

4/18/16

**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  
February 19, 2016**

**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 February 19, 2016.**

A handwritten signature in blue ink, reading "W. Scott Phillips", written over a horizontal line.

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

**Certified this 15th day of April 2016.**

**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  
February 19, 2016**

**Convened: 10:00 a.m.  
Adjourned: 10:13 a.m.**

**Part A**

**Transcript  
Word Index**

**Part B**

**Attachment Index  
Attachment 1  
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## Part A

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1 MEETING OF THE RULEMAKING COMMITTEE  
2 OF THE  
3 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
4  
5  
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7  
8  
9  
10 ALABAMA DEPARTMENT OF ENVIRONMENTAL  
11 MANAGEMENT  
12 Alabama Room  
13 1400 Coliseum Boulevard  
14 Montgomery, Alabama 36110-2400  
15 February 19, 2016  
16 10:00 a.m.  
17  
18  
19  
20  
21  
22  
23 Taken by: Charity McCulley, CCR #424

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1 CHAIRMAN PHILLIPS: Good  
2 morning. I would like to call  
3 the February 19, 2016 Rulemaking  
4 Committee Meeting to order.  
5 I recognize that we have a  
6 quorum.  
7 Agenda item number 1 is the  
8 consideration of minutes of the  
9 meeting held on December 18,  
10 2015.  
11 I'll entertain a motion from  
12 the Committee regarding the  
13 minutes.  
14 DR. RICHARDSON: So moved.  
15 MS. MERRITT: Second.  
16 CHAIRMAN PHILLIPS: I have a  
17 motion and a second.  
18 Any further discussion  
19 regarding the motion?  
20 (No response.)  
21 CHAIRMAN PHILLIPS: All in  
22 favor, signify with a sign of  
23 "aye."

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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 Mary J. Merritt  
7  
8  
9 ALSO PRESENT:  
10 Robert D. Tambling, EMC Legal Counsel  
11 Debi Thomas, EMC Executive Assistant  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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1 THE COMMITTEE: Aye.  
2 CHAIRMAN PHILLIPS: All  
3 opposed?  
4 (No response.)  
5 CHAIRMAN PHILLIPS: Motion  
6 carries.  
7 Agenda item number 2. We'll  
8 have a discussion and possible  
9 consideration of a  
10 recommendation from this  
11 Rulemaking Committee to the  
12 Commission on ADEM  
13 Administrative Code 335-2,  
14 Environmental Management  
15 Commission Regulations, Rule  
16 335-2-3-.05, Agenda, Sections 1  
17 through 3. So with that, I  
18 would like to note that the  
19 latest version of the draft rule  
20 and draft guidelines was made  
21 available to the public for  
22 comment. And we did receive  
23 three sets of comments. I think

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1 all the Committee members have a  
2 copy of those.  
3 So I would like to open the  
4 floor up to discussion.  
5 Commissioner Richardson.  
6 DR. RICHARDSON: Mr. Chair,  
7 having reviewed the comments and  
8 considering the rule draft  
9 amendment, I have a couple of  
10 things I would like to change in  
11 this -- or insertions,  
12 basically.  
13 Looking at paragraph 2,  
14 sixth line from the bottom, a  
15 red insertion, already a change  
16 we are considering. I would  
17 simply like for that to --  
18 instead of reading deny or  
19 table, that it read "and/or  
20 table." "Deny, and/or table."  
21 CHAIRMAN PHILLIPS: So let  
22 me clarify. The only insertion  
23 is really the "and/"?

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1 DR. RICHARDSON: Correct.  
2 Insert "and/or." So that's to  
3 be considered as part of the  
4 amendment insertion would now  
5 read: The Commission may at its  
6 discretion, approve, deny and/or  
7 table presentation requests.  
8 CHAIRMAN PHILLIPS: Okay.  
9 DR. RICHARDSON: In rule  
10 draft amendment paragraph 4, a  
11 new paragraph that is being  
12 inserted currently reads,  
13 "Members of the public wishing  
14 to appear before the Commission,  
15 are encouraged to carefully  
16 observe the Commission's  
17 "Guidelines for Public Comment"  
18 applicable to this Rule. The  
19 "Guidelines for Public Comment"  
20 shall be available on the  
21 Department's website and at the  
22 Commission office." I would  
23 like to insert after the first

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1 sentence, before the last  
2 sentence, "This is in order to  
3 facilitate the exchange of  
4 information between the  
5 Commission and the public in a  
6 manner that will enable the  
7 Commission to better serve the  
8 people of this State and their  
9 environment."  
10 Again, we would be inserting  
11 after the first sentence, as the  
12 second sentence, "This is in  
13 order to facilitate the exchange  
14 of information between the  
15 Commission and the public in a  
16 manner that will enable the  
17 Commission to better serve the  
18 people of this State and their  
19 environment."  
20 Now, if you will allow me,  
21 that paragraph will now read,  
22 "Members of the public wishing  
23 to appear before the Commission,

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1 are encouraged to carefully  
2 observe the Commission's  
3 "Guidelines for Public Comment"  
4 applicable to this Rule. This  
5 is in order to facilitate the  
6 exchange of information between  
7 the Commission and the public in  
8 a manner that will enable the  
9 Commission to better serve the  
10 people of this State and their  
11 environment. The "Guidelines  
12 for Public Comment" shall be  
13 available on the Department's  
14 website and at the Commission  
15 office."  
16 And I have no further  
17 comments or discussion.  
18 CHAIRMAN PHILLIPS: Any  
19 questions relative to those  
20 comments?  
21 MS. MERRITT: I don't have  
22 any questions on it.  
23 CHAIRMAN PHILLIPS: I'm

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1 looking at it for a moment.  
2 MS. MERRITT: I would just  
3 like to say my comment would be  
4 that I agree with the changes.  
5 And that's number 4. I don't  
6 have a problem.  
7 Could you read that one more  
8 time, Commissioner Richardson?  
9 DR. RICHARDSON: The  
10 insertion or the entire  
11 paragraph?  
12 MS. MERRITT: The insertion.  
13 DR. RICHARDSON: To be  
14 inserted as the second sentence  
15 of paragraph 4. "This is in  
16 order to facilitate the exchange  
17 of information between the  
18 Commission and the public in a  
19 manner that will enable the  
20 Commission to better serve the  
21 people of this State and their  
22 environment."  
23 MS. MERRITT: Okay. And

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1 that's fine with me.  
2 CHAIRMAN PHILLIPS: Any  
3 other comments or questions  
4 relative to the amended public  
5 comment rule draft that we have  
6 in front of us?  
7 (No response.)  
8 CHAIRMAN PHILLIPS: Do I  
9 have a motion from the  
10 Committee?  
11 MS. MERRITT: You need a  
12 motion for the changes or to  
13 adopt the rule?  
14 CHAIRMAN PHILLIPS: I'm  
15 asking do I have a  
16 recommendation to take to the  
17 full Commission or do we want to  
18 continue looking at this?  
19 DR. RICHARDSON: If I may,  
20 Mr. Chair.  
21 CHAIRMAN PHILLIPS: Sure.  
22 DR. RICHARDSON: As a matter  
23 of clarification, shouldn't we

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1 have a motion to adopt the  
2 changes I just inserted and then  
3 a motion to adopt the proposed  
4 as presented, then decide --  
5 CHAIRMAN PHILLIPS: I think  
6 you can do it one --  
7 MS. MERRITT: Because these  
8 have not been adopted anyway.  
9 CHAIRMAN PHILLIPS: Right.  
10 I mean, nothing has gone from  
11 this Committee to the Commission  
12 at this point.  
13 MS. MERRITT: Right.  
14 CHAIRMAN PHILLIPS: So  
15 anything that you make in a form  
16 of insertion incorporates the  
17 things we included and  
18 discussed.  
19 Robert, is that --  
20 MR. TAMBLING: I agree with  
21 that.  
22 CHAIRMAN PHILLIPS: If you  
23 make a motion in a form of

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1 accepting these changes that we  
2 made today into the amended,  
3 that's one form of a motion that  
4 you could make.  
5 DR. RICHARDSON: I move that  
6 the Committee recommend that the  
7 Commission proceed to rulemaking  
8 with the draft rule as amended,  
9 and that the Commission consider  
10 adopting the draft guidelines to  
11 accompany the proposed rule.  
12 MS. MERRITT: I second.  
13 CHAIRMAN PHILLIPS: Before  
14 we do that, I'm going to make a  
15 recommendation before you go to  
16 your motion.  
17 MS. MERRITT: Okay.  
18 CHAIRMAN PHILLIPS: And that  
19 is, the guideline is not a rule.  
20 So therefore, there's really no  
21 need for us to make a  
22 recommendation for rulemaking on  
23 the guideline. We still, I

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1 think, have some work to do on  
2 the guideline in Committee.  
3 There were some comments that  
4 were made by the public relative  
5 to requirements on that. If  
6 there's going to be  
7 requirements, they need to be  
8 part of the rule. If they're  
9 not going to be requirements,  
10 they can be a guideline. But I  
11 think we have some work to do on  
12 the guidelines before we move  
13 those forward. Because it's not  
14 the intent of the guidelines to  
15 be a rule.  
16 DR. RICHARDSON: Then allow  
17 me to restate my motion.  
18 I move that the Committee  
19 recommend that the Commission  
20 proceed to rulemaking with the  
21 draft rule as amended.  
22 CHAIRMAN PHILLIPS: Do I  
23 have a second?

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1 MS. MERRITT: Second.  
2 CHAIRMAN PHILLIPS: Any  
3 discussion regarding the motion?  
4 (No response.)  
5 CHAIRMAN PHILLIPS: The only  
6 discussion I have is I want some  
7 clarification just to be certain  
8 that when you say "as amended,"  
9 you also are including the  
10 suggested changes that you've  
11 provided today.  
12 DR. RICHARDSON: That  
13 includes all of the suggested  
14 amendments to the current rule.  
15 CHAIRMAN PHILLIPS:  
16 Including yours today?  
17 DR. RICHARDSON: Yes.  
18 CHAIRMAN PHILLIPS: Any  
19 other discussion on the motion?  
20 (No response.)  
21 CHAIRMAN PHILLIPS: There  
22 being no further discussion, all  
23 in favor of the motion, signify

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1 with "aye" and raise your hand.  
2 THE COMMITTEE: Aye.  
3 CHAIRMAN PHILLIPS: All  
4 opposed, same sign.  
5 (No response.)  
6 CHAIRMAN PHILLIPS: Motion  
7 carries.  
8 Other business?  
9 (No response.)  
10 CHAIRMAN PHILLIPS: I would  
11 like to mention some other  
12 business to the Committee. That  
13 is partially what I said  
14 earlier, which are the  
15 guidelines. I think at our next  
16 meeting I would like to take up  
17 the discussion of guidelines  
18 should the Commission desire to  
19 move to rulemaking. We need to  
20 see how they act on our  
21 recommendation today. But I  
22 still think we need to go  
23 through those guidelines at our

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1 next meeting.  
2 And Commissioner Richardson,  
3 if you want to think of how we  
4 would deal with the  
5 environmental justice issue that  
6 you brought forward earlier.  
7 And we can talk about that at  
8 our next Rulemaking Committee.  
9 Any other business to  
10 discuss?  
11 (No response.)  
12 CHAIRMAN PHILLIPS: Future  
13 Rulemaking Committee meeting  
14 will be April 15, at 10:00 a.m.  
15 in this room. So I will ask for  
16 a motion for that.  
17 MS. MERRITT: So moved.  
18 DR. RICHARDSON: Second.  
19 CHAIRMAN PHILLIPS: Motion  
20 and second. Any further  
21 discussion?  
22 (No response.)  
23 CHAIRMAN PHILLIPS: All in



1 favor, signify with a sign of  
2 "aye."  
3 THE BOARD: Aye.  
4 CHAIRMAN PHILLIPS: I'll  
5 entertain a motion to adjourn.  
6 DR. RICHARDSON: So moved.  
7 CHAIRMAN PHILLIPS: Second?  
8 MS. MERRITT: Second.  
9 CHAIRMAN PHILLIPS: We're  
10 adjourned. Thank you.  
11  
12 (THE HEARING WAS CONCLUDED AT 10:13 A.M.)  
13  
14  
15  
16  
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21  
22  
23

1 C E R T I F I C A T E  
2 STATE OF ALABAMA )  
3 COUNTY OF CONECUH )  
4 I hereby certify that the above and  
5 foregoing transcript of proceedings was  
6 taken down by me in machine shorthand, and  
7 the questions and answers thereto were  
8 transcribed by means of computer-aided  
9 transcription, and that the foregoing  
10 represents a true and correct transcript of  
11 the proceedings given by said witness upon  
12 said hearing.  
13 I further certify that I am neither  
14 of counsel nor of kin to the parties to the  
15 action, nor am I in anywise interested in  
16 the result of said cause.  
17 I further certify that I am duly licensed  
18 by the Alabama Board of Court Reporting as  
19 a Certified Court Reporter as evidenced by  
20 the ACCR number following my name below.  
21 \_\_\_\_\_  
22 CHARITY McCULLEY ACCR# 424  
23 My Commission Expires: 2/19/17

## 1                   C E R T I F I C A T E

2   STATE OF ALABAMA   )

3   COUNTY OF CONECUH )

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18  by the Alabama Board of Court Reporting as  
19  a Certified Court Reporter as evidenced by  
20  the ACCR number following my name below.

21           Charity McCulley

22           CHARITY McCULLEY ACCR# 424

23           My Commission Expires: 2/19/17

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**Part B**

## **Attachment Index**

**Attachment 1**      **Agenda**

**Attachment 2**      **Order to adopt motion that the Committee recommend to the Commission to proceed to rulemaking with the draft rule as amended (Agenda Item 2)**

**Attachment 1**

1/20/16

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

DATE: February 19, 2016

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 December 18, 2015\*\*
2. Discussion and possible consideration of a recommendation from the Rulemaking Committee to the Commission on ADEM Administrative 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](http://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 DECEMBER 18, 2015
2. DISCUSSION AND POSSIBLE CONSIDERATION OF A RECOMMENDATION FROM THE RULEMAKING COMMITTEE TO THE COMMISSION ON ADEM ADMINISTRATIVE 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 ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3). This Rule includes the procedures and requirements regarding requests from the public to make presentations before the Commission at its meetings following consideration of agenda items. The Committee will also discuss and may consider a recommendation to the Commission as to whether the Commission should proceed to rulemaking and whether the Commission should consider adopting guidelines to accompany the proposed Rule.

3. OTHER BUSINESS
4. FUTURE RULEMAKING COMMITTEE MEETING

**Attachment 2**

BEFORE THE  
RULEMAKING COMMITTEE  
OF THE  
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

MOTION

Move that the Committee recommend to the Commission  
to proceed to rulemaking with the draft rule as amended

ORDER


This cause having come before the Rulemaking Committee pursuant to the above motion, and having considered the same, the Committee hereby ORDERS, ADJUDGES, and DECREES as follows:

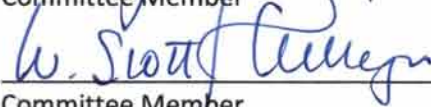
1. That the above motion is hereby adopted; and
2. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

Rulemaking Committee Order  
Page 2

ISSUED this 19th day of February 2016.

APPROVED:

  
\_\_\_\_\_  
Committee Member

  
\_\_\_\_\_  
Committee Member

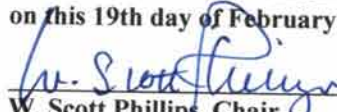
  
\_\_\_\_\_  
Committee Member

DISAPPROVED:

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

This is to certify that this Order is a true and accurate account of the actions taken by the Rulemaking Committee on this 19th day of February 2016.

  
\_\_\_\_\_  
W. Scott Phillips, Chair  
Rulemaking Committee  
Certified this 19th day of February 2016

335-2-3-.05 Agenda and Public Participation.

(1) For any regularly scheduled meeting, the Chair of the Commission shall cause to be published a draft agenda on the Department website and forward it to the other Commission members at least 30 (thirty) days prior to the Commission meeting. Included in the agenda shall be the consideration of the previous meeting's minutes, a report from the Director, committee reports, any pending recommendation from a hearing officer and other matters within the jurisdiction of the Commission. ~~Requests from members of the public to appear before the Commission shall be attached to the agenda.~~

(2) In order for the Commission to be better prepared on the subjects to be discussed, members of the public wishing to make presentations speak at regularly scheduled Commission meetings must first submit to the Commission Office a written request along with a description of their presentation ~~matter they wish to raise before the Commission~~. Written requests must include the name, address, telephone number and, if applicable, the email address of any and all persons who wish to deliver presentations before address the Commission as well as a description of the matter to be presented ~~discussed~~. Written requests from members of the public wishing to make presentations ~~appear before the Commission~~ must be received by the Commission Office not later than 14 (fourteen) days prior to the next regularly scheduled meeting of the Commission. Such submissions shall be in writing and delivered by hand, U.S. Mail, facsimile, email, or private express delivery service. ~~The Chair of the Commission, or designee, shall notify those persons requesting an opportunity to address the Commission in writing as to the proposed disposition of their request.~~ The Commission may, at its discretion, approve, deny, and/or table presentation requests. The Chair of the Commission shall have the final agenda published along with the list of persons requesting to make presentations ~~who will appear~~ and the subjects to be ~~they will address~~ on the Department website and at the Commission office at least 7 (seven) days before the Commission meeting. The Commission shall set reasonable time limitations on public appearances before the Commission.

(3) After consideration of agenda items the Commission may consider comments from the members of the public. While the Commission encourages public participation at its meetings, for reasons of fairness and due process to the parties in administrative and legal proceedings involving the Commission, it specifically discourages the members of the Commission from engaging in the non-deliberative discussion of any case or legal proceeding pending before the Commission, or of any decision by the Commission or matter involving the Commission or Department that is the subject of ~~in any ongoing case or legal proceeding pending appeal before the Courts of this State~~. Parties to such proceedings and members of the general public shall not be permitted to use the public participation opportunities herein provided by the Commission to circumvent administrative or judicial procedures which specify the time and manner of presenting testimony, evidence, or comment to the Commission in a formal manner designed to provide due process to all parties.

(4) Members of the public wishing to appear before the Commission are encouraged to carefully observe the Commission's "Guidelines for Public Comment" applicable to this Rule. This is in order to facilitate the exchange of information between the Commission and the public in a manner that will enable the Commission to better serve the people of this state and their environment. The "Guidelines for Public Comment" shall be available on the Department's website and at the Commission office.

(5) (4)With the exception of a request for a stay of administrative action pending hearing, no item shall be added to the agenda that has not been submitted to the Commission's Executive Assistant at least 7 (seven) days prior to the Commission meeting.

DRAFT