Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 20, 2014
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 June 20, 2014.

\[Signature\]

W. Scott Phillips  
Vice Chair  
Alabama Environmental Management Commission

Certified this 15th day of August 2014.
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June 20, 2014

Convened: 10:58 a.m.
Adjourned: 12:55 p.m.

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Part A
VICE CHAIR PHILLIPS: Good morning. I want to call the meeting of the Alabama Environmental Management Commission to order. I want to acknowledge that we have a quorum here today. Before we get started, we have a lot of people here. Some of you may have been here for the first time. I just want to remind you if you have a cell phone, please put it on silent or off so it doesn't disrupt the meeting today.

With that, we will move to agenda item number two, consideration of the meeting minutes of the Commission meeting held on April 11th, 2014. I will entertain a motion from the Commission regarding the minutes.

DR. RICHARDSON: So moved. MS. MERRITT: Second. VICE CHAIR PHILLIPS: I have a motion and a second to adopt the minutes of the April 11th, 2014 Commission meeting as distributed.

Do I have any discussion? (No response) VICE CHAIR PHILLIPS: Being no discussion, all in favor with the motion, signify with the sign "aye." (All Commission members indicate "aye.") VICE CHAIR PHILLIPS: Motion carries. Thank you. Agenda item number two, we will have the report from the Director. Mr. Director.

MR. LeFLEUR: Good morning, and welcome to all of you present for the fifth of the six scheduled meetings of the Alabama Environmental Management Commission for Fiscal Year 2014. In today's report, I will update you on the budget, and then focus on several topics related to Departmental results including: Updated Resource Conservation and Recovery Act, RCRA dashboards; Departmental Innovations; announce EPA's granting primacy for another Departmental program; and, finally,
1 recognition of individual achievements by  
2 staff members.  
3 As for the Fiscal Year 2014  
4 budget, we are now into the ninth month and  
5 we continue to be on target with  
6 anticipated revenues and expenditures in  
7 both the State and Federal budget  
8 components. As we prepare to enter the  
9 final quarter of the current fiscal year,  
10 there is no reason to believe that any  
11 major change will occur in the Department's  
12 finances before the new fiscal year.  
13 In past meetings, we have  
14 reviewed RCRA, air, and water dashboard  
15 graphs. These reviews are intended to be a  
16 regular part of my report to the  
17 Commission. Having completed a full  
18 rotation through the dashboards for all  
19 three programs, it is now time to look at  
20 updated RCRA dashboards again. Today, we  
21 will review updates to the same type of  
22 information presented previously.  
23 These graphs are a little bit  
24 fuzzy, so I apologize for that. Alabama's  
25 total hazardous waste universe of more than  
26 5,000 facilities is broken down into four  
27 categories: Treatment, storage and  
28 disposal facilities, TSDFs -- shown in  
29 purple -- large quantity generators, LQGs  
30 -- shown in yellow -- small quantity  
31 generators -- the blue portion -- and  
32 others represented in orange.  
33 As you may recall from last  
34 summer when I introduced you to the RCRA  
35 dashboards, the majority of the RCRA  
36 regulated facilities in our state fall into  
37 the small generator and "other"  
38 categories. These facilities either  
39 temporarily store small amounts of  
40 hazardous material or simply transport  
41 materials that are defined as hazardous.  
42 This large number of small  
43 facilities, however, represents a very  
44 small fraction of the total hazardous waste  
45 generated and managed in Alabama and  
46 likewise represents a very small risk of  
47 environmental exposure.  
48 By contrast, there are fewer  
49 large generators of hazardous waste, but  
50 they represent the vast majority of  
51 hazardous material in the state.  
52 Interestingly, since our last update, there  
53 has been an increase in the number of  
54 hazardous waste notifications received by  
55 the Department from retail stores.  
56 Pharmacies and big box stores --  
57 which have now been categorized as large  
58 quantity generators -- have begun to  
59 routinely provide notice of hazardous waste  
60 activity based on the management of expired  
61 pharmaceuticals, such as nicotine patches.  
62 In light of this trend, EPA has begun  
63 information gathering for potential RCRA  
64 regulations concerning retail operations.  
65 These next dashboards will focus  
66 on the large quantity generators which  
67 represent the largest potential hazardous  
68 waste risk.  
69 On this second dashboard, you  
70 see a comparison of the percentage of  
71 annual inspections coverage of large  
72 quantity generators made in Alabama for the  
73 period 2010 through year-to-date, 2014, to  
74 the national standard of 20 percent  
75 established by EPA. Although I refer to  
76 this as year-to-date data, the 2014 data is  
77 not realtime data, but rather is updated  
78 periodically by EPA from  
79 national enforcement -- a national  
80 enforcement database.  
81 Nevertheless, by year end that  
82 bar will also exceed the 20 percent  
83 standard by a significant margin. This  
84 measure of the rate of inspections is one  
85 of our grant commitments made each year to  
86 EPA. If you look closely, you can see the  
87 dotted blue line hovering around the 20  
88 percent EPA standard. That dotted line is  
89 the national average percentage of  
90 inspections for all states.  
91 As you can see, the ADEM RCRA  
92 program consistently meets or exceeds the
EPA 20 percent requirement and national averages for the rate of inspections. This third dashboard shows the percentage of inspected large quantity hazardous waste generator facilities that were found to be in significant noncompliance, S-N-C or SNC, with an applicable state or federal requirement. The percentages of these large facilities found to be in significant noncompliance in both Alabama and the nation are small, thankfully. For the past several years, ADEM inspectors have been consistent with or have slightly exceeded the national average of other state inspectors in identifying SNCs during facility inspections. You see the red portion of this slide representing the percentage of sites where EPA participated with ADEM in the inspection -- in the inspection is higher than the other percentages shown. The reason for this is that ADEM and EPA jointly inspect the small number of facilities where there is either a high probability or a history of significant noncompliance. This fourth slide is an activity dashboard. It shows the number of facilities with some type of enforcement action. The graph is a comparison of informal enforcement actions, including Notices of Violation, to formal enforcement actions, primarily Administrative and Consent Orders. The yellow bar shows the number of Alabama facilities with formal enforcement actions, and the light blue bar indicates the number of Alabama facilities with informal enforcement actions. As you can see, the number of facilities with informal enforcement, such as technical assistance, Warning Letters, and NOVs is roughly twice the number of those that receive Orders or litigation, yet -- as shown on the previous slide -- our overall significant noncompliance rate is trending down and remains less than five percent. This is consistent with the recent compliance related research and the Next Generation Compliance concept discussed in the April Commission meeting. To summarize, these dashboards show: An increasing universe of hazardous waste handling facilities, primarily in the retail sector; the rate of inspections continues to exceed national averages; identification of facilities found to be in significant noncompliance is on par with national averages; and, the compliance strategy adopted by the Department is achieving the intended results. As has been noted previously, the dashboards presented today are just a few of the more than 150 available on the EPA Web site. I have previously reported to you on the Department's budget and on its performance, given that limited budget. Periodically, I have reported on individual programs such as recycling, work on impaired water bodies, and air programs that have resulted in the attainment of fine particle pollution standards for the first time in 30 years for the entire state. These past reports were intended to give the Commission and the people -- and the public -- excuse me -- a sense of how the Department is using funding that is 49th in the nation to obtain results that are in the top ten in the nation. Today, I would like to address the issue of what will be necessary for the Department to continue to be one of the top programs in the nation with the lowest funding in the nation. Clearly, something has enabled the Department to position itself as a low cost provider of high quality service. Employing topnotch personnel, our greatest asset, is certainly the starting point. But how the efforts of those individuals have been channeled is what converts the
1 potential of those employees into results.
2 A critical component of past and
3 future success is the embracing of
4 innovation and the implementation of
5 forward leaning ideas. Because this
6 involves change, for many organizations,
7 especially public entities, this is a very
difficult process. At times, this process
9 can be doing something entirely new, while
10 at other times it may involve being an
11 early implementer of an idea developed
12 elsewhere. ADEM has used both.
13 This notion of innovation and
14 embracing of forward leaning ideas has been
15 applied in technical, operational,
16 organizational, communication, and other
17 activities. It has also been applied in
18 both the regulatory and non-regulatory
19 programs.
20 First, we will look at some of
21 the past and ongoing actions that have
22 already paid off in the form of improved
23 performance, including service to the
24
25 public, or have lowered costs. After
26 looking at the past and present, we will
27 then look at some of the innovations we
28 will be considering in the future. Before
29 beginning this group of slides, I ask your
30 indulgence with the large number of slides
31 and the amount of detail. While this could
32 have been spread out over two or three
33 reports, I think this will give you a
34 better idea of the scope and impact of
35 innovation at the Department. So please
36 bear with me.
37 This first slide outlines the
38 groups into which these innovative current
39 activities have been categorized based on
40 the primary type of benefit realized from
41 the innovation. Many innovations could
42 easily be included in several of these
43 categories. The categories are: Improved
44 productivity and compliance; reduced costs
45 from new technology; leveraging of
46 resources; improved public service through
47 non-regulatory programs; and, an improved
48 environment through non-regulatory
49 programs. These next slides will cover the
50 categories one at a time.
51 In the category of improved
52 productivity and compliance, innovations
53 fall into the following two areas: Data
54 management and organizational and
55 operational changes.
56 First, data management. Like
57 many organizations, efficient data
58 management can result in eliminating the
59 requirement to enter data more than once,
60 which reduces costs, reduces the occurrence
61 of human error, and for a public entity
62 such as ADEM, also facilitates greater
63 transparency.
64 FileNet is the internally
65 accessible system for all documents that
66 allows the Department to be paperless.
67 eFile is a computer application that
68 identifies all FileNet documents related to
69 a given facility and makes them readily
70 accessible for both internal and external
1 operational changes have also had a
2 significant impact on both our productivity
3 and our ability to obtain compliance. At
4 the April 11, 2014 Commission meeting, I
5 reviewed the rationale for and the results
6 achieved from streamlining our inspection,
7 technical assistance, and enforcement
8 activities.
9 Embracing the Next Generation
10 Compliance program recently advocated by
11 EPA is a logical next step after the
12 streamlining activities of the Department
13 over the last several years.
14 A General Permit allows any
15 entity willing to abide by its conditions
16 to simply notify the Department of the
17 entity’s intent to operate under such a
18 permit and then start complying with the
19 conditions. General permits save time and
20 resources for the regulated entity and the
21 Department.
22 GPS tracking of vehicles avoids
23 excessive motor pool costs. Having

1 inspectors perform inspections for
2 combinations of air, water, and land
3 permits in the geographic area increases
4 productivity. ADEM’s Concentrated Animal
5 Feeding Operation regulatory program has
6 been successful in obtaining voluntary
7 participation by facilities that are not
8 legally required to participate. The CAFO
9 program is so successful that EPA is
10 seeking to use many of its provisions in
11 the federal program.
12 Technology is being used to
13 lower costs. Using the Internet instead of
14 traditional telephone lines saves money and
15 provides many additional services. An
16 innovative way to avoid investing funds in
17 older generation computer equipment, while
18 still using applications tied to that
19 equipment, is to obtain service through
20 so-called virtual equipment that is at
21 another location. It may actually be
22 different computer equipment set up to
23 operate like the older generation

1 equipment.
2 New rugged computer tablets,
3 suitable for rigorous field applications,
4 are now available and being used to enter
5 data in the field and have it automatically
6 distributed to the proper databases. When
7 possible, as existing laboratory equipment
8 becomes obsolete, it is being replaced with
9 the latest generation equipment capable of
10 doing multiple analyses simultaneously,
11 which reduces labor costs by more than the
12 added cost of the equipment.
13 The Department has been able to
14 find ways to leverage those resources that
15 are available to it. For example, the
16 initial funding of the State Revolving Fund
17 grants provided to the Department was used
18 to issue revenue bonds secured by low
19 interest loans to municipalities to build
20 water -- drinking water and waste water
21 infrastructure. The sale of such revenue
22 bonds made available more than three times
23 as much in loans to municipalities for

1 infrastructure as would have otherwise been
2 available.
3 When funds were awarded to the
4 Department in a regional settlement with
5 TVA, the Department used the funds to
6 provide grants and low cost loans to public
7 waste water and drinking water systems in
8 the TVA service area for the purpose of
9 installing higher efficiency electric
10 motors.
11 The Non-Point Source Program
12 develops partnerships with water and soil
13 conservation districts and others to
14 combine funding and avoid overlap of
15 efforts. Municipalities have been
16 particularly hard hit in recent years with
17 strained budgets. Often community waste
18 water treatment facilities fall out of
19 compliance and funds are not available to
20 bring them back into compliance.
21 Alabama’s Congressional
22 delegation, USDA, and others have come
23 together to assist financially strapped
1 communities in finding funding to bring
2 their systems back into compliance with
3 ADEM permit conditions.
4 In some of the previous slides,
5 I have highlighted how innovations in
6 Departmental regulatory programs have been
7 improved -- have improved productivity and
8 compliance. Innovations in the
9 Department's non-regulatory programs have
10 also improved productivity and compliance
11 and have improved service to the public and
12 the environment as well.
13 As a public institution, ADEM
14 has an obligation to provide high quality
15 service to the public. This slide
16 identifies a few of the non-regulatory
17 innovations that have improved service to
18 the public.
19 Environmental Justice is a
20 concept that seeks to assure that no group
21 bears a disproportionate environmental
22 burden due to minority or low income
23 status. The Department has a program to
24 reach out to disadvantaged communities
25 utilizing individual EJ coordinators in the
26 air, land, and water divisions.
27 In EJ communities the Department
28 provides targeted one-on-one training on
29 how to find out what is happening in their
30 county and how to file a complaint using
31 the automated eComplaint system. The
32 Department has built on the EPA EJ 2014
33 program to provide increased service to the
34 public.
35 The regulated public is offered
36 the convenience of electronic payments,
37 notification of intent to operate under
38 general permits, and even electronically
39 filling out permit applications online.
40 Municipalities -- municipalities can now
41 apply for drinking water and waste water
42 infrastructure loans year round rather than
43 only during a limited window once per
44 year. Outreach to students, the
45 environmental community, and industry is
46 now done on a planned schedule in addition
47 to an open door whenever issues arise.
48 Just as innovations have
49 improved service to the public in our
50 non-regulatory programs, innovations in
51 non-regulatory programs have also improved
52 the environment.
53 More than ever, Low Impact
54 Development and Green Infrastructure are
55 being recognized as critical elements to
56 having sustainable communities. The
57 Department, in cooperation with the Alabama
58 Cooperative Extension System, Auburn
59 University, and others, has developed a
60 comprehensive manual to show developers and
61 others how to do it. The manual is on the
62 ADEM Web site, and I believe a few computer
63 disks and paper copies are available on the
64 table in the lobby.
65 Our State Revolving Fund loan
66 program now gives LID/Green Infrastructure
67 projects increased weighting in any loan
68 eligibility analysis. Other innovative
69 programs that benefit the environment
70 include the Non-Point Source Education
71 program, the Recycling Fund Grants program,
72 and the Scrap Tire Market Development
73 program.
74 As the last eight slides have
75 illustrated, there is a solid history of
76 using innovation to keep productivity up
77 and costs down, all the while generating
78 substantial benefits for public service and
79 the environment. This is part of the
80 answer to the question of how the
81 Department has been able to use a very
82 small budget to achieve its mission. The
83 next question is: What is in store for the
84 future? Any time we try to look into the
85 future, it's a risky proposition. This
86 slide highlights some of the innovations we
87 will be considering to help us continue to
88 be a low cost provider of top tier
89 environmental regulation in the future.
90 Playing off the Department's
91 data management capabilities, we will be
embracing new applications of our current eEnterprise expertise. ADEM has been and will continue to press EPA to improve its game in data systems. Replacing deplorable, undersized, outdated facilities in Mobile to position us to meet challenges -- looming challenges unique to the gulf coast area is a major initiative, and it will require innovative methods of funding. If ever tightening carbon emission targets are to be met, the energy costs are to be -- and energy costs are to be moderated, demand side initiatives will be required. Water policy is an emerging concern, not only in Alabama, but throughout the nation. An environmental water quality model of Mobile Bay has been in development for more than a decade, and we are not yet at the point where it can be used to set more precise permit limits throughout the bay and its in-flowing watercourses.

1 This allows us to assure water quality without unnecessarily restricting industrial development. Using a common sense approach to environmental regulation, we will seek to eliminate costly and ineffective requirements, such as boutique gasoline in the Birmingham area when opportunities arise. Another common sense initiative is to help develop both the supply and demand for recycled materials as a means to increase recycling. Finally, ADEM seeks to lead by example in forward leaning areas such as reducing energy usage. For the Department, there is an added financial benefit to reducing in-house energy usage. It will eliminate the need for an expensive upgrade to our uninterruptable power supply equipment. Many of the activities shown in these slides keep down costs, others improve program outputs, others serve the public, and some do all three. If we are to continue to be a low cost, high performance organization, we must continue to innovate and adopt forward leaning initiatives. On another matter, but related to the quality of the Department’s programs, I am pleased to report that ADEM has just been notified by EPA that the Department has received full authorization to administer the Federal Groundwater Rule. Alabama is the second state of the eight southeastern states comprising EPA Region 4 to be granted independent program primacy over the federal rule. The one other state in Region 4 that received delegation, did so only by directly referencing EPA’s drinking water program, rather than implementing its own program, as is the case in Alabama. The Department’s Drinking Water program has a long history of top performance, which is reflected in this action by EPA.

Dennis Harrison is the Chief of our Drinking Water Branch. Stand up, Dennis. You are so tall you don’t even need to stand up for everybody to see you. Thank you for a job well done. As noted earlier, our people are our greatest asset, and I would like to recognize some additional people for their achievements. In the interest of time, I cannot introduce all of the people who have participated in outreach activities. But those 57 who took on the extra workload of reaching out to high school students in the ADEM sponsored Earth Day activities are listed on the display board in the lobby. And I ask that those present in this meeting today please stand up and be recognized. Those of you who participated in the Earth Day activities, I want to applaud you-all.

(Audience applause)

MR. LeFLEUR: That was in addition to their normal workload.
Similarly, those 19 employees who took on the extra workload to help fourth grade students gain greater appreciation of Alabama’s water resources by participating in Water Festivals around the state are listed on the display board in the lobby. And if any of you are present here today, I’d like for you to please stand and be recognized.

(Audience applause)

MR. LeFLEUR: The other 17 are still at their desks. Achieving the formal designation of professional engineer requires extensive education, on-the-job experience, and rigorous testing. It’s a significant milestone in the professional life of those pursuing a career in engineering. It is my pleasure to recognize two individuals in the Air Division who have recently achieved that milestone. Ryan Cowart and Paul Hansen, are you with us today?

(Audience applause)

MR. LeFLEUR: Well, we have one. There’s also motivation that he gets a small raise as a result.

Once again, let me close with my thanks to you for serving the state as Commissioners of the Alabama Environmental Management Commission and allowing me to serve in this capacity.

If there are any questions, I will be pleased to address them now.

VICE CHAIR PHILLIPS: Thank you, Mr. Director. Do I have any questions from anyone on the Commission?

(No response)

VICE CHAIR PHILLIPS: Thank you, Mr. Director. Agenda item number three is the report from the Commission Chair. As you can see, I am the Vice Chair and I am sitting here as Chair today. Our Chairman was unable to attend and did not provide me any report that he wanted to provide, and I don’t have anything at this time.

1 met to review the comments, positive and constructive, with respect to Director LeFleur’s performance. And at the conclusion of our discussions, we voted unanimously on four motions. Those motions are being brought today before the full Commission.

There was, in the beginning, a very thorough assessment by every one of our Committee members with respect to the content of the comments that were brought to us with respect to Director LeFleur’s performance. We adopted by vote a draft summary of the written comments on ADEM Director’s Performance Evaluation. That’s important because the Board needs to have that on file.

We had two -- I’m sorry -- three additional motions. We recommended that the Commission request that the State Personnel Board, the Board, approve placement of Director LeFleur in the state paid pay plan at grade range 90, stage 15,
1 and that the Commission requested that the 
2 Board approve an increase in the Director's 
3 pay grade -- pay salary per year to a 
4 salary of $152,618.40. 
5 The second motion, we 
6 recommended that the Commission approve the 
7 participation of using pay -- pay range 
8 grade 90 for salary levels of the ADEM 
9 Director and with the stipulation that the 
10 placing of Director LeFleur in the pay 
11 range is approved by the Board. 
12 And, third, we recommended that 
13 the Commission authorize the Personnel 
14 Committee Chair, that is me, to meet with 
15 Director LeFleur regarding the Summary of 
16 Written Comments on ADEM's Director and his 
17 performance evaluation and to recommend the 
18 recommendations of the Personnel Committee 
19 adopted by the Commission and to accept the 
20 Verification of the Understanding between 
21 the Commission and the Director regarding 
22 the results of the personnel evaluation. 
23 So those are the items that we

1 brought forth in a motion to be reviewed by 
2 the full Committee, full Board. 
3 VICE CHAIR PHILLIPS: Okay. 
4 MR. LAIER: The end of the 
5 year report. 
6 VICE CHAIR PHILLIPS: Thank 
7 you, Chairman Laier. At this time do I 
8 have a motion or motions from the 
9 Commission? 
10 MS. MERRITT: I move that we 
11 accept the motion that's come from the 
12 Chair of the Personnel Committee. I motion 
13 that we accept those motions. 
14 VICE CHAIR PHILLIPS: Okay. 
15 I have a motion to accept the four motions 
16 from the Personnel Committee. Do I have a 
17 second? 
18 DR. RICHARDSON: Second. 
19 VICE CHAIR PHILLIPS: I have 
20 a motion and a second. Is there any 
21 discussion from the Commission members? 
22 DR. RICHARDSON: 
23 Mr. Chairman, just for clarification, I

1 want to make sure that we're not voting on 
2 a motion on motions, that what we're doing 
3 is voting on a motion to accept 
4 recommendations put forth to this body from 
5 the Committee. 
6 VICE CHAIR PHILLIPS: Okay. 
7 I will ask the -- 
8 MS. MERRITT: Correct, 
9 right. 
10 VICE CHAIR PHILLIPS: Okay. 
11 That is the motion that is on the floor. 
12 Thank you for the clarification. 
13 So your second stands? 
14 DR. RICHARDSON: Yes. 
15 VICE CHAIR PHILLIPS: Any 
16 additional discussion? 
17 (No response) 
18 VICE CHAIR PHILLIPS: There 
19 being no additional discussion, everyone in 
20 favor signify with the sign aye and raise 
21 your hand. 
22 (All Commissioners indicate 
23 "aye.")

1 VICE CHAIR PHILLIPS: All 
2 opposed same sign. 
3 (No response) 
4 VICE CHAIR PHILLIPS: Motion 
5 carries. Thank you. And thank you to the 
6 Committee for all your work. We will pause 
7 a moment while we sign the motion to be 
8 carried. 
9 Moving on to agenda item number 
10 two, which is Phillips Truck and Scrap Tire 
11 Removal versus ADEM; EMC docket number 
12 12-01. I want to note that the Commission 
13 would consider the petitioner's dismissal 
14 of request for hearing, which is viewed as 
15 a motion for voluntary dismissal of the 
16 request for a hearing. 
17 I will entertain a motion from 
18 the Commission regarding the petitioner's 
19 motion for voluntary dismissal of the 
20 request for hearing at this time. 
21 DR. MILLER: I move that we 
22 grant the petitioner's motion for voluntary 
23 dismissal.
VICE CHAIR PHILLIPS: I have a second?
DR. CARSON: Second.
VICE CHAIR PHILLIPS: I have a motion and a second to grant the petitioner's motion for voluntary dismissal of the request for a hearing.
All in favor of that motion sign with the sign aye.
(All Commissioners indicate "aye.")
VICE CHAIR PHILLIPS: All opposed same sign.
(No response)
VICE CHAIR PHILLIPS: Motion carries. We will sign the order now.
Moving now to agenda item number six, which is other business. Do we have any other business from the Commission to consider?
DR. LAIER: Yes, sir, I have a --

1 Commissioner Laier.
DR. LAIER: I would like to move that rule -- the Rule Committee study and re-examine rule number 335-2-3-.05, sections one through three, related to requesting -- related to requests from members of the public to appear before the Commission to make public presentations.
I further move that the Rulemaking Committee report back to the Commission in full their findings and along with any recommendations or adjustments as needed to amend this rule.

DR. RICHARDSON: Second.
VICE CHAIR PHILLIPS: Yes, I was trying to get all that. Well --
DR. LAIER: Here you go.
VICE CHAIR PHILLIPS: Okay.
I have a motion to refer to the Rulemaking Committee re-examination and study of rule 335-2-3-.05, sections one through three, and to further report back its findings to the full Commission along with any recommendations as needed to amend the rule, correct?
DR. LAIER: That's correct.
VICE CHAIR PHILLIPS: And I have a second on that motion?
DR. RICHARDSON: That is correct.
VICE CHAIR PHILLIPS: Any discussion with Commission members?
(No response)
VICE CHAIR PHILLIPS: Okay.
With no discussion --
DR. MILLER: I have one question.
VICE CHAIR PHILLIPS: Yes, please.
DR. MILLER: When will that report be expected to come back?
VICE CHAIR PHILLIPS: Very good question. You have any thought on that?
DR. LAIER: No, I haven't given it any.

VICE CHAIR PHILLIPS: I'm the Chair of the Rulemaking Committee, so I guess what I would -- I would ask of the Commission is let us look at the content and the process that we will use to do that and to get back with the Chair and the full Commission on what schedule we think we could do that in. We will need help from the Department, and Robert, you and Debi, so we will need to look at what's reasonable to get the right process in place. Is that okay?
DR. MILLER: That sounds good.
DR. CARSON: Maybe a report by next meeting as to just preliminary report?
VICE CHAIR PHILLIPS:

Progress report -- absolutely. We will also provide a progress report by the next meeting. But before that next meeting, we will commit to get you a schedule and process to get your feedback. Okay. So I
have the motion. I have a second. We've had discussion. Any further discussion to come before the Commission?

(No response)

VICE CHAIR PHILLIPS: No further Commission discussion. All in favor of the motion as proposed and seconded signify with the sign aye and raise your hand.

(All Commissioners indicate "aye.")

VICE CHAIR PHILLIPS: All opposed same sign.

(No response)

VICE CHAIR PHILLIPS: Motion carries. Debi, I know you don't have this written up. So if you will get us something so we get it, you know, over the next week or so, so -- or however you want to do that.

MS. THOMAS: It will be reflected in the transcript if that will be sufficient, and then I can follow through.

and let you-all know exactly --

VICE CHAIR PHILLIPS: Thank you. Okay. Any other business to come before the Commission?

(No response)

VICE CHAIR PHILLIPS: Okay.

We will move to agenda item number seven, future business session. Just a reminder that our next meeting is August 15th, 2014, as always 11 a.m. in this conference room.

Everyone okay with that?

(No response)

VICE CHAIR PHILLIPS: Good.

Move to public comment periods. We have four public comment requests. I'm going to just state the requesting party and Chair Brown's recommendation to the Commission for each one of those, and then we will go back and take a vote.

The first request is Benjamin Eaton, resident of Uniontown on behalf of Black Belt Citizens Fighting for Health and Justice in Uniontown, Alabama. Chair Brown has recommended that the Commission grant the request, subject to the limitation that the presentation focus on how the city of Uniontown's waste water treatment plant offers lessons learned for future policy consideration, rather than a presentation on the status of Uniontown's Waste Water Treatment Plant, which is subject to ongoing litigation. So realize as a Commission, that's what we're going to ask that you agree to do and agree to hear that comment period.

The second request is from Nelson Brooke of Black Warrior Riverkeeper, on behalf of Black Warrior Riverkeeper, Incorporated in Birmingham, Alabama. Chair Brown has recommended that the Commission also grant the request of Mr. Brooke, subject to the limitation that the presentation focus on education on the issues presented by municipal waste water treatment plants for future policy considerations, rather than a presentation on the status of Uniontown Waste Water Treatment Plant, which is the subject of ongoing litigation.

Third request is from David Ludder on behalf of the ADEM Reform Coalition. Chairman Brown has recommended that the Commission grant this request. And the fourth and final request is from Mitchell L. Reid on behalf of the Alabama Rivers Alliance in Birmingham, Alabama, and Chairman Brown has recommended that the Commission grant this request. Do I have a motion or motions from the Commission?

DR. MILLER: I move that we accept the Chairman's recommendations.

VICE CHAIR PHILLIPS: I have a motion that we accept the Chairman's recommendations for the four requests.

Do I have a second?

DR. LAIER: I second.

VICE CHAIR PHILLIPS: I have a second. Any discussion of further --
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<tr>
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<tbody>
<tr>
<td>1  DR. RICHARDSON: Yes,</td>
<td>1  Citizens Fighting for Health and Justice</td>
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<tr>
<td>2  Mr. Chairman. Making sure that, again,</td>
<td>2  hope to see from ADEM and the EMC in the near future, ADEM should</td>
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<td>3  that the recommendation from the Chair includes the limitations</td>
<td>3  require all proper tests before the property is purchased.</td>
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<td>4  placed by the Chair.</td>
<td>4  This will give the city an opportunity to develop another</td>
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<td>5  VICE CHAIR PHILLIPS: As</td>
<td>5  alternative. This will be a Justice Act.</td>
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<tr>
<td>6  acting Chair, I will commit to listen closely. And, please, any of</td>
<td>6  ADEM should make sure all tests are complete before the project</td>
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<td>7  you feel free to do the same thing to remind the speaker of the</td>
<td>7  begins, especially a completed hydrogeologist test. ADEM should</td>
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<td>8  limitation. We also have a limitation of time, I will remind the</td>
<td>8  allow the community an opportunity to voice their concerns about</td>
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<td>9  Commission.</td>
<td>9  any project concerning the water and land.</td>
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<tr>
<td>10 All right. Any other discussion? Thank you for that.</td>
<td>10 Continuing, ADEM should make sure the project have an independent</td>
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<tr>
<td>11 (No response)</td>
<td>11 inspector, project manager, that reports directly to the city and/or ADEM should be required to do an on-site review of all project plans, not just a desk review.</td>
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<tr>
<td>12 VICE CHAIR PHILLIPS: No further discussion. All in favor of the</td>
<td>12 Also, part of ADEM's responsibility should include a policy that makes those that are at fault be</td>
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<td>13 motion to grant the Chairman's recommendations to hear the four</td>
<td>13</td>
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<td>14 requests signify with the sign aye and raise your hand.</td>
<td>14</td>
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<tr>
<td>15 (All Commissioners indicate &quot;aye.&quot;)</td>
<td>15</td>
</tr>
<tr>
<td>16 VICE CHAIR PHILLIPS: All opposed same sign.</td>
<td>16</td>
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<tr>
<td>17 (No response)</td>
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<td>18 VICE CHAIR PHILLIPS: Motions carry. Okay. Just a reminder, I will</td>
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<td>19 repeat for each speaker as you get up we have a ten-minute time</td>
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<td>20 limitation, and some of you have limitations that have been</td>
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<td>21 requested and approved by the Commission. So I will remind you of</td>
<td>21</td>
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<tr>
<td>22 that.</td>
<td>22</td>
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<tr>
<td>23 Mr. Eaton, are you in the room?</td>
<td>23</td>
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<tr>
<td>24 MR. EATON: Yes, sir.</td>
<td>24</td>
</tr>
<tr>
<td>25 VICE CHAIR PHILLIPS: Just a reminder of the time limitation and</td>
<td>25</td>
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<tr>
<td>26 your presentation focus on lessons learned and not on the ongoing</td>
<td>26</td>
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<tr>
<td>27 status of the waste water treatment plant subject to the ongoing</td>
<td>27</td>
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<tr>
<td>28 litigation. Thank you for coming.</td>
<td>28</td>
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<tr>
<td>29 MR. EATON: Thank you, Commissioners, for allowing me this</td>
<td>29</td>
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<td>30 opportunity to give this presentation concerning the waste water</td>
<td>30</td>
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<tr>
<td>31 treatment plant in Uniontown, Alabama. What we Black Belt</td>
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<tr>
<td>VICE CHAIR PHILLIPS: All opposed same sign.</td>
<td>responsible for correcting the problem at their expense.</td>
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<tr>
<td>(No response)</td>
<td>Continuing, all information stated in a report should be verified by</td>
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<tr>
<td>VICE CHAIR PHILLIPS: Motions carry. Okay. Just a reminder, I will</td>
<td>ADEM, from the information presented by the hydrogeologist test</td>
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<td>repeat for each speaker as you get up we have a ten-minute time</td>
<td>number two, this site should never be used for the sake of justice and the health of mankind. So we ask that ADEM give us your word that spray field number two will never be used.</td>
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<td>limitation, and some of you have limitations that have been requested</td>
<td>The citizens should never be put in the position to provide the plan meets requirements that are suitable for this purpose or the application meets its deadline time.</td>
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<td>and approved by the Commission. So I will remind you of that.</td>
<td>Continuing, all the statements above are, a form of injustice.</td>
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</table>
| Mr. Eaton, are you in the room?                                        | Being put in the position to do the work of our agency, ADEM, is unheard of. Now we ask for your help to fix this mess in Uniontown. Black Belt Citizens Fighting for Health and Justice ask: Does ADEM
provide an advocate for Environmental Justice. We ask if those acts in Uniontown would have happened in Hoover, Alabama. We ask who is responsible for Uniontown being in the situation they are in today, an incomplete project and no money? $4.8 million gone.

Black Belt Citizens Fighting for Health and Justice existence is to prevail over this injustice act on this community in the blackbelt area. I apologize.

Black Belt Citizens Fighting for Health and Justice ask that a high level mechanical waste water treatment plant that would clean the water so it can be legally discharged in a nearby stream.

We ask that ADEM compensate for the environmental injustice done to Uniontown by giving the $4 million that ADEM profited from its decision to permit the coal ash to be disposed of in Uniontown's landfill. That ends my presentation.

Any questions?

VICE CHAIR PHILLIPS: Thank you, Mr. Eaton. Do we have any questions from Commissioners? I have one question, Mr. Eaton. Have you met with the Department? Mr. Director, have you met with Mr. Eaton?

MR. EATON: We have met many times.

VICE CHAIR PHILLIPS: And these things are the things that you covered with him?

MR. EATON: We still have a concern based on unsurety.

VICE CHAIR PHILLIPS: Okay. The uncertainty of what moving forward would be?

MR. EATON: Yes.

VICE CHAIR PHILLIPS: Mr. Director, I'd ask you just to look at what he's presented here and then get with us and let us know what could -- can be done if anything.

MR. LeFLEUR: I will do that.

VICE CHAIR PHILLIPS: Thank you, Mr. Eaton. Thank you very much.

Request number two is from Mr. Brooke.

Mr. Brooke, if you will come forward.

Remember ten minutes limitation on lessons learned for statewide policy that you have requested to present to us.

MR. BROOKE: Thank you.

Thank you for the opportunity to speak on this important issue. So there have been a lot of lessons learned by, I think, ADEM and our organization and the general public in the Uniontown area over the history of the lagoon, which is a waste water system for the city of Uniontown over the past several decades. And what I'm going to attempt to do today is to highlight some of those lessons so that hopefully that will help inform future discussions and decisions made regarding municipal waste water treatment.

VICE CHAIR PHILLIPS: And will you do that kind of in the sense of what policy might be something we should consider as you do that? Can you make some recommendations?

MR. BROOKE: I can certainly attempt to do so.

VICE CHAIR PHILLIPS: Great. Thank you.

MR. BROOKE: So the lagoon in Uniontown is situated on the banks of a very small tributary, Cottonwood Creek, which is the head water tributary system to Cottonwood Creek that feeds out into Big Prairie Creek, and then ultimately into the Black Warrior system. And then the spray field exists down to the south, and that's where the waste water is being sent to be discharged to groundwater. And I think a policy consideration with regard to how this plant was set up would be to do what Mr. Eaton
1 suggested and ensure that adequate
2 percolation can actually occur, that it
3 shows in spray field sites before ever
4 permitting or allowing it to happen.
5 And the lesson learned here is
6 that ADEM permitted the city of Umtown
7 to discharge solely to groundwater through
8 a spray field. But since 1992 that spray
9 field has been failing and discharging into
10 the surface water of the United States,
11 with little to no abatement.
12 The other issue there is the
13 allowance of industry, local industry, to
14 discharge directly to a small municipal
15 lagoon treatment system without adequate
16 capacity to handle all of the input from
17 the town, rainwater infiltration, and the
18 addition of large inputs from local
19 industries.
20 The result being, large amounts
21 of untreated and partially treated waste
22 water being directly discharged in
23 violation of the permit to the tributary to
24 Cottonwood Creek, and ultimately Cottonwood
25 Creek and down the stream and the Big
26 Prairie Creek and the Black Warrior River
27 for many years and the situation not being
28 adequately addressed for those ensuing many
29 years.
30 VICE CHAIR PHILLIPS: Not --
31 I don't want to cut you off on everything
32 that pops up in my head, but trying to stay
33 focused on the policy issues. Because
34 we've seen the slides, but help us
35 understand from a process that -- did the
36 complaint system fail? What could we do
37 differently that would prevent this in the
38 future?
39 MR. BROOKE: Well, the
40 lesson learned is not allowing the system
41 to operate with inputs that it can't
42 handle. This is happening across the
43 state. Systems being designed for a
44 certain capacity and then having to treat
45 far greater amount than they're designed to
46 handle.
47 And in the ensuing years, the
48 lessoned learned is that you have these raw
49 overflows and improperly treated
50 overflows. But in instead of ratcheting
51 back on those contributing industries in a
52 very aggressive way, the problem just
53 persists.
54 So up front there needs to be a
55 check and balance to keep it from
56 happening, but if it's realized that
57 there's a problem in the ensuing years,
58 then the agency needs to step in and
59 correct the problem instead of just
60 allowing it to continue for years on end.
61 VICE CHAIR PHILLIPS: Okay.
62 Thank you.
63 MR. BROOKE: So of course
64 this has many lessons learned for
65 communities downstream, local farmers,
66 fishermen, children, and, you know, not to
67 mention the wildlife, that depend on these
68 freshwater systems for their sustenance,
69 for clean water, for recreation. This has
70 been an ongoing problem, and it's just a
71 severe travesty for the community and all
72 affected people downstream.
73 Another lesson learned is that
74 although many of these concerns have been
75 known for many years, the policy
76 consideration of stepping in to address a
77 problem when it's known to be ongoing,
78 there was an illegal bypass structure
79 situated at the lagoon, discharging
80 directly to this Cottonwood Creek tributary
81 for many years. I mean, all the way up
82 until -- this is an ADEM inspection picture
83 from 2011 where this is just a blatantly
84 illegal discharge to surface water without
85 a permit to do so.
86 And we've seen no enforcement
87 with regard to this overflow. I mean, that
88 was just allowed to go on. No fines
89 associated with that whatsoever. So the --
90 the message to the permitted entity, to the
91 municipality, is you can just blatantly
92 violate your permit and we will do little
1 to nothing to hold you accountable for it.
2 And that's really the wrong message to be
3 sending to the regulating community.
4 Meanwhile, lessons learned big
5 time for downstream residents who are
6 learning about these problems with this May
7 and the lack of regulatory enforcement to
8 address the problem while they're, you
9 know -- they're downstream swimming and
10 fishing, and little known to them and the
11 water is tainted with sewage. Because the
12 regulatory policy of ADEM is if a
13 municipality which is discharging raw or
14 untreated waste water, either from its
15 treatment plant or via overflows from its
16 collection system, they are required to
17 notify the public. The permittee is
18 required to notify the public so that they
19 are aware that there is a public health
20 concern. This is not being enforced by
21 ADEM. This is not being enforced.
22 So we're talking about in some
23 cases daily overflows with no public

1 spent over a period of time that took much
2 longer than it should have, and the problem
3 is still ongoing. And that's the lesson
4 learned is an inadequate system to ensure
5 that funds, precious little funds that are
6 hard to get, are properly administrated so
7 that these systems actually get the relief
8 and the local citizens get the relief that
9 they need.
10 This is a picture in December of
11 the ongoing overflows at the lagoon system
12 as it's being upgraded. And so the
13 consideration for policy is if the fix is
14 causing the problem to continue rather than
15 fixing it, then is it really a fix?
16 And Mr. Eaton brought up a
17 really good point. Back during the public
18 comment period, our organization and many
19 others commented on this permit on the
20 proposal to add a second spray field. And
21 we raised serious concerns at that
22 proposal, knowing that the ground in that
23 area does not adequately percolate into

1 notification for years. So people are just
2 swimming in sewage downstream, and that's
3 completely out of hand.
4 So we fast forward to, thank
5 God, the USDA was able to provide some
6 funding finally, even though this problem
7 has been going on for decades, to
8 adequately fix this plant, once and for all
9 get it treated, sewage properly. The
10 oversight of that process by ADEM has been
11 abominable.
12 And the policy consideration
13 would be if this agency is going to
14 entertain an upgrade to a system and permit
15 it, that it be responsible for ensuring
16 that it's an adequate fix and that it's not
17 going to be a complete waste of public
18 dollars. And that's precisely what
19 happened. $4.8 million have been totally
20 wasted in Uniontown, and the schedule for
21 the dispensing of those funds has not been
22 met.
23 So it's money wasted and money

1 groundwater.
2 And we asked for maps of where
3 the new spray field was going to be, what
4 the plan entailed, had hydrotests been done
5 to ensure that it would work properly, and
6 what are the other considerations for
7 alternatives like spending the $4.8 million
8 on actually building a state of the art
9 waste water treatment plant, which would
10 have been possible with those funds, to fix
11 the problem once and for.
12 All our comments were ignored,
13 and the spray field was continued on with
14 despite all the concerns, both locally from
15 our organization. And so that was back in
16 November of 2012. So we're going on over a
17 year and a half later. Unfortunately,
18 we're not seeing an end to the problem.
19 And, I mean, I think that's a
20 clear illustration that there's a major
21 problem in the way that the agency
22 administered this project that this
23 permit -- and has been overseeing this
1 permit for many decades. It's basically a
2 permit that is designed to allow the
3 illegal discharges of sewage and surface
4 waters. And while there may be ongoing
5 enforcement, there were no fines instituted
6 and ridiculously long compliance histories.
7 And, once again, it's the wrong
8 message to send to the regulated community,
9 and it is a mere slap on the wrist, not an
10 actual deterrent, for future illegal
11 violations.
12 So, we, like I said, have ongoing
13 recurring overflows also to Freetown Creek,
14 which is a tributary to Chilatchee Creek
15 and on down into the Alabama River near
16 Selma. It actually -- the map of this
17 Chilatchee Creek goes into the Alabama
18 River at a public use area. So, once
19 again, there are many people downstream
20 unknowingly swimming in improperly treated
21 sewage.
22 While we have found a few
23 reports of these ongoing overflows in the

1 public file, in E-file in ADEM's server,
2 there are very few. Yet we know that this
3 problem is going on on a regular basis. A
4 permitted facility is required by your
5 regulations to notify the Department every
6 single time there's an illegal overflow
7 like this to surface waters. Every time.
8 And if they don't, then it's a violation of
9 their permit and of existing regulations,
10 and we're not seeing them being fined for
11 these ongoing problems and we're not seeing
12 the public notification that's required to
13 ensure the downstream citizens are aware of
14 what's going on.
15 There has been one public
16 notification that we know of that occurred
17 back in April of 2012. But, unfortunately,
18 it was attributed to a lift station issue
19 and an overflow, and it didn't adequately
20 address the ongoing and systemic overflows
21 that are actually the true source of all of
22 the contamination downstream.
23 So there is work being done out

1 there, and clearly part of the fix is being
2 implemented. There are some engineering
3 designs being put in place, but, yet again,
4 the problem continues. Instead of
5 percolating into the ground, you can see
6 spray field number one is a massive lake.
7 This is an ADEM inspector's photograph from
8 back in last summer. So this water is just
9 ponding up out there and waiting. It is
10 not going to soak into the ground as it's
11 supposed to.
12 These spills are coming through
13 very inadequate -- and going directly into
14 Freetown Creek, and ultimately downstream
15 into the Chilatchee and Alabama River.
16 People live --
17 DR. MILLER: We've seen all
18 of these pictures. This is just rehash of
19 something --
20 MR. BROOKE: Sir, actually,
21 I presented in October of last year. These
22 pictures were not in my presentation. And
23 when I tried to present when you denied me

1 this past April, you would have seen
2 these. But you -- this is the first
3 opportunity you've had to see these, unless
4 you have looked through the file yourself.
5 DR. MILLER: Well, of course
6 I've looked at the file itself, but I am
7 just telling you this is a rehash of stuff
8 we've already seen.
9 VICE CHAIR PHILLIPS: And I
10 would really like for you to keep it on --
11 DR. MILLER: This is
12 supposed --
13 MR. BROOKE: Enforcement --
14 VICE CHAIR PHILLIPS: You've
15 told us that. I've got it.
16 MR. BROOKE: I am just
17 flipping through them as quick as I can.
18 There's just a lot of pictures of all the
19 problems.
20 VICE CHAIR PHILLIPS: Then
21 keep moving.
22 MR. BROOKE: This has all
23 been made available to you, so of course
1 you'll have a copy of my presentation.
2 This just illustrates that the overflows
3 have been going on for many, many years,
4 yet the problems persist as we speak.
5 So let me get through all of
6 these then. All right. So spray field
7 number two, designed in two segments on
8 either side of a tributary to the -- water
9 through as to Freetown Creek. And part of
10 the plan submitted, the design was for a
11 25-foot buffer on either side of this
12 creek.
13 But in correspondence we've seen
14 from ADEM, that's actually inadequate and
15 ADEM recommends 100. Unfortunately, ADEM
16 didn't notice that until the spray fields
17 had already been installed and everything
18 had been cleared, and they were in place
19 actually inside of 20 feet -- actually
20 inside of 25 feet of this tributary.
21 The perc test, as Mr. Eaton
22 outlines, had not been done, and so we
23 would reiterate definitely way more due

1 diligence needs to be done to ensure that a
2 design such as this would be adequate
3 before funds are allowed to be spent on
4 it.
5 We talked to the USDA as well.
6 They were not willing to step in and say
7 the funds can't be used in a certain way.
8 They said that the plans were submitted to
9 ADEM. In the last meeting you-all told us
10 that's not your role, that that is the role
11 of the permittee. But clearly the
12 permittee was not up to the task, nor were
13 the engineers hired to do the job.
14 And so we have this problem with
15 a new spray field that has been installed
16 and site cleared that is not percolating.
17 And so we have standing water out there in
18 these cells that are hopefully never going
19 to be used, because this illustrates that
20 if used --
21 VICE CHAIR PHILLIPS: Bring
22 it to an end.
23 MR. BROOKE: -- the exact

1 same problem will be occurring in spray
2 field number two. And so we are asking not
3 only that this plan be seriously
4 reconsidered, as we know it is being
5 because of the proposed pipe discharge to
6 the Black Warrior River, but we want to be
7 involved in the discussion and the
8 decisions that are going to be made to
9 ensure that future plans for this facility
10 are adequate to actually put an end to all
11 this mess. We hope that you-all will --
12 the Department will reach out to
13 Riverkeeper and to the local citizens and
14 let us have a voice at the table.
15 VICE CHAIR PHILLIPS: Thank
16 you. Any questions from the Commission?
17 DR. RICHARDSON: Mr. Brooks,
18 Chairman -- Director LeFleur frequently has
19 an open invitation extended to people like
20 yourself, Mr. Eaton, et cetera, to sit
21 down, have meetings, voice your concerns
22 one on one, talk to the Director privately,
23 say -- state what you need to state. Have

1 you attended any of these meetings that he
2 has extended an open invitation?
3 MR. BROOKE: I attended one
4 back in the beginning and decided that it
5 wasn't going to be a fruitful avenue for
6 discussing specific facility details. It
7 was more of a generalized forum for
8 conversation and whatnot. I did talk to
9 him briefly, as I did some of you, after
10 the April meeting and the -- actually, not
11 the April meeting, the October meeting,
12 where I was informed that it was not ADEM's
13 duty to get involved in these sorts of
14 decisions.
15 So that to me pretty much said
16 that there wasn't an opportunity to discuss
17 that with the Director. However, we have
18 attempted to discuss it through proper
19 channels during the administrative
20 regulatory process. And as I said, our
21 concerns were overlooked.
22 DR. MILLER: Would you
23 describe what that proper channel was?
1   MR. BROOKE: Well, when a
2   permit reissuance or modification is
3   proposed by the Department, it's put up for
4   public notice for a 30-day period. And we
5   routinely submit permit comments and
6   concerns during that time, and we very much
7   look forward to feedback and responses from
8   the Department in hopes that our concerns
9   and issues we bring forward will be
10  seriously considered and taken into account
11  in the permitting position.
12   And, unfortunately, we've raised
13  most of the concerns -- I still have today
14  way back during the comment period, and we
15  still ended up with a big mess.
16   DR. RICHARDSON: I am
17  confused. Is it your thinking that because
18  the decision didn't go the way you wanted
19  it to, that you think your comments were
20  ignored?
21   MR. BROOKE: Well, they
22  weren't responded to, so I would call that
23  being ignored. Usually if they're listened
24  to, then we get a response to them.
25   DR. MILLER: Do you not
26  consider that filing a lawsuit and holding
27  Uniontown responsible for their failure to
28  live up to their permit requirements, you
29  don't consider that as any sort of punitive
30  action?
31   MR. BROOKE: A 2008 lawsuit
32  that levies zero fine and gives three years
33  from compliance --
34   DR. MILLER: This is the
35  lawsuit from 2012, Mr. Brooke. Apparently,
36  you're not aware of that. I don't know.
37  You must not be. And then are you going to
38  fine Uniontown? What are they going to pay
39  a fine with? Do you want to just shut down
40  their system and let them use the bathroom
41  in the yard?
42   MR. BROOKE: This is not an
43  issue about trying to keep poor people from
44  having adequate sanitation --
45   DR. MILLER: Just --
46   MR. BROOKE: -- this is
47  going to -- who are we going to fine? What
48  are we going to do? Tell me, just give me
49  some answers.
50   MR. BROOKE: It's a fine
51  question. If you're not going to fine them
52  and if your enforcement actions are not
53  going to bring about a fix to the problem
54  and compliance with the Clean Water Act,
55  then, yes, there's tons of question marks.
56   DR. MILLER: I agree.
57   MR. BROOKE: We're wondering
58  about the efficacy of the regulatory --
59   VICE CHAIR PHILLIPS: Hence
60  the reason we asked you to give us the
61  lessons learned on policy, so we appreciate
62  that. But do I have any more questions
63  from the Commission? I would like to --
64  I'd like to hear from the Director. I'd
65  like to get some feedback from what you
66  just said from the Department. So, if you
67  would --
68   MR. BROOKE: Thank you.
69   VICE CHAIR PHILLIPS: Let's
MR. LeFLEUR: I'd like to address his last point first, if I may.

The Commission should be aware that over the past two years the Department has met on numerous occasions with EPA, USDA, the mayor of Uniontown, the members of the Uniontown City Council, the Uniontown citizens groups, Congresswoman Terri Sewell, the design engineers, the operating engineers, and others regarding the Uniontown Waste Water Treatment Plant.

On numerous occasions, including one as recently as April 11th, 2014, Mr. Brooke was invited to, but elected not to, address the issue or attend meetings with the Department and Uniontown citizens.

I submit that the speaker today, contrary to his representations, is, by his own choice, uninformed on matters related to the Uniontown Waste Water Treatment Plant.

There are many, many statements that were made in this presentation that I would like to take considerable issue with. But suffice it to say that Mr. Brooke is ill informed on the regulatory process. He does not understand what statutory authority the Department has and the Commission has.

The Department is not authorized, nor does it have the resources, to design waste water treatment plants or to review waste water treatment plant designs any more than we do for the 600 other waste water treatment plants that are out there or for any of the industries that we issue permits for, thousands of other industries.

He does not understand that the responsibility for the design and operation of waste water treatment plants lies solely with either a city authority for waste water treatment or the city fathers themselves, the elected officials in that area.

The Department is responsible, as was mentioned earlier, for setting discharge limits; to inspect to see if those limits have been met; and if they have not been met, to undertake enforcement action. That was done most recently -- well, not most recently, but beginning in 2005. That matter has been taken through the normal required steps that are set out in statutes in the law.

And we are now -- we now have a matter pending before the circuit court. That suit was filed, and this is -- I don't want to get into a pending legal matter, but the suit was filed in 2012 requesting a temporary restraining order, a cease and desist order, and order for contempt of a consent decree that was entered into in 2005.

The municipality, as you well know, is an impoverished community that has almost no capability to raise funds to either pay for penalties or for upgrades to their plant. The only way that they were able to obtain any funding was over a period of six years, seven years was through work done by USDA, ADEM, Congresswoman Sewell's office to obtain grants and low interest long term loans.

Now, to imply that no enforcement action has been taking place is irresponsible, it is incorrect, and it is clearly contradicted by the facts. His representation that comments made at public hearings or comment periods for permits are not responded to is inaccurate. It is wrong. All comments received on any permit are responded to, 100 percent.

So I -- I can only say that Mr. Brooke is either intentionally ill informed or that he is unable to understand what the duties and responsibilities set out in statutes are for the Department and the Commission, and I want to make that very clear.
VICE CHAIR PHILLIPS: Thank you, Mr. Director. Do I have any questions from the Commissioners?

DR. RICHARDSON:

Mr. Director, right as you began to speak, you rattled off a list of ADEM involvement. Would you quickly go over that list again, right at the very beginning?

MR. LEFLEUR: Well, eventually -- the groups that we have met with to work on this problem, we have gone the extra mile in trying to help Uniontown solve this problem. But the people, the organizations that we have met with on numerous occasions including EPA, USDA, the mayor of Uniontown, members of the Uniontown City Council, Uniontown citizens groups, Congresswoman Terri Sewell, the design engineers, the operating engineers, and others.

DR. RICHARDSON: Would you characterize ADEM's involvement with this particular involvement of this facility as normal?

MR. LEFLEUR: No, I would not. Our involvement has gone far beyond what we normally do. If you want to draw the analogy to we are an enforcement agency, a regulatory agency. We set the speed limits. We check to see if people are obeying. And if they're not, we take enforcement actions. We do not design automobiles. We do not look to see if their speedometer is working. We -- we are charged with one responsibility, and that is to set standards for discharges.

It is up to the community to meet those requirements, and my heart goes out to the people of Uniontown who have had to deal with this situation for some period of time. It truly does. But we must -- we must operate under the authority that has been granted to us by statutes. We cannot take actions that involve us in things that we are not authorized to be involved with.

DR. MILLER: That would mean we would be prohibited from determining which kind of septic tank plant they would have; we would have nothing to do with whether they purchase land for a spray field or not, things of that nature? Once they got the grant, that was a local responsibility. Am I understanding that correct?

MR. LEFLEUR: Absolutely, it is up to the community to determine how it wants to meet those requirements.

DR. MILLER: They chose the engineer. That has nothing to do with ADEM.

MR. LEFLEUR: And when ADEM receives plans with PE stamp on it, which is what happened in Uniontown, in our -- in our regulations -- and this has been made clear to the mayor and everybody else over there -- that the Department -- when those plans are received, the Department and the engineer agree the engineer takes responsibility for the performance of that plant. Clearly, without question, the engineer takes responsibility for the performance of that plant.

VICE CHAIR PHILLIPS: Any other questions?

(No response)

VICE CHAIR PHILLIPS: Thank you, Mr. Director.

MR. LEFLEUR: Thank you.

VICE CHAIR PHILLIPS: Moving to request number three. Mr. Ludder, would you come forward.

MR. LUDDER: Good morning.

Thank you, Mr. Chairman.

VICE CHAIR PHILLIPS: Thank you for being here.

MR. LUDDER: Commission, my name is David Ludder, and I appear today on behalf of the ADEM Reform Coalition. The Coalition thanks you for allowing us the opportunity to speak to you today about Environmental Justice in Alabama.
As its name implies, the ADEM Reform Coalition, a mission of the Reform Coalition, is to improve ADEM's efforts to protect human health and the environment. Today the Coalition would like to speak to you about Environmental Justice policy. In the ten minutes that we are allotted to speak, we cannot address every aspect of Environmental Justice, but what I would like to do is describe to you a bit of the history of Environmental Justice at ADEM, why the current policy at ADEM will not achieve effective results, and why it is the EMC's responsibility to develop Environmental Justice policy.

Hopefully you have a printout of this presentation with a first page that looks different than that. You should have red dots illustrated on the map. Just briefly, what this map shows is the base map of census block groups from 2010 in five different shadings of color. The darker the shade, the higher the population of African Americans.

The red dots are -- represent the 40 facilities, 40 air pollution facilities, in Alabama, not -- I am sorry -- not the 40, the top 40 air pollution facilities in Alabama that according to EPA's risk screening environmental indicators model, emit the largest quantity and toxicity of pollution.

So this is just a rough demonstration of where the worst air polluting facilities are and how they relate to African American communities. I'm not making any judgment about this is bad or good. I'm just saying this is what the data shows.

Going to the Environmental Justice policy itself.

DR. MILLER: May I ask you one question? Where did the data come from?

MR. LUDDER: The original base data comes from toxic release

inventory data and census data.

DR. MILLER: All right.

MR. LUDDER: This EPA's definition of Environmental Justice, and as highlighted there are two components: Fair treatment and meaningful involvement. Those are the two objectives of EPA's Environmental Justice policy.

Meaningful involvement is defined in this policy, and basically it means that disadvantaged communities should be encouraged and given the resources to be involved in the process.

And this is -- you can -- you can summarize this aspect as basically education and outreach to disadvantaged communities. Now, a good example of this is that many poor communities, the residents, you won't find that they subscribe to newspapers that get notice of ADEM -- where notices of ADEM actions are published, or they don't have Internet access where they can get on the Web.
The second was to require the creation of an Environmental Justice division within ADEM that would collect demographic data, assess the exposures and the risks to health, and employ a toxicologist and other relevant staff.

And the third recommendation was that ADEM support legislation to prevent disproportional impacts on populations. And over the years there have been multiple bills introduced in the legislature to address that issue. Frankly, I can't recall one where ADEM supported it.

In September of 2004 members of the ADEM Reform Coalition filed a petition with this Commission asking it to publish the data of demographics with each permit notice. A very simple small step that we thought might advance things.

How did we think it would advance it? The public would learn about the issue, would learn that there was a minority community involved, and they might step forward and become more involved.

On November 19th of the same year, this Commission denied that petition, and basically the denial was based on the strength of a comment by the only African American on the Commission at that time, and his comment was we need a programmatic approach to Environmental Justice, not a piecemeal approach and that what the ADEM Reform Coalition proposed was just a piecemeal approach.

In the 2005 and 2006 annual report of the Department, the Department acknowledges, as the white lettering indicates, that Environmental Justice is defined as fair treatment and meaningful involvement. They acknowledge that that is what Environmental Justice means, but then they go on to say that ADEM's Environmental Justice program is the latter, meaningful involvement. They don't address the fair treatment aspect. The Department did appoint an Environmental Justice coordinator on October 1st, 2006. That was Elvin Lang. He retired on May 30th, 2009, and his duties have been assigned to other people.

In February of 2007 the Director of ADEM advised this Commission that the top priority of the new Environmental Justice coordinator is education and outreach. No mention of fair treatment. In August of 2007, or about that time, ADEM came out with an official definition of Environmental Justice for ADEM.

And basically it is the meaningful involvement aspect, not fair treatment. In the 2008 annual report the Department reiterates meaningful involvement, not fair treatment.

Now, here is the first rub. The powers of the Director are limited. They are limited to doing all things except those that are assigned specifically to this Commission. The Director has no authority to do what this Commission is required to do. And this Commission is required to develop environmental policy for the state. That is not the Director's job. That is your job.

So I conclude from that -- from that language, this Commission has the exclusive authority to develop environmental policy for the state, including Environmental Justice policy. The Director of ADEM acted unlawfully.

That is beyond his authority -- not -- not in any way being bad or ill-willed, just beyond his authority -- when he developed and implemented ADEM's Environmental Justice policy and Environmental Justice definition. So that policy and that definition are really unlawful.

And there is a requirement in the code of Alabama that no state agency shall expend money or incur any obligations, except in accordance with law. And I would suggest to you that if...
1 this agency expended money based on that --
2 based on the Environmental Justice policy
3 that he -- that the Director was not
4 authorized to adopt, that was not in
5 accordance with law.
6 So my recommendations are,
7 first, the Commission should develop an
8 Environmental Justice policy for the
9 state.

10 Second, an effective
11 Environmental Justice policy must not only
12 provide for meaningful involvement, but it
13 must also provide for fair treatment. That
14 is, it must provide that regulatory
15 decisions avoid the imposition of
16 disproportionate -- of a disproportionate
17 share of negative consequences on
18 Environmental Justice communities.
19 And, third, perhaps the first
20 step in pushing this ball forward to
21 achieving fair treatment, is a methodology
22 or a practice of providing an assessment of
23 whether individual regulatory decisions

1 will impose a disproportionate share of
2 negative consequences on Environmental
3 Justice communities.
4 The Department now makes some
5 assessment of whether permits will
6 adversely impact or impair human health, et
7 cetera, but what they don't do is assess
8 whether or not there is a disproportionate
9 burden on some communities. So that, I
10 think, is the first step toward achieving
11 fair treatment.
12 But, obviously, this Commission
13 has to develop a policy, and there are
14 certainly many policies, many iterations or
15 versions of policies, that could be
16 developed. The ADEM Reform Coalition
17 submitted to the Department in 2006 its
18 proposed agenda for Environmental Justice.
19 And I will be happy to provide that for
20 you, but it had six suggestions which might
21 be a starting point for the Commission.
22 But I would encourage this
23 Commission not to leave this meeting and do

1 nothing. I encourage you to undertake
2 development of an Environmental Justice
3 policy that not only provides meaningful
4 involvement for Environmental Justice
5 communities, but also provides for fair
6 treatment so that those communities don't
7 have to bear a disproportionate burden.
8 That's my presentation, and I will take any
9 questions if you have any.

10 VICE CHAIR PHILLIPS: Thank
11 you, Mr. Ludder. Do we have any questions
12 from Commissioners? Dr. Richardson.
13 DR. RICHARDSON: Mr. Ludder,
14 you referred to ADEM's Environmental
15 Justice policy several times.
16 MR. LUDDER: Right.
17 DR. RICHARDSON: Would you
18 please state for me what the Environmental
19 Justice policy of ADEM is.
20 MR. LUDDER: It's outreach.
21 It's education based on the definition --
22 DR. RICHARDSON: Is it the
23 formal official policy, or is this the

1 definition?
2 MR. LUDDER: There's a
3 definition of Environmental Justice, and
4 it's implemented with a policy of outreach
5 and education.
6 DR. RICHARDSON: What is
7 EPA's Environmental Justice policy?
8 MR. LUDDER: It was in one
9 of the slides that I presented, one of the
10 first slides.
11 VICE CHAIR PHILLIPS: While
12 you're looking at that, Dr. Richardson, I
13 do have a question. I'm probably the only
14 Commissioner that was here in 2004, and my
15 memory is not what it used to be. But I
16 noticed you have an excerpt from
17 Commissioner Hairston at the time on the
18 programmatic versus piecemeal.
19 Did you review the rest? I
20 intend to go back and review that record,
21 but I seem to recall the Commission asking
22 the Department to work with naming a
23 coordinator and getting something in
1. place. Did you read that through?
2. MR. LUDDER: Actually, yes,
3. there was a decision, and it's in my notes,
4. but I didn't mention it. There was a
decision at that -- at that meeting where
5. our petition was denied that the Commission
6. said it endorsed the creation of the
7. establishment of a position of
8. Environmental Justice coordinator.
9. VICE CHAIR PHILLIPS: I
10. remember us doing something. I just -- I
11. will go back and look. Thank you, Dr. --
12. DR. RICHARDSON: No further
13. questions.
14. VICE CHAIR PHILLIPS: Any
15. other questions from the Commission?
16. DR. RICHARDSON: I would
17. like to give Director LeFleur the
18. opportunity --
19. VICE CHAIR PHILLIPS: I was
20. going -- thank you for beating me there. I
21. would also like to ask the Director to
22. respond to that for us, so that -- so that
23. incorrect, and I believe it is
24. irresponsible.
25. Finally, the ADEM Reform
26. Coalition seems to be requesting that the
27. Department be prevented from addressing
28. Environmental Justice issues. And I
29. believe as a matter of good public policy
30. and in good conscience that recommendation
31. should not be honored. There is a
32. presumption in the presentation that was
33. just made that fair treatment is not a part
34. of activities related to Environmental
35. Justice that are undertaken by the
36. Department.
37. There -- fair treatment is a
38. hallmark of what we do in every program,
39. and to say that the fact that it was not
40. stated that there would be fair treatment,
41. I believe leaves the wrong impression that
42. the Department excludes fair treatment for
43. this community. That is inaccurate, and it
44. is not the proper impression to leave this
45. Commission or this meeting with.

1. we don't leave here, Mr. Ludder, without
2. thinking about what the future holds.
3. MR. LEFLEUR: First, the
4. Environmental Justice program at the
5. Department is not a regulatory program. It
6. is not a regulatory program at the
7. Department, nor is it a regulatory program
8. at EPA. There was a suggestion in the
9. slides in the presentation just made by the
10. ADEM Reform Coalition that the Department
11. is required to provide public notice and
12. obtain Commission approval to utilize a
13. non-regulatory definition of Environmental
15. There is no occasion where the
16. Department has ever sought public approval
17. to use the dozens of definitions that are
18. utilized in the Department. And the
19. suggestion that it is required, I can find
20. no basis in fact for that.
21. Secondly, to state that the
22. Director engaged in an unlawful act by
23. utilizing a definition developed by EPA is

1. VICE CHAIR PHILLIPS: Thank
2. you, Mr. Director. Any questions of the
3. Director?
4. (No response)
5. VICE CHAIR PHILLIPS: Thank
6. you. Thank you, Mr. Ludder. The fourth
7. and final presentation for public comment
8. will be from Mr. Mitchell Reid on behalf of
9. the Alabama Rivers Alliance. Mr. Reid.
10. MR. REID: Gentlemen, and I
11. fully appreciate that I am standing at the
12. end of a long meeting before lunch.
13. VICE CHAIR PHILLIPS: It's
14. okay. You have the same ten minutes
15. though.
16. MR. REID: I feel like this
17. is a bit of an attempt to do legal
18. CrossFit, which is -- CrossFit was
19. something that was coming out while I was
20. in the military with the 82nd Airborne --
21. is get as much as you can into your workout
22. as fast as possible, and I'm going to
23. attempt to do that. And I'm going to
1deviate from my slides just briefly based
2off the early recommendation to take a
3look at the public comment portion of these
4meetings, and just to say that this is --
5this is time-consuming -- and I know -- and
6you have to sit up here and have to listen
7to problems over and over and over again,
8but this is vitally important to us.
9Because we're the citizens of the state
10that want to be part of the process and
11want to have public access to the process
12of protecting our waters and our streams.
13And this is one of the very few
14venues, frankly, that we have to address
15decision-makers about things that we see in
16our community. Yes, we take advantage of
17the opportunity to meet with the Director
18and to meet with his staff routinely. But
19you -- as previously mentioned, you guys
20set policy for the state. And so you are
21our advocates as well, and that's why we're
22here.
23I come to you today to basically
24just give you an update from some actions
25that we took back in 2010, and I think to
26just give our side of the story. Because
27in the previous meeting, Director LeFleur
28mentioned this NPDES petition. And while
29I've gone through his transcript and
30record, I do think that it does leave a bit
31of a misimpression as to what the
32conclusions that Environment Management
33Agency came up with, or at least maybe
34didn't stress the significance of some of
35the findings.
36The Alabama Rivers Alliance is a
37statewide nonprofit river protection
38group. We have people who enjoy boating
39and fishing and swimming. We also have
40members who are part of the business
41community. We have members who are part of
42the waste water and water treatment
43communities, both as individuals -- as
44individuals, not as the utility
45themselves. And our purpose basically is
46just to protect the rivers of Alabama, the
47waters of Alabama.
48And our goal, as you can see
49here, is to achieve healthy rivers, healthy
50people, and a healthy system of
51government. And that's what I'm doing
52here, I'm talking to my government
53representatives. We have over 800 members
54and 60 grassroot groups. The groups that
55you see come before you today are actually,
56in many cases, members of the Rivers
57Alliance. Although, I'm not necessarily
58speaking as a Riverkeeper. They are
59members of our organization, or at least
60our alliance.
61The Alabama Water Agenda, which
62I just handed to you, I won't go through
63it. This is basically -- someone accused
64us back in probably 2009, 2010 of having a
65secret environmental agenda. We said,
66Well, let's just go ahead and put that to
67bed. So we published our agenda. These
68are what we see as the big ticket items for
69things that we can work on in the state
70that would make the environment of Alabama,
71the waters of Alabama, better.
72If we can get good enforcement
73of the laws that we have, if we can get the
74funding that we need -- and Director
75LeFleur talks about that in every single
76meeting -- if we can make sure that our
77agencies are coordinating their
78activities -- which includes not just ADEM
79and the Surface Mining Commission or ADEM
80and the Office of Water Resources, but ADEM
81and EPA -- we can better protect our
82environment.
83And then my big job, frankly, is
84to think of ways that we can develop
85policies for the state that would better
86protect the environment. Unfortunately,
87I'm here talking about the first three and
88not necessarily -- today -- and not
89necessarily the big picture policies. I
90would love to have a broader discussion
91about water policy in Alabama.
92I'm not going to read through
all these slides. I'm sure you have a copy
of these, and they're very -- this is our
letter to Administrator Jackson back in
2010, which basically said, We've come to a
point after decades of work -- decades,
which I should say, didn't include Director
LeFleur at the helm of ADEM, did not
include Ms. Dean as the Chief of the Water
Division -- but, I guess, Chairman
Phillips, you were here at the time, and
the rest of you guys were coming on board
right as we filed the petition.
But basically the petition was
the result of a very real frustration that
we were not able to move the state forward
to what we thought was a fair enforcement
of the Clean Water Act, and that's where
the petition came from.
This is the letter that came
back to us and to ADEM on April 9th of
2014. Highlighted is just one of the
quotes. EPA conducted a four-year
comprehensive review of the state's
environmental program based off of our
petition, based off of supplements that we
gave the petition, as it was starting to
get stale.
There has been some indication
that -- I mentioned in my letter to the
Chairman that this was an extraordinary
action, and it was. Asking the federal
government to step in and take over the
water pollution program for the state of
Alabama is not something that we want to
see. Because the best way to have water
pollution prevention is working with our
local communities and working with our
local state agencies.
The fact that we felt it
necessary to go to the EPA and say, Hey,
help us out here and step in and take a
look at this program, I think should
highlight how strongly we felt about this.
I, frankly, have better things to do than
go to Atlanta and work with EPA to try to
get them to enforce pollution laws in

1 Alliance. There were 13 organizations that
signed on as petitioners, and I, frankly,
cannot speak for any other petitioning
organization.
VICE CHAIR PHILLIPS: But
you are speaking as program director --
MR. REID: Of the Rivers
Alliance, and I --
VICE CHAIR PHILLIPS: That
was a little confusing.
MR. REID: I apologize for
that.
DR. RICHARDSON: Even though
your opinion does not represent the views
of the ARA?
MR. REID: I cannot speak
for the member organizations of the
Alliance. So for instance --
DR. RICHARDSON: Do your
views -- are -- what you are presenting, is
it your opinion or is it the views of the
ARA?
MR. REID: This is my
opinion.

DR. RICHARDSON: Okay.

Thank you.

MR. REID: So don't take from this -- so let me get to where we're going with this disclaimer.

VICE CHAIR PHILLIPS: We just wanted to make sure we knew who was making the presentation.

MR. REID: Petitioners have not yet made a determination on the sufficiency of the EPA's response to the petition. I am trying to present you what I see out of that response, but I don't want you to take from this that I am saying the petitioners are dropping the issue or that EPA has made the correct conclusions. And I just want to be very clear about that.

VICE CHAIR PHILLIPS: That's why we wanted the clarity.

MR. REID: And I appreciate that. So this is -- and I should say there are issues that EPA has said we're not going to address because it frankly doesn't have anything to with what we think -- what EPA says that they think they should address. So, for instance, you're not going to see in here the Department's responsibility to levy fines against another state agency, because that is sort of at the constitutional level and is part of the response, but I'm not going to talk about that. So please just don't expect to see a rundown of 26 issues.

Noted improvements though -- and there are several that EPA has said we've seen very real improvements in the State program. The data entry was one of the first things that we said, and that's been clarified quite a few times by Director LeFleur as to how the communications between the databases work and the agencies processing that information into those databases.

They said that prior -- you know, what we saw as a problem with construction was large -- EPA said was largely alleviated by the development of the construction general permit, and so an improved permit, EPA says, has taken a lot of the questions that we raised off the board.

The citizens' complaint process, you guys have heard about that several times, and, you know, I think has probably been explained as well as possible. But the Department has really redeveloped its complaint process since 2010.

And then we've had -- this is not necessarily a change in what ADEM has done -- but there has been, as a response to EPA, a clarification of what the responsibilities of our municipalities are and their authorities under state law, which EPA asked ADEM for that clarification. So where we said we were reading in questions with the authorities of our municipalities to carry out their responsibility for stormwater pollution, ADEM provided a clarification, which now we basically have to see if that plays out over time.

These are areas that EPA says, well, we see room for improvement, but ADEM has demonstrated a good faith effort, and we're not going to take the program from them based off of this.

The processing of backlogs, I think that that's understandable that EPA is saying that we're not going to inspect every single backlog permit to be filed off. Our question in 2010 was a certainly different question about the number of backlogged permits than we see today. And so we see that improvement over time.

And, again, I'm trying to sort of speak through what EPA said. And I should say, following the Director's presentation in April, we actually went to the EPA and asked them to come make this presentation so that there was no question...
1 about what they were saying. And I would
2 refer any questions about their response
3 back to them. Evaluation --
4 VICE CHAIR PHILLIPS: What
5 was their response when you requested
6 that?
7 MR. REID: Their response
8 was we have given you a very detailed
9 response on paper, and I think that should
10 suffice.
11 DR. MILLER: So you're
12 asking us if we have questions to call the
13 EPA, is that what you just said?
14 MR. REID: If you have a
15 question about what EPA said as far as
16 improvements or these improvements, I will
17 certainly give my opinion about what we
18 want the Department to do. But if it has
19 to do with what EPA says their analysis is,
20 I would certainly contact the EPA.
21 VICE CHAIR PHILLIPS: You're
22 just saying you're not interpreting --
23 MR. REID: I'm not in that

1 position. I can't speak for the EPA. And
2 then you can see the timely enforcement of
3 appropriate actions, appropriate
4 enforcement response to the SNCs that
5 Director LeFleur talked about earlier, the
6 timeliness of enforcement. And the page
7 numbers are from the EPA's response.
8 And then addressing the
9 noncompliance, which is -- these are areas
10 that they said that work needs to continue,
11 that we need to see more improvement, but
12 it's going to be part of our oversight
13 responsibility.
14 There are some issues that EPA
15 says we are not going to take the pressure
16 off. We're going to defer a decision over
17 whether to withdraw the program, and those
18 issues remain outstanding, according to the
19 EPA. And I'm going to go through them
20 now. Now, the verbiage here is taken from
21 the response. These are obviously multi-
22 page responses on each issue, but I think
23 these are the highlights.
MR. REID: I certainly appreciate it. And I would say that in preparing this response, I was responding to a letter from Director LeFleur, which was e-mailed to me yesterday -- mailed to me through the mail yesterday, but e-mailed to me yesterday. I felt that I had to take the time to respond to his concerns, obviously, so that I could provide a fair analysis of what we were talking about.

VICE CHAIR PHILLIPS: Okay. Thank you. Anybody else?

(No response)

VICE CHAIR PHILLIPS: All right. Thank you very much, Mr. Reid. Do I have a motion to adjourn?

DR. CARSON: So moved.

DR. LAIER: Second.

VICE CHAIR PHILLIPS: All in favor?

(All Commission members indicate "aye.")

VICE CHAIR PHILLIPS: Thank you very much.

(The meeting concluded at 12:55 p.m.)
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.

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accede (2) 88:22,89:5
accred (2) 82:6,110:18
account (2) 69:10,112:2
accountable (1) 57:1
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Baker Realtime Reporting and Video Services
334.262.3332 888.253.3377
Part B
Attachment Index

Attachment 1  Agenda

Attachment 2  Resolution to request that the State Personnel Board (Board) approve placing Director LeFleur in the State Pay Plan Pay Grade Range 90 at Step 15 and that the Board approve an Increase for Director LeFleur to a per year salary of $152,618.40 (Agenda Item 4)

Attachment 3  Order to grant the Petitioner's motion for voluntary dismissal (Agenda Item 5)
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: June 20, 2014
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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PUBLIC COMMENT PERIOD 2, 3 & Attachments

* 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 11, 2014

2. REPORT FROM THE DIRECTOR

3. REPORT FROM THE COMMISSION CHAIR

4. REPORT AND RECOMMENDATIONS FROM THE PERSONNEL COMMITTEE ON THE ADEM DIRECTOR PERFORMANCE EVALUATION FOR COMMISSION CONSIDERATION

5. PHILLIPS TRUCK AND SCRAP TIRE REMOVAL V. ADEM, EMC DOCKET NO. 12-01

The Commission will consider Petitioner Phillips Truck and Scrap Tire Removal’s “Dismissal of Request for Hearing” which is viewed as a motion for voluntary dismissal of the request for hearing in this appeal concerning ADEM’s Administrative Order 12-061-ST issued on January 13, 2012, to Phillips Truck and Scrap Tire Removal, Gadsden, Alabama, Transporter Permit No. S0000038828.

6. OTHER BUSINESS

7. FUTURE BUSINESS SESSION

PUBLIC COMMENT PERIOD
(The Requests from the public to address the Commission are attached to the agenda.)

Request 1
Benjamin Eaton, resident of Uniontown, on behalf of Black Belt Citizens Fighting for Health and Justice, Uniontown, Alabama
SUBJECTS: Several environmental issues of public interest and how the city of Uniontown’s Wastewater Treatment Plant offers lessons to be learned by the community and ADEM in addressing longstanding pollution issues in our communities.
Presentation slides are titled “What we (BBCFHJ) hope to see from ADEM and the EMC in the near Future.”
(Chair Brown will recommend that the Commission grant the Request subject to the limitation that the presentation focus on how the city of Uniontown’s Wastewater Treatment Plant offers lessons to be learned for future policy considerations, rather than a presentation on the status of the city of Uniontown’s Wastewater Treatment Plant which is the subject of ongoing litigation.)

Request 2
Nelson Brooke, Black Warrior Riverkeeper, on behalf of Black Warrior Riverkeeper, Inc., Birmingham, Alabama
SUBJECTS: Update on new developments and issues of concern to Black Warrior Riverkeeper, Inc. at the city of Uniontown’s Wastewater Treatment Plant and education on the larger issue of how ADEM and involved stakeholders can address some of the challenging issues presented by municipal wastewater treatment plants.
Presentation slides are titled “ADEM and Citizen Stakeholders: The Challenges Presented by Wastewater Treatment Plants with Limited Funding – Lessons Learned: How to Avoid Another Uniontown.”
(Chair Brown will recommend that the Commission grant the Request subject to the limitation that the presentation focus on education on the issues presented by municipal wastewater treatment plants for future policy considerations, rather than a presentation on the status of the city of Uniontown’s Wastewater Treatment Plant which is the subject of ongoing litigation.)
PUBLIC COMMENT PERIOD
(The Requests from the public to address the Commission are attached to the agenda.)

Request 3
David A. Ludder, Esq., on behalf of the ADEM Reform Coalition
SUBJECT: ADEM’s current Environmental Justice policy.
Presentation slides are titled “Environmental Justice for All Alabama Citizens.”
(Chair Brown will recommend that the Commission grant the Request.)

Request 4
Mitchell L. Reid, J.D., on behalf of the Alabama Rivers Alliance (ARA), Birmingham, Alabama
SUBJECT: Analysis of 2014 EPA response to ARA’s 2010 NPDES Petition
(Chair Brown will recommend that the Commission grant the Request.)
May 2, 2014

H. Laster Brown, Esq., Chairman
Environmental Management Commission
P.O. Box 301463
Montgomery, AL 36130-1463

Via electronic mail and fax

Re: Request to Address the Environmental Management Commission
       June 20, 2014 Meeting

Dear Chairman Brown:

Please accept this letter as two separate requests to address the Environmental Management Commission ("EMC" or "Commission") at its regularly scheduled June 20, 2014 meeting.

Benjamin Eaton is a resident of Uniontown, Alabama as well as a member of Black Belt Citizens Fighting for Health and Justice, a nonprofit organization of concerned citizens in Uniontown, Alabama. He would like to address the Commission on several environmental issues of public interest. Mr. Eaton plans to follow up an October 2013 presentation that he made to the EMC about ongoing sewage treatment issues in his community, which was demonstrably of interest to the EMC since they asked many questions which prompted a robust public discussion at that time. His June 2014 presentation offers an informative "Part 2" to that October presentation and will focus on how the City of Uniontown's Wastewater Treatment Plant offers lessons to be learned by both the community and the Alabama Department of Environmental Management ("ADEM") in addressing longstanding pollution issues in our communities. These lessons learned can help ADEM and other stakeholders improve future outcomes in these circumstances.

Nelson Brooke is Riverkeeper at Black Warrior Riverkeeper, Inc., a nonprofit organization located in Birmingham, Alabama, whose mission is to protect and restore the Black Warrior River and its tributaries. The City of Uniontown is in the Black Warrior basin. Mr. Brooke also made an EMC presentation on issues raised by the City of Uniontown's Wastewater Treatment Plant that complemented Mr. Eaton's at the Commission's October 2013 meeting. At the June 2014 meeting, Mr. Brooke plans to present the EMC with an update on new developments and issues of concern to our
organization at the City of Uniontown’s Wastewater Treatment Plant. Mr. Brooke’s comments will present and provide education on the larger issue of how ADEM and involved stakeholders can address some of the challenging issues presented by municipal wastewater treatment plants that struggle to put together adequate funding and workable plans to meet compliance goals. Mr. Brooke’s comments will be instructive not just for the specifics presented by the example of Uniontown, but also may inform the EMC and the public’s larger perspective in addressing similar situations in the future.

As was the case in October 2013, the two presentations will complement each other rather than provide duplicative or redundant information.

As you know, we do not agree that public comments on City of Uniontown’s Wastewater Treatment Plant may be foreclosed by “ongoing litigation involving the Department” as stated previously. See April 2, 2014 Letter to Chairman H. Lanier Brown, II from Eva L. Dillard. However, I want to assure you that neither presentation will mention, address or comment upon the 2008 Order of Consent between ADEM and Uniontown or ADEM’s April 25, 2012 Amended Petition Seeking Finding of Contempt filed in the Circuit Court of Perry County.

The scheduling of each of these presentations is in the public interest, as they will educate and inform both the Commission and the public. Moreover, these presentations will support and contribute to the Commission’s mission of developing appropriate environmental policy for the State.

As a courtesy to the Commission, both Mr. Eaton and Mr. Brooke are each happy to submit their slides to you in advance of the meeting so that Commission members may have an opportunity to prepare. Please know that I appreciate your kind consideration of these requests and look forward to hearing from you whether you plan to recommend that the EMC hear these public comments. Thank you.

Sincerely,

Eva Dillard
Staff Attorney

cc: Deb Thomas, EMC Executive Assistant

1 Applicable regulation “discourages the members of the Commission from engaging in the non-deliberative discussion of any case or legal proceeding pending before the Commission, or of any decision by the Commission in a case or legal proceeding pending appeal before the Courts of this State.” See Ala. Admin. Code r. 335-2-3-.05(3) (emphasis added). Neither Eaton nor Brooke wish to speak about a case or legal proceeding pending before the Commission or a decision by the Commission they merely want to provide information and offer perspective to a public agency on topics of public interest.
Robert D. Tambling, Chief
Environmental Section
Office of the Attorney General of Alabama
May 13, 2014

Delivered via Facsimile & Electronic Mail
H. Laniot Brown, II, Esq., Chair
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-146

Re: Request of ADEM Reform Coalition to Speak at June 20, 2014 Meeting

Dear Chairman Brown:

The ADEM Reform Coalition requests that the Alabama Environmental Management Commission allow me, as an authorized representative of the Coalition, to address the Commission during the public comment portion of the Commission’s June 20, 2014 meeting. The topic for discussion is ADEM’s current Environmental Justice policy which the Coalition contends is both lacking in critical substance and in excess of ADEM’s authority to develop and implement. A draft of the Coalition’s presentation is attached and a final copy of the presentation will be provided in advance of the meeting.

Please note that Environmental Justice is not the same as Title VI of the Civil Rights Act of 1964 or EPA’s Title VI compliance program. This presentation will not address ADEM’s Title VI obligations or any pending Title VI complaints against ADEM that have been filed with the U.S. Environmental Protection Agency. Moreover, this presentation will not address any specific regulated facilities.

I look forward to receiving your recommendation.

Sincerely,

David A. Ludder

9150 McDougall Court • Tallahassee • Florida 32312-4208 • Telephone 850-386-5671
Facsimile 267-873-5848 • Email DavidALudder@enviro-lawyer.com • Web www.enviro-lawyer.com
June 6, 2014

H. Lanier Brown, II, Esq.
Chair
Alabama Environmental Management Commission
1400 Coliseum Boulevard
Montgomery, AL 36130-146

Deliver via Facsimile and Electronic Mail

Dear Chairman Brown:

In accordance with Alabama Administrative Code Section 335-2-3-.05, this letter is a request to the Alabama Environmental Management Commission for approval to address the Commission during the public comment portion of the Commission's June 20, 2014, meeting. The topic of the discussion is EPA's "Consolidated Interim Response to Three Petitions to Withdraw Alabama's Authorization to Implement the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Program" dated April 9, 2014. On April 11, 2014, Director LeFleur discussed this report and presented the Department's reaction to the EPA response along with commentary that manifestly misrepresented both the positions and intentions of the Petitioners as well as the EPA's response. In light of the Director's statements and in the interest of fairness, it is critical that the Commission hear the other side of the story. Attached is ARA's analysis of the EPA's response which serves as the draft of my presentation. A final copy of the presentation will be provided in advance of the meeting.

Please note that this request is in keeping with the provisions of Alabama Administrative Code Sections 335-2-1-.26 and 335-2-3-.05(3). As there is no administrative or legal proceedings involving the Commission discussed in this presentation, allowing public participation on this topic cannot be considered Ex Parte communication. Allowing this presentation will not engage members of the Commission in non-deliberative discussion of any case or legal proceeding pending before the Commission, nor of any decision by the Commission in a case or legal proceeding pending appeal before any Court of the State. This request is in no way intended to be, nor will approval of this request result in, a circumvention of any administrative or judicial procedure which specify the time and manner of presenting testimony, evidence, or comment to the Commission in a formal manner designed to provide due process to all parties.

Thank you for your consideration of this request and I look forward to your recommendation.

Sincerely,

Mitchell L. Reid, J.D.
Program Director
Alabama Rivers Alliance
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION

WHEREAS, the Alabama Environmental Management Commission (Commission) considered the Summary of Written Comments on ADEM Director Performance Evaluation and the following recommendations of the Personnel Committee:

1. Recommend that the Commission request that the State Personnel Board (Board) approve placing Director LeFleur in the State Pay Plan Pay Grade Range (Pay Range) 90 at Step 15 and that the Commission request that the Board approve an increase for Director LeFleur to a per year salary of $152,618.40.

2. Recommend that the Commission approve the practice of using Pay Range 90 for salary levels for the ADEM Director position with the stipulation that placing Director LeFleur in that Pay Range is approved by the Board.

3. Recommend that the Commission authorize the Personnel Committee Chair to meet with Director LeFleur regarding the Summary of Written Comments on ADEM Director Performance Evaluation and recommendations of the Personnel Committee adopted by the Commission and to execute the verification of understanding between the Commission and the Director regarding the results of the Performance Evaluation.

WHEREAS, the Commission hereby adopts the above recommendations of the Personnel Committee.

NOW THEREFORE, be it resolved that the Commission requests that the Board approve placing Director LeFleur in the Pay Range 90 at Step 15 and that the Board approve an increase for Director LeFleur to a per year salary of $152,618.40.
IN WITNESS WHEREOF, we have affixed our signatures below on this 20th day of June, 2014.

APPROVED:

Mary J. Merritt
Commissioner

James E. Salmon
Commissioner

Robert L. Crevisie
Commissioner

W. Scott Phillips
Commissioner

DISAPPROVED:

Commissioner

Commissioner

This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 20th day of June 2014.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 20th day of June 2014
Attachment 3
BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In the Matter of: )
) )
Phillips Truck and Scrap Tire Removal, ) )
    Petitioner, ) )
) )
vs. ) EMC Docket No. 12-01 )
) )
Alabama Department of )
Environmental Management, )
    Respondent. )
)

ORDER

This cause having come before the Environmental Management Commission pursuant to the Petitioner’s Dismissal of Request for Hearing, which is viewed as a motion for voluntary dismissal of the request for hearing, for the above-styled appeal and having considered the same, the Commission hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the Petitioner’s motion for voluntary dismissal is hereby granted; and

2. That pursuant to granting the motion for voluntary dismissal, this request for hearing is hereby 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 the Order, along with a copy of the Petitioner’s Dismissal of Request for Hearing, shall be forthwith served upon each of the parties hereto either personally, or by certified mail.
ISSUED this 20th day of June 2014.

APPROVED:

Mary J. Merrell
Commissioner

Janet K. Uecker
Commissioner

Robert D. Casebeer
Commissioner

DISAPPROVED:

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 20th day of June 2014.

W. Scott Phillips, Vice Chair
Environmental Management Commission
Certified this 20th day of June 2014
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Phillips Truck and Scrap Tire Removal
76 Tarpley Drive W
Gadsden, Etowah County, Alabama
Transporter Permit No. S000039928
Order No. 12-061-ST

DISMISSAL OF REQUEST FOR HEARING

COMES NOW, your Petitioner, Phillips Truck and Scrap Tire Removal, and hereby requests that its request for Hearing be dismissed as the parties have resolved this matter.

Respectfully submitted, this 5th day of May 2014.

[Signature]

Philip E. Miles

Law Office of Philip E. Miles, LLC
309 Broad Street
Gadsden, AL 35901
Telephone 256-543-9777
Facsimile 256-543-9770
Email: pemllc@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been placed in the U.S. Mail, first class, postage prepaid, on this 5th day of May 2014.

Alabama Department of Environmental Management
Attn: Wm. Gerald Hardy, Chief Land Division
Post Office Box 301463
Montgomery, AL 36130-1463

Alabama Environmental Management Commission
P O Box 301463
Montgomery, AL 36130

[Signature]

Philip E. Miles