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JEFFERSON COUNTY SEWER

PUBLIC HEARING

August 20, 2012

1 COMMISSIONER CARRINGTON: Good evening
2 everyone. We're here today for the third public
3 hearing for us as a Commission to take testimony
4 from an expert witness and comments from the
5 public about sewer rates. We have found this
6 process to be very valuable, because -- both
7 because the testimony we have heard from the
8 invited witnesses and because of the citizen
9 comments.

10 We are glad you are here, and for those
11 of you who have signed up to speak, we look
12 forward to hearing your comments. Before we
13 begin tonight's hearing, I want to express the
14 Commission's appreciation to Dean Carroll once
15 again for agreeing to moderate the three
16 hearings we have held on this important topic
17 and especially for hosting us at the moot
18 courtroom that bears his name here at Cumberland
19 School of Law. We are indebted to Dean Carroll
20 for his service in this regard. As he mentioned
21 at the first public hearing meetings like this
22 are the essence of democracy, and we are
23 grateful for his participation in this process.

1 Thank you, Dean Carroll.

2 DEAN CARROLL: You're welcome.

3 COMMISSIONER CARRINGTON: I would like
4 to remind everyone that there is no proposal on
5 the table with regard to sewer rates. The
6 purpose of this public hearing, just like the
7 previous two hearings, is for the Commission to
8 receive information that will guide us when we
9 do have a proposal on the table.

10 When we began this process a couple of
11 months ago, we knew that we were building toward
12 the day when our discussions about sewer rates
13 could become more specific. We're not there
14 yet, though. That day will come in the next
15 month or so. For now, we are still focused on
16 receiving information from our invited
17 witnesses, or from our invited witness this
18 evening, or from the public that you think we
19 should consider.

20 The format for tonight's public hearing
21 will be similar to the format of our previous
22 two meetings. First, we will hear from Mr.
23 Lance LeFleur, Director of the Alabama

1 Department of Environmental Management. Mr.
2 LeFleur oversees one of the agencies that
3 regulates our sewer system, and we will hear
4 from him tonight about the environmental laws
5 that the County has to comply with, and some of
6 the new regulations that the County will have to
7 comply with in future, and his views about the
8 costs associated with ensuring that the County
9 remains in compliance with the law. We are
10 grateful to Mr. LeFleur for coming up here
11 tonight from Montgomery to share his perspective
12 with us.

13 After Mr. LeFleur has finished, we will
14 hear from many of you who have signed up to
15 speak tonight. The signup sheet was available
16 before the hearing, including -- outside the
17 door as you came in. As with our previous
18 meetings, in order to make sure we can hear from
19 everyone, we need you to keep your comments to
20 three minutes or less. In addition to speaking
21 at tonight's hearing, we welcome any written
22 submissions you might care to make to the
23 Commission. Any time between now and September

1 1st, you are welcome to submit your written
2 comments to the County Manager's office, Room
3 251, in the County Courthouse, 716 Richard
4 Arrington Boulevard North, or you can submit
5 your comments on the website we have set up for
6 these meetings, www.jeffcosewerhearings.org.
7 There is a comment button for you to click if
8 you would like to submit your comments in that
9 way.

10 Finally, on behalf of the entire
11 Commission, I would like to express our
12 appreciation for the public's participation in
13 this process. We realize that the topic of
14 sewer rates is one of which the people -- which
15 people can disagree. That is completely
16 appropriate, and as Dean Carroll said before,
17 the discussion about that topic in meetings like
18 this is very -- the very essence of the
19 democratic process. The purpose of this process
20 has been to give you every opportunity to let us
21 know what you think before we begin to
22 deliberate about any concrete proposal. We, as
23 Commissioners will ultimately have a proposal to

1 vote on, and we will approach that vote, we will
2 take with us all the information we have learned
3 through these hearings. We appreciate your
4 input, and we thank you for taking the time to
5 be with us here tonight. Before I recognize and
6 turn it over to Dean Carroll, I would like to
7 introduce Commissioner Jimmy Stephens on my
8 left, Commissioner Joe Knight on my right.
9 Commissioner Bowman is out of town at a
10 conference, and Commissioner Brown couldn't join
11 us here this evening. With that said, I'll turn
12 the floor over to Dean Carroll. Thank you, sir.

13 DEAN CARROLL: Commissioner Carrington,
14 thank you, and let me add my welcome to all of
15 you to the Cumberland School of Law here at
16 Samford University. This is the third of the
17 three public hearings that we've had on this
18 particular issue. To echo something that
19 Commissioner Carrington said, there is a website
20 where all the testimony and exhibits from the
21 previous hearings can be found. It's
22 www.jeffcosewerhearings.org. There is a court
23 reporter who will take down all the testimony,

1 so this really is a wonderful way to get this
2 information out to the general public.

3 It's my pleasure now to introduce our
4 expert witness for this evening, and this
5 follows the format of the others where we'll
6 have some testimony from an expert witness
7 followed by a public comment period.

8 We're fortunate tonight to have the
9 Director of the Alabama Department of
10 Environmental Management, Lance LeFleur here.
11 Mr. LeFleur holds a Bachelor of Science in
12 Chemistry from Georgia Tech, an MBA in
13 Management and Finance from Southern Methodist
14 University, and he completed the Advanced
15 Management Program at Harvard University
16 Graduate School of Business. His education
17 includes extensive training in the field of
18 chemistry, physics and mathematics, subjects
19 which often left me cold in college and high
20 school, so we're glad that you're here. He
21 provides tremendous guidance for the Alabama
22 Department of Environmental Management. Please
23 join me in welcoming Lance LeFleur.

1 MR. LeFLEUR: Thank you, Dean Carroll
2 and thank you Commissioners for the opportunity
3 to speak to you today. As Dean Carroll
4 mentioned, my name is Lance LeFleur, and I am
5 the Director of the Alabama Department of
6 Environ -- Environmental Management, which is
7 referred to, by just about everyone, as ADEM.

8 I've been asked to come before you as
9 you consider potential adjustments to the sewer
10 fees paid by rate payers at a time when your
11 sanitary sewer system faces significant costs to
12 pay for upgrades required to meet
13 recently-revised ADEM permit conditions.

14 By way of background, ADEM was created
15 by the Legislature in 1982 and empowered to
16 administer and enforce state and federal
17 environmental laws in Alabama.

18 Our mission is to responsibly adopt and
19 fairly enforce environmental rules and
20 regulations to protect and improve the quality
21 of Alabama's environment and the health of all
22 its citizens. We also monitor environmental
23 conditions in Alabama and recommend changes in

1 state law. From time-to-time, we also revise
2 regulations as-needed to respond to changing
3 environmental conditions. The exceptional group
4 of men and women working for ADEM across this
5 great State understand, appreciate and take
6 extremely seriously the importance of our
7 mission.

8 One of ADEM's responsibilities is
9 issuing the National Pollution Discharge
10 Elimination, or NPDES, permits to water and
11 wastewater systems in Alabama pursuant to the
12 Federal Clean Water Act. Although the Clean
13 Water Act is a federal statute, it embraces the
14 singularity -- the singular important concept of
15 federalism by allowing states to assume primacy
16 over permitting functions.

17 Accordingly, in Alabama, ADEM and not
18 the United States Environmental Protection
19 Agency issues NPDES permits. The Clean Water
20 Act is a prescriptive statute when it comes to
21 discharges of pollutants. In other words, and
22 this is something of an oversimplification,
23 discharges are prohibited unless they are

1 expressly allowed by an NPDES permit.

2 Therefore, without an NPDES permit, a
3 wastewater utility cannot legally discharge
4 treated wastewater. ADEM has issued NPDES
5 permits to each of the nine wastewater treatment
6 plants that make up the Jefferson County sewer
7 system. These permits include specific and
8 detailed requirements addressing discharge
9 limits, monitoring, recordkeeping, and
10 reporting, and notification.

11 The requirements in the permits are
12 mandatory. The County must comply with all of
13 them. Noncompliance with any permit provision
14 can have serious consequences, such as
15 enforcement actions by ADEM, substantial
16 monetary penalties, permit termination,
17 suspension or modification, or denial of a
18 permit renewal application.

19 Indeed, NPDES violations can even
20 result in criminal charges. In light of these
21 consequences, the resources spent by the County
22 to comply with the NPDES permits are a wise and
23 prudent investment. As you know, many years

1 ago, noncompliance with Clean Water Act got the
2 County into trouble. Over the past 15 years,
3 however, the County has done a good job with its
4 compliance efforts. More particularly, the
5 professionals who operate the County sewer
6 system have done an excellent job running the
7 system. The collaborative working relationship
8 ADEM has with those professionals is, we
9 believe, critical to the continued operation of
10 the County's treatment plants in accordance with
11 the applicable NPDES permits. Needless to say,
12 ADEM expects the cooperative spirit and
13 dedicated efforts of the County personnel to
14 continue.

15 Unfortunately, operating and
16 maintaining a wastewater system in compliance
17 with law and with the conditions of an NPDES
18 permit is not free. Often permit holders must
19 spend significant amounts of money to maintain
20 or upgrade their systems so that the treatment
21 plants can comply with the terms and conditions
22 of their permits. NPDES permits are not static.
23 From time-to-time, ADEM evaluates and where

1 necessary, modifies them. Usually changes are
2 intended to improve Alabama's environment, and
3 sometimes they're also required to meet tougher
4 federal standards.

5 The tougher requirements can be driven
6 by a number of factors, such as the potential
7 impact a particular substance or pollutant might
8 have on the fish, plant life or other organisms
9 in the waters into which permit-holders
10 discharge.

11 Regardless for the reason for
12 modifications, when ADEM alters a permit, those
13 changes are mandatory. Usually when ADEM
14 changes a permit, it gives the County and other
15 permit-holders around the State, time to adjust
16 their operations to meet new requirements. This
17 is particularly true when compliance, where
18 required, new equipment or new processes or
19 other capital investments, all of which we
20 recognize cost money to comply with the new
21 requirements.

22 The challenges created and burdens
23 imposed by NPDES permit modification are

1 certainly illustrated by the renewal permits
2 ADEM anticipates issuing in the near future for
3 two of the County's treatment plants. These
4 permits will contain stricter limitations on the
5 amount of total phosphorous or TP present in the
6 treated wastewater discharge by these two
7 plants. Why TP, and why not?

8 Let me start with the first part; why
9 TP. I know you don't want a science lesson, but
10 I believe it's important to understand the
11 background of the new permits, like so many
12 nationally occurring elements, phosphorous is
13 neither inherently good, nor intrinsic --
14 intrinsically bad. It's all a question of
15 amount and concentration. A small amount of
16 phosphorous is integral to healthy plant and
17 animal growth. A larger amount, on the other
18 hand, can overstimulate algae and aquatic plant
19 growth. There is only a limited amount of
20 oxygen available in a river environment, and if
21 all the oxygen goes to algae and plants, other
22 vegetation and other aquatic life dies.

23 So one of the keys to healthy river eco

1 -- to a healthy river eco system is achieving
2 and maintaining a proper TP balance.

3 Under the Clean Water Act regulatory
4 agencies, like ADEM, must identify rivers where
5 too much of a particular pollutant exist. Such
6 a river is called an impaired water, and ADEM
7 must develop a total maximum daily load or TMDL
8 for that river. A TMDL is a way of expressing
9 how much of a particular pollutant can exist in
10 a river while still allowing that river to meet
11 water quality standards.

12 TMDL's cover an entire river, but those
13 river-wide levels are achieved through discharge
14 limitations in individual NPDES permits. The
15 theory is that by controlling what people put
16 into a river, we can effectively control the
17 overall health of the river.

18 Of course in practice, it is neither
19 simple nor as clean cut as that sounds.
20 Developing TMDL's is complicated and in many
21 instances controversial. Among the questions,
22 agencies like ADEM and EPA struggle with are;
23 are we unfairly targeting NPDES permit-holders

1 when other sources may actually contribute more
2 of the problem pollutant. Do we really have
3 sufficient scientific data to support our
4 conclusions about the health of the river? Do
5 the often infinitesimal reductions in a
6 particular pollutant truly benefit the river's
7 health, particularly when the cost of achieving
8 those reductions is so high.

9 While ADEM has tremendous respect for
10 the accomplishments and expertise of the EPA,
11 there are times when we question the wisdom of
12 its decisions, such interagency disagreements
13 are, we believe, healthy and wholly consistent
14 with our obligations as an agency of the State
15 of Alabama, as well as with the robust
16 federalism embodied in the Clean Water Act and
17 in our system of government.

18 For Jefferson County, the challenge
19 today and in coming years is that the two
20 treatment plants we are discussing discharge
21 into the Cahaba River. ADEM has concluded that
22 the Cahaba River is impaired with regard to TP.
23 Consistent with the procedure I described above,

1 ADEM in conjunction with EPA has, therefore,
2 developed a TMDL for TP in the Cahaba River and
3 begun issuing new NPDES permits designed to
4 reduce overall TP in the river to a level
5 acceptable to the EPA. I'm not here to defend
6 or dispute the EPA TP target, but to explain
7 that once EPA made the threshold water quality
8 target decision, a process began that has
9 profound and far-reaching implications for the
10 citizens of Jefferson County.

11 What ADEM has done is to develop a TMDL
12 that permits the new, more stringent TP target
13 to be faced in the NPDES permits over the
14 maximum time period available. Gradually
15 becoming stricter and stricter and presumably
16 thereby allowing the County and other
17 dischargers the time necessary to gradually
18 modify processes and technology to meet the
19 final target. Meeting the EPA's new TP target
20 will not be easy nor will it be cheap.

21 It is my understanding, based on
22 information provided by the County's Department
23 of Environmental Services, that the County will

1 have to make an estimated investment of more
2 than 150 million dollars in capital and
3 operating expenses to meet the new permit
4 requirements. We recognize that significant
5 outlays will be required for the system to
6 operate in accordance with current law and
7 permit requirements. In the future, the
8 Jefferson County sewer system can anticipate
9 that significant additional expenditures will be
10 necessary to ensure compliance with the
11 increasingly stringent requirements of NPDES
12 permits. The Commission, likewise, can
13 anticipate that funding of those requirement --
14 required expenditures will be necessary.

15 Jefferson County is not alone.
16 Wastewater systems throughout the State and the
17 nation are facing the challenge of increased
18 expenditures necessary to ensure legal
19 compliance. Many systems are making difficult
20 decisions about raising rates in these difficult
21 economic times. Nonetheless meeting the terms
22 and conditions of NPDES permits is required
23 under the Federal Clean Water Act. Failure to

1 comply carries significant adverse financial
2 consequences and possible loss of local control.

3 Given the federal requirements in the
4 Clean Water Act, ADEM considers its mandatory
5 regulatory requirements to be reasonable. User
6 rates that allow a municipal wastewater utility
7 to comply with the law would, by extension,
8 likewise have to be considered reasonable.

9 In closing, as the Commission considers
10 various possible adjustments to sewer rates, I
11 urge it to take into account the cost to comply
12 with environmental laws both now and in the
13 future and to put in place a mechanism that will
14 allow the County to pay for these increasing
15 costs. Thank you.

16 DEAN CARROLL: The format of the
17 previous hearings is the one that we'll follow,
18 which is anyone who wished to give public
19 comment was required to sign up in advance of
20 the hearing. We have no one who has signed up
21 to give public comment at this hearing. Unless
22 I'm wrong, is there anybody in the audience that
23 signed up?

1 Well, that means that this afternoon --
2 this evening's proceeding is at an end. I would
3 like to thank the Commissioners for, again,
4 allowing this process to go forward. Thank all
5 of you for coming, and we'll see you around.
6 Tour the Samford Campus while you're here.
7 Thank you.

8 (END OF HEARING.)

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Errata Sheet – Testimony of Lance LeFleur before the Jefferson County Commission, August 20, 2012

I have the following corrections to the transcript:

Page 13, line 7 the word “not” should be changed to “now” and should read “Why TP and why now?”

Page 13, line 11 should have a period after the word “permits.” and the first letter of the word “like” should be capitalized.

Page 14, line 5 the word “exist” should have an “s” at the end and read “exists”.

Page 15, line 2 the sentence ending in “pollutant.” should end with a question mark rather than a period.

Page 15, line 8 the sentence ending in “high.” should end with a question mark rather than a period.

Page 15, line 12 should have a period after the word “decisions.” and the first letter of the word “such” should be capitalized.

Page 16, line 14 should have a comma or hyphen after the word “available” rather than a period.

BEFORE THE JEFFERSON COUNTY COMMISSION

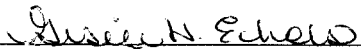
State of Alabama)
)
County of _____)

I, Lance LeFleur, do solemnly swear (or affirm) that:

1. I have read the foregoing transcript of my testimony of August 20, 2012 before the Jefferson County Commission;
2. With the changes indicated in the errata sheet attached hereto, the transcript is a true and correct transcription of my testimony;
3. My testimony is based on my personal knowledge, training, education and experience; and
4. My testimony is the truth, the whole truth, and nothing but the truth.



Sworn to and subscribed before me, the undersigned notary public in and for the State of Alabama, this 7th day of September, 2012.



Notary Public exp 6-21-2015

[Seal]

Printed Name: Gabele H. Echols
My Commission Expires 6-21-2015