6/25/21

DRAFT

Minutes

Environmental Management Commission Meeting

Alabama Department of Environmental Management Building

1400 Coliseum Boulevard

Montgomery, Alabama 36110-2400

June 11, 2021

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June 11, 2021

Convened: 10:59 a.m.

Adjourned: 11:41 a.m.

Part A

Transcript

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Part B

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Attachment 1

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Part A

1 ALABAMA ENVIRONMENTAL MANAGEMENT
2 COMMISSION MEETING
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11 ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
12 Alabama Room
13 1400 Coliseum Boulevard
14 Montgomery, Alabama 36110-2400
15 June 11, 2021
16 10:59 a.m.
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23
24
25 Taken by: Victoria M. Castillo, ACCR No. 17

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1 A P P E A R A N C E S
2
3 COMMISSION MEMBERS PRESENT:
4 John (Jay) H. Masingill, III
5 Kevin McKinstry
6 Mary J. Merritt
7 Samuel L. Miller, M.D., Chair
8 Ruby L. Perry, D.V.M.
9 Thomas P. Walters, P.E., Vice Chair
10
11 COMMISSION MEMBER NOT PRESENT:
12 H. Lanier Brown, II, Esq.
13
14 ALSO PRESENT:
15 Robert Tambling, AEMC Legal Counsel
16 Debi Thomas, AEMC Executive Assistant
17 Lance R. LeFleur, ADEM Director
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1 (WHEREUPON, proceedings began at
2 10:59 a.m.)
3 DR. MILLER: I think it's time
4 to call the meeting to order. And we do have a
5 quorum here today.
6 Our first item is to consider the
7 minutes of the meeting held on April 9th, 2021.
8 Everybody has been furnished a copy of these to
9 review, and I will entertain a motion regarding
10 these minutes.
11 MS. MERRITT: So moved.
12 MR. MASINGILL: Second.
13 DR. MILLER: All right. We have
14 a motion to accept and second.
15 Any further discussion?
16 (No response.)
17 DR. MILLER: If not, I will call
18 for the question. All in favor of accepting the
19 minutes, raise your right hand.
20 (All Commissioners raise hand.)
21 DR. MILLER: Any opposed, same
22 sign.
23 (No response.)
24 DR. MILLER: Motion passes.
25 We'd like to call on Mr. LeFleur now

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1 for his report.
2 MR. LeFLEUR: Good morning,
3 Commissioners. Can you hear me all right? Is
4 this okay? Good. It's nice to be here without a
5 mask. You-all have been vaccinated, so you-all
6 won't need to have the social distancing issue
7 come up.
8 I want to say good morning and
9 welcome to others present for this fifth meeting
10 of the Alabama Environmental Management
11 Commission for fiscal year 2021. Today's report
12 will briefly cover our budget status and then
13 look at the state of the environment in Alabama.
14 We are nearly through with fiscal year 2021
15 and -- thank goodness -- and on target with our
16 funding and expenditures. The FY 2022 General
17 Fund budget was passed by the Legislature and
18 signed by the Governor. It includes our
19 requested $4 million funding. On the federal
20 side, an FY 2022 budget has been enacted for EPA
21 that includes funding for the states. The FY
22 2022 funding level for all states is essentially
23 the same as it has been since the year 2010.
24 Now to the state of the environment
25 in Alabama. The process that seeks to improve

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1 environmental quality in Alabama and states
2 throughout the nation begins with putting in
3 place the necessary state laws, material
4 resources, and expertise to obtain delegation of
5 authority from EPA. That has been done. Air,
6 land, and water environmental quality standards
7 were developed along with discharge permits
8 reflecting those standards. That is an ongoing
9 activity. The final step in the process is
10 inspections to make sure there is compliance with
11 the permits and, if necessary, enforcement
12 actions to obtain compliance.
13 EPA-generated quantitative
14 compliance and enforcement metrics comparing all
15 states were reviewed in the April Commission
16 meeting. Using those measures, the Department
17 compared very favorably to the rest of the
18 nation. The question for today is: Are the
19 process and those favorable metrics actually
20 resulting in measurably better quality
21 environment in Alabama?
22 It has been two years since the last
23 report to the Commission on the State of the
24 Environment in Alabama. The state of the
25 environment takes the longer view and compares

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1 the quality of the state's environmental
2 activities when reliable records were first
3 available 20 to 30 years ago, versus where they
4 are today, to see if Alabama's environment is
5 improving.
6 The format of this report is a "then
7 versus now" comparison that will look at how the
8 public perceives our environment and what the
9 actual data shows.
10 We start with public perceptions.
11 Beginning in 1998, every five years the Department
12 commissioned either Auburn University or the
13 University of Alabama to do a survey of public
14 opinion in Alabama to determine how well the
15 public understands matters related to the
16 environment. The public has both correct and
17 incorrect perceptions about the environment in
18 Alabama.
19 Some of the correct perceptions are:
20 In 2018, the most recent year for the survey, 92
21 percent ranked the environment good versus 76
22 percent doing so in 1998. And it is the highest
23 percentage since the survey began 20 years ago.
24 49 percent ranked water cleaner than 25 years ago
25 versus 19 percent in 1998. And it is also the

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1 highest percentage since the survey began. Keep
2 in mind that since water has been getting
3 cleaner, the baseline from which the 25 years ago
4 comparison is made is higher as time passes.
5 43 percent ranked air cleaner than
6 25 years ago versus 18 percent doing so in 1998.
7 Again, the highest percentage since the survey
8 began. Once again, since the air has been
9 getting cleaner, the baseline from which the
10 comparison is made is higher as time passes.
11 And, finally, 90 percent of the
12 respondents recognize that Alabama's
13 environmental standards are protective of human
14 health and the environment. This is up from just
15 76 percent in the last survey in 2013.
16 These correct perceptions show we
17 are making headway in educating the public.
18 The survey also shows several
19 incorrect perceptions, which means we still have
20 work to do in educating the public. In 2018, 73
21 percent did not realize motor vehicles are the
22 biggest source of air pollution in Alabama and
23 the nation. 89 percent of the public did not realize
24 that stormwater is the biggest source of water
25 pollution. And despite ample objective evidence

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1 to the contrary, 44 percent do not perceive
2 environmental laws are being enforced in Alabama.
3 The Department has made special
4 efforts in recent years to better inform the
5 public on the state of the environment in
6 Alabama. We report various relevant objective
7 environmental quality measures in addition to the
8 quantitative compliance and enforcement metrics
9 such as were presented at the last Commission
10 meeting.
11 The following series of slides will
12 be a comparison of the environmental quality data
13 for air, water, and land showing environmental
14 measures when reliable data first became
15 available and those same measures today. Unlike
16 the quantitative performance metrics available
17 from EPA, comparable environmental quality data
18 from other states is not available.
19 Beginning with air data, there are
20 six basic air quality standards: Fine particles,
21 ozone, oxides of nitrogen, Sulphur dioxide,
22 Carbon monoxide, and Lead. There's also a
23 regional haze goal.
24 Over time, most of the standards
25 have been revised, as this next slide will show.

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1 Each time they have been revised they become more
2 stringent. Fine particles and ozone standards
3 have seen four revisions since the Clean Air Act
4 became law in 1971, while others have been more
5 stable. In 2008, EPA set the 2018 goal for total
6 reductions in haze.
7 As this next slide shows, one by one
8 Alabama has been able to attain individual air
9 quality standards even as the standards have been
10 becoming tighter. The fine particles standard
11 was first met in Alabama in 2013, followed by
12 ozone in 2014. The NOx standard was first met in
13 back in 1971, SO2 in 1977, Carbon monoxide in
14 1971, and Lead in 2015. In 2015, for the first
15 time since the Clean Air Act was enacted in 1971,
16 the state of Alabama reached attainment for all
17 air quality standards. In addition, Alabama met
18 the 2018 haze goal in 2013, five years early.
19 This graphs shows air pollution
20 emissions in Alabama have declined materially
21 since 1990 and improvement continues even after
22 those ever more stringent air quality standards
23 were attained. Today the public in Alabama can
24 breathe easier than it could in 1990.
25 In the water media, we will look at

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1 drinking water data first because of its
2 importance in that it directly impacts every
3 individual in Alabama. Potential contaminants in
4 drinking water fall into four categories:
5 Organic chemicals, Inorganic chemicals,
6 Radionuclides, and Microbes. In 1982, when the
7 Department was created, there were 23 drinking
8 water contaminants regulated. That number is
9 currently 89, with most of the increase being
10 in the organic chemicals category.
11 We are obviously regulating more
12 potential contaminants in drinking water. With
13 more contaminants to monitor, the logical
14 question is: How well are the water systems
15 doing?
16 Here's the answer. In 1982, 82
17 percent of the water systems in Alabama were
18 consistently in compliance with the standards for
19 the 23 regulated contaminants. Today, 98 percent
20 of the water systems in Alabama are consistently
21 in compliance with the standards for the 89
22 contaminants now regulated. I would also point
23 out that, for years, only the state of Hawaii has
24 had a lower number of drinking water violations
25 than Alabama. Needless to say, the citizens of

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1 Alabama have much safer drinking water now than
2 they did in 1982.
3 Another measure of water quality
4 looks at the impairments to surface waters in the
5 state. Section 303(d) of the Clean Water Act
6 calls for a listing of impaired waterbodies,
7 which are those not meeting federally approved
8 water quality standards for various pollutants such
9 as nutrients, pathogens, metals, and suspended solids.
10 This chart couples both the area of
11 the impairments and the number of pollutants.
12 For example, if one mile of stream or one acre of
13 surface water is impaired for both nutrients and
14 pathogens, that would be counted as two
15 combination miles of impaired stream or two
16 combination acres of surface water.
17 25 percent of the 59,000 miles of
18 perennial rivers and streams and 93 percent of
19 the more than one million acres of lakes,
20 reservoirs, ocean, and estuaries in the state
21 have now been fully assessed for impairment.
22 Over the years, as more waterbodies have been
23 assessed, more impairments have been identified
24 and listed.
25 During the period between 1998 and

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1 2020, more than 12,000 combination miles of
2 impaired rivers and streams were identified and
3 added to the 303(d) list. In 2020, there remained
4 about 4,000 combination miles of impaired rivers
5 and streams as a result of 8,700 combined miles
6 being removed from the list due to improved water
7 quality or being addressed through the
8 development of a total maximum daily load, or
9 TMDL, determination. A TMDL sets strict limits
10 for the discharge of pollutants into the assessed
11 waterbody that will bring that body into
12 compliance with water quality standards.
13 During the period 1998 through 2020,
14 more than 1.1 million combination acres of
15 impaired lakes, reservoirs, ocean, and estuaries
16 were added to the 303(d) list when identified.
17 In 2020, there remained about 660,000
18 combination acres of impaired lakes, reservoirs,
19 ocean, and estuaries as a result of more than
20 400,000 combination acres being removed from the
21 list due to improved water quality or being
22 addressed through TMDL development.
23 Impaired waterbodies have seen
24 significant improvement over the years and that
25 improvement continues.

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1 The 303(d) list identifies impaired
2 waterbodies. Waterbodies are also tracked by an
3 assigned designation or use classification. The
4 data in this slide will go back to 1982, which is
5 a bit further back than the previous slide.
6 Looking at the three highest
7 designations -- Outstanding National Resource
8 Waters, Outstanding Alabama Waters, and Treasured
9 Alabama Lakes -- as you can see, in 1982 no state
10 waters were yet determined to have met the
11 requirements to be designated in the highest
12 categories.
13 By 2020, Alabama was recognized to
14 have more than 1,100 miles and nearly 5,600 acres
15 in the two combined designations of natural
16 waters of outstanding quality that are considered
17 important to Alabama and the nation.
18 Alabama also had more than 40,000
19 acres of exceptionally high quality waters
20 resulting from the manmade impoundment of
21 watercourses into reservoirs with the Treasured
22 Alabama Lakes designation.
23 Conversely, at the other end of the
24 scale, the number of miles of watercourses in the
25 lowest use classification, which is below the

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1 Fish and Wildlife classification and suitable
2 only for industrial and agricultural use, has
3 declined from more than 700 miles to just over
4 100 miles.
5 Since 1982, Alabama has seen a
6 dramatic increase in the waters qualifying for
7 the highest quality designations and use
8 classifications and, likewise, a dramatic
9 decrease in those falling into the lowest use
10 classifications.
11 As measured by drinking water
12 quality, impaired water bodies, and waterbody
13 designations and use classifications, water
14 quality in Alabama has improved significantly
15 over the years.
16 Moving on to the data from the land
17 media, we begin by looking at an area that has
18 had heightened level of public interest in the
19 last few years, landfills. Landfills are a
20 necessary feature if we are to dispose of the
21 solid waste generated by each of us in a safe,
22 efficient, and effective manner.
23 In 1989, Alabama had 141 unlined
24 solid waste landfills. All of those have been
25 closed, and today there are 32 state-of-the-art

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1 lined, MSW-permitted landfills handling all the
2 municipal solid waste in Alabama.
3 Alabama, like other states, has had
4 to deal with not only permitted landfills but
5 also with unauthorized solid waste dumps.
6 Since 2009, more than 2,000
7 unauthorized solid waste dumps have been
8 remediated. More than 1,450 of those have been
9 remediated by actions against the responsible
10 parties, while more than 550, representing
11 innocent landowners, have been cleaned up using
12 funds provided by the dollar-per-ton fee on solid
13 waste disposed of in landfills, which was
14 initiated in 2009.
15 Each of these categories continues
16 to show steady improvement over the two years
17 since we last reviewed them.
18 In addition to safely disposing of
19 solid waste, efforts have been expanding to
20 reduce the total amount of solid waste in Alabama
21 by promoting recycling. Once again, significant
22 progress has been made during the last two years
23 just as it has been in prior years.
24 The solid waste reduction rate in
25 Alabama today is more than five times what it was

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1 in 1989 and it has now surpassed the 25 percent
2 recycling goal set back in 1991 and compares
3 favorably with national averages. The total now
4 comes to 2.5 million tons per year. That is a
5 noteworthy accomplishment.
6 Scrap tires present special problems
7 as fire hazards and breeding grounds for vectors.
8 Since 2006, more than 350 illegal scrap tire
9 dumps containing 11 million tires have been
10 cleaned up.
11 Today, solid waste in Alabama's
12 environment is being dealt with far more
13 responsibly.
14 In the past, underground storage
15 tanks, typically found at gas stations, have been
16 subject to leaks due to corrosion or physical
17 damage. Leaking petroleum products contaminate
18 both soil and groundwater. New regulations and
19 technology now prevent or provide for early
20 detection of leaks from tanks installed in recent
21 years. But many legacy sites exist in Alabama
22 and throughout the nation.
23 Since 1989, more than 12,000 leak
24 sites have been identified in Alabama. More than
25 11,000, or 92 percent, have been cleaned up with

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1 the remaining 900 in some stage of the clean-up
2 process.
3 There is much less contaminated soil
4 and groundwater in Alabama now than there was in
5 1989.
6 This final state of the environment
7 slide shows what has been happening with other
8 contaminated legacy sites known as brownfields.
9 These most often are old industrial sites. As
10 with underground storage tanks, new regulatory
11 programs and technology have all but halted the
12 creation of new brownfield sites.
13 The brownfield program has
14 identified 648 legacy brownfield sites in
15 Alabama. Since 2001, 430, or two-thirds, of
16 these sites, totaling 6,000 acres, have been
17 returned to productive use and 84 of the
18 remaining sites, totaling more than 7,000 acres,
19 are actively enrolled in the brownfields program.
20 The land returned to productive use
21 is very often in prime areas for future
22 industrial development. Both the environment and
23 economic prospects in Alabama have been improved
24 since 2001 because of this program.
25 As reports to you during the last

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1 few years have set out, the Department, like most
2 states, has taken significant steps to address
3 environmental quality issues related to Coal
4 Combustion Residuals, CCR, often referred to as
5 coal ash, and Per- and Polyfluoroalkyl
6 substances, PFAS.
7 With coal ash, in 2018 the
8 Department and the Commission undertook initial
9 CCR rulemaking. The rules were updated in 2020.
10 In 2018, the Department took significant
11 enforcement actions for groundwater contamination
12 from coal ash impoundments. We are in the midst
13 of a permitting program to issue permits for the
14 closure of CCR impoundments and for the
15 remediation of contaminated groundwater.
16 Concern for the long-lived, widely
17 used compounds known as PFAS has been increasing
18 in recent years. This has led the Department to
19 have every public drinking water system in
20 Alabama test for the presence of a panel of PFAS.
21 Three out of the 579 drinking water systems in
22 Alabama tested positive for PFAS at or above the
23 lifetime consumption health advisory level and,
24 in addition to the Department, have taken several
25 actions to control PFAS.

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1 We are still in the early stages of
2 the CCR and PFAS programs, so trends have not yet
3 been established, but we will be monitoring,
4 analyzing, and reporting those trends as they
5 emerge.
6 The quality of Alabama's
7 environment -- as measured by air emissions,
8 meeting or beating water quality standards, and
9 remediated legacy soil contamination -- has been
10 improving continuously over the years and it has
11 continued that improvement in the two years since
12 we last reviewed the data. Hard data shows the
13 progress.
14 The progress is evidence of the
15 cooperative efforts of federal and state
16 regulatory agencies, as well as industry, the
17 environmental community, and involved citizens.
18 That is not to say there was always agreement
19 among all the players about important issues.
20 Quite the contrary, opposing points of view often
21 occurred but often that led to better results.
22 Results are what we all look for.
23 This report is to look back at some
24 highlights of achievement and is a commitment to
25 continue the work.

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1 The state of the environment in
2 Alabama is much improved over what it was 20 to
3 30 years ago. Our citizens breathe much cleaner
4 air, have higher quality water, and can be
5 assured that solid waste management and
6 contaminated land remediation have significantly
7 progressed. The current state of the environment
8 in Alabama is very good and all trends are
9 favorable.
10 Now, I'd like to change the topic
11 just briefly. We have as one of our main
12 objectives to develop our employees. Our
13 personnel are our greatest asset. And I often
14 take the occasion to recognize those who have
15 achieved the development that we are seeking to
16 have them engage in.
17 Today I would like to recognize
18 Justin Rigdon.
19 Would you -- are you in here?
20 There he is. Please stand. Justin
21 just earned his PE designation six days ago. So
22 he is a brand-new PE. And I want to congratulate
23 him and thank him very much for his work.
24 (Audience applause.)
25 MR. LeFLEUR: And as I say to

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1 our new PEs, you do get a raise.
2 Okay. With that, that completes my
3 report for today. I will be happy to answer any
4 questions you have.
5 DR. MILLER: I have one
6 question, Mr. Director. Do we have any sort of
7 program or -- to me it seems like we have a lot
8 of people who are throwing away computers in the
9 garbage can and lithium ion batteries and old TVs
10 and stuff like that. Does the Department have
11 any programs to combat that --
12 MR. LeFLEUR: Recycle
13 electronics?
14 DR. MILLER: Yes.
15 MR. LeFLEUR: We don't have a
16 specific program for electronics that we
17 administer. However, we work with landfills and
18 various communities about recycling in general.
19 And part of the recycling is the recycling of
20 electronics. So we work with the local
21 communities, as opposed to having a statewide
22 program. We give out about -- I think it's about
23 $2 million per year in recycling grants to
24 municipalities for a number of different
25 recycling activities.

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1 DR. MILLER: Okay. Thank you.
2 Any more questions?
3 MS. PERRY: I have a question on
4 the scrap tire recycling. Even though it looks
5 like you're making some headway with it, are we
6 really making headway with it with 11 million
7 tires that we reported in 2006? And where do
8 those tires go in the recycling process?
9 MR. LeFLEUR: Well, we have been
10 working for many years on a recycling program for
11 scrap tires. The bulk of the scrap tires that
12 are collected and eventually -- we pick them up
13 from things like pastureland or alongside of the
14 road. These are places where they're not
15 controlled. They can go a number of different
16 places.
17 But the biggest reuse of the scrap
18 tires currently is in the fuel sector.
19 Typically, for cement kilns. They have the air
20 pollution control equipment to be able to burn
21 those tires and still meet environmental
22 requirements. But, primarily, it's fuel.
23 We're working on other types of
24 recycling. In fact, we have a ribbon-cutting
25 coming up in the next week or two with the

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1 Department of Conservation and Natural Resources.
2 They are repaving some of the roads in the state
3 parks, two state parks, using rubber-modified
4 asphalt, where crumb rubber is mixed with asphalt
5 and it gives it qualities that are very
6 helpful -- skid resistance, that sort of thing.
7 And we have a number of other
8 demonstration projects going on. The walking
9 track out here between this building and the lab
10 is from recycled scrap tires. We're also using
11 recycled scrap tires, scrap -- rubber-modified
12 asphalt in the paved area for our new Mobile
13 field office. That's been one of the design
14 characteristics that we have requested. Also,
15 using it for curbing and a walking track at the
16 -- in the new Mobile field office.
17 We want to expand the recycling
18 scrap tires. Right now fuel is the most widely
19 used form of recycled tires, but we're trying to
20 work on other ones, also.
21 Thank you. Thank you for that
22 question. I hope I answered it.
23 MS. PERRY: Thank you.
24 DR. MILLER: Any further
25 questions?

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1 (No response.)
2 DR. MILLER: Thank you,
3 Mr. Director.
4 MR. LeFLEUR: Thank you.
5 DR. MILLER: Our next item on
6 the agenda is a report from the Commission chair.
7 And I would like to report that this
8 week I was driving down I-85 toward town and I
9 noticed a nice, large, very readable sign that
10 says "You are now entering the Alabama River
11 watershed." And it encouraged people not to
12 litter and not to, you know, soil the watershed.
13 But it was a very nice and very readable sign,
14 and I think it's just been put up because I just
15 noticed it this week.
16 MR. LeFLEUR: Mr. Chairman, I
17 can mention that that is an ADEM program to try
18 to help address litter in the state. We're
19 having 48 signs put up in the interstates around
20 Alabama. Right now the Department of
21 Transportation spends between $6- and $7 million
22 a year just for litter in their rights of
23 way. That doesn't include local roads and so
24 forth. But we're working on that program.
25 Thank you for recognizing it.

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1 DR. MILLER: Well, I knew it was
2 from ADEM. But perhaps we should ask the ALDOT
3 people to put a little disclaimer at the bottom
4 that this is supplied by your ADEM. Anyway.
5 Also, it's time again to evaluate
6 Director LeFleur, and we're going to ask the
7 Personnel Committee to start a job performance
8 evaluation covering the period of October 10th,
9 2020, which was the day after our last report,
10 through the next meeting, which is August, I
11 guess -- that's not right. No. It will be in
12 October again. Anyway, we need to get started on
13 that. And we're going to invite members of the
14 Commission and members of the public to submit
15 their thoughts on Director LeFleur's performance.
16 We will circulate those among the
17 Committee members, our Commission members, and
18 the Personnel Committee will take those up and
19 then we will vote on them at the Commission in
20 October.
21 The deadline -- Debi, when would the
22 deadline be? July 31st? Is that right?
23 MS. THOMAS: Yes, it would be
24 end of July. Yes, sir.
25 DR. MILLER: The end of July

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1 would be the deadline for submitting your
2 evaluation, and we look forward to hearing from
3 everyone.
4 Agenda item 4 is the Sierra Club
5 versus ADEM and Alabama Power Company, EMC Docket
6 No. 21-02.
7 The Commission will consider the
8 Hearing Officer's Recommendation of Dismissal.
9 The Hearing Officer recommends that the
10 Commission dismiss this appeal, with prejudice.
11 And I think that the Sierra Club and ADEM and
12 everyone is in agreement that this should be
13 dismissed.
14 So we have been furnished the
15 details of this for our evaluation prior to the
16 meeting. And I would entertain a motion from the
17 Commission regarding the Hearing Officer's
18 Recommendation of Dismissal.
19 MR. WALTERS: I move to adopt
20 the Hearing Officer's Recommendation for
21 Dismissal.
22 DR. MILLER: Is there a second?
23 MR. MASINGILL: Second.
24 MS. PERRY: I second.
25 DR. MILLER: There has been a

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1 motion and a second.
2 Any further discussion?
3 (No response.)
4 DR. MILLER: If not, let's call
5 for the question. All in favor of dismissal,
6 raise your right hand.
7 (All Commissioners raise hand.)
8 DR. MILLER: All opposed, same
9 sign.
10 (No response.)
11 DR. MILLER: Motion carries.
12 Seems strange that we're all up here
13 in a row today versus having a two-level
14 approach.
15 All right. Is there any other
16 business that we need to consider today on our
17 agenda?
18 (No response.)
19 DR. MILLER: If not, let it be
20 noted for the record our next meeting is August
21 13th, 2021.
22 Does anyone know of a conflict at
23 this point with that date?
24 (No response.)
25 DR. MILLER: If not, our next

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1 item would be to open the floor for statements by
2 members of the public who have registered to
3 speak. And we have one request today from James
4 Endsley regarding a proposed regulation.
5 Mr. Endsley.
6 MR. ENDSLEY: Thank you. I know
7 it's three minutes, but I ain't even going to
8 take that long. Are we ready?
9 DR. MILLER: I think so.
10 MR. ENDSLEY: All right. Well,
11 good morning, Commissioners, Director LeFleur. I
12 prepared a 20-minute speech that I got down to
13 two minutes and 50 seconds after about 20
14 revisions, and I'm not even going to read it.
15 The reason why is I've actually got two
16 detailed proposals that I'm going to submit to
17 the Chairman and Director LeFleur for later, so
18 what's the point in going through the whole thing
19 now?
20 The point is you made a mention
21 about air quality, and air quality has gotten
22 better. I love the things that you-all are
23 doing, but the one thing that he did mention was
24 more stringent regulations. And those stringent
25 regulations are affecting homeowners.

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1 So for me, for example, I'm trying
2 to build a new home, and those regulations are
3 costing me an additional $12,000 because I can't
4 clear my trees and burn them on my property
5 because of a neighbor that has filed a complaint
6 against me.
7 So this proposal has an amendment to
8 that regulation that says maybe we can do
9 something about that 500-foot regulation. Maybe
10 we can drop it down to 200 feet for certain types
11 to burn or maybe 100 feet that's just a leaf
12 burner. What I got reported for was burning a
13 small pile of leaves on my property and that was
14 it.
15 So now I've gotten threatened with a
16 $25,000 fine if I ever burn anything on my
17 property ever again. So I own three acres of
18 land. There is no reason why I shouldn't be able
19 to burn a small pile of leaves on three acres of
20 land.
21 So 500 feet is a long way. I don't
22 know if you have ever stepped it, but it's a long
23 way. And to me it just seems, you know, a little
24 ridiculous that we can't do that.
25 Like I said, I get it. I know why

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1 it's there, you know, particulates in the air. I
2 get all that, all the things. Can we at least
3 look at the length of it and see if we can't
4 amend it to allow for certain things?
5 Or even this, allow for certain burn
6 permits during winter months. I know the summer
7 months we have to worry about because of the
8 ozone levels, you know, warm air and all that
9 good stuff. I understand that. But even during
10 the winter months in rural areas or suburban
11 areas that don't have high pollution, you know,
12 maybe we can look at those things and see if we
13 can allow it at different times throughout the
14 year, just different areas.
15 And, bottom line, even if we change
16 it, you-all have the ability to put a burn ban
17 anywhere you want, right? I mean, you put a burn
18 ban on 12 counties every year from May to August
19 or October, something like that. Is that right?
20 I know you-all did last year. I don't know if
21 you're still doing it this year. But, I mean,
22 you-all have that ability to do that. So even if
23 things start getting out of hand, you can always
24 shut it right back down. So all I'm saying is at
25 least open it up and see what happens.

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1 In the past month I have drove by
2 nine different homes that have fires burning in
3 their yard. And I guarantee you not a single one
4 of them probably even know that there's a 500-foot
5 rule. Probably not a single one of them. I
6 never even heard of it. I think the only people
7 that do know it are the ones like me who got hit
8 with a fine or a citation or the people like
9 you-all who are actually in that industry and
10 know that.
11 So, again, I like air quality. I
12 don't want to mess it up. All I'm saying is let's
13 just look at it and see if this is really going
14 to make an impact. That's all I got. And, like
15 I said, I will drop these off for you-all later.
16 DR. MILLER: Thank you.
17 MR. ENDSLEY: Thank you-all for
18 you-all's time.
19 DR. MILLER: Thank you.
20 MR. McKINSTRY: Where is your
21 homesite?
22 MR. ENDSLEY: Moody, Alabama.
23 MR. MASINGILL: Is that in
24 Jefferson County?
25 MR. ENDSLEY: We're about 30

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1 miles east of Birmingham. And it's a nice area.
2 MR. McKINSTRY: I've got a
3 question maybe for the Director on that. But
4 with the popularity of outdoor fireplaces and
5 fire pits now, how does that -- do they fall
6 under the same regulation or --
7 MR. LeFLEUR: Well, this is an
8 open burning requirement, and I have to defer to
9 our Air Division folks for the expertise on when
10 an outdoor fireplace becomes an open burning.
11 MR. ENDSLEY: I actually have an
12 answer for this, because I already got it.
13 Recreational, so fire pits and
14 fireplaces outdoor are allowed. But what I have
15 been told is within reason. So, you know, I have
16 been told that open burning is a privilege, and it
17 is. And all I want to do is extend it to more
18 people. But, yes, you can have fire pits and
19 campfires. You just can't have burning leaves
20 for some unknown reason. I don't know what the
21 difference is between campfire and burning
22 leaves, but that's another story, per his Air
23 Quality people.
24 DR. MILLER: Any more questions
25 for Mr. Endsley?

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1 (No response.)
2 DR. MILLER: Thank you for
3 coming today.
4 MR. ENDSLEY: Thank you for your
5 time. Thank you.
6 DR. MILLER: Okay. I think that
7 was -- that sort of ends up where we need to get
8 to today.
9 I will entertain a motion to
10 adjourn.
11 MS. PERRY: I move to adjourn.
12 MR. MASINGILL: Second.
13 DR. MILLER: All in favor, say
14 aye.
15
16 (All Commissioners say "aye.")
17 DR. MILLER: We're adjourned.
18 Thank you.
19 (Proceedings concluded at
20 11:41 a.m.)
21 **********
22
23
24
25

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1 STATE OF ALABAMA)
2 COUNTY OF ELMORE)
3
4
5 I hereby certify that the above
6 proceedings were taken down by me and transcribed
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Part B

Attachment Index

Attachment 1 **Agenda**

Attachment 2 **Director's Slides**
(Agenda Item 2)

Attachment 3 **Order adopting Hearing Officer's Recommendation of Dismissal**
(Agenda Item 4)

Attachment 1

Amended 5/28/21

AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: June 11, 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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4.	Sierra Club v. ADEM, and Alabama Power Company EMC Docket No. 21-02 (NPDES-Related Matter)	2
5.	Other business	2
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PUBLIC COMMENT PERIOD		2
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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission

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

1. CONSIDERATION OF MINUTES OF MEETING HELD ON APRIL 9, 2021

2. REPORT FROM THE ADEM DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. SIERRA CLUB V. ADEM, AND ALABAMA POWER COMPANY, EMC DOCKET NO. 21-02 (NPDES-RELATED MATTER)

The Commission will consider the Hearing Officer's *Recommendation of Dismissal*. The Hearing Officer recommends dismissal of this appeal with prejudice. The Hearing Officer's Recommendation is based on his consideration of the parties' *Stipulation for Dismissal*, in which the parties agreed to stipulate to dismissal of this appeal with prejudice, pursuant to Ala. Admin. Code r. 335-2-1-.21(2), and each party agreed to bear its own fees and costs. The subject of this appeal is ADEM's reissuance of NPDES Permit No. AL0002879 to Alabama Power Company, Barry Steam Electric Plant, Bucks, Alabama, on December 9, 2020.

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

Report
on
State of the Environment in Alabama
to
Alabama Environmental Management Commission

June 11, 2021

adem.alabama.gov

Alabama Department Of Environmental Management

The Environment: Then verses Now

- What does the Alabama public think?
- What does the data show?

Alabama Department Of Environmental Management

Survey of Public Opinion

- Every 5 years 1998 – 2018 [5 times]
- Correct perceptions:
  - 92% rank environment good vs. 76% in 1998
  - 49% rank water cleaner than 25 yrs ago vs. 19% in 1998
  - 43% rank air cleaner than 25 yrs ago vs. 18% in 1998
  - 90% agree standards are protective of human health and the environment

Alabama Department Of Environmental Management

Survey of Public Opinion

- Incorrect perceptions:
  - 73% do not realize motor vehicles biggest source of air pollution in Alabama and Nation
  - 89% do not realize storm water biggest source of water pollution
  - 44% do not perceive environmental laws are being enforced in Alabama

ADEM Alabama Department Of Environmental Management

AIR DATA

ADEM Alabama Department Of Environmental Management

Air Quality and related standards

- PM2.5
- Ozone
- NO_x
- SO_2
- CO
- Pb
- Haze

ADEM Alabama Department Of Environmental Management

Revisions to Air Quality Standards and Goals

- PM2.5 – 1971; 1987; 1997; 2006; 2012
- Ozone – 1971; 1979; 1997; 2008; 2015
- NO_x – 1971; 2010
- SO_2 – 1971; 2010
- CO – 1971
- Pb – 1978; 2008
- Haze – goal for 2018 set in 2008

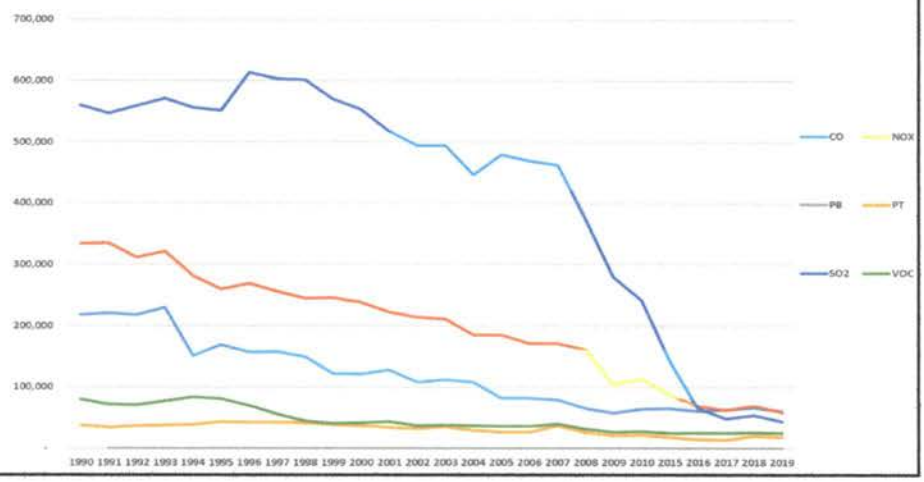
ADEM Alabama Department Of Environmental Management

Statewide Attainment of Air Quality and related standards

- PM2.5 – 2013
- Ozone – 2014
- NO_x – 1971
- SO_2 – 1977
- CO – 1971
- Pb – 2015
- Haze – 2013

Alabama Department Of Environmental Management

AL Emissions from Major Sources (tons) 1990-2019



Alabama Department Of Environmental Management

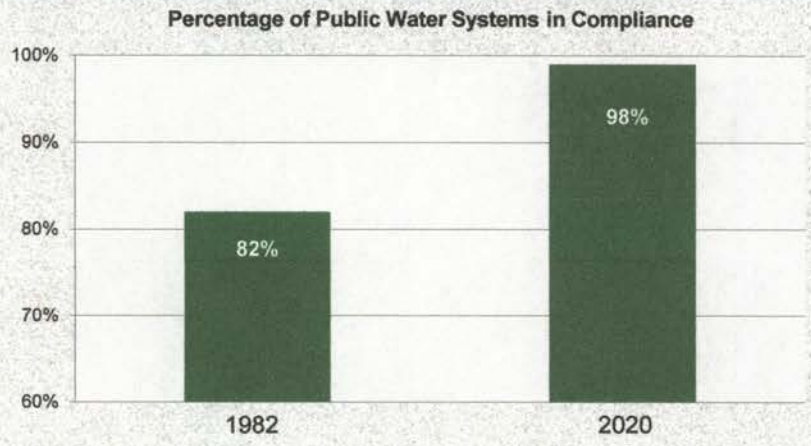
WATER DATA

Alabama Department Of Environmental Management

Number of Drinking Water Contaminants Regulated

	1982	2020
• Organic chemicals	7	55
• Inorganic chemicals	10	19
• Radionuclides	3	7
• Microbes	3	8
Total	23	89

Alabama Department Of Environmental Management



ADEM Alabama Department Of Environmental Management

303(d) Impaired water body / pollutant combinations 1998-2020

	Listed	Ending
River/Stream (miles)	12,765	4,057
Lake/Reservoir (1000s ac)	546	199
Ocean/Estuary (1000s ac)	563	463

ADEM Alabama Department Of Environmental Management

Water Designations & Classifications

	1982	2020
• Highest Quality Waters:		
– Outstanding National Resource Waters		
➢ miles	0	805
➢ acres	0	1,946
– Outstanding Alabama Waters		
➢ miles	0	343
➢ acres	0	3,651
– Treasured Alabama Lakes		
➢ acres	0	40,065
• Lowest Use Classifications:		
– Lower than Fish & Wildlife		
➢ miles	713	138

ADEM Alabama Department Of Environmental Management

LAND DATA

ADEM Alabama Department Of Environmental Management

Landfills

- Improved landfills 1989 - 2020:
  - 141 unlined MSW landfills closed
  - 32 state-of-the-art lined MSW landfill permits today

ADEM Alabama Department Of Environmental Management

Unauthorized solid waste dumps (UAD)

- 2,017 UADs remediated 2009 – 2020
  - 1,454 UADs remediated by responsible parties
  - 563 UADs innocent landowners held harmless

ADEM Alabama Department Of Environmental Management

Solid waste & Scrap tire recycling

- Solid waste reduction since 1989
  - rate increased from 5% to >25%
  - rate increased from .2 million TPY to 2.5 million TPY
- Scrap tire cleanup since 2006
  - 356 illegal scrap tire dumps cleaned up
  - 11 million passenger tires cleaned up

ADEM Alabama Department Of Environmental Management

Underground Storage Tanks (UST)

Since 1989:

- 12,235 UST leak sites identified
  - 11,333 UST sites cleaned up
  - 902 UST sites currently being cleaned up

ADEM Alabama Department Of Environmental Management

Brownfields (BF)

- 648 BF sites identified 2001 – 2020
  - 430 BF sites returned to productive use
    - 6,002 acres returned to productive use
  - 84 BF sites currently actively enrolled
    - 7,759 acres currently actively enrolled

ADEM Alabama Department Of Environmental Management

Coal Ash & PFAS

- Coal Ash:
  - Rulemaking,
  - Enforcement
  - Closure & remediation
- Per and Polyfluoroalkyl Substances;
  - Testing
  - Controls

Attachment 3

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

SIERRA CLUB,	)	
Petitioner,	)	
v.	)	
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	**EMC DOCKET No. 21-02**
Respondent	)	**NPDES PERMIT No. AL0002879**
and	)	
ALABAMA POWER COMPANY,	)	
Intervenor-Respondent.	)	

ORDER OF DISMISSAL

Before the Environmental Management Commission (the Commission) in the above appeal is the Hearing Officer's Recommendation of Dismissal dated May 21, 2021. Based upon the record in the proceeding, including the Parties' Stipulation for Dismissal, the Commission hereby ORDERS, ADJUDGE and DECREES as follows:

1. That the Hearing Officer's Recommendation of Dismissal is hereby adopted;

2. That pursuant to the adoption of the Hearing Officer's Recommendation of Dismissal, the Commission orders that the above appeal is dismissed with prejudice, with each party bearing its own fees and costs;

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 Recommendation of 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 11th day of June 2021.

APPROVED:

Commissioner

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 11th day of June 2021.

Samuel L. Miller, Chair
Environmental Management Commission
Certified this 11th day of June 2021

EXHIBIT A

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

SIERRA CLUB,	)	
Petitioner,	)	
v.	)	
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	**EMC DOCKET No. 21-02** **NPDES PERMIT No. AL0002879**
Respondent	)	
and	)	
ALABAMA POWER COMPANY,	)	
Intervenor.	)	

RECOMMENDATION OF DISMISSAL

In consideration of the Stipulation of Dismissal filed by the parties to this action on May 21, 2021, the undersigned recommends to the Alabama Environmental Management Commission that the above captioned action be dismissed with prejudice.

DONE this the 21st day of May, 2021.

JAMES F. HAMPTON
Hearing Officer
Alabama Environmental Management Commission
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