

12/21/15

**Minutes
Meeting of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 16, 2015**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Rulemaking Committee of the Alabama Environmental Management Commission on October 16, 2015.



**W. Scott Phillips, Chair
Rulemaking Committee
Alabama Environmental Management Commission**

Certified this 18th day of December 2015.

**Minutes
Meeting of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 16, 2015**

**Convened: 10:01 a.m.
Adjourned: 10:39 a.m.**

Part A

**Transcript
Word Index**

Part B

Attachment 1 - Agenda

Part A

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1 MEETING OF THE
2 RULEMAKING COMMITTEE
3 OF THE
4 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
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10
11 ALABAMA DEPARTMENT OF ENVIRONMENTAL
12 MANAGEMENT
13 Alabama Room
14 1400 Coliseum Boulevard
15 Montgomery, Alabama 36110-2400
16 October 16, 2015
17 10:01 a.m.
18
19
20
21
22
23 Taken by: Victoria M. Castillo, CCR#17

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1 CHAIRMAN PHILLIPS: I want
2 to call the October 16th, 2015, Rulemaking
3 Committee meeting to order. I want to
4 acknowledge we do have a quorum.
5 Agenda Item No. 1:
6 Consideration of the minutes of the meeting
7 and work session held on August 21st, 2015.
8 Do I have a motion?
9 DR. RICHARDSON: Seeing no
10 needed changes, I move that we adopt the
11 minutes of the August 21, 2015, Committee
12 meeting as presented.
13 CHAIRMAN PHILLIPS: I have a
14 motion, and I will make the second to the
15 motion.
16 All in favor?
17 (All Committee members
18 signify "aye.")
19 CHAIRMAN PHILLIPS: Motion
20 carries.
21 Agenda Item No. 2: Agenda Item
22 No. 2 is the discussion and consideration
23 of ADEM Administrative Code 335-2;

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1 A P P E A R A N C E S
2
3 COMMITTEE MEMBERS PRESENT:
4 W. Scott Phillips, Chair
5 Terry D. Richardson, Ph.D.
6
7 COMMITTEE MEMBER NOT PRESENT:
8 Mary J. Merritt
9
10 ALSO PRESENT:
11 Robert Tambling, EMC Legal Counsel
12 Debi Thomas, EMC Executive Assistant
13
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18
19
20
21
22
23

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1 Environmental Management Commission
2 Regulations Rule 335-2-3-.05; Agenda
3 Sections 1 through 3.
4 I want to point out that we're
5 continuing our examination of this rule
6 that I just noted, and that the sections of
7 this rule include the procedures and
8 requirements regarding requests from the
9 public to appear before the Commission at
10 our meetings following consideration of the
11 agenda items.
12 On August 21st, 2015, the
13 Committee met. Committee Member Richardson
14 provided us a draft rule, which we
15 discussed at our meeting. Written comments
16 regarding that draft were received from the
17 Alabama Rivers Alliance, on behalf of the
18 Alliance; and the Southern Environmental
19 Law Center; and the Black Warrior
20 Riverkeeper; and the Choctawhatchee
21 Riverkeeper.
22 Those were pretty much the only
23 ones we received, correct?

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1 DR. RICHARDSON: Yes, we --
2 we opened this up --
3 CHAIRMAN PHILLIPS: Pretty
4 much to everyone, right? Okay.
5 DR. RICHARDSON: That's
6 right.
7 CHAIRMAN PHILLIPS: I just
8 want to make sure I'm clear on that.
9 DR. RICHARDSON: That is
10 correct, yes.
11 CHAIRMAN PHILLIPS: In
12 addition to that, we received a set of
13 draft rule and guidelines, as we had
14 requested, from Robert Tambling and
15 received some changes to those proposed by
16 Committee Member Richardson.
17 So I really would like to open
18 the discussion up around all of those
19 comments we received, the drafts that we
20 prepared, and let's just have a dialogue,
21 Commissioner, about what we have in front
22 of us.
23 DR. RICHARDSON: Thank you,

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1 Chairman Phillips. My comments in general
2 are that, first off, I'd like to thank
3 Robert for taking what I put together very
4 crudely, I think, and really putting it
5 into some form that I think even better and
6 more accurately reflects the various
7 comments that we received, not only from
8 the Committee, but from public interests as
9 well.
10 And I think that what he has
11 presented to us, personally, I think is
12 really, really close. I mean, I think it's
13 where we want to go with this. It keeps
14 intact pretty much immediate ability to
15 address the Commission. It also keeps
16 intact the ability to give more extensive
17 and detailed presentations to the Committee
18 and knowing the disposition of your
19 presentation beforehand.
20 Now, as -- Commissioner
21 Phillips, as you're aware, one of the
22 criticisms we have before us is in the way
23 that I proposed -- for those of you that

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1 have that and saw that last time, the way
2 that I proposed, and basically what has
3 been put together in this revision by
4 Mr. Tambling, says there's basically, what,
5 two and a half months between idealization,
6 conceptualization, putting something
7 together and the time it's put before the
8 Commission.
9 I don't -- I don't know how to
10 deal with that otherwise and us still have
11 time to look at something, a detailed
12 presentation like that, and get some idea
13 and prepare ourselves before the time
14 comes.
15 So I guess, to me, I'm okay with
16 everything that's in front of us at this
17 point, with a few changes as noted. But I
18 think that's the biggest issue we probably
19 ought to open up and kind of deal with
20 right now, in my view. And I'll relinquish
21 the floor to you for comment on that, so --
22 CHAIRMAN PHILLIPS: I think
23 you're right. I think that's probably the

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1 most substantive comments that we got back
2 relative to the Alabama Rivers Alliance
3 comments. I think before we jump into that
4 one with both feet, I'd like to at least
5 make sure that we don't have any small
6 edits or things that we need to talk about,
7 because I think that will probably consume
8 most of our time and get us to the end.
9 Robert, in what you proposed to
10 us, which was an edit of what Commissioner
11 Richardson has prepared --
12 DR. RICHARDSON: Basically
13 the same thing, just a different format
14 really?
15 CHAIRMAN PHILLIPS: That's
16 right.
17 MR. TAMBLING: Yes.
18 CHAIRMAN PHILLIPS: One of
19 the discussions that we had as a full
20 Committee, and I think speaks to your
21 concern, Commissioner Richardson, also, is
22 there are various forms that we get public
23 input. And that public input, by going

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1 though the guidelines that we had relative
2 to being able to have people to sign up,
3 for example, to come before the Commission
4 at a regularly scheduled meeting, as
5 proposed to having to prepare a
6 presentation, I think is a good step.
7 But I think -- and I don't know
8 that it needs to be in the rule or in the
9 guideline, but I'm going to throw it out
10 there. One thing that I think got lost in
11 kind of all the back and forth drafts is
12 the fact that we would take written
13 comments from the public at any time --
14 MR. TAMBLING: Yes.
15 CHAIRMAN PHILLIPS: -- on
16 any matter. And then the ability to bring
17 that forward in the Commission meeting is
18 really up to the Commission. But it
19 doesn't preclude anyone from making written
20 comments at any time.
21 So I think, if you could, look
22 at where that might need to be. It may be
23 over in the guidelines.

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1 DR. RICHARDSON: It is in
2 the guidelines. It is explicitly stated in
3 the guidelines. Now --
4 CHAIRMAN PHILLIPS: But as
5 explicit as we made the procedure for
6 presentations, I really would think we've
7 missed the boat a little bit if we don't --
8 DR. RICHARDSON: Well --
9 CHAIRMAN PHILLIPS: --
10 make it explicit that we would want written
11 comments at any time.
12 DR. RICHARDSON: I don't see
13 a problem with taking -- I'm trying to find
14 exactly -- Robert, do you know specifically
15 --
16 MR. TAMBLING: Yes.
17 DR. RICHARDSON: -- where it
18 is in the guidelines?
19 MR. TAMBLING: Yes. I --
20 you know, it's Guideline 11.
21 DR. RICHARDSON: Unless --
22 "Members of the public wishing to engage
23 the Commission should feel free to submit

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1 written comments and other materials to the
2 Commission office or the director of the
3 department in lieu of presentation
4 requests. Written comments submitted to
5 the Commission office will be carefully
6 read by Commission members and will be
7 given the same weight" -- and I would argue
8 perhaps more -- "and consideration as the
9 presentations made during Commission
10 meetings."
11 CHAIRMAN PHILLIPS: And it
12 may be fine that it's in the guidelines.
13 To me, we just seem to really address only
14 in the rule the process for the big
15 presentations.
16 MR. TAMBLING: That's true.
17 DR. RICHARDSON: Well, I
18 wouldn't have a problem with -- perhaps,
19 Robert, I'm -- just think with me here.
20 We've got 335-2-3.05(1) then (2). Maybe we
21 could insert between those some general
22 statement about -- that just addresses
23 specifically how we would accept comments.

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1 CHAIRMAN PHILLIPS: Because
2 we're really saying --
3 DR. RICHARDSON: All the
4 presentations, the standing queue for
5 the --
6 CHAIRMAN PHILLIPS: Sign-up
7 --
8 DR. RICHARDSON: -- sign-up
9 part --
10 CHAIRMAN PHILLIPS: Or by
11 written.
12 DR. RICHARDSON: -- as well
13 as by written comment. Maybe put that as a
14 (2) and elevate the rest of the bullets
15 after that.
16 Does that sound reasonable?
17 MR. TAMBLING: It's doable.
18 DR. RICHARDSON: I mean,
19 leaving the guidelines as is, just simply
20 putting in a point to make it quite clear
21 in the rule the ways in which the
22 Commission will receive comments from the
23 public.

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1 CHAIRMAN PHILLIPS: And the
2 only reason I bring that up is if I'm
3 looking at the rule, while I know it does
4 refer to the guidelines, which is
5 important, if I were just to look at the rule,
6 it appears to me the only way that I have
7 to present is to do that big presentation
8 to the Commission.
9 DR. RICHARDSON: Yes.
10 MR. TAMBLING: Okay.
11 CHAIRMAN PHILLIPS: And I
12 know the concern -- I'm kind of getting
13 over into what you brought up. I know part
14 of the concerns is that's a big gap of time
15 to wait to get a presentation.
16 One of the initial discussion
17 points the Committee had was the ability to
18 truly talk to us about things we could do
19 things about, things that were in our
20 authorities to act on by -- and so,
21 therefore, I think the time gap to educate
22 us on policy or to talk to us about
23 something that has not been able to be

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1 month delay in there, would the ability in
2 the interim to sign in and address the
3 immediate concerns, would that -- I'm
4 wondering, would that suffice until that
5 time period allows you to present -- Mitch,
6 you too, I guess -- to present that
7 presentation with PowerPoints and all of
8 that?
9 I'm just kind of putting that
10 out as a question so to help us kind of
11 decide --
12 CHAIRMAN PHILLIPS: And I'm
13 going to put a clarifier on that. Because
14 to me it seems that if it's something so
15 important and urgent, it probably doesn't
16 need for you to sit down and figure out to
17 put together a PowerPoint.
18 MR. LUDDER: Well, I guess
19 -- I guess my opinion is that I tend to
20 fall on the side of what Dr. --
21 Mr. Phillips said about, you know, if it's
22 a big policy matter that's going to take
23 the Commission time to resolve, then

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1 resolved through other processes or
2 procedures, I'm not as worried about that
3 big gap because it, to me, elevates to a
4 significance the need to really put
5 together a good presentation to us.
6 But absent talking about the
7 other options for addressing the Commission
8 in the rule, it appears to me -- even
9 though it's in the guidelines, it appears
10 to me that we're telling the public that's
11 really the only way you have to talk to us.
12 DR. RICHARDSON: Will this
13 allay your concerns, if we did something
14 like I'm suggesting?
15 CHAIRMAN PHILLIPS: Yes, it
16 would.
17 DR. RICHARDSON: And I would
18 like to open to the audience, specifically
19 Mr. Ludder, if he doesn't mind addressing
20 this, in lieu of the fact that the way
21 things were kind of presented, what you
22 have that was -- that I offered up last
23 time, that there is about a two-and-a-half

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1 another two months probably isn't --
2 DR. RICHARDSON: Not that
3 big a deal. Understood.
4 CHAIRMAN PHILLIPS: And I'd
5 much rather someone know that we're wanting
6 to hear from them and they're already
7 approved --
8 MR. LUDDER: Right.
9 CHAIRMAN PHILLIPS: -- as
10 opposed to making the drive and finding out
11 that we've decided to deny it or table it.
12 MR. LUDDER: Right. Now,
13 I'm not quite sure I understood what you
14 were saying about the --
15 DR. RICHARDSON: Well, what
16 --
17 MR. LUDDER: -- the other
18 presentation, the -- just the --
19 CHAIRMAN PHILLIPS: The
20 sign-up sheet.
21 DR. RICHARDSON: Well,
22 here's -- here's --
23 MR. LUDDER: -- the sign-up

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1 sheet.
2 DR. RICHARDSON: -- here's
3 the general criticism that we have heard is
4 that two and a half -- and I think
5 Mr. Ludder had -- that two and a half
6 months could be too long in some instances.
7 MR. LUDDER: Correct.
8 DR. RICHARDSON: But in
9 order to let you know the disposition of
10 your request, there almost has to be
11 another meeting in between there, which
12 that's what forces the two and a half
13 months.
14 CHAIRMAN PHILLIPS: And at
15 least in the stakeholder group meeting that
16 we had, that -- that --
17 DR. RICHARDSON: That was
18 critical. That was important.
19 CHAIRMAN PHILLIPS: That was
20 important. They wanted to know.
21 DR. RICHARDSON: People
22 wanted to know that. As I think you've
23 even indicated, that you like to know,

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1 Okay, I've submitted a request. They'll
2 vote on it this time. Yes, I know next
3 meeting I need to be here and talk. That's
4 a beautiful kind of set-up.
5 MR. LUDDER: I actually
6 haven't had to rely on that. I haven't
7 felt compelled to rely on that kind of --
8 MR. RICHARDSON: But -- but
9 --
10 MR. LUDDER: -- advanced
11 notice. My personal feeling and is -- and
12 I expressed this to Robert this morning --
13 is that a person who wants to make a
14 presentation ought to have the choice of
15 running the risk of being turned down at
16 the -- at the meeting of the presentation;
17 or being informed by the Commission that
18 the presentation will be allowed, but it
19 will have to wait until the next Commission
20 meeting.
21 MR. REID: And I -- I think
22 that just in talking -- and I haven't had
23 this sort of hashed out between David and

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1 I -- but the -- if that was the method,
2 then that could actually be something that
3 was just put in the guidelines, rather than
4 go through a rulemaking of it has to be a
5 meeting before. Something along the lines
6 of, you know, "Presenters understand that
7 the EMC is not going to decide until the
8 meeting -- the next meeting after we've
9 received your request. And if you would
10 like to present at -- if it is your desire
11 to present at that meeting, be warned" --
12 CHAIRMAN PHILLIPS: Put the
13 risk on the public.
14 MR. REID: -- "be warned
15 that you -- we may not decide to hear that
16 request."
17 DR. RICHARDSON: So the
18 outcomes are speak now, denied, speak at
19 the next meeting or a subsequent meeting?
20 MR. TAMBLING: Right.
21 CHAIRMAN PHILLIPS: Robert?
22 MR. TAMBLING: I think, you
23 know, if you look at your -- at your edited

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1 document here, you know, one of the ways we
2 might be able to resolve that is if you
3 look at the first sentence, you say, "The
4 Commission may, at its discretion, approve,
5 deny" -- and you can say -- "and/or table
6 presentations requests -- presentation
7 requests" --
8 CHAIRMAN PHILLIPS:
9 "Period."
10 MR. TAMBLING: -- "period."
11 You take the second part of it, and you put
12 it in the guidelines, and you say, "The
13 disposition of presentation requests may be
14 determined by the Commission at the
15 regularly scheduled meeting of the
16 Commission for which or prior to which they
17 have been submitted. Any presentation
18 requests approved by the Commission may be
19 tabled and placed on the agenda for a
20 subsequent regularly scheduled" --
21 CHAIRMAN PHILLIPS: That's a
22 good --
23 DR. RICHARDSON: I like it.

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1 CHAIRMAN PHILLIPS: I like
2 that.
3 DR. RICHARDSON: I like
4 that.
5 MR. TAMBLING: And you can
6 just do it that way, and that way it
7 simplifies the rule even more.
8 CHAIRMAN PHILLIPS: Yes, I
9 like that.
10 DR. RICHARDSON: That gives
11 us our -- that addresses our concerns and
12 needs. I think it keeps it as maximally
13 flexible as it can be, realizing there's
14 going to be some constraint, like you show
15 up, but you may not get to talk, you know.
16 And, yes, I'm okay with that.
17 So what I've done, Robert, is in
18 the first statement, just simply inserted
19 "and/" before "or."
20 MR. TAMBLING: Right.
21 DR. RICHARDSON: And then I
22 have the second sentence in its entirety,
23 just moved it to guidelines.

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1 MR. TAMBLING: And the third
2 sentence as well.
3 CHAIRMAN PHILLIPS: And the
4 third sentence.
5 MR. TAMBLING: And the
6 third --
7 DR. RICHARDSON: And the
8 third sentence.
9 MR. TAMBLING: Yes. I think
10 what you say, instead of "shall" you use
11 that -- you change that to "may."
12 DR. RICHARDSON: Okay.
13 MR. TAMBLING: Or "will"
14 goes to "may," gets you some flexibility.
15 DR. RICHARDSON: "Will" to
16 "may."
17 CHAIRMAN PHILLIPS: Okay.
18 Mitch?
19 DR. RICHARDSON: I'm good --
20 I'm good with that.
21 MR. REID: Just to clarify a
22 little bit from the letter that we
23 submitted, I think that the time delay, the

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1 two-and-a-half month delay, was not so much
2 that I -- that it was we need to get before
3 you with urgent information, but it was
4 that the information that I would be
5 providing -- if the expectation is the full
6 presentation, or at least as close as I can
7 get to a full presentation, two and a half
8 months before, worlds change in that.
9 DR. RICHARDSON: Sure.
10 Well, one of the things that occurred to me
11 reading your letter was that I see nothing
12 in any of this that would preclude you from
13 inserting the most updated information, as
14 long as the crux of your presentation has
15 not shifted. You know, basically you're
16 giving the same presentation, it's just,
17 Ooh, we've got this latest, hottest stuff
18 come in, and this changes the whole
19 ballgame, and I really want to get this --
20 I think that's perfectly acceptable.
21 Plus, keep if mind, you're
22 always going to have that sign-in option.
23 I mean, that's -- and, David, as you

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1 alluded to a minute ago, that's just going
2 to allow you to immediately speak before
3 the Commission.
4 CHAIRMAN PHILLIPS: Now,
5 we've got to manage that. We end up with a
6 hundred people signing up --
7 MR. REID: And that's
8 actually a pressure relief -- relieve
9 valve. I think you may see less formal
10 substantive presentations.
11 DR. RICHARDSON: I think
12 there will be times we will be swamped, and
13 most of the time it'll be just venting
14 little bits of pressure along the way
15 CHAIRMAN PHILLIPS: Robert?
16 MR. TAMBLING: Going back to
17 the proposed rule guideline change here, I
18 think it's really incumbent on those
19 requesting presentations to let the
20 Commission know ahead of time, We want to
21 know -- we want to know right now whether
22 or not, you know, we're going to be able to
23 speak. Or in other words, you -- you're

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1 not going to be able to know how to handle
2 these.
3 DR. RICHARDSON: I
4 understand where you're -- I think -- I
5 think that in the guidelines what needs to
6 be inserted in there is that, "The
7 requester needs to let us know that we
8 would prefer to speak at this meeting, yet
9 we will -- we will accept a deferment to
10 the subsequent meeting."
11 MR. TAMBLING: Right.
12 DR. RICHARDSON: "But our
13 preference is -- is right now." And --
14 and, you know, I think that that kind of
15 wording could be easily inserted in here.
16 MR. TAMBLING: Sure.
17 DR. RICHARDSON: And it
18 could also be that you could say, you know,
19 "I want to speak at this meeting; and if I
20 can't speak at this meeting, just withdraw
21 my request." I mean, that -- that's --
22 that, to me, would be you-all's call.
23 CHAIRMAN PHILLIPS: One of

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1 the things that came out of the stakeholder
2 group discussion -- Mitch, as you remember
3 because you were there -- was would it be
4 possible to put a form together so we
5 understood what we needed to get to you.
6 To me, the guidelines allow us
7 to do just what you just said in the format
8 of a cover form that says, Here's the
9 relevant information the Commission needs
10 to get to Debi, so that she can get it to
11 us so that we know kind of what's before us
12 to make those decisions.
13 DR. RICHARDSON: I mean, it
14 would help me -- if I'm reviewing something
15 David has submitted -- it just occurred to
16 me I should probably be more formal --
17 Mr. Ludder has submitted, then I -- I would
18 like to know when I'm reviewing it, Is this
19 something he really would like to get
20 before us at this meeting?
21 Because I think -- I think my
22 approach is going to be a little bit
23 different, you know, because I -- I need to

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1 get really digested as opposed to having,
2 you know, a little more time to just an
3 approval or not.
4 CHAIRMAN PHILLIPS: And I
5 think for us to understand the relevance,
6 instead of us having to go through a
7 presentation. And, quite frankly, I don't
8 think there's anything in our rules now or
9 in our guidelines that we've kind of put
10 together that say everything has to be a
11 PowerPoint presentation.
12 So a presentation could be
13 nothing more than a white paper that you've
14 provided to us or any other form of
15 presentation. But if I have to go through
16 it to find out what the relevance is to
17 make a decision on whether it's important
18 and urgent enough to hear at this meeting
19 or the next meeting, I'd rather have a form
20 on top of it that lets you tell me why it's
21 that important.
22 Mr. Ludder?
23 MR. LUDDER: Even though I

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1 think it -- it is important for citizens to
2 communicate to you about what their
3 preference is, I think it's going to be
4 equally or more important for the Chairman
5 to communicate back to the requester, you
6 know, If you show up at this meeting, you
7 may not get heard because the Commission
8 may deny your presentation.
9 CHAIRMAN PHILLIPS: Good
10 point.
11 MR. LUDDER: Or --
12 DR. RICHARDSON: And that
13 also I think could be clearly spelled out
14 in the guidelines as well so that they're
15 getting -- they know that from reading the
16 guidelines as they're putting it together.
17 But as the request is received and there's
18 a response that has it been received,
19 please be aware that there is the
20 possibility that you will not be heard at
21 --
22 CHAIRMAN PHILLIPS: But we
23 can build that into a process that's pretty

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1 standard, so that when Debi works with the
2 Chair, that that comes back. But I think
3 clear communication is important. So that
4 was my stuff.
5 DR. RICHARDSON: Well, I
6 think that that takes care of a lot of the
7 issues, I think. I'm -- I'm sensing from
8 the audience that they're pretty much okay
9 with that kind of way things are going.
10 It's -- it seems to be fitting what we're
11 wanting. It seems -- I think we're hitting
12 about as good a middle ground perhaps as we
13 could under the circumstances.
14 CHAIRMAN PHILLIPS: I think
15 one other thing that would be valuable to
16 hear from you, those of you that are here
17 today, is, you know, I made a comment just
18 a moment ago about of course we have to
19 manage sign-ins, and -- and I saw some
20 smiles and nodding of heads.
21 How clear do we need to be in
22 the communication of that? Because any
23 given meeting we're depending on our Chair

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1 to really look at what we have in front of
2 us and relative to our agenda, and then
3 what's in front of us relative to a sign-up
4 sheet to speak and making a call on what to
5 bring up.
6 DR. RICHARDSON: And let
7 me -- before we entertain your comments,
8 I'm just going to read a -- just an
9 off-the-top-of-my-head statement that I put
10 down as something for us to entertain.
11 "While an effort will be made to
12 hear all members of the public signed on
13 the registry, the number of statements
14 heard may be limited due to time
15 constraints of the Commission."
16 I didn't know how else to really
17 kind of put that down. I mean, we're not
18 going to go on for hours and hours, and I
19 don't think anybody really expects that.
20 Is that a fair way --
21 MR. REID: I will tell you
22 that my experience with -- with trying to
23 speak at public hearings with the

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1 legislature is that that is more clarity
2 than the arbitrary process that we usually
3 get, which is -- which is the Chairman of
4 the Committee saying --
5 CHAIRMAN PHILLIPS: Let me
6 make a clarification based on what you just
7 said. Number one, it's not a hearing.
8 DR. RICHARDSON: Right.
9 MR. REID: No, no, right.
10 CHAIRMAN PHILLIPS: I mean,
11 we're not -- I mean, we have a whole
12 different process for hearings before the
13 Commission, but I appreciate what you said
14 relative to clarity.
15 I think one concern I have
16 relative to that statement -- and I'm not
17 proposing that we clarify it any further,
18 because I think the Commission needs the
19 flexibility -- is we have a hundred people
20 sign up, but on our sign-up sheet we've
21 asked them what's your topic that you want
22 to talk about. And the Chairman has 80 of
23 them that have the same topic and ten that

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1 have a topic and ten that have a topic. It
2 may be more latitude that we need to hear a
3 representative sampling of the different
4 topics than having the expectation that,
5 Because I signed up first, I'm the first
6 person that gets to speak.
7 Does that bother you at all?
8 MR. LUDDER: No, I agree
9 with that.
10 DR. RICHARDSON: So adding
11 to that with --
12 CHAIRMAN PHILLIPS: I think
13 just leave it open so the Chair can manage
14 it that way. We can make it known as a
15 Commission. I think it's important to hear
16 people's topics as much as it is to hear
17 about the 80 people that want to say the
18 same thing about one topic.
19 MR. TAMBLING: Relative to
20 the tier two public statements, you need to
21 also think about where you want that placed
22 on your agenda. And Dr. Richardson and I
23 have talked about this. Do you want it

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1 placed on the agenda, or do you want to
2 adjourn and then have the statements?
3 The question I think this begs
4 is whether or not you want the court
5 reporter working -- transcribing these
6 statements. Or maybe you can have them on
7 the agenda and just instruct the court
8 reporter not to transcribe them, because
9 there's going to be a video record made of
10 this anyway. You know, if you're
11 transcribing these statements, it's going
12 to wind up costing the Department a pretty
13 good bit of money, depending on the number
14 of statements that are received.
15 DR. RICHARDSON: I'd like to
16 hear --
17 MR. LUDDER: As far as -- as
18 far as the recording, I guess it doesn't
19 matter to me whether it's a stenographer or
20 the camera. What matters to me, I guess,
21 more is if this is the official business of
22 the Commission, it needs to be on the
23 agenda. It needs to be part of the

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1 official proceeding.
2 CHAIRMAN PHILLIPS: Not to
3 diminish what you just said, but I'm going
4 to ask a question of counsel.
5 Is that a requirement?
6 MR. TAMBLING: I don't think
7 it's a requirement, but it makes a lot of
8 sense to me. I think -- I think if, you
9 know, it's going to be part of the agenda,
10 and it's -- then I think it really is part
11 of the official business of the Commission.
12 CHAIRMAN PHILLIPS: So then
13 let me restate what I think I heard you
14 say, David, which is it doesn't really
15 matter to you as long as it's recorded --
16 as long as it's documented?
17 MR. LUDDER: Right.
18 CHAIRMAN PHILLIPS: Okay.
19 MR. REID: And there's also
20 the -- the option of someone handing a
21 written -- you know, if they want --
22 CHAIRMAN PHILLIPS: You mean
23 if they walk up and hand us a statement,

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1 and then they make their statement?
2 MR. REID: Right. Right.
3 CHAIRMAN PHILLIPS: To me,
4 that's just two ways of communicating the
5 same thing. It's okay with me.
6 MR. TAMBLING: And if you
7 adjourn --
8 CHAIRMAN PHILLIPS: -- since
9 we're taking written comments at any time.
10 MR. TAMBLING: If you
11 adjourn and then take the statements, then
12 any Commission member could get up and
13 leave whenever they wanted to. So it would
14 kind of, I think, take away from the
15 process.
16 CHAIRMAN PHILLIPS:
17 Dr. Richardson?
18 DR. RICHARDSON: My personal
19 feeling on this is today, and always has
20 been, if it's worth my time to sit here and
21 listen to, it's worth -- it's worth being
22 on the record. It needs to be on the
23 record.

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1 I think me, as a citizen,
2 wanting to get up and address a body such
3 as this, I would expect that my comments
4 were a part of the record. I would want my
5 comments to be a part of the record. Just
6 that there is some recording of it is
7 better than nothing, but I -- I really
8 think I -- my position is it needs to be a
9 part of our agenda. It needs to be
10 something that is a matter of record and is
11 treated official. And that way if some
12 point in the future something is said,
13 somebody can go to the record and look it
14 up and say, "Here's -- this is it. This is
15 what you said."
16 You know, that's just my
17 position though. I -- I really don't care
18 how we handle it. I just feel like it
19 ought to be a part of the record.
20 CHAIRMAN PHILLIPS: I think
21 the other part of that is what Robert just
22 said, which I had not thought about. Which
23 is, if we adjourn, anyone can just -- we

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1 could end up with one Commissioner sitting
2 here listening to people. To me, it
3 denotes the rule with lack of respect --
4 DR. RICHARDSON: Well, and
5 --
6 CHAIRMAN PHILLIPS: And so
7 from that perspective, I think it's really
8 more incumbent to manage that time to fit
9 the needs of the Commission, while at the
10 same time allowing whomever wants to speak
11 the time to speak.
12 So that just makes it much more
13 of a task for the Chair to have to
14 accommodate, but it think it's as important
15 to do that to make sure that the full
16 Commission is here as they can be.
17 DR. RICHARDSON: Well, if
18 I'm hearing right then, I'm hearing that we
19 want this to be a part of the record.
20 CHAIRMAN PHILLIPS: Yes.
21 DR. RICHARDSON: Part of the
22 agenda. And I agree. I just think that's
23 the way to do it.

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1 CHAIRMAN PHILLIPS: David?
2 MR. LUDDER: One last point.
3 If we're going rely on the video, then I
4 think that needs to be a part of the
5 Commission's records of the -- you know,
6 the proceedings of that day. I think
7 somebody in the office is going to have to
8 maintain that.
9 CHAIRMAN PHILLIPS: Well,
10 and I think one thing that I want to think
11 about between now and our next meeting in
12 December is really the balance between
13 whether we continue with transcribing it,
14 as opposed to managing dual documents.
15 You know, I know it will cost
16 more. But if we effectively manage the
17 time and not make it a half-day affair,
18 which I don't think is the intent of the
19 Commission, then it shouldn't be
20 incrementally that much more.
21 Now, I say that without knowing,
22 Debi, what you have to do to make that
23 happen.

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1 DR. RICHARDSON: And this is
2 --
3 CHAIRMAN PHILLIPS: But I
4 think we need to explore that.
5 DR. RICHARDSON: And this is
6 still the primary means by which records of
7 official meetings are taken. And I think
8 until that starts to change more globally,
9 then we should stick with a court reporter.
10 MR. TAMBLING: Okay.
11 CHAIRMAN PHILLIPS: Roy, do
12 you have a perspective that would help us?
13 MR. McAULEY: I guess my --
14 my main concern is that the open forum is
15 going to be hard for you to manage. And
16 you have to think about how you're going to
17 manage that.
18 CHAIRMAN PHILLIPS: I have a
19 concern about that because -- well,
20 consistently manage that. That's my
21 concern is maintaining consistency.
22 MR. McAULEY: Actually, I
23 think where you are already, if it were

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1 managed -- if it were managed, is fine.
2 CHAIRMAN PHILLIPS: Okay.
3 MR. McAULEY: I guess I just
4 think it's sometimes not managed.
5 CHAIRMAN PHILLIPS: Thank
6 you. That was helpful. Okay.
7 I don't have anything else on
8 this, Commissioner Richardson. Do you?
9 DR. RICHARDSON: I have
10 nothing else specific that I haven't put to
11 the Committee.
12 CHAIRMAN PHILLIPS: Then --
13 DR. RICHARDSON: And I think
14 the changes -- I've noted the changes we've
15 discussed, which just, in brief, is to
16 insert a new paragraph two, elevating the
17 remaining paragraphs, that just describes
18 all the means in which we will receive
19 public comment, and then to address the
20 time issue to receive the second two
21 sentences, move those to the (inaudible)
22 and insert that it may -- "and/or
23 discretion, approved, denied," et cetera.

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1 CHAIRMAN PHILLIPS: And then
2 I think that we need to give some thought.
3 I don't think there's anything to do other
4 than to really reflect on it, but give some
5 thought to the idea of how we would manage
6 the register.
7 Because of that, I think we need
8 to work through that, Robert. And if you
9 and Debi will work with us to incorporate
10 those changes so that we can have a final
11 draft to share with the Committee.
12 DR. RICHARDSON: Yes, I
13 would -- I'm sorry.
14 CHAIRMAN PHILLIPS: And I
15 think at that point we may be prepared to
16 also get it out to those stakeholders that
17 we had involved to get their comments.
18 Because I would like to, at least in our
19 December meeting, make a point of when we
20 make a recommendation the full Commission.
21 DR. RICHARDSON: I would --
22 I would like at the December meeting
23 following, I would like for us to meet

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1 again prior to the December meeting, you
2 know, at 10 a.m.
3 CHAIRMAN PHILLIPS: Oh,
4 okay.
5 DR. RICHARDSON: And then at
6 the conclusion of that meeting, be prepared
7 to make a -- to recommend a document to the
8 Commission for their --
9 CHAIRMAN PHILLIPS: Further
10 action.
11 DR. RICHARDSON: -- action
12 and their consideration.
13 CHAIRMAN PHILLIPS: And that
14 brings one last thing that I'd like to ask
15 Robert, because I think it's something that
16 you just sparked when you said that.
17 Is there any reason we couldn't
18 implement the guidelines that we had while
19 we were -- if the full Commission in
20 December decided to move forward with the
21 rule changes, is there any reason we
22 couldn't start managing our meetings by the
23 guidelines?

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1 MR. TAMBLING: I think we
2 could start. I think officially though,
3 because the guidelines serve to inform the
4 public as to how we're going to interpret
5 the rules that we're going to adopt, I
6 think it's always better to have the
7 guidelines in place after -- at the same
8 time the rules become effective. But I
9 mean, some of these guidelines --
10 CHAIRMAN PHILLIPS: I guess
11 my question is could we really just go
12 ahead and start operating that way?
13 MR. TAMBLING: I think we
14 can.
15 DR. RICHARDSON: Yes. I was
16 -- can -- in December can we have a sign-up
17 sheet?
18 CHAIRMAN PHILLIPS: Well, I
19 think we'd need to do that after we went to
20 the Commission.
21 DR. RICHARDSON: A little
22 bit too far.
23 CHAIRMAN PHILLIPS: But

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1 maybe in February.
2 DR. RICHARDSON: All right.
3 CHAIRMAN PHILLIPS: Unless
4 you tell me otherwise.
5 MR. TAMBLING: I think we
6 can, because I think a lot of these
7 guidelines already track the existing rule,
8 and so we just need to start
9 implementing those.
10 DR. RICHARDSON: It's
11 really -- really a lot of this is just
12 clarification on how we do things.
13 CHAIRMAN PHILLIPS: Well,
14 and as, I think Roy, points out is making
15 sure that we consistently manage that.
16 David?
17 MR. TAMBLING: I would
18 prefer -- I'm sorry.
19 MR. LUDDER: No, go ahead.
20 MR. TAMBLING: I would
21 prefer that we just go ahead and start
22 managing without official action by the
23 Commission adopting a resolution to

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1 implement these guidelines. I think that
2 has to take place when we -- after we go
3 through rulemaking.
4 CHAIRMAN PHILLIPS: Okay.
5 MR. TAMBLING: But I think
6 we can start managing our meetings
7 according to the guidelines, at least the
8 spirit of the guidelines.
9 CHAIRMAN PHILLIPS: So even
10 in the December meeting?
11 MR. TAMBLING: Yes.
12 DR. RICHARDSON: Yes.
13 CHAIRMAN PHILLIPS: Okay.
14 DR. RICHARDSON: I'm good
15 with that, absolutely.
16 CHAIRMAN PHILLIPS: David?
17 MR. LUDDER: And in line
18 with all this, this discussion, I think the
19 Chairman can now write a letter to somebody
20 asking to make a presentation, you know,
21 "If you want to be heard at this meeting,
22 you know, you may not be; but if you want
23 to be certain of what the Commission's

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1 DR. RICHARDSON: So moved.
2 CHAIRMAN PHILLIPS: Second,
3 aye.
4 Thank you. Thank you all.
5 (The meeting concluded at
6 10:39 a.m.)
7 *****
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1 decision is, wait until the next meeting."
2 CHAIRMAN PHILLIPS: Got you.
3 MR. LUDDER: That can be
4 done now without rulemaking.
5 CHAIRMAN PHILLIPS: Well,
6 which is pretty much what we're saying
7 relative to the guidelines.
8 DR. RICHARDSON: Right.
9 Well, I got it. I move that we adjourn.
10 CHAIRMAN PHILLIPS: Well,
11 let's talk about the future rulemaking,
12 just to make sure that we know when we'll
13 meet next.
14 I will entertain a motion to set
15 the next Committee meeting on December 18,
16 2015, at 10 a.m. in this room.
17 DR. RICHARDSON: So moved.
18 CHAIRMAN PHILLIPS: Second.
19 All in favor?
20 (All Committee members
21 signify "aye.")
22 CHAIRMAN PHILLIPS: I move
23 to adjourn.

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Part B

Attachment 1

9/16/15

AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: October 16, 2015

TIME: 10:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

ITEMS

1. Consideration of minutes of meeting held on August 21, 2015**
2. Discussion and consideration of ADEM Admin. Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3)
3. Other business
4. Future Rulemaking Committee meeting

* The agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The minutes of this meeting will be available on the ADEM website under Environmental Management Commission.

1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 21, 2015
2. DISCUSSION AND CONSIDERATION OF ADEM ADMIN. CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

The Rulemaking Committee continues its re-examination and study of Rule 335-2-3-.05, Agenda, Sections (1) through (3). This rule includes the procedures and requirements regarding requests from the public to appear before the Commission at its meetings following consideration of agenda items.

3. OTHER BUSINESS
4. FUTURE RULEMAKING COMMITTEE MEETING