

WATERKEEPERS® Alabama
c/o Black Warrior **RIVERKEEPER®**
712 37th Street South
Birmingham, AL 35222
Phone: (205) 458-0095
Fax: (205) 458-0094
cscibner@blackwarriorriver.org



July 31, 2019

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

Re: Evaluation of Director Lance LeFleur

Via electronic mail only to aemc@adem.alabama.gov

Dear Chair Walters and Members of the AEMC Personnel Committee:

Thank you for the opportunity to provide feedback on Lance LeFleur's performance as the Director of the Alabama Department of Environmental Management (ADEM). While I am executive director of Black Warrior Riverkeeper, I am sending this letter as president of Waterkeepers Alabama, a new Regional Entity of Waterkeeper Alliance. Waterkeepers Alabama formed in 2018 to further connect and support eight Waterkeepers across Alabama: Black Warrior Riverkeeper, Cahaba Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Hurricane Creekkeeper, Little River Waterkeeper, Mobile Baykeeper, and Tennessee Riverkeeper.

Each of those eight independent nonprofit organizations may be submitting their own letter during this public comment process, focusing more on specific problems in each of their watersheds. As a team, however, we consider the state in its entirety – as does ADEM – and therefore decided to submit this letter through that broader lens. We compiled over a dozen "big picture" areas where ADEM is failing under Director LeFleur's lack of leadership, subsequently voting to present five of them for the sake of a more concise letter. Here are the priorities that we identified:

1. **Enforcement Inadequacy:** Director LeFleur seems to think a collaborative approach is the most effective way to deal with polluters violating the Clean Water Act in Alabama. This is a serious misstep, as friendly closed-door meetings do not send a strong regulatory message to polluters. The people of Alabama want ADEM to command the attention of polluters with an aggressive enforcement regime that actually deters future violations of the Clean Water Act and other environmental regulations. Instead, Director LeFleur would rather join hands with major polluters and either levy no fine or arrive at a mutually agreeable fine without a lawsuit. ADEM often cites an inability to fine polluters more than \$250,000. In actuality, ADEM can assess much larger penalty amounts if they file a lawsuit with an aim to truly set precedent and deter future violations, which is necessary to set a new environmental regulatory paradigm. In many cases, \$250,000 is far less than the economic benefit that polluters gain by skirting environmental laws, meaning it is in their financial interest to ignore the law and instead anticipate paying minimal fines levied by ADEM as a token cost of doing business. Such an

approach also essentially penalizes entities who invest in environmental procedures to follow the State's environmental laws and regulations. ADEM must stop this ineffective approach and begin to take meaningful legal action when it is warranted. An aggressive and effective enforcement program at ADEM could supply Alabama's ailing General Fund with hundreds of millions of dollars every year, and justify significant funding from the Legislature for ADEM, which has been chronically underfunded for decades.

2. **Lack of Transparency in Calculating Penalties:** Alabama law requires ADEM to consider six penalty factors in imposing environmental fines through Administrative Orders. ADEM has failed to clearly explain or support its consideration of the six factors when calculating penalties, and Director LeFleur has failed to provide necessary transparency and accountability in this regard. Without properly accounting for its calculations, ADEM not only fails the public, it also provides ample opportunity for polluters to challenge levied fines and overturn enforcement actions. This should be of grave concern to ADEM, the AEMC, and all Alabamians. For the sake of transparency, accountability, and effective enforcement, ADEM should make its penalty calculations clear and understandable for all who review an ADEM order
3. **Public Notification of Spills:** The public has a right to know when raw sewage, partially treated sewage, industrial wastewater, chemicals, and more are spilled or dumped into our rivers, streams, lakes, bays, and shorelines. However, loosely-constructed state guidelines mean that the public is often notified long after spills have been affecting our public resources, during which time swimmers, anglers, paddlers and others are in harm's way. ADEM's online email notification system does not account for spills other than sewage and does not reach a significant proportion of the public. Its emails are often sent days after major spills. In the last few years Director LeFleur has actively fought for the status quo even though that means putting Alabama citizens in harm's way. Instead of working with Waterkeepers Alabama and others across Alabama to implement updates to regulations which would require effective public notification of sewage spills, Director LeFleur sided with the misguided wastewater operators who opposed commonsense updates to regulations, even though many other operators supported the concept of improving notification. The new email notification system and signage at public boat launches are a step in the right direction, but fall far short of providing the majority of Alabamians with adequate and timely public notice. Without phone, text, social media, and more widespread signage, many people who use our waterways will never be notified. Alabamians expect far more proactive action on this subject from ADEM, as was shown during the poorly handled public notification during and after the recent Tyson wastewater spill and fish kill.
4. **Communications:** ADEM has a responsibility to provide transparent, timely information to the public. Unfortunately, under Director LeFleur ADEM acts as more of public affairs branch for industry. Director LeFleur needs to spend more time holding polluters accountable for repeated violations of state laws, and less time targeting reporters or public advocates who call out ADEM for their mistakes. Director LeFleur should be graciously accepting constructive public criticisms, a key role of public employees with leadership capabilities. He should be implementing effective public notification of public comment opportunities on regulations, permit decisions, and designated water use classifications. Additionally, when citizens file complaints about pollution incidents and fish kills, ADEM should follow up with those complaints in a prompt and transparent way. Meaningfully implementing a public notification program regarding spills and major incidents is ADEM's responsibility in the absence of clear delegation, which would provide permitted facilities with important guidance and enforceable accountability. When left up to permitted facilities without guidance and plans in place, public

notification routinely falls short. Director LeFleur must accept that ADEM cannot leave public notification up to polluters in such a haphazard way, and then expect the public and media to be happy with ADEM when it does not provide adequate or timely responses to questions. If proper notification is not provided by polluters, the public will naturally seek answers from ADEM. If ADEM is not going to provide guidance and clarity regarding public notification to polluters, then it must assume the responsibility of timely and effectively provide public notification itself.

5. **Alabama Power coal ash groundwater contamination:** Contaminants including arsenic, lithium, molybdenum and others are currently polluting the groundwater beneath coal ash ponds throughout the state of Alabama. This groundwater refreshes drinking water aquifers and provides base flow for rivers and streams. ADEM's recent "enforcement" action (fining utilities \$250,000 for each of their power plant's leaking coal ash ponds) for this pollution amounts to little more than an effort to protect Alabama Power and other utilities by preempting potential citizen suits. Rather than aggressively requiring utilities to halt and remediate their pollution, ADEM has allowed utilities like Alabama Power to select their own relaxed and self-serving method(s) of corrective action. Alabama Power's recent Corrective Action Plans have elected to cap coal ash ponds in place (in unlined, leaking pits next to rivers), and allow so-called "natural attenuation" to do the remediation for them over many decades. Director LeFleur's failure to hold these polluters meaningfully accountable on behalf of all Alabamians means that ADEM is protecting industry giants at the expense of public health and natural resources. Coal ash has been polluting Alabama's surface waters and groundwater for decades and it will continue to do so for many generations without effective leadership at ADEM. Other states, such as South Carolina, North Carolina, Georgia and Virginia, are requiring utilities use removal and dry storage to close their ash ponds near waterbodies. This approach removes the ash from areas where it will continue to move into ground and surface waters. We want to see Alabama follow the lead of nearby states to ensure the protection of public resources and public health from coal ash. Under Director LeFleur's direction, the State has allowed Alabama Power to take the least protective approach.

In short, Waterkeepers Alabama members are deeply concerned about the aforementioned weaknesses at ADEM, as well as many other problems we will describe in our eight organizations' separate comment letters. We acknowledge that most of ADEM's failures are systemic and political, transcending the impact of any one director. Still, responsibility for any agency's performance ultimately falls on its leader, as the AEMC clearly and correctly acknowledges by providing this public comment process.

We believe that Director LeFleur does not lead ADEM in a manner that will even inch it closer to fulfilling its stated mission, "to ensure for all citizens of the State a safe, healthful, and productive environment." Instead, ADEM consistently moves in the wrong direction, and is doing so under the wrong director. Thank you again for the chance to record our concerns for an agency that could and should be doing far more to protect Alabama's environment and people.

For Cleaner Water,



Charles Scribner
President
Waterkeepers Alabama

On behalf of Waterkeepers Alabama's eight member organizations in Alabama:

Black Warrior Riverkeeper
Nelson Brooke, Riverkeeper

Cahaba Riverkeeper
David Butler, Riverkeeper

Choctawhatchee Riverkeeper
Michael Mullen, Riverkeeper

Coosa Riverkeeper
Steven Dudley, Riverkeeper

Friends of Hurricane Creek
John Wathen, Creekkeeper

Little River Waterkeeper
William Shugart, Waterkeeper

Mobile Baykeeper
Casi Callaway, Baykeeper

Tennessee Riverkeeper
David Whiteside, Riverkeeper