



AEMC Personnel Committee
Submitted electronically to:
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To AEMC Personnel Committee,

The following comments are submitted by Coosa Riverkeeper, Inc. on behalf of our 600+ dues-paying members and the general public who support our mission to protect, restore, and promote the Coosa River. We patrol the waters, educate the public, and advocate on behalf of the river. These comments are for consideration regarding the Alabama Environmental Management Commission (AEMC) Personnel Committee's Notice of ADEM Director Job Performance Evaluation dated the June 24, 2019.

Coosa Riverkeeper believes that Director Lance LeFleur fails to lead the Department to achieve their mission "to assure for all citizens of the State a safe, healthful and productive environment." The following are a few examples of how the Director fails to uphold the Department's mission:

- Poor Compliance Enforcement
- Ineffective Enforcement Action of Coal Ash Discharges
- Construction Stormwater Enforcement & Violations

POOR COMPLIANCE ENFORCEMENT

Our first criticism stems from the Director's failure to lead the Department to implement effective enforcement action that assures that permittees comply with current state and federal environmental laws. When a compliance failure does occur, the Director needs to lead the Department to implement enforcement action that will ensure that the facility will comply with their permit in perpetuity rather than issuing minimal fines (or simply doing nothing at all). **The Department consistently fails to enforce commensurate action with the severity and frequency of permit violations across the state.**

Coosa Riverkeeper conducts a file review quarterly of all of the active water related permits within the middle and lower Coosa River Basin. We compile a list of facilities that self-report quarters of significant noncompliance, most of which show that they are repeat and/or persistent offenders. **Our most recent file review showed that 67% of facilities that self-report violations have more than just one quarter of significant non-compliance. Since 2015, only 15% percent of facilities that were listed as having at least one quarter of significant noncompliance had any kind of formal enforcement action.**

These numbers show a huge disparity between the amount of violations that occur and a significant lack of formal enforcement action. Without proper enforcement action, permitted polluters across the state will continue to exceed their permit allowances.

INEFFECTIVE ENFORCEMENT ACTION OF COAL ASH DISCHARGES

Monitoring wells at both Alabama Power's Gadsden Steam Plant on Lake Neely Henry and Gaston Steam Plant on Lay Lake indicate that these facilities are in violation of discharging arsenic and radium into groundwater. The monitoring results showed that the Gadsden Steam Plant coal ash pond discharged arsenic at 10,000% above the national limit and that the Gaston Steam Plant coal ash pond discharged radium, molybdenum lithium, and arsenic above the national limit. Both facilities received the maximum fine of \$250,000 which is only 0.03% of Alabama Power's profits for 2017. **The "maximum fine" levied against Alabama Power is not commensurate to the severity of the violation and threat to wildlife, public health, and the local economy.**

Additionally, Alabama Power will continue to operate out of compliance because of the asinine maximum fine limit. The point of levying fines is to persuade the violator to promptly return to compliance. **Having an arbitrary maximum fine in place inhibits the Department's ability to implement effective deterrence of permittees operating out of compliance, and so it is imperative that the Director take the lead in removing this cap.** Both facilities will continue to discharge dangerous amount of toxins into groundwater without appropriate enforcement action.

The coal ash ponds located on the Coosa are just two examples of how permit holders continue to operate out of compliance. There are many other facilities where permittees continue to violate the conditions of their permit and continue to negatively impact water quality of the Coosa and her tributaries. **The lack of enforcement is not only limited to large operations like Alabama Power, but to other operations across the state.** This especially applies to construction stormwater permits in the Coosa River Basin.

CONSTRUCTION STORMWATER ENFORCEMENT & VIOLATIONS

Coosa Riverkeeper has fielded numerous complaints about construction stormwater runoff that has damaged private citizen's property and muddied the creeks, streams, rivers, etc. that they swim and fish in. One such example was a series of complaints by residents of Fowler Lake who were concerned about the excessive sediment flowing into their lake due the construction related activities from the Village of Highland Lakes development (Permit ALR108425). In the last five years, the **Department has inspected the site 12 times and has found violations of the permit 92% of the time.** The Department issued one warning letter, three notices of violation, and threatened a Consent Order after a failure to come into compliance after a Notice of Violation. **Despite these actions implemented by the Department, excessive sediment continued to muddy Fowler Lake. It was not until Coosa Riverkeeper submitted a Notice of Intent to Sue to the permittee that effective change actually occurred.**

While Coosa Riverkeeper is pleased to see significant improvements of construction stormwater management implemented by the permittee, **we are not pleased with the fact that it took significant effort on the part Coosa Riverkeeper, the Southern Environmental Law Center, and the residents of Fowler Lake to make effective change.** The lack of meaningful enforcement by the Department required time and resources of Alabama citizens to ensure compliance of the permit, something that should have already been done by the Department.

CONCLUSION

The Director's inability to lead the Department to properly implement enforcement action on permittees shows the citizens of the state of Alabama that he consistently fails to uphold the Department's mission. This has led to general mistrust among the citizens of Alabama

of the Departments's willingness and ability to enforce environmental regulation. The Director's cavalier attitude towards the severity of significant environmental pollution such as the recent the Tyson Foods fish kill, certainly does not help with public trust. **We ask that the AEMC Personnel Committee demand that the Director take greater initiative in leading the Department to properly enforce environmental regulation not only within the Coosa Valley but across the entire state of Alabama.**

For the Coosa,



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Executive Director



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