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July 31<sup>st</sup>, 2019

Thomas P. Walters, Chair  
AEMC Personnel Committee  
P.O. Box 301463  
Montgomery, AL 36130-1463

Submitted by email to [aemc@adem.alabama.gov](mailto:aemc@adem.alabama.gov)

Regarding: ADEM Director Job Performance Evaluation for October 20, 2018 to July 31, 2019.

Mr. Walters and the AEMC Personnel Committee,

The Cahaba River Society is a 501 (c) 3 non-profit conservation group located in Birmingham, Alabama. Our mission is to restore and protect the Cahaba River watershed and its rich diversity of life. The diverse lives depending on the Cahaba include the 600,000 people and numerous businesses in the Birmingham Water Board service area relying on the River as a major source of drinking water as well as its internationally significant diversity of freshwater wildlife.

It is our experience that the ADEM Director's performance over the past year has been inadequate to achieve ADEM's mission and to protect the people of Alabama from environmental harm. We provide three examples and describe those in greater detail below:

- The Director has not advocated to increase ADEM's inadequate budget
- ADEM's Eastern Area Landfill permit review and approval endangers public health
- ADEM's enforcement policies not deter violations

### **The Director has not advocated to increase ADEM's inadequate budget**

The Director should do more to advocate for an adequate budget for ADEM. In the Director's response to the Personnel Committee last year, he notes that he requested \$7M from the legislature for ADEM for the past two budgets. He did not indicate that he has communicated with state legislators or taken any other steps to secure

adequate funding for ADEM from the legislature. We want a Director who will work harder to secure the funding ADEM needs to do more than merely 'getting by', but which will be adequate to protect the health of our communities and the natural resources of this beautiful state. We don't see that happening for Alabama.

The Environmental Council of States (ECOS) compares budgets for participating states for 2013 to 2015<sup>1</sup>. They document that only 1.5% of ADEM's budget is from the state's General Fund<sup>2</sup>. ADEM's support from our legislature is the weakest of all the states participating in the Environmental Council of States, save for Missouri which has a dedicated funding source over 10-fold larger than Alabama's. The Director should do more to secure better funding from the state legislature.

Furthermore, that ECOS document shows Alabama's *per capita* spending for environmental management was the lowest of all 50 states. Alabama's *per capita* contribution from the state's General Fund is less than Puerto Rico's contribution. In 2015, ADEM spent \$11.53 per person on implementation of environmental regulations. This only is 21.5% of the average *per capita* spending by other states that participated in the Environmental Council of States.

Agency funding is obviously and fundamentally important. However, the Director's response to questions about ADEM's funding<sup>3</sup> does not address the actual *adequacy* of ADEM's current funding and its capacity to adequately protect the health and safety of our communities. Instead, the Director promotes the idea that ADEM is doing well enough with the budget it has.

Unfortunately, the metrics the Director cites to assure the Environmental Management Commission<sup>4</sup> that ADEM is performing well do not always reflect strong environmental protection. While we are pleased that ADEM's performance has improved in many respects over time, those improvements in timely issuance of permits and other metrics do not necessarily result in better environmental protection.

For example, in the next section, we will describe how ADEM's Land Division has issued a landfill permit in a timely fashion. Unfortunately, that permit is deeply flawed and puts public health at risk. That permit's 'timely issuance' does not compensate for the seriousness of the permit's defects. Metrics about the proportion of permits issued 'on time', while important, they do not always reflect whether those permits have been adequately reviewed or are actually protective.

### **ADEM's Eastern Area Landfill permit review and approval endangers public health**

In our comments on the Draft Permit for the modification of The City of Birmingham's Eastern Area Landfill, AL 37-12, we pointed out that the map in the permit application materials showing the location

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<sup>1</sup> These are the most recent assessments available from ECOS. Available at <https://www.ecos.org/documents/green-report-on-status-of-environmental-agency-budgets/>

<sup>2</sup> See Figure 4a on page 12 of the above document.

<sup>3</sup> For example, in the Director's August 1, 2018 letter to the Personnel Committee responding to concerns of eleven environmental organizations submitted to the Personnel Committee as a part of the Director's Job Performance evaluation last year.

<sup>4</sup> For example, from the Director's Report in the Minutes of the December 14, 2018 Environmental Management Commission Meeting, available at <http://adem.alabama.gov/commission/minutes/12-14-18EMCMeetingFinalMinutes2-19-19.pdf>

of the proposed new unit of the landfill was incorrect. Rather than being sited over Floyd Shale, as indicated in the application material, the actual proposed landfill location would be sited over Bangor Limestone, which currently serves as the drinking water aquifer for the City of Trussville. ADEM's response to our comment was that "...although there are minor discrepancies in the maps provided in the application, the required five feet of separation from groundwater was shown to be achieved in all of the relevant information provided." <sup>5</sup>

ADEM apparently made a decision to rely on the perpetual integrity of the landfill liner to protect the Trussville Utility customers whose only source of drinking water are the Utility's wells. ADEM apparently assumes the liner will be installed perfectly and will perform perfectly into the foreseeable future rather than exercising a modest degree of caution regarding the quality of the drinking water supply for Trussville Utility customers. Apparently, 'meeting the five foot requirement' of separation from groundwater was used to justify siting a landfill atop a drinking water aquifer. Satisfying a requirement to avoid groundwater contact is not sufficient to protect a drinking water supply.

Siting a landfill immediately atop a drinking water aquifer used by the Trussville Utilities is simply asking for trouble. This appears to be an example of applying a groundwater protection standard where a drinking water protection standard is more appropriate.

Concerns about this permit were expressed by local elected officials, state legislators, the Trussville Water Utility manager, environmental NGOs, and other members of the community. It appears that ADEM has determined that the potential risk to Trussville's drinking water source is less important than allowing the permittee to site the landfill where they prefer.

We have learned that ADEM's hydrologist did not review this permit prior to issuing the draft permit. This speaks to our point in the previous section of our comments that ADEM's resources are not sufficient to ensure adequate time and personnel for permit review. Either ADEM does not have adequate resources or it has a policy to allow siting of a landfill atop a drinking water aquifer. In either case, the Director has not assured adequate review of NPDES permits.

The Eastern Area Landfill is also an example where 'the metrics' cited by the Director<sup>6</sup> do not capture the actual potential environmental risks associated with ADEM's willingness to issue permits that might put Alabamians at risk. We believe the Director has not created the proper climate for adequate environmental regulation and enforcement.

### **ADEM's enforcement policies do not deter violations**

Using EPA's "Enforcement and Compliance History Online (ECHO)"<sup>7</sup>, we find that facilities currently discharging to Alabama's waters have been out of compliance statewide 8,992 times on a quarterly basis over the past three years (12 quarters). The Director has pointed out that ADEM administers around 35,000 permits. This means that in any given year, about 8.6% of all NPDES permitted facilities are out

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<sup>5</sup> See <http://app.adem.alabama.gov/eFile/Download.ashx?lib=Land&docId=004253335>, first page of the Response, paragraph 3.

<sup>6</sup> For example, from the Director's Report in the Minutes of the December 14, 2018 Environmental Management Commission Meeting, available at <http://adem.alabama.gov/commission/minutes/12-14-18EMCMeetingFinalMinutes2-19-19.pdf>

<sup>7</sup> Available at <https://echo.epa.gov/>

of compliance<sup>8</sup>. While some of these violations are a ‘failure to report’ and so do not represent pollution events, this rate of non-compliance is not admirably low.

ADEM’s eFile system shows that notices of non-compliance were sent to the operators of River Valley Ingredients facility on the following; June 2018, July 2018, August 2018, November 2018, May 2019, and June 2019. Then on June 6<sup>th</sup>, 2019, approximately 220,000 gallons from a treatment lagoon was accidentally pumped into Dave Young Spring, a tributary of the Mulberry Fork River.

Recent high-profile violations illustrate that ADEM’s compliance enforcement policy does not achieve adequate deterrence or avoidance of violations. These high-profile non-compliance events emphasize that ADEM allows poor compliance to continue for too long. For both of these events, and for many other lower-profile situations that typically do not receive public attention, compliance with environmental regulations is not a priority for ADEM relative to protecting permittees from any economic repercussions of compliance enforcement that good corporate citizens should strive to achieve.

It is the ADEM Director’s responsibility to create a culture of compliance regarding environmental regulation and enforcement. From the perspective of our organization, there are far too many examples of meetings attended and suggestions made that have been summarily ignored, too many cases where permittees wishes have been adopted to the detriment of the public, and too many examples of policy decisions that would strengthen the health and welfare of the public that have been ignored by ADEM<sup>9</sup>.

The cost to Alabama communities of allowing permittees to pollute is difficult to measure. However, the impacts of pollution are real and they harm Alabamians. The ADEM Director should create, support, and ensure funding of an agency that protects the interests of the general population and our natural resources and wildlife, as well as those of permittees.

The Director has documented the many occasions when he met with environmental advocates about our concerns and suggestions. While laudably open to hearing from us, the number of occasions when our concerns were addressed or our suggestions adopted are rare. When combined with the distrust that was engendered in the Director’s management by the testimony out of *U.S. v. Gilbert*, which to this day colors my own perceptions about the Director’s management, environmental interests have seen very few positive gains from our interactions with the Director. Maybe that is what the Alabama Environmental Commission desires in an ADEM Director, but I do hope that is not the case.

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<sup>8</sup> Calculated as follows:

$$8,992 \text{ quarterly violations} / (35,000 \text{ permittees per year} \times 3 \text{ years}) = 8,992 / 105,000 = 0.0857 \text{ or about } 8.6\%$$

<sup>9</sup> A list of policies that could be adopted by ADEM which would improving environmental quality include the following:

- 1) Use 4C Categorization of Use Attainment to identify stream segments impaired by altered hydrology
- 2) ADEM should be clear to Municipalities that increased volume of stormwater runoff cause instream pollution
- 3) ADEM could use its 401 Water Quality Certification process to address the volume of stormwater runoff from proposed projects requiring a 404 permit
- 4) Fines for non-compliance should remove the economic incentive to ignore regulations (ADEM has a penalty policy that states this, but we do not believe fines generally achieve that goal)
- 5) ADEM should not intervene in citizen lawsuits and subsequently delay or fail to achieve compliance
- 6) The Director should actively work to rescind Alabama legislation that prohibits state environmental regulations from being more stringent than minimum federal requirements
- 7) The Director’s opposition to reasonable improvement to notification requirements for sewage overflows

Thank you for your thoughtful consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Randall C. Haddock". The signature is written in a cursive style with a large, prominent initial 'R'.

Randall C. Haddock, PhD  
Field Director  
Cahaba River Society

Cc: Buddy Choat, Mayor, City of Trussville  
Jef Freeman, Council President, City of Trussville  
Mike Strength, General Manager, Trussville Water and Gas  
Curt Chaffin, Policy Director, Alabama Rivers Alliance