

**10/19/21**

**Minutes  
Environmental Management Commission Meeting  
Alabama Department of Environmental Management Building  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2400  
August 13, 2021**

**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 August 13, 2021.**



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**Chair  
Alabama Environmental Management Commission**

**Certified this 8th day of October 2021.**

**Minutes**  
**Environmental Management Commission Meeting**  
**Alabama Department of Environmental Management Building**  
**1400 Coliseum Boulevard**  
**Montgomery, Alabama 36110-2400**  
**August 13, 2021**

**Convened: 11:00 a.m.**  
**Adjourned: 11:40 a.m.**

**Part A**

**Transcript**  
**Word Index**

**Part B**

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

**Part A**

MEETING OF THE ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
Meeting on 08/13/2021

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2

3 MEETING OF THE  
4 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

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7

8 AUGUST 13, 2021

9 11:00 A.M.

10 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

11 (ADEM) BUILDING

12 ALABAMA ROOM (MAIN CONFERENCE ROOM)

13 1400 COLISEUM BOULEVARD

14 MONTGOMERY, ALABAMA 36110

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20

21

22 COURT REPORTER: PATRICK R. MILLER, ACCR 631

23 \* \* \* \* \*

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1 \* \* \* \* \*

2 APPEARANCES

3

4 COMMISSION MEMBERS PRESENT:

5

6 SAMUEL L. MILLER, M.D., CHAIR

7 MARY J. MERRITT

8 THOMAS P. WALTERS, P.E., VICE CHAIR

9 KEVIN MCKINSTRY

10 JOHN (JAY) H. MASINGILL, III

11 RUBY L. PERRY, D.V.M.

12 H. LANIER BROWN, II, ESQUIRE

13

14 Also Present:

15

16 ROBERT TAMBLING, AEMC Legal Counsel

17

18 DEBI THOMAS, AEMC Executive Assistant

19 LANCE LEFLEUR, ADEM Director

20

21 SHAWN SIBLEY, ADEM General Counsel

22

23 \* \* \* \* \*

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1 \* \* \* \* \*

2 DR. MILLER: I would like to call

3 the August 13th, 2021 Environmental

4 Management Commission to order. We

5 have a quorum present, and our first

6 item is to -- consideration of the

7 minutes with a meeting held on June

8 11th, 2021. These have been

9 circulated to all the members, and I

10 will accept a motion regarding

11 acceptance or rejection.

12 MR. BROWN: Move to approve.

13 MR. MASINGILL: Second.

14 DR. MILLER: It's been moved and

15 seconded. Any further discussion?

16 (No response was heard.)

17 DR. MILLER: All in favor, signify

18 by raising your right hand. All

19 opposed, same sign.

20 Motion passes.

21 We'd like to now call on Director

22 LeFleur for his report.

23 DIRECTOR LEFLEUR: Good morning.

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1 SIMULTANEOUS SPEAKERS: Good

2 morning.

3 DIRECTOR LEFLEUR: Welcome to all

4 of you present for the final meeting

5 of the Alabama Environmental

6 Management Commission for Fiscal Year

7 2021. Today's report will focus on

8 the Department's Environmental Justice

9 and related activities. I will also

10 recognize achievements of two of our

11 personnel.

12 Environmental Justice has been

13 receiving increased attention recently

14 with the new federal administration.

15 The recent attention is nothing new

16 for the Commission. For many years,

17 the Commission has expressed an

18 ongoing interest in the Environmental

19 Justice, often referred to as EJ, and

20 related activities of the Department.

21 It's now part of our regular reporting

22 routine to update you on Environmental

23 Justice and related activities, which

Page 5

1 is the focus of today's report. It's

2 been two years since the last report

3 to the Commission on this topic.

4 The 20,000 -- excuse me, the 2014

5 and 2019 updates to the five-year

6 Unified Strategic Plan of the

7 Commission and the Department have

8 clear objectives related to fair

9 treatment of and proactive outreach to

10 all stakeholders, particularly those

11 in minority and disadvantaged

12 communities. The annual operating

13 plans of the Department implement

14 efforts to achieve those objectives.

15 Environmental Justice is related to

16 civil rights law, diversity,

17 environmental regulation, and social

18 justice. All of these fall under the

19 heading of fair treatment.

20 I'll begin with some highlights of

21 the major milestones in our nation's

22 journey toward fair treatment, and

23 then report on ADEM's activities to

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1 achieve our goals in this area.  
2 Title VI of the Civil Rights Act of  
3 1964 prohibits the recipients of  
4 federal funds from engaging in the  
5 discriminatory treatment of  
6 individuals based on race, color, or  
7 national origin. It is the law. ADEM  
8 receives federal funds, and is  
9 therefore subject to the law.  
10 In the late 1960s, the movement  
11 toward diversity began to take hold as  
12 a concept and has developed over the  
13 years to encompass the ideas of equity  
14 and inclusion with a number of  
15 initiatives, including at least one  
16 presidential executive order related  
17 to federal government executive branch  
18 employment. ADEM embraces the  
19 concepts of diversity, equity, and  
20 inclusion.  
21 On the environmental side of fair  
22 treatment, in the 1970s, the Clean Air  
23 Act, Clean Water Act, Safe Drinking

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1 Water Act, and the Resource  
2 Conservation and Recovery Act became  
3 laws. The State of Alabama, through  
4 ADEM, has been delegated authority to  
5 administer those federal environmental  
6 laws under conforming state laws.  
7 The formal concept of Environmental  
8 Justice came about through a 1994  
9 presidential executive order to  
10 address perceived environmental  
11 burdens borne by low income and  
12 minority populations. Although  
13 presidential executive orders are only  
14 binding on certain federal agencies,  
15 including EPA, in the executive branch  
16 of the federal government, ADEM has  
17 determined EJ is a worthy concept and  
18 voluntarily embraces the EJ fair  
19 treatment goals.  
20 For a number of years,  
21 Environmental Justice areas in Alabama  
22 have been defined as: Those census  
23 blocks in Alabama with the -- with a

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1 non-white population of greater than  
2 36 percent which is 120 percent of the  
3 statewide non-white population  
4 percentage; and those census blocks  
5 with a median household income below  
6 120 percent of the poverty level.  
7 EPA is currently utilizing terms  
8 such as underserved, disadvantaged,  
9 marginalized, or overburdened so the  
10 definition of Environmental Justice  
11 communities or areas may be refined in  
12 the future. Until the process is  
13 completed, we will continue to utilize  
14 non-white and low income census data.  
15 Before going into detail on the  
16 ADEM Environmental Justice activities,  
17 I want to provide some additional  
18 perspective on the EJ programs at EPA.  
19 EJ was identified as a centerpiece for  
20 the new federal administration;  
21 however, it is currently in the  
22 process of getting organized. Until  
23 EPA develops a new plan, ADEM is

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1 continuing to incorporate elements of  
2 the EPA EJ 2020 Action Agenda that was  
3 developed in 2014 and updated in 2016.  
4 The ADEM EJ program incorporates  
5 the three main goals of the EPA EJ  
6 2020 Action Agenda. They are: First,  
7 to deepen EJ practices to improve the  
8 health and environment of overburdened  
9 communities. This includes engaging  
10 those communities in rulemaking,  
11 permitting, and compliance issues, as  
12 well as employing innovative tools to  
13 communicate with all stakeholders. In  
14 a few moments, I'll highlight some  
15 specific and innovative actions the  
16 Department is taking in this area.  
17 The second goal is to work with  
18 various partners to expand our  
19 positive impact within overburdened  
20 communities. This involves working  
21 with our state government and local  
22 governments, federal agencies,  
23 primarily EPA, and non-governmental

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<p style="text-align: right;">Page 10</p> <p>1 community organizations.</p> <p>2 The third goal is to demonstrate</p> <p>3 progress on significant environmental</p> <p>4 justice challenges, with particular</p> <p>5 emphasis in the areas of lead</p> <p>6 disparities, drinking water quality,</p> <p>7 air quality, and hazardous waste</p> <p>8 sites. This is the area where ADEM</p> <p>9 has, for some time, been out ahead of</p> <p>10 EPA.</p> <p>11 While ADEM's EJ program includes</p> <p>12 the major EPA EJ 2020 Action Agenda</p> <p>13 goals, ADEM goes well beyond what EPA</p> <p>14 is doing.</p> <p>15 When considering EPA's programs to</p> <p>16 promote fair treatment for all</p> <p>17 individuals in our state, we must also</p> <p>18 be aware of the backdrop of history.</p> <p>19 Alabama's history from many years</p> <p>20 ago included discriminatory practices.</p> <p>21 Try as we might, and despite much</p> <p>22 evidence to the contrary, those less</p> <p>23 familiar with Alabama harbor</p>	<p style="text-align: right;">Page 12</p> <p>1 designated in our Air, Land, Water,</p> <p>2 and Permits and Services Divisions.</p> <p>3 Because of the importance of this</p> <p>4 effort, the coordinators' EJ</p> <p>5 activities are overseen by the Deputy</p> <p>6 Director. The Deputy Director meets</p> <p>7 with the coordinators regularly to</p> <p>8 manage activities and to assess</p> <p>9 progress.</p> <p>10 Personnel assigned to coordinate EJ</p> <p>11 activities receive the specialized</p> <p>12 training necessary to be effective in</p> <p>13 their work. The ongoing training</p> <p>14 often involves EPA-sponsored programs.</p> <p>15 Training is an important step in</p> <p>16 all that we do. In addition to</p> <p>17 training our EJ coordinators, we</p> <p>18 formally train each of our personnel</p> <p>19 in the basic concepts of fair</p> <p>20 treatment. We begin with the</p> <p>21 requirements of the law, Title VI of</p> <p>22 the Civil Rights Act of 1964. We are</p> <p>23 all required to comply with the law so</p>
<p style="text-align: right;">Page 11</p> <p>1 preconceived skepticism about our</p> <p>2 commitments to fair treatment and</p> <p>3 proactive outreach to all Alabamians.</p> <p>4 This creates hurdles the Department</p> <p>5 must overcome. For example, EPA has</p> <p>6 audited the Department's civil rights</p> <p>7 non-discrimination program more than</p> <p>8 any other non-discrimination program</p> <p>9 in the nation. I'm pleased that each</p> <p>10 audit determined the program met or</p> <p>11 surpassed all legal requirements.</p> <p>12 Indeed, today's report will</p> <p>13 highlight how the Department goes</p> <p>14 beyond simply complying with the law.</p> <p>15 It will show that we are going the</p> <p>16 extra mile to invest in activities to</p> <p>17 achieve fair treatment for all those</p> <p>18 in our state.</p> <p>19 Looking at the ADEM EJ program, we</p> <p>20 begin by highlighting that ADEM has</p> <p>21 dedicated the necessary human</p> <p>22 resources to make our EJ efforts</p> <p>23 successful. EJ coordinators have been</p>	<p style="text-align: right;">Page 13</p> <p>1 each employee is trained in the</p> <p>2 requirements of the law. We utilize</p> <p>3 an online program developed by EPA</p> <p>4 that is now housed at the Department.</p> <p>5 A formal diversity training program</p> <p>6 was implemented in 2020. The program</p> <p>7 was developed at the University of</p> <p>8 South Alabama at our request and</p> <p>9 covers the concepts of diversity,</p> <p>10 equity, and inclusion. As with the</p> <p>11 Title VI -- as with Title VI, all</p> <p>12 personnel are required to complete the</p> <p>13 video training program.</p> <p>14 In addition to training our</p> <p>15 assigned EJ coordinators, as noted</p> <p>16 earlier, for the last ten years the</p> <p>17 Department has provided in-house</p> <p>18 formal Environmental Justice training</p> <p>19 for every member of our staff. Two</p> <p>20 years ago, the Department reached out</p> <p>21 to EPA for input on its vision and</p> <p>22 implementation of EJ concepts. EPA</p> <p>23 had no EJ training program. Just last</p>



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1 month after two years of work, EPA and  
2 ADEM completed development of an EPA  
3 Environmental Justice training  
4 program. Every ADEM employee was  
5 required to complete that training  
6 program. EPA will now be using that  
7 program as the basis for EJ training  
8 throughout the nation.  
9 For a number of years, the  
10 Department has been tracking what  
11 environmental results have actually  
12 been achieved in EJ communities. In  
13 its EJ 2020 plan, EPA is now beginning  
14 also to track results. It is  
15 worthwhile to note that the 12 EJ  
16 program metrics ADEM tracks have  
17 concentrations of between 64 and 100  
18 percent in or abutting EJ communities.  
19 Our EJ areas have: 64 percent of  
20 scrap tire cleanups, 65 percent of the  
21 recipients of special compliance  
22 assistance for Aboveground Storage  
23 Tanks, 70 percent of illegal dump

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1 cleanups from the Department's Solid  
2 Waste Fund for innocent landowners, 78  
3 percent of the air monitoring sites,  
4 79 percent of the fish tissue sampling  
5 stations, 79 percent of the  
6 brownfields cleaned up, 92 percent of  
7 the non-point source pollution control  
8 project awards, 94 percent of the  
9 waterbodies with Total Maximum Daily  
10 Load limits, 96 percent of our water  
11 quality sampling stations, 96 percent  
12 of the stream miles with Total Maximum  
13 Daily Load limits, 99 percent of the  
14 assessed waterbodies, and 100 percent  
15 of the diesel retrofit grants.  
16 In addition to formal EJ training  
17 and tracking actual results, the  
18 Department also gives extra credit  
19 ranking weight to EJ areas: When  
20 prioritizing which unauthorized dump  
21 sites are to be cleaned up, in  
22 eligibility for partial principal  
23 forgiveness in the drinking water and

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1 wastewater state revolving fund loan  
2 programs, for demonstration projects  
3 in our scrap tire, recycling and other  
4 programs, and extra ranking weight in  
5 the various grant programs  
6 administered by the Department, to  
7 name a few.  
8 The Department has also gone beyond  
9 activities that can be measured  
10 quantitatively with a number of fair  
11 treatment initiatives such as:  
12 Special compliance assistance to local  
13 governments in EJ areas, enhanced  
14 marketing of low interest state  
15 revolving fund loans to drinking water  
16 and wastewater systems in  
17 disadvantaged communities; targeted  
18 health and education initiatives in EJ  
19 areas; focused brownfield  
20 redevelopment in low income and  
21 minority areas of Alabama; increased  
22 community meetings and listening  
23 sessions in EJ areas, especially

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1 during high interest permitting  
2 activities; direct mailings to every  
3 household within a given radius for  
4 high interest actions in EJ  
5 communities.  
6 I hope it's evident the Department  
7 is dedicated to fair and proactive  
8 outreach to all stakeholders,  
9 especially those in minority and  
10 disadvantaged communities. We embrace  
11 the goals set out in EPA's EJ 2020  
12 Action Plan. Specific personnel are  
13 assigned to coordinate the  
14 Department's EJ activities. All our  
15 employees are formally trained in the  
16 principles of fair treatment. We use  
17 metrics to measure actual results. A  
18 hand up and tailored outreach is  
19 offered to disadvantaged communities.  
20 ADEM fair treatment activities are  
21 systematic, focused, and  
22 results-oriented. These efforts are  
23 not mandated by statute or regulation.

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<p style="text-align: right;">Page 18</p> <p>1 Copies of a more detailed outline 2 of ADEM's Environmental Justice and 3 related activities, along with a 4 reference copy of a compilation of the 5 Department's broader community 6 outreach activities, included in a 7 booklet titled, Community Engagement, 8 are available on the table in the 9 lobby for review.</p> <p>10 The booklet is a living document 11 subject to update and input from 12 interested parties. The electronic 13 version of Community Engagement is 14 available on the home page of the 15 Department's website. The reason we 16 put the document online is to provide 17 the public a way to hold the 18 Department accountable for its 19 activities to ensure fair treatment 20 for all individuals in Alabama.</p> <p>21 Moving on to the accomplishments of 22 some of our personnel, our employees 23 are our most valuable resource, and</p>	<p style="text-align: right;">Page 20</p> <p>1 Thank you very much for being here. 2 With that, I will close out my 3 report and answer any questions you 4 may have.</p> <p>5 DR. MILLER: Anyone with a question 6 or a comment?</p> <p>7 (No response was heard.) 8 DR. MILLER: Thank you, Director. 9 DIRECTOR LEFLEUR: Thank you. 10 DR. MILLER: Next on our agenda is 11 reports from the Commission Chair, and 12 I would like to thank Debi for getting 13 us set up into the old-timey COVID 14 setup again today. With the 15 resurgence of Delta, we sort of just 16 need to be more careful than we used 17 to be.</p> <p>18 Our next item is Item 4, a petition 19 to amend Administrative Code Rule 20 335-3-3-.01, an open burning section. 21 We have been -- received a petition 22 from James Endsley from Moody, 23 Alabama, and I have asked the</p>
<p style="text-align: right;">Page 19</p> <p>1 their professional development is 2 important to our success. 3 Professional development is an 4 important ongoing Departmental 5 objective.</p> <p>6 Today, I am pleased to recognize 7 two individuals who have reached that 8 significant milestone of having earned 9 the designation, Professional 10 Engineer. The PE designation requires 11 educational achievement, rigorous 12 testing, and extensive on-the-job 13 experience.</p> <p>14 Kel Morrissette? There you are. 15 Would you please stand?</p> <p>16 And we have Skyler Sanderson from 17 our Air Division. Kel is from our 18 Land Division. I want to thank you 19 both for your hard work.</p> <p>20 (An applause was heard.) 21 DIRECTOR LEFLEUR: And 22 congratulations. We're a stronger 23 organization because of your work.</p>	<p style="text-align: right;">Page 21</p> <p>1 Department to look over his 2 submission, and give us their views on 3 what they think of this petition, and 4 we're going to call on Mr. Endsley and 5 the Department today for comments. Is 6 Mr. Endsley here?</p> <p>7 MR. ENDSLEY: Yes, sir. 8 DR. MILLER: Oh, there you are, 9 yes, sir. Please come forward. Take 10 your time.</p> <p>11 MR. ENDSLEY: Good morning. How 12 are y'all?</p> <p>13 DR. MILLER: Good morning. 14 MR. ENDSLEY: So I appreciate y'all 15 having me back. Director LeFleur, I 16 appreciate what you do for your 17 employees.</p> <p>18 I'm an HR director by profession, 19 so when I see him, you know, bringing 20 people that have done good at work, 21 you know, to the table, that's always 22 awesome to see that recognition, so 23 good job on that.</p>

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1 So moving on to my thing, so I did  
2 get the response. I'm guessing y'all  
3 read this, right? So it's a slam  
4 dunk. There's no way you can fight  
5 this. There's no way y'all could vote  
6 against this, I mean, to be honest  
7 with you, so -- and that's a good job  
8 on his part for writing it. But it's  
9 sad at the same time, so it -- I do  
10 what I always do when I did -- when I  
11 have to give a response to legal  
12 briefings. I go through line by line,  
13 and I made notes. I practice -- at my  
14 rebuttals, whatever. And I did the  
15 same thing on this, but when I got  
16 done, I realized how frustrated I was  
17 at it. And for three things. One is,  
18 the rules for ADEM allow for the  
19 public to come and voice concerns,  
20 petition for change, things like that,  
21 but they're designed in such a way  
22 that you can't really do anything  
23 about it. So even in its own

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1 response, if the ADEM is requiring the  
2 individual citizen, I mean, the  
3 average citizen, I mean, that has very  
4 limited resources to provide all this  
5 data, it's just impossible for me to  
6 obtain. I mean, I would have to have  
7 a lot of money and a staff, a team,  
8 that can do all this study, research  
9 state-wide, and there's no way the  
10 average citizen can actually do that.  
11 And on beyond that, would you want the  
12 word of an average citizen that has  
13 no, you know, experience in the  
14 environmental management world, or do  
15 you want the person that is the expert  
16 conducting that -- those surveys,  
17 collecting that data? So there's Rule  
18 1. I mean, that's the first thing I  
19 came across.  
20 The second thing is, you know, it  
21 seems that the ADEM is not open to  
22 change. So -- and this -- and this is  
23 evident in this slam dunk right here.

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1 I mean, it could have been a simple,  
2 Hey, you know, the EPA binds our  
3 hands; there's nothing we can do.  
4 I mean, I could have settled for  
5 that. But we went through three pages  
6 of picking it apart, at one point  
7 saying, The things that are in this is  
8 only convenient for me.  
9 So to me, that just says that  
10 they're just not open to change. And  
11 the other part of that is, they gave a  
12 slam dunk rejection of my petition  
13 without even picking up a phone,  
14 giving me a call. Hey, I would have  
15 accepted, Look, I'm going to deny your  
16 petition. Here's why. Talk about it.  
17 Have a conversation.  
18 That's it. No conversations. So  
19 to me, that just says that, you know,  
20 the average citizen cannot come and  
21 actually petition for change and it be  
22 taken seriously.  
23 DR. MILLER: Mr. Endsley, you do

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1 realize that the Department can't  
2 reject your petition? They can't call  
3 you --  
4 MR. ENDSLEY: You're right.  
5 DR. MILLER: -- and tell you that  
6 they've rejected it.  
7 MR. ENDSLEY: I'm not referring to  
8 the Commission itself. I'm referring  
9 to the Department.  
10 DR. MILLER: I'm referring to the  
11 Department too. They can't call you  
12 and tell you that they rejected it.  
13 MR. ENDSLEY: I understand that, I  
14 understand that. But what I'm getting  
15 at is, if he wanted to -- if they were  
16 open to change, they were open to a  
17 real conversation, at least they would  
18 pick up the phone. Let's talk about  
19 it. This is what we got to -- these  
20 are the rules that are binding our  
21 hands. I'm not saying I won't reject  
22 you, but these are the rules that are  
23 binding our hands, you know. This is

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1 why we can't do certain things this  
2 way. It's because of this.  
3 So that would have been helpful.  
4 It would have been understanding. So  
5 that's all I'm getting at.  
6 The only other thing I got on here  
7 was in the conclusion, it says, My  
8 one-size-fits-all approach would be a  
9 burden.  
10 Currently, what we have is a  
11 one-size-fits-all approach. It was my  
12 submission that was going to open it  
13 up for options, not just the one  
14 500-foot rule; you're done. I've  
15 walked off my land a dozen different  
16 times, and from my neighbor's house,  
17 the furthest I can get is 400 feet.  
18 Burning a pile of leaves at 400 feet  
19 with the wind blowing the opposite  
20 direction is not the same as burning a  
21 pile of leaves by a house that's 15  
22 feet beside me in a garden. That's  
23 not the same. Even the fire

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1 department comes out there, and looked  
2 and says, This is ridiculous.  
3 I know y'all have to worry about  
4 the particulates in the air. I get  
5 that. I'm not -- I'm not dismissing  
6 any of that. I promise. All I'm  
7 saying is the one-size-fits-all  
8 approach is what we currently have,  
9 and that is what I'm just trying to  
10 get changed, is to have that opened  
11 up, and to have more options for that.  
12 You know, in the past four months,  
13 I've now seen 47 burns -- open burns.  
14 I'm willing to bet that none of them  
15 still have ever heard of this rule,  
16 because if they had, and they've  
17 gotten a citation like I've gotten,  
18 they wouldn't be even attempting to  
19 burn again, because they don't want to  
20 risk getting a \$25,000 fine. That's  
21 47 of them. And then my changes. I  
22 even looked. I'm very familiar with  
23 how far 500 feet is now, because I've

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1 walked it many times. And of those, I  
2 guarantee you, only 39 of those would  
3 not have been affected by those  
4 changes. 39 of 47 would not have been  
5 affected by my changes. I don't  
6 think -- again, I don't have any  
7 evidence. I cannot prove this, but I  
8 do not think making any changes is  
9 going to make that huge of an impact  
10 on our environment. He said it's  
11 going to be a financial impact.  
12 I said -- I suggested we had burn  
13 permits in winter months when the  
14 particulates are low. Burn permits  
15 can be a fee. It's a trade-off. You  
16 can burn within 500 feet for a fee.  
17 There's your -- you know, there's your  
18 financial burden relieved from that.  
19 So, I mean, again, I mean, I've read  
20 this. There are rules, but he has the  
21 right to say that EPA said, We've got  
22 to do this; we've got to do that. His  
23 hands are tied, I guess. Y'all cannot

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1 vote against this. All I'm saying is,  
2 the way it's being done is not right,  
3 and that's all I've got to say. So I  
4 thank y'all very much for at least  
5 attempting to listen to me. Y'all  
6 have a great day.  
7 (Laughter was heard.)  
8 MR. ENDSLEY: Oh, I'm sorry.  
9 Questions?  
10 MR. WALTERS: We didn't just  
11 attempt to listen to you. We listened  
12 to you.  
13 MR. ENDSLEY: Well, I appreciate  
14 that very much. I'm not a public  
15 speaker, but I appreciate it.  
16 DR. MILLER: Well, could we have a  
17 response from the Department, please?  
18 MR. SIBLEY: Sure. Good morning,  
19 y'all. My name is Shawn Sibley. I'm  
20 the general counsel here at ADEM. We  
21 did give you a real detailed response,  
22 you know, the recommendation of the  
23 Director, and we understand it is your

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<p style="text-align: right;">Page 30</p> <p>1 decision. It's not ours. And we 2 understand Mr. Endsley's position. We 3 understand the dilemma he's in. But 4 as a state agency that has state-wide, 5 you know, authorization to administer 6 the federal Clean Air Act, we have to 7 look at the big picture. And the big 8 picture is, is this would -- as 9 proposed, would adversely affect air 10 pollution. In other words, it would 11 increase it if everybody in the state 12 was able to have, you know, open burns 13 that were, you know, only 100 feet as 14 opposed -- now, Mr. Endsley did 15 propose some alternatives, but our 16 position is, is EPA would not approve 17 those. As this rule stands now, it is 18 approved in the state implementation 19 plan. EPA would consider this as 20 backsliding, and it would jeopardize 21 our approval, our authorization to 22 administer the federal Clean Air Act. 23 We completely identify with</p>	<p style="text-align: right;">Page 32</p> <p>1 (No response was heard.) 2 DR. MILLER: Thank you. 3 MR. SIBLEY: Thank you. 4 DR. MILLER: At this point, I 5 suppose the next item would be to 6 accept a recommendation or a motion as 7 to whether to accept or reject this 8 petition. Hello? 9 MR. WALTERS: I move to deny the 10 petition for rulemaking based on the 11 views of the Director opposing the 12 petition, and that granting the 13 petition would negatively impact the 14 Department's regulatory scheme. 15 DR. MILLER: All right. We have a 16 motion. Is there a second? 17 MR. MASINGILL: Second. 18 DR. MILLER: I have a second. Any 19 further discussion? 20 MR. WALTERS: I guess the only 21 thing I would say is I empathize with 22 the position of Mr. Endsley. I mean, 23 he brought up some practical points,</p>
<p style="text-align: right;">Page 31</p> <p>1 Mr. Endsley. We understand his 2 dilemma, the size of his lot. Believe 3 me, we've looked at that. And you 4 know, just so you know, we have to go 5 element by element when we give you a 6 recommendation, and we did that. And 7 just so you know, the Air Division did 8 respond to Mr. Endsley when he first 9 reached out, and we didn't go line by 10 line, but we did mention that this 11 would impact federal authorization, so 12 he knew that on the front end. And 13 so if -- I mean, I understand we 14 didn't call. I did send him a 15 courtesy copy of what the Director's 16 views were, but early on, he knew that 17 there was, you know, some issues with 18 our authorization. And I would be 19 glad to entertain any questions that 20 y'all have. Again, we understand the 21 dilemma that he's in, so... 22 DR. MILLER: Anybody with 23 questions, comments?</p>	<p style="text-align: right;">Page 33</p> <p>1 but the backsliding issue is kind of 2 like the hugest thing that bothered 3 me, and as a person who has an excess 4 of 37 years in the environmental -- 5 that's what I did for a living -- I 6 can appreciate the position of the 7 Department, and almost the dilemma 8 that they were in in that respect, 9 so... 10 But, you know, it's hard to make a 11 one-size-fits-all situation for sure. 12 But I applaud your -- your attempt, 13 you know. It's not easy, and I 14 applaud you for trying to make a 15 difference, and recognize the 16 potential difficulty that it -- that's 17 involved. 18 DR. MILLER: I echo that. I agree 19 with you. I mean, I understand your 20 frustration, but I feel like our hands 21 are sort of tied at this point. 22 Anyway, let's vote on the motion and 23 the second. All in favor of the</p>

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<p style="text-align: right;">Page 34</p> <p>1 motion, please signify by raising your 2 right hands. All opposed, same sign. 3 We have a unanimous vote. 4 As far as other business, I have 5 here a copy, and I think that all the 6 Commissioners have received, and the 7 comments regarding Director LeFleur's 8 evaluation, which will be brought up 9 at our October meeting. With regard 10 to that, talking with Commissioner 11 Walters, it's sort of a problem with 12 the personnel committee in that they 13 have three members -- and, Robert, I 14 want you to comment on this -- they 15 have three members, so they really 16 can't talk to each other, because that 17 represents a quorum. So it's sort of 18 a catch-22. They can't discuss what's 19 happening with their work without 20 coming up here and having a formalized 21 meeting with minutes, et cetera. Do 22 you have any ideas about that? 23 MR. TAMBLING: Dr. Miller, you're</p>	<p style="text-align: right;">Page 36</p> <p>1 one Commission member needed to pick 2 up the phone or talk to somebody else, 3 they could have a conversation, you 4 know, without it constituting a 5 quorum. 6 DR. MILLER: Is a quorum 66 7 percent? Is that what it is? 8 MR. TAMBLING: It's -- it's a 9 majority, I believe, of -- 10 DR. MILLER: Well, suppose -- 11 suppose we made the Chairman of the 12 Commission a member of both the 13 committees? That way, could two 14 Commissioners talk to each other about 15 the workings of the committee without 16 breaking the law? 17 MR. TAMBLING: That would be -- how 18 many members on the committee? 19 DR. MILLER: That would be the 20 three we have now, plus the Chairman, 21 which would be four. So if it's two 22 we're talking out of four, would that 23 be --</p>
<p style="text-align: right;">Page 35</p> <p>1 correct. If the committee -- if 2 either one of the committee members 3 were to speak with each other, that 4 would -- and conduct any business 5 behind the scenes, that would -- that 6 would constitute a quorum and probably 7 a violation of the Open Meetings laws, 8 so there really is no recourse other 9 than for them to convene a meeting, 10 you know, publicly, that is properly 11 noticed, so that they can conduct 12 business. The only other option would 13 be for, I guess, the Commission to act 14 and abolish the personnel committee 15 and just handle all personnel matters 16 itself. 17 DR. MILLER: Well, I think we 18 probably need sort of a subcommittee 19 approach. What about adding more 20 Commissioners to the -- to the 21 Committee? 22 MR. TAMBLING: That would be an 23 option. And that way, you know, if</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. TAMBLING: Yeah, let me -- I 2 would just request some time to look 3 into that, and report back to you. 4 DR. MILLER: Okay. 5 MR. TAMBLING: I don't want to give 6 you an answer right now that would not 7 be the correct answer. 8 DR. MILLER: Yeah. 9 MR. TAMBLING: My recommendation 10 would be for purposes of the October 11 meeting just to move forward as it is, 12 and then if you wanted to make any 13 changes in the future, to institute 14 those later. 15 DR. MILLER: Well, I think that's 16 fine. I just don't want the committee 17 to be hamstrung, or scared they're 18 going to be, you know, handcuffed or 19 whatever. 20 MR. TAMBLING: I understand 21 completely. 22 DR. MILLER: Okay. Well, I just 23 think it's a problem that we need to</p>

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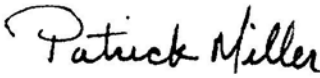
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1 try to resolve one way or the other.  
 2 MR. TAMBLING: I understand.  
 3 DR. MILLER: All right. We'll look  
 4 forward to your recommendation.  
 5 MR. TAMBLING: Okay. I'll be glad to  
 6 get back to you.  
 7 DR. MILLER: Okay. Good, good. All  
 8 right. Our next meeting is scheduled  
 9 for October the 8th. Is there any known  
 10 conflict with that date at this point?  
 11 (No response was heard.)  
 12 DR. MILLER: All right. We have our  
 13 public comment period, and we have no  
 14 one registered; is that --  
 15 MS. THOMAS: That's correct.  
 16 DR. MILLER: -- to speak. So I will  
 17 entertain a motion to adjourn.  
 18 MR. BROWN: So moved.  
 19 MR. MASINGILL: Second.  
 20 DR. MILLER: All in favor, raise your  
 21 right hand. Okay. Thank you-all for  
 22 coming.  
 23 \* \* \* \* \*

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1 REPORTER'S CERTIFICATE  
 2 STATE OF ALABAMA  
 3 MONTGOMERY COUNTY  
 4 I, Patrick Miller, Alabama Certified  
 5 Court Reporter No. 631, and Commissioner for the  
 6 State of Alabama at Large, hereby certify that on  
 7 Friday, August 13th, 2021, I reported the  
 8 PROCEEDINGS in the matter of the foregoing cause,  
 9 and that the pages herein contain a true and  
 10 accurate transcription of said proceedings.  
 11 I further certify that I am neither kin  
 12 nor of counsel to the parties to said cause, nor in  
 13 any manner interested in the results thereof.  
 14 This 30th day of August, 2021.  
 15  
 16   
 17  
 18 PATRICK MILLER, ACCR-631  
 19 Commissioner for the  
 20 State of Alabama at Large  
 21 MY LICENSE EXPIRES: 9/30/21  
 22 MY COMMISSION EXPIRES: 2/08/23  
 23

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1 \* \* \* \* \*  
 2 (Whereupon, the meeting  
 3 concluded at 11:40 a.m.)  
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**Attachment 2 Director's Slides  
(Agenda Item 3)**

**Attachment 3 Order adopting motion to deny the Petition for Rulemaking based on the views of the Director opposing the petition and that granting the petition would negatively impact the Department's regulatory scheme**



**Attachment 1**

7/14/21

AGENDA\*  
MEETING OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: August 13, 2021

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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2. Report from the ADEM Director	2
3. Report from the Commission Chair	2
4. Petition to Amend ADEM Admin. Code Rule 335-3-3-.01, <u>Open Burning</u> , Section 2(b), Subsection 2 EMC Rulemaking Petition 21-01 Petitioner – James R. Endsley, Moody, Alabama	2
5. Other business	2
6. Future business session	2
PUBLIC COMMENT PERIOD	2
Brief statements by members of the public registered to speak	2

\* 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 JUNE 11, 2021
2. REPORT FROM THE ADEM DIRECTOR
3. REPORT FROM THE COMMISSION CHAIR
4. CONSIDERATION OF PETITION TO AMEND ADEM ADMIN. CODE RULE 335-3-3-.01, OPEN BURNING, SECTION 2(b), SUBSECTION 2, EMC RULEMAKING PETITION 21-01, PETITIONER - JAMES R. ENDSLEY, MOODY, ALABAMA

The Commission will consider the Petition to Amend ADEM Admin. Code Rule 335-3-3-.01, Open Burning, Section 2(b), Subsection 2. The Petition requests that the Commission amend this rule as follows:

(1) Reduce 500 feet to 100 feet. (This would still eliminate homes in most neighborhoods but allow for dwellings on 1+ acres to burn.) Alternative: Reduce 500 feet to 100 feet for burn piles less than 6 feet in diameter, and 200 feet for burn piles greater than 6 feet in diameter.

(2) Allow for permits to burn yard debris no more than twice per year per household during cold weather months in low pollution areas.

5. OTHER BUSINESS
6. 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 of "Fair Treatment"

- 1964 Civil Rights Act Title VI - law
- 1968 Diversity, Equity, Inclusion - initiatives
- 1970s CAA, CWA, SDWA, RCRA - laws
- 1994 Presidential Environmental Justice - EO



## Alabama Department Of Environmental Management

### Definition of Environmental Justice Areas

- Census Blocks with >36% non-white
- or
- Census Blocks with median income below 120% of poverty level



## Alabama Department Of Environmental Management

### EPA EJ 2020 Action Agenda Goals

- Deepen EJ Practices
- Work with Partners
- Demonstrate Progress



## 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

### Training ADEM Personnel

- Title VI of the Civil Rights Act of 1964
- Diversity, Equity, Inclusion
- Environmental Justice
  - In-house
  - EPA



## Alabama Department Of Environmental Management

### Tracking Fair Treatment Results

- 64% of illegal scrap tire cleanups
- 65% of special compliance assistance AST
- 70% of illegal dump cleanups from SWF
- 78% of air monitoring sites
- 79% of fish tissue sampling stations
- 79% of brownfields cleaned up



## Alabama Department Of Environmental Management

### Tracking Fair Treatment Results

- 92% of non-point source project awards
- 94% of waterbodies with TMDLs
- 96% of water quality sampling stations
- 96% of stream miles with TMDLs
- 99% of assessed waterbodies
- 100% of diesel retrofit grants



## Alabama Department Of Environmental Management

### Increased Ranking Weight

- Cleanup priorities
- State Revolving Fund loan forgiveness
- Demonstration projects
- Grant programs



**Additional ADEM EJ Initiatives**

- Local Government compliance assistance
- Low interest Water & Sewer loans
- Health and Education initiatives
- Brownfield redevelopment assistance
- Increased community meetings
- Direct mail to each household

**Attachment 3**

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

In the matter of:	)	
	)	
Petition to Amend ADEM Admin. Code Rule	)	EMC Rulemaking Petition 21-01
335-3-3-.01, Open Burning, Section 2(b),	)	
Subsection 2	)	
Petitioner – James R. Endsley, Moody, Alabama	)	

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MOTION

Move to deny the Petition for Rulemaking based on the views of the Director opposing the petition and that granting the petition would negatively impact the Department's regulatory scheme

ORDER


This cause coming before the Environmental Management Commission pursuant to the above Petition for Rulemaking and having considered the petition and arguments supporting the petition and the views of the Director of the Alabama Department of Environmental Management opposing the petition and arguments supporting said views, it is hereby ORDERED:


1. That having given due consideration to the petition pursuant to ADEM Admin. Code R. 335-2-2-.05;
2. That the above motion is hereby adopted; and
3. That this action has been taken and this order issued by the Commission effective August 13, 2021; and
4. That a copy of this order shall be served upon the Petitioner and the Department either personally or by certified mail.


Environmental Management Commission Order  
Page 2


ISSUED this 13th day of August 2021.

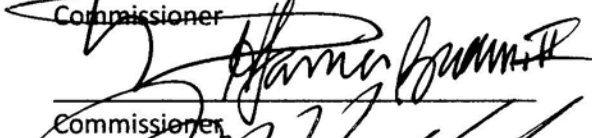
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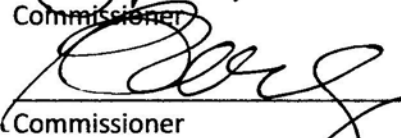
  
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Commissioner

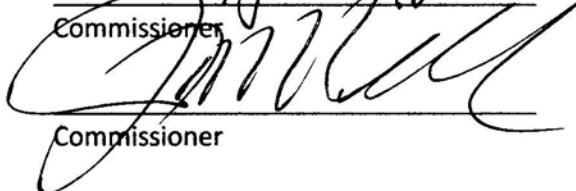
  
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DISAPPROVED:

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Commissioner

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Commissioner

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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 13th day of August 2021.

  
\_\_\_\_\_

Samuel L. Miller, Chair  
Environmental Management Commission  
Certified this 13th day of August 2021