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.

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.

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Part A
(WHEREUPON, proceedings began at 11:01 a.m.)

DR. MILLER: Well, we have a quorum, so let's call the meeting to order.

Thank you for coming to our April 12th meeting of the Environmental Management Commission. First item on our agenda is to consider the minutes from the February 15th meeting. I assume everybody's had a chance to look those over, and I will accept the motion to adopt or reject those minutes.

DR. PERRY: Move to adopt the minutes of the February 15, 2019 Commission meeting as circulated.

DR. MILLER: A second?

MR. MCKINSTRY: Second.

DR. MILLER: Is there any further discussion?

(No response.)

DR. MILLER: If not, let's call for the question. All in favor of adopting the minutes from February 15th, 2019, signify by saying "aye."

(All Commission members signify with "aye.")

DR. MILLER: All opposed?

(No response.)

DR. MILLER: Ayes have it.

We'll call on Director LeFleur at this point for his report.

DIRECTOR LEFLEUR: Good morning and welcome to the fourth meeting of the Environmental Management Commission for fiscal year 2019. Today's report will update you on the Department's funding for this fiscal year; review several important planned upgrades to facilities and operating software systems; report on the Department's Environmental Justice activities; recognize one of our personnel; and, report on some current events.

We are halfway through FY 2019 and on target with funding and expenditures. We're working with the Governor's Office and the state legislature to seek an increase in the Department's General Fund appropriation from the current $575,000 to $4 million beginning in
fiscal year 2020. The General Fund budget that passed the House earlier this week includes a line item for funding ADEM at $4 million. The House budget will now go to the Senate for consideration. There appears to be broad support for the Department's budget request.

On the federal side, an FY 2019 budget has been enacted for EPA that includes funding for the States. The FY 2019 funding level for all states is essentially the same as it has been each year since 2010.

If the requested $4 million State General Fund appropriation is granted, the Department's total funding from our three sources (fees, State General Fund, and federal appropriations) combined will maintain our position of dead last in per capita funding among all states in the nation as it has been since 2013. With the increased State General Fund appropriation, the Department is committed to maintaining the top ten performance level it has exhibited for many years despite its lowest ranked funding.

In order to maintain top performance, we must make investments in the long-term future of the Department. Making those investments requires strategically using all available resources. Today I will give you a brief update on the status of upgrading our physical facilities and moving automation to a higher level. Our physical facilities here in Montgomery are in excellent condition and will serve our needs for the foreseeable future. That is not the case for our field offices in Mobile and Birmingham.

Since February 2013, you have been receiving reports on the need to replace the deplorable physical facilities in Mobile housing our Field Office and the Coastal Program. It has been a painfully slow process, but I'm pleased to report a very significant milestone. On March 29, 2019, the Federal RESTORE Council approved $5.9 million to fund the new facility in Mobile. There are still federal grant forms to be completed, but we anticipate being able to enter into contracts for the purchase of a site and architectural and engineering services shortly after June 1, 2019. The identified site is on South Broad Street in Mobile about two miles from our current field office facility and nine miles closer to water access than our current Coastal Program facility. It has easy access to Interstate 10 and a boat launch point next to the nearby U.S. Coast Guard station. Based on a study of the current and projected workload, it will be near the center of our service area.

A Request for Qualifications (RFQ) for Architectural and Engineering Services was issued in conjunction with the Alabama Building Commission. The four-week response period closed March 22nd. Six organizations responded to the RFQ, and a selection will be announced prior to June 1st. As with all State agency construction, our project will receive oversight by the Alabama Building Commission. Additionally, our Field Operations Division and Permits and Services Division, as well as the architectural/engineering contractor will be providing oversight.

When completed, this new facility will replace the two woefully substandard facilities in Mobile housing the Field Office and Coastal Program with a single facility designed to allow the Department to accomplish its mission today and in the future.

The Department is also undertaking the final phase in upgrading the Birmingham Field Office. The upgrade involves rationalizing and modernizing the laboratory facilities. Several lab functions previously performed in the Birmingham Field Office have been relocated to the Montgomery lab, where there is available capacity, without any loss of efficacy. The estimated $800,000 investment will result in increased efficiency. Outdated equipment, including analytical instruments, heating, ventilation and air-conditioning, lab benches, and storage will be moved, replaced, or refurbished.

As was noted in the February Commission meeting, it's now the time in the life cycle of our computer software systems to upgrade...
in order to optimize the automation that allows us to do more with less. Over an anticipated three-to-four year span, we will be doing software upgrades in nearly all our major programs. Vendor interviews have taken place, vendor references have been checked, input from the Alabama Office of Information Technology has been obtained, and potentially impacted division and branch personnel are being included as an integral part of the review and selection process. A vendor will be selected within the next 90 days. A portion of the requested State General Fund appropriation will be used to implement these software upgrades.

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

Future reports to the Commission will keep you abreast of progress on each of these endeavors.

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

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

Unlike the Civil Rights Act, which is a federal law, the Presidential Executive Order is not a law and is only binding on certain identified federal agencies, including EPA, in the Executive Branch of the federal government. An EJ program is totally voluntary for states.

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

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

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

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

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

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

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

First, deepening EJ practices to improve the health and environment of overburdened communities. This includes engaging
Second, working with various partners to expand our positive impact within overburdened communities. This involves working with our state government and local governments, federal agencies -- primarily EPA -- and non-governmental community organizations.

And, third, demonstrating progress on significant environmental justice challenges, with particular emphasis in the areas of lead disparities, drinking water quality, air quality, and hazardous waste sites. This is the area where ADEM has for some time been out ahead of EPA.

While ADEM's EJ program includes the major EPA EJ 2020 goals, ADEM goes well beyond EPA in measuring actual results. The Department has for some time invested in EJ initiatives that go above and beyond what even EPA has done.

In addition to training our assigned EJ Coordinators, as noted earlier, for the last ten years the Department has provided formal environmental justice training for every member of our staff.

For a number of years, the Department has also been tracking what environmental results have actually been achieved in EJ communities. In its EJ 2020 plan, EPA is now also beginning to track results. It is worthwhile to note that the twelve EJ program metrics ADEM tracks have concentrations between 65 and 100 percent in, or abutting, EJ communities.

Our EJ areas have: 65 percent of the recipients of special compliance assistance for aboveground storage tanks, 66 percent of scrap tire cleanups, 73 percent of illegal dump cleanups from the Department's Solid Waste Fund for innocent landowners, 76 percent of fish tissue sampling stations, 77 percent of brownfields cleaned up, 85 percent of the air monitoring sites, 93 percent of the non-point source pollution control project awards, 94 percent of the waterbodies with Total Maximum Daily Load Limits, 95 percent of our water quality sampling stations, 96 percent of the assessed waterbodies, 96 percent of the stream miles with TMDLs, and 100 percent of the diesel retrofit grants.

In addition to the formal EJ training and tracking actual results, the Department gives extra ranking weight to EJ areas when prioritizing which unauthorized dump sites are to be cleaned up, eligibility for partial principal forgiveness in the drinking water State Revolving Fund loan program, and other programs. The Department has also gone beyond activities that can be measured quantitatively with a number of EJ-related programs such as increased community meetings and listening sessions -- especially during high-interest permitting activity -- focusing on brownfield redevelopment in low-income and minority areas of Alabama, special compliance assistance to local government in EJ areas, targeted health and education initiatives in EJ areas, and extra efforts to recruit minority science and engineering students -- to name a few.

As you have seen, the Department is involved in many efforts relating to environmental justice. Personnel are assigned to coordinate the Department's EJ activities which incorporate the goals set out in the EPA-developed EJ 2020 Action Agenda, but also go above and beyond what EPA does. ADEM EJ activities are systematic, focused, and results oriented. These efforts are not mandated by statute or regulation.

Copies of an outline of ADEM's Environmental Justice activities, along with a reference copy of the more detailed compilation of the Department's broader community outreach activities included in a booklet titled "Community Engagement" are available on the table in the lobby for review. The booklet is a living document subject to update and input from interested parties. The electronic version of Community Engagement is available on the homepage.
of the Department's website.

Yesterday ADEM held its Earth Day commemoration. Earth Day has been around since 1970. Each year since 2012, we have taken the opportunity to bring in Junior High and High School students to stimulate their interest in the environment, science, and engineering. This year 66 of our employees participated in setting up and interacting with the students at 20 stations showing everything from biological sample collection to air monitoring to how a Geoprobe works and many other Departmental activities. We also announced the results of the interschool recycling challenge, where schools competed to see which student body collected the most recyclables. Cash prizes were awarded to the four schools with the highest recycled material totals. As you will see in the photos displayed in the lobby, the kids were fully engaged and I can confirm they had a good time.

Our employees are our most valuable resource and their professional development is important to our success, which makes professional development an important Departmental objective. I'm pleased to recognize Austin Pierce in our Land Division -- please stand -- who has reached that significant milestone of having earned the designation "Professional Engineer." Congratulations.

(Audience applause.)

DIRECTOR LeFLEUR: At the February Commission meeting, the GASP environmental organization delivered a letter addressed to Commission Chair Miller, Vice-Chair Brown, and me, as Director, seeking to have ADEM concur in the proposed listing of the 35th Avenue site in north Birmingham on the National Priorities List. GASP also made an oral presentation covering several points in the letter. A detailed response to the letter and presentation was prepared and is available to any interested party on the ADEM website by selecting the "eFile" icon and then selecting the "Director's Correspondence" option.

Finally, I'm pleased to report continued success by our attorneys in the Office of General Counsel in obtaining favorable court rulings and dismissals upholding actions by ADEM and the Commission in several lawsuits brought by Florida-based Attorney David Ludden. The appeal of the Arrowhead Landfill permit renewal in Alabama Circuit Court was denied, the action in Alabama Circuit Court challenging the Department's authority to designate alternate daily cover for landfills was denied, and the action in Alabama Circuit Court seeking to invalidate ADEM's procedure for investigating discrimination claims was dismissed. Mr. Ludden has appealed the alternate daily cover court ruling and re-filed the action seeking to invalidate ADEM's procedure for investigating discrimination claims.

That concludes my report. I will be pleased to answer any questions you have.

DR. MILLER: Does anybody have any questions?

(No response.)

DR. MILLER: Thank you,

Director.

Our next item is a Report from the Commission Chair, and at this point I have nothing to report.

Item 4 on our agenda is Chad Johnson versus ADEM, EMC Docket No. 19-04. We are going to consider the Hearing Officer's Recommendation of the Dismissal. The Hearing Officer has recommended dismissal based on the consideration of ADEM's Motion to Strike and Dismiss and the apparent abandonment by the Petitioner to the alleged appeal.

We at this point need to either adopt or reject the Hearing Officer's Report. Do I have a motion either way?

MR. WALTERS: I move to adopt the Hearing Officer's Order of Recommending Dismissal.

DR. MILLER: Is there a second?

MR. MASINGILL: Second.

DR. MILLER: All right. Is there any further discussion regarding this motion?

(No response.)
DR. MILLER: If not, let's call for the question. All in favor of recommending dismissal as proposed by the Hearing Officer to be signified by saying "aye."

(All Commission members signify with "aye.")

DR. MILLER: All opposed, "no."

(No response.)

DR. MILLER: The motion passes.

Agenda Item No. 5 is Wynlake Development, LLC, versus ADEM, Docket 18-03. At this point we need to consider the report of the Hearing Officer of the appeal of the Wynlake Development Group. I think at this point the best way to summarize this would be that the Hearing Officer has agreed with everything that ADEM has said regarding the Wynlake Development, but the Department recommended -- I believe it was a $52,000 penalty. Is that right?

MR. MASINGILL: 53.3.

DR. MILLER: 53.

MR. MASINGILL: No. 53,300.

DR. MILLER: 53,300.

And the Hearing Officer in his report stated that the penalty should be reduced to $30,000. I've had several discussions with our attorney, Robert Tambling, regarding this and have gone over several areas of the Alabama Code. And it looks to me -- and I think Robert would concur with this -- that the Hearing Officer more or less arbitrarily lowered the penalty without giving any documentation or references as to why he was doing that. So we are here today to consider his report and also consider as a separate item the reduction in penalty that the Hearing Officer had imposed.

Has everyone kind of been up to date as far as the documentation and the rules and so forth? I don't know of anything really further to say other than in my opinion -- and it's just my opinion -- I don't think that the Hearing Officer followed our rules or the State's rules regarding lowering the penalty. And I don't really think that, without his giving documentation as to why he thought that was necessary, that we can do that.

So I'm going to ask for either a motion to adopt the entire Report of the Hearing Officer; a motion to approve the Hearing Officer's Report, but noting ADEM's objections and removing the part in the report regarding the amount of the penalty; or to reject the entire Report of the Hearing Officer. I hope I didn't confuse everybody with what I just said.

So do we have a motion on any of those three options?

MR. MASINGILL: Move to approve the Report of the Hearing Officer in part and reject it in part, as set forth in Respondent ADEM's Objection to the Hearing Officer Report.

DR. MILLER: All right. Is there a second to that?

DR. PERRY: Second.

DR. MILLER: All right. Is there any further discussion?

(No response.)

DR. MILLER: All right. Calling for the question on the motion to approve the Report of the Hearing Officer, leaving out the part about the reduction in the penalty, all in favor say "aye."

(All Commission members signify with "aye.")

DR. MILLER: All opposed, "no."

(No response.)

DR. MILLER: Passed.

The next item is Ranger Environmental Services, LLC, and Ranger Resources Logistics, LLC, versus ADEM, Docket No. 19-02. The Chair will acknowledge that the Petitioner has withdrawn the appeal and request for hearing on this item.

The next item is Ranger Environmental Services, LLC, versus ADEM, 19-03. Likewise, the Petitioner has withdrawn his request for an appeal or hearing on this item as well.

Is there any other business that we need to discuss or bring up?

(No response.)

DR. MILLER: All right. Our next scheduled meeting is June 21st, 2019. Does
anyone have a known conflict with that particular date?

(No response.)

DR. MILLER: As it stands now, then that will be our meeting date.

Now, we have two people registered to make brief statements to the Commission. We are asking that you please observe the three-minute time limit on these, addressing the Commission's points.

And we ask Mayor McCarty from Wilsonville to please come up.

MAYOR McCARTY: Good morning, Mr. Chairman and other Commission members. Thank you for having me again. I have been here several times previously talking about coal ash. Let's talk about it today -- some articles -- some news articles from other places. There was a headline that said "Northam Signs Coal Ash Excavation Legislation." There was another headline that said "Regulatory Agency Requires Duke Energy Excavate Remaining Coal Ash Ponds."

There's others like that. There's even one from Indiana, which I normally don't keep up with. The Virginia situation is notable in that Northam, the Governor, is a democrat. The person who introduced this bill was a democrat, but the three who were the main co-sponsors were republican. And the House speaker in the republican-controlled Virginia Legislature was for it and even added an amendment to it and let it go through.

In North Carolina, that regulatory agency that just voted to require Duke Energy to remove the rest of its coal ash was mainly appointed by a republican governor. There's even a real interesting article out there that Bloomberg did talking about how red states are grappling with the coal ash issue and how things are changing.

Now, you come back to Alabama, and there's a couple of headlines that would make you think we don't get it yet. One was "Alabama Power Receives 3.5 Percent Rate Increase and Blames It on Coal Ash Cost." Now, the coal -- blaming it on coal ash costs, that's not my words. That's their words. 3.5 percent sounds like a pretty big increase, especially when they're not doing anything about coal ash. All they're doing is reporting how poisonous the water is and covering it up with dirt and grass. I don't think we're getting our money's worth there.

Then there's another article -- and you're going to think, Well, this doesn't have anything to do with it, but it kind of does. "Legislature Debates Bill to Ban Banning Plastic Bags." That's not political reality. That's just some legislators sort of flexing their conservative credentials after they just passed a big gas tax hike.

Okay. That's not the political reality out there with the common person. That's what's going into the politics in Alabama. You go back to Childersburg, Dr. Miller, and you other Commissioners go back to your hometown and ask the person on the street. Depends on how you ask the question. If you say, You think the EPA is bad, most people are going to say, Yeah, I think the EPA is bad. All these regulations. Driving up costs. But that's an ideological response. It's not a practical, hands-on, how-does-it-exactly-affect-me response. If you were to ask them, Do you think it's okay for the utilities to poison our groundwater and leave it there forever, their answer is going to be something like, I don't think that -- that doesn't sound right. And then if you further ask the question, Do you think the power company ought to get a 3.5 percent claiming it's for cleaning up coal ash and then not actually cleaning up coal ash, most of those responses are going to be something that is not even quotable at a public hearing.

My point is: This train is leaving the station. You might want to be on this train. Mr. LeFleur talked about environmental justice. Everybody in this room knows that it would be environmentally just for that stuff to be excavated and removed and put to a safe place away from our rivers. Now, there's some in this room that are opposed to it, but it's not on a
right-or-wrong, ethical-moral basis. This train is leaving the station. This is coming. As people put this together, as they see what this cap-in-place regulation would do, they're going to put this together, and they'll say, No, this has got to go. If -- let me change that word -- "when." When there's a dam and river situation -- now, some of the reason that North Carolina was so gung-ho was because they had that Dan River spill that was spectacular. If that happened -- if something like that were to happen in Alabama, if my water pipes break, I get groundwater contamination into the water supply and we got to be down here handing out plastic water bottles, or if one of these dikes breaks and a river and a town is destroyed, at the next AEMC meeting it won't just be me coming down here to speak to you by myself, it will be two or three busloads of people. And their comments will be much more caustic than mine have been. The train is leaving the station. You might want to be on that train. It's time we cleaned this coal ash up. You also want to be on the right side of history, and you also want to be on the right side of government "of, by," -- and especially -- "for the people." Thank you for your time.

DR. MILLER: Thank you, Mayor. Next we have Ms. Cindy Lowry from --

MS. LOWRY: Alabama Rivers Alliance.

DR. MILLER: Yes. Please limit your comments to three minutes.

DIRECTOR LeFLEUR: I apologize, we didn't have the three-minute clock working. MS. LOWRY: Well, I can be pretty brief, because I didn't realize that Mayor McCarty was going to be here. He's much more qualified to speak about this, because this is happening in his community right now. So I will just keep my comments brief.

I do want to also talk about coal ash. Thank you for letting me speak. And I e-mailed you guys -- I hope all of you got my e-mail -- with a little bit of background information. That's the reason I wanted to bring it up today, because there has been since a little over a year ago when you guys approved the state permitting program for coal ash here in Alabama, which is a follow-up or steps after the federal regulations which were passed in 2015. But it's been a little over a year, and a lot has happened in other states. And I think we owe it to ourselves and to the people whose communities and lives are being impacted by coal ash to ask ourselves, What are we doing in Alabama, and are we doing enough, and why are we not doing as much as these other states?

So thanks to the federal requirements, the power companies were required to do groundwater monitoring and to publish that information. And, also, last year that information -- when that information was published, it proved that those coal ash ponds were leaking into groundwater. Every one of them across the state were leaking into groundwater. ADEM did fine the companies and issue administrative orders on that.

So that's what we know now. We know that this stuff has heavy metals and toxic chemicals that pose a risk to human health, and we know that it's leaking into our groundwater, which oftentimes is getting into our surface waters as well. So capping and closing we just do not feel like is an answer. That's currently the plan that our power companies in Alabama have for this stuff. And that's basically putting a Band-Aid on it. It's kicking a can down the road. I think that all these other states have kind of evaluated this and realized that's not the answer. The quote from the North Carolina DEQ -- or actually the Department of Environmental Quality secretary was: The science points us clearly to excavation as the only way to protect public health and the environment. So they realize this, and I think that we need to realize this as well.

When I was a kid growing up in a small town in Alabama, we put our household -- everybody put their household garbage (unintelligible) into an unlined pit in the
ground. Those are illegal dumps now. Director LeFleur talked about those earlier, and they're being cleaned up. They're not being allowed anymore. It only makes sense that coal ash would also be required -- even more rigorous standards for storage should be required. We think they should be excavated, removed, put into lined, upland, dry storage away from people, away from rivers. This is obviously not a small task. We understand that. But we just -- we believe that this is what needs to happen in order to protect people in Alabama.

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

DR. MILLER: All right. Thank you.

Well, I suppose our next item will be a proposal to adjourn. Do you want to have a motion for that?

MR. MASINGILL: Move to adjourn.

DR. MILLER: Second?

DR. PERRY: Second.

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

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

DR. MILLER: Thank you.

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

***************
STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

I hereby certify that the above
proceedings were taken down by me and transcribed
by me using computer-aided transcription and that
the above is a true and accurate transcript of
said proceedings taken down by me and transcribed
by me.

I further certify that I am neither
of kin nor of counsel to any of the parties nor
in anywise financially interested in the outcome
of this case.

I further certify that I am duly
licensed by the Alabama Board of Court Reporting
as a Certified Court Reporter as evidenced by the
ACCR number following my name found below.

Victoria Castillo

VICTORIA CASTILLO, ACCR #17, 9/30/19
FREELANCE COURT REPORTER
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Part B
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Attachment 1 Agenda

Attachment 2 Director's Slides
   [Agenda Item 2 – Report from the ADEM Director]

Attachment 3 Order Adopting Hearing Officer's Order Recommending Dismissal
   [Agenda Item 4 – Chad Johnson v. ADEM, EMC Docket No. 19-04]

Attachment 4 Order Approving in Part and Rejecting in Part Report of Hearing Officer
   [Agenda Item 5 – Wynlake Development, LLC v. ADEM, EMC Docket No. 18-03
   (NPDES-Related Matter)]
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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| 8. Other business | 2 |
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PUBLIC COMMENT PERIOD

Brief statements by members of the public registered to speak

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

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON 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
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

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)
EPA EJ 2020 Action Agenda Goals

- Deepen EJ Practice
- Work with Partners
- Demonstrate Progress

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.  
Alabama Department of Environmental Management, 
Respondent. 

EMC Docket No. 19-04

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

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.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,

Respondent.

EMC Docket No. 19-04

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 11th day of March, 2019.

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

RECEIVED
MAR 11 2019
ENV. MGMT. COMMISSION
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing 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  
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

/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 12th day of April 2019.
APPROVED:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

DISAPPROVED:

Commissioner

Commissioner

Commissioner

ABSTAINED:

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