



Alabama Environmental Management Commission

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H. LANIER BROWN, II, ESQ.
CHAIR

May 21, 2014

ROBERT J. BENTLEY
GOVERNOR

W. SCOTT PHILLIPS
VICE CHAIR

By E-Mail and U.S. Mail

David A. Ludder, Esq.
9150 McDougal Court
Tallahassee, Florida 32312-4208

Re: *June 20, 2014, EMC Meeting – Public Comment Period
Request 3 – David A. Ludder, Esq., on behalf of the ADEM Reform Coalition,
SUBJECT: ADEM's current Environmental Justice policy*

Dear Mr. Ludder:

This is to acknowledge receipt of the enclosed request to address the Commission on the above-referenced subject during the public comment period at the Commission meeting on June 20, 2014, and the draft of the presentation.

Please be advised that I will recommend that the Commission grant the request to address the Commission. The full Commission will vote on whether or not to grant the request prior to moving to the public comment period. I ask that if the Commission grants the request that the presentation be limited to not more than 10 minutes.

Sincerely,

H. Lanier Brown, II

H. Lanier Brown, II
Chair

HLB/dst

Enclosures

cc: EMC Members (by e-mail, w/enc.)
Robert D. Tambling, EMC Legal Counsel (by e-mail, w/enc.)
Lance R. LeFleur, ADEM Director (by e-mail and hand delivery, w/enc.)

MEMBERS –

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May 13, 2014

Delivered via Facsimile & Electronic Mail

H. Lanier 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.

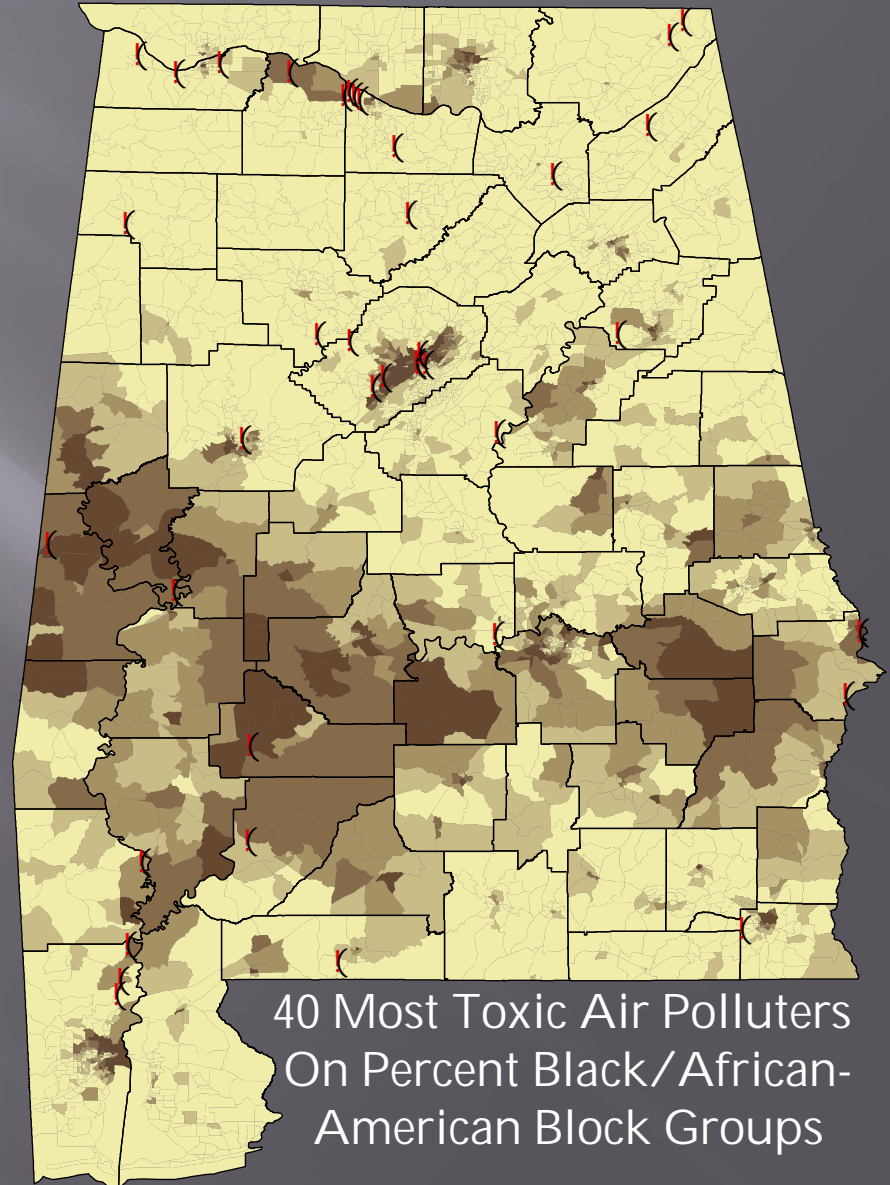
I look forward to receiving your recommendation.

Sincerely,

David A. Ludder

Environmental Justice for All Alabama Citizens

Presented to the
Alabama Environmental
Management Commission
by the
ADEM Reform Coalition
April 11, 2014



EPA'S DEFINITION OF ENVIRONMENTAL JUSTICE

Environmental Justice is the **fair treatment** and **meaningful involvement** of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair Treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. Meaningful Involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

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August 24, 2004

ADEM Reform Coalition members ask Commission to:

- ▣ Amend ADEM rules to require that every notice of a proposed permit include demographic information for the area in which the facility will be located;
- ▣ Require the creation of an Environmental Justice Division within ADEM to collect demographic data, assess exposures to demographically defined populations, and employ a toxicologist and other relevant staff; and
- ▣ Support legislation to prevent disproportionate impacts on populations defined by demographics.

September 21, 2004

Petition for rulemaking filed with AEMC to require publication of data on race, color and national origin of populations surrounding facilities proposed to be permitted

**BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION**

IN THE MATTER OF:

PETITION TO AMEND ADEM ADMIN. CODE R.
335-3-14-.01, 335-3-15-.05, 335-6-6-.21, 335-13-5-.03,
and 335-14-8-.08

(ALABAMA AFRICAN AMERICAN ENVIRONMENTAL JUSTICE ACTION NETWORK, ALABAMA ENVIRONMENTAL COUNCIL, ALABAMA ENVIRONMENTAL COUNCIL - HUNTSVILLE CHAPTER, ALABAMA RIVERS ALLIANCE, INC., ALABAMA WATCH, ASHUEST BAR/SMITH COMMUNITY ORGANIZATION, BLACK WARRIOR RIVER KEEPER, INC., CAHABA RIVER SOCIETY, INC., CONSERVATION UNLIMITED, FRIENDS OF LOCUST FORK RIVER, FRIENDS OF RURAL ALABAMA, INC., LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION, INC., and SAND MOUNTAIN CONCERNED CITIZENS, INC.,

Petitioners),



**PETITION TO AMEND ADEM ADMIN. CODE
R. 335-3-14-.01, 335-3-15-.05, 335-6-6-.21, 335-13-5-.03, and 335-14-8-.08**

I. INTRODUCTION

1. This Petition is to amend ADEM Admin. Code R. 335-3-14-.01, 335-3-15-.05, 335-6-6-.21, 335-13-5-.03, and 335-14-8-.08 to require that the Alabama Department of Environmental Management publish in each notice of initial permit issuance, permit reissuance, and permit

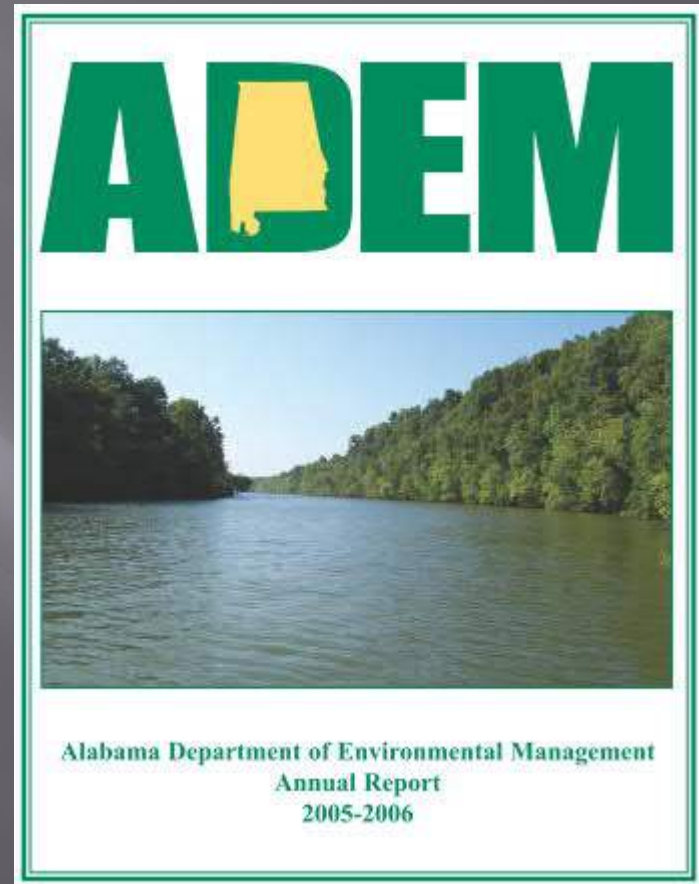
November 19, 2004

AEMC denies petition for rulemaking after AEMC's only African-American member says "programmatic approach" to environmental justice, not "piecemeal approach," is needed.

1 MR. CHAIRMAN: Yes.
2 MR. HAIRSTON: I just want to
3 say I have talked with Mr. Ludder and
4 those who are in support of this and they
5 understand what I'm about to suggest:
6 I'm committed to the environmental
7 justice resolution that we made and I am
8 committed to the concept of getting an
9 ombudsman in place, notwithstanding what
10 currently is expressed with regard to
11 that and I don't want to take a piecemeal
12 approach to any of that.
13 I want to take a programmatic
14 approach to it so that everything flows
15 together reasonably and with that in
16 mind, I think that the timing of this is
17 just not proper for what my intention is
18 with regard to the environmental justice
19 initiative that I'm interested in. Some
20 of the things that they are interested in
21 may well be feasible through the
22 ombudsman and I don't want to move
23 forward at this point until I can be

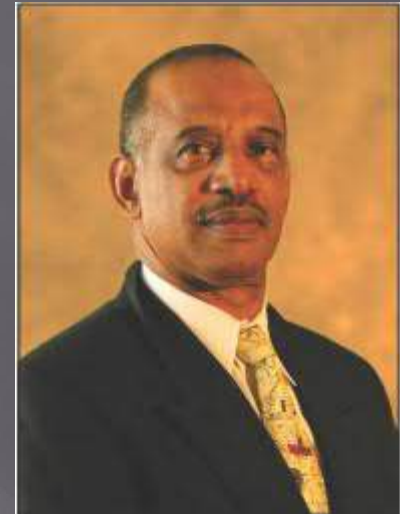
Environmental Justice

“ In the 2006 fiscal year, the Alabama Department of Environmental Management secured funding for its Environmental Justice program. Environmental Justice is defined as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. ADEM's Environmental Justice program is designed to help all communities and persons across Alabama enjoy the same degree of



access to the decision-making process. In the 2006 fiscal year, the department tabbed [sic] long-time employee Elvin D. Lang to serve as Environmental Justice Ombudsman and Coordinator. After working with the department for 30 years, Lang began serving in his new position Oct. 1, 2006 (the first day of the 2007 fiscal year).

“The focus of the department's Environmental Justice program centers on continuing to develop an appropriate and meaningful process that will work in all of Alabama's 67 counties. A significant portion of the department's efforts in the area of Environmental Justice is ensuring that everyone in the state has equal access to information and opportunity for involvement.”



*Elvin Lang,
Environmental Justice Ombudsman and
Coordinator*

ADEM'S DEFINITION OF ENVIRONMENTAL JUSTICE

The meaningful involvement and consideration of all people – regardless of race, color, national origin, or income – with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Adopted by ADEM circa August 2007 without public notice and comment or approval by AEMC.

The Code of Alabama 1975



§ 22-22A-4(b)

All powers, duties and functions transferred to the department by this chapter, **except those specifically granted to the Environmental Management Commission**, shall be performed by the director;

The Code of Alabama 1975



§ 22-22A-6(a)

[The] Environmental Management Commission of the Alabama Department of Environmental Management . . . shall have the following duties:

* * *

(3) To develop environmental policy for the state;

CONCLUSIONS

- ▣ The AEMC has the exclusive authority to develop environmental policy for the State, including Environmental Justice policy.
- ▣ The Director of ADEM acted unlawfully (i.e., beyond his statutory authority) when he developed and implemented ADEM's Environmental Justice policy and "Environmental Justice" definition. That policy and definition are void.
- ▣ "No state agency/department may . . . expend money or incur any obligations except in accordance with law" Ala. Code § 41-19-10(d).

RECOMMENDATIONS

1. The AEMC should develop Environmental Justice policy for the State.
2. An effective Environmental Justice policy must not only provide for “**meaningful involvement**” of Environmental Justice communities in regulatory decision-making, it must also provide for “**fair treatment**” of those communities, i.e., it must provide that regulatory decisions avoid the imposition of a disproportionate share of negative consequences on Environmental Justice communities.
3. The first step in achieving “fair treatment” is the “**assessment**” of whether individual regulatory decisions will impose a disproportionate share of the negative consequences on Environmental Justice communities.

Now ... what will you do
for Alabama citizens?

Will you leave this meeting never to
discuss Environmental Justice
again?

Or will you undertake development
of Environmental Justice policy for
the State?