

4/17/15

**Minutes
Meeting and Work Session of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 20, 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 February 20, 2015.

A handwritten signature in black ink, appearing to read "W. Scott Phillips", is written over a solid horizontal line. The signature is stylized and cursive.

W. Scott Phillips

Chair

Rulemaking Committee

Alabama Environmental Management Commission

Certified this 17th day of April 2015.

**Minutes
Meeting and Work Session of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 20, 2015**

Convened: 1:00 p.m.

Adjourned: 3:15 p.m.

Part A

**Transcript
Word Index**

Part B

Attachment 1 - Agenda

Part A

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1
2 * * * * *
3
4 MEETING AND WORK SESSION OF THE
5 RULEMAKING COMMITTEE
6 OF THE
7 ALABAMA ENVIRONMENTAL MANAGEMENT
8 COMMISSION
9
10
11 ALABAMA DEPARTMENT OF ENVIRONMENTAL
12 MANAGEMENT
13 Alabama Room
14 1400 Coliseum Boulevard
15 Montgomery, Alabama 36110-2400
16
17
18 February 20, 2015
19 1:00 p.m.
20
21 * * * * *
22
23 Taken by: Bridgette W. Mitchell,
ACCR 231

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1 ALSO PRESENT (continued):
2 Esther Calhoun, Black Belt Citizens
3 Fighting for Health and Justice
4 Mary Shaeffer, Black Belt Citizens
5 Fighting for Health and Justice
6 Dick Bronson, Lake Watch of
7 Lake Martin
8 Keith Johnston, Southern
9 Environmental Law Center
10 Sarah Stokes, Southern Environmental
11 Law Center
12 Beth Stewart, Cahaba River Society
13 Myra Crawford, Cahaba Riverkeeper
14 Joe Howle, Vulcan Materials Company
15 Misha Mitchell, Black Warrior
16 Riverkeeper
17 Isabella Trussell, Logan Martin Lake
18 Protection Association
19
20
21
22
23

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1 * * * * *
2
3 APPEARANCES
4
5 COMMITTEE MEMBERS PRESENT:
6 W. Scott Phillips, Chair
7 Mary J. Merritt
8
9 COMMITTEE MEMBERS NOT PRESENT:
10 Terry D. Richardson, Ph.D.
11
12 ALSO PRESENT:
13 Lanier Brown, II, Chairman of the
14 Commission
15 Robert Tambling, EMC Legal Counsel
16 Debi Thomas, EMC Executive
17 Assistant
18 Lance LeFleur, ADEM Director
19 Marilyn Elliott, ADEM Deputy
20 Director
21 Trey Glenn, Business Council of
22 Alabama
23 Jessica Trotman, Rushton, Stakely,
Johnston & Garrett
Mitch Reid, Alabama Rivers Alliance
Adam Johnston, Alabama Rivers
Alliance
Cindy Lowry, Alabama Rivers
Alliance
Katie Robertson Shaddix, Alabama
Rivers Alliance
Eva Dillard, Black Warrior
Riverkeeper
Nelson Brooke, Black Warrior
Riverkeeper
Michael Mullen, Choctawhatchee
Riverkeeper, Inc.
Ben Eaton, Black Belt Citizens
Fighting for Health and Justice
Ellis Long, Black Belt Citizens
Fighting for Health and Justice

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1 COMMITTEE CHAIRMAN PHILLIPS:
2 Welcome to the Rulemaking Committee.
3 Acknowledge we do have a quorum. We do
4 not have Commissioner Terry Richardson.
5 He didn't want him to get snowbound from
6 the north, so he asked to not be able to
7 come today. But we're going to move
8 forward regardless.
9 We'll start with Agenda Item No. 1,
10 which is consideration of the minutes
11 from our meeting that we held on December
12 the 12th. I'll entertain a motion.
13 MS. MERRITT: So moved.
14 COMMITTEE CHAIRMAN PHILLIPS:
15 Second?
16 MS. MERRITT: Second.
17 COMMITTEE CHAIRMAN PHILLIPS: All
18 in favor signify and say aye.
19 MS. MERRITT: First and second.
20 (Unanimous.)
21 COMMITTEE CHAIRMAN PHILLIPS:
22 That was easy. Agenda Item No. 2.
23 Agenda Item No. 2 is really the working

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1 session that the Rulemaking Committee
2 crafted. Many of you were in the room
3 when we thought of that, and that's why
4 you're here today. What I'd like to do
5 is to start off -- I know most everyone
6 in the room, but everybody may not know
7 everyone else. So I'm going to ask that
8 we go around the room, make a very quick
9 introduction of yourself, who you're
10 representing, but keep it short because
11 there's a lot of us in the room. I'll
12 start, and then I'm going to ask you, as
13 we engage, for our court reporter, we
14 really need for you to start with your
15 name and your organization so we can get
16 it on the record. All right?
17 I'm Scott Phillips. I'm the vice
18 chair of the Environmental Management
19 Commission and the Chair of the
20 Rulemaking Committee.
21 MS. MERRITT: And I'm Mary
22 Merritt. I'm the commissioner at large.
23 COMMITTEE CHAIRMAN PHILLIPS:

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1 Robert?
2 MR. TAMBLING: Robert Tambling.
3 I'm legal counsel for the Commission.
4 COMMITTEE CHAIRMAN PHILLIPS:
5 Chairman, we'll go with you and then go
6 around.
7 COMMISSION CHAIRMAN BROWN:
8 Lanier Brown, Chairman of the Commission.
9 MS. SHAEFFER: Mary Shaeffer with
10 Black Belt Citizens Fighting for Health
11 and Justice, from Uniontown.
12 MS. LONG: Ellis Long, also with
13 Black Belt Citizens Fighting for Health
14 and Justice in Uniontown.
15 MR. BROOKE: Nelson Brooke, Black
16 Warrior Riverkeeper out of Birmingham.
17 MS. DILLARD: Eva Dillard, Black
18 Warrior Riverkeeper.
19 MR. JOHNSTON: Keith Johnston,
20 Southern Environmental Law Center out of
21 Birmingham.
22 MS. STOKES: Sarah Stokes,
23 Southern Environmental Law Center.

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1 MS. CRAWFORD: Myra Crawford,
2 Cahaba Riverkeeper, Birmingham.
3 MR. BRONSON: Dick Bronson, Lake
4 Watch of Lake Martin.
5 MR. MULLEN: Mike Mullen,
6 Choctawhatchee Riverkeeper, Troy.
7 MR. EATON: Ben Eaton, Black Belt
8 Citizens Fighting for Health and Justice,
9 Uniontown.
10 MR. GLENN: I'm Trey Glenn on
11 behalf of Business Council of Alabama.
12 MR. HOWLE: I'm Joe Howle, Vulcan
13 Materials Company.
14 MS. CALHOUN: I am Esther Calhoun
15 from Uniontown, Alabama, Black Belt
16 Citizens Fighting for Health and Justice.
17 MR. REID: Mitch Reid from the
18 Alabama Rivers Alliance based out of
19 Birmingham.
20 MS. TROTMAN: Jessica Trotman
21 from Rushton-Stakely. I'm here for
22 Dennis Bailey.
23 MS. STEWART: Beth Stewart with

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1 the Cahaba River Society.
2 MS. LOWRY: Cindy Lowry, Alabama
3 Rivers Alliance.
4 MS. SHADDIX: Katie Shaddix,
5 Alabama Rivers Alliance.
6 MR. JOHNSTON: Adam Johnston,
7 Alabama Rivers Alliance.
8 MS. ELLIOTT: Marilyn Elliott,
9 ADEM.
10 MR. LeFLEUR: Lance LeFleur,
11 ADEM.
12 COMMITTEE CHAIRMAN PHILLIPS: In
13 the back?
14 MS. MITCHELL: Hi. I'm Misha
15 Mitchell, and I'm the legal intern for
16 Black Warrior Riverkeeper.
17 COMMITTEE CHAIRMAN PHILLIPS: And
18 in the back?
19 MS. TRUSSELL: Isabella Trussell,
20 Logan Martin Lake Protection Association.
21 COMMITTEE CHAIRMAN PHILLIPS:
22 Debi?
23 MS. THOMAS: I'm Debi Thomas with

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1 the Environmental Management Commission.
2 COMMITTEE CHAIRMAN PHILLIPS:
3 Okay. I want to thank all of you for
4 being here. I know it's cold outside.
5 And by the swarm of people who wanted to
6 know when we were going to finish after
7 the Commission meeting, I know
8 everybody's anxious to get about it and
9 get on with it. So what I want to do is
10 start by saying we're going to open the
11 floor up, but don't everyone jump in all
12 at once. And hopefully we'll cover the
13 very topics that we've heard for quite a
14 while and the Commission shares in. If I
15 don't hear people who jump in, then I'm
16 going to throw them out one at a time and
17 then we can kind of debate those.
18 This is intended to be a dialogue, a
19 productive dialogue. It's not about a
20 decision that's coming out of this room
21 today. It's really to get your views of
22 what enhancements, if any, could be made
23 to our public-comment rule for us to

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1 people who care about the, in this case,
2 the rivers in their backyard, we would --
3 I personally would like to see a public
4 participation ethic that is in favor of
5 someone being able to come and approach
6 the Commission in a -- in a way that
7 says, Look, this is something that I see
8 that's on my mind that we're having
9 problems with or I'm concerned about,
10 without it being something that -- that
11 takes someone on a staff with a law
12 degree to work their way through the
13 process.
14 Now, recognizing that there's -- and
15 fully understanding Commissioner
16 Richardson's sort of other end of that
17 spectrum, but as -- if there was any way
18 of sort of putting the thumb on the scale
19 towards people being able to have an open
20 voice -- I understand that they don't
21 need to come and say things that you
22 don't need to hear about and that they
23 don't need to come and litigate their

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1 consider. We will then take this
2 information, look back over it, talk to
3 Commissioner Richardson, who's not here,
4 and decide at our next meeting, which
5 will be in April, what, if anything, we
6 want to take to the Commission. Okay?
7 Anybody have any questions about the
8 process?
9 (No response.)
10 COMMITTEE CHAIRMAN PHILLIPS:
11 Good. Anyone want to start with an issue
12 that they believe would make our public-
13 comment period more productive? Mitch.
14 MR. REID: So I'm just sort of
15 trying to frame maybe the ideal that I
16 see, and -- and recognizing that that may
17 not be what the actual rule looks like,
18 but I feel like it's -- as an advocate
19 for not only the groups that we represent
20 that are staffed organizations but also
21 the groups that we represent that are
22 citizens groups that don't do this as
23 their full-time job, that they're just

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1 case in front of you if you're going to
2 hear an appeal. I understand that there
3 are parameters. But if there's a way of
4 just putting the favor in -- towards
5 someone being able to speak.
6 The example that I think of is the
7 Water Resources Commission in OWR's
8 meeting. At the end of the meeting, it's
9 not a formal process. I've never seen
10 anyone say, I want to present to the
11 Water Resources Commission, but at the
12 end of the meeting they say, Is there
13 anybody in the back that would like to
14 say anything? And that -- that's a
15 public participation, a really informal
16 way of doing it but it still allows
17 people to say, I appreciate what you're
18 doing or I've got some issues. So maybe
19 just framing the question.
20 COMMITTEE CHAIRMAN PHILLIPS:
21 That's a good start, because I think
22 it -- it raises kind of an end state that
23 you believe we should be working toward.

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1 I think it's one that we believe we
2 should be working toward. I think our
3 experiences give us concern in some
4 areas, and one of those areas that I'll
5 throw out for the group to help us think
6 about how to manage is people that come
7 to the Commission and want to address us
8 about issues that we have no mechanism in
9 law, regulations, or otherwise to help
10 them with. And while I'm all for putting
11 the thumb on letting people get up and
12 talk about what they want to, if I can't
13 help them, if I'm not legislatively
14 authorized to do something, they're
15 really wasting their time, and we don't
16 want to waste their time. We don't want
17 to frustrate them.

18 And a good example of this is land-
19 use planning. We don't do land-use
20 planning. That's a local responsibility.
21 It's something that when people come to
22 us and say, We don't want this landfill
23 in our county, well, if it meets the

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1 I'm Eva Dillard with Black Warrior
2 Riverkeeper. I've been attending the EMC
3 meetings for about five years, and I
4 don't think I have -- and I could be
5 wrong -- I don't think I've ever
6 witnessed a public presentation that
7 wasn't in some way related to the
8 responsibilities that the EMC has or
9 that -- or that address items that ADEM
10 oversees. I would just like to know, how
11 big of a problem is this? How big of an
12 issue are off-topic citizen
13 presentations? because I don't know that
14 I've ever witnessed one, but I might lead
15 a sheltered life.

16 COMMITTEE CHAIRMAN PHILLIPS:
17 Well, I've been here a lot longer than
18 five years --

19 MS. DILLARD: Right.

20 COMMITTEE CHAIRMAN PHILLIPS: --
21 so maybe I'm relying on things. But it
22 is an issue and it's one that we would
23 like your help in at least addressing.

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1 permit requirements, we really don't have
2 the wherewithal to do anything about that
3 other than to look at them after they've
4 finished ten minutes and say, Have you
5 spoken with your local representatives,
6 your local governments? So on the hand
7 of letting people get up and talk, I
8 think we're for that when it really is
9 something that we can do something about.

10 So one of the thoughts that we've
11 had is to make sure that we do a better
12 job of helping the public know what it is
13 we can do something about, whether it's
14 about setting policy, setting rules or
15 regulations, or holding the Department
16 director accountable. Beyond that, the
17 only other thing we do, which we don't
18 take public comment about, is hearing
19 appeals or hearings that come before us.

20 How do we manage that, the two of
21 those? Any thoughts?

22 MS. DILLARD: I have a quick
23 question, maybe, before we answer that.

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1 If it doesn't happen, that's great.

2 MS. DILLARD: Right.

3 COMMITTEE CHAIRMAN PHILLIPS:
4 Then we don't have to deal with it. But
5 if it does, how do we make sure that we
6 get people where they need to be? Cindy?

7 MS. LOWRY: One suggestion I
8 think that -- I think we made in our
9 comments -- we maybe evolved it a little
10 since then -- was that there be some kind
11 of template for the request or the
12 submittal so that it says exactly what
13 you need to hear, and that could -- you
14 know, obviously who you are and what your
15 issue is, but another category could be
16 what is the EMC's role in resolving --
17 what do you see as EMC's role? So that
18 puts it on us a little bit to say -- to
19 make the case that we have the
20 responsibility that we're -- you know, we
21 understand what we're asking you to do,
22 but also gives you a chance to tell us
23 what you need to hear from us. That

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1 could be on a website form, could be --
2 obviously needs to be downloadable as
3 well for people that don't have Internet.
4 So that's an idea for that.
5 COMMITTEE CHAIRMAN PHILLIPS:
6 That's a good idea and I think that
7 really kind of touches on the edge of
8 where I was talking about an example, for
9 example, a landfill in the county. Even
10 when individuals come -- and I think many
11 of you that have come before us in the
12 last year have seen a difference of us
13 really asking you, when you talk to us,
14 What do you think we could do, which kind
15 of gets to your -- and maybe we should be
16 a lot more proactive about a template.
17 I think the other item that we've
18 learned from the group of many of you in
19 this room is there's this perception that
20 we don't take comments except right
21 before our meeting or at the end of our
22 meeting. We really -- and not everyone
23 wants to travel here from across the

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1 state to make a comment, so one of the
2 thoughts that Commissioner Richardson had
3 was we really need to be a little more
4 proactive in letting people know that
5 they're welcome to provide comments to us
6 at any time, written -- written, and
7 e-mail. Right now you can't really --
8 can't even do e-mails; right? So, I
9 mean, that's really an area where we need
10 to catch up with the technology that
11 passed us.
12 MR. TAMBLING: Well, I think they
13 can make e-mail comments, but I don't
14 think you can make a request to appear
15 before the Commission through e-mail.
16 MS. STEWART: I have a pretty
17 simple request. Beth Stewart, Cahaba
18 River Society. I think that it be
19 changed to allow e-mail requests and, in
20 doing so, we'd like to ask you to do what
21 everybody else does, which is 5 p.m. is
22 not really a meaningful deadline for an
23 e-mail request because nobody at 5:01 on

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1 staff is going to sit down and look
2 through all those, so having it be a
3 midnight on day of deadline would be
4 tremendously helpful.
5 COMMITTEE CHAIRMAN PHILLIPS:
6 Someone raised their hand over here. I'm
7 sorry.
8 MS. CRAWFORD: Mine is very
9 similar. Myra Crawford, Cahaba
10 Riverkeeper. I was wondering, would you
11 be comfortable receiving e-mail requests
12 to speak? Would that be a way that you
13 would be comfortable receiving that
14 request?
15 COMMITTEE CHAIRMAN PHILLIPS: You
16 mean personally?
17 MS. CRAWFORD: I mean, would that
18 be -- that be helpful if you had --
19 COMMITTEE CHAIRMAN PHILLIPS: I
20 think what's helpful, if we decide that
21 e-mail requests are okay for requesting
22 coming before the Commission to talk, I
23 think we would still want it to go

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1 through Debi, because I get two or three
2 or four hundred e-mails a day.
3 MS. CRAWFORD: I didn't mean
4 personally.
5 COMMITTEE CHAIRMAN PHILLIPS: Oh,
6 okay.
7 MS. CRAWFORD: I mean to a single
8 person.
9 COMMITTEE CHAIRMAN PHILLIPS: I
10 mean, Debi, you deal with e-mails. Is
11 that cumbersome?
12 MS. THOMAS: No. I think e-mails
13 would be fine, an e-mail request. For my
14 logistics standpoint, I think that would
15 be fine.
16 MS. MERRITT: Probably just like
17 we do the -- you know, the way we did
18 before, you just got to have rules with
19 the e-mail, you know, it's got to be in a
20 certain day. That's what I'm thinking
21 about.
22 COMMITTEE CHAIRMAN PHILLIPS:
23 That may be a way to help with the

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1 templating that Cindy was talking about.
2 MS. MERRITT: Yeah.
3 COMMITTEE CHAIRMAN PHILLIPS: I
4 mean, it doesn't bother me. Seems like
5 everything I do nowadays is on e-mail.
6 MR. JOHNSTON: I have a comment,
7 Commissioner. Adam Johnston, Alabama
8 Rivers Alliance. I do think it's
9 important that we provide a variety of
10 avenues for individuals to contact. I do
11 agree that e-mail should be a way. Added
12 to it, I also feel like a phone call
13 should be able to call in Debi and say --
14 we live in a time and age where not
15 everybody deals on e-mail, or we still
16 have individuals who don't necessarily in
17 our state rely and survive on e-mail; and
18 I'd like to be able to see somebody be
19 able to pick up a phone, call the
20 executive assistant, and be able to go
21 through that process. We still rely on
22 phones and people should be able to do
23 this person-to-person thing and not --

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1 But with regard to different people
2 around the state and their ability to
3 send e-mails/not send e-mails, that
4 also -- I think someone mentioned their
5 ability to drive down here, willingness/
6 desire to stand in front of a commission
7 and make remarks. You know, that's --
8 takes a different thought process to do
9 that. I'm a big believer if somebody, no
10 matter whether you're on the
11 environmentalist side, the business side,
12 or just the, most importantly, the
13 citizen side, wants to reach out to you
14 as the policy-setting board to tell you
15 something, say Lance and the Department
16 are doing a great job, doing a bad job,
17 whatever, whatever they want to tell you,
18 I mean, you need to consider this, you
19 need to consider that, they should be
20 able to do that. And there's a lot of
21 mechanisms for doing that.
22 The one thing, though, from a
23 business standpoint that concerns me

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1 and so I would like to see there be able
2 to be a call-in option to be on the
3 agenda.
4 MS. DILLARD: Eva Dillard. I
5 think Adam makes an excellent point.
6 And, you know, there was some recent
7 information released that about 35
8 percent of the households in Alabama
9 don't have a computer at home, and so I
10 think if we can expand the opportunities,
11 you're going to reach some folks who may
12 not have a computer. And chances are, if
13 they don't have a computer, they're
14 certainly not going to have a fax
15 machine, because the fax machines are on
16 the way out. I don't know of many folks
17 who even use them anymore.
18 COMMITTEE CHAIRMAN PHILLIPS:
19 Okay. Thanks.
20 MR. GLENN: Trey Glenn on behalf
21 of Business Council. And obviously I
22 have a very different perspective now
23 than I may have a few years ago on this.

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1 about comments is, sometimes when people
2 stand up and start talking, maybe you
3 don't -- you're not hearing what they're
4 trying to say, maybe their words are
5 different and so the messages sometimes
6 get a little garbled and may get even
7 misinterpreted, and that may have
8 negative ramifications on folks who
9 are -- then spend time, energy, and money
10 and resources and -- to respond to
11 something, and maybe they don't even need
12 to respond to it, it was just
13 misunderstood.
14 So I'm a big fan of doing this kind
15 of stuff in writing, because it gives
16 y'all absolute clarity and it gives the
17 person who may be snowed in today up in
18 wherever Alabama the opportunity to tell
19 you something. I mean, I'm assuming put
20 it on the record so everybody in the
21 world can see it and it's part of the
22 minutes and -- but not have to get in a
23 car and drive -- drive down here. They

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1 can do that for y'all, then if y'all get
2 it, have some time and you have to get a
3 letter in from somebody for this
4 commission meeting and if you see it and
5 you have a question, say, Listen, this is
6 important, I'd like you to come, we have
7 questions for you, do you mind coming and
8 addressing the Commission? We'd like to
9 talk to you about it. Give them a
10 certain amount of time. Y'all can invite
11 them down and talk to you about it. But
12 that would just cut down on some of the
13 confusion and maybe some of the back and
14 forth that comes from the comment period.
15 MR. MULLEN: Mike Mullen,
16 Choctawhatchee Riverkeeper. I think what
17 Trey said is important, too. I think
18 we've had instances where people have
19 come all the way down here and then their
20 request is denied, and maybe the better
21 process would be if we don't know whether
22 it's going to be approved or not is for
23 them to make the request and defer that

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1 up with those and not -- they not just go
2 into a black hole, because then that sort
3 of makes those seem useless for the
4 public that's doing it.
5 And then this is, I guess, maybe a
6 more difficult subject or more -- not
7 contentious but I think there's a
8 perception on our part maybe at times
9 that when you guys want the written
10 comment or the written work ahead of time
11 and the certain criteria and all that,
12 it's so that you can posture yourselves
13 for defense because maybe we're -- we are
14 perceived that we're coming to you with
15 some kind of complaint or some kind of
16 problem at ADEM, which often -- at the
17 EMC, which often we might be. So these
18 perceptions of sort of getting a defense
19 posture both sides to say, Okay, we need
20 all this time to prepare ahead of time so
21 that we can defend ourself. And we're
22 like, Why do you need all this time just
23 to hear from the public? So I guess I

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1 to the next EMC meeting so that
2 somebody's not driving all the way --
3 give them the option if they don't want
4 to drive down here for that meeting to
5 get the approval and come to a later
6 meeting.
7 COMMITTEE CHAIRMAN PHILLIPS: So
8 if they request --
9 MR. MULLEN: Say they made a
10 request for the April --
11 COMMITTEE CHAIRMAN PHILLIPS: And
12 we're not sure, because it's the full
13 Commission that makes that determination.
14 Wait until that determination's been
15 made.
16 MS. LOWRY: Cindy with the
17 Alabama Rivers Alliance. That brings up
18 a couple of thoughts, one as to the --
19 your mention earlier, taking in written
20 comments all the time. You know, I don't
21 think that's a bad idea. I do think
22 there needs to be some mechanism, which
23 will put more work on you guys, to follow

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1 just want to throw that out on the table
2 as -- I'm not saying that those
3 perceptions are correct on either side.
4 I'm just saying --
5 COMMITTEE CHAIRMAN PHILLIPS:
6 Well, perception is reality.
7 MS. LOWRY: So I think that we
8 don't -- as we said in our comments, we
9 understand the need to prepare for our
10 presentations and especially if -- some
11 of these subjects are pretty -- need some
12 education level ahead of time, and I
13 think that's good. I guess I just want
14 to throw that out there as -- prepare so
15 that you can ask questions to the
16 presenter is one thing. Prepare so that
17 you can -- so they can set up some kind
18 of rebuttal or something is -- is
19 something that was brought up in comments
20 I think warrants discussion.
21 COMMITTEE CHAIRMAN PHILLIPS: I
22 agree.
23 MR. MULLEN: It's sort of like

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1 there's a rebuttal, and it makes it
2 appear at times that the Commission is
3 not really giving a lot of thought to
4 something when as soon as the person
5 finishes their presentation they're
6 getting a rebuttal. And if you're
7 really going to digest something, I think
8 it'd be more professional, look a lot
9 more seemly if -- the Commission
10 shouldn't feel like it has to make a
11 response to that presentation at the
12 meeting, and it seems like we've got more
13 and more of those cases. And some of
14 those -- I'm not going to point any
15 fingers, but some of them have almost
16 been condescending type of rebuttals.
17 And it would be much better if the
18 Commission took that presentation under
19 advisement, got back in communication
20 directly with that individual
21 organization or brought it up at a later
22 meeting.
23 COMMISSION CHAIRMAN BROWN: But

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1 more work on Debi or Lance's crew or
2 whatever -- but if that written
3 communication to the Commission could go
4 on e-file and the responses could go on
5 e-file, as long as they're not -- as long
6 as they're appropriate, that might help
7 make people more amenable and make less
8 presentation -- fewer presentations.
9 MR. REID: Just to -- this is
10 Mitch Reid. Just to dovetail off of
11 that, which I don't really see the
12 presentations that I give as necessarily
13 a way of venting, but I think it is a way
14 of -- of sort of standing in the public
15 eye and saying this is something that we
16 see, like, for instance, today, on the
17 horizon that we want to be a part of and
18 sort of let everyone know that it's
19 something we're working on.
20 If -- communications in writing can
21 be a much more efficient way, but I think
22 there does have to be a way of recording
23 that so that people can see that that

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1 wouldn't it be better just to do that in
2 writing --
3 MR. MULLEN: Yeah. Right.
4 That'd be --
5 COMMISSION CHAIRMAN BROWN: --
6 rather than have --
7 MR. MULLEN: The exchange, that
8 response, could be in writing.
9 COMMISSION CHAIRMAN BROWN: But
10 rather than come up here and speak to me
11 and me say nothing but write you a letter
12 later, wouldn't it be better for you just
13 to write me and I write you back?
14 MR. MULLEN: There is one --
15 there is one value of making that
16 presentation. It takes -- some people
17 need to vent a little bit and get rid of
18 a little bit of the anger and -- and I
19 think there's some benefit in the
20 presentations that they just don't get in
21 writing. I know I send things to the
22 Commission. And to get to another
23 something somebody brought up -- it'd put

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1 conversation is happening; otherwise, you
2 do lose that -- that public exchange,
3 like the Commission has been asked to
4 work on this issue, it's within their
5 wheelhouse, according to the regulations,
6 and someone stood up and said it; that's
7 a very public act. And a writing can --
8 can meet that as long as it's also open
9 and -- and available for people to say,
10 Okay, we see that exchange. So that's
11 sort of -- kind of what Mike was saying
12 but a little different.
13 MR. GLENN: Trey Glenn on behalf
14 of Business Council. And I can happily
15 say I have not read y'all's minutes in
16 about five years or so. But I'm
17 assuming, though, there's some mechanism
18 if we've got an industry person who wants
19 to say, ADEM Commission, there's a policy
20 and there's a rule coming out, I just
21 want you to be aware of it, much like
22 Mitch did today, there's something coming
23 out, I want to make sure you're aware of

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1 it. Good. I mean, that's good. Most of
2 my guys are running plants right now.
3 They can't -- they can't drop everything
4 and get down here and spend hours talking
5 to you about this stuff because they're
6 working and doing items they can't get
7 away from. So if that is the case, if
8 they wrote something very clearly and
9 said, Commissioners, I want you to be
10 aware of this, can y'all put that --
11 attach it to the record? I mean, as long
12 as you get it in a certain amount of time
13 and everything so, therefore, it's very
14 clear, there's no reason -- I mean, we
15 can point to it and say, You got this
16 letter. You can't ignore it. We're
17 concerned about coal ash as well and we
18 want to make sure it's fair and not, you
19 know, unnecessarily harmful jobs and the
20 like. But could you take that written
21 correspondence and put that in the record
22 so that it's publicly out there?
23 COMMITTEE CHAIRMAN PHILLIPS:

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1 personal presentations and appearing
2 before you, that that would then
3 substitute. And I strongly recommend
4 against that. Having that time to have
5 face-to-face, build relationships with
6 the EMC on issues is critically
7 important. We're losing that kind of
8 personal communication and connection in
9 our society in so many ways, and that's
10 really vitally important. Plus, there
11 are people who communicate in various
12 ways, and there are some people who may
13 communicate really well in writing and
14 there are other people who communicate
15 really well in conversation and directly.
16 There are some people who like to use
17 presentations where photographs might be
18 essential, and the rest of us often want
19 to hear as well what's being presented to
20 the Commission and be able to think about
21 that. And it's part of a community
22 conversation around environmental
23 conservation in the state. And so I

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1 Yeah. I'm sitting here listening to that
2 and I'm thinking I don't know if there's
3 anything that would prevent us from doing
4 it now. It's public --
5 MR. GLENN: Like you acknowledge
6 it or something at the meeting.
7 COMMITTEE CHAIRMAN PHILLIPS:
8 Yeah. I don't see any reason we couldn't
9 do that. Good suggestion. And I think
10 it gets to -- I don't remember if it was
11 Mike or -- the whole issue of kind of
12 that seamlessness that happens between
13 that exchange. Beth?
14 MS. STEWART: Beth Stewart,
15 Cahaba River Society. I agree that it
16 would be wonderful to be able to make
17 comments in writing and it would be
18 excellent if those would be recorded and
19 it would be excellent if there were
20 responses in writing. But I'm a little
21 uncomfortable. What I think I'm hearing
22 is some indicating that that would be a
23 substitute for coming down and making

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1 think it's very important to maintain
2 that, not to substitute the written. But
3 I think adding the written is really
4 valuable.
5 COMMITTEE CHAIRMAN PHILLIPS:
6 And, once again, while we don't
7 specifically say in the rule written --
8 written comments are always welcome,
9 written comments are always welcome. I
10 mean, maybe we need to be more deliberate
11 in the way we lay that out. But we would
12 always take written comments. I don't
13 know that at this point we've kind of
14 talked about whether we attached them to
15 the record or not like you suggested.
16 That's something I think we need to think
17 about.
18 MR. REID: Before we lose this
19 subject -- Mitch Reid -- I just would
20 like to take the opportunity to commend
21 ADEM and their e-file system, which is,
22 given our work with other agencies, state
23 and federal, the ability to -- to always

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1 have the record. I would certainly like
2 to see some improvements on the search
3 function of it, but the idea and the
4 ability is -- is leaps and bounds above
5 some others. I don't know if e-file is
6 the appropriate clearinghouse for EMC
7 documents going forward. I mean,
8 certainly I think saying we received this
9 letter on this topic in the intervening
10 time is something that would be helpful
11 on this -- you know, on that meeting.
12 But, you know, to sort of keep that in
13 the -- in the -- in storage, e-file is a
14 wonderful way of doing that with some
15 additional search capability, if we can
16 get that.

17 COMMITTEE CHAIRMAN PHILLIPS:
18 Lance, can you address that? I mean, is
19 that capability there?

20 MR. LeFLEUR: Yeah. We have
21 already on there Director's
22 correspondence. We also have the
23 Commission minutes and so forth on there.

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1 the citizens always have to come bring
2 you the problem that's going on in
3 Uniontown? Is there an overseer of ADEM
4 that goes around to check different
5 things? You know, like, for instance,
6 the water is leaking into whatever-
7 whatever or there's something going on,
8 you know, that's not right. Is there a
9 ground person like there's a water
10 person, there's a land person? Who does
11 that with ADEM? What do ADEM do? That's
12 what I'm asking. You know, we come in
13 and we say, This is going on. I'm trying
14 to get an understanding because I'm a
15 citizen, you know, from Uniontown, and we
16 deal with a lot of environmental
17 problems.

18 Okay. ADEM gives the permit, but
19 then you know it's a lot of things that's
20 not right in, you know, that whole thing.
21 But what I'm saying is, what does ADEM do
22 to -- I know a permit is okay, but if
23 it's the wrong kind of permit, what I'm

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1 There's a place that it can be slotted.
2 I don't think that's any problem.

3 COMMITTEE CHAIRMAN PHILLIPS:
4 Thanks. Have we kind of beat that one to
5 death or do you have anything else to say
6 about that one?

7 (No response.)

8 COMMITTEE CHAIRMAN PHILLIPS:
9 Okay. Any other big topic that jumps to
10 your mind before I throw one out?

11 MS. CALHOUN: I'd like to ask a
12 question.

13 COMMITTEE CHAIRMAN PHILLIPS:
14 Yes, ma'am.

15 MS. CALHOUN: Okay. You say you
16 guys give out permits; right?

17 COMMITTEE CHAIRMAN PHILLIPS:
18 Uh-huh.

19 MS. CALHOUN: Okay. What
20 procedures do you go through? Like,
21 Uniontown is a big environmental
22 injustice place. You know, we're always
23 dealing with problems. Why is it that we

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1 saying is, if it's right -- the person's
2 house is right there and then you go give
3 them permit to have a landfill -- we'll
4 just use that as an example -- what makes
5 it right to give a person -- give the
6 landowner a permit when it's going to be
7 environmental injustice or racial
8 injustice? You know, it's just too close
9 to a house. What kind of rules do y'all
10 have to say they don't need a permit
11 because it's too close to these people's
12 home? Does that person that goes
13 ground -- I'm not talking about on the
14 computer. Everybody's doing the
15 computer. But the 911 stuff don't really
16 direct you to my house, not in Uniontown.
17 You may go to 105 Jones, but you're not
18 going to be at 105 Jones because we don't
19 have a real -- so how do you determine
20 that the landowners can have a permit?
21 That's what I'm asking.

22 COMMITTEE CHAIRMAN PHILLIPS:
23 Well, we have rules and regulations that

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1 set whether or not something can be
2 permitted. So whether they can get a
3 permit is based on the rules and
4 regulations that are set by ADEM.
5 However, that doesn't necessarily include
6 location or placement, for example,
7 because if your local council or
8 commission has authorized land use --
9 that was the example I gave earlier --
10 then that's their jurisdiction to deal
11 with. Ours is to deal with the
12 environmental impacts of that. And we do
13 have a process. And once that permit is
14 issued, then ADEM is responsible for
15 making sure that whoever has that permit
16 is operating in compliance with that
17 permit.
18 MS. CALHOUN: Okay.
19 COMMITTEE CHAIRMAN PHILLIPS: The
20 best way we have to know whether
21 people -- because this is a big state and
22 a lot of people -- is when people tell us
23 that there's a problem. That's why we

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1 you know, evidently, there's going to be
2 some problems. So what I'm asking is,
3 why not, when you know that these -- that
4 there's always environmental problems,
5 why don't they do a second check?
6 MR. LeFLEUR: Well, normally if
7 it's generated from a complaint, we will
8 go out and investigate the complaint.
9 And if we find that there's some sort of
10 a violation, we'll take action to -- to
11 tell these people to correct the
12 violation. And then we go back and check
13 to see if they've actually done what they
14 were supposed to do. Now, we take -- we
15 do a number of inspections on sites where
16 there is no complaint. We just go out
17 and inspect to sample, to see if people
18 are doing what they're supposed to do.
19 Now, we don't do every site every, you
20 know, year. We try to go where the
21 highest risks are or where we've received
22 complaints. Now, we're not always
23 perfect. I can readily concede that.

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1 have an e-complaint system.
2 MS. CALHOUN: Okay. What about
3 ADEM, why not -- they're not going to do
4 a second look? You know, when you have a
5 project done, why don't they come back
6 and say, Well, let's see how well this is
7 working?
8 COMMITTEE CHAIRMAN PHILLIPS:
9 Well, they do have periodic inspections;
10 right? I mean, you're better at walking
11 through the process than I am because you
12 do it.
13 MR. LeFLEUR: Well, certainly.
14 People can file complaints either, like
15 you say, on the computer, but they can
16 also just call us up.
17 MS. CALHOUN: I mean, why do we
18 have to call y'all up and you're ADEM?
19 Why can't ADEM come out -- if they got a
20 new project going on, they just started
21 and you have a lot of complaints from
22 certain people from, like, from
23 California -- they're always coming. So

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1 But if our people are not being
2 responsive, then you can call me. I
3 don't -- I don't make the inspections,
4 but if somebody is not making an
5 inspection in your area, I can certainly
6 go and talk to those people and make sure
7 that they are. It's a communication sort
8 of thing and we don't want people to
9 suffer through things that they believe
10 are not the way they should be. But we
11 have to know about those things before we
12 can react.
13 COMMITTEE CHAIRMAN PHILLIPS: And
14 at the same time, as the Director said,
15 there is a schedule of doing inspections
16 even if there's not a complaint. But
17 there are just so many people at ADEM and
18 so many facilities that have to be
19 inspected, so it's a matter of time. So
20 it can be much quicker if somebody calls
21 and says there's a problem than
22 potentially if we have to wait till we
23 get a cycle where we're going to check on

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1 somebody. You know, we hope we get there
2 sooner, but if somebody sees something,
3 that's why we encourage those complaints.
4 MR. LeFLEUR: We've tried to
5 streamline the complaint process and some
6 people have access to computers and
7 certainly some do not, but if somebody
8 does have access to a computer -- they
9 can go to their library, for example, and
10 access their computer -- and the
11 e-complaint system, you don't have to say
12 your name or you can if you want to. If
13 you want to tell us your name, we'll get
14 back to you and we'll tell you what we
15 did. You can go on there and look and
16 see what's happened on that complaint day
17 by day. But that's sort of an education
18 communication process. We want to get
19 that word out.
20 COMMITTEE CHAIRMAN PHILLIPS: And
21 for us, it's an early-warning system.
22 It's a way for us --
23 MR. LeFLEUR: Oh, absolutely.

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1 COMMITTEE CHAIRMAN PHILLIPS: --
2 to hear about things sooner than we may
3 otherwise know. It may -- I'm sure it
4 feels like it takes forever and why
5 aren't we just out there looking anyway.
6 MR. LeFLEUR: Well, some
7 people -- some people are bothered by
8 complaints. We want complaints. The
9 reason we want complaints is we can go to
10 ten sites just randomly and we might find
11 one violation. If somebody sends us a
12 complaint, the chances are very good we
13 can go out one time and find a violation.
14 It saves us a lot of time and a lot of
15 effort if we can get people to file those
16 complaints. We want to encourage people
17 to use that system. And, please, you
18 know, we'd be happy to help you -- we
19 have an education process, a couple of
20 them, over in Uniontown to work through
21 that, but we can come back and have
22 another one or two of those.
23 MS. STOKES: Speaking of

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1 welcoming complaints, the idea of
2 allowing a public comment period after
3 presentation, such as Virginia, Oregon,
4 there are EMCs across the country that
5 allow a public comment period to give a
6 three-minute complaint for people -- for
7 people in the meeting. How do you guys
8 feel about that? What are your -- what
9 are your -- I know the Alabama
10 legislature, for example, when you have a
11 legislative committee hearing, it allows
12 for anybody who wants a public comment
13 period or public hearing to speak. You
14 have to ask for that in advance, but they
15 allow for that. So I was wondering what
16 your thoughts are.
17 COMMITTEE CHAIRMAN PHILLIPS:
18 When you said that you have to ask in
19 advance, I assume you mean you sign up at
20 the beginning of the meeting or --
21 MS. STOKES: Well, you sign up,
22 but then you -- anybody who wants to
23 request a public hearing, you can request

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1 it 24 hours in advance, depending on when
2 the notice was published. So you can
3 request a public hearing 24 hours in
4 advance, you know, based on when the
5 notice was -- for the hearing was, and
6 that's how it works there. So I wondered
7 if that would work --
8 COMMITTEE CHAIRMAN PHILLIPS: I'm
9 easily confused, so --
10 MS. STOKES: So what happens
11 is --
12 COMMITTEE CHAIRMAN PHILLIPS:
13 Before -- well, let me --
14 MS. STOKES: Yeah.
15 COMMITTEE CHAIRMAN PHILLIPS: --
16 explain why I'm confused --
17 MS. STOKES: Okay.
18 COMMITTEE CHAIRMAN PHILLIPS: --
19 and maybe that will help. I thought we
20 were -- you started with kind of an open
21 get up and say three minutes from anybody
22 that's in the room.
23 MS. STOKES: Right.

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1 COMMITTEE CHAIRMAN PHILLIPS: And
2 now we've kind of progressed to
3 requesting a public hearing. Which one
4 are we dealing with?
5 MS. STOKES: Well, they would be
6 one and the same, really. I mean, I
7 guess my -- any way you want to do it,
8 because y'all are obviously the decision-
9 makers. So it would be you could do
10 where people sign up when they get here
11 to speak three minutes at the end of --
12 at the end of the meeting or you can do
13 it where somebody if they feel like
14 there's going to be a lot of people to
15 discuss an issue can request a public
16 hearing 24 hours in advance of the
17 meeting. However y'all wanted to do it.
18 My only point is, how do you feel about
19 allowing people, anybody, who wants to
20 register a complaint to speak at the end
21 of the meeting? That would be my only --
22 that would be the goal, to get people --
23 you don't have to register 14 days or

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1 repeal rules and we set environmental
2 policy. So if your complaint is about
3 one of those three items, I want to hear
4 about it. If your complaint is, I've
5 complained to him for six months and he
6 hasn't done anything about it, we want to
7 hear it, because that's one of our
8 responsibilities. But if you're coming
9 before us to say -- and this has
10 happened -- Eva, this has happened --
11 we've got a complaint about an
12 environmental issue and then we ask the
13 question have you talked to the
14 Department, the answer is no.
15 So for us, you know, our immediate
16 turn for a real environmental complaint
17 is has it gone through a process where
18 the Department's been engaged? If they
19 have and you're unhappy with the outcome,
20 we want to hear it. If you have and
21 you're very happy with the outcome, we'd
22 love to hear that, too. But if it's to
23 really tell us for the first time that --

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1 seven days in advance to allow the public
2 to speak.
3 COMMITTEE CHAIRMAN PHILLIPS: Do
4 you want to jump in or I'll start?
5 MS. MERRITT: You can start.
6 COMMITTEE CHAIRMAN PHILLIPS: I'm
7 all for the public speaking, but I'm for
8 the public speaking in things that we can
9 do something about. You say somebody
10 wants to make a complaint. We would hope
11 that if they really had complaints they
12 would have dealt with the Department
13 prior to a Commission meeting with a
14 complaint that the Department was working
15 toward resolving, either determining that
16 there really was a violation or, yeah,
17 there's something but it's not really a
18 permit violation that we need -- that we
19 can do much about other than trying to
20 assist people.
21 If someone's before our Commission,
22 we hold the Director accountable for the
23 Department. We promulgate, modify,

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1 that somebody's discharging something off
2 their property onto your property, the
3 first question we're going to ask is have
4 you talked to the Department; and if the
5 answer is no, we're going to ask the
6 Director to get with you right after the
7 meeting.
8 So from the standpoint of hearing
9 that, I want to hear it. But it's going
10 to be a much more efficient process for
11 you if it's a complaint that the
12 department should be dealing with that
13 you go to the Department first.
14 I'm intrigued by the concept of the
15 three-minute period. I think we've
16 always -- I mean, the real issue for us
17 is managing the meeting, and our meetings
18 last short times and sometimes they last
19 long. And for us to be prepared -- and
20 someone said this earlier -- I don't
21 recall whom -- said, you know, sometimes
22 maybe you don't have to respond to it
23 right there in that meeting and you just

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1 let it go and maybe at the next meeting
2 you have to do that. I don't think we've
3 done a very effective job of doing that.
4 I think we try to -- if somebody comes to
5 us, we kind of take it on and we try to
6 deal with it right then. Maybe we need
7 to relax that a little bit. But it's
8 managing how many people do we hear from
9 in a day.
10 And maybe it's our perception --
11 maybe it's the wrong perception -- that
12 there's this thought that if somebody's
13 really got an issue that they're
14 passionate about that the more people
15 that they put in front of us and the more
16 times they tell us that it's a problem
17 that it makes it more significant. And
18 to me it doesn't matter if one person
19 tells me or ten people tell me about the
20 same complaint/issue. As long as it's in
21 my wheelhouse and responsibility, I weigh
22 them the same.
23 So what we're trying to do is

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1 balance management of a meeting and
2 giving people the opportunity to talk
3 while at the same time not going through
4 an hour -- and it's been a long time
5 since it's happened, but it has happened,
6 where we've had many, many people who
7 want to come up and tell us about the
8 same thing. And we hear it, but then we
9 still have the struggle -- and this is
10 what really started this whole process
11 with Commissioner Richardson -- is I want
12 to help, I want to do something about
13 them, what do I do differently so that I
14 can do something about it.
15 So do you think if we said, Okay,
16 we've got people that have responded in
17 writing, we made that a part of the
18 record, we've got someone who wants to
19 make a presentation -- coal ash, like you
20 did today -- we've got someone who's kind
21 of gotten on the agenda to do that, is
22 going before the Commission, and then at
23 the end we say, And for any of you that

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1 have signed up to talk for two or three
2 minutes, will that be productive for
3 people?
4 MS. STOKES: Absolutely.
5 COMMITTEE CHAIRMAN PHILLIPS: As
6 long as it's around the areas where we
7 can --
8 MS. STOKES: Right. Sure. Make
9 that a rule.
10 MR. REID: In preparing for --
11 for a presentation today, I wanted to
12 have a slide show that had some pictures
13 and sort of put some thought into that,
14 that -- you know, and I knew I had a ten-
15 minute block that I wanted to fill. That
16 wouldn't, I don't think, personally, be
17 appropriate for me to show up with a
18 PowerPoint and say, I'd like to get on
19 the agenda for my ten-minute
20 presentation, you know, because that -- I
21 mean, as far as my personal expectation
22 of being able to get that in, it would
23 just -- I don't think I should expect

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1 that.
2 So I do think that there is a role
3 for saying, I would like to be on the
4 agenda for the -- an allotted amount of
5 time -- ten minutes is a fair amount to
6 me -- and I would expect that I would
7 provide that if I was going to use some
8 sort of aid like a PowerPoint that I
9 would send that in ahead of time so we're
10 not trying to load that in.
11 I also think that there can be a
12 role for I'm -- I've got an issue and I'd
13 like to just say something about it at
14 the end of a meeting and sign up. My --
15 my sense of the way that that would work,
16 if I were setting something up, would be
17 that there was a sign-in sheet that said,
18 you know, here's -- here's sort of the
19 requirements. If you've got something on
20 that subject, please sign up. And if --
21 you know, to the extent that there's time
22 at the end of the meeting, I think the
23 Commission should absolutely be able to

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1 say we've had -- we've got five appeals
2 that we had to hear today plus three
3 rulemakings that ADEM brought before me
4 plus two people who signed up ahead of
5 time with presentations, we're just out
6 of time for that meeting.
7 I think -- and I think that also
8 saying that there is -- that public
9 comment for people signing up can be
10 limited to, you know, 20 minutes at the
11 end of the meeting, 10 minutes, 30
12 minutes, or whatever is the appropriate
13 time to say we're not going to stay here
14 all day because 400 people have signed
15 up. I mean, if you -- using the example
16 of the Legislature, they take in a
17 sign-in sheet and it's for and against,
18 because that's sort of the nature of that
19 game, but it's for and against to the
20 extent that there's time allotted. You
21 may have hundreds of people signed up
22 against a bill, two people signed up for.
23 Those X hundred people are not all going

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1 MR. REID: That's always the --
2 that's why lawyers get involved.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 That was a good topic. Thank you. Yes,
5 ma'am?
6 MS. LONG: Ellis Long, Black Belt
7 Citizens. Going back to the idea of
8 sending in a presentation and then
9 getting a response before the meeting
10 that might tell you that it's okay to
11 come this meeting or maybe we'd have to
12 put it off till the next meeting, to me
13 that's not very practical, because some
14 of the issues are more urgent than that.
15 And so I would suggest that when Debi
16 gets the presentation -- and we've always
17 sent ours by e-mail. I didn't realize
18 that was unusual. But, anyway --
19 COMMITTEE CHAIRMAN PHILLIPS: I
20 think getting the document is not
21 unusual, by e-mail.
22 COMMISSION CHAIRMAN BROWN: The
23 request comes by fax.

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1 to get to speak. It's only going to be
2 the people who signed up first. If you
3 want to come back -- certainly if you
4 want to get on the agenda, let us know
5 ahead of time; that's the best and
6 preferred way of doing something. And,
7 also, I think every time that there is a
8 chance to sign up there should also be
9 this is what we can hear, this is what
10 we're -- this is what we're here for, so
11 that it -- so someone's saying I want
12 to --
13 COMMITTEE CHAIRMAN PHILLIPS: So
14 it can be managed.
15 MR. REID: Right. I think
16 that's -- I mean, think -- there has to
17 be -- and David Ludder, I think, made
18 that comment in his letter -- that
19 reasonable restrictions are absolutely
20 necessary so that you can make this
21 meeting work.
22 COMMITTEE CHAIRMAN PHILLIPS:
23 Just the definition of "reasonable."

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1 MS. LONG: The request. When she
2 gets it, I know she sends it to the
3 Chair, and I think that I've understood
4 that the Chair sends it around to the
5 other members of the Commission. Is that
6 not right? Yes?
7 COMMITTEE CHAIRMAN PHILLIPS:
8 Chair --
9 COMMISSION CHAIRMAN BROWN: I
10 think Debi does it, but --
11 COMMITTEE CHAIRMAN PHILLIPS:
12 About what his disposition of it is, yes.
13 MS. LONG: Yeah. What I'm trying
14 to say is, the Chair either recommends
15 that the person can speak or recommends
16 against it. So I don't see really why
17 the whole Commission couldn't make a
18 decision by getting the presentation.
19 Why couldn't they make a decision ahead
20 of time so that the person -- if the
21 person is going to be allowed to speak,
22 they could get a final decision?
23 COMMISSION CHAIRMAN BROWN: I

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1 think -- I think the law requires us to
2 have a meeting to have a decision.
3 MS. LONG: Does it?
4 COMMITTEE CHAIRMAN PHILLIPS: To
5 take an action.
6 COMMISSION CHAIRMAN BROWN: To
7 take an action. So I can make --
8 MS. LONG: You have to actually
9 have a physical meeting?
10 MR. HOWLE: You have to have a
11 quorum.
12 COMMISSION CHAIRMAN BROWN: You
13 have to have a quorum. You have to have
14 a meeting. So I can make a
15 recommendation or announce that I will
16 recommend it. And I think I've only been
17 bucked once.
18 MS. DILLARD: Not to pull us too
19 far down in the weeds, but our board has
20 a similar policy and we have authorizing
21 regulations that allow an e-mail vote to
22 be taken if everyone unanimously agrees
23 that there can be an e-mail vote without

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1 a meeting, and then there has to be a
2 quorum for the decision. So there might
3 be a way -- and obviously Robert would
4 know this, whether y'all have the ability
5 to do that -- or you could always ask
6 for, you know, the Legislature if you
7 don't have the ability to do that under
8 your regulations and can't -- can't
9 change that, you can ask for help from
10 the Legislature, because at the end of
11 the day, what you want to do is make your
12 process work for you, obviously, but also
13 work for the citizens.
14 MR. HOWLE: Let me weigh in on
15 that. If -- I'm Joe Howle, Vulcan
16 Materials Company. That would require
17 certainly changing the Sunshine Laws in
18 the state of Alabama. And, you know, one
19 of the -- and just so you know, I'm on
20 the Water Commission for the State of
21 Alabama, so we're -- we fall under the
22 same rules that these guys do, from a
23 meeting standpoint. One of the things

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1 that's important about those rules is
2 that we do have an open and public
3 process when decisions are made, when
4 votes are taken, and to do it by e-mail,
5 even though, you know, from a technology
6 standpoint that that's very achievable --
7 and I understand that a group like yours
8 would do that -- it makes things work a
9 lot easier.
10 From a public standpoint, though,
11 and a public group, a commission, I just
12 don't see that that's tenable, and the
13 reason being is the threat of -- of
14 accusations. And I certainly know that
15 none of these guys up here want to be in
16 front of the Ethics Commission because
17 somebody sent in a complaint about an
18 e-mail vote that they had or maybe
19 somebody hacks their e-mail account or,
20 you know, all these different things. So
21 I think that the Sunshine Law itself is
22 in place for a very good reason, and --
23 to take these public votes so that you

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1 are -- you're in the spotlight when you
2 take those votes. That's just --
3 MS. DILLARD: I think your point
4 is well taken, but I also point out there
5 are different kinds of votes. There's
6 substantive votes and there are votes
7 that fall more on administrative or the
8 administrative kind of aspect, and to
9 me -- and the Commission obviously might
10 look at this differently -- if you are
11 going to have a robust public
12 participation and public comment process,
13 then these sorts of decisions you can't
14 and won't be discriminating on people's
15 viewpoint or the content of their
16 presentation or what they want to say; it
17 will just be a topic and you either want
18 to hear it or you don't. But I do think
19 you've raised some good concerns about,
20 you know, some other things in play that
21 might make it more complicated.
22 MR. HOWLE: I don't think that
23 the law discriminates as to what you can

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1 and can't do. You have to --
2 COMMITTEE CHAIRMAN PHILLIPS:
3 Yes, please.
4 MS. TROTMAN: Any kind of -- I'm
5 Jessica Trotman. I'm with Rushton-
6 Stakely, and we do a lot with the APA,
7 the Alabama Press Association. And
8 Dennis Bailey, who I'm here for, I
9 believe, was a big help with the Sunshine
10 Laws when they were admitted back in
11 2005. Regardless, this is a government
12 agency. Any kind of vote, any kind of
13 rule or whatever it is that you guys
14 make, it has to be made in an open forum.
15 Even discussions about what is going to
16 be voted on has to be open to the public.
17 And the whole purpose, like he said,
18 behind the Sunshine Law is to make sure
19 that the agency isn't viewed as somebody
20 having closed-door meetings so, you know,
21 nobody can come in and say you're doing
22 something unethical or you're doing
23 something behind closed doors and you

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1 given after that law was passed, we were
2 told there was no such thing as a
3 distinction between a decision.
4 MS. DILLARD: Okay.
5 COMMITTEE CHAIRMAN PHILLIPS:
6 That a decision was a public meeting
7 event regardless of what the decision
8 was. So we have abided by that. And he
9 makes sure.
10 MS. LOWRY: So that brings us
11 back to -- this is Cindy with Rivers
12 Alliance. That brings us back to the
13 problem that she was talking about, is
14 how to -- how do citizens prepare for
15 potentially being denied when they get
16 here? And, you know, they're going to
17 take off work to get here potentially.
18 You know, I mean, obviously it's not a
19 problem for me. I'm a staff
20 organization. I think Mike's suggestion
21 was potentially -- you know, recommend
22 that we can't promise you'll be done
23 at -- you know, we'll vote at this

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1 didn't give another person an opportunity
2 to come in and speak and give their
3 viewpoint. It's kind of like having
4 serial meetings, going from office to
5 office asking people, Well, what's your
6 opinion, how are you going to vote, and
7 going ahead and deciding how you're going
8 to vote before you actually submit it to
9 the public for them to understand what
10 you're dealing and why you're voting on
11 that.
12 But, I mean, it's state law. So
13 right now there's no way possible to have
14 an e-mail vote for a state agency. That
15 would be a direct violation and anything
16 you voted on would be overturned and
17 subject to, you know, lawsuits and all
18 that stuff, not something you definitely
19 want.
20 COMMITTEE CHAIRMAN PHILLIPS: You
21 guys most certainly said it better than I
22 was going to say it. All I was going to
23 say is through the training that we were

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1 meeting, you can speak at the next
2 meeting, if it's not an urgent issue.
3 But if it's a more urgent issue, that's
4 still -- and I believe that the
5 Commissioners have also brought up a
6 concern about the Chair being -- sort of
7 recommending approval.
8 COMMITTEE CHAIRMAN PHILLIPS: I
9 think their concern is that we're putting
10 the Chair in the middle of something that
11 he's making a recommendation that --
12 MS. LOWRY: Yeah.
13 COMMITTEE CHAIRMAN PHILLIPS: --
14 the Commission needs to act upon. I'm
15 not speaking for all the Commissioners.
16 I'm speaking for me. But what that
17 basically does is, if the Commissioner
18 sits there and really doesn't want to
19 hear it, truly doesn't believe that
20 that's a good recommendation -- no
21 offense -- that they have a right to
22 vote, that they don't agree with that
23 recommendation. And that puts the

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1 Chairman -- he makes the recommendation,
2 but he really doesn't make the decision
3 on who speaks before the Commission.
4 MS. LOWRY: So not being an
5 attorney and exploring this concept, the
6 Chair is allowed to make a
7 recommendation. Can the other
8 Commissioners just also send in a letter
9 that says I would recommend this be
10 approved and it would all just be
11 individual letters saying
12 recommendations?
13 COMMITTEE CHAIRMAN PHILLIPS:
14 Well, I mean, I'm not a lawyer either and
15 I'm not going to practice law, but I
16 think the reason we did that was to
17 manage meetings so that information came
18 to Commissioners prior to a meeting.
19 Now, I'm going to throw -- I'm going to
20 get back to your urgency one, because I
21 think "urgency" was the basis of yours.
22 We have time. I think, Mike, your idea
23 is a good model, maybe, to go to, much

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1 director. I don't see y'all doing urgent
2 day-to-day --
3 COMMITTEE CHAIRMAN PHILLIPS: And
4 maybe that's the answer. But when you're
5 talking about the other, what I was going
6 to throw out there is we also have this
7 issue that we do not get anyone telling
8 us they want to talk to us until the
9 deadline that we set that says you have
10 to tell us by this day, and then there's
11 a flood, a flood as in two, three, four,
12 sometimes five. But everybody then wants
13 to tell us. And the reason we moved it
14 where we did was so that we actually have
15 time, because if we put it 24 hours
16 before, we'd get it 24 hours before,
17 would be our perception, because that's
18 what happens now. We get it -- how many
19 days, Debi? Fourteen?
20 MS. THOMAS: Yes.
21 COMMITTEE CHAIRMAN PHILLIPS:
22 Fourteen days before we need to know, and
23 that's when we find out, for the most

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1 more deliberate in preparing and having
2 the person who comes before us prepared
3 where we can do more of a dialogue.
4 An urgency, though, I think we -- if
5 it's really urgent, we need to be acting
6 on something. But the Chair does have
7 the right to call a special meeting.
8 MR. MULLEN: Mike Mullen,
9 Choctawhatchee River. I don't understand
10 what the urgency is. If it's urgent,
11 there's an environmental threat or
12 something, then it goes to the
13 Department.
14 COMMITTEE CHAIRMAN PHILLIPS: I would
15 hope it would go to the Department.
16 MR. MULLEN: I don't see what the
17 Commission does as being urgent.
18 COMMITTEE CHAIRMAN PHILLIPS:
19 It's not day-to-day extreme. It really
20 should be the Director dealing with
21 those. If it's urgent to the point that
22 we would need to meet and make a --
23 MR. MULLEN: Y'all are managing a

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1 part.
2 MR. MULLEN: Mike Mullen again,
3 Choctawhatchee Riverkeeper. I'm probably
4 saying too much, but one way to -- I
5 think a lot of things that come before
6 you are policy or policy-related, that
7 one way that we're not making quite that
8 many presentations that would be
9 productive is to once or twice a year --
10 I assume there's a policy committee or if
11 there isn't, perhaps there should be a
12 policy commission --
13 COMMITTEE CHAIRMAN PHILLIPS: The
14 Rulemaking Committee. It's this one.
15 MR. MULLEN: But maybe once a
16 year you set aside a meeting for people
17 to bring policy things, everything that
18 people around this table may think is
19 important policy that may not be coming
20 down as an EPA directive. It may be
21 something unique to Alabama. And say
22 occasionally, once a year, circulate and
23 see if there's enough interest and maybe

COMMITTEE

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1 do that and have some things done in a
2 more constructive -- like we're doing
3 today, more constructive manner.
4 COMMITTEE CHAIRMAN PHILLIPS:
5 That's a good point. And I think maybe
6 the answer to the urgency is really what
7 is it that would come before us that
8 would be so urgent that we would need --
9 I mean, we do have mechanisms for
10 gathering the Commission quickly, but I
11 don't -- I don't know of much of anything
12 that's ever come before us that needed
13 something that quickly.
14 MS. LONG: Well, we thought it
15 was urgent that toxic wastewater was
16 going into the creeks around our town,
17 but I guess it's not so urgent because
18 it's been happening for decades.
19 COMMITTEE CHAIRMAN PHILLIPS: And
20 you've called on the Department to deal
21 with that?
22 MS. LONG: Yeah. For a long
23 time. But, you know, just the idea of

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1 waiting another two months since you -- I
2 think you-all meet only every two months;
3 right?
4 COMMITTEE CHAIRMAN PHILLIPS:
5 That's right, every other month.
6 MS. LONG: That seems like a long
7 time to have to wait when you prepared
8 for one month, a certain month.
9 COMMITTEE CHAIRMAN PHILLIPS:
10 Well, I mean, if we do something like
11 Mr. Mullen said, I mean, that could mean
12 that we get it, we talk about it, and we
13 decide, and then it's another two months.
14 MS. STOKES: Right. It'd be four
15 months.
16 MS. LOWRY: Yeah. That case
17 where they feel they've tried to address
18 it with ADEM and it hasn't been addressed
19 satisfactory would be, I guess, the one
20 where it would be more urgency to the
21 person that's involved.
22 COMMITTEE CHAIRMAN PHILLIPS: But
23 I do believe that in that case, if

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1 something came to the Chair, the Chair
2 would have that conversation. And if --
3 I'm not putting words in your mouth, so
4 you shouldn't have stayed.
5 COMMISSION CHAIRMAN BROWN: You
6 mean I would make a phone call and read
7 somebody the riot act?
8 COMMITTEE CHAIRMAN PHILLIPS:
9 Yeah, I do. And if it necessitated
10 anything beyond that, you would take that
11 into consideration.
12 MR. REID: Just to dovetail in on
13 that. Mitch Reid. The idea of the
14 recommendation from the Chair I do see as
15 serving a purpose not to say that the
16 Commissioners should or should not vote
17 on it. I think that the voting
18 process -- what the recommendation does
19 for me is, is allows me to at least get a
20 first-blush idea of whether I've met the
21 criteria. If the Chair says, I'm not
22 going to recommend this because this
23 doesn't fall under the purview, it still

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1 has to come to a vote of the EMC, I would
2 imagine, and the Chair would say my -- my
3 recommendation is that it doesn't meet
4 the vote or meet the requirements.
5 Also, under the current way rules
6 are set up, the Chair lets you know that
7 you didn't meet the deadline or if it
8 came in. So we had a situation where we
9 mailed something that we thought would be
10 received in the correct amount of time
11 and for whatever reason didn't get in,
12 which is probably saying more about the
13 federal postal service than anything.
14 The fact is, is that the recommended --
15 the notification from the Chair about us
16 being tardy with meeting the rules kept
17 us from bringing down a whole host of
18 people to come down and make a
19 presentation that was denied,
20 essentially. Had we not got that notice
21 and had it been -- somebody has to be the
22 gatekeeper to say, This looks like it's
23 what we're looking for.

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1 And I -- I completely understand
2 that my recommendation to have people
3 sign up outside is going to monkey with
4 that, but for a presentation you're
5 asking for a full ten minutes, that sort
6 of thing, that seems fair to have
7 somebody say, you know, this is really a
8 question for ADEM. On that note, the --
9 there are times where ADEM, the Director
10 or his staff, should be brought in ahead
11 of time, the situation where you have
12 asked for relief of an environmental
13 problem numerous times and you don't feel
14 like action is taken, then you want to
15 speak to the EMC. You're essentially
16 asking the EMC to exercise its oversight
17 authority over the Director.
18 On other cases where you're asking
19 the EMC to develop environmental policy,
20 there is no reason for me to go to ADEM
21 and ask them about what the EMC should do
22 on environmental policy as far as the
23 rules read. I mean, it may be good

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1 Were taken. Yeah.
2 MR. REID: -- were taken. So I
3 just want to make sure that if it's
4 within the wheelhouse of the EMC,
5 development of environmental policy,
6 well, that's fully in that wheelhouse.
7 COMMITTEE CHAIRMAN PHILLIPS: I
8 mean, unfortunate --
9 MR. REID: I just jumped two
10 subjects there, so I'm sorry.
11 COMMITTEE CHAIRMAN PHILLIPS: I'm
12 going to kind of go back to the other
13 one, the first one. On behalf of
14 Commissioner Richardson -- and I'm not
15 speaking for him. Just from what we've
16 heard him say to us in meetings. And you
17 guys have heard some of this. I don't
18 believe that Commissioner Richardson's
19 concern is that there shouldn't be an
20 evaluation of someone's request and how
21 it meets the requirements of the rule.
22 He thinks it's unfair that the chairman
23 gets put in the position of being the one

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1 practice. They're smart people. I would
2 not talk about environmental or water
3 policy without going to Glenda and trying
4 to figure out what's going on. But as
5 far as just who makes the rules, the
6 requirement that I go to ADEM and exhaust
7 that avenue before going to the EMC just
8 really doesn't fit in with the way that
9 it's set up.
10 COMMITTEE CHAIRMAN PHILLIPS: I
11 don't think I was -- if you're referring
12 to my reference to that, mine was more
13 toward the complaints of environmental
14 issues.
15 MR. REID: This is in the -- in
16 the sort of recommended proposed actions
17 that we read on -- online --
18 COMMITTEE CHAIRMAN PHILLIPS: Oh,
19 in the notice?
20 MR. REID: -- that all reasonable
21 avenues of approach or something with
22 ADEM --
23 COMMITTEE CHAIRMAN PHILLIPS:

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1 that has to do that because he believes
2 that the criteria are objective enough
3 that, frankly, Debi could do that, I
4 mean, go through the requirements, as she
5 really does anyway. And what -- I mean,
6 the Chair making a recommendation, Debi
7 sends to all the Commissioners, this
8 requirement came in, met the timeline,
9 has the materials, covers the areas that
10 the EMC is responsible for checked. It's
11 really at that point we all can vote on
12 it at the meeting, so it really -- I
13 mean, you said you really like that
14 recommendation from the Chair, but he's
15 really doing what she could do.
16 MR. REID: I like the gatekeeper.
17 COMMITTEE CHAIRMAN PHILLIPS:
18 Okay. All right. So it doesn't really
19 matter --
20 MR. REID: -- if it's Chairman
21 Brown or you or Robert.
22 COMMITTEE CHAIRMAN PHILLIPS:
23 That helps me, because I was wondering

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1 the merit of really continuing to have
2 the Chair do it or just let Debi give it
3 to us as this one meets, this one
4 doesn't.
5 MR. TAMBLING: The Commission
6 office.
7 COMMITTEE CHAIRMAN PHILLIPS:
8 Yeah, the Commission office. Yes, sir.
9 MR. EATON: Ben Eaton, Black Belt
10 Citizens. On the many different ways of
11 making the request, whether it's a
12 presentation, e-mail, letter, or e-file,
13 I would like to ask if ADEM can increase
14 their files so that a citizen can send a
15 photo that will -- you know, we all heard
16 that a picture is worth a thousand words.
17 But when the files are so small that one
18 can't send that picture to actually
19 explain or demonstrate what they're
20 saying, I'm asking if they can consider
21 increasing --
22 COMMITTEE CHAIRMAN PHILLIPS: Is
23 that an issue that we've encountered?

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1 We ought to be able to do it as long as
2 the Internet will allow us to do that.
3 MR. LeFLEUR: We are limited by
4 transmission capabilities.
5 COMMITTEE CHAIRMAN PHILLIPS:
6 And, Marilyn, when you look into it,
7 think of a way or see if there's a -- I
8 call it Drop Box now, but it used to be
9 called something else. I just can't
10 remember what it was. But basically
11 where you can upload to something that
12 takes the pressure -- because I know you
13 use the Internet for your day-to-day. So
14 see if there's at least someplace where
15 they can be uploaded to be retrieved or
16 dumped at a more reasonable time for you.
17 Yes, ma'am.
18 MS. CALHOUN: Just a question.
19 Like, can y'all consider video
20 presentation? You know, like, for
21 instance -- I'm not saying putting the
22 job on y'all, but sometimes you can take
23 out time, like a person just want to

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1 (Multiple people speaking.)
2 MR. LeFLEUR: We have the ability
3 to upload photographs. I don't know what
4 the outer limit on size of file.
5 MS. LONG: Two kilobytes.
6 MR. EATON: Two.
7 MS. LONG: Two kilobytes?
8 MR. EATON: Two megabytes.
9 MS. LONG: That's the limit. And
10 that's too small.
11 MR. LeFLEUR: Of course, you
12 could make multiple entries. Or if you
13 would like to contact us about providing
14 those photographs in another format,
15 either an e-mail or something like that.
16 You know, if you call, we can make
17 arrangements to deal with the situation.
18 I don't know. Can we go higher than two
19 megabytes?
20 MS. ELLIOTT: Maybe.
21 MR. JOHNSTON: Please. Please.
22 MS. ELLIOTT: I don't know the
23 answer to that, but I'll look into it.

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1 video what they wanted to say to you and
2 you can have a special meeting that you
3 can just view that?
4 COMMITTEE CHAIRMAN PHILLIPS:
5 We've actually had videos come before us
6 where people played a video; the
7 individual wasn't at the meeting and they
8 just played the video.
9 MS. CALHOUN: So, you know,
10 because sometimes people are not --
11 COMMITTEE CHAIRMAN PHILLIPS: So
12 we have that capability.
13 MS. CALHOUN: -- comfortable in
14 doing presentations.
15 COMMITTEE CHAIRMAN PHILLIPS:
16 Right.
17 MS. CALHOUN: And that saves
18 time. And then you have a limit, too.
19 Well, you respond to their presentation
20 within so many days.
21 COMMITTEE CHAIRMAN PHILLIPS:
22 Yeah. Yeah, I think we can do that. I
23 think -- I know we've accommodated that

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1 in the past.
2 MS. CALHOUN: That will save time
3 for -- you know, you say you got so many
4 people you have to tend to.
5 COMMITTEE CHAIRMAN PHILLIPS:
6 Right.
7 MS. CALHOUN: So if they send in,
8 you know, like a presentation that Ben
9 had one time, that he could just be
10 talking about it. Not no long one. You
11 have a limit of time how long you can
12 talk and get to a point, you know. And
13 so the, you know, Commissioners and the
14 Chairman could video -- I mean, you know,
15 view it.
16 COMMITTEE CHAIRMAN PHILLIPS:
17 View it, yeah.
18 MS. CALHOUN: And then make a
19 decision within so many days.
20 COMMITTEE CHAIRMAN PHILLIPS: I
21 think we have that capability to do that,
22 so yes, I think that's something we need
23 to take as part of this.

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1 But let me ask a question relative
2 to that, because we've kind of -- we've
3 talked about this item as a piece of
4 everything that's been said, and that's
5 the response. What is the expectation
6 that you guys have -- business,
7 environmental, citizens -- of when you
8 bring something to the Commission around
9 policy, rules, regulations, the
10 Department, what type of response are you
11 looking for?
12 MS. CALHOUN: Action.
13 COMMITTEE CHAIRMAN PHILLIPS:
14 Action. That's a good word.
15 MS. LONG: Solve the problem.
16 MR. JOHNSTON: Yeah. And more
17 response from -- Adam Johnston. I feel
18 like part of the -- part of the initial
19 response from Commissioner -- I believe
20 it was Richardson, and he's not here. I
21 wish he was able to be here.
22 COMMITTEE CHAIRMAN PHILLIPS: He
23 really wanted to be.

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1 MR. JOHNSTON: Yeah, because he
2 was one of the first person who made
3 public comments in regards to some of
4 these things that y'all brought up, and
5 one it seemed like he was -- he was
6 interested in the amount of times
7 individual organizations were coming in
8 front of you, very much similar to what
9 your comment was. And I see it very,
10 very differently, and I feel like a
11 citizen or an organization or a community
12 should be able to come in front of you
13 every single time until they feel that
14 situation has been dealt with adequately,
15 and that requires a response and followup
16 from the EMC on what the Director and his
17 agency is actually doing to go back to
18 the community and actually deal with
19 these issues. And we're not seeing that
20 one, I don't think, adequately, from
21 ADEM's stance on complaints. That's a
22 whole other situation.
23 But on the issue of the EMC actually

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1 addressing public issues, what is being
2 done after this? And I don't feel like
3 the Director's rebuttal is a chance to
4 dictate that. And I think that there
5 should be a very formal stance on how the
6 EMC follows up with these situations,
7 what the agency is doing. And not just a
8 rebuttal from the Director right there,
9 an actual written piece of whatever we're
10 talking about. Have something written
11 that you can put on the file that says
12 that we went and we did this
13 investigation, listening sessions,
14 monitoring, whatever it needs to be to --
15 so that the citizens aren't coming up
16 here every two months with the same type
17 of complaints because there's not
18 satisfactory issues being done with the
19 Department and these communities.
20 And my experience has been that, is
21 that the citizens are coming up here
22 because they're not being dealt with in a
23 very satisfactory manner. And so I would

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1 see that there be an unlimited amount of
2 opportunity for any citizen group, any
3 individual, to continue to come up here
4 until their situation is, you know,
5 sufficiently dealt with. And so, yeah,
6 it might be -- you know, maybe it's
7 limiting in time if you have a community
8 come, next time the community is still
9 coming, but to me, there's a need for the
10 community to come. They wouldn't be
11 coming up here and addressing and driving
12 miles out of the way and leaving family
13 members if there wasn't an issue that
14 needed to be addressed. And to be able
15 to then go back home and not have the
16 Commission follow back up, to be able to
17 say, Well, thank you for coming in, thank
18 you for taking time out of your day to
19 address these complaints, we have
20 followed up on these matters with our
21 Department. I mean, can we have that? I
22 mean, that should be --
23 COMMITTEE CHAIRMAN PHILLIPS:

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1 That's what I asked. What should we
2 have?
3 MR. JOHNSTON: That should be the
4 least. You know, we should at least have
5 that.
6 COMMITTEE CHAIRMAN PHILLIPS: So
7 what's the most? I mean, you're giving
8 me the least. What's the most?
9 MS. SHAEFFER: Final resolution.
10 Solve the problem.
11 MR. LeFLEUR: If I might, I --
12 Uniontown is a special problem that's
13 come up time after time.
14 MS. SHAEFFER: Well, why has it?
15 MR. LeFLEUR: And there seems to
16 be some miscommunication. The people
17 responsible for correcting the problem is
18 not ADEM. It's the elected officials in
19 Uniontown. And to continually bring the
20 problem to ADEM to solve is -- you're
21 asking the Department to do something
22 that is not within its authority to do.
23 Now, we work with people. And sometimes

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1 that answer is not a very satisfactory
2 answer to people, but it happens to be
3 the correct answer. And for people to
4 not like the answer and keep coming is
5 not as productive as it might be.
6 COMMITTEE CHAIRMAN PHILLIPS:
7 Before anybody jumps in -- because I see
8 hands everywhere -- remember the purpose
9 of the meeting today.
10 MR. LeFLEUR: And I'm sorry. I
11 was out of line.
12 COMMITTEE CHAIRMAN PHILLIPS: The
13 purpose of the meeting today is for you
14 to share with this Committee what you
15 believe would be better. We're not going
16 to make a decision today. I said that
17 when I began the meeting. I want to hear
18 everything, though. It's more -- I heard
19 resolution. I got it. But I'm not
20 really going to take the time to debate
21 the issue of Uniontown other than an
22 example of what we could do differently
23 that would make our public-comment

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1 sessions better. So with that said, who
2 wants to talk?
3 MS. CALHOUN: I do again.
4 COMMITTEE CHAIRMAN PHILLIPS:
5 Yes, ma'am.
6 MS. CALHOUN: Look, I just want
7 to ask a -- when you're in a violation
8 and then you can't afford to fix it and
9 then a violation continue and continue
10 and continue and you never have the money
11 to fix it, what do the ADEM do? I mean,
12 you know, like for say -- I'm just using
13 this for example, which we have a
14 problem. But how do you -- you know,
15 you're in the violation and it keeps
16 flowing. If you don't have the money to
17 fix it, so how far do ADEM allow to keep
18 going and going and going? Because it's
19 not going to get correct for a long,
20 long, long time.
21 COMMITTEE CHAIRMAN PHILLIPS:
22 Well, once again, I'm not solving
23 Uniontown's issues today. That's not the

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1 purpose of this meeting.
 2 MS. CALHOUN: I'm not -- okay.
 3 COMMITTEE CHAIRMAN PHILLIPS: But
 4 what I will say --
 5 MR. LeFLEUR: Perhaps you and I
 6 can talk after the meeting.
 7 COMMITTEE CHAIRMAN PHILLIPS: But
 8 what I will say is this. I know that the
 9 Department has gone above and beyond
 10 spending time to try to help in every way
 11 that they can. And we can say, Well, the
 12 answer is it keeps having violations.
 13 We'll just stop it. That doesn't help
 14 anybody if the toilet's backed up in the
 15 houses, because then we'll just get the
 16 complaint that the toilets are backing up
 17 and it's because ADEM shut down whatever
 18 solution may be there.
 19 What I'm trying to get to relative
 20 to public comment is probably more
 21 touched by what the Director said, is
 22 there are going to be times -- we all
 23 experience this in life -- that we're

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1 working with people on Uniontown;
 2 correct?
 3 MR. LeFLEUR: Oh, yes.
 4 COMMITTEE CHAIRMAN PHILLIPS:
 5 Trying to get to that resolution that
 6 you're talking about. I mean, if they
 7 weren't showing up and doing anything,
 8 then I would say that's a different issue
 9 than if they're trying to get to a
 10 resolution. Well, I mean, maybe so. But
 11 unless they're -- unless they're doing
 12 something that we need to know that's --
 13 they're able to do and they're not doing,
 14 I don't know how else to help you with
 15 that solution other than what they're
 16 doing.
 17 MS. LOWRY: I think that one
 18 thing that could get to that -- and I can
 19 even switch to another example that Mitch
 20 brought up today of -- well, first let me
 21 say, one thing the Commission could do in
 22 situations like that -- it's not going to
 23 remedy because that is a difficult --

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1 going to hear something that we don't
 2 necessarily agree with or like. And if
 3 part of the resolution -- what I want to
 4 be clear about when you say get it to a
 5 resolution or get it -- you know, action,
 6 I think, I heard from you, is within the
 7 framework of the law that we have to
 8 operate under. And we as Commissioners
 9 are bound by rules and regulations and
 10 laws and authorities that we have. When
 11 we use them as best we can to get to a
 12 point and it still doesn't make the
 13 person giving us a public comment
 14 satisfied -- because I kept hearing the
 15 word we want to be satisfied -- it may be
 16 that that's just where it is. We may not
 17 be able to get everyone to the point of
 18 being satisfied. What I'm trying to do
 19 in this Rulemaking Committee, though, is
 20 to understand what we can do within our
 21 rules and regulations to get as close as
 22 we can or at least to move action.
 23 I think the Department's still

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1 that particular issue and many of those
 2 around the state are difficult and can't
 3 be remedied immediately by the
 4 Commission. But one thing the Commission
 5 could contribute to -- to working toward
 6 the solution on is brainstorming and --
 7 with the citizens or just with yourselves
 8 in developing -- looking back at the
 9 record and seeing are there policies that
 10 can be changed that may have prevented
 11 this from happening.
 12 COMMITTEE CHAIRMAN PHILLIPS:
 13 Lessons learned?
 14 MS. LOWRY: Yeah. Another
 15 example would be the permitting
 16 situation, discharge permits on the coal-
 17 ash ponds that have been administratively
 18 renewed for sometimes eight, nine years.
 19 Oftentimes we get those permits -- we're
 20 not going to bring those up for renewal
 21 because there's federal regulations
 22 pending. But in this case, the federal
 23 regulation's been pending for years, you

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1 know, seven, eight years, so let's go
2 ahead and renew permits when we should
3 and not wait just -- now we want you to
4 wait because it's September, so might as
5 well just wait. But, you know, you see
6 what I'm saying.
7 COMMITTEE CHAIRMAN PHILLIPS: I
8 get the point.
9 MS. LOWRY: There's policies that
10 can prevent things. You know, sometimes
11 we get so far down a road of a huge mess
12 like what's happened in Uniontown that we
13 don't -- we can't even see the solution.
14 But oftentimes the solution is going back
15 and looking at what could have prevented
16 it to start with. And maybe that is a
17 Commission thing. Maybe it's not.
18 COMMITTEE CHAIRMAN PHILLIPS:
19 Nelson?
20 MR. BROOKE: I mean, I think
21 we're kind of batting around what's
22 appropriate to come before you and what
23 isn't, but also the efficacy of what does

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1 come before you and how it's dealt with.
2 So obviously I get having rules around
3 what you should and shouldn't hear and
4 you should just be able to tell people
5 upfront we're not going to hear that
6 because that's not relevant and here's
7 why or come on down.
8 In terms of, you know, continuing to
9 have people come back, that's obviously a
10 symptom of a situation that people don't
11 feel like it's being dealt with. I think
12 the process during the meeting has a lot
13 to do with that. So if you come down
14 with the understanding that you're going
15 to be heard, only to feel like at the end
16 of that what you have said has been
17 either discounted or slapped back in your
18 face in an unprofessional way, then
19 you're going to go home feeling like,
20 well, maybe I didn't get my point across.
21 I have to keep trying and I'm going to
22 keep coming back until I get a thoughtful
23 resolution.

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1 So I think the key word there is
2 "resolution." When I get done with a
3 presentation, if you give the Director
4 the opportunity to stand up and tell you
5 that I am misinformed and disingenuous
6 and that what I have said is misleading
7 and that's the resolution that I have for
8 bringing something before you, it's
9 incredibly unprofessional and it's going
10 to leave me thinking, Wow, something's
11 messed up here and I may need to keep
12 pressing as a citizen that's acting on
13 behalf of thousands of people and their
14 best interest of public health until we
15 get a thoughtful resolution.
16 So in the term of this situation,
17 it's pretty hard not to talk about what
18 we're talking about because that's why we
19 keep coming back. And Uniontown, if he's
20 given the chance to tell you you're
21 supposed to hold him accountable that
22 what I said is untrue and ADEM's doing
23 everything above and beyond their power

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1 to address it and that I must be
2 misinformed, then you're not giving
3 yourself as the oversight entity the
4 opportunity to hear the whole truth. So
5 if he gets a rebuttal, I get a rebuttal.
6 All right. So if ADEM has done
7 everything in their power, then why is it
8 that ADEM is not upholding the law and
9 the rules set out in actual permits as
10 written and saying that they are? I'm
11 going to keep coming back and saying this
12 is not happening until I see it happen.
13 And if we want to get literal about it,
14 it's adequate public notification to the
15 public that ongoing many thousands or
16 millions of gallons of raw sewage are
17 being spilled in creeks, through people's
18 property, in their yards, their livestock
19 are in it on a daily basis and an
20 outright refusal by your agency to force
21 Uniontown to adequately notify the
22 public.
23 MR. LeFLEUR: I have -- I have to

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1 object, Commissioner. Refusal of the
2 agency. We're getting into something
3 that has been an issue for quite some
4 time, and I don't think this is the
5 proper forum to address that.
6 COMMITTEE CHAIRMAN PHILLIPS: And
7 I've said that at least three times and
8 we're continuing to go down this as a
9 public meeting on Uniontown.
10 MR. BROOKE: Y'all brought it up.
11 But the point is, is that --
12 COMMITTEE CHAIRMAN PHILLIPS: I
13 don't believe I brought it up.
14 MR. BROOKE: Well, I mean, he's
15 sitting at the table with you.
16 COMMITTEE CHAIRMAN PHILLIPS: I
17 said I didn't bring it up. I brought up
18 that we aren't here to resolve a
19 Uniontown issue. We're here to talk
20 about public comment.
21 MR. BROOKE: I don't want to
22 resolve the issue here, but we're talking
23 about the idea of us coming before y'all

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1 and providing y'all with comments and --
2 COMMITTEE CHAIRMAN PHILLIPS: So
3 you want to be provocative with the
4 Uniontown issue to get him then to come
5 back and rebut with you.
6 MR. BROOKE: I don't.
7 COMMITTEE CHAIRMAN PHILLIPS: So
8 I'm asking you to either put it in place
9 with the public comment on what we can do
10 differently to make it better or don't
11 talk about it.
12 MR. BROOKE: That's what I'm
13 trying to do. So if y'all are concerned,
14 No. 6, about groups coming back
15 repeatedly, what I'm trying to say is, is
16 that we're going to keep coming back if
17 we feel like we're --
18 COMMITTEE CHAIRMAN PHILLIPS: And
19 I heard that loud and clear, but then you
20 added all of the Uniontown words that you
21 wanted to get directed to him into that.
22 So if the answer is help us get to a
23 satisfactory resolution and we won't keep

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1 getting back, I understand that.
2 MR. BROOKE: Okay.
3 COMMITTEE CHAIRMAN PHILLIPS: I
4 got that.
5 MR. BROOKE: Cool.
6 MS. DILLARD: And I think
7 certainly that is one of the most
8 important objectives of public comment,
9 is getting action or satisfactory
10 resolution. But I think you're selling
11 public-comment opportunity short if
12 that's all that you look at, because you-
13 all are the commission that oversees our
14 state environmental agency and you make
15 state environmental policy.
16 Another important purpose of these
17 public presentations is to share
18 information and to educate the public
19 about important issues, and this is the
20 very forum I think to do that. Another
21 important part of it is to provide you
22 with information you need to do your job,
23 whether it's oversight of the Director

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1 or, you know, other aspects of your job.
2 Another important role of the public
3 comment process in my eyes is the
4 ability -- and it is the fundamental
5 ability that our country affords us -- to
6 petition our government for redress of
7 grievances. And obviously not to use
8 Uniontown as an example, but the ability
9 for those folks to come directly to you
10 and make those grievances known is a very
11 healthy kind of process.
12 Finally, it affords a check and a
13 balance because, you know, every EMC
14 meeting starts the same way. First you
15 consider and you vote on your minutes and
16 then you have the Director's report which
17 is very constructive and I learn and you
18 learn about what's going on at ADEM and
19 what the priorities are and what's coming
20 up on the horizon that the agency is
21 going to have to address. But it's a
22 little bit about like that parable that
23 everybody's familiar with, six blind men,

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1 you know, who all feel a part of an
2 elephant and then they come together and
3 they have a violent disagreement as to
4 what an elephant really looks like
5 because they've all just had one part of
6 the elephant.
7 If you just rely on your very
8 capable agency or your Director who
9 reports directly to you, you are going to
10 get very valuable and important
11 information. And it's also going to be
12 accurate information in many respects but
13 it also is one subjective viewpoint. And
14 if you really want to be able to
15 understand as a Commission that entire
16 elephant, my hope and expectation would
17 be you would want to hear from the public
18 in a fairly meaningful and robust way in
19 a process that, again, makes the most of
20 your time and the idea that you-all
21 basically do this not for the glory or
22 for the money or anything else but you do
23 it as a public service.

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1 And I certainly recognize that. But
2 you have to make some important, you
3 know, balancing acts about how important
4 is this opportunity, how important is
5 this process, how integral is it to the
6 job you do, and is it worth it to you to
7 sometimes take on a presentation that may
8 not be relevant or it may not be
9 something that you can directly go out
10 and have that action or resolution but is
11 there another important role that it
12 plays, whether it's providing information
13 or just giving citizens an opportunity to
14 come to you and share with you a problem
15 that may educate you about important
16 issues in this state.
17 And, again, if you're going to do
18 your -- your job, which is to oversee our
19 state environmental agency and make
20 environmental policy, both of which are
21 extraordinarily important, being able to
22 ground truth that information by hearing
23 from people who are directly affected by

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1 some of those decisions and some of those
2 actions I hope is -- is worth the
3 occasional foray into off-topic
4 conversations or other things. I hope
5 that whatever you come back with will be
6 a robust public participation opportunity
7 that, as Mitch said at the very
8 beginning, makes it easy for people to
9 come to you as opposed to more difficult.
10 MS. STOKES: Yes. With that
11 said, the technicalities of Consideration
12 No. 6, when you talk about the Commission
13 needs -- we have some concerns that when
14 you say people cannot address the
15 Commission on the same topic more than
16 once in a short amount of time except
17 under special circumstances, it's just
18 very -- there's a huge potential for
19 abuse, because what is exactly the same
20 topic? You know, sometimes you have an
21 expert on a specific topic that may need
22 to come to you at the same time or two
23 months later to tell you an update to

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1 give you that more information. That
2 person may be the person that is the
3 person that knows the most about that
4 issue. So I would just caution you on
5 how you, you know, how you write that
6 rule, especially keeping in mind that
7 some people may need to come on the exact
8 same topic, on the exact same thing.
9 Also, another technicality would be
10 the -- we haven't touched on the
11 PowerPoint, addressing that, seven days
12 in advance, having to present that seven
13 days in advance. And I think
14 Commissioner Richardson has said that he
15 supports the idea of allowing or
16 submitting a manuscript as well as the
17 PowerPoint seven days in advance, and I
18 think that's going to be very burdensome
19 for people to write out exactly what
20 they're going to say, no edits can -- you
21 know, part of the rule is no edits can be
22 part of it. This is Consideration No. 7,
23 changes cannot be made to the

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1 presentation following the submission,
2 and I think that's hard for anybody to
3 stay on script with a presentation. And
4 it's certainly hard to write out exactly
5 everything you're going to say, so we
6 just request that just generally you
7 give -- the 14 days in advance, give the
8 topic. And there's really no need to add
9 in seven days prior that you give a
10 PowerPoint, that you give a manuscript.
11 That's just an added -- thank you.
12 MS. DILLARD: Just very briefly.
13 And Robert can advise you on this ably.
14 There are also First Amendment issues, I
15 think, in requiring, you know, ahead of
16 time, you know, certain aspects of a
17 presentation. And if you go too far down
18 that road, there's some issues there that
19 you will want to address with your
20 counsel.
21 COMMITTEE CHAIRMAN PHILLIPS: Go
22 ahead, Beth.
23 MS. STEWART: I just want to

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1 really support that and ask that you not
2 make that requirement. I agree with
3 Mitch it can be reasonable to ask for a
4 PowerPoint to be provided some short
5 period of time in advance simply to allow
6 that to be loaded so that the meeting is
7 moving along swiftly; but to require
8 that, it just -- it feels like -- it
9 feels to the public like a potential
10 for -- for censorship based on what is
11 intended to be said. And it also -- and
12 I don't believe that that's what the
13 Commission wishes to convey about your
14 process at all. It seems that if a topic
15 meets the criteria, then it meets the
16 criteria. And it may be a moving issue;
17 it may be that more information is
18 available prior to the meeting and after
19 some seven-day-in-advance-required-
20 deadline and that that additional
21 information would be valuable for the
22 Commission to have. And the way this is
23 written, you would not be able to have

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1 current information in necessarily. And
2 I think it simply would be burdensome to
3 many people to have to provide it in
4 advance in either manuscript or
5 PowerPoint form. That's simply not the
6 way some people communicate most
7 effectively. So it does feel like an
8 abridgment of rights of being able to
9 speak openly with you. And we really
10 would like to see that not followed and
11 not included in the rule.
12 COMMITTEE CHAIRMAN PHILLIPS:
13 That being?
14 MS. STEWART: The requirement
15 that you have to have some sort of a
16 presentation of a manuscript or a
17 PowerPoint or something seven days in
18 advance. I can understand the 14-days-
19 in-advance basic criteria. And we really
20 like the idea that Cindy raised earlier
21 about why not and would it make it easier
22 for you if you had a downloadable form
23 that either -- that could be

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1 electronically submitted or otherwise
2 that has a set of questions and those
3 standard set of questions are answered
4 and that is your basic criteria. And we
5 all know exactly what information you
6 need in advance. And then if it's Debi
7 that's making that determination or
8 whoever it is that's screening that,
9 there it is. It's clear how that is
10 screened according to the responses to
11 your questions. And then there's greater
12 clarity to that.
13 COMMITTEE CHAIRMAN PHILLIPS: I'm
14 going to speak once again for me. The
15 intent of a document coming before the
16 Commission probably came -- evolved from
17 the whole issue of people were always
18 making presentations to us and our desire
19 to at least be engaged and prepared for
20 what we were going to hear so that we
21 weren't just sitting there listening and
22 really having no idea -- I mean, we were
23 kind of getting it first time, because I

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1 think our perception was people expected
2 us to engage or respond then. What
3 I'm -- what I've heard today, this
4 afternoon, is that that's not as big of
5 an urgency as we probably perceived that
6 it was, and so there may be other ways to
7 manage that.

8 MS. STEWART: And if I may add, I
9 think that the way that has actually
10 played out most frequently feels to us --
11 it was mentioned earlier -- like there
12 has been a prebuttal prepared, and it --
13 and I don't believe this is your intent,
14 but it comes across to the public that
15 folks have made the effort to come and
16 present information and they're being
17 slapped down. That's what it feels like.
18 It feels defensive and it feels that the
19 Department is giving the message we're
20 rejecting what you have to say. That's
21 how it's felt. And I'm sure that's not
22 how it's meant, but that's how it comes
23 across.

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1 there, Failing to do so will result in
2 default denial of request. And I think
3 that's a real red flag for us. I think
4 you can certainly put in those checks and
5 balances to satisfy your needs to know
6 what people are going to be presenting at
7 the meeting, you know, and I think you
8 can do that with some sort of checklist
9 process.

10 The other thing I wanted to comment
11 on was just the same thing that people
12 were talking about earlier about
13 commenting more than once on the same
14 topic. And I think it's important for
15 the Commission, I mean, one -- as part of
16 fulfilling your duties, you need as much
17 information as possible. And I think
18 when certain issues are not getting
19 addressed or there is no change, that's
20 information you need. And so if somebody
21 is presenting the same topic but there
22 may not have been a lot of change on that
23 issue, that's something the Commission

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1 COMMITTEE CHAIRMAN PHILLIPS:
2 Yes.

3 MR. JOHNSTON: Keith Johnston
4 with the Southern Environmental Law
5 Center. Just to sort of dovetail onto
6 some of what was being said, and
7 addressing No. 8, I think, was the one
8 they were addressing about the
9 presentations. I think you guys have
10 said that almost anyone can sort of make
11 that decision about presentation if it
12 falls within the parameters. And I think
13 you could almost have, like, a checklist
14 of, you know, does this have a certain --
15 does it concern a certain issue, will you
16 have a PowerPoint presentation or
17 something like that -- just a general
18 description maybe of what you are doing
19 and what your intent is to give you guys
20 a full notice and understanding of what
21 people are going to come up and present
22 to you. I think one of the problems we
23 had with No. 8 was the second sentence

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1 needs to know about. So I think in
2 considering 6, I hope you consider that
3 as well when you sort of hear some of
4 these reoccurring themes.

5 COMMITTEE CHAIRMAN PHILLIPS:
6 Thank you. That's good. I think -- I
7 should have probably said this at the
8 beginning, but the areas that you see
9 there are not things that we have
10 presupposed our answers. They're not --
11 they are areas that have come up either
12 from Commission members or members of the
13 public that seem to be the only real
14 issues that we continually hear about
15 around public comment. And so the real
16 desire was to get your sense, the room's
17 sense, on those items. So it's helpful
18 that you're kind of referencing to ones
19 that we listed. But those are not
20 predisposed answers by any stretch of the
21 imagination, so just be aware of that.
22 It's -- if nothing else, it was the hot
23 topics that were sure to generate

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1 dialogue.
2 MR. REID: The question of what
3 the answer should be, what we expect of
4 the Commission, I think, is -- I mean, it
5 probably is the most pressing and burning
6 question. You give a presentation and
7 then it -- you're actively looking to see
8 how much interest is displayed. And it
9 would certainly be great to say, Well,
10 let's -- let's form a special committee
11 to take this on and study this right
12 there, but that's really not what I'm
13 expecting from --
14 COMMITTEE CHAIRMAN PHILLIPS:
15 Although we have done that in the past.
16 MR. REID: And I think that
17 this -- I think that the example of this
18 sort of working group and that -- I'm
19 thinking of the -- the air toxic work
20 that was done in the past. That was a
21 situation where something was brought in
22 and then it resulted in a very deliberate
23 process of addressing an issue. And

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1 that's -- that is fantastic, but it is
2 also probably not what I am expecting
3 with every presentation. So I don't
4 necessarily have an answer to what the
5 answer should be to a presentation. I do
6 like the idea of a response when -- when
7 the Chair or when the Commission says,
8 This is something we want to take on and
9 we've talked about it or a discussion,
10 you know, deliberation by the Commission
11 saying, Let's look into this some more,
12 and then action taken. I don't think
13 that that needs to be written into the
14 rules, but it is always helpful to see
15 deliberation in action.
16 But the -- what I see the
17 presentation being, a public comment,
18 whether it's someone signing up at the
19 door or coming in with a premade
20 presentation, is the start of a
21 conversation or the continuance of a
22 conversation if things are not going on.
23 But it goes to the idea of if I submitted

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1 my manuscript two weeks in advance or
2 seven days in advance, then really I
3 should just stand up and say do you have
4 any questions. But since I'm giving a
5 presentation, there is an infinite amount
6 of time relatively going forward for the
7 Commission to work on this issue.
8 So I've given a presentation, coal
9 ash being an example today. There's
10 Rulemaking coming up. EPA's going to do
11 something in February, they're going to
12 do something maybe in September. This is
13 now the chance for a conversation to
14 occur going off into the next year or
15 more. That was the point of the
16 presentation. Not that I would get an
17 answer today on this is what we're going
18 to do about coal ash and not for the
19 Director or anybody else to say, Well,
20 here's what the -- here's what the world
21 looks like to us and for it to become a
22 debate. I do think that it gets tedious
23 when it -- because then I'm -- you know,

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1 that just seems like, Well, I've got to
2 come back to say something else, and
3 that's probably unnecessary.
4 So my just gut feeling is that the
5 presentation at the meeting becomes the
6 entrée into the followup. And if we
7 don't hear from you again and things
8 still occur, then we would request to
9 come back and -- and, you know, it would
10 always be within our best interest, I
11 think -- and I don't think you need to
12 write this as a rule -- but in our best
13 interest to say, Here's the next steps or
14 here's what we want you to do, because
15 then that would tell you what we want.
16 But I don't know how you write that into
17 a rule that says you've got to tell us
18 what to vote on. But, anyway, that's
19 my -- my sense, is that it starts --
20 COMMITTEE CHAIRMAN PHILLIPS: I
21 think we have a rulemaking process for
22 that.
23 MR. REID: Sure. Right. I mean,

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1 we can always do a petition for
2 rulemaking.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 That's helpful.
5 MR. MULLEN: I think that applies
6 not just to presentations but also the
7 correspondence. If you want us to do
8 more written correspondence, some kind of
9 feedback -- we're considering it; if
10 there's an answer, an answer; if there's
11 not, here's what we're planning on doing
12 with it; the Director's the one you ought
13 to be talking with, or staff, instead of
14 us. Almost a menu of things there. And
15 then, very importantly, if there's a
16 suggestion from the Commission how the
17 individual or group can be productively
18 involved, you know, what that individual
19 or group can do to be productively
20 involved and then how can we all
21 cooperate and solve it, you know, whether
22 it's a committee meeting or whatever.
23 Just more -- just more give and take

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1 after a presentation or correspondence.
2
3 COMMITTEE CHAIRMAN PHILLIPS: I
4 think the one thing that I'm hearing --
5 and I think Eva said this in some form --
6 I think too many times there's the
7 expectation that there is an answer, that
8 every presentation is for one purpose,
9 and we know that it's not. I mean, we
10 know that sometimes people want to
11 educate us or at least share information
12 with us for us to consider future policy
13 or future regulations that may be coming,
14 for example. But in other instances,
15 it's because they feel like something
16 hasn't been -- has not been done to meet
17 their expectations. And then other times
18 it's -- they're -- I mean, we rarely get
19 what I would call happy news, but that's
20 okay. Occasionally, we do. We have
21 someone come and talk and say, you know,
22 this happened but, you know, I still
23 think the Department did a good job with

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1 this. So there are different reasons we
2 know that the public come to us.
3 I think in the past, though, we've
4 tried to fit -- fit everything into one
5 box, what one means for someone to come
6 and make public comment to us. And, once
7 again, I'm sharing my view, not the
8 Commission's view. And I think this has
9 helped us. And I mentioned in the last
10 meeting that by far the public comment
11 that came back relative to us looking for
12 improvements was don't do away with
13 public comment, and that was never our
14 intent, to do away with public comment.
15 It was to make it better. And not make
16 it better just for the public but to make
17 it better for the Commission, because
18 there was frustration growing on the
19 Commission that everything was really
20 kind of stuck in one box and not
21 everything demands a response and why
22 does it always come two weeks before a
23 meeting? Because that's when we say we

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1 accept; right? So we're kind of creating
2 our own issue.
3 And the purpose of this whole
4 session really came out of a dialogue
5 that occurred after a meeting and then we
6 realized that it was after a meeting so
7 we had to wait until the next meeting to
8 set up the meeting we wanted to have. So
9 our intent -- and we know that there are
10 issues. We're all human. We're not
11 perfect. But we're trying to get better
12 at what we do, and the only way we know
13 to get better is to hear from you. You
14 mentioned why does it always have to be
15 about us calling you. Well, that helps
16 us, because it's a complaint and we just
17 can't be everywhere all the time. And so
18 it's helpful to hear your concerns, your
19 issues, and probably more valuable for
20 me, Ms. Merritt, to hear --
21 MS. MERRITT: It's been very,
22 very --
23 COMMITTEE CHAIRMAN PHILLIPS: --

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1 perceptions, because many of the
2 perceptions that you have -- you know, we
3 kind of have our own perceptions of why
4 things get brought to us. And so I think
5 it's helpful for us -- for you to share
6 with us your perceptions of why things
7 are done. And they really don't match.
8 But the only way we're ever going to get
9 them closer to matching is to have
10 dialogue like we're having here.
11 Yes, ma'am.
12 MS. CALHOUN: Hi.
13 COMMITTEE CHAIRMAN PHILLIPS: Hi.
14 You're back. And we're glad.
15 MS. CALHOUN: Okay. I'm cool.
16 With the presentation, like you give them
17 so long to respond -- seven, 14 days,
18 because, you know, I don't do those. I'm
19 not with them. But why can't you guys
20 have a deadline with the presentation,
21 you know, well -- or your secretary or
22 whoever, well, I haven't had a chance to
23 get back with John yet. Debi, would you

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1 send him a note that I'm still looking at
2 it, so it won't be on a, you know, Oh, I
3 went and did my presentation today and,
4 okay, they sit up there and looked at me,
5 they did listen, I guess they did. But a
6 response would really kind of ease the --
7 saying that you're listening or, you
8 know, fooling us or something.
9 COMMITTEE CHAIRMAN PHILLIPS:
10 Well, hopefully we're not going to fool
11 you. Our intent -- I heard loud and
12 clear out of this session today, which I
13 don't even think was one of the items --
14 maybe it was -- was we really need to do
15 better at responding at what we are
16 thinking about what we heard, even if it
17 means it's going to take time. And it
18 may be months before we really get to
19 dealing with it. We should at least
20 communicate that. And whether we do that
21 in writing or whether we do it at the
22 next meeting where we just revisit what
23 we heard and talk about it, I don't know

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1 yet. But it most certainly is something
2 that was not lost on us about responding.
3 Beth?
4 MS. STEWART: I really like what
5 was said earlier by Mitch about the way
6 that if the public presentations are a
7 way to either begin a conversation or
8 continue a conversation, well, then, how
9 does that conversation happen? So if
10 we're making a presentation and then the
11 EMC is having to go away because of your,
12 you know, formal setup and talk about it
13 with the Department and in the various
14 ways you're looking into it and then it
15 eventually gets back, there's not really
16 a conversation happening. So if there
17 were some issues in which the EMC were to
18 say, you know, on a policy issue,
19 obviously the Rulemaking Committee, as
20 mentioned earlier, could say, you know,
21 we would like to have a situation like
22 this where we invite conversation and we
23 share perspectives.

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1 And I think a difficulty with the
2 requirements on your deliberations is
3 when you're up there and someone's here
4 and they speak for ten minutes and
5 there's not -- that's not a conversation.
6 It's a great way to present information,
7 it's a good conversation opener, but it
8 doesn't let us do what we're doing here,
9 and this has been really, extremely
10 valuable. And if there were ways that
11 you could figure out how to work into
12 your process on those topics brought to
13 you that are of interest and you feel
14 it's worthwhile that there's more
15 communication about it, that there could
16 be -- the followup could include a true
17 conversation.
18 MR. GLENN: And I'll --
19 personally I'll close here because I'm
20 fixing to get a winter advisory up around
21 I-20, so I'm fixing to cut out.
22 MS. LOWRY: There have been a lot
23 of weather things pop up.

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1 MR. GLENN: Yeah, they're popping
2 up. But, number one, thank y'all for
3 having this meeting. And on behalf of a
4 lot of industry representatives, again,
5 clarity of communications is important,
6 whether they're communications that our
7 members want to have with you as the
8 policy-setting body, either something we
9 like that's going on, don't like is going
10 on, wish you would do faster or slower or
11 whatever the situation may be. And, you
12 know, I like the idea of the clarity of
13 some kind of communication. I like the
14 idea of written communications. I like
15 the idea before the meeting, too. I
16 mean, get stuff in a couple weeks before
17 or whatever, give y'all time to think
18 about it. You've got places in your
19 agenda where you can stop and talk about
20 it. And if you need information from
21 somebody, I think you can ask for that in
22 a meeting. I think you can do that any
23 time you want to do that.

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1 COMMITTEE CHAIRMAN PHILLIPS: I
2 assume you mean at the other business?
3 MR. GLENN: Yeah. Exactly. Or
4 time to add stuff to the agenda or maybe
5 ask for information and collect stuff in
6 advance. You can always add it to your
7 agenda. There's time limits on all that,
8 I know. But just a big fan of written
9 communication for clarity, because unlike
10 Christmas morning, not everybody likes
11 surprises all the time. So we walk into
12 a meeting and all of a sudden an issue or
13 a member of ours is under attack, if you
14 will, either directly or indirectly, it's
15 nice to know that so we can prepare for
16 that and what that brings with it.
17 Again, thank y'all for having this
18 conversation.
19 COMMITTEE CHAIRMAN PHILLIPS:
20 Thank you, sir, for those comments.
21 Because I heard the weather comment, I'll
22 ask, have we covered -- I mean, I know we
23 covered the items that were put in the

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1 notice, but have we covered the things
2 that -- I guess we did not cover that. I
3 think someone mentioned it earlier about
4 what we could or could not hear and the
5 issue of the Commission hearing things
6 when there's pending or ongoing
7 litigation is something that we'll
8 continue to have an issue, that we can't
9 hear those things. We know, and I've
10 heard people say, Yeah, but there are --
11 just because it's about that topic
12 doesn't mean that you shouldn't be able
13 to listen to that from the standpoint of
14 an environmental policy.
15 And that may be true, but we still
16 have to gauge it when it comes in.
17 That's part of the reason that we ask
18 what are you going to talk about, who are
19 you going to talk about, because in our
20 early days, we did have a lot of people
21 that would come up and just really go to
22 town and then we'd find out a month later
23 that we were -- there was litigation

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1 pending. And so we really have to be
2 careful with that. So we would ask for
3 your understanding at least in that
4 arena. Thanks for reminding me of that,
5 Robert.
6 But is there anything else that's on
7 your mind that would be valuable for us,
8 and then I'll let Ms. Merritt make a
9 closing statement.
10 MR. JOHNSTON: This is Keith
11 Johnston with Southern Environmental Law
12 Center. Just on that point, I would make
13 sure that when you interpret that rule
14 and that responsibility -- and I
15 understand it and certainly respect
16 that -- that you do it in a narrow
17 fashion so you're not being too broad in
18 that interpretation. I think you have
19 counsel at these meetings. You know, you
20 can certainly -- you can cut that off if
21 need be. So I think there's a couple of
22 safeguards there that can really --
23 COMMITTEE CHAIRMAN PHILLIPS: And

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1 we will defer to our counsel.
2 MR. JOHNSTON: -- help you there
3 and just making sure that you're not, you
4 know, going too broad in that
5 interpretation if it's just hitting on an
6 issue that you may have before the
7 Director.
8 COMMITTEE CHAIRMAN PHILLIPS:
9 Well, we do depend on our counsel.
10 MR. TAMBLING: And, Keith -- this
11 is Robert Tambling. I'm sure all the
12 lawyers here can appreciate they don't
13 want their clients who are involved in
14 litigation to publicly discuss any facet
15 of that litigation. As the oversight
16 body for the Department, I don't think
17 it's appropriate for the Department to
18 engage in any kind of public discussion
19 about litigation or administrative
20 petitions, for instance, at EPA involving
21 the Department. So that's kind of the
22 concern with having a rule like that.
23 That said, when we first drafted the

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1 rule many years ago and worked with
2 Dennis Bailey, we were at that time
3 really only concerned about matters that
4 might come before the Commission. But
5 it's been our experience since then that
6 we've had a lot of matters involving ADEM
7 that are under litigation that people
8 want to talk about. We were able to
9 nuance the prohibition by placing that
10 squarely on the Commission where the rule
11 basically discourages the Commission from
12 engaging in the nondeliberative
13 discussion of any matter that might come
14 before them. Well, in the like manner, I
15 think if we did adopt a rule like that,
16 it would be phrased in the same manner.
17 We're not telling the public what they
18 can talk about, what they can't talk
19 about. We're discouraging the Commission
20 from engaging in any kind of discussion
21 involving litigation.
22 COMMITTEE CHAIRMAN PHILLIPS: Is
23 that okay?

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1 MR. TAMBLING: Would that be
2 narrow enough for you?
3 MR. JOHNSTON: I think it would
4 depend on how the Commission puts that in
5 practice. I think that's the --
6 MR. TAMBLING: But facially? I
7 mean, is --
8 MR. JOHNSTON: Yeah. Facially,
9 if it's a matter before the Commission
10 that has two parties, there should be
11 safeguards for those parties to not try
12 to --
13 MR. TAMBLING: That's the rule
14 right now --
15 MR. JOHNSTON: Right.
16 MR. TAMBLING: -- but we're
17 talking about expanding it to litigation
18 involving the Department. We really
19 don't want the Commission members
20 discussing any kind of litigation
21 involving the Department.
22 MR. REID: Robert --
23 MR. TAMBLING: Any matter that is

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1 the subject of litigation involving the
2 Department.
3 MR. REID: If the Department --
4 if there is something between the
5 Department and the --
6 COMMITTEE CHAIRMAN PHILLIPS: Go
7 ahead.
8 COMMISSION CHAIRMAN BROWN:
9 They're listening.
10 MR. REID: If it's something
11 between the Department and the EPA,
12 you're saying that the EMC would not then
13 need to have a discussion about that type
14 of subject?
15 MR. TAMBLING: I think if there
16 was something that is the subject matter
17 of a petition involving the Department
18 that is pending at EPA, then I would -- I
19 would advise my client, the Commission,
20 not to engage in any kind of
21 nondeliberative discussion involving that
22 matter publicly. If the matter is
23 resolved, then I think we can talk about

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1 it.
2 MS. DILLARD: And, Robert, by
3 "discussion," do you mean even passively
4 listening to a presentation made by a
5 member of the public?
6 MR. TAMBLING: Well, I mean, I
7 don't know if there is such a thing as
8 passively listening when you come in
9 front of the Commission. I think the
10 Commission really wants to be prepared
11 and wants to be able to engage you, you
12 know, and not just sit there stoically
13 and just listen to you. What's the
14 purpose of that?
15 MS. TROTMAN: I can make a
16 comment.
17 MR. TAMBLING: Yes.
18 MS. TROTMAN: I completely
19 understand this, being an attorney. You
20 don't want your clients in here
21 discussing something that is going
22 through litigation, and the main purpose
23 is I wouldn't want to subpoena each and

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1 every one of you to come and testify to
2 what my client said in court or what the,
3 you know, opposing person said in court.
4 You just don't want to bring those
5 outside. And then, also, you don't want
6 to waive any kind of privileges that you
7 may have with attorney-client or anything
8 like that. And you definitely don't want
9 to speak outside what's going on in the
10 litigation.
11 MR. REID: And I'm just not sure
12 that applies --
13 MS. TROTMAN: Right.
14 MR. REID: -- here with the EMC
15 versus the Department. And I think -- if
16 I could -- this may be something we could
17 table, because I think --
18 COMMISSION CHAIRMAN BROWN: I
19 think -- I think where it applies is if
20 the Department is a party to the
21 litigation and somebody wants to kind of
22 speak to it, the issue you get is that
23 once we hear what you say, we always want

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1 to hear what the Department says. Eva
2 keeps saying all of the parties having
3 their say, and you -- as a lawyer, you
4 know, I tell my clients to get off
5 Facebook, get off Twitter, get off
6 everything, shut down. If you open your
7 mouth, we're going to have a problem.
8 You don't talk to anybody but me about
9 it. And I think that's what Robert is
10 saying he would counsel the Department,
11 not to speak about it. For us, you know,
12 I don't want to sit up here like a bump
13 on a log. I don't want to sit up there
14 to the effect that you may as well be
15 that congressman that nobody's ever heard
16 of that's on C-SPAN at ten o'clock at
17 night speaking to the empty senate or
18 house chamber. And sometimes I feel
19 like, you know, I'm just -- I may as well
20 be -- have rolled over in bed, cut the TV
21 on, and I'm watching because we're not
22 engaging the process. We're listening to
23 people come, have some comments with no

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1 discussion about, well, where does it go
2 from here, what are you asking us to do,
3 what is the point of this. And so it's
4 like, hey, thank you for coming, have a
5 nice day, you know.
6 COMMITTEE CHAIRMAN PHILLIPS: And
7 I heard some of you say that's how it
8 feels.
9 MS. DILLARD: It does.
10 COMMISSION CHAIRMAN BROWN:
11 Right. And, you know, for us -- and I
12 think that's why Commissioner Richardson
13 gets -- is passionate about this issue,
14 is why I asked the Rulemaking Committee
15 to look at it, because, I mean, I just --
16 you know, it's like, hey, thank you for
17 coming, and that's all we have to say.
18 And, you know, if I'm going to sit up
19 here and devote my time, you know, almost
20 gratuitously -- may as well be -- I want
21 to be able to engage the process, for
22 there to be a process, to do something.
23 And, you know, a lot of times I sit

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1 there, I listen to the presentations and
2 it's like, okay, I've heard that before.
3 Yes.
4 And I hate to use the word
5 "Uniontown" again, but -- but, you know,
6 a lot -- I keep up with what's going on,
7 and so -- and I know what's going on and
8 I -- you know, I get reports about what's
9 going on and where the process stands,
10 and so it's like, yes, thank you for
11 coming. And I found sometimes that some
12 of the most productive meetings or
13 conversations have not been up there but
14 in the little room over there.
15 COMMITTEE CHAIRMAN PHILLIPS:
16 Eva, I'll call on you.
17 COMMISSION CHAIRMAN BROWN: I
18 know you've got something to say.
19 MS. DILLARD: I always do.
20 COMMISSION CHAIRMAN BROWN: But,
21 I mean, that's sort of -- you know, and
22 now I'm hearing, I guess, that maybe we
23 don't need to make a response right then.

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1 And, you know, my feeling is that is
2 completely -- I don't know -- opposite of
3 what I have always thought. You know,
4 I've always looked at it as people come
5 seeking redress of grievances. Well, I'm
6 supposed to do something. And if you
7 come in and tell me that -- that's why I
8 like getting the information beforehand.
9 I want the information. I've gotten a
10 little more proactive recently to where
11 some of the letters that say I'm going to
12 recommend, you know, you for speaking I
13 put in, "but you need to address these
14 points in your presentation." And, you
15 know, maybe by exercising some discretion
16 in that manner, some of these issues can
17 be -- can be addressed.
18 COMMITTEE CHAIRMAN PHILLIPS: I
19 would hope you've seen a difference in
20 the last few meetings.
21 MS. DILLARD: I was actually
22 going to make it easier for you. I know
23 that that's a shock. And that is, I

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1 think we can all agree that if a matter
2 is in active litigation that it is not
3 appropriate for discussion. No question.
4 And by the same token, if it's subject to
5 a final order or closed, it obviously is.
6 What I think Keith was touching on and
7 it's a concern that I share -- and Robert
8 and I have had this discussion as well --
9 is there's a continuum of kind of cases
10 in between that maybe might be
11 appropriate for comment because of the
12 subject matter and the comment wouldn't
13 be directed to the litigation, it would
14 be maybe the underlying problem. So
15 that's my longwinded way of saying
16 there's certain things that it's not
17 appropriate to comment on and there's
18 certain things that there are if there's
19 a continuum in the middle. And what we
20 would respect fully, is when you're
21 looking at that rule, please don't in an
22 overabundance of caution define it so
23 broadly that you're actually going to be

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1 excluding some things that folks should
2 be able to talk about. But it's one of
3 those things the devil's in the details
4 and you're going to have to play around
5 drafting it and we'll let you know.
6 COMMITTEE CHAIRMAN PHILLIPS:
7 Have any suggestions, share.
8 MR. TAMBLING: Absolutely. I'm
9 going to do everything I can, as you
10 would, to protect your client.
11 MS. DILLARD: Right. And that
12 makes sense.
13 MR. JOHNSTON: Yeah. Absolutely.
14 There's no question about that. It's
15 just that interpretation of how far you
16 go in protecting your client when you
17 have maybe Party A against Party B, you
18 know, but you want to discuss an issue in
19 front of the Commission that's a broader
20 issue that goes beyond what those two
21 parties are arguing about. I think
22 that's where -- we just don't want the
23 rule being used to wipe out potential

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1 issues that the Commission needs to know
2 about.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 Mitch.
5 MR. REID: That was -- that's it
6 in a nutshell. And we would certainly,
7 if there -- if Robert has concerns about
8 something we're asking to talk about, we
9 would like to at least provide our
10 assertion or justification for why this
11 doesn't meet the bar, it doesn't --
12 shouldn't be barred by that. The
13 situation I'm thinking about is a
14 situation where the Department is
15 involved in something that the EMC is not
16 and -- and we --
17 COMMITTEE CHAIRMAN PHILLIPS: I
18 don't want to hear about it, but how can
19 the Department be involved in something
20 that the EMC is not as an oversight body
21 of the Department?
22 MR. REID: A --
23 COMMITTEE CHAIRMAN PHILLIPS: I

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1 don't want to hear specifics of what
2 you're talking about.
3 MR. REID: Sure. A specific
4 situation where the Department is
5 involved in a -- in a dispute with the
6 EPA specifically which is not going to
7 require the oversight or adjudication of
8 the dispute by the EMC, it's not going to
9 come before the EMC as a matter that the
10 EMC is then deciding on. So it is not --
11 it's not a situation where you would then
12 be sort of predeterminational on an
13 issue. That's -- but I guess you can --
14 you can probably draw Venn diagrams to
15 where that particular issue would look at
16 something else, but I can draw you a
17 significantly big enough Venn diagram and
18 we can't talk about anything.
19 COMMITTEE CHAIRMAN PHILLIPS: Now
20 we're talking. I'm an engineer.
21 MR. REID: Line diagram. We want
22 lines, not Venns.
23 COMMISSION CHAIRMAN BROWN: I

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1 guess the issue I have, though, is how
2 can -- if the Department can't talk about
3 it because it's in litigation, how do we
4 consider something related to a
5 litigative matter without being able to
6 hear from the Department on the issue?
7 MR. REID: I -- I would -- I can
8 definitely see this as being a working
9 group session for -- because we can -- I
10 can go through hypotheticals and it would
11 probably require more research than I've
12 got on my phone right now.
13 COMMITTEE CHAIRMAN PHILLIPS: Is
14 there anything else we didn't touch?
15 MS. CALHOUN: I'd like to say one
16 more thing.
17 COMMITTEE CHAIRMAN PHILLIPS:
18 Yes, ma'am.
19 MS. CALHOUN: I enjoyed this, you
20 know. It seems like y'all are not
21 sitting up there, that you're down to the
22 level that we are. And I see y'all have
23 a little heart -- little heart. But

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1 thanks for -- I'm just -- it's just me.
2 I have to laugh sometimes. But it's --
3 CHAIRMAN PHILLIPS: That's okay.
4 That's some praise, at least.
5 MS. CALHOUN: But, see, it's a
6 learning process. What you tell us,
7 well, don't do this or we don't do that,
8 we don't know that you don't do this or
9 you don't do that. Then you can know
10 what we don't do: We don't go away.
11 COMMITTEE CHAIRMAN PHILLIPS:
12 That's fair.
13 MS. CALHOUN: Thank you.
14 COMMISSION CHAIRMAN BROWN: And I
15 guess I think to me it's always been --
16 you know, people want to make a lot of
17 times the citizens that aren't involved
18 professionally with the Commission or
19 with the Department, you know, they --
20 they for some reason come to the
21 Commission first, but going to the
22 Department first I think helps that
23 educational process that you're talking

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1 about. And I think that's been a lot of
2 our frustration, is you're coming to us
3 and, you know, well, the permit's either
4 issued or not issued or, you know, the
5 fine has been levied or it's in
6 litigation and there's really nothing we
7 can do except say go down yonder to
8 Director LeFleur's office. And I just
9 feel useless sitting up there in that
10 standpoint. I mean, I don't feel like
11 I'm doing any good for anybody.
12 MS. CALHOUN: We thought y'all
13 was the big dogs.
14 MS. LOWRY: Commissioner, I just
15 wanted to report that Michael Churchman
16 from the Environmental Council was on the
17 phone for a little while. He said he
18 really couldn't hear anything so he just
19 got off.
20 COMMITTEE CHAIRMAN PHILLIPS:
21 Well, that's a good lesson learned on
22 that one.
23 MS. LOWRY: We have that same

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1 problem with our board meetings. It's a
2 challenge.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 Well, we want to thank all of you, but
5 before we go, do you want to say anything
6 else, Mr. Chairman?
7 COMMISSION CHAIRMAN BROWN: I
8 can't believe I've stayed as long as I
9 did.
10 COMMITTEE CHAIRMAN PHILLIPS:
11 We're glad you did.
12 COMMISSION CHAIRMAN BROWN: Now
13 I'm late to -- way late to be somewhere
14 else. But I enjoyed it.
15 MS. MERRITT: I just want to say
16 that I've learned a lot today, and I just
17 want to thank our Chairman. You know, I
18 know this came out of conversation after
19 our last meeting, and I've been -- I
20 mean, I've only been on a short time, and
21 this is my -- this Rulemaking Committee,
22 I've been reading. But today has been
23 really a learning -- I've learned a lot

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1 from you. It will help me make -- I can
2 talk more knowledge on it now with the
3 Committee after seeing -- you know,
4 hearing anybody talk. And, you know, I
5 think this was the best thing that could
6 have ever happened. So thank you so
7 much.
8 COMMITTEE CHAIRMAN PHILLIPS:
9 Well, I want to thank all of you. I want
10 to thank Ms. Merritt and Chairman for
11 sending this to Rulemaking. But I really
12 want to thank those of you in the room --
13 and you know who you are -- that really
14 helped conceive the concept of us doing
15 what we did today. It's something that's
16 much -- much more valuable, I think, to
17 the Commission, but most certainly more
18 valuable to the Rulemaking Committee to
19 try to put reality and to hear what
20 perceptions are really on both sides
21 of -- of that counter when we're sitting
22 up there. We have this belief that we're
23 having those conversations, but what

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1 we're not doing is letting you know we're
2 having those conversations. So I think
3 it's been very good to hear how it feels
4 from your seats, because many times we,
5 unfortunately, being human, we think
6 about how it felt sitting in our seats.
7 And we juggle that with a whole host of
8 other obligations and commitments just
9 like you do. And I think the more we can
10 talk about how to get to an end point
11 together, the more likely that we'll get
12 there. Most certainly we're not going to
13 get there if we don't talk about it.
14 So I want to thank all of you for
15 your ideas. And then I want to remind
16 you that the process is we'll take all
17 this in, we'll have it in transcript so
18 that you can look at it also. We'll get
19 it to Commissioner Richardson. We'll
20 have our next meeting in April. I
21 encourage you to be there, if you can.
22 If you can't, feel free to send written
23 comments, videos, anything you want to

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1 send. We'd love to hear from you.
2 And -- and I guess the final is be safe
3 on your way from here.
4 MR. LeFLEUR: I would like to
5 invite everybody to come to the meeting
6 between the Department and the
7 environmental community after the April
8 meeting.
9 COMMITTEE CHAIRMAN PHILLIPS:
10 That's right. What time is it?
11 MR. LeFLEUR: At one o'clock.
12 COMMITTEE CHAIRMAN PHILLIPS:
13 Your office?
14 MR. LeFLEUR: Attendance started
15 drifting off, and we'd like to see it
16 jump back up on these meetings. It's an
17 opportunity to address some of these
18 issues that y'all have brought up today.
19 COMMITTEE CHAIRMAN PHILLIPS: I
20 know the Chair has gone to some of those.
21 So I'll commit to go to those if you guys
22 will stay next time and go. We can all
23 see each other again.

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1 MR. JOHNSTON: I'm sorry. Was I
2 under the impression that we were going
3 to have another Rulemaking Committee
4 stakeholder meeting after the EMC at one
5 o'clock or -- in April?
6 COMMITTEE CHAIRMAN PHILLIPS: In
7 April, it's probably at ten. If that
8 changes, we'll let you know. But right
9 now I don't think we're expecting to have
10 another one o'clock session in April.
11 That's not what we had talked about.
12 MS. STOKES: Would you mind
13 e-mailing all of us? I think last time
14 we didn't know whether to RSVP or whether
15 to send in comments. Do you mind sending
16 an e-mail out or is it going to be on
17 your website?
18 COMMITTEE CHAIRMAN PHILLIPS: It
19 will be a notice on our website. But,
20 Debi, you have everybody. They're all on
21 the list, right, the mailing list?
22 MS. THOMAS: Yeah.
23 COMMITTEE CHAIRMAN PHILLIPS: So

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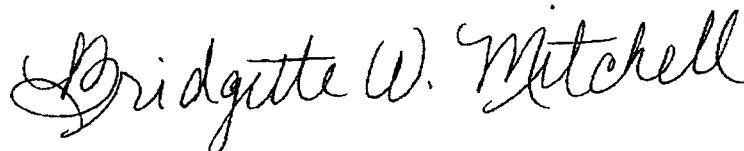
1 we'll get it out to you.
2 MS. STOKES: That will be great.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 Thank you once again and be careful
5 driving home. I need a motion to
6 adjourn.
7 MS. MERRITT: So move.
8 COMMITTEE CHAIRMAN PHILLIPS:
9 Second?
10 MS. MERRITT: Second.
11 COMMITTEE CHAIRMAN PHILLIPS: All
12 in favor?
13 (Unanimous.)
14 (The Rulemaking Committee meeting
15 and work session concluded at
16 3:15 p.m., on February 20, 2015.)
17
18
19
20
21
22
23

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1 REPORTER'S CERTIFICATE
2
3 STATE OF ALABAMA)
4 ELMORE COUNTY)
5
6 I do hereby certify that the above
7 and foregoing transcript was taken down
8 by me in stenotype, and the questions and
9 answers thereto were transcribed by means
10 of computer-aided transcription, and that
11 the foregoing represents a true and
12 correct transcript of the testimony given
13 by said witness.
14
15 I further certify that I am
16 neither of counsel, nor any relation to
17 the parties to the action, nor am I
18 anyway interested in the result of said
19 cause.
20
21 I further certify that I am duly
22 licensed by the Alabama Board of Court
23 Reporting as a Certified Court Reporter
as evidenced by the ACCR number following
my name below.

/s/ Bridgette W. Mitchell
Bridgette W. Mitchell
Certified Court Reporter and
Commissioner for the State of
Alabama at Large
ACCR No. 231 - Expires 9/30/15
MY COMMISSION EXPIRES 12/19/17

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA)
3)
4 ELMORE COUNTY)5
6 I do hereby certify that the above
7 and foregoing transcript was taken down
8 by me in stenotype, and the questions and
9 answers thereto were transcribed by means
10 of computer-aided transcription, and that
11 the foregoing represents a true and
12 correct transcript of the testimony given
13 by said witness.14
15 I further certify that I am
16 neither of counsel, nor any relation to
17 the parties to the action, nor am I
18 anywise interested in the result of said
19 cause.20 I further certify that I am duly
21 licensed by the Alabama Board of Court
22 Reporting as a Certified Court Reporter
23 as evidenced by the ACCR number following
 my name below.20 /s/ Bridgette W. Mitchell
21 Bridgette W. Mitchell
22 Certified Court Reporter and
23 Commissioner for the State of
 Alabama at Large
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Part B

Attachment 1

AGENDA*
MEETING AND WORK SESSION OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 20, 2015

TIME: 1:00 p.m.

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

<u>ITEMS</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on December 12, 2014**	2
2. Rulemaking Committee work session on Division 335-2 ADEM Administrative Code Rule 335-2-3-.05, <u>Agenda</u> , Sections (1) through (3)	2 & Attachment
3. Other business	2
4. Future Rulemaking Committee meeting	2

* The agenda for this meeting and work session and notice for the work session will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission and Public Notices and Permits/EMC Notice of Work Session.

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

Agenda
Rulemaking Committee Meeting and Work Session
Page 2

1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 12, 2014
2. RULEMAKING COMMITTEE WORK SESSION ON DIVISION 335-2 ADEM ADMINISTRATIVE CODE
RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

Attached is a notice that provides details regarding the work session.

3. OTHER BUSINESS
4. FUTURE RULEMAKING COMMITTEE MEETING

ATTACHMENT

**ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION (AEMC)
RULEMAKING COMMITTEE
NOTICE OF WORK SESSION ON DIVISION 335-2 ADEM ADMINISTRATIVE CODE
RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)**

Rule No.	Rule Title
335-2-3-.05, Sections (1) through (3)	Agenda

Notice is hereby given that a work session will be held by the AEMC's Rulemaking Committee under Agenda Item 2 at its meeting on **February 20, 2015, at 1:00 p.m. in the main hearing room at the ADEM – Central Office location at 1400 Coliseum Boulevard in Montgomery**, to conduct an open discussion with interested parties on the Committee's current areas of concern regarding the above Rule as listed below. During the work session, the Committee will hear oral comments from interested parties regarding the Committee's current areas of concern regarding the above Rule and any additional areas of concern regarding the above Rule that they wish to present and discuss with the Committee. **THE PURPOSE OF THIS WORK SESSION IS TO SEEK CONSTRUCTIVE INPUT ON HOW TO IMPROVE THE EXISTING RULE. IT IS NOT THE INTENT OF THE COMMITTEE TO REPEAL THE EXISTING RULE. IT IS THE COMMITTEE'S INTENT TO IMPROVE THE RULE AND IF CHANGES ARE DECIDED TO PRESENT THEM TO THE FULL COMMISSION FOR ITS CONSIDERATION.**

RULEMAKING COMMITTEE'S CURRENT AREAS TO CONSIDER

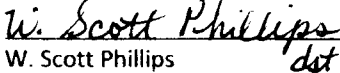
1. E-mail delivery of requests from members of the public to appear before the Commission is currently not allowed in the existing Rule.
2. Requests from members of the public to appear before the Commission are being submitted right at or after the 14 days deadline before the Commission meeting.
3. Public comments should focus on the following areas of Commission responsibility: (1) To select a Director for the Department of Environmental Management and to advise the Director on environmental matters which are within the Department's scope of authority; (2) To establish, adopt, promulgate, modify, repeal and suspend any rules, regulations or environmental standards for the Department which may be applicable to the State as a whole or any of its geographical parts; and (3) To develop environmental policy for the State.
4. A process for encouraging written public comments at all times in order to let Commission know what input is desired.
5. Commissioners should not be predisposed to granting or denying the requests from members of the public to appear before the Commission. The Rule should clarify that the AEMC Chair shall not communicate to the person or persons requesting that their respective request will be "recommended" or "not recommended" for acceptance by the Commission. The Chair should acknowledge receipt and that it will be placed before the Commission for consideration. If the request fails to meet certain criteria required of such a presentation, the Chair should be able to deny the presentation without consultation of the Commission. Person or persons requesting should come prepared to make their presentation.
6. Clarify that no individual, entity, or various representatives of an entity may be granted permission to address the Commission on the same topic more than once in a short amount of time, except under special circumstances.
7. Clarify that before being granted permission to address the Commission, person or persons requesting to appear before the Commission must pursue all reasonable venues made available through the ADEM and its Director for addressing concerns that are subject to the Department's roles and responsibilities. Verifiable evidence of such effort should be presented with request.
8. Clarify that to be granted permission to address the Commission, person or persons requesting must provide presentations (either PowerPoints or manuscripts) to the Commission no later than 7 business days prior to consideration. Failing to do so will result in default denial of request. Changes cannot be made to the presentation following this submission.

Persons interested in attending and participating in the work session should notify the Committee of their intent to attend and participate in the work session by mail directed to: Rulemaking Committee, Alabama Environmental Management Commission, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at aemc@adem.state.al.us. Notification of intent to attend and participate in the work session must be received by the Rulemaking Committee prior to 5:00 p.m. on **February 6, 2015**.

Persons interested in participating in the work session by teleconference may request to do so and will be provided with a teleconference telephone number to call in to the work session. Participants wanting to provide input through Conference Call need to understand that participation may be limited in engaging their involvement. A request to participate in the work session by teleconference should be directed to the Rulemaking Committee by e-mail at the aemc@adem.state.al.us and received by the Committee prior to 5:00 p.m. on **February 6, 2015**.

Attendance at the work session is not necessary to present comments regarding the Committee's current areas to consider (listed above) regarding the current Rule and other areas of concern regarding the current Rule as the same may be submitted in writing. Written submissions and other inquiries should be directed to: Rulemaking Committee, Alabama Environmental Management Commission, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at aemc@adem.state.al.us and must be received by the Rulemaking Committee prior to 5:00 p.m. on **February 6, 2015**.

This notice is hereby given this day, **January 21, 2015**, by authority of the Chair of the Rulemaking Committee of the Alabama Environmental Management Commission.


W. Scott Phillips
Chair
AEMC Rulemaking Committee