Minutes
Meeting of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 16, 2015
This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Rulemaking Committee of the Alabama Environmental Management Commission on October 16, 2015.

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

Certified this 18th day of December 2015.
Minutes
Meeting of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
October 16, 2015

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

Part A
Transcript
Word Index

Part B
Attachment 1 - Agenda
Part A
CHAIRMAN PHILLIPS: I want to call the October 16th, 2015, Rulemaking Committee meeting to order. I want to acknowledge we do have a quorum.

Agenda Item No. 1:
Consideration of the minutes of the meeting and work session held on August 21st, 2015.
Do I have a motion?

DR. RICHARDSON: Seeing no needed changes, I move that we adopt the minutes of the August 21, 2015, Committee meeting as presented.

CHAIRMAN PHILLIPS: I have a motion, and I will make the second to the motion.

All in favor?
(All Committee members signify "aye.")

CHAIRMAN PHILLIPS: Motion carries.

Agenda Item No. 2: Agenda Item No. 2 is the discussion and consideration of ADEM Administrative Code 335-2;

Environmental Management Commission Regulations Rule 335-2-3-.05; Agenda Sections 1 through 3.
I want to point out that we're continuing our examination of this rule that I just noted, and that the sections of this rule include the procedures and requirements regarding requests from the public to appear before the Commission at our meetings following consideration of the agenda items.

On August 21st, 2015, the Committee met. Committee Member Richardson provided us a draft rule, which we discussed at our meeting. Written comments regarding that draft were received from the Alabama Rivers Alliance, on behalf of the Alliance; and the Southern Environmental Law Center; and the Black Warrior Riverkeeper; and the Choctawhatchee Riverkeeper.
Those were pretty much the only ones we received, correct?
DR. RICHARDSON: Yes, we --
we opened this up --
CHAIRMAN PHILLIPS: Pretty
much to everyone, right? Okay.
DR. RICHARDSON: That's
right.
CHAIRMAN PHILLIPS: I just
want to make sure I'm clear on that.
DR. RICHARDSON: That is
correct, yes.
CHAIRMAN PHILLIPS: In
addition to that, we received a set of
draft rule and guidelines, as we had
requested, from Robert Tambling and
received some changes to those proposed by
Committee Member Richardson.
So I really would like to open
the discussion up around all of those
comments we received, the drafts that we
prepared, and let's just have a dialogue,
Commissioner, about what we have in front
of us.
DR. RICHARDSON: Thank you,
Chairman Phillips. My comments in general
are that, first off, I'd like to thank
Robert for taking what I put together very
cruelly, I think, and really putting it
into some form that I think even better and
more accurately reflects the various
comments that we received, not only from
the Committee, but from public interests as
well.
And I think that what he has
presented to us, personally, I think is
really, really close. I mean, I think it's
where we want to go with this. It keeps
intact pretty much immediate ability to
address the Commission. It also keeps
intact the ability to give more extensive
and detailed presentations to the Committee
and knowing the disposition of your
presentation beforehand.
Now, as -- Commissioner
Phillips, as you're aware, one of the
criticisms we have before us is in the way
that I proposed -- for those of you that
have that and saw that last time, the way
that I proposed, and basically what has
been put together in this revision by
Mr. Tambling, says there's basically, what,
two and a half months between idealization,
conceptualization, putting something
together and the time it's put before the
Commission.
I don't -- I don't know how to
deal with that otherwise and us still have
time to look at something, a detailed
presentation like that, and get some idea
and prepare ourselves before the time
comes.
So I guess, to me, I'm okay with
everything that's in front of us at this
point, with a few changes as noted. But I
think that's the biggest issue we probably
ought to open up and kind of deal with
right now, in my view. And I'll relinquish
the floor to you for comment on that, so --
CHAIRMAN PHILLIPS: I think
you're right. I think that's probably the
most substantive comments that we got back
relative to the Alabama Rivers Alliance
comments. I think before we jump into that
one with both feet, I'd like to at least
make sure that we don't have any small
edits or things that we need to talk about,
because I think that will probably consume
most of our time and get us to the end.
Robert, in what you proposed to
us, which was an edit of what Commissioner
Richardson has prepared --
DR. RICHARDSON: Basically
the same thing, just a different format
really?
CHAIRMAN PHILLIPS: That's
right.
MR. TAMBLING: Yes.
CHAIRMAN PHILLIPS: One of
the discussions that we had as a full
Committee, and I think speaks to your
concern, Commissioner Richardson, also, is
there are various forms that we get public
input. And that public input, by going
though the guidelines that we had relative to being able to have people to sign up, for example, to come before the Commission at a regularly scheduled meeting, as proposed to having to prepare a presentation, I think is a good step. But I think -- and I don't know that it needs to be in the rule or in the guideline, but I'm going to throw it out there. One thing that I think got lost in kind of all the back and forth drafts is the fact that we would take written comments from the public at any time --

MR. TAMBLING: Yes.

CHAIRMAN PHILLIPS: -- on any matter. And then the ability to bring that forward in the Commission meeting is really up to the Commission. But it doesn't preclude anyone from making written comments at any time.

So I think, if you could, look at where that might need to be. It may be over in the guidelines.

DR. RICHARDSON: It is in the guidelines. It is explicitly stated in the guidelines. Now --

CHAIRMAN PHILLIPS: But as explicit as we made the procedure for presentations, I really would think we've missed the boat a little bit if we don't --

DR. RICHARDSON: Well --

CHAIRMAN PHILLIPS: -- make it explicit that we would want written comments at any time.

DR. RICHARDSON: I don't see a problem with taking -- I'm trying to find exactly -- Robert, do you know specifically --

MR. TAMBLING: Yes.

DR. RICHARDSON: -- where it is in the guidelines?

MR. TAMBLING: Yes. I --

you know, it's Guideline 11.

DR. RICHARDSON: Unless --

"Members of the public wishing to engage the Commission should feel free to submit written comments and other materials to the Commission office or the director of the department in lieu of presentation requests. Written comments submitted to the Commission office will be carefully read by Commission members and will be given the same weight" -- and I would argue perhaps more -- "and consideration as the presentations made during Commission meetings."

CHAIRMAN PHILLIPS: And it may be fine that it's in the guidelines.

To me, we just seem to really address only in the rule the process for the big presentations.

MR. TAMBLING: That's true.

DR. RICHARDSON: Well, I wouldn't have a problem with -- perhaps, Robert, I'm -- just think with me here.

We've got 335-2-3.05(1) then (2). Maybe we could insert between those some general statement about -- that just addresses specifically how we would accept comments.

CHAIRMAN PHILLIPS: Because we're really saying --

DR. RICHARDSON: All the presentations, the standing queue for the --

CHAIRMAN PHILLIPS: Sign-up --

DR. RICHARDSON: -- sign-up part --

CHAIRMAN PHILLIPS: Or by written.

DR. RICHARDSON: -- as well as by written comment. Maybe put that as a (2) and elevate the rest of the bullets after that.

Does that sound reasonable?

MR. TAMBLING: It's doable.

DR. RICHARDSON: I mean, leaving the guidelines as is, just simply putting in a point to make it quite clear in the rule the ways in which the Commission will receive comments from the public.
CHAIRMAN PHILLIPS: And the only reason I bring that up is if I'm looking at the rule, while I know it does refer to the guidelines, which is important, if I were just to look at the rule, it appears to me the only way that I have to present is to do that big presentation to the Commission.

DR. RICHARDSON: Yes.

MR. TAMBLING: Okay.

CHAIRMAN PHILLIPS: And I know the concern -- I'm kind of getting over into what you brought up. I know part of the concerns is that's a big gap of time to wait to get a presentation.

One of the initial discussion points the Committee had was the ability to truly talk to us about things we could do things about, things that were in our authorities to act on by -- and so, therefore, I think the time gap to educate us on policy or to talk to us about something that has not been able to be resolved through other processes or procedures, I'm not as worried about that big gap because it, to me, elevates to a significance the need to really put together a good presentation to us.

But absent talking about the other options for addressing the Commission in the rule, it appears to me -- even though it's in the guidelines, it appears to me that we're telling the public that's really the only way you have to talk to us.

DR. RICHARDSON: Will this allay your concerns, if we did something like I'm suggesting?

CHAIRMAN PHILLIPS: Yes, it would.

DR. RICHARDSON: And I would like to open to the audience, specifically Mr. Ludder, if he doesn't mind addressing this, in lieu of the fact that the way things were kind of presented, what you have that was -- that I offered up last time, that there is about a two-and-a-half month delay in there, would the ability in the interim to sign in and address the immediate concerns, would that -- I'm wondering, would that suffice until that time period allows you to present -- Mitch, you too, I guess -- to present that presentation with PowerPoints and all of that?

I'm just kind of putting that out as a question so to help us kind of decide --

CHAIRMAN PHILLIPS: And I'm going to put a clarifier on that. Because to me it seems that it's something so important and urgent, it probably doesn't need for you to sit down and figure out to put together a PowerPoint.

MR. LUDDER: Well, I guess -- I guess my opinion is that I tend to fall on the side of what Dr. --

Mr. Phillips said about, you know, if it's a big policy matter that's going to take the Commission time to resolve, then another two months probably isn't --

DR. RICHARDSON: Not that big a deal. Understood.

CHAIRMAN PHILLIPS: And I'd much rather someone know that we're wanting to hear from them and they're already approved --

MR. LUDDER: Right.

CHAIRMAN PHILLIPS: -- as opposed to making the drive and finding out that we've decided to deny it or table it.

MR. LUDDER: Right. Now, I'm not quite sure I understood what you were saying about the --

DR. RICHARDSON: Well, what --

MR. LUDDER: -- the other presentation, the -- just the --

CHAIRMAN PHILLIPS: The sign-up sheet.

DR. RICHARDSON: Well, here's -- here's --

MR. LUDDER: -- the sign-up
DR. RICHARDSON: -- here's the general criticism that we have heard is that two and a half -- and I think Mr. Ludder had -- that two and a half months could be too long in some instances.

MR. LUDDER: Correct.

DR. RICHARDSON: But in order to let you know the disposition of your request, there almost has to be another meeting in between there, which that's what forces the two and a half months.

CHAIRMAN PHILLIPS: And at least in the stakeholder group meeting that we had, that -- that --

DR. RICHARDSON: That was critical. That was important.

CHAIRMAN PHILLIPS: That was important. They wanted to know.

DR. RICHARDSON: People wanted to know that. As I think you've even indicated, that you like to know,

Okay, I've submitted a request. They'll vote on it this time. Yes, I know next meeting I need to be here and talk. That's a beautiful kind of set-up.

MR. LUDDER: I actually haven't had to rely on that. I haven't felt compelled to rely on that kind of --

MR. RICHARDSON: But -- but --

MR. LUDDER: -- advanced notice. My personal feeling and is -- and I expressed this to Robert this morning -- is that a person who wants to make a presentation ought to have the choice of running the risk of being turned down at the -- at the meeting of the presentation; or being informed by the Commission that the presentation will be allowed, but it will have to wait until the next Commission meeting.

MR. REID: And I -- I think that just in talking -- and I haven't had this sort of hashed out between David and

I -- but the -- if that was the method, then that could actually be something that was just put in the guidelines, rather than go through a rulemaking of it has to be a meeting before. Something along the lines of, you know, "Presenters understand that the EMC is not going to decide until the meeting -- the next meeting after we've received your request. And if you would like to present at -- if it is your desire to present at that meeting, be warned" --

CHAIRMAN PHILLIPS: Put the risk on the public.

MR. REID: -- "be warned that you -- we may not decide to hear that request."

DR. RICHARDSON: So the outcomes are speak now, denied, speak at the next meeting or a subsequent meeting?

MR. TAMBLING: Right.

CHAIRMAN PHILLIPS: Robert?

MR. TAMBLING: I think, you know, if you look at your -- at your edited document here, you know, one of the ways we might be able to resolve that is if you look at the first sentence, you say, "The Commission may, at its discretion, approve, deny" -- and you can say -- "and/or table presentations requests -- presentation requests" --

CHAIRMAN PHILLIPS: "Period."

MR. TAMBLING: -- "period."

You take the second part of it, and you put it in the guidelines, and you say, "The disposition of presentation requests may be determined by the Commission at the regularly scheduled meeting of the Commission for which or prior to which they have been submitted. Any presentation requests approved by the Commission may be tabled and placed on the agenda for a subsequent regularly scheduled" --

CHAIRMAN PHILLIPS: That's a good --

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

1 MR. TAMBLING: And the third sentence as well.
2 4 CHAIRMAN PHILLIPS: And the third sentence.
5 6 MR. TAMBLING: And the third --
7 8 DR. RICHARDSON: And the third sentence.
9 10 MR. TAMBLING: Yes. I think what you say, instead of "shall" you use that -- you change that to "may."
11 12 DR. RICHARDSON: Okay.
13 14 MR. TAMBLING: Or "will" goes to "may," gets you some flexibility.
15 16 DR. RICHARDSON: "Will" to "may."
17 18 CHAIRMAN PHILLIPS: Okay. Mitch?
19 20 DR. RICHARDSON: I'm good --
21 22 MR. REID: Just to clarify a little bit from the letter that we submitted, I think that the time delay, the two-and-a-half month delay, was not so much that I -- that it was we need to get before you with urgent information, but it was that the information that I would be providing -- if the expectation is the full presentation, or at least as close as I can get to a full presentation, two and a half months before, worlds change in that.
9 10 DR. RICHARDSON: Sure.
11 12 Well, one of the things that occurred to me reading your letter was that I see nothing in any of this that would preclude you from inserting the most updated information, as long as the crux of your presentation has not shifted. You know, basically you're giving the same presentation, it's just, Ooh, we've got this latest, hottest stuff come in, and this changes the whole ballgame, and I really want to get this --
16 17 I think that's perfectly acceptable.
21 22 Plus, keep if mind, you're always going to have that sign-in option.
23 I mean, that's -- and, David, as you alluded to a minute ago, that's just going to allow you to immediately speak before the Commission.
4 5 CHAIRMAN PHILLIPS: Now, we've got to manage that. We end up with a hundred people signing up --
7 8 MR. REID: And that's actually a pressure relief -- relieve valve. I think you may see less formal substantive presentations.
11 12 DR. RICHARDSON: I think there will be times we will be swamped, and most of the time it'll be just venting little bits of pressure along the way.
15 16 CHAIRMAN PHILLIPS: Robert?
16 17 MR. TAMBLING: Going back to the proposed rule guideline change here, I think it's really incumbent on those requesting presentations to let the Commission know ahead of time, We want to know -- we want to know right now whether or not, you know, we're going to be able to speak. Or in other words, you -- you're
DR. RICHARDSON: I understand where you're -- I think -- I think that in the guidelines what needs to be inserted in there is that, "The requester needs to let us know that we would prefer to speak at this meeting, yet we will -- we will accept a deferment to the subsequent meeting."

MR. TAMBLING: Right.

DR. RICHARDSON: "But our preference is -- is right now." And -- and, you know, I think that that kind of wording could be easily inserted in here.

MR. TAMBLING: Sure.

DR. RICHARDSON: And it could also be that you could say, you know, "I want to speak at this meeting; and if I can't speak at this meeting, just withdraw my request." I mean, that -- that's -- that, to me, would be you-all's call.

CHAIRMAN PHILLIPS: One of the things that came out of the stakeholder group discussion -- Mitch, as you remember because you were there -- was would it be possible to put a form together so we understood what we needed to get to you.

To me, the guidelines allow us to do just what you just said in the format of a cover form that says, Here's the relevant information the Commission needs to get to Debi, so that she can get it to us so that we know kind of what's before us to make those decisions.

DR. RICHARDSON: I mean, it would help me -- if I'm reviewing something David has submitted -- it just occurred to me I should probably be more formal -- Mr. Ludder has submitted, then I -- I would like to know when I'm reviewing it, Is this something he really would like to get before us at this meeting?

Because I think -- I think my approach is going to be a little bit different, you know, because I -- I need to get really digested as opposed to having, you know, a little more time to just an approval or not.

CHAIRMAN PHILLIPS: And I think for us to understand the relevance, instead of us having to go through a presentation. And, quite frankly, I don't think there's anything in our rules now or in our guidelines that we've kind of put together that say everything has to be a PowerPoint presentation.

So a presentation could be nothing more than a white paper that you've provided to us or any other form of presentation. But if I have to go through it to find out what the relevance is to make a decision on whether it's important and urgent enough to hear at this meeting or the next meeting, I'd rather have a form on top of it that lets you tell me why it's that important.

Mr. Ludder?

MR. LUDDER: Even though I think it -- it is important for citizens to communicate to you about what their preference is, I think it's going to be equally or more important for the Chairman to communicate back to the requester, you know, If you show up at this meeting, you may not get heard because the Commission may deny your presentation.

CHAIRMAN PHILLIPS: Good point.

MR. LUDDER: Or --

DR. RICHARDSON: And that also I think could be clearly spelled out in the guidelines as well so that they're getting -- they know that from reading the guidelines as they're putting it together.

But as the request is received and there's a response that has it been received, please be aware that there is the possibility that you will not be heard at --

CHAIRMAN PHILLIPS: But we can build that into a process that's pretty
standard, so that when Debi works with the
Chair, that's that comes back. But I think
3 clear communication is important. So that
4 was my stuff.

DR. RICHARDSON: Well, I
6 think that that takes care of a lot of the
7 issues, I think. I'm -- I'm sensing from
8 the audience that they're pretty much okay
9 with that kind of way things are going.
10 It's -- it seems to be fitting what we're
11 wanting. It seems -- I think we're hitting
12 about as good a middle ground perhaps as we
13 could under the circumstances.

CHAIRMAN PHILLIPS: I think
15 one other thing that would be valuable to
16 hear from you, those of you that are here
17 today, is, you know, I made a comment just
18 a moment ago about of course we have to
19 manage sign-ins, and -- and I saw some
20 smiles and nodding of heads.
21 How clear do we need to be in
22 the communication of that? Because any
23 given meeting we're depending on our Chair

to really look at what we have in front of
us and relative to our agenda, and then
what's in front of us relative to a sign-up
sheet to speak and making a call on what to
bring up.

DR. RICHARDSON: And let
7 me -- before we entertain your comments,
8 I'm just going to read a -- just an
9 off-the-top-of-my-head statement that I put
down as something for us to entertain.

"While an effort will be made to
12 hear all members of the public signed on
13 the registry, the number of statements
14 heard may be limited due to time
15 constraints of the Commission."
16 I didn't know how else to really
17 kind of put that down. I mean, we're not
18 going to go on for hours and hours, and I
19 don't think anybody really expects that.
20

MR. REID: I will tell you
22 that my experience with -- with trying to
23 speak at public hearings with the

1 legislature is that that is more clarity
2 than the arbitrary process that we usually
3 get, which is -- which is the Chairman of
4 the Committee saying --
5
6 CHAIRMAN PHILLIPS: Let me
7 make a clarification based on what you just
8 said. Number one, it's not a hearing.

DR. RICHARDSON: Right.

MR. REID: No, no, right.

CHAIRMAN PHILLIPS: I mean,
11 we're not -- I mean, we have a whole
12 different process for hearings before the
13 Commission, but I appreciate what you said
14 relative to clarity.
15
16 I think one concern I have
17 relative to that statement -- and I'm not
18 proposing that we clarify it any further,
19 because I think the Commission needs the
20 flexibility -- is we have a hundred people
21 sign up, but on our sign-up sheet we've
22 asked them what's your topic that you want
23 to talk about. And the Chairman has 80 of
24 them that have the same topic and ten that
Meeting of the Rulemaking Committee of the
Alabama Environmental Management Commission

1. placed on the agenda, or do you want to
2. adjourn and then have the statements?
3. The question I think this begs
4. is whether or not you want the court
5. reporter working -- transcribing these
6. statements. Or maybe you can have them on
7. the agenda and just instruct the court
8. reporter not to transcribe them, because
9. there's going to be a video record made of
10. this anyway. You know, if you're
11. transcribing these statements, it's going
12. to wind up costing the Department a pretty
13. good bit of money, depending on the number
14. of statements that are received.
15. DR. RICHARDSON: I'd like to hear --
16. MR. LUDER: As far as -- as far as the recording, I guess it doesn't
17. matter to me whether it's a stenographer or
18. the camera. What matters to me, I guess,
19. more is if this is the official business of
20. the Commission, it needs to be on the
21. agenda. It needs to be part of the
22. official proceeding.
23. CHAIRMAN PHILLIPS: Not to diminish what you just said, but I'm going
24. to ask a question of counsel.
25. Is that a requirement?
26. MR. TAMBLING: I don't think
27. it's a requirement, but it makes a lot of
28. sense to me. I think -- I think if you
29. know, it's going to be part of the agenda,
30. and it's -- then I think it really is part
31. of the official business of the Commission.
32. CHAIRMAN PHILLIPS: So then
33. let me restate what I think I heard you
34. say, David, which is it doesn't really
35. matter to you as long as it's recorded --
36. as long as it's documented?
37. MR. LUDER: Right.
38. CHAIRMAN PHILLIPS: Okay.
39. MR. REID: And there's also
40. the -- the option of someone handing a
41. written -- you know, if they want --
42. CHAIRMAN PHILLIPS: You mean
43. if they walk up and hand us a statement,
44. and then they make their statement?
45. MR. REID: Right. Right.
46. CHAIRMAN PHILLIPS: To me,
47. that's just two ways of communicating the
48. same thing. It's okay with me.
49. MR. TAMBLING: And if you
50. adjourn --
51. CHAIRMAN PHILLIPS: -- since
52. we're taking written comments at any time.
53. MR. TAMBLING: If you
54. adjourn and then take the statements, then
55. any Commission member could get up and
56. leave whenever they wanted to. So it would
57. kind of, I think, take away from the
58. process.
59. CHAIRMAN PHILLIPS:
60. Dr. Richardson?
61. DR. RICHARDSON: My personal
62. feeling on this is today, and always has
63. been, if it's worth my time to sit here and
64. listen to, it's worth -- it's worth being
65. on the record. It needs to be on the
66. record.

I think me, as a citizen,
wanting to get up and address a body such
as this, I would expect that my comments
were a part of the record. I would want my
comments to be a part of the record. Just
that there is some recording of it is
better than nothing, but I -- I really
think I -- my position is it needs to be a
part of our agenda. It needs to be
something that is a matter of record and is
traded official. And that way if some
point in the future something is said,
somebody can go to the record and look it
up and say, "Here's -- this is it. This is
what you said."
You know, that's just my
position though. I -- I really don't care
how we handle it. I just feel like it
ought to be a part of the record.

CHAIRMAN PHILLIPS: I think
the other part of that is what Robert just
said, which I had not thought about. Which
is, if we adjourn, anyone can just -- we
1. could end up with one Commissioner sitting
2. here listening to people. To me, it
3. denotes the rule with lack of respect —
4. DR. RICHARDSON: Well, and
5. —
6. CHAIRMAN PHILLIPS: And so
7. from that perspective, I think it's really
8. more incumbent to manage that time to fit
9. the needs of the Commission, while at the
10. same time allowing whomever wants to speak
11. the time to speak.
12. So that just makes it much more
13. of a task for the Chair to have to
14. accommodate, but it think it's as important
15. to do that to make sure that the full
16. Commission is here as they can be.
17. DR. RICHARDSON: Well, if
18. I'm hearing right then, I'm hearing that we
19. want this to be a part of the record.
20. CHAIRMAN PHILLIPS: Yes.
21. DR. RICHARDSON: Part of the
22. agenda. And I agree. I just think that's
23. the way to do it.

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

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

1. managed -- if it were managed, is fine.
2. CHAIRMAN PHILLIPS: Okay.
3. MR. McAULEY: I guess I just
4. think it's sometimes not managed.
5. CHAIRMAN PHILLIPS: Thank
6. you. That was helpful. Okay.
7. I don't have anything else on
8. this, Commissioner Richardson. Do you?
9. DR. RICHARDSON: I have
10. nothing else specific that I haven't put to
11. the Committee.
12. CHAIRMAN PHILLIPS: Then --
13. DR. RICHARDSON: And I think
14. the changes -- I've noted the changes we've
15. discussed, which just, in brief, is to
16. insert a new paragraph two, elevating the
17. remaining paragraphs, that just describes
18. all the means in which we will receive
19. public comment, and then to address the
20. time issue to receive the second two
21. sentences, move those to the (inaudible)
22. and insert that it may -- "and/or"
23. discretion, approved, denied," et cetera.
CHAIRMAN PHILLIPS: And then I think that we need to give some thought.
I don't think there's anything to do other than to really reflect on it, but give some
thought to the idea of how we would manage the register.
Because of that, I think we need to work through that, Robert. And if you
and Debi will work with us to incorporate those changes so that we can have a final
draft to share with the Committee.
DR. RICHARDSON: Yes, I would -- I'm sorry.
CHAIRMAN PHILLIPS: And I think at that point we may be prepared to
also get it out to those stakeholders that we had involved to get their comments.
Because I would like to, at least in our December meeting, make a point of when we
make a recommendation the full Commission.
DR. RICHARDSON: I would -- I would like at the December meeting
following, I would like for us to meet again prior to the December meeting, you know, at 10 a.m.
CHAIRMAN PHILLIPS: Oh, okay.
DR. RICHARDSON: And then at the conclusion of that meeting, be prepared to make a -- to recommend a document to the
Commission for their --
CHAIRMAN PHILLIPS: Further action.
DR. RICHARDSON: -- action and their consideration.
CHAIRMAN PHILLIPS: And that brings one last thing that I'd like to ask Robert, because I think it's something that you just sparked when you said that.
Is there any reason we couldn't implement the guidelines that we had while we were -- if the full Commission in December decided to move forward with the rule changes, is there any reason we couldn't start managing our meetings by the guidelines?
implement these guidelines. I think that 1
has to take place when we -- after we go 2
through rulemaking.
3
CHAIRMAN PHILLIPS: Okay.
4
MR. TAMBLING: But I think 5
we can start managing our meetings
6
according to the guidelines, at least the
7
spirit of the guidelines.
8
CHAIRMAN PHILLIPS: So even 9
in the December meeting?
10
MR. TAMBLING: Yes.
11
DR. RICHARDSON: Yes.
12
CHAIRMAN PHILLIPS: Okay.
13
DR. RICHARDSON: I'm good
14
with that, absolutely.
15
CHAIRMAN PHILLIPS: David?
16
MR. LUDDER: And in line
17
with all this, this discussion, I think the
18
Chairman can now write a letter to somebody
19
asking to make a presentation, you know,
20
"If you want to be heard at this meeting,
21
you know, you may not be; but if you want
22
to be certain of what the Commission's
23
decision is, wait until the next meeting."

CHAIRMAN PHILLIPS: Got you.
MR. LUDDER: That can be
done now without rulemaking.
CHAIRMAN PHILLIPS: Well,
which is pretty much what we're saying
relative to the guidelines.
DR. RICHARDSON: Right.
Well, I got it. I move that we adjourn.
CHAIRMAN PHILLIPS: Well,
let's talk about the future rulemaking,
just to make sure that we know when we'll
meet next.
I will entertain a motion to set
the next Committee meeting on December 18,
2015, at 10 a.m. in this room.

DR. RICHARDSON: So moved.
CHAIRMAN PHILLIPS: Second.
All in favor?
(All Committee members
signify "aye.")
CHAIRMAN PHILLIPS: I move
to adjourn.
STATE OF ALABAMA
COUNTY OF MONTGOMERY

I hereby certify that the above proceedings were taken down by me and transcribed by me using computer-aided transcription and that the above is a true and accurate transcript of said proceedings taken down by me and transcribed by me.

I further certify that I am neither of kin nor of counsel to any of the parties nor in anywise financially interested in the outcome of this case.

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter as evidenced by the ACCR number following my name found below.

[Signature]

VICTORIA CASTILLO, ACCR #17, 9/30/16
FREELANCE COURT REPORTER
### Meeting of the Rulemaking Committee of the Alabama Environmental Management Commission

October 16, 2015

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>again (1)</td>
<td>42:1</td>
<td>authorities (1)</td>
</tr>
<tr>
<td>Agenda (14)</td>
<td>3:5,21,21;4:2,11;20:19;30:2;32:22;33:1;7,23;34:9;36:9;37:22</td>
<td>aware (2)</td>
</tr>
<tr>
<td>ago (2)</td>
<td>24:1;29:18</td>
<td>away (1)</td>
</tr>
<tr>
<td>agree (2)</td>
<td>32:8;37:22</td>
<td>aye (3)</td>
</tr>
<tr>
<td>ahead (4)</td>
<td>24:20;43:12;44:19;21</td>
<td>Alabama (2)</td>
</tr>
<tr>
<td>alloy (1)</td>
<td>14:13</td>
<td>Alliance (3)</td>
</tr>
<tr>
<td>allow (2)</td>
<td>24:2;22:6</td>
<td>allowed (1)</td>
</tr>
<tr>
<td>allowing (1)</td>
<td>37:10</td>
<td>allows (1)</td>
</tr>
<tr>
<td>altogether (2)</td>
<td>15:7;10</td>
<td>alluded (1)</td>
</tr>
<tr>
<td>almost (1)</td>
<td>17:10</td>
<td>always (3)</td>
</tr>
<tr>
<td>along (2)</td>
<td>19:5;24:14</td>
<td>and/or (1)</td>
</tr>
<tr>
<td>appear (1)</td>
<td>4:9</td>
<td>appear (1)</td>
</tr>
<tr>
<td>appears (3)</td>
<td>13:6;14:8:9</td>
<td>appreciate (1)</td>
</tr>
<tr>
<td>approach (1)</td>
<td>26:22</td>
<td>approval (1)</td>
</tr>
<tr>
<td>approve (1)</td>
<td>20:4</td>
<td>approved (3)</td>
</tr>
<tr>
<td>arbitrary (1)</td>
<td>31:2</td>
<td>argue (1)</td>
</tr>
<tr>
<td>around (1)</td>
<td>5:18</td>
<td>audience (2)</td>
</tr>
<tr>
<td>August (3)</td>
<td>3:7,11;4:12</td>
<td>August (3)</td>
</tr>
<tr>
<td>B</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>back (5)</td>
<td>8:1;9;11;24:16;28:5;29:2</td>
<td>balance (1)</td>
</tr>
<tr>
<td>ballgame (1)</td>
<td>23:19</td>
<td>based (1)</td>
</tr>
<tr>
<td>basically (4)</td>
<td>7:2,4;8:12;23:15</td>
<td>beautiful (1)</td>
</tr>
<tr>
<td>become (1)</td>
<td>43:8</td>
<td>beforehand (1)</td>
</tr>
<tr>
<td>begs (1)</td>
<td>33:3</td>
<td>behalf (1)</td>
</tr>
<tr>
<td>better (3)</td>
<td>6:5;36:7;43:6</td>
<td>big (6)</td>
</tr>
<tr>
<td>smallest (1)</td>
<td>7:18</td>
<td>bit (5)</td>
</tr>
<tr>
<td>Black (1)</td>
<td>24:14</td>
<td>bits (1)</td>
</tr>
<tr>
<td>boat (1)</td>
<td>11:14;13:7;14;14:3;15:22;16:3</td>
<td>body (1)</td>
</tr>
<tr>
<td>both (1)</td>
<td>11:14;13:7;14;14:3;15:22;16:3</td>
<td>bring (1)</td>
</tr>
<tr>
<td>change (4)</td>
<td>22:11;23:8;24:17;39:8</td>
<td>changes (8)</td>
</tr>
<tr>
<td>Chocawhatchee (1)</td>
<td>4:20</td>
<td>choice (1)</td>
</tr>
<tr>
<td>Collins (6)</td>
<td>3:7,11;4:12;36:1;29:13</td>
<td>citizens (1)</td>
</tr>
<tr>
<td>clarification (2)</td>
<td>31:6;44:12</td>
<td>clarifier (1)</td>
</tr>
<tr>
<td>clarify (2)</td>
<td>22:1;31:17</td>
<td>clarity (2)</td>
</tr>
<tr>
<td>clearly (1)</td>
<td>28:13</td>
<td>close (2)</td>
</tr>
<tr>
<td>Code (1)</td>
<td>3:23</td>
<td>comments (4)</td>
</tr>
<tr>
<td>comment (4)</td>
<td>7:21;12;13:29:17;40:49</td>
<td>comments (18)</td>
</tr>
<tr>
<td>Commissioners (6)</td>
<td>8:1;9;11;24:16;28:5;29:2</td>
<td>Commission (41)</td>
</tr>
<tr>
<td>Committee (15)</td>
<td>3:3,11;17;4:13;5:16;8:17;8:20;13:17;31:4;40:11</td>
<td>conceptualization (1)</td>
</tr>
<tr>
<td>concern (6)</td>
<td>8:21;13;12;31:15;39:14;9:21</td>
<td>concerns (4)</td>
</tr>
<tr>
<td>A</td>
<td>B</td>
<td>C</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>H</td>
<td>half (5)</td>
<td>7:5:17:4:5:12:23:7</td>
</tr>
<tr>
<td>handle (2)</td>
<td>25:13:6:18</td>
<td>happen (1)</td>
</tr>
<tr>
<td>hitting (1)</td>
<td>29:11</td>
<td>hottest (1)</td>
</tr>
<tr>
<td>Item (3)</td>
<td>3:5:21:21</td>
<td>items (1)</td>
</tr>
<tr>
<td>Instead (2)</td>
<td>22:10:27:6</td>
<td>instruct (1)</td>
</tr>
<tr>
<td>Item (3)</td>
<td>3:5:21:21</td>
<td>items (1)</td>
</tr>
</tbody>
</table>
reason (3)
13:2;42:17,21
reasonable (1)
12:16
receive (3)
12:22;40:18,20
received (10)
4:16,23:5;12,15,19;
6:7,19;9:28;17,18;
33:14
recommend (1)
42:7
recommendation (1)
41:20
record (9)
33:9;35:22,23;36:4;
5,10,13,19;37:19
recorded (1)
34:15
recording (2)
33:18;36:6
records (2)
38:5,39:6
refer (1)
13:4
reflect (1)
41:4
reflects (1)
6:6
regarding (2)
4:8,16
register (1)
41:6
registry (1)
30:13
regularly (3)
9:4,20:15,20
Regulations (1)
4:2
REID (8)
18:21;19:14;22:21;
24:7;30:21,23:9,14,19;
35:2
relative (8)
8:2,9:1,3;0,2,3;31:14;
16,32:19,46:7
relevance (2)
27:5,16
relevant (1)
26:9
relief (1)
24:8
relieve (1)
24:8
relinquish (1)
7:20
rely (3)
18:6,7,38:3
remaining (1)
40:17
remember (1)
26:2
reporter (3)
33:5,8;39:9
representative (1)
32:3
request (6)
17:10;18:1,19:9,16;
25:2;18:27,17
requested (1)
5:14
requester (2)
25:7;28:5
requesting (1)
24:19
requests (6)
4:8,11;4:20,6:7,13,
18
requirement (2)
34:5,7
requirements (1)
4:8
resolution (1)
44:23
resolve (2)
15:23,20:2
resolved (1)
14:1
respect (1)
37:3
response (1)
28:18
rest (1)
12:14
restate (1)
34:13
reviewing (2)
26,14,18
revision (1)
7:3
RICHARDSON (76)
3:9,4,13,5,1,5;3,1,9,
23;8,11,12,21;10:1,8,
12,17;11:17;12,3,8,
12,18;13,9;14,12,17,
16,2,15,21,17:2,8,17,
21,18,18:19,17:20,23,
21,3,10,21,22,7;12,15,
19;23:9,24:11,25:3,12,
17,26,13,28,12,29:5,
30:6,31:8,32:10,22,
33:15,35,17,18;37:4,
17,21,39:1,5,40:8,9,13,
41:12,21,42:5,11,
45:15,21,44:2,10,
45:12,14,46:8,17,47:1
right (20)
5:4,6,7;20,23:8,16;
16,8,19;20,21:20,21,
24:21,25,11,13:31:8,9,
34:17,35:2,2;37:18,
44:2,46:8
risk (2)
18:15,19:13
Riverkeeper (2)
4:20,21
Rivers (2)
4:17,8:2
Robert (12)
5:14,6,3;8,9,10;14;
11,19,18;12,9,19,21,
21,17,24,15;36,21,
41,8,42,15
room (1)
46:16
Roy (2)
39:11,44:14
Rule (16)
4:2,5,7;14,5:13,9,8;
11,14,12,21;13,3,5,
14,8,21,7;24,17,37:3,
42;21,44:7
Rulemaking (5)
3:2,19,4;45,3;46:4,11
rules (3)
27,8,43,5,8
running (1)
18:15
S
same (8)
8:13,11,7,23:16;
31,23,32;18,35;5,
37,10,43:7
sampling (1)
32:3
saw (2)
7:1,29:19
saying (4)
12,2,16,14,31:4,
46:6
scheduled (3)
9:4,20,15,20
second (6)
3:14,20,11,21,22;
40,20,46,18,47:2
Sections (2)
4,3,6
Seeing (1)
3:9
seem (1)
11,13
seems (3)
15,14,29,10,11
sense (1)
34:8
sensing (1)
29,7
sentence (5)
20,3,21,22,22:2,4,8
sentences (1)
40,21
serve (1)
43:3
session (1)
3:7
set (2)
5:12,46:14
set-up (1)
18:4
shall (1)
22:10
share (1)
41:11
sheet (5)
16,20,17,1,30,4,11;
31,20,43,17
shifted (1)
23:15
show (2)
21,14,28,6
side (1)
15:20
sign (3)
9,2,15,2,31,20
signed (2)
30,12,32:5
significance (1)
27:14,44,21
sign-in (1)
23:22
signing (1)
24:6
sign-ins (1)
29:19
Sign-up (7)
12,6,8,16,20,23,
30,3,31,20,43:16
simplifies (1)
21:7
simply (2)
12,19,21,18
sit (2)
15,16,23:10
sitting (1)
37:1
small (1)
8:5
smiles (1)
29:20
somebody (3)
36,13,38,7:45,19
someone (2)
16,5,34,20
sometimes (1)
40:4
sorry (2)
41:13,44:18
sort (1)
18:23
sound (1)
12:16
Southern (1)
4:18
sparked (1)
42:16
speak (12)
19,18,18,24:2,23;
25,8,19,20,30:4,23;
32,6:37,10,11
speaks (1)
8:20
specific (1)
40:10
specifically (3)
10,14,11,23,14:18
spelled (1)
28:13
spirit (1)
45:8
stakeholder (2)
17,15:26,1
stakeholders (1)
41:16
standard (1)
29:1
standing (1)
12:4
start (6)
42,22,43,2,12,44,8,
21,45:6
starts (1)
39:8
stated (1)
10:2
statement (6)
11,22,21,18,30,9;
31,16,34,23,35:1
statements (7)
30,13,32:20,33,2,6,
11,14,35:11
stenographer (1)
33:19
step (1)
9:6
stick (1)
39:9
still (2)
7:10,39:6
stuff (2)
23,17,29:4
submit (1)
10:23
submitted (6)
11,4,18,1:20,17;
22,23,26,15,17
subsequent (3)
19:19,20,20,25:10
substantive (2)
8:1,24:10
suffice (1)
15:4
suggesting (1)
14:14
sure (8)
5,8,8,5,16,13,23:9,
25,16,37,15,44,15,
46:12
swamped (1)
24:12
Part B
Attachment 1
AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: October 16, 2015
TIME: 10:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

ITEMS

1. Consideration of minutes of meeting held on August 21, 2015**

2. Discussion and consideration of ADEM Admin. Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3)

3. Other business

4. Future Rulemaking Committee meeting

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

** The minutes of this meeting will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON AUGUST 21, 2015

2. DISCUSSION AND CONSIDERATION OF ADEM ADMIN. CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

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

3. OTHER BUSINESS

4. FUTURE RULEMAKING COMMITTEE MEETING