlake Development,  
 18 but the Department recommended -- I believe it  
 19 was a \$52,000 penalty. Is that right?  
 20 MR. MASINGILL: 53.3.  
 21 DR. MILLER: 53.  
 22 MR. MASINGILL: No. 53,300.  
 23 DR. MILLER: 53,300.

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1 And the Hearing Officer in his  
 2 report stated that the penalty should be reduced  
 3 to \$30,000. I've had several discussions with  
 4 our attorney, Robert Tambling, regarding this and  
 5 have gone over several areas of the Alabama Code.  
 6 And it looks to me -- and I think Robert would  
 7 concur with this -- that the Hearing Officer more  
 8 or less arbitrarily lowered the penalty without  
 9 giving any documentation or references as to why  
 10 he was doing that. So we are here today to  
 11 consider his report and also consider as a  
 12 separate item the reduction in penalty that the  
 13 Hearing Officer had imposed.  
 14 Has everyone kind of been up to date  
 15 as far as the documentation and the rules and so  
 16 forth? I don't know of anything really further  
 17 to say other than in my opinion -- and it's just  
 18 my opinion -- I don't think that the Hearing  
 19 Officer followed our rules or the State's rules  
 20 regarding lowering the penalty. And I don't  
 21 really think that, without his giving  
 22 documentation as to why he thought that was  
 23 necessary, that we can do that.

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1 So I'm going to ask for either a  
 2 motion to adopt the entire Report of the Hearing  
 3 Officer; a motion to approve the Hearing  
 4 Officer's Report, but noting ADEM's objections  
 5 and removing the part in the report regarding the  
 6 amount of the penalty; or to reject the entire  
 7 Report of the Hearing Officer. I hope I didn't  
 8 confuse everybody with what I just said.  
 9 So do we have a motion on any of  
 10 those three options?  
 11 MR. MASINGILL: Move to approve  
 12 the Report of the Hearing Officer in part and  
 13 reject it in part, as set forth in Respondent  
 14 ADEM's Objection to the Hearing Officer Report.  
 15 DR. MILLER: All right. Is  
 16 there a second to that?  
 17 DR. PERRY: Second.  
 18 DR. MILLER: All right. Is  
 19 there any further discussion?  
 20 (No response.)  
 21 DR. MILLER: All right. Calling  
 22 for the question on the motion to approve the  
 23 Report of the Hearing Officer, leaving out the

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1 part about the reduction in the penalty, all in  
 2 favor say "aye."  
 3 (All Commission members signify  
 4 with "aye.")  
 5 DR. MILLER: All opposed, "no."  
 6 (No response.)  
 7 DR. MILLER: Passed.  
 8 The next item is Ranger  
 9 Environmental Services, LLC, and Ranger Resources  
 10 and Logistics, LLC, versus ADEM, Docket No.  
 11 19-02. The Chair will acknowledge that the  
 12 Petitioner has withdrawn the appeal and request  
 13 for hearing on this item.  
 14 The next item is Ranger  
 15 Environmental Services, LLC, versus ADEM, 19-03.  
 16 Likewise, the Petitioner has withdrawn his  
 17 request for an appeal or hearing on this item as  
 18 well.  
 19 Is there any other business that we  
 20 need to discuss or bring up?  
 21 (No response.)  
 22 DR. MILLER: All right. Our  
 23 next scheduled meeting is June 21st, 2019. Does



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1 anyone have a known conflict with that particular  
2 date?  
3 (No response.)  
4 DR. MILLER: As it stands now,  
5 then that will be our meeting date.  
6 Now, we have two people registered  
7 to make brief statements to the Commission. We  
8 are asking that you please observe the  
9 three-minute time limit on these, addressing the  
10 Commission's points.  
11 And we ask Mayor McCarty from  
12 Wilsonville to please come up.  
13 MAYOR McCARTY: Good morning,  
14 Mr. Chairman and other Commission members. Thank  
15 you for having me again. I have been here  
16 several times previously talking about coal ash.  
17 Let's talk about it today -- some articles --  
18 some news articles from other places. There was  
19 a headline that said "Northam Signs Coal Ash  
20 Excavation Legislation." There was another  
21 headline that said "Regulatory Agency Requires  
22 Duke Energy Excavate Remaining Coal Ash Ponds."  
23 There's others like that. There's even one from

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1 Indiana, which I normally don't keep up with.  
2 The Virginia situation is notable in  
3 that Northam, the Governor, is a democrat. The  
4 person who introduced this bill was a democrat,  
5 but the three who were the main co-sponsors were  
6 republican. And the House speaker in the  
7 republican-controlled Virginia Legislature was  
8 for it and even added an amendment to it and let  
9 it go through.  
10 In North Carolina, that regulatory  
11 agency that just voted to require Duke Energy to  
12 remove the rest of its coal ash was mainly  
13 appointed by a republican governor. There's even  
14 a real interesting article out there that  
15 Bloomberg did talking about how red states are  
16 grappling with the coal ash issue and how things  
17 are changing.  
18 Now, you come back to Alabama, and  
19 there's a couple of headlines that would make you  
20 think we don't get it yet. One was "Alabama  
21 Power Receives 3.5 Percent Rate Increase and  
22 Blames It on Coal Ash Cost." Now, the coal --  
23 blaming it on coal ash costs, that's not my

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1 words. That's their words. 3.5 percent sounds  
2 like a pretty big increase, especially when  
3 they're not doing anything about coal ash. All  
4 they're doing is reporting how poisonous the  
5 water is and covering it up with dirt and grass.  
6 I don't think we're getting our money's worth  
7 there.  
8 Then there's another article -- and  
9 you're going to think, Well, this doesn't have  
10 anything to do with it, but it kind of does.  
11 "Legislature Debates Bill to Ban Banning Plastic  
12 Bags." That's not political reality. That's  
13 just some legislators sort of flexing their  
14 conservative credentials after they just passed a  
15 big gas tax hike.  
16 Okay. That's not the political  
17 reality out there with the common person. That's  
18 what's going into the politics in Alabama. You  
19 go back to Childersburg, Dr. Miller, and you  
20 other Commissioners go back to your hometown and  
21 ask the person on the street. Depends on how you  
22 ask the question. If you say, You think the EPA  
23 is bad, most people are going to say, Yeah, I

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1 think the EPA is bad. All these regulations.  
2 Driving up costs. But that's an ideological  
3 response. It's not a practical, hands-on,  
4 how-does-it-exactly-affect-me response. If you  
5 were to ask them, Do you think it's okay for the  
6 utilities to poison our groundwater and leave it  
7 there forever, their answer is going to be  
8 something like, I don't think that -- that  
9 doesn't sound right. And then if you further ask  
10 the question, Do you think the power company  
11 ought to get a 3.5 percent claiming it's for  
12 cleaning up coal ash and then not actually  
13 cleaning up coal ash, most of those responses are  
14 going to be something that is not even quotable  
15 at a public hearing.  
16 My point is: This train is leaving  
17 the station. You might want to be on this train.  
18 Mr. LeFleur talked about environmental justice.  
19 Everybody in this room knows that it would be  
20 environmentally just for that stuff to be  
21 excavated and removed and put to a safe place  
22 away from our rivers. Now, there's some in this  
23 room that are opposed to it, but it's not on a



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1 right-or-wrong, ethical-moral basis. This train  
2 is leaving the station. This is coming.  
3       As people put this together, as they  
4 see what this cap-in-place regulation would do,  
5 they're going to put this together, and they'll  
6 say, No, this has got to go. If -- let me change  
7 that word -- "when." When there's a dam and  
8 river situation -- now, some of the reason that  
9 North Carolina was so gung-ho was because they  
10 had that Dan River spill that was spectacular.  
11 If that happened -- if something like that were  
12 to happen in Alabama, if my water pipes break, I  
13 get groundwater contamination into the water  
14 supply and we got to be down there handing out  
15 plastic water bottles, or if one of these dikes  
16 breaks and a river and a town is destroyed, at  
17 the next AEMC meeting it won't just be me coming  
18 down here to speak to you by myself, it will be  
19 two or three busloads of people. And their  
20 comments will be much more caustic than mine have  
21 been.  
22       The train is leaving the station.  
23 You might want to be on that train. It's time we

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1 clean this coal ash up. You also want to be on  
2 the right side of history, and you also want to  
3 be on the right side of government "of, by," --  
4 and especially -- "for the people." Thank you  
5 for your time.  
6       DR. MILLER: Thank you, Mayor.  
7       Next we have Ms. Cindy Lowry from --  
8       MS. LOWRY: Alabama Rivers  
9 Alliance.  
10       DR. MILLER: Yes. Please limit  
11 your comments to three minutes.  
12       DIRECTOR LeFLEUR: I apologize,  
13 we didn't have the three-minute clock working.  
14       MS. LOWRY: Well, I can be  
15 pretty brief, because I didn't realize that Mayor  
16 McCarty was going to be here. He's much more  
17 qualified to speak about this, because this is  
18 happening in his community right now. So I will  
19 just keep my comments brief.  
20       I do want to also talk about coal  
21 ash. Thank you for letting me speak. And I  
22 e-mailed you guys -- I hope all of you got my  
23 e-mail -- with a little bit of background

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1 information. That's the reason I wanted to bring  
2 it up today, because there has been since a  
3 little over a year ago when you guys approved the  
4 state permitting program for coal ash here in  
5 Alabama, which is a follow-up or steps after the  
6 federal regulations which were passed in 2015.  
7 But it's been a little over a year, and a lot has  
8 happened in other states. And I think we owe it  
9 to ourselves and to the people whose communities  
10 and lives are being impacted by coal ash to ask  
11 ourself, What are we doing in Alabama, and are we  
12 doing enough, and why are we not doing as much as  
13 these other states?  
14       So thanks to the federal  
15 requirements, the power companies were required  
16 to do groundwater monitoring and to publish that  
17 information. And, also, last year that  
18 information -- when that information was  
19 published, it proved that those coal ash ponds  
20 were leaking into groundwater. Every one of them  
21 across the state were leaking into groundwater.  
22 ADEM did fine the companies and issue  
23 administrative orders on that.

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1       So that's what we know now. We know  
2 that this stuff has heavy metals and toxic  
3 chemicals that pose a risk to human health, and  
4 we know that it's leaking into our groundwater,  
5 which oftentimes is getting into our surface  
6 waters as well. So capping and closing we just  
7 do not feel like is an answer. That's currently  
8 the plan that our power companies in Alabama have  
9 for this stuff. And that's basically putting a  
10 Band-Aid on it. It's kicking a can down the  
11 road. I think that all these other states have  
12 kind of evaluated this and realized that that's  
13 not the answer. The quote from the North  
14 Carolina DEQ -- or actually the Department of  
15 Environmental Quality secretary was: The science  
16 points us clearly to excavation as the only way  
17 to protect public health and the environment. So  
18 they realize this, and I think that we need to  
19 realize this as well.  
20       When I was a kid growing up in a  
21 small town in Alabama, we put our household --  
22 everybody put their household garbage  
23 (unintelligible) into an unlined pit in the

1 ground. Those are illegal dumps now. Director  
2 LeFleur talked about those earlier, and they're  
3 being cleaned up. They're not being allowed  
4 anymore. It only makes sense that coal ash would  
5 also be required -- even more rigorous standards  
6 for storage should be required. We think they  
7 should be excavated, removed, put into lined,  
8 upland, dry storage away from people, away from  
9 rivers. This is obviously not a small task. We  
10 understand that. But we just -- we believe that  
11 this is what needs to happen in order to protect  
12 people in Alabama.

13 And so I encourage you to look at  
14 what other states are doing. You have the power,  
15 and there are various options. We also need a  
16 robust public conversation about this. We need  
17 more public information about what is going on  
18 and dialogue between you guys and the power  
19 companies about what's being done. Because the  
20 less we know, the more concerned we get. Thank  
21 you.

22 DR. MILLER: All right. Thank  
23 you.

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5 proceedings were taken down by me and transcribed  
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1 Well, I suppose our next item will  
2 be a proposal to adjourn. Do you want to have a  
3 motion for that?

4 MR. MASINGILL: Move to adjourn.

5 DR. MILLER: Second?

6 DR. PERRY: Second.

7 DR. MILLER: All in favor say  
8 "aye."

9 (All Commission members signify  
10 with "aye.")

11 DR. MILLER: Thank you.

12 (Proceedings concluded at  
13 11:42 a.m.)

14 \*\*\*\*\*  
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	<b>U</b>	<b>W</b>		<b>3</b>
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**Part B**

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**Attachment 4 Order Approving in Part and Rejecting in Part Report of Hearing Officer**

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(NPDES-Related Matter)]**



**Attachment 1**

Amended 4/5/19

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: April 12, 2019

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](http://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 FEBRUARY 15, 2019
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CHAD JOHNSON V. ADEM, EMC DOCKET NO. 19-04

The Commission will consider the Hearing Officer's *Order Recommending Dismissal*. The Hearing Officer recommends dismissal based on his consideration of ADEM's *Motion to Strike and Dismiss* and the apparent abandonment by the Petitioner as to the alleged appeal.

5. WYNLAKE DEVELOPMENT, LLC V. ADEM, EMC DOCKET NO. 18-03 (NPDES-RELATED MATTER)

The Commission will consider the *Report of Hearing Officer*, which includes Findings of Fact, Conclusions of Law, and a Recommendation. The subject of the appeal/request for hearing is ADEM Administrative Order No. 18-057-LD issued on May 1, 2018, to Wynlake Development, LLC, Wynlake Subdivision, Shelby County, NPDES Registration ALR 160672.

6. RANGER ENVIRONMENTAL SERVICES, LLC AND RANGER RESOURCES AND LOGISTICS, LLC V. ADEM, EMC DOCKET NO. 19-02

The Commission will acknowledge for the record the Petitioners' withdrawal of the appeal/request for hearing. The subject of the appeal/request for hearing is ADEM's November 5, 2018 Notice of Violation issued to Ranger Environmental and Logistics, LLC (Ranger Environmental), Tuscaloosa County, Alabama, EPA Identification No. ALR000063149.

7. RANGER ENVIRONMENTAL SERVICES, LLC V. ADEM, EMC DOCKET NO. 19-03

The Commission will acknowledge for the record the Petitioner's withdrawal of the appeal/request for hearing. The subject of the appeal/request for hearing is ADEM's December 20, 2018 Notice of Violation issued to Ranger Environmental Services, LLC, Tuscaloosa, Alabama, EPA Identification No. ALD983175316.

8. OTHER BUSINESS
9. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD

BRIEF STATEMENTS BY MEMBERS OF THE PUBLIC REGISTERED TO SPEAK

Members of the public that wish to make a brief statement at a Commission meeting may do so by first signing in on a register maintained by the Commission office prior to each regularly scheduled meeting. The register will close ten minutes prior to convening each meeting of the Commission. Following completion of all agenda items, the Commission Chair will call on members of the public wishing to make a statement in the order their names appear on the register. Speakers are encouraged to limit their statement to matters that directly relate to the Commission's functions. Speakers will be asked to observe a three-minute time limit. While an effort will be made to hear all members of the public signed on the register, the Commission may place reasonable limitations on the number of speakers to be heard. (Guideline 11, Guidelines for Public Comment).

The Guidelines for Public Comment are used in the application of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda and Public Participation. The Guidelines for Public Comment serve to educate and inform the public as to how the Commission interprets and intends to apply the Rule. The revised Rule 335-2-3-.05 was effective October 7, 2016.



**Attachment 2**



## Alabama Department Of Environmental Management

### History and Definition of Environmental Justice (EJ)

- 1994 Presidential Executive Order
- Unlike the Civil Rights Act it is not a law
- State participation is voluntary
- Definition of EJ areas
- ADEM vigorously engages in EJ activities



## Alabama Department Of Environmental Management

### Designated ADEM Personnel to Coordinate EJ Activities

- Department-wide EJ coordinators
- EJ activities overseen by Deputy Director
- Meet with Deputy Director at least twice per month
- Specialized training (e.g. EPA conferences)





## Alabama Department Of Environmental Management

### EPA EJ 2020 Action Agenda Goals

- Deepen EJ Practice
- Work with Partners
- Demonstrate Progress



## Alabama Department Of Environmental Management

### Additional ADEM EJ Initiatives

- Formal EJ Training for all ADEM Employees
- Tracking of Environmental Results in EJ Areas

**Additional ADEM EJ Initiatives**

- Tracking results:
  - 65% of special compliance assistance AST
  - 66% of illegal scrap tire cleanups
  - 73% of illegal dump cleanups from SWF
  - 76% of fish tissue sampling stations
  - 77% of brownfields cleaned up
  - 85% of air monitoring sites

**Additional ADEM EJ Initiatives**

- Tracking results:
  - 93% of non-point source project awards
  - 94% of waterbodies with TMDLs
  - 95% of water quality sampling stations
  - 96% of assessed waterbodies
  - 96% of stream miles with TMDLs
  - 100% of diesel retrofit grants



**Additional ADEM EJ Initiatives**

- Formal EJ Training for ADEM Employees
- Tracking of Environmental Results in EJ Areas
- Increased Ranking Weight for Cleanups and Eligibility for Loan Forgiveness in EJ Areas

**Attachment 3**

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

In the matter of:	)	
	)	
Chad Johnson,	)	
	)	
Petitioner,	)	
	)	
v.	)	EMC Docket No. 19-04
	)	
Alabama Department of	)	
Environmental Management,	)	
	)	
Respondent.	)	

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ORDER

Before the Commission in the above matter is the Hearing Officer's *Order Recommending Dismissal*. Based upon the record in the proceeding, including *ADEM's Motion to Strike and Dismiss*, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Hearing Officer's *Order Recommending Dismissal* is hereby adopted; and
2. That pursuant to the adoption of the Hearing Officer's *Order Recommending Dismissal*, the Commission orders that the alleged appeal is 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 this Order along with a copy of the Hearing Officer's *Order Recommending Dismissal*, attached hereto as Exhibit A, and made a part hereof, shall be forthwith served upon each of the parties hereto either personally, or by certified mail, return receipt requested.




ISSUED this 12th day of April 2019.

APPROVED:

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

DISAPPROVED:

\_\_\_\_\_  
Commissioner


\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ABSTAINED:

\_\_\_\_\_  
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 12th day of April 2019.

  
\_\_\_\_\_  
Samuel L. Miller, Chair  
Environmental Management Commission  
Certified this 12th day of April 2019

BEFORE THE ALABAMA ENVIRONMENTAL  
MANAGEMENT COMMISSION

CHAD JOHNSON	)	
	)	
Petitioner,	)	
	)	
vs.	)	EMC Docket No. 19-04
	)	
ALABAMA DEPARTMENT OF	)	
ENVIRONMENTAL MANAGEMENT,	)	
	)	
Respondent.	)	

**ORDER RECOMMENDING DISMISSAL**


On February 27, 2019, the undersigned entered an order setting a pre-hearing conference, a final hearing date and deadlines related to the Department’s Motion to Strike and Dismiss. Despite telephonic efforts by the undersigned and the Department’s counsel, Petitioner, Chad Johnson, did not appear for the pre-hearing conference or otherwise contact the Department’s counsel or the undersigned related to said conference. Further, as directed and allowed for in said order, Petitioner did not file any response to the Department’s Motion to Strike and Dismiss.

Therefore, after considering said Motion and for good cause shown as referenced in the Motion, as well as the apparent abandonment by Petitioner as to this alleged appeal, it is recommended by the Undersigned that the alleged appeal be dismissed.

The final hearing set for March 19, 2019, is cancelled.

It is so ORDERED.

Done this 11<sup>th</sup> day of March, 2019.



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R. Rainer Cotter, III  
Hearing Officer  
PO Box 310910  
Enterprise, Alabama 36331  
Ph. 334-347-2626  
Fax 334-393-1396  
Email [rrc@enterpriselawyers.com](mailto:rrc@enterpriselawyers.com)

<p>RECEIVED</p> <p>MAR 11 2019</p> <p>ENV. MGMT. COMMISSION</p>
---

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing on the following individual(s) by email or placing a copy of the same in the U.S. Mail, postage prepaid and properly addressed this 11 day of March, 2019:

Chad Johnson  
319 Riverview Drive  
Decatur, Alabama 35603

S. Shawn Sibley, Esq.  
James R. Thrash, Esq.  
Alabama Environmental Management Commission  
P O Box 301463  
Montgomery, Alabama 36130-1463  
[ssibley@adem.alabama.gov](mailto:ssibley@adem.alabama.gov)  
[jrthrash@adem.alabama.gov](mailto:jrthrash@adem.alabama.gov)

Debra S. Thomas, Executive Assistant  
Alabama Environmental Management Commission  
P. O. Box 301463  
Montgomery, Alabama 36130-1463  
[aemc@adem.alabama.gov](mailto:aemc@adem.alabama.gov)

  
/s/ R. Rainer Cotter, III  
OF COUNSEL



**Attachment 4**

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

WYNLAKE DEVELOPMENT, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	EMC DOCKET NO. 18-03
	)	
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	
	)	
Respondent.	)	
	)	

ORDER

This cause having come before the Environmental Management Commission to consider the *Report of Hearing Officer* in the appeal of Administrative Order No. 18-057-LD, issued by the Department to the Petitioner on May 1, 2018, and having considered the same, as well as the submissions and arguments of the parties, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the "*Report of Hearing Officer*" is hereby approved in part and rejected in part; and
2. That the Commission rejects the Hearing Officer's recommended penalty reduction, strikes the statement that ADEM's penalty was statutorily "excessive," and otherwise adopts the remainder of the Hearing Officer's report and APPROVES the Department's administrative action, as issued.

ISSUED this 12<sup>th</sup> day of April 2019.

APPROVED:

  
Commissioner

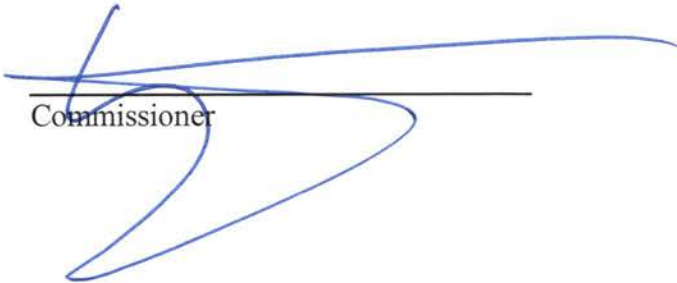
  
Commissioner

  
Commissioner

\_\_\_\_\_  
Commissioner

  
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DISAPPROVED:

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Commissioner

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Commissioner

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Commissioner

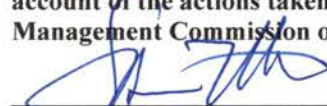
ABSTAINED:

\_\_\_\_\_  
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 12th day of April 2019.

  
\_\_\_\_\_  
Samuel L. Miller, Chair  
Environmental Management Commission  
Certified this 12th day of April 2019