

6/1/17

DRAFT

Minutes

**Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
April 21, 2017**

Page 137

1 be notified if there was actually public
 2 notice. And we talked to the City of
 3 Pelham, who was responsible for the
 4 overflow, and what they said was that
 5 they do want to notify the public but
 6 they didn't know how. And we did; we did
 7 notify the public and we do know how to
 8 do it. And in a very short period of
 9 time, our, you know, attempt to notify
 10 the public reached 70,000 people in less
 11 than eight hours. And there is a very
 12 strong desire for the public to know
 13 that.
 14 And in your questions, you asked --
 15 you know, you referenced these comments
 16 of people that sent in that don't believe
 17 there is a system for public
 18 notification, and that's the reason why.
 19 When their children have swum -- you
 20 know, been swimming in water that is
 21 contaminated and they were not notified,
 22 that is effectively not a system of
 23 public notification. And in our case,

Page 139

1 anybody to do more with less resources
 2 than the groups who have submitted this
 3 petition. I think Casi mentioned it. We
 4 work closely with the Coosa Riverkeeper,
 5 which is two employees. We have two
 6 employees. We test all summer at every
 7 recreational access point. We provide,
 8 you know, adequate public notice. And I
 9 think that -- that we have shown that you
 10 can do that with -- with limited
 11 resources.
 12 And then the only other --
 13 CHAIRMAN BROWN: Thank you.
 14 MR. BUTLER: -- thing I wanted to
 15 say -- what's that?
 16 CHAIRMAN BROWN: Thank you.
 17 MR. BUTLER: That's it?
 18 CHAIRMAN BROWN: Next, David
 19 Ludder representing self to address
 20 Director's criticism at last meeting. Be
 21 careful.
 22 MR. LUDDER: Of course. My name
 23 is David Ludder, and I am here on behalf

Page 138

1 you know, in a state of six million, you
 2 know, however many million people live in
 3 Alabama, I happen to be in the right
 4 place at the right time with the right
 5 equipment. And had I not been there that
 6 day, nobody would have been notified.
 7 There would have been absolutely no
 8 notification. And at that location where
 9 that waterfall is, on a day like that,
 10 which was July 22, 2015, literally
 11 hundreds of people play in that water,
 12 and it's inexcusable to us that -- that
 13 the operator came to that park and
 14 notified nobody. The difference -- what
 15 we are asking in the petition is that the
 16 difference in his responsibility -- he
 17 was responsible to go to the park, and
 18 all we're asking is to hang a sign there.
 19 And that's a very small burden on the
 20 operator.
 21 And then the other thing is, you
 22 know, resources. We've heard "resources"
 23 come up a lot. And I would challenge

Page 140

1 of myself. I was unable to attend the
 2 last meeting of the Commission; however,
 3 I did view the videotape of that meeting.
 4 I was very disappointed to see the
 5 criticism leveled at the environmental
 6 community by the Director as well as
 7 leveled at Michael Mullen in particular.
 8 Michael Mullen has complained
 9 repeatedly to ADEM about construction
 10 storm-water sites that are not adequately
 11 prepared to control erosion and sediment
 12 deposition in state water. Mr. Mullen is
 13 not an amateur at this. He is a
 14 certified professional in erosion and
 15 sediment control, a certification that
 16 under ADEM's regulations authorizes him
 17 to design all nonstructural elements of
 18 construction of storm water best-
 19 management plans. He also has a Bachelor
 20 of Science degree in chemistry and
 21 biology, a Master of Science degree in
 22 chemistry, and a Master of Science degree
 23 in biology. He is the former director of

<p>1 the Center for Environmental Research and 2 Service at Troy State University. Given 3 his expertise and qualifications, his 4 complaints about adequate or inadequate 5 erosion and sediment controls at 6 construction and storm water sites should 7 be taken seriously. 8 One complaint that Mr. Mullen and 9 others have had repeatedly or have made 10 repeatedly concerns the time it takes for 11 ADEM to take enforcement action once a 12 violation is discovered and the time it 13 takes for violators to return to 14 compliance once enforcement action is 15 taken. The timeliness of enforcement 16 actions and return to compliance are 17 important measures of the effectiveness 18 of ADEM's enforcement program. The EPA 19 dashboards that the Director so often 20 references at Commission meetings do not 21 measure the timeliness of enforcement 22 actions or the timeliness of return to 23 compliance. The collection of anecdotal</p>	<p>Page 141</p>	<p>1 Choctatawhatchee Riverkeeper, 2 Incorporated, led by Mr. Mullen, filed 3 eight notices of intent to sue violators 4 for Clean Water Act violations. Some of 5 these included sanitary sewer overflows. 6 In response to each of these notices, 7 ADEM and the State of Alabama filed 8 lawsuits against the violators alleging 9 the same violations that Mr. Mullen 10 identified. 11 I urge the Commission to do two 12 things -- first, establish a policy -- 13 establish that it is a policy of ADEM to 14 collect and report data on the timeliness 15 of enforcement actions and the timeliness 16 of return to compliance. And, second, 17 advise the Director to refrain from 18 engaging in personal attacks on members 19 of the environmental community. 20 Thank you for giving me the 21 opportunity to express my views. Thank 22 you. 23 CHAIRMAN BROWN: Thank you. I'll</p>	<p>Page 143</p>
<p>1 data on timeliness of enforcement and 2 timeliness of return to compliance is not 3 an appropriate way to characterize the 4 effectiveness of ADEM's enforcement 5 program. Therefore, the environmental 6 community has repeatedly asked the 7 Director to collect such data, and the 8 Director has repeatedly refused to do so, 9 preferring instead to rely on the EPA 10 dashboards. 11 Given the Director's reluctance to 12 collect such data, it is appropriate for 13 the environmental community now to ask 14 the Commission to establish that it is 15 the policy of the Department to collect 16 and report data on the timeliness of 17 enforcement action and the timeliness of 18 return to compliance. 19 Finally, I would say that 20 Mr. Mullen's credibility and accuracy has 21 been confirmed numerous times by ADEM and 22 the attorney general. Between April 12, 23 2008 and May 4, 2016, the</p>	<p>Page 142</p>	<p>1 entertain a motion -- 2 MR. PHILLIPS: Move we adjourn. 3 DR. MARTIN: Second. 4 CHAIRMAN BROWN: All in favor? 5 (Indicated.) 6 CHAIRMAN BROWN: We're adjourned. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 REPORTER'S CERTIFICATE</p>	<p>Page 144</p>