



For the People, By the People



**A BLUEPRINT FOR REFORM OF THE ALABAMA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**



presented by the



**ADEM REFORM
COALITION**

SEEKING ENVIRONMENTAL PROTECTION FOR THE PEOPLE, BY THE PEOPLE

Revised October 2006

ACKNOWLEDGMENTS

The ADEM Reform Coalition wishes to thank the numerous people who gave countless hours to produce the Blueprint for ADEM Reform. Our collective goals of environmental health, environmental justice, and a better Alabama will one day be realized because of the commitment of the hundreds and thousands of volunteers throughout the State.

Thank you to Charles Seifried for his photographic contributions of the waterfall on the cover and on pages 5, 11, and 28.

Thank you to the Mary Reynolds Babcock Foundation, whose support helped make the revised Blueprint possible.

The ADEM Reform Coalition is comprised of more than 40 grassroots, public health, environmental justice, and environmental organizations in the state. The mission of the ADEM Reform Coalition is to transform the Alabama Department of Environmental Management into an agency with the mission, leadership, capacity, and commitment to serve the people of Alabama and protect Alabama's environment, safeguard human health from environmental causes, and pursue environmental justice. The Coalition wants to work with business interests, citizen groups, and ADEM to develop policies that will ensure that the agency is truly "for the people, by the people" in the areas of:

- Leadership
- Enforcement
- Resources
- Public Participation

For additional copies of this report, contact:

Cindy Lowry
Alabama Rivers Alliance
2027 2nd Avenue North, Suite A
Birmingham, Alabama 35203
(205) 322-6395
clowry@alabamarivers.org

For more information regarding the ADEM Reform Coalition, please see the directory of member groups on the following pages.

The Blueprint for ADEM Reform is a working document that will be maintained and updated with every success, and as new issues arise. The ARC anticipates that these recommendations will provide a framework for reform and a benchmark from which to judge success.

Implementation of these recommendations will require the commitment and participation by many elected public officials and government employees, as well as the support and advocacy by many groups and citizens in Alabama. The ADEM Reform Coalition is committed to working with citizens, the Governor, ADEM, the Legislature, and the EMC to ensure that Alabama's environmental agency is one that protects the environment and public health, requires environmental justice and public participation in all of its activities, and that will work to preserve and protect Alabama's abundance of natural resources for generations to come.

ADEM REFORM COALITION

Airport Neighbors United

306 90th Street South
Birmingham, Alabama 35206
Phone: (205) 296-6890
Fax: (205) 699-7862
Contact: Kimberly Rafferty
selbi@bellsouth.net

Alabama Environmental Council

2717 7th Avenue South, Suite 207
Birmingham, Alabama 35233
Phone: (205) 322-3126
Fax: (205) 324-3784
www.aeconline.ws

Alabama Green Party

1305 White Road
Opelika, Alabama 36801
Phone: (334) 741-9791
Contact: Gene Hunter
hunters56@earthlink.net

Alabama League of Environmental Action Voters

P.O. Box 1987
Montgomery, Alabama 36102
Phone: (334) 834-2956
Fax: (334) 834-2959
Contact: Jeff Martin
alaleavs@aol.com
www.alaleavs.org

Alabama Rivers Alliance

2027 2nd Avenue North, Suite A
Birmingham, Alabama 35203
Phone: (205) 322-6395
Fax: (205) 322-6397
Contact: Adam Snyder
asnyder@alabamarivers.org
www.alabamarivers.org

Alabama Sustainable Agriculture Network

P.O. Box 18782
Huntsville, Alabama 35804
Phone: (256) 520-2400
Contact: Karen Wynne
wynnekaren@hotmail.com

Alabama Watch

278 Tubman Road
Lowndesboro, Alabama 36752
Phone: (334) 284-0555
Fax: (334) 280-2784
Contact: Barbara Evans
bevans@alabamawatch.org
www.alabamawatch.org

Arise Citizen's Policy Project

P.O. Box 1188
Montgomery, Alabama 36101
Phone: 800-832-9060
Fax: (334) 832-9061
Contact: Zack Carter
zack@alarise.org
www.alarise.org

Ashurst Bar/Smith Community

436 Gleeden Drive
Tallasse, Alabama 36078
Phone: (334) 283-4067
Contact: Ann Smith
acsmith216@aol.com

Black Warrior Riverkeeper

712 37th Street South
Birmingham, AL 35222
Phone: (205)458-0095
Fax: (205)458-0094
Contact: Brantley Fry
bfry@blackwarriorriver.org
www.blackwarriorriver.org

Cahaba River Society

2717 7th Avenue South, Suite 205
Birmingham, Alabama 35233
Phone: (205) 322-5326
Fax: (205) 324-8346
Contact: Beth Stewart
beths@cahabariversociety.org
www.cahabariversociety.org

Camp McDowell

105 DeLong Road
Navoo, Alabama 35578
Phone: (205) 387-1806
Fax: (205) 221-3454
Contact: Rev. Mark Johnston
mark@campmcdowell.com
www.campmcdowell.com

Choctawhatchee Riverkeeper

207 Gail Street
Troy, Alabama 36079
Phone: (334) 566-4860
Mobile: (334) 807-2365
Contact: Mike Mullen
Riverkeeper@troycable.net

Concerned Citizens of Sylvan Springs, Maytown, and Booker Heights

5047 Birmingham Road
Sylvan Springs, Alabama 35118
(205) 616-1194
Contact: Elaine Adkins
adkinsk@bellsouth.net

Coosa River Basin Initiative

303 East 5th Avenue
Rome, Georgia 30161
Contact: Joe Cook
joe@joecook.net

East Central Alliance for Quality Living

P.O. Box 203
Loachapoka, Alabama 36865
Phone: (334) 821-9666
Fax: (334) 821-9689
Contact: Sheila Eckman
sheilaeckman@bellsouth.net

Episcopal Diocese of Alabama: Task Force for Stewardship of Creation

2402 Wyncove Way
Prattville, Alabama 36067
Phone: (334) 546-3967
Contact: Sam Robertson
onsitesam@charter.net

Flint River Conservation Association

1623 Monte Sano Blvd.
Huntsville, Alabama 35801
Phone: (256) 539-3747
Fax: (256) 539-3747
Contact: Susan Weber
Weber_caudill@knology.net

Friends of Hurricane Creek/Hurricane Creekkeeper

P.O. Box 40836
Tuscaloosa, Alabama 35404
Phone: (205) 507-0867
Contact: John Wathen
hckeeper@dbtech.net

Friends of Keel Mountain

498 Keel Hollow Road
New Hope, Alabama 35760
Phone: (256) 723-4960
Contact: Stewart Horn

Friends of the Little Cahaba River

1257 Montevallo Road SW
Leeds, Alabama 35094
Phone: (205) 699-5604
Contact: Debbie Pezzillo
dpezzill@uab.edu

Friends of the Locust Fork River

P.O. Box 245
Hayden, Alabama 35079
Phone: (205) 466-3858
Contact: Cindy Lowry
clowry@alabamarivers.org
www.flfr.org

ADEM REFORM COALITION

Friends of Rural Alabama

145 Cross Creek Lane
Ashville, Alabama 35953
Phone: (205) 594-5943
Fax: (205) 594-4475
Contact: Bryan Burgess
burgessbe@alltel.net

Friends of Shades Creek Watershed

401 Woodland Drive
Homewood, Alabama 35209
Phone: (205) 879-6866
Contact: Michelle Blackwood
mkblackwood@earthlink.net

Greater Birmingham Ministries

2304 12 Avenue North
Birmingham, Alabama 35234
Phone: (205) 326-6821
Fax: (205) 252-8458
Contact: Scott Douglas
scott@gbm.org

Lake Watch of Lake Martin

P.O. Box 72
Alexander City, Alabama 35011
Phone: (256) 825-9353
Contact: Dick Bronson
dbronson@charter.net

Legal Environmental Assistance Foundation

1114 Thomasville Road, Suite E
Tallahassee, Florida 32303
Phone: (850) 681-2591
Fax: (850) 224-1275
Contact: David Ludder
dludder@leaflaw.org
www.leaflaw.org

Lowndes Citizens United For Action

P.O. Box 472
Hayneville, Alabama 36040
Phone: (334) 613-7891
Contact: Debra Harris
kiky@bellsouth.net

Mobile Baykeeper

300 Dauphin Street, Suite 200
Mobile, AL 36602
Phone: (251) 433-4229
Fax: (251) 432-8197
Contact: Casi Callaway
callaway@mobilebaykeeper.org
www.mobilebaykeeper.org

North Alabama Citizens for Environmental Protection

375 Ashley Drive
Grant, Alabama 35747
Phone: (256) 582-7240
Contact: David Stanbrough
dstanbro@juno.com

Paradise Lake Homeowner's Association

3140 Paradise Acres
Hoover, Alabama 35244
Phone: (205) 987-0103
Fax: (205) 682-7558
Contact: Ruth Peters
Rpeters80@charter.net

Sand Mountain Concerned Citizens

P.O. Box 400
Pisgah, Alabama 35765
Phone: (256) 657-6457
Contact: Wayne Cummins
wcummins@farmstel.com

Save Our Sougahatchee

1960 Lee Road 65
Auburn, Alabama 36832
Phone: (334) 844-9212
Fax: (334) 844-9208
Contact: Wendy Seesock
wseesock@aces.ag.auburn.edu

Save Our Unique Lands and Streams

146 Walnut Lane
Deatsville, Alabama 36022
Phone: (334) 569-3159
Contact: Woody Snell
wsnell@chillitech.com

Shoals Environmental Alliance

1206 North Montgomery Avenue
Sheffield, Alabama 35660
Phone: (256) 366-1937
Fax: (256) 381-0806
Contact: Charles Rose
chuckrivers@comcast.net

Sierra Club of Alabama

105 DeLong Rd
Nauvoo, AL 35578
Phone: (205) 221-7201
Contact: Margaret Johnston
maggie@campmcdowell.com

Sierra Club: Southeast Alabama

Contact: Michael Stewart
mstewart@troy.edu

Southern Alliance for Clean Energy

P.O. Box 1842
Knoxville, Tennessee 37942
Phone: (865) 637-6055
Fax: (865) 524-4489
Contact: Ulla Reeves
ureeves@cleanenergy.org
www.cleanenergy.org

Southwest Area Parents Association

426 Jerry Drive
Bessemer, Alabama 35022
Phone: (205) 426-9804
Fax: (205) 481-9379
Contact: Rev. Franklin Tate
ythotline@yahoo.com

St. Clair Conservation Alliance

8338 County Road 31
Ashville, Alabama 35953
Phone: (205) 594-5943
Contact: Brad Sargent
Bradley.k.sargent@samford.edu

Village Creek Human and Environmental Justice Society

P.O. Box 310715
Birmingham, Alabama 35231
Phone: (205) 798-0087
Fax: (205) 791-9875
Contact: Dr. Mable Anderson
vilcreek@bellsouth.net

TABLE OF CONTENTS

INTRODUCTION: A CALL FOR REFORM	7
LEADERSHIP	11
<i>Recommendations One - Ten</i>	<i>11-22</i>
ENFORCEMENT	23
<i>Recommendations Eleven - Fifteen</i>	<i>23-27</i>
RESOURCES	28
<i>Recommendation Sixteen</i>	<i>28-29</i>
PUBLIC PARTICIPATION	30
<i>Recommendations Seventeen - Twenty-three</i>	<i>30-36</i>
ENDNOTES	37
APPENDIX	42



© Charles Seifried Photo

INTRODUCTION

A Call for Reform

Alabama is a state blessed with an abundance of natural resources and extraordinary natural beauty. Twenty-two million acres of forest provide timber for paper products, buildings, recreation areas for outdoor enthusiasts, and shelter for wildlife and endangered species. Ten percent of the nation's surface water passes through Alabama's rivers and streams into Mobile Bay. Economic opportunities from these resources abound - from minerals, oil, natural gas, timber, and agriculture, to camping, hiking, hunting and fishing. Alabama's people and the diversity of its population are also great strengths and resources. The State is, indeed, "Alabama the Beautiful."

But Alabama's natural resources are not limitless, nor are its blue skies, waters, fertile soil and citizens immune from pollution. Although we live in an age when economic and environmental interests can appear to be at odds, it should be abundantly clear that Alabama's future economy, environment and public health are inextricably linked together and dependent on the way we care for and protect these natural blessings. In Alabama, the principle caretaker of this vital public trust is the state's environmental agency, the Alabama Department of Environmental Management (ADEM).

ADEM and the Alabama Environmental Management Commission (EMC) were created in 1982 by the Alabama legislature to combine and coordinate the functions of numerous agencies charged with implementing environmental laws. Today, however, far too many Alabamians can testify that the agency's twenty-four year history clearly demonstrates that ADEM and the EMC are in serious need of fundamental reform. One of the major problems is that for the past twenty-four years ADEM and the EMC have focused their actions on managing the environment. However, Alabama's low national rankings for environmental protection are clear evidence that ADEM has failed to ensure protection of Alabama's environment.

There is a growing consensus across the state that ADEM is not doing the

Since its inception in 1982, ADEM has done a poor job of protecting the environmental resources of the state. A covey of Alabama's environmental groups in 2003 called for reform of the agency because, in their well-reasoned opinion, it has focused on managing the environment, rather than on protecting it, and has been too lax in enforcing environmental laws.

Most of the state's newspaper editorial pages, including the Register's editorial board, agree with that assessment.

*Mobile Register editorial
Jan. 10, 2005*

job Alabama needs and deserves for environmental protection, public health and safety. Increasing problems of pollution and lack of agency accountability during the past twenty years have made it clear that ADEM is in need of fundamental reform. Although there have been attempts in the past to address this need, none of those attempts resulted in any significant recommendations or concrete reform. Therefore, a diverse group of citizen organizations have joined together and formed the ADEM Reform Coalition (ARC) to examine ADEM's challenges, recommend solutions and organize Alabama citizens to work for effective change.

At an "ADEM Reform Summit" convened in September 2002, representatives from more than twenty-five Alabama grassroots and statewide organizations met to discuss the problems of agency leadership, lack of enforcement, limited public participation and inadequate resources at ADEM. A diverse and representative coalition of public health, environmental justice, faith-based, small rural and larger urban environmental groups, the ADEM Reform Coalition began development of a set of reforms necessary to create an agency with the mission, mandate, capacity and leadership to truly protect the health and safety of Alabama's citizens and environment.

After years of fighting separate battles for environmental justice and protection in their local communities, and spurred by the lack of

leadership and dedication to environmental protection at ADEM and the EMC, the creation of the ADEM Reform Coalition signals a strong and growing grassroots movement for safe and healthy communities in Alabama. Since the first ADEM Reform Summit, more than forty groups have joined the Coalition and endorsed this Blueprint for ADEM Reform.

This Blueprint for ADEM Reform summarizes the ADEM Reform Coalition's recommendations. At the heart of ARC's reform efforts is the fundamental belief that ADEM should stop managing the environment and start protecting it. Revising the agency's mission is central to these reform efforts to provide direction to the agency so that it can achieve its new goals focused on environmental protection. Therefore, ARC believes that:

The mission and mandate of the agency need to ensure the sustainable use of land, air and water resources, provide protection for both human and environmental health, and ensure that public participation and environmental justice considerations are an essential component of decision-making at the agency.

This Blueprint for ADEM Reform is ARC's first attempt to provide a constructive analysis and achievable set of recommendations to help ADEM become an agency that fulfills its mission and is accountable to the public it serves. However, the ADEM Reform

No, the mess at ADEM, the mess that is ADEM, dates back two decades, to when this state's Legislature — then, as now, buffaloes by special interests — established an environmental watchdog without bite, an agency with table scraps for budget and no mandate to speak of, especially when it came to actually preserving the environment.

It was an attitude that paved the way for puppet ADEM managers . . . , people whose chief function was to appease folks like the Alabama Forestry Association and the Alabama Farm Federation, and the big polluters on whose behalf they lobby.

Over the years this lax attitude in regard to protecting our fish, fowl, air and stream, and the hands-off approach to industrial pollution, has created a climate of environmental abuse that is virtually unchecked.

After 20-plus years of neglect and mediocrity, this state needs real leadership at ADEM, and less politics.

*"Cleaning up ADEM's mess," The Anniston Star
Dec. 8, 2004*

Coalition is not the only voice currently calling for fundamental reform at the agency. A report by the nonpartisan Public Affairs Research Council of Alabama (PARCA), published on January 30, 2003, has made similar recommendations for important reforms at the agency, and they are referenced herein. Recommendations of the Environmental Protection Agency (EPA), in its January 2003 audit of ADEM, are also noted herein. Should all of these recommendations be acted upon, Alabama would not only have an effective

agency acting in the public interest to protect the environment, but also one of which all citizens could be proud. Implementation of these reforms is essential to fulfill the Environmental Management Commission's goal of making ADEM the "premier environmental agency in the Nation."

This Blueprint for ADEM Reform sets out four main goals to achieve the vision of a new and improved environmental protection agency in Alabama:

LEADERSHIP	ENFORCEMENT	RESOURCES	PUBLIC PARTICIPATION
<p><i>Reform the structure of ADEM and the EMC to strengthen the agency's mission and leadership and improve accountability to the public.</i></p>	<p><i>Create new environmental enforcement policies and practices that are swift, just and serve to effectively halt existing violations and deter future violations of environmental laws.</i></p>	<p><i>Reform the ADEM budgetary process so that it is transparent and increase ADEM funding to provide the agency with the necessary resources to fulfill its mission.</i></p>	<p><i>Improve the agency's public involvement process to ensure that citizens have the right to provide meaningful input into ADEM decision-making and receive sufficient notice of agency actions and access to agency information, in order to empower citizens to hold the agency accountable.</i></p>

The above goals are fundamental to the overall reform of ADEM and the effective implementation of all environmental laws and regulations. ARC anticipates that this citizen-authored platform will initiate and inform a statewide dialogue among the public, elected officials, government, industry, community leaders and the media, and help guide those legislative, administrative and

other efforts necessary to reform this vitally important agency.

This Blueprint for ADEM Reform is intended as a step toward creation of an environmental agency, one that is accountable to all the people and that will inspire public trust and promote a cleaner and healthier environment in Alabama.

[P]erhaps the agency should be reminded that it was created to implement the state's "environmental regulatory system" and "to protect human health and safety."...[I]n this case, it appears that ADEM tipped the scales against the public by implementing an environmental regulation so as to be "business friendly or land-fill friendly." Unfortunately, such a policy would reduce ADEM's oversight process to the rubber stamp approval of industry requests.... It is even more sobering as an indication that ADEM may have adopted an internal philosophy that compromises its role as the primary regulatory body protecting the environment, and, thus, may ultimately violate the public trust.

Brunson Const. and Environmental Services, Inc. v. City of Prichard, 664 So. 2d 885, 896 (Ala. 1995) (Butts, J. concurring)



© Charles Seifried Photo

LEADERSHIP

Reform the structure of ADEM and the EMC to strengthen the agency's mission and leadership and improve accountability to the public.

Recommendation One

Change the name of the Alabama Department of Environmental Management to the Alabama Department of Environmental Protection (ADEP) and the Alabama Environmental Management Commission to the Alabama Environmental Protection Commission (EPC).

The problems with ADEM begin with its title, the Alabama Department of Environmental Management. While ADEM has focused on managing the environment—often for business and industry purposes, the agency has not effectively protected the environment for Alabama citizens. This approach and bias of the agency has been one of its major failings over the years. It has served to create significant distrust among a public that has come to believe the agency cares more about promoting business development than protecting the environment.

While changing the name of the agency will not achieve the substantive changes necessary to reform the agency, doing so can have a powerful symbolic impact, especially for an agency that has lost the public's trust.

For the agency to affirm its commitment to environmental protection and to begin the important task of restoring trust with the public, renaming the agency to reflect what should be its main goal is an essential first step.

I. Emphasize Environmental Protection

Recommendation Two

Amend the Alabama Environmental Management Act (AEMA) - the agency's enabling statute - to provide the agency with a clear mission and strong mandate for environmental protection, public health and environmental justice, as follows:

The mission of the Alabama Department of Environmental Protection is to protect, restore and enhance the quality of Alabama's air, land and water; to safeguard human and environmental health; to preserve the biodiversity and integrity of natural ecosystems for posterity; and to ensure that environmental justice and public participation are considered in all agency action and decision-making.

2. Strengthen Agency Mission and Mandates

PROGRESS HIGHLIGHTS

ARC members participated in the Environmental Stakeholders Committee and "town hall" meetings to influence development of the Environmental Management Commission's strategic plan in 2003 and 2005 - 2006. The plan, adopted April 20, 2004, incorporates the following revised mission statement:

"Responsibly adopt and fairly enforce rules and regulations consistent with the statutory authority granted to the Alabama Environmental Management Commission (AEMC) and the Alabama Department of Environmental Management (ADEM) to protect and improve the quality of Alabama's environment and the health of all its citizens. Monitor environmental conditions in Alabama and recommend changes in state law or revise regulations as needed to respond appropriately to changing environmental conditions."

ADEM's emphasis on management rather than protection has been the orientation of the agency since its creation in 1982. Its enabling statute sets out in its first sentence the general mission of the agency: "The...resources of the state must be managed in a manner compatible with the environment, and the health and welfare of the citizens of the state." Nowhere in the statute is there language stating that ADEM is to "protect the environment" of the state.

Mission statements of effective organizations express the organization's purpose in a way that inspires support, motivates those who are connected to the organization, and provides a general statement of the organization's purpose by which its work can be measured. ADEM's mission fails in all these respects.¹

A good mission statement should accurately explain why ADEM exists and what it will work to achieve. It should give direction to an organization by establishing the scope of its activities and providing a framework and justification for the organization's goals and objectives. It should articulate the organization's essential nature, its values, and its work. It is time to review and revise ADEM's mission statement in light of its historical shortcomings and its current challenges.

Recommendation Three

The Governor shall appoint the ADEM Director. The appointee must meet certain minimum qualifications and be confirmed by the Alabama Senate after public notice and hearing.



When the AEMA was enacted in 1982, the Legislature designated the EMC as the body to appoint the Director of ADEM, rather than the Governor. The principal reasons for this policy were the desire to avoid frequent interference by Governors in ADEM decision-making and a change in agency leadership and direction with each election of a new Governor. These goals are laudable but they have come at too great a cost.

Since 1982, the EMC has appointed five Directors of ADEM. Three had no prior experience in environmental matters as is required by law. Virtually all have been controversial. Moreover, when Directors have made contro-

versial decisions, Governors have claimed that they are powerless to do anything about it since the Legislature granted the power to hire and fire to the EMC. Citizens presently have no one they can hold accountable, in a political sense, for the actions or omissions of ADEM.

Although ARC recognizes that the current structure of the agency, in which the EMC appoints the Director, was created to shield the Department from politics, experience has shown that due to this, the agency cannot be held accountable by the public. It is time that Alabama's environmental agency, whose actions have far-reaching and long-lasting consequences on every citizen in the State, assume cabinet level status.²

3. Improve Director Accountability

PROGRESS HIGHLIGHTS

Senate Bill 373 (Sen. Ted Little) was introduced in the 2003 Regular Session of the Alabama Legislature. This bill proposed to allow the Governor to appoint the Director.

Moreover, to promote optimal checks and balances and increased accountability for the new appointing procedure, Alabama Senate confirmation of the ADEM Director should be required, and that confirmation should be a public one, after notice and public hearing. One of the problems of Senate confirmation procedures generally, and as they apply, for example, to EMC appointments, is that they are typified by backroom deals and rarely surface in well-publicized hearings. Requiring a more public process would provide an additional method for bringing accountability to the appointment procedure.

Recommendation Four

The ADEM Director shall have an annual performance evaluation conducted by the EMC with public participation. Job performance criteria shall be based on the degree to which the Director has successfully implemented ADEM's mission, mandates and strategic plan objectives. The annual evaluation shall be reported to the Governor, State Legislature and the public.

4. Establish Director Performance Evaluation

PROGRESS HIGHLIGHTS

ARC members participated in the Environmental Stakeholders Committee and “town hall” meetings to influence development of the Environmental Management Commission’s strategic plan. The plan, adopted April 20, 2004, incorporated the following provisions for evaluation of the Director:

“The AEMC should establish a standing committee to assist in evaluating the performance of the Director and to provide feedback to the Director on the performance of ADEM staff. Committee assessments should be provided to the AEMC for use in an annual evaluation of the Director.”

On October 19, 2004, the Commission dismissed Director James W. Warr because of dissatisfaction with his performance. Subsequently, ARC members served on the ADEM Director Search Stakeholders Committee. Onis “Trey” Glenn, III was appointed Director effective February 1, 2005.

ADEM currently has no mandated procedure for job performance evaluations of its Director. The best way to determine whether the Director’s leadership is contributing to the accomplishment of the agency’s mission and mandates is through regular job performance evaluations.

It could also promote a new confidence in the Department, restore trust with the public, and justify its requests for increased funding from the Legislature. Moreover, because public comment and involvement is limited and proscribed by the regulations and the practices of ADEM and the EMC, the public has no formal opportunity to document support for or concerns about the Director’s performance.

Coupled with the selection of the Director by an apolitical body, this lack of public participation in performance evaluations has insulated the Director to the extent that the ADEM leadership has not been held accountable for failures within the agency, and similarly cannot be held accountable for significant reform.

As ADEM's new director, Mr. Glenn can maintain the status quo, or he can aggressively lead ADEM down the road to reform. If he chooses the latter, the agency can fulfill its statutory duty to both manage and protect the state's precious natural resources, and in the process protect the public's interest.

“Glenn’s challenge: to lead agency to reform”

The Mobile Register

Jan. 10, 2005

Recommendation Five

Amend the ADEM enabling statute to enhance the minimum qualifications of the EMC members so that they are better qualified to make decisions about environmental protection, public health and environmental justice. Amend the ADEM enabling statute to add two at-large members to the EMC (for a total of three at-large members), to bring needed geographical diversity and greater representation by citizens on the EMC.

While ADEM's name and actions are better known to the public, the EMC—the governor-appointed volunteer commission with the duty and power to oversee ADEM—plays a central role in environmental protection efforts in Alabama. The EMC is presently a seven-member body authorized to select and advise the Director of ADEM; to adopt rules for ADEM after review by the Director and public hearing; to develop environmental policy; and to hear appeals of ADEM administrative actions. As envisioned by the Legislature, the EMC is to function, in part, as a check and balance for the broad authority of the Director, to establish environmental policy and regulations in Alabama, to lead ADEM and to serve as the public's watchdog. The EMC has largely failed to live up to these challenges.

The minimum statutory qualifications of the members of the EMC typically include a requirement that they be "familiar with environmental matters." This terminology is inadequate to ensure that appointees have significant environmental training or experience. Many appointees have not met the intent of this requirement, but their qualifications are unassailable because virtually any experience or training, no matter how informal or casual, can qualify as familiarity with environmental matters. To ensure that the appointees have appropriate knowledge and expertise, useful to the functions of the EMC, greater specificity is required.

There are a number of ways to establish the minimum qualifications of members of the EMC. The guiding principles, however, should be (1) significant formal training or professional competency (e.g., licensing) in a field appropriate to the EMC's functions; and (2) articulation of minimum

qualifications with sufficient specificity so that the intent cannot be evaded by an appointing Governor or confirming Senate.

The other reform recommended for the EMC is to increase its at-large membership and to require one at-large member from each of the three main geographical divisions (north, central, south) of the State. At-large positions can be filled by any citizen of majority age. A requirement increasing the number of at-large members, and that the at-large members represent these geographical areas, will help to ensure greater and more representative citizen participation on the EMC. It will also provide new opportunities for citizen involvement and encourage greater public participation in the work of the EMC.

See the APPENDIX for ARC's suggested recommendations for EMC qualifications.

5. Reform EMC Structure and Enhance Qualifications

PROGRESS HIGHLIGHTS

House Bill 144 (Rep. Layson) and Senate Bill 164 (Sen. Means) and Senate Bill 251 (Sen. Means) were introduced in the 2003 Regular Session of the Alabama Legislature. These bills proposed to change the certified well driller position on the Environmental Management Commission to a geologist or hydrologist position. House Bill 542 (Rep. McDaniel) and Senate Bill 289 (Sen. Means) were introduced in the 2004 Regular Session of the Alabama Legislature and House Bill 321 (Rep. McDaniel, Letson, Clouse, Wood, Rogers, Spicer, Grantland, Johnson, Thigpen, Lindsey, Dukes) and Senate Bill 222 (Sen. Means) were introduced in the 2005 Regular Session of the Alabama Legislature.

These bills proposed to change the certified well driller position to a geologist position. House Bill 487 (Rep. Clark) was introduced in the 2005 Regular Session of the Alabama Legislature to add two new members with interest in environmental justice.

Recommendation Six

The Governor shall appoint the six EMC members with technical qualifications and the Lieutenant Governor should appoint the three at-large members. Affirmative Senate confirmation, after public notice and hearing, shall be required for all Commission appointees. If the appointing official fails to appoint a member within ninety days of the expiration of a term or creation of a vacancy, the authority to appoint such member shall transfer to the other appointing official.

6. Improve EMC Appointment Accountability

PROGRESS HIGHLIGHTS

ARC recruited well qualified candidates for positions on the Environmental Management Commission and submitted their names to the Governor for his nomination. Among them were candidates who would bring greater racial, gender and geographic diversity to the Commission.

ARC coordinated a telephone and letter writing campaign to encourage the Governor to make appointments to the Commission that would improve ADEM and bring greater diversity to the Commission.

On January 2006, Governor Riley appointed Dr. Kathleen Felker to the Commission, and in April 2006, he appointed Anita Archie and Laurel Gardner to the Commission. These appointment bring needed gender, racial, and geographic diversity to the Commission.

The Governor currently appoints all EMC members and such appointments are not required to be affirmatively confirmed by the Senate. This process concentrates too much control and power over the appointments in the Governor. In addition, EMC members whose terms have expired can “holdover” indefinitely if the Governor fails or refuses to appoint a replacement. Such holdover appointments have been a problem in recent years.

By authorizing the Lieutenant Governor to appoint the at-large members, the EMC appointment power will no longer be concentrated in the Governor’s office. By providing a procedure for transferring appointment power when one official fails to appoint, the problem of holdover appointments will be minimized.

As in providing for affirmative Senate confirmation after public notice and hearing of the ADEM Director, a similar procedure for EMC appointments will promote greater public awareness and accountability of the appointment process.

Recommendation Seven

Amend the ADEM enabling statute to establish the duties of the EMC, as follows: develop environmental policy; perform strategic planning in consultation with ADEM; adopt rules; and evaluate the ADEM Director.

Currently, the duties of the EMC are to develop environmental policy, select and advise the Director of ADEM, adopt rules, and hear and determine appeals of ADEM administrative actions. Based on ARC's Recommendation Three, the duty to select the Director of ADEM should not reside with the EMC because the EMC is not politically accountable to the people. ARC's Recommendation Nine discusses that the duty to hear and determine appeals of administrative actions of ADEM should not reside with the EMC. The members of the EMC are simply not trained and qualified to perform this adjudicative function, nor do they have the time required to review all of the information that is generated in an appeal.

The EMC should retain its authority to adopt rules. This ensures that the far-reaching and enduring policies established by rules are considered by a number of persons with differing expertise, backgrounds and interests. Permitting the EMC to adopt rules also serves as a mechanism to correct abuses by a Director. For example, if a Director decides to interpret certain rules in a manner that allows facilities to excessively pollute the environment, the EMC can adopt further rules to clarify the Director's responsibility to protect the environment.

ARC's Recommendation Eight sets out new methods to bring greater accountability and checks and balances to the rulemaking process.

The EMC should also have the responsibility to evaluate the performance of the Director, with public input, and to report the results of its evaluation to the Governor, Legislature, and public. This process will ensure that the Director is held accountable for his actions and omissions.

Finally, ADEM is not required to develop a strategic plan, setting goals, objectives, and tasks for the agency. Prior to the first edition of the Blueprint, ADEM had little direction, nor has it been held to performance measures inherent in such a plan.³ However, during 2003-2004 and again in 2005-2006, the EMC led two separate strategic planning processes, updating the agency strategic plan, which was previously revised in 1989.

The EMC already has the responsibility to develop environmental policy for the State and to adopt rules to implement that policy. The EMC should continue to take a leadership role in developing, reviewing, and implementing strategic plans for ADEM, with consultation from ADEM and through public participation.

7. Improve EMC Duties

PROGRESS HIGHLIGHTS

In 2003 and again in 2005, the Environmental Management Commission held a total of 13 town-hall meetings to receive public input on the agency's strategic plan. A revised plan was adopted in April 2004 for the first time since 1989.

Recommendation Eight

Amend the ADEM enabling statute to provide for greater public participation and checks and balances in the adoption of rules, including the following:

- (A) ADEM shall propose rules only after adequate notice is given to the EMC;*
 - (B) the right of any person to petition the EMC for adoption of rules shall remain unchanged;*
 - (C) ADEM shall hold "rule development" public workshops upon request and attempt to resolve public concerns before the public hearing;*
 - (D) any person shall be allowed to propose amendments to a proposed rule, which must be submitted to the EMC in advance of the public hearing; and*
 - (E) the EMC shall hear testimony directly from the public, as well as ADEM, and shall make the final decision on any proposed amendments to the proposed rule and adoption of the rule.*
-

8. Improve Administrative Rulemaking Accountability

PROGRESS HIGHLIGHTS

ADEM's practice of initiating rulemaking without prior notice to the Environmental Management Commission has ceased.

Currently, ADEM proposes rules, conducts the public hearings, prepares the reconciliation statements responding to public comments and submits the recommendations

for rule adoption to the EMC. The EMC rarely deviates from the recommendations submitted by ADEM. The EMC has largely

abdicated its statutory responsibility and authority for rulemaking to ADEM and has failed to be engaged in the debate over proposed rules. ADEM should not be permitted to propose a rule without first giving adequate notice to the EMC. This will ensure that the EMC is informed as to the nature of

any proposed rules suggested by ADEM and is given the opportunity to revise or reject the proposed rule before it is noticed for public hearing and comment. In addition, new opportunities for public participation should be added to the rulemaking process. For example, at its discretion, or if requested by any interested person, ADEM should engage in one or more "rule development" workshops prior to requesting approval of the EMC to initiate rulemaking. Such workshops can provide the opportunity for ADEM and interested persons to discuss concerns and objections to a draft rule with a view toward working out solutions prior to proposal. The EMC cannot adequately appreciate public concerns about a proposed rule by reading a transcript of public hearing testimony or a reconciliation statement prepared by ADEM, often the proponent of the proposed rule. The EMC should not delegate its responsibility to conduct public hearings to a hearing officer, but should hear that testimony directly.

Recommendation Nine

Amend the ADEM enabling statute to place the authority to adjudicate appeals in a more neutral and capable body, as follows:

- (A) expand upon the current use of independent administrative law judges in the Alabama Attorney General’s Administrative Hearings Division by creating an Environmental Appeals Board within the Attorney General’s Administrative Hearings Division comprised of three administrative law judges; and*
 - (B) the Environmental Appeals Board would hear appeals of ADEM administrative actions and make final decisions.*
-

One of the primary observations in the 2003 report by PARCA is that it is “inappropriate to place legislative, executive, and judicial duties in the same hands.”⁴ The report noted that administrative appeals are best handled by hearing officers, administrative judges and the courts, but that Alabama law departs from this practice by placing authority for hearing appeals with the EMC. The report stated that none of our neighboring states handles appeals in this way.⁵

ARC, therefore, recommends that the duty to hear and determine appeals of administrative actions of ADEM should not reside with the EMC. In addition to the problems of mixing administrative and judicial duties, the members of the EMC are neither trained, nor qualified, to perform the often extremely complex legal analyses of this adjudicative

function. In addition, the EMC members are overburdened with the voluminous material that must be reviewed in an appeal, and often cannot adequately review the material. Their lack of qualifications and sufficient review time has led to frequent “rubber-stamping” of hearing officer recommendations and deference to ADEM positions.

With this reform, the EMC would be relieved of

the considerable burden of reviewing appeals, and Alabama would join its neighboring states in following the normal practice of handling environmental appeals. Such practice often places the authority to hear such appeals within the jurisdiction of an Environmental Appeals Board.

9. Improve Administrative Appeals Accountability

With this reform, the EMC would be relieved of the considerable burden of reviewing appeals.

Recommendation Ten

Create a Division of Environmental Justice and Human Health to do the following:

- (A) identify fully the impacts of agency actions and decisions on communities of color and low-income communities;*
- (B) make agency decisions that are aimed at remedying and preventing disproportionate impacts; and*
- (C) ensure that affected communities have meaningful input in identifying impacts, making decisions and implementing environmental programs.*

That is, the new Division would monitor, evaluate, advise and offer recommendations for corrective actions to the agency on existing or potential negative environmental justice impacts that ADEM permitting and regulatory actions have or may have on communities of color and/or other economically marginalized populations. This evaluation must assess the cumulative impact of all environmental burdens affecting nearby communities and/or populations, regardless of racial and economic composition. The evaluation must also include an ongoing study every five years to determine any actual or potential human health impacts resulting from existing pollution permitting in or near the community or specific population. Final agency actions must demonstrate having taken into account the Division's findings, conclusions and recommendations.

Environmental justice is based on the principle that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits.⁶

In Alabama, the geography of race and class is all too frequently tied to the geography of healthy and degraded environments; there has been unequal application of environmental protection in our State for generations. The public

health problems and lowered property values that are a direct result of these degraded environments are significant factors in the cycle of poverty gripping many communities.

No Alabama state agency is clearly addressing the existing and ever-growing threat of negative impacts from environmental permitting practices on citizen health, public welfare and quality of life, especially that of socially and economically repressed communities and/or populations. The Alabama Department of Public Health addresses the health of the individuals, but not the environmental conditions that are damaging the health of communities. Currently,

neither ADEM nor the ADPH take responsibility for the role that state permitting practices, including arbitrary siting of facilities, play in ill health inflicted by environmental hazards, such as permitted toxic air emissions or permitted degradation of water quality.

ADEM does not believe it is authorized or required to protect the health of individuals and communities that are impacted by agency actions. Current agency structure, permit application requirements and assessments often do little to prevent potential negative impacts of a polluting entity to neighboring or downstream communities. Often those left to bear the burden of those negative impacts are predominantly communities of color and/or low-income communities.

ADEM must be held accountable to ensure that all permit and regulatory decisions prevent environmental injustice and are administered equally and effectively to prevent negative impacts to public health, public welfare and quality of life. ADEM also must have the capacity to perform those complex tasks. Therefore, the need for comprehensive human health and environmental justice assessments, regulations, corrective actions, and evaluations of agency actions according to potential health impacts - and the new capacity and inter-agency coordination required of ADEM to perform those functions - is sufficient to warrant a new division to focus on environmental justice and health issues.

Alabama law specifically addresses instances where public health should be considered in relation to ADEM decisions. That is, the protection of "human health and safety" are distinctively referenced in the Alabama Environmental Management Act (AEMA), which overlaps the duties of ADEM with that of the Alabama Department of Health where environmental impacts are implicated.⁷ This mandate should be strengthened and clarified in the amended AEMA as described in Recommendation One.

The purpose of the Division of Environmental Justice and Health would be as follows: (1) to gather information on environmental impacts to communities of color and

low-income communities; (2) to monitor and evaluate ADEM actions and regulatory processes; (3) to ensure meaningful participation by those communities in agency actions and decisions affecting those communities; and (4) to advise the agency regarding the proper course of action should the Division find that a permit or regulatory decision would have detrimental impacts on a community. For instance, the Division of Environmental Justice and Health would help ensure that citizen health, safety and welfare are considered in all agency action, including rulemaking, permit review and enforcement actions.

In order to ensure that low income communities and people of color do not continue to be subjected and exposed to negative and cumulative environmental, social and health impacts there must be included in the structure of such a division a representative component facilitating substantive input from, and accountability to the impacted communities and/or populations. Additionally, ADEM must develop and implement a strong proactive Environmental Justice program that supports state and local strategies for substantial economic revitalization in impacted and traditionally repressed and/or economically marginalized communities and populations.

10. Establish Division of Environmental Justice and Health

PROGRESS HIGHLIGHTS

ARC members presented environmental injustice data relating to landfills and additional data relating to toxic air emissions to the Environmental Management Commission on August 24, 2004 and September 13, 2004 and recommended (1) establishment of Division of Environmental Justice and Health; (2) a rule amendment requiring routine publication of demographic data surrounding permitted facilities; and (3) support for legislation prohibiting disparate impacts.

ARC members petitioned the Commission for a rule amendment requiring routine publication of demographic data surrounding permitted facilities on October 19, 2004. The Commission denied the petition but promised comprehensive action on environmental justice.

House Bill 505 (Rep. Mitchell) and Senate Bill 335 (Sen. Ross, Penn, Singleton) were introduced in 2005 Regular Session of Alabama Legislature to establish a Division of Environmental Justice and Health in ADEM. The bills received unanimous endorsement by the Black Caucus and Senate Energy and Natural Resources Committee but did not pass.

The ADEM Director has appointed an Environmental Justice Ombudsman.

While it is not fair to say that all polluting plants are in minority communities and that polluted populations are invariably poor and politically powerless, Anniston's experience with PCB contamination is more often the rule than the exception. Which is why we are encouraged by the news that the state Senate's Energy and Natural Resources Committee unanimously approved a bill that would take us a long way toward keeping what happened to us from happening again. Under this plan, the state would be required to define and identify "subpopulations" — minority groups that live below the poverty line. If these groups were adversely affected by pollution coming from an industry that was seeking a permit from the state, that permit would be denied until the pollution was reduced.

"Environmental justice"
The Anniston Star
March 28, 2005

A bill that offered minorities and poor people protection from health hazards has died in the Legislature, a victim of the long-running budget filibuster.

We're glad to see that its supporters plan to resurrect it next year. If any state ever needed the environmental justice it offers, it's Alabama.

The bill would have required the Alabama Department of Environmental Management to publish demographics each time heavy industries or landfills seek new or renewed permits.

The data would include the number of people per square mile surrounding the industries or landfills, the percentage of minority residents, the percentage of people below the poverty line and the per capita income of area residents.

The bill also would have required ADEM to hire an environmental justice officer, along with experts and investigators, to evaluate the impact of the landfills and heavy industries. This is not mere feel-good legislation. It was designed to address a very real and troubling problem that has become an increasing headache during the last two decades.

"Alabama needs environmental justice"
Tuscaloosa News
May 16, 2005



ENFORCEMENT

Create new environmental enforcement policy and practices that are swift, just and serve to effectively halt existing environmental law violations and deter future violations.

Recommendation Eleven

To provide for consistent, swift and effective enforcement, create an Enforcement Division to coordinate ADEM enforcement activities on an agency-wide and statewide level.

ARC believes that ADEM should emphasize and encourage compliance with environmental rules and regulations through enforcement policies and practices that are effective, swift and fairly applied in order to deter non-compliance. In order to coordinate the many tasks of such an inter-agency function, many state environmental agencies have a division or office dedicated to enforcement efforts. However, ADEM does not.

The creation of a division at ADEM, the specific purpose of which is to manage the enforcement program, will allow for the enforcement process to be applied consistently throughout the state and will also streamline the process so that enforcement cases will be handled both fairly and expeditiously. Currently, ADEM conducts enforcement through the litigation division, which is both costly and time-consuming. A great majority of enforcement cases can be settled quickly outside of the litigation field and with

relatively little expense. Separating enforcement from litigation when possible will be more efficient for both the agency and industries. Coordinated enforcement strategy is what is lacking at ADEM and could be centralized within a new enforcement division at the Alabama agency.⁸

The Enforcement Division would be responsible for ensuring that violations of environmental laws are corrected and, when necessary, penalized. The division will be responsible for developing formal enforcement cases in accordance with state and federal rules. Specifically, the division will draft enforcement orders that will include appropriate penalties and corrective actions necessary to remedy the violation. The Division would also provide support and guidance to other divisions in enforcement actions.

II. Establish Division of Enforcement

Recommendation Twelve

With public participation, ADEM should develop and adopt a mandatory enforcement action policy that dictates the enforcement action appropriate to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public.

12. Develop Mandatory Enforcement Policy

Current ADEM enforcement policy calls for a graduated response to environmental violations, “with the response being appropriate for the violation” (ADEM Enforcement Strategy #105, Sept. 17, 1992). Several enforcement mechanisms are utilized by ADEM against violators according to this strategy, including: telephone calls; warning letters;

investigatory meetings;
Notices of Violation;
Administrative

Orders (with or without penalty); and Referrals for Litigation.

Because ADEM relies on a “graduated enforcement response,” ADEM’s response often fails to be sufficiently swift and sufficiently severe to promote deterrence. There have been a number of cases where violations have persisted for many months without ade-

quate enforcement action by ADEM to abate the violations. In many cases, ADEM enforcement actions are initiated only after citizens file intent to sue letters. ADEM should be compelled to initiate enforcement actions when the violation is serious enough to warrant immediate remedy.

Violations vary in the degree of magnitude - and the danger they represent to the environment and public health - and there should be specific guidelines as to what types of violations call for what response. Thus, violations should be categorized according to the harm and impact to human health and the environment and the magnitude of the violation.⁹ This will not only eliminate confusion as to what type of response is necessary for a specific violation, it will also serve to make enforcement consistent on a statewide level, an important component of a successful enforcement program.

In a first-of-its-kind study of ADEM’s enforcement policy, an advisory committee of environmental experts formed by the state Environmental Management Commission found ADEM’s penalties and guidelines insufficient for the kinds of violations the agency encounters.

The policy doesn’t outline the factors ADEM inspectors should consider when determining the appropriate course of action for a violation, the report said. It doesn’t list some basic responses available to inspectors, such as imposing multiple penalties, escalating the administrative orders or suspending the violator’s permit. It doesn’t offer guidance on calculating penalties. In fact, it doesn’t even define what is meant by terms such as “minor violation,” “significant exceedance,” and “major noncompliance.”

“Is leniency or lawmakers the cause for ADEM’s woes?”

The Anniston Star

Aug. 29, 2005

Recommendation Thirteen

With public participation, ADEM shall develop and adopt a strong mandatory and standardized written penalty policy by which its enforcement actions can be measured and evaluated. The policy shall ensure that, at a minimum, penalties levied by ADEM will:

- (A) act as a sufficient deterrent to violators;*
- (B) be levied swiftly and consistently;*
- (C) reflect the economic benefit of non-compliance; and*
- (D) be tied to compliance history.*

ADEM does not currently have a written penalty policy. Thus, ADEM does not regularly document the basis or calculation upon which it arrives at a specific penalty. The same problems inherent in ADEM's enforcement policies are present in its approach to penalties. That is, its approach is not consistent, and thus subject to being unfair, arbitrary and weak.

By statute, ADEM is required to calculate penalties based on six factors: (a) the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; (b) the standard of care manifested by such person; (c) the economic benefit which delayed compliance may confer upon such person; (d) the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; (e) such person's history of previous violations; and (f) the ability of such person to pay such penalty.

However, without a written penalty policy to implement that statute, ADEM's approach to imposing penalties lacks consistency and has earned a reputation for being weak and ineffective.

The purpose of enforcement is to discourage future violations and encourage compliance with environmental rules and regulations. A monetary fine accompanied with an

order stipulating corrective actions should penalize violators for noncompliance, encourage future compliance and should bring the violator back into compliance as quickly as possible. Standardized guidance should be used to calculate penalties to ensure that the penalty reflects the seriousness of the violation, is a sufficient deterrent to continued non-compliance, and effectively recoups the economic benefits of non-compliance. A standardized penalty calculation method will also promote consistent enforcement practices. In its recent audit, EPA recommended that ADEM adopt a written policy "that meets minimum federal stringency requirements and provides for the documentation of penalty and economic benefit calculations."¹⁰

13. Develop Mandatory Penalty Policy

PROGRESS HIGHLIGHTS

ARC drafted a legislative bill in 2004 to require explanation of penalty calculations in every administrative order issued by ADEM.

ARC members met with the ADEM Director on five occasions between March 28 and August 23, 2005 to discuss enforcement concerns.

An ARC member participated on the Enforcement and Administrative Penalties Stakeholder Committee to recommend changes to ADEM enforcement and penalty policies and procedures. The final report of the Committee, which incorporated many recommendations of ARC, was presented to the Environmental Management Commission on April 27, 2005. The ADEM Director filed his response to the Committee's final report on November 29, 2005, promising little change.

Recommendation Fourteen

Through rule or legislation, a “Repeat Violators” program should be created that will subject repeat violators to higher fines, listing in a “Bad Actor” database and, in certain situations, to permit denials and revocations. ADEM should not issue new permits to current violators and should consider an applicant’s environmental violations in and outside of Alabama when evaluating permit applications.

14. Develop Repeat Violators Program and Bad Actors Database

ADEM does not currently maintain a publicly available and easily accessible database of all enforcement actions and compliance history. This not only hampers the public’s ability to become familiar with the regulatory history of facilities in their communities, it prevents the various divisions of ADEM from making informed decisions regarding permitting and enforcement, as available information is limited to what

must be searched for and located in only one working file at ADEM’s headquarters.

Compliance history is not only an important component of penalty calculations, it should also be utilized when determining whether a company should be able to renew or apply for new permits or authorizations. Many states have implemented a “Bad Actors” program which weights compliance histories. Programs of this type act as an added incentive to comply, as most companies do not wish to hamper future permitting activities because of environmental violations.

The state's environmental police have a pitiful history of letting polluters off the hook.

This doesn't come as any big news to people who have followed ADEM and watched its kidglove treatment of polluters through the years. But now there's more than anecdotal evidence to consider. A committee looking into Alabama's environmental penalties found that current policies are too arbitrary and vague and that they encourage lax punishment for offenders.

State law sets the criteria for ADEM to consider in establishing fines and other penalties. But the department doesn't give enough guidance about how to put the rules into practice, the committee said. Even legal orders issued against polluters usually don't give any indication of why a certain penalty was imposed.

That's a sure-fire recipe for penalties that are not uniform or sensible. The conclusion carries greater weight coming from this committee - which is made up of environmental lawyers representing various interests, including the business community and the state.

“Fines and punishment too vague at ADEM”

The Birmingham News

Feb. 16, 2005

Recommendation Fifteen

Empower local governments to enforce selected environmental requirements.

Compliance monitoring and enforcement of environmental laws, rules, permits and orders often suffers because of ADEM's limited field presence and travel distances that delay response times.

ADEM implements a number of environmental programs that could be more effectively implemented by local governments. These may include programs for the regulation of open burning, non-industrial stormwater discharges, construction and demolition landfills, municipal solid waste landfills, illegal dumping, concentrated animal feeding operations, quarries and other mining, and similar activities.

ARC does not believe, however, that local governments should be authorized to enforce more complicated and technically demanding programs such as hazardous waste, industrial wastewater, or industrial air pollution (except as authorized by the Alabama Air Pollution Control Act).

Local governments often have greater monitoring and surveillance capability because of their close proximity to these regulated activities. ARC recommends that local governments be empowered, through delegation, contract, agreement, legislation or constitutional provision (home rule), to perform compliance monitoring and enforcement of certain State environmental programs or to adopt and enforce local environmental programs that are no less stringent than State requirements.

ARC also endorses the inclusion of a "home rule" provision in the Alabama Constitution authorizing local governments to adopt and enforce local environmental, zoning, and other programs beneficial to the health, safety and comfort of citizens that are no less stringent than applicable State requirements.

15. Empower Local Government Enforcement

Three of the five most powerful special-interest groups in the state — the Alabama Farmers Federation, Alabama Forestry Association and Business Council of Alabama — have a huge stake in limiting environmental regulation.

The critics blame the situation in part on the way Alabama's government is designed. Agriculture and timber industry heads crafted the Alabama Constitution of 1901 to concentrate power in the hands of the landowning elite and to keep taxes low. The constitution denies Alabama's counties the authority to pass taxes and zoning ordinances, confining these powers within the Legislature.

"Alabama suffers as environmental agency struggles for support"
The Anniston Star
Aug. 28, 2005

RESOURCES



© Charles Seifried Photo

Reform the ADEM budgetary process so that it is transparent and increase ADEM funding to provide the agency with the necessary resources to fulfill its mission.

Recommendation Sixteen

Non-federal funding for ADEM shall be increased to levels comparable to the funding of other environmental agencies in the Southeastern states. Budgetary increases at ADEM should be transparent and tied to performance measures and Agency objectives as outlined in the strategic plan.

16. Provide Adequate and Transparent Funding

PROGRESS HIGHLIGHTS

ARC members participated in Environmental Stakeholders Committee that recommended a solid waste tipping fee to fund ADEM's impoverished solid waste program. Senate Bill 231 (Sen. Mitchell and Means) and House Bill 263 (Rep. McDaniel, Layson, Gipson, Johnson, Clark, and McLaughlin) were introduced in the 2005 Regular Session of the Alabama Legislature to impose a tipping fee on the disposal of solid waste to support ADEM's solid waste program. During the 2006 session, the ARC helped secure \$100,000 for the environmental justice unit at ADEM.

ADEM is ranked very low among southeastern states in state funding for environmental protection.¹¹

In Resource Guide to State Environmental Management (5th. Ed. 1999), the Council on State Governments reported that Alabama spent \$28.07 per person on environmental programs in 1996.¹² This expenditure was the sixth lowest in the nation and the second lowest in EPA Region 4. The Resource Guide also reported that Alabama's expenditures on the environment were only 1.09% of the State's total expenditures. ADEM must have sufficient state funding in order to successfully implement its environmental and regulatory programs. The cost of environmental protection is one that the public and industry have the responsibility to share.

ADEM also needs greater accountability and transparency in its budget and budgeting process to encourage both legislative and public support for increased funding to provide it with adequate resources to fulfill its mission. The current budget does not itemize expenditures, to give just one example, by the amount spent on enforcement efforts. Without this kind of specific reference to important program goals, it is not possible to understand the

Department's priorities. Without that understanding, it is not surprising that the Department has been unable to rally the public support necessary to support its requests for funding increases.

The Legislature should create additional

funding sources for ADEM, such as a solid waste tipping fee, toxic waste disposal fee, and increased permit fees. Increased funding should result in the earmarking of sufficient funds for the establishment of a Division of Environmental Justice and Health and increased inspections and enforcement.

But ADEM isn't given the tools it needs to do its job, according to experts, environmental administrators and an assessment of the agency's budget.

While ADEM's responsibilities have increased over the last two decades, its funding has declined steadily. In 2005 the agency received a state contribution of \$4.5 million, about the same as it had in the mid-1980s. That's an expenditure of about \$1 per resident, making the agency the lowest-funded environmental agency in the Southeast and among the lowest-funded in the nation. Alabama has paid a price for this lack of investment, critics say.

Fourteen percent of the state's waters are impaired by low levels of the dissolved oxygen needed to support aquatic life and by organic materials, urban and agricultural runoff and fecal coliform bacteria.

Fifteen percent of Alabama's more than 4,500 species of plants and animals now are rare or endangered, and 90 species have gone extinct.

More species have gone extinct in Alabama than in any other state except Hawaii.

Alabama in 2003 ranked second nationally in the number of wastewater discharges that were more than five times permitted levels and eighth in the total number of wastewater violations, according to the U.S. Public Interest Research Group. On average, hazardous chemical violations were 14 times above the permitted levels.

The air division, which regulates more than 300 major sources of air pollution in the state, hasn't seen a decline in its personnel or number of inspections. Because the agency receives millions of dollars in federally mandated emissions fees each year, it actually has seen its budget and inspections increase. Ron Gore, head of ADEM's air division, said his branch is unique in this regard. Because of the federal fees, it hasn't had to take money from the state's General Fund in years. The other divisions have seen their budgets stagnate, which is made worse by inflation, he said.

EPA records back these assessments. The federal agency released an audit of ADEM in 2003 that showed ADEM didn't have enough money or employees, took too long to enforce environmental laws, lacked a consistent policy for deciding penalties, and withheld information necessary for a thorough EPA evaluation of its enforcement practices.

Critics say lawmakers have starved the agency of funding, allowing environmental regulation to be hogtied by the so-called "Big Mules," the agricultural and industrial interests that have run Montgomery for more than 160 years.

"Alabama suffers as environmental agency struggles for support"

The Anniston Star

Aug. 28, 2005



PUBLIC PARTICIPATION

Improve the agency's public participation process to ensure that citizens have the right to provide meaningful input into ADEM decision-making and to receive sufficient notice of agency actions and access to agency information, in order to empower citizens to hold the agency accountable.

Recommendation Seventeen

Amend ADEM's enabling statute to require publication of an easily accessible quarterly list of all environmental violations, that will provide information on the nature and seriousness of the violations, the permit holder, penalties assessed, corrective actions required and whether these actions were completed. In addition, ADEM should be required to keep and make available to the public basic information on all environmental violations and place this information on their web site within 14 days from date of issuance.

ADEM does not publish a regular list of environmental law violators. In fact, obtaining that

information from ADEM in a meaningful format is difficult. But the public has a right to know which companies are violating environmental laws, regulations and permits in their communities and what enforcement actions ADEM has taken to abate the violations.

Removing the anonymity that violators presently enjoy will help encourage compliance. Removing the anonymity with which ADEM exercises its enforcement dis-

cretion will encourage accountability to the public.

Regular and easily available enforcement reports are important tools to keep the affected communities knowledgeable about the industries in their area. They also serve as a way for ADEM to gauge the relative success of its regulatory programs. The EPA Enforcement and Compliance History Online database program is an important step toward increased public knowledge of violators, but State information is more accurate and timely.

Additionally, ADEM currently makes available Administrative Orders and has plans to place the information on the Agency website, but this list is not comprehensive enough to provide all of the information that citizens need to be aware of.

17. Publish Violator's List

PROGRESS HIGHLIGHTS

Senate Bill 338 (Sen. Little (T), Ross, Penn) and House Bill 351 (Rep. Schmitz, Robinson (J)) were introduced in the 2003 and 2004 Regular Sessions of the Alabama Legislature, respectively. These bills would have required that ADEM publish a quarterly list of violators.

Recommendation Eighteen

Improve delivery of important environmental information to the public by implementing the following measures:

- (A) publish and make available Permit Applications and Actions, including responses to comments, within 14 days of action;*
- (B) enhance the ADEM website to include a state map organized by county that will provide information on all ADEM activities for an area; and*
- (C) implement a comprehensive health advisory program focused on public education regarding health advisory information, utilizing TV and radio public service announcements and on-site signage, including fish consumption advisories at all accessible landings.*

By statute, ADEM is mandated to “[s]erve as the state’s clearinghouse for environmental data.”¹³ Easy access to information on environmental matters expands citizen involvement and gives individuals and communities the tools for better environmental protection at local levels. Moreover, increased environmental information exchange among citizens, stakeholders and affected communities stimulates greater awareness about the environment and public health as well as what can be done to protect them.

Although ADEM has made great strides in recent years with the continued development of their web site, environmental information is still often hard to obtain from ADEM. Often, citizens, and even the regulated community, find obtaining information from the agency difficult, time-consuming, expensive and sometimes futile. All agency decisions affect the citizens of Alabama, directly or indirectly, and it is imperative that citizens have full and easy access to information that affects their quality of life or environmental health.

Information access is also an important environmental justice issue. With the state’s educational problems and inequities, this is

especially the case in Alabama. That is, “[e]ven with the public participation reforms of recent decades, for those outside of government and professional advocacy groups, navigating the regulatory process remains a daunting task. For many communities of color and low-income communities, the economic, cultural, linguistic and other barriers are often substantial. The importance of enhancing participation in the regulatory process ‘early and often’ has been a core element of discussions of how to achieve environmental justice.”¹⁴ Therefore, greater access to environmental information will be of special importance to communities of color and low-income communities.

However, having greater access to information will provide greater opportunities for all citizens for meaningful participation in environmental decision-making. Information is, indeed, the currency of democracy. ADEM should make every effort to ensure that all publicly available information should be easily accessible.

18. Improve Information Delivery to Public

Recommendation Nineteen

Amend ADEM rules to guarantee the right of the public to address the EMC at its regular meeting on issues within its jurisdiction, in order to provide a significant new public participation opportunity in agency decision-making.

19. Guarantee Public's Right to Speak at EMC Meetings

PROGRESS HIGHLIGHTS

ARC petitioned for rule amendment to allow public comments at Environmental Management Commission meetings. Ala. Admin. Code R. 335-2-3-.05 was amended by the Commission on June 17, 2003 to allow the public an opportunity to address the Commission at its meetings. ARC members and others subsequently made numerous presentations to the Commission documenting ADEM's failures and making recommendations for reform.

The EMC, the body responsible for promulgating rules and establishing environmental policy for the state, is not required to allow public comments at their meetings and, historically, has not been receptive to requests by citizens to address the Commission on issues of public concern.

It was to give the public more of a voice in the agency's decision-making, that, early in 2002, a number of environmental and citizen groups petitioned the EMC to guarantee the public a right to directly address the EMC at its meetings. During public hearings in April and June of 2002, dozens of Alabama citizens testified about the need for the agency to adopt a rule guaranteeing the public a right to speak freely at its regular meetings.

The EMC proposed a modified rule that limited that right, but nevertheless it adopted a rule that improves the ability of citizens to participate in EMC meetings.

Ala. Admin. Code R. 335-2-3-.05 was amended by the Commission on June 17, 2003 to allow the public an opportunity to address the Commission at its meetings.

Presentations by citizen organizations following the “public right to speak” rulemaking petition:

June 17, 2003 - Cahaba River Society on coordinating local and ADEM efforts to implement stormwater requirements

June 17, 2003 - Legal Environmental Assistance Foundation on ADEM copying costs

October 28, 2003 - Sand Mountain Concerned Citizens on enforcement and budget cuts

October 28, 2003 - Ashurst Bar/Smith Community regarding solid waste issues

April 20, 2004 - Friends of Rural Alabama on concentrated animal feeding operations

June 29, 2004 - Friends of Rural Alabama on vegetative buffers at animal feeding operations

June 29, 2004 - Legal Environmental Assistance Foundation and Pleasant Grove community on abandoned landfill and lack of financial assurance

June 29, 2004 - Mobile Baykeeper on monitoring and enforcement deficiencies in Mobile County

August 24, 2004 - Legal Environmental Assistance Foundation and African-American Environmental Justice Action Network on environmental justice

August 24, 2004 - Choctawhatchee Riverkeeper on water quality monitoring and data use

February 11, 2005 - Cahaba River Society and ARC on ADEM priorities for next six months

April 8, 2005 - Legal Environmental Assistance Foundation on cumulative risk assessment

June 17, 2005 - Alabama Environmental Council and ARC on Enforcement and Administrative Penalties Stakeholder Committee’s Final Report

November 4, 2005 - Legal Environmental Assistance Foundation on air toxics in Mobile County

June 2, 2006 - Legal Environmental Assistance Foundation on air toxics in Jefferson County

Recommendation Twenty

Amend ADEM rules to require that, in addition to meeting in Montgomery at ADEM headquarters, the EMC should conduct its regular meetings around the state and at times that are convenient for working people to attend and participate. In addition, so that the at-large commissioners will become knowledgeable about the environmental issues in their geographic regions, those commissioners should each hold informal “town hall” meetings in their regions of the state every year.

20. Improve Public Access to EMC Meetings

The EMC currently meets only in Montgomery and during regular business hours. This limits the ability of most citizens to attend the EMC meetings and to generally participate in agency decision-making. Attendance at EMC meeting by average citizens is notoriously sparse, and most citizens are not even aware when an issue that affects their community is on the agenda for discussion. Those who do attend EMC meetings must seek leave from their jobs and drive long distances to be present. This presents a hardship to citizens and limits meaningful participation.

While the EMC held thirteen townhall meetings around the state in th evenings as part of two strategic planning processes, the EMC has yet to make its regular business meetings more accessible to citizens. The EMC needs to be responsive and receptive toward citizen participation. Commissioners need to be aware of issues that concern their constituents so that they may adequately express citizen concerns at the meetings regarding matters before the commission. Additionally, citizens should be given every opportunity to attend and participate in EMC meetings. This can be achieved by changing the time and location of the EMC meetings so that working people will be able to attend on a regular basis.

The EMC needs to be responsive and receptive toward citizen participation. Commissioners need to be aware of the issues that concern their constituents so that they may adequately express citizen concerns at the meetings regarding matters before the commission.

Recommendation Twenty-One

Amend ADEM rules to provide improved access to public records for citizens, including the following:

- (A) reduction in copying fees;*
- (B) file review appointments should be available within three days of the request;*
- (C) copies of public documents should be made at the time of the appointment;*
- (D) all documents that are part of the public records shall be available for review; and*
- (E) all pertinent field documents must be available at ADEM headquarters by the file review appointment.*

The ability of citizens to effectively participate in public comment on permits and other ADEM actions is undercut by ADEM's file review and document copying policies. Citizens cannot get an appointment to review files until ten days after the request, must mark items of interest, and ADEM then copies them at an unreasonable cost and mails them back. These excessive charges for copying public records deter public participation and discriminate against low-income citizens. The public has also been banned from bringing their own copy machines, which would reduce ADEM staff costs. Fifteen days or more of the comment period go by before citizens even have access to the documents they need to review. Frequently the files are incomplete, with significant documents unavailable because they are "on the inspectors desk" or "pertinent to an enforcement matter." This frequent withholding of public documents damages the agency's cred-

ibility and prevents effective citizen participation in agency review procedures.

Citizens should have prompt and reliable access to public documents both at ADEM headquarters and in the field offices. The practice of charging excessive fees for copies discriminates against low income citizens and should be eliminated. No documents that are part of the public record should ever be withheld when a request to view them is made.

21. Improve Citizen Access to Public Records

PROGRESS HIGHLIGHTS

ARC petitioned for rule amendment to reduce public record copying costs. Ala. Admin. Code R. 335-1-1-.06 was amended by the Environmental Management Commission on December 23, 2003 to reduce public record copying costs from \$.40 to \$.30 per page.

Recommendation Twenty-Two

Amend ADEM rules to require that the Department shall conduct a public hearing on a permit application and draft permit when ten or more persons request such a hearing.

22. Improve Public Hearing Process

Current ADEM policy is not clear in specifying what constitutes “sufficient interest” in an agency action to conduct a public hearing. It is often at the discretion of the department to determine

whether a public hearing should take place, regardless of the amount of interest the public takes in an action. ADEM should standardize the public hearing process for permit activities to allow for communities’ concerns to be heard in the formal arena of a public hearing if ten or more people express the desire that ADEM conduct the hearing.

Recommendation Twenty-Three

Amend ADEM rules to require ADEM to provide specific, documented justification in the Department’s responses to written public comments when such a request is made.

23. Improve Agency Response to Public Comments

ADEM frequently receives comments on permit actions, rulemaking, or other issues from the general public, environmental organizations, or industry. Often, these comments go unanswered or have inadequate answers that are not pertinent to the comment or question.

Public comments are often the only venue that citizens have to participate in ADEM’s actions, and ADEM has not lived up to its responsibility to the public by providing timely and complete responses to comments that the agency receives. ADEM should be required to provide a full and pertinent written response to all written public comments when a request for response is made. ADEM’s written responses must be specific to each point of the public comment.

ENDNOTES

¹ Compare ADEM's statement of its "mission" with the following:

"The mission of the U.S. Environmental Protection Agency is to protect human health and to safeguard the natural environment - air, water, land - upon which life depends."

"To safeguard life, promote human health, and protect the environment through the practice of modern environmental health sciences, the use of technology, rules, public education, and above all, dedication to the public trust." - "Mission Statement" of the Division of Environmental Health of the North Carolina Department of Environment and Natural Resources

"The mission of the California Environmental Protection Agency is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality."

² The recent PARCA report also studied this question of environmental agency leadership and accountability.

The second way in which Alabama organizes contrary to norms is that the Environmental Management Commission appoints the Director of the Department of Environmental Management, who serves at the pleasure of the Commission. This contributes to the isolation of the Department within the executive branch of government. All of our neighboring states give the Governor a role in the appointment of the environmental agency director. In Florida, Mississippi, and Tennessee, the director is appointed by and serves at the pleasure of the Governor; in Georgia, the director is appointed by the Board of Natural Resources with the approval of the Governor. Involving the Governor in the appointment of the Director links environmental protection to the executive branch of government and creates accountability to the voters; senatorial confirmation is required in some states, creating a link with the legislative branch. In all of the neighboring states, the environmental commission retains policy-making power over the director and the environmental agency.

Improving the Way the State of Alabama Does Business: The Case of Environmental Protection, PARCA QUARTERLY 1, at 2 (Winter 2003).

³ The PARCA Report studied the environmental agencies of Alabama's neighboring states, and made the following observations and recommendations regarding the importance of strategic planning:

The second step toward conducting business more effectively is to create goals, operating principles, and strategies to guide agency operations. Goals are general expressions of intent that provide broad guidance for how an agency operates. General goals guide the department in creating operating principles and strategies. Operating principles are statements of purpose that are permanent in nature, while strategies are time-specific plans for implementation. A strategic plan is a comprehensive set of strategies for an organization.

Environmental agencies in the neighboring states of Florida, Mississippi, and Tennessee are required by law to develop strategic plans, which are intended to ensure that administrators are focused purposefully. Properly done, such a plan exposes any mismatch between the agency's purposes and the resources it has to carry them out. Alabama environmental law has no such requirement, although it does give the Environmental Management Commission the broad duty to make environmental policy for the state. It would appear to be within this power to call for a strategic plan, and to require that the Department's annual budget be linked to it.

Id., at 2-3.

⁴ The PARCA report explains the rationale behind separating various functions within an environmental agency:

More than 200 years ago, James Madison pointed out that it is inappropriate to place legislative, executive, and judicial duties in the same hands. Combining them not only detracts from the performance of each responsibility, but also can concentrate power inappropriately. The normal practice in environmental protection is that policymaking duties are assigned to a board or commission, administrative duties are given to an agency headed by an appointed director, and appeals are handled by hearing officers, administrative law judges, and ultimately the courts.

Alabama law departs from these norms in two ways. First, the Environmental Management Commission is given responsibility both for making environmental policy and for deciding appeals from administrative actions. None of our neighboring states mixes policymaking and adjudicatory responsibilities in this way. When a policymaking commission decides appeals that arise from administering rules it has adopted, commissioners are forced to become involved in the details of particular cases, some of which may even put them in the position of judging their own rules. They are forced by the demands of judicial neutrality to separate themselves from the very audiences with which they ought to be discussing policy.

Mississippi law provides an example of how these responsibilities are normally divided. The statutory duties of the Mississippi Commission on Environmental Quality include formulating policy regarding natural resources, adopting rules and regulations for pollution control, and commissioning or conducting studies to improve environmental management. The Executive Director of the Department of Environmental Quality is appointed by the Governor, with the advice and consent of the Senate, and serves at the pleasure of the Governor. Environmental permits are issued and revoked by a Permit Board composed largely of officials from state agencies responsible for the environment, health, parks and wildlife conservation, agriculture and commerce, oil and gas production, and marine resources. Appeals from decisions of the Permit Board go to the state court system.

Id., at 2.

⁵ The recent PARCA report is also instructive on how environmental agencies should be organized and the problems that arise when judicial roles are mixed with executive and legislative ones.

The first step toward conducting business effectively is to organize appropriately. A state environmental protection program involves three kinds of responsibilities. First,

there are policymaking responsibilities including rule-making, fee-setting, and the gathering of information through oversight activities such as hearings and studies. These duties are essentially legislative in nature. Second, there are administrative responsibilities that include planning, permitting, compliance monitoring, and the levying of penalties for noncompliance. These duties are executive in nature because they involve the implementation of rules, regulations, and other policies. Third, there are adjudicatory responsibilities involved in hearing and deciding on appeals from administrative actions. These are judicial duties that focus on resolving cases that arise under established policy.”

Id., at 2.

⁶ In 1995, EPA adopted a Strategy that established for the agency the goal of environmental justice, that

[n]o segment of the population, regardless of race, color, national origin, or income, as a result of EPA’s policies, programs, and activities, suffers disproportionately from adverse human health or environmental effects, and all people live in clean, healthy and sustainable communities.

U.S. Environmental Protection Agency, ENVIRONMENTAL JUSTICE PROTECTION STRATEGY (April 3, 1995).

⁷ § 22-22A-2(1), Ala. Code 1975.

⁸ The PARCA report also noted how North Carolina’s environmental agency has coordinated its enforcement strategies into an integrated approach:

In 1999, DENR initiated an assessment of its enforcement of the state’s environmental law and regulations, aimed at understanding the department’s strengths and weaknesses and identifying opportunities for improvement. This process, staffed internally, led to publication two years later of a report titled Environmental Regulatory Compliance Activity in Calendar Year 2000. The report established a baseline for measuring performance, laid out four goals and twelve principles of enforcement for the department, and created the basis for strategic plans to guide the agency’s budget and operations.

Much that is in the North Carolina report would be transferable to Alabama. The four goals state that, while shared stewardship is preferable, when enforcement is necessary, it should be: Fair: The agency should use consistent decision-making criteria in determining appropriate penalties for all violations. Focused: The agency should plan enforcement activities for effectiveness, and spend resources where problems are likely to be found. Visible: The agency should keep the community aware of enforcement actions. Timely: Enforcement actions should occur in close proximity to the violation.

The twelve enforcement principles elaborate on these goals, requiring for example that “the of non-compliance should be greater than the cost of compliance,” and that “enforcement decisions will be defensible, documented, and proportional to the degree of potential harm.” The report also developed “enforcement profiles” for each regulatory program, showing the number of regulated sites, number of inspectors, compliance

rates, and rate of repeat violations. The report is to be updated annually, and it is guiding the DENR in its activities.

PARCA QUARTERLY, *supra* note 2, at 3.

⁹ A recent audit of ADEM by EPA concluded that the lack of a coordinated enforcement system limits the ability of ADEM to address overall compliance problems at regulated industries. The audit also pointed to an overarching lack of strategic planning for enforcement:

[T]here is no holistic prioritization of those noncompliance problems which have the greatest impact on priority environmental problems as well as those problems which constitute the highest risk to human health or ecosystem protection in the State. Defining baseline noncompliance problems maximizes environmental results by addressing the highest priority enforcement problems in light of environmental priorities and State resources.

FINAL FY-2000 COMPOSITE STATE OF ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (ADEM) COMPLIANCE ASSURANCE PROGRAM EVALUATION § 4.2.1.1 at 6 (EPA January 2003).

¹⁰ In its recent audit, EPA makes the following observations about ADEM's penalty policy before recommending that ADEM adopt a written policy "that meets minimum federal stringency requirements and provides for the documentation of penalty and economic benefit calculations":

ADEM has been working on the development of a State penalty policy, which at the time of this review, was not finalized. There is some concern that the penalty policy being developed may prove to be less stringent than the Federal penalty policy because of State requirements that cap penalties. EPA's guidance recommends including in the case file, all supporting documentation as to how penalties and economic benefit were calculated. Although ADEM's enforcement files were generally complete, they were missing copies of the penalty calculations, associated economic benefit or ability to pay reports used to assess a civil penalty. Therefore, an independent determination of the appropriateness of the penalties assessed could not be made.

Id., §4.2.1.3. at 7.

¹¹ The PARCA report analyzed our neighboring states regarding funding of environmental protection agencies and determined that Alabama ranks last in several categories:

The third step involved in conducting the state's business effectively is to create appropriate and adequate funding sources. In broad terms, there are two ways to fund environmental protection activities. One is to make the regulated community pay, through fees and fines. The other funding source for environmental protection is the general fund. Pollution problems often reflect societal choices, and a clean environment provides benefits to every resident of the state; in addition, general tax support for environmental protection gives all citizens a stake in such programs that would not be present if all funding came from those who are regulated.

On paper, the Alabama Department of Environmental Management (ADEM) has an advantage in creating the appropriate funding mix for its programs, in that the Environmental Management Commission has authority to set both state environmental policy and environmental fees. The law calls for a cost analysis. A straightforward

approach would be to establish the resources required to make rule-making, permitting, inspections, and technical assistance available at adequate levels in the various water, air, and land programs, and then create an explicit cost-sharing formula to spread the burden between the regulated community and the general taxpayer (e.g., fees might be set to cover 75 percent of the budgeted costs, with the general fund expected to provide the remaining 25 percent).

Conducting this analysis is critical, because it is well recognized today that ADEM's resources are inadequate in some areas. Recently, PARCA staff compiled detailed figures on state and local funding support for environmental protection agencies in Alabama, Florida, Georgia, and Tennessee. The study looked at funding for a matched set of activities. The results, some of which are shown in the table below, showed that ADEM receives by far the lowest amount of general fund and fee support for its water protection programs. Its land protection efforts receive far less general fund support than is found in neighboring states. Its air protection programs are not as disadvantaged, in part because of a well-funded local program within Jefferson County.

TABLE 2. Environmental Protection Funding, 2000.

General Fund Support Per Capita					
Media	Alabama	Florida	Georgia	Tennessee	
Water	\$ 0.73	\$ 4.36	\$ 2.20	\$ 5.12	
Air	0.18	0.00	0.24	0.32	
Land	0.45	13.86	2.20	4.15	
Total	\$ 1.36	\$ 18.51	\$ 4.64	\$ 9.59	

Fee Support Per Capita					
Media	Alabama	Florida	Georgia	Tennessee	
Water	\$ 1.33	\$ 4.49	\$ 3.18	\$ 2.06	
Air	1.61	2.05	2.55	1.04	
Land	2.58	1.67	0.21	1.02	
Total	\$ 5.52	\$ 8.22	\$ 5.95	\$ 4.12	

PARCA QUARTERLY, *supra* note 2, at 3-4;

¹² This number represents allocation of state funds to multiple state agencies with responsibility for environmental functions as well as local government expenditures. Actual annual state appropriations for ADEM are closer to \$1 per person.

¹³ “The clearinghouse shall be developed in coordination and cooperation with other governmental data collection and record keeping systems to provide for an inventory, and for the cataloguing and dissemination of environmental information.” § 22-22A-5(5), Ala. Code 1975.

¹⁴ ENVIRONMENTAL LAW INSTITUTE, OPPORTUNITIES FOR ADVANCING ENVIRONMENTAL JUSTICE at iv (November 2001).

EMC Qualifications

POSITION ONE

One member shall be licensed to practice medicine in the State of Alabama and certified in the specialty of Public Health and General Preventive Medicine by the American Board of Preventive Medicine or shall have a master of public health degree, master of science in public health degree, or doctor of philosophy degree, with a specialization in epidemiology or environmental health sciences, from a program accredited by the Council on Education for Public Health and a minimum of five years experience in the field of public health;

POSITION TWO

One member shall be licensed as a professional engineer by the State Board of Licensure for Professional Engineers and Land Surveyors and shall have a bachelor of civil engineering degree, bachelor of science in civil engineering degree, master of civil engineering degree, or master of science in civil engineering degree, with a recognized specialty, emphasis, concentration or certificate in environmental engineering or water resources and coastal engineering, from a program accredited by the Accreditation Board for Engineering and Technology, Inc. and a minimum of five years experience in the practice of environmental engineering;

POSITION THREE

One member shall be an attorney licensed to practice law in the State of Alabama and shall have a bachelor of laws or juris doctor degree from a law school approved by the American Bar Association and a minimum of ten years experience in the practice of law and shall be familiar with environmental matters;

POSITION FOUR

One member shall have a master of science degree or doctor of philosophy degree in geology from a university accredited by a regional or national accrediting agency recognized by the U.S. Secretary of Education under 20 U.S.C. s. 1099b and a minimum of five years experience in the practice of geology, including hydrogeology;

POSITION FIVE

One member shall have a master of science degree or doctor of philosophy degree in zoology, botany, forestry, wildlife science, or wildlife biology from a university accredited by a regional or national accrediting agency recognized by the U.S. Secretary of Education under 20 U.S.C. s. 1099b and a minimum of five years experience in the practice of any such discipline;

POSITION SIX

One member shall be an individual possessing a master of science degree or doctor of philosophy degree in aquatic biology, fisheries biology, marine biology or marine science from a university accredited by a regional or national accrediting agency recognized by the U.S. Secretary of Education under 20 U.S.C. s. 1099b and a minimum of five years experience in the practice of any such discipline;

POSITION SEVEN

One member shall have been a resident of the State of Alabama for the two years next preceding his appointment and who shall live in one of the following counties: Blount, Calhoun, Cherokee, Cleburne, Colbert, Cullman, DeKalb, Etowah, Fayette,

Franklin, Jackson, Lamar, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, St. Clair, Walker, or Winston;

POSITION EIGHT

One member shall have been a resident of the State of Alabama for the two years next preceding his appointment and who shall live in one of the following counties: Autauga, Bibb, Chambers, Chilton, Clay, Coosa, Elmore, Greene, Hale, Jefferson, Lee, Perry, Pickens, Randolph, Shelby, Sumter,

Talladega, Tallapoosa, or Tuscaloosa;

POSITION NINE

One member shall have been a resident of the State of Alabama for the two years preceding his appointment and who shall live in one of the following counties: Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, Wilcox.