



Alabama Department of Environmental Management
adem.alabama.gov

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July 2, 2019

Dear Chair Miller and Commissioners

Civil discourse seems to be rapidly disappearing. Media reporting based on facts is also disappearing. Three recent examples are attached. One is a posting on the Black Warrior Riverkeeper (BWRK) Facebook page. The others are AL.com articles by John Archibald and Kyle Whitmire.

When one of BWRK's Facebook friends posted a proposal to use violence against ADEM personnel and BWRK posted an endorsement of the proposal, I requested that the BWRK board of directors address the matter by repudiating the posting and providing assurance that BWRK would refrain from such activities in the future. The board did not respond. The executive director did reply, after being confronted, that the endorsement was unintentional and was really intended to be a disapproval not the approval shown. BWRK has refused to provide the name of the individual who provided the endorsement, has not admitted to any additional similar posts and has not advised of any procedures to assure that similar activities will not occur in the future.

Normally I don't respond to items about me appearing in the media because media has no accountability, does not offer a comparable forum for responding, and rarely sets the record straight. That said, the recent article by Mr. Archibald is so indecent, so reckless and so filled with false statements I am compelled to at least address it with you. Mr. Whitmire's article is not as obscene but is no less reckless and filled with false statements. Local television coverage has fallen in line with their false narrative.

Readers of Mr. Archibald's article can decide for themselves what his quite obvious fixation on a specific part of the male anatomy reveals about him. What follows will address the underlying allegations, however, I do so with some misgivings because it may be construed as giving some credibility to the articles that are so obviously devoid of facts and riddled with false baseless statements.

Please note that the words "This is an opinion column" at the top of their articles seems to mean the article does not need to be based on facts, does not need to be truthful, does not need to be concerned with what the law or regulations require, and does not even need to be logical – it just has to be entertaining. Clearly writing an opinion column does not require any investigative work on the part of the authors nor does any other point of view need to be considered.



The following will address the matters referenced in the Archibald and Whitmire articles which are similar.

North Birmingham

The articles' statements that ADEM, and in particular I, acted in a manner other than the best interests of the citizens of Alabama regarding contamination in the North Birmingham area have been thoroughly discredited by prior responses to similar allegations by the environmental activist groups GASP and Black Warrior Riverkeeper, et.al. [see 3/18/19 GASP & 8/1/18 BWRK correspondence on ADEM website]. Two relevant excerpts from the 3/18/19 GASP response are:

Excerpt #1 page 2:

The term "revisionist history" implies that ADEM changed its determination on whether or not to concur in EPA's proposed NPL listing. Prior to having access to the HRS documentation or any other information from EPA, upon which ADEM could make an informed determination, on June 11, 2014 ADEM stated it would not object to the proposed listing under three specific circumstances [ref #4]. None of those circumstances has ever occurred. In the September 16, 2014 email from LeFleur to EPA, prior to EPA releasing the HRS calculation on September 22, 2014, ADEM reiterated that EPA had provided no basis for NPL listing and all available information from other sources did not support NPL listing [ref. #5]. ADEM has consistently advocated for more timely and effective options than NPL listing [ref #1, pgs. 66-68; #2, pgs. 1 & 2; #3, pgs. 3 & 4; #6]. Rather than ADEM presenting a revisionist history, GASP has clearly invented a false history.

Excerpt #2, pages 3-4:

Members of the AEMC and ADEM are public servants and are obligated to engage with any party interested in matters that may come before them. That includes environmental organizations, regulated industry, elected officials, and the general public [ref #2, pgs. 2-3]. The billing entries by Gilbert, et.al. detail their actions and work toward their objectives to justify billing their clients, and do not describe the actions or objectives of members of the AEMC or ADEM. To imply nefarious intent on the part of the AEMC members or ADEM for meeting with Gilbert, et.al. or any other party is to imply that the AEMC members and ADEM should not engage with the regulated industry or others when requested to do so. Keep in mind that, as revealed in the transcript of the USA v. Gilbert, et.al. trial, the AEMC and ADEM were being misled by the criminal activities of Gilbert, et.al., just as numerous others were.

In reality, the cleanup of the contaminated soil in the North Birmingham area has nearly been completed and will be complete decades earlier than it would have taken place if ADEM had not taken the action it did.

It appears Mr. Archibald and Mr. Whitmire have not read or have chosen to ignore the above referenced responses on the ADEM website and the transcript of the USA v. Gilbert, et.al. trial nor do they understand the logic leading to faster cleanup of the site.

3M releases of chemicals to the Tennessee River

EPA is the agency responsible for the reporting, record-keeping, testing, and restrictions of potentially hazardous chemical substances under the Toxic Substances Control Act (TSCA). EPA does not delegate its TSCA authority to any state nor is TSCA information shared with the states.

EPA has not made a determination whether FBSA and FBSEE manufactured by 3M are toxic or not toxic. Until EPA makes such a determination, regulating discharges of those substances is solely within the purview of EPA under TSCA. ADEM has no regulatory authority to set limits for the discharge of those substances. ADEM, along with others, continues to press EPA to develop standards as quickly as possible because state regulatory agencies and the public have a heightened concern regarding this family of chemicals that has been widely used for more than 50 years.

Releases to water bodies of chemical substances that have been determined by EPA to pose a hazard to human health or the environment are regulated under the Clean Water Act (CWA). ADEM has been authorized by EPA under the CWA to regulate the discharge of substances for which a toxicity determination has been made and water quality standards set.

ADEM does monitor the release of certain chemical substances of undetermined toxicity for the purpose of having a reference data base for when EPA establishes regulatory thresholds. ADEM has the authority to take enforcement action for the discharge of chemicals that have not been disclosed to the Department. If 3M is found to be in violation of the Clean Water Act or ADEM rules, orderly enforcement action and remediation will follow holding any responsible party accountable.

Media reporting that a release is toxic when EPA has not made a determination whether or not it is toxic, are reporting false information and misleading the public.

Tyson Farms unpermitted discharge

Please see the attached summary of the Tyson discharge which is updated as new information is available on the ADEM website [copy 6/26/19 update attached].

A few pertinent items are:

- The unintentional release occurred as a result of the failure of a pipe / hose being used to transfer partially treated waste water from one pond to another as a step in upgrades to reduce odor from the plant
- ADEM and private sector emergency response teams were immediately deployed when the discharge was discovered

- It was determined that the release depleted the dissolved oxygen causing an extensive fish kill and elevated levels of e-coli
- Existing ADEM notification signage at public boat launch points and marinas directed all interested members of the public how to get up-to-the-minute water quality information
- Public water systems were notified to take appropriate treatment measures to maintain all drinking water quality standards [**no violations of health based drinking water standards occurred as a result of the spill**]
- Dissolved oxygen and e-coli levels had returned to normal by 6/13/19 following the 6/6/19 spill
- ADCNR did a survey of the number, size and species of fish killed
- Private contractors removed dead fish
- Citizens in the area lost the opportunity to engage in recreational activities during the spill, assessment, cleanup, and restoration activities
- ADEM has engaged with Alabama-based and headquarters-based corporate executive Tyson personnel in Montgomery to address further response, remediation and enforcement which will include penalties

ADEM seeks to get accurate information to the public when violations of this type occur. Unfortunately today's media does not accurately report the information provided by ADEM. For example, during a thirty second response to a television reporter's questions right after the commission meeting, on a video clip, I made four points:

1. Information about the spill is on the ADEM website
2. Water from drinking water systems in the area is safe to drink
3. This is an ongoing enforcement action
4. Parties are entitled to due process

What was reported on air by that television station was that information about the spill is on ADEM's website (implying that it is not adequate) and that I would not answer a question about safety of drinking water (in fact the clip shows my statement that drinking water was safe to drink). The television announcer made no mention of an ongoing enforcement action or due process. Nor did the announcer mention any of the information on the ADEM website. Informing the public did not appear to be one of their objectives. The video clip is available at <https://abc3340.com/news/abc-3340-news-iteam/adem-refuses-to-answer-black-warrior-river-water-safety-questions>

Of the four points, Mr. Archibald only reports that ADEM engages in due process but he does so with disdain for the process. He later claims due process is the equivalent to giving Tyson "the benefit of the doubt" when in fact it means a step-wise process after the discharge has been stopped and cleanup begun. Due process involves scientifically gathering evidence, assessing the root cause, determining what permit conditions or regulations might have been violated, statute-based penalty calculations, show cause

meetings, opportunity for appeal, etc. He, like the television station, made no mention of any of the information on the ADEM website.

Mr. Whitmire states in his article that when asked about the fish kill I would not answer questions when in fact the video clip confirms the four questions asked and answered. He also reports there was a question about the safety of water in the Black Warrior River, to which he claims my answer was go look on the website. In fact there was no such question asked. He made no mention of any of the information on the ADEM website.

Sadly, today's media in Alabama cannot be relied upon to provide complete, accurate, or unbiased information to the public so ADEM must rely on its own website. Indeed, the placement of permanent signage at all public boat launches and marinas is for the purpose of providing the public easy access to reliable information on numerous water quality issues on ADEM's website.

We will be meeting with local elected officials and citizens in the impacted area to address all relevant issues. Tyson will be held accountable for any violations of the Clean Water Act, for remediation of environmental damage, and loss of use of natural resources by Alabama citizens. It will be done in accordance with the law.

In closing I can assure you that the 3M and Tyson situations are receiving ADEM's full attention. We seek to keep the public informed in a very challenging media environment and are constantly seeking to improve in that effort. The Department regulates 35,000 facilities in Alabama. Make no mistake about it, there will be violations, including unpermitted discharges, at some of those 35,000 facilities. EPA data, which is readily available through an ADEM website link, shows the rate of violations in Alabama is among the lowest in the nation. Violators are held accountable as shown by EPA data where penalties assessed in Alabama are in line with the rest of the nation despite our lower violation rate.

If you would like to discuss the matter please call me at your convenience.

Sincerely



Lance R. LeFleur
Director

CC: Governor Kay Ivey

Enclosures: BWRK Facebook post; Archibald 6-24-19 opinion article;
Whitmire 6-24-19 opinion article; and ADEM 6/26/19 website update to
ADEM Investigation of Mulberry Fork Fish Kill



Black Warrior Riverkeeper's Post



15h Like Reply



Drew Sharpe

ADEM doesn't do a damn thing to help the environment.

Everyone working there should be ashamed....then they should be taken into the street and beat senseless.

Trailer parks can dump raw sewage into AL waterways and they won't do a damn thing about it....

FUCK Alabama Department of Environmental Management and any sorry piece of shit that works for them.

If they had any morals,they'd be stealing for a living VS working for a state agency that does nothing.

17h Like Reply



Black Warrior Riverkeeper

NEWS

Flaccid ADEM is the picture of phallic failure

Posted Jun 24, 2019



special

If penises get attention, Alabama's rivers and lakes need the right tools.

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By [John Archibald | jarchibald@al.com](mailto:jarchibald@al.com)

This is an opinion column.

And here I thought all our problems started with penises.

Turns out they may be the answer.

Just look at what genitals are doing in Birmingham to combat the elected dysfunction that has so long failed to repair or even acknowledge the potholes that mark the streets like a pox.

Residents couldn't get the city to pay attention to them. So they spray-painted giant penises on the pavement. Instant results.

Instant for government work, anyway.

It's a strategy, [as AL.com's Anna Beahm described](#), that has been used across the world to draw attention to problems so mundane or common or unsolvable they are ignored, or accepted, or too often written off and forgotten.

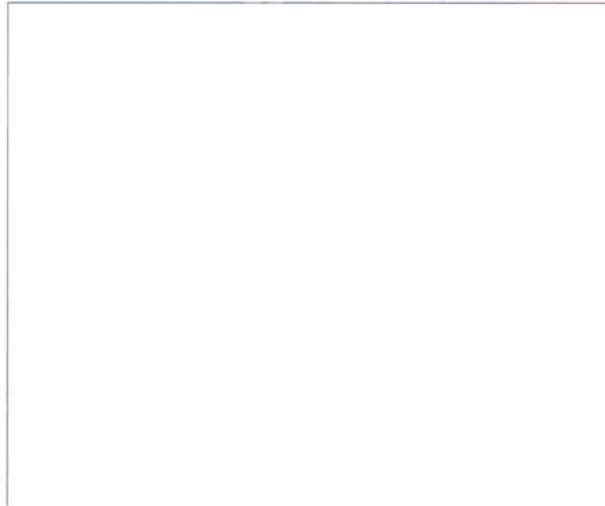
The sad nature of humanity through the ages, I guess. It's easy to write off a hole. Harder to write off a giant phallus.

It's no great surprise to those who care about, say, women's health. They know the government pays a lot more attention to issues when there's a penis in the picture.

Let me stop here and acknowledge the inappropriateness of this tactic and this column. It is shameful, really. Shameless. Giant penises are, of course, an affront to the sensibilities of proper and dignified and cautious people. Genitals are an affront to the genteel. I know that. I see that.

Which is why penises might just be the right tool for the job.

Make 'em see what they don't want to see. But not just on potholes. Oh no. The proverbial penis is the perfect instrument for all the problems that are right before us, that have become so common they are accepted as normal, that have become so frustrating they change our moods, that have become so dangerous they threaten our health, that have been ignored so long by impotent, pussyfooting politicians that we come to expect no satisfaction.



Nobody deserves a big penis like the Alabama Department of Environmental Management deserves a big penis. Nobody. Which is ironic, I supposed, because it is the eunuch of state regulators, a body known for its limp acceptance of responsibility and failure to stand up to polluters.

People have come to expect disappointment from ADEM. Like potholes.

People hardly blinked when regulators at ADEM – [armed with talking points from polluters](#) -- practically bushwhacked a visitor who wanted to question challenges to EPA cleanup of north Birmingham and Tarrant. Business as usual. [Even after a legislator admitted working with polluters](#) and their lawyers to prevent the cleanup, ADEM's apologist-in-chief, Lance LeFleur, sat as [vacant as a pothole](#) and did nothing.

A reporter at WHNT in Huntsville, Chelsea Brentzel, [has outlined in alarming detail](#) how 3M dumped pollution into the Tennessee River, and how the company acknowledged it to ADEM, who did not bother to acknowledge it to the people of Alabama, to the people of the river.

And finally Cynthia Gould, a reporter at ABC 33/40 in Birmingham [questioned LeFleur about the Tyson Foods spill](#) that killed thousands of fish in the Mulberry Fork this month, and he reacted like, well, like the picture somebody ought to draw on his legacy.

People can go to the website, LeFleur oozed as he walked away. Because Tyson deserves the benefit of the doubt. Not the people of Alabama.

It's time to dust off the spray paint again.

Alabama should have been shocked into action long ago by the sordid and salacious disregard of the agency that puts polluters over the people and limply makes excuses by explaining it is charged with managing destruction to the environment and not regulating it.

Alabama should be offended by the disregard of the state's health and beauty, of the fouling of the air and water and the cost to tourism and recreation and health and life.

Some will be more upset that I'm talking about penises. Which tells you a thing or two about our priorities.

John Archibald, a Pulitzer Prize winner, is a columnist for Reckon by [AL.com](#). His column appears in The Birmingham News, the Huntsville Times, the Mobile Register and [AL.com](#). Write him at jarchibald@al.com.

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NEWS

Who does Alabama's environmental watchdog work for? Not you.

Updated Jun 24, 2019;

Posted Jun 24, 2019



Alabama Department of Environmental Management director Lance LeFleur has failed repeatedly while giving polluters and inside track in the name of "due process." (Dennis Pillion | dpillion@al.com)

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3.8k
sharesBy [Kyle Whitmire | \[kwhitmire@al.com\]\(mailto:kwhitmire@al.com\)](#)***This is an opinion column.***

When Drummond Co. and Balch & Bingham pressured the Alabama Department of Environmental Management to reverse course on toxic soil cleanup in north Birmingham, ADEM Director Lance LeFleur [rolled over](#) like a dying fish in an Alabama river.

When 3M self-reported toxins it had dumped in the Tennessee River, [the agency he heads didn't bother to tell anyone](#) — including the people who drink from that river. A Huntsville TV reporter had to discover the 3M disclosure on her own and do the work for them.

And when a Birmingham TV reporter asked about a disastrous fish kill on the Mulberry Fork, where a chicken plant poisoned the water there, too, LeFleur wouldn't answer questions about that, either.

When ABC 33/40 reporter Cynthia Gould told LeFleur that people want to know whether the water in the Black Warrior River system is safe, [LeFleur told her to go look on ADEM's website](#).

"This is an ongoing enforcement matter and we owe it to these people to give them due process as we do for anybody," he said.



Dirty Business: How Alabama conspired against its own people

Due process. These people. Who exactly are these people? Because as LeFleur and ADEM have shown again and again, these people aren't people at all, but rather the industries that make it unsafe for real people to live.

If there's one thing that people across the political spectrum can agree on, it's this: When a granddad takes his grandchildren to fish in the river, when they catch a fish, they should be able to eat that fish without worry of impairing the little ones' brain development.

That won't be a problem on the Mulberry Fork. For a while, at least, there won't be any fish there to catch.

And it's not just the fish, either. It's the water. The water we play in. The water we drink.

WHNT's Chelsea Brentzel has been relentlessly reporting the neglect of 3M, which has dumped enough FBSA, a toxin, into the Tennessee River that the company recently agreed to pay the West Morgan East Lawrence Water Authority \$35 million in a legal settlement.

If you don't get your water from the West Morgan East Lawrence Water Authority, don't rest easy that this story doesn't apply to you. Rivers are long and a lot of other folks live between there and the Gulf of Mexico.

But here's the thing. 3M told ADEM in April that it had underreported the amount of FBSA it had dumped in the river for years.

You would think ADEM would have told somebody, but nope. Brentzel had to discover it on her own. People who live there had to learn the news from her only last week.

In north Birmingham, residents don't need to go fishing for pollution. The toxins are in the dirt where children play, and in the soil where residents grow their food.

In 2015, the EPA wanted to clean up that soil by adding the area to its National Priorities List. All it really needed was an OK from Alabama that it would pick up 10 percent of cleanup costs until it forced local polluters to repay those expenses.

Initially, LeFleur and ADEM said they had no problem with the plan, but one of those potential polluters, Drummond Co., and its law firm, Balch and Bingham, got to LeFleur, [applying pressure](#) directly and — through Gov. Robert Bentley — indirectly, until LeFleur told EPA the state agency had changed its mind.

Challenged on it later, [LeFleur called his course reversal "by the book."](#)

When LeFleur talks about "due process," understand that's how ADEM's due process works. When he says "by the book," remember that means putting polluters ahead of people.

And LeFleur wasn't the only one who got caught working with polluters in that case. Alabama Environmental Management Commissioner Lanier Brown met with the same men and helped sway the due process in their direction, testimony in federal court and documents obtained by federal prosecutors has shown.

When the folks — people, not polluters — showed up at an AEMC meeting demanding an explanation last year, Brown wouldn't so much as apologize.



Despite court case, environmental regulators ignore duty

This much is clear. LeFleur lives in fear of losing his job. And when you're squaring off with powerful polluters, the last person you need in that position is someone who's afraid.

I would tell you LeFleur, needs to go, but then I couldn't tell you somebody better would replace him. We've seen worse in that job before. LeFleur's predecessor, Trey Glenn, is currently [under indictment on state ethics charges](#).

I would tell you that we need a better ADEM, but that would be understating things. In case after case, ADEM gets caught, not regulating polluters, but aiding and abetting them.

I'm not certain we wouldn't be better off with no ADEM at all.

In Alabama, the poisons aren't just in our water, our air and our dirt. Our politics are the most poisonous of all.



Alabama's governor could clean up toxic soil. Instead, she took \$55,000 from its polluter

Kyle Whitmire is the state political columnist for the Alabama Media Group.

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ADEM INVESTIGATION OF MULBERRY FORK FISH KILL

NPDES Permit No. AL0040843 / Master ID 892

ONGOING RESPONSE EFFORTS

- The water quality in Mulberry Fork/Sipsey returned to pre-release conditions suitable for recreational activities as of June 13, 2019. [Click here for recent Mulberry Fork/Sipsey Sampling Locations and Results.](#)
- ADEM contacted drinking water systems with downstream water intakes after the spill regarding possible impacts. As needed, the systems in the area have adjusted treatment to ensure that drinking water meets all health-based standards.
 - Jasper Water Works and Sewer Board has released a statement. All available information is in the Department's [eFile](#) System by selecting "Water" for the media type and entering the Master ID 6632.
- ADEM and the Alabama Department of Conservation and Natural Resources (ADCNR) are compiling all data / information collected throughout this event. Each agency will generate a comprehensive report of its investigative activities.
- Finalized reports and other data will be available in the Department's [eFile](#) system by selecting "Water" for the media type and entering the Master ID 892.
- ADEM will take the appropriate enforcement actions after a full review of the comprehensive reports and all other available information.
- In furtherance of ADEM's commitment to providing a safe, productive and healthful environment, permanent [signage](#) is posted at the boat ramps to allow boaters, anglers, and users to access water quality information, which includes the latest information concerning the Mulberry Fork fish kill.

CAUSE / RESPONSE EFFORTS

A release of partially-treated wastewater from River Valley Ingredients (Tyson Farms Inc.) in Hanceville was reported to ADEM on Thursday (6/6). The release was reportedly due to the failure of an above-ground hose/pipe that was being used to pump the partially-treated wastewater from one holding pond to another holding pond. River Valley Ingredients hired an emergency response contractor who removed recoverable wastewater and dead fish.

ADEM confirmed that the discharge was stopped and alerted Tyson to initiate the public notification process. ADEM also confirmed that emergency response contractors had been deployed to the affected area. ADEM and the ADCNR began monitoring water quality and assessing impacts on Thursday (6/6). ADEM collected water quality data at numerous locations and documented depressed levels of dissolved oxygen, which is believed to be the main reason for fish mortality. ADCNR collected data on the overall number of fish killed along with the different types of fish species.

ADEM documented depressed levels of dissolved oxygen on the Mulberry Fork beginning at the River Valley Ingredients facility and extending approximately twenty-two (22) miles downstream (June 6th – 10th). ADEM also documented elevated levels of pathogens (June 6th and 7th) downstream of the facility. Dead fish were observed as far as forty (40) miles downstream of the facility due to them being washed downstream as a result of rains and river flow. ADEM worked with the Alabama Department of Public Health to confirm that a fish consumption advisory is not warranted due to the fish kill being related to depressed levels of dissolved oxygen.

ADEM called a meeting in Montgomery with senior Tyson management from Alabama and Tyson headquarters on June 13, 2019, to review public outreach, response efforts, enforcement and remediation efforts relating to the events of the spill.