Minutes
Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 18, 2015
This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Alabama Environmental Management Commission on December 18, 2015.

H. Lanier Brown, II, Chair
Alabama Environmental Management Commission

Certified this 19th day of February 2016.
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Environmental Management Commission Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 18, 2015

Convened: 11:00 a.m.
Adjourned: 12:26 p.m.

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Part A
MEETING OF THE
ABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 18, 2015
11:00 a.m.

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T REPORTER: PATRICK R. MILLER, ACCR 2037

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APPEARANCES

ISSION MEMBERS:
Mr. H. Lanier Brown, II, Esq., Chair
Mr. W. Scott Phillips, Vice Chair
Samuel L. Miller, M.D.
Terry D. Richardson, Ph.D.
Elliott Craig Martin, D.V.M.
James R. Laier, Ph.D., P.E.
Mary J. Merritt

PRESENT:
Mr. Lance R. LeFleur, ADEM Director
Mr. Russell A. Kelly, P.E., Chief, Permits and Services Division
Mr. Robert D. Tambling, EMC Legal Counsel
Ms. Debi Thomas, EMC Executive Assistant

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CHAIRMAN BROWN: Good morning, everyone.

MS. MERRITT: Good morning.

CHAIRMAN BROWN: We will call the December 18, 2015 meeting of the Alabama Environmental Management Commission to order. The Chair acknowledges a quorum. The first item on the agenda is consideration of the minutes of the meeting held on October 16, 2015. The Chair knows that the minutes have been previously circulated to the Commissioners, and entertain a motion.

MR. PHILLIPS: I move to adopt the minutes of the October 16, 2015 meeting as circulated.

DR. LAIER: Second.

CHAIRMAN BROWN: Any discussion? (No response was heard.)

CHAIRMAN BROWN: All in favor, say Aye.

(A unanimous response was heard.)

CHAIRMAN BROWN: Resolution passes.

Next on the agenda item is elections for the Personnel Committee and Rulemaking Committee. For the Personnel Committee, nominations are Jim Laier for Chairman, Craig Martin and Sam Miller as members. For Rulemaking Committee, Scott Phillips as Chair, Mary Merritt and Terry Richardson as members.

Again, the Chair will entertain a motion.

DR. MILLER: I move that we accept the nominations.

DR. MARTIN: Second.

CHAIRMAN BROWN: Any discussions? (No response was heard.)

CHAIRMAN BROWN: All in favor, say Aye.

(A unanimous response was heard.)
CHAIRMAN BROWN: Resolution passes.
Agenda Item Number 3 is the report
from the Director. Good morning.
MR. LEFLEUR: Good morning, sir.
Good morning to all that are present
today.
MS. MERRITT: Good morning.
MR. PHILLIPS: Good morning.
DR. LAIER: Good morning.
MR. LEFLEUR: Today's entire report
will address the proposed permit fee
increase to be considered by the
Commission later in this meeting. Due
to the depth -- the in-depth nature of
the budget and funding report, the
RCRA Hazardous Waste Dashboards will
once again be rescheduled until the
next Commission meeting.
Today's report is intended to
provide you a comprehensive analysis
of ADEM's budget, issues involving
EPA, funding options, concerns that
have expressed, and other related
matters as you consider the proposed
permit fee rulemaking. At the October
16th, 2015 Commission meeting, I
reported the results of the State
General Fund budgeting process that
concluded on September 16, 2015, where
the Department received a substantial
funding reduction, and an additional
requirement for the Department to
transfer dedicated cleanup fees to the
General Fund. The Department, the
Commission, regulated industries, and
others have all voiced aversion to any
increase in permit fees to make up for
the cuts; however, in order to
maintain the Departmental performance
levels necessary to retain the NPDES
water program under the control of the
State, the Department initiated a
rulemaking process to increase permit
fees, excluding Clean Air Act Title V
fees, which are regulated by Federal
statute, by 20 percent to replace the

General Fund cut.
Why and how the decision to seek
the permit fee increase was reached is
as follows.
First, the Department has been
under the scrutiny of EPA for more
than five years for insufficient
funding. State -- State environmental
programs receive Federal funding and
State funding. The State sources are
General Fund appropriations and fees.
EPA looks to the total of General Fund
appropriations plus State fees, which
equals the total funds provided by the
State to run environmental programs.
Let's see here. What am I not doing
right? You got to slide? Well, we
seem to have a technical difficulty
here. Please bear with me for a
moment.
(A brief recess was taken.)
MR. LEFLEUR: All right. The
following table illustrates the cause
for EPA's concern. The information
displayed shows State-sourced funding
for 2013, which is the most current
data available. The numbers in this
table are before the FY 2016 General
Fund budget cuts. The left column
ranks each state by its per capita
General Fund appropriation. The
center column ranks each state by its
per capita total state fees. The
right column is the sum of the other
two columns and ranks each state by
its total state-sourced funding. The
Federal funding is not displayed.
Some states elect to provide large
General Fund appropriations to keep
fees to regulated industries low while
other states provide little or no
General Fund appropriations and
implement fees to cover virtually all
the non-Federally funded costs of
their environmental programs. Of
course, some states come closer to
balancing the two sources of funding.
Each state determines independently
how much it will rely on one source or
the other.
As you can see, only five states
provide less funding from General Fund
appropriations per capita than
Alabama, and only nine states provide
less funding from fees. Being at the
lower end of both funding sources
results in Alabama being lower than
diff in total
state-funded funding.
State funding is necessary to
supplement Federal funding in order to
meet Federal work plan requirements
for numbers of inspections, timeliness
of various activities, permit quality
reviews, water quality monitoring, and
many other measured criteria.
Personnel costs are the largest
component of any State program budget.
Without sufficient funding, staffing
levels must be reduced below those
necessary to meet work plan
requirements. Failure to meet minimum
performance standards, for whatever
reason, triggers EPA scrutiny.
As the displayed table illustrates,
the Department operates with
significantly less state-provided
funding than other programs throughout
the nation. Although the matter is
currently being contested by several
focused environmental groups, the
Department maintains that it has
consistently demonstrated performance
exceeding minimum standards through
FY 2015.
Let's see, I got a little something
here showing up on the screen.
Where's my expert? Oh, okay. He's
working on it. We'll have this
straightened out, perhaps, at the next
meeting.
Okay. While he works on that, let
me -- let me continue with my
comments, if I may.
The FY 2016 General Fund budget
cut, excluding the transfer to the
General Fund of cleanup fees, is
equivalent to reducing headcount by
approximately twelve. If the FY 2016
required transfers to the General Fund
are included, the impact of the cuts
is doubled. The proposed permit fee
increase is intended to replace the FY
2016 funding cut and simply -- and
simply maintain total funding at 49th
in the nation as is shown on this
chart. Given the extremely low
funding in recent years, the pending
petition to withdraw NPDES authority,
and the current level of Federal
scrutiny, not replacing the FY 2016
General Fund budget cut and hoping EPA
will not step in is a gamble.
Increased EPA involvement in
Alabama can potentially take several
forms. In its most aggressive form,
EPA can begin directly issuing all
permits, conducting all inspections,
and directly taking all enforcement
actions. At a lower level, those
activities could be performed by
existing ADEM personnel, supplemented
with EPA personnel, all under the
direct supervision of EPA. At a low
level, EPA can elect to increase the
number of direct independent
inspections and enforcement actions it
takes in Alabama. It is not clear how
EPA's costs for any added oversight or
activity would be recovered.
Regardless of what form it may take,
any state program such as Alabama's
that is increasingly in financial
distress is subjected to increased
scrutiny and administrative
involvement by EPA. On a number of
occasions, EPA has stated that the FY
2014 funding level in Alabama is a
cause for concern. If funding is not maintained at least the FY 2014 level, an increased EPA presence in the State should be expected. Again, the proposed 20 percent permit fee increase is not intended to bring funding above the 2014 level. It is intended to simply maintain total state-sourced funding at the level shown in the chart on the screen.

Comments at the October Commission meeting, formal comments in the official record, and informal comments at regulated industry meetings have focused less on the need to maintain the prior funding level and more on whether Federal funding, General Fund appropriations, fee increases, or some other source of funds is the best means to address the funding shortfall. I will briefly address each of these possible funding sources individually, beginning with Federal funding.

For at least five years, Federal funding for every state has been level to declining as Congressional appropriations to EPA have, at best, been in the form of Continuing Resolutions. The Federal budget agreement reached just this week calls for EPA funding, which is the source for Federal funding for states, to be reduced to the 2010 funding level. Federal funding as a source to make up for the lost State General Fund appropriation appears to be an option only if it is accompanied by increased Federal control over state programs. This would potentially be a default scenario if no sources of State funding are provided. The second and most often suggested source of funding to make up for General Fund appropriation cut -- for the General Fund appropriation is to have the legislature reinstate the FY 2016 appropriation reduction. There has been hope expressed that the legislature, in its next session, will reverse the five-year trend of shifting the financial burden of funding environmental management from the General Fund to the regulated industries. Shifting the burden has been done not only through reduced General Fund appropriations but also through transfers of environmental fees to the General Fund to prop up general expenditures of the State. What the legislature will do in future sessions is, obviously, unknown. No one inside or outside the Legislature can guarantee what the legislative -- what the Legislature will do as a body in the future; however, I have had an opportunity to discuss possible FY '17 Departmental funding with Senate and House leadership. There is clear consensus that the FY 2017 budgets will be even more challenging than the FY 2000 -- those in 2016. Based on history, new demands for funding of other state programs, and a projected decline in general state revenues, planning on increased ADEM funding from the General Fund in FY 2017 would be a long odds bet. The FY 2016 General Fund budget has already been adopted and very well may be the one in place when EPA acts on the insufficient funding element of the NPDES withdrawal petition currently pending at EPA headquarters. An FY 2016 funding shortfall exists today. The third remaining source of funding is State-imposed environmental fees. With no other viable source of funding, the Department has proposed a permit fee increase to make up this...
funding shortfall.

This proposed fee increase has raised at least three general areas of concern which have been expressed in formal comments in the official record, open meetings, and informal meetings prior to the previous -- previous permit fee increases, and expressed in similar forums again during the last several months regarding this proposed fee increase. One is a concern that the statutory cap limiting the amount of permit fees that can charged by the Department will be exceeded. Another concern is the possibility of undue influence on the Department by regulated entities resulting from the heavier reliance on fees from those regulated industries [verbatim]. The final obvious concern is the financial burden a permit fee increase will have on regulated industries on top of the

calculation of the cap can be somewhat involved and subject to interpretation of how some costs are allocated among the various duties of the Department. A conservative computation by the Department puts the cost of the permitting functions of the Department at approximately $20 million, which is about 30 percent of total Departmental expenditures. Considering that the Department's three primary functions are permitting, inspections, and enforcement, a calculation showing 30 percent of expenditures attributable to permitting is certainly what would reasonably be expected.

Okay. All right. Again. My apologies to the Commission and those present. If we were to get a new flashdrive, would that solve the problem? Oh, okay. Which button do I press? Oh, I press it up here again?

two recent substantial permit fee increases.

The Alabama statutory cap stipulates that the permit fees cannot exceed -- and I'm quoting -- Reasonable anticipated cost to be incurred by the Department and directly related to the issuance, reissuance, modification, or denial of any permit, license, certification, or variance, such fees to include, but not be limited to, the reasonable anticipated cost of the examination and processing of applications, plans, specifications, or any other data, and any necessary public hearings and investigations. Picking up further along, still quoting, With the understanding that the fees -- and here, it's referring to projected fees -- May be higher or lower. End of quote.

Given that definition, a

Okay. All right.

Okay. We're back -- back on track. The graph on the screen is the one presented in the October Commission meeting. As you can see, the green portion, which represents permit fees, is projected to be well below the $20 million calculated statutory limit. The difference between the $20 million cost to issue permits and the permit fee revenue, as shown in green, is covered with funds provided by Federal grants. The State of Alabama Department of Examiners of Public Accounts just concluded a routine legal compliance examination of ADEM. The examination looked at the Department's compliance with all applicable Alabama laws and regulations, which would include compliance with the statute limiting the amount of permit fees that may be collected. Although the final report
has not been completed, a draft final report has been prepared and made available to the Department which summarizes the findings. No issues were raised concerning compliance with the statutory limit on permit fees.

Regarding the second area of concern, at the last Commission meeting, the potential for undesirable influence by regulated industries over the work of the Department was raised, should the Department rely too heavily on permit fees for funding. A similar concern was expressed that reliance on Federal funding carries the potential risk of undesirable influence by EPA over the work of the Department. Such concerns are legitimate and applicable to those as well as any other source of funding. As the earlier table illustrated, states vary widely on the level of reliance on one source of funding or another. It is appropriate for the Department, the Commission, and each of the Department's oversight bodies to guard against any unacceptable influence and to do so by requiring management accountability for adherence to the objective standards set out in the ADEM Administrative Code. The concern about increased influence by Federal authorities would only come into play if the lack of state-provided funding necessitates additional Federal funding, which, of course, would be accompanied by increased Federal control.

Next is a concern about the financial burden placed on regulated industries. The approximate $2 million cost of the permit fee increase will fall directly on regulated industries. As the graph on the screen now illustrates, ADEM's General Fund appropriation, shown in

red, has been declining and is now approaching zero. Permit fees, shown in green, have increased at a rate anticipated to replace the General Fund decline in an effort to keep total state-sourced funding, shown in orange, approximately constant at 49th in the nation where it has been since 2008. Previous permit fee increases were 19 percent in 2011, and 50 percent in 2013. Even after the proposed 20 percent permit fee increase, environmental fees in Alabama will still be among the lowest in the nation. Nevertheless, both the General Fund decreases and permit fee increases, including this final one, to offset the General Fund decreases, have been objectionable to regulated industry, members of the Commission, and the Department alike. For many, a permit fee increase is and should be the funding source of last resort.

Not surprisingly, no regulated industry wants to pay more in permit fees, and, therefore, they want to understand what other options are available.

Recognizing these concerns, the Department has for quite some time actively solicited suggestions on other ways to obtain the resources necessary to administer its environmental programs. The Department has considered EPA's offer to perform a portion of the inspections and enforcements in Alabama, which would allow the Department to reduce its -- the resources needed to maintain a full complement headcount, although it is unknown how EPA would be reimbursed for its cost. For many reasons, this is an undesirable option.

Another suggestion considered is to institute new fees for currently
1. rising level of concern. It is
difficult to imagine anything that
would make Alabama more unattractive
for new business investment and job
creation than increasing EPA
involvement in the State. The option
to delay or do nothing raises the
question, Is the gamble worth the $2
million budget increment being
addressed? I am unable to tell you
the odds of winning or losing the bet.
I can say that the adverse
consequences for economic development
and jobs in Alabama of losing that bet
far outweigh any possible benefit of
not addressing the $2 million budget
shortfall.

As is the case with all proposed
rule changes, the public was afforded
an opportunity to provide input on
this proposed rule change. A 45-day
public comment period was provided,
followed by a public hearing on the
proposed permit fee increase. Eleven
different comments representing four
interest groups were received. The
comments, the Department’s response to
comments, and the transcript of the
public hearing, all of which have been
provided to you, constitute the
official record for public input on
the proposed rulemaking.

The four groups commenting were:
Concentrated Animal Feeding
Operations, or (CAFO) interests, a
waste and recycling industry
association, the Business Council of
Alabama, and a Tallahassee,
Florida-based environmental attorney.
Eight of the eleven total comments
were from CAFO interests
opposed -- eight of the eleven total
comments were from CAFO interests
opposed to the imposition of the CAFO
fee schedule currently in the ADEM
Administrative Code, as well as the
proposed 20 percent increase to that financial burden. Those fees have been suspended since the CAFO program began in 1999 as a result of the legislature providing line item funding for the program. In FY 2016, sufficient funding was not provided, so the Department no longer has the financial resources to fund the CAFO program and is, therefore, unable to continue to suspend the fees.

One of the three remaining comments offered assistance with efficiency matters, requested confirmation about how fee increases would be allocated, and expressed disagreement with the legislature's action to reduce ADEM funding and thereby transfer the burden to Alabama's regulated community. Finally, two comments questioned the legal authority to increase permit fees, and the

expressed, and weighing the risks associated with each course of action, the Department has concluded that the proposed fee increase provides the best available opportunity to maintain the performance necessary to retain State control of critical environmental programs, and it is, therefore, the most responsible course of action.

Based on the official record and for the reasons set forth in this report, the Department recommends approval of the proposed permit fee increase.

Whatever the future holds, the Department remains strongly committed to continue to effectively utilize whatever funding is available.

Before closing, I would like to provide an example of that commitment by recognizing a significant milestone achieved by several of our dedicated

commenters were provided the relevant legal references citing the legal authority. Other concerns expressed in the comments, as well as suggestions to consider possible options, were addressed earlier in this report and in the official response to comments.

To review and summarize, it appears there is general agreement that it is in the best interest of Alabama, its citizens, and its regulated industries, for the State to maintain control over its environmental programs.

After much analysis of budget issues and trends for the past -- past five years, discussions with individual legislators, seeking out and evaluating numerous alternatives, discussions with numerous potentially impacted parties and other interested groups, examining each of the concerns

employees. The following individuals have completed the rigorous study, testing, and other requirements to earn the highly respected designation of Professional Engineer. We only have one of them with us today, but, Jeremy -- Jeremy Weant, in our Air Division, is one. The two that are not here are Ross Caton -- I assume they're not here -- and Taylor Griswell. They are not here.

(An applause was heard.)

MR. LEFLEUR: Thank you for your dedication to your profession and to your State.

That concludes today's report. I will be pleased to address any questions you may have.

CHAIRMAN BROWN: I recognize Commissioner Richardson.

DR. RICHARDSON: Director, that first table that you put up with the states' listing -- I don't know if you
can get that back up again or not.

MR. LEFLEUR: There we go.

DR. RICHARDSON: You said that these values were 2013 --

MR. LEFLEUR: That's correct.

DR. RICHARDSON: -- and I'm assuming -- and you said that was the most recent available. I'm assuming that means from all the states?

MR. LEFLEUR: Correct.

DR. RICHARDSON: Because you obviously have more information --

MR. LEFLEUR: Oh, yeah, we have --

DR. RICHARDSON: -- than from ours, right?

MR. LEFLEUR: Certainly.

DR. RICHARDSON: Alabama's positioning on there, under the fees per capita column, does that include the 2013 50 percent fee increase or not?

MR. LEFLEUR: Yes, sir, to the degree that it was implemented at that time. These fees, total per capita fees, this represents all fees. They don't break out just permit fees, so there are other fees, such as Title V fees in there. Permit fees, I'm going to have to say are approximately two dollars of that total.

DR. RICHARDSON: Also, I noticed on your chart that fees continue to increase, yet, 2013 was the last fee increase. Now, I know this is total money generated by fees. Is this from more permits, more regulated industry? What's -- what's responsible for the green bars continuing to climb?

MR. LEFLEUR: Primarily fee increases. Primarily fee increases.

DR. RICHARDSON: But not fee increases passed by us?

MR. LEFLEUR: Yes, yes.

DR. RICHARDSON: So -- but we only passed 19 percent in 2011 and 50 percent in 2013, yet it increases again in 2014, it increases again in 2015, and I understand the projection for 2016. I'm just trying to understand that continued increase.

MR. LEFLEUR: Well, there are variations in our permit fee revenue. Permit fees have either a three-year -- typically a three-year or a five-year renewal cycle, and the trend lines are intended -- they're computed by the cal -- by the computer. The trend lines are intended to level out variations year to year.

DR. RICHARDSON: Yes.

CHAIRMAN BROWN: Yes?

MR. PHILLIPS: Where to start? I think, Mr. Director, I'm just going to ask for clarifications from your discussion, and then when we get to the matter of yes or no on the fee increase, I'll ask -- or I'll make some other statements. But you made a comment that we're now approaching zero. I think it would be helpful if you could help the full Commission understand why it's not zero and also address the issue of -- that doesn't show the effect of the money remitted to the State General Fund.

MR. LEFLEUR: Your point is well taken. The 2016 red bar on there represents $280,000, which was the appropriation to the Department. You make the point that this graph does not reflect the $1.2 million that was transferred from Departmental fees to the General Fund. Those fees --

MR. PHILLIPS: So the true net impact of the State funding to the Department was roughly a negative million dollars?

MR. LEFLEUR: That's correct.

MR. PHILLIPS: Okay. Was the $280,000 line item for CAFO, or was it...
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Commission Meeting

MR. LEFLEUR: It was line item for CAFO.

MR. PHILLIPS: So even the $280,000 was not available for the Department for anything other than CAFO use?

MR. LEFLEUR: That's correct.

MR. PHILLIPS: And what's it cost to run the CAFO program?

MR. LEFLEUR: That's correct.

MR. PHILLIPS: No, what --

MR. LEFLEUR: Oh, what are the costs? Okay.

MR. PHILLIPS: -- are the costs to run the CAFO program?

MR. LEFLEUR: Excuse me. I'm sorry. I misheard you. The CAFO program runs somewhere between $400- and $500,000 to operate.

MR. PHILLIPS: So woefully short --

MR. LEFLEUR: Well, yes, sir.

MR. PHILLIPS: -- to meet that need. One other comment you made was that this final increase -- I ask that, because I think I was under the impression that maybe the 19 and the 50 were the final increase, and it may be easy to say with such a small remittance to the Department of even $280,000 -- they didn't stop there at this time. They went below the line. There's no guarantee that that won't happen again?

MR. LEFLEUR: You are correct.

MR. PHILLIPS: And in that case, should they ask for more money from the Department, what would be your strategy for making up that shortfall?

MR. LEFLEUR: Mr. Commissioner, I have no way of knowing -- and nor does anyone else, obviously, what the Legislature might do. All I can say is that it will be a heavier lift to transfer money out of the Department than it is to not give money to the Department. I -- I do not know at this point what our options might be if they decide to take fees that are generated now and, in effect, make this a truly negative appropriation beyond what it is today.

MR. PHILLIPS: But based on all the conversations I've heard today, you would be back before us asking for another fee increase?

MR. LEFLEUR: I have no anticipation of doing that, sir.

MR. PHILLIPS: Okay. Just -- just to make sure that we're on the same page, the 19 percent increase, the 50 percent increase, and now the requested 20 percent increase over doubles fees and permits from that -- in that time period, correct?

MR. LEFLEUR: Correct.

MR. PHILLIPS: And then the last question -- you made -- that the Department initiated rulemaking. I think it would be helpful if you let the Commission know when you initiated that rulemaking.

MR. LEFLEUR: What was the date of that? November -- or shortly after the -- the Legislature acted.

MR. PHILLIPS: That's basically all I needed. I wanted to hear that it was after the --

MR. LEFLEUR: Oh, yes. Yes.

Absolutely. It was shortly after, although we had plenty of warning that the Legislature was moving in that direction.

MR. PHILLIPS: And then my last clarification of your report is you -- you aptly reminded us that even this 20 percent fee increase gets us back to 2014 funding, correct?

MR. LEFLEUR: That's correct.

MR. PHILLIPS: Which doesn't remove the specter of EPA deciding or not deciding that the funding is still an issue?
MR. LEFLEUR: That's absolutely correct.
MR. PHILLIPS: And you clarified that EPA's date or commitment to make a decision relevant to that was December the 31st, 2016?
MR. LEFLEUR: That was their statement in our arguments for the 11th Circuit Court of Appeals.
MR. PHILLIPS: Due process, I guess. Okay. That's all I have.
Thank you.
DR. MARTIN: I have a couple of questions though.
Based on what you said, even with the fee increase, there's still a possibility that EPA could come in and take over?
MR. LEFLEUR: That's correct.
That's correct.
DR. MARTIN: Okay. And the second question, I guess, it's just a clarification on Commissioner Phillips’. Assuming the State doesn't allocate funding for ADEM for 2017, what's the percent chance that we'll be in the same position next year?
MR. LEFLEUR: Well, the --
DR. MARTIN: Asking for funding and fee increases?
MR. LEFLEUR: Well, by this time next year, EPA has indicated they are prepared to act, and the situation will have been determined by that time, I believe. We have no anticipation that we can come back for an additional fee increase based on General Fund appropriation declines.
DR. MARTIN: Okay.
CHAIRMAN BROWN: Yes?
MR. PHILLIPS: Yes, just one more clarifying -- based on that statement. I appreciate that, because quite frank -- frankly, General Fund commitments, $280,000, is no money, so going to zero is not a far cry. But the negative number is more concerning to me than the zero number.
DR. RICHARDSON: Absolutely.
MR. PHILLIPS: So you can't predict, any more than anyone else in this room can, what's going to happen in the legislative session. And so it just needs to be clear that there is absolutely no guarantee that they won't come back the second -- the first session and the regular session, they were looking at $7.7 million to come out of the Department. That's a much bigger number than one, so we just need to be certain that we understand that our job is not done when this gets acted on, one way or the other.
MR. LEFLEUR: Your point is well taken.
MR. PHILLIPS: And I said I was going to reserve that until later.
CHAIRMAN BROWN: Any of the Commissioners have any other questions or comments of the Director?
(No response was heard.)
CHAIRMAN BROWN: Thank you.
MR. LEFLEUR: Thank you.
CHAIRMAN BROWN: I guess a report from the Commission Chair would simply be bah humbug.
MR. LEFLEUR: Oh, I would like to -- before I leave, speaking of bah humbug -- I would like to wish the Commission and everybody a very Merry Christmas.
DR. LAIER: Merry Christmas to you.
MR. PHILLIPS: Merry Christmas to you too.
CHAIRMAN BROWN: Obviously, this fee increase is a matter of urgency, importance, and great interest. I think I would be remiss to point out -- if I didn't -- failed to point out that I think most of the Commissioners have received written
communications, e-mail communications, phone communications, maybe even some smoke signals from virtually all segments of the stakeholders in the Department. I think most have a great concern for EPA's taking over. I think a lot of people are disappointed that the Legislature has not been able to fund ADEM as a critical State agency. I mean, it's a mission-critical agency, if you think about it in terms of both public health and economic development. So I think we have gotten a lot of communications supporting, reluctantly, a fee increase to support those objectives. Even though there has been a lot of dissatisfaction with the legislative funding. And with that, I'll move onto the next agenda item, which is a report and potential recommendation for the Rulemaking Committee on Administrative Code 335-2-3-.05 Section 1 through 3, and that's for a report from the Rulemaking Committee, Chair Phillips. MR. PHILLIPS: Thank you, Mr. Chairman. The Rulemaking Committee met this morning at 10 a.m. in this chamber and discussed some of the comments that we have been working with, and Mr. Tambling's input to us on those relative to rulemaking versus guidelines. We had some additional comments that were provided to the Rulemaking Committee on -- on different topics that we had talked about over the course of our deliberations in this last year. It was not as robust a discussion, as you can imagine, because there's a lot more on other -- on all the Commissioners' minds beyond where we are on the public comment, considering we have a pretty effective rule in place as we stand. However, it was -- a motion was made and seconded to postpone our recommendation to come before this full Commission until our February 19th 10 a.m. Rulemaking Committee meeting. So we will take this back up on February the 19th at 10 a.m. in this chamber. I have asked Debi to go ahead and circulate where we are at this point to the stakeholders group that we had, including the full Commission. I tried not to burden you with any more paper than I had to, prior to us being ready to make a recommendation. However, considering that we're postponing it, I thought it would be good to request they come in to see what those guidelines and rule -- potential rule changes were. So you will be getting that from Debi in the next week or so, and I would ask that you just -- as you have time, look at it. It may change when we come out of the Committee meeting next week -- or next meeting date. If it does, then we will give you sufficient time to absorb that. If it stays the same, we may be prepared to make a recommendation at that point.

I will be happy to answer any questions from the Commissioners.

CHAIRMAN BROWN: Any questions?

Comments?

(No response was heard.)

MR. PHILLIPS: Thank you, Mr. Chairman.

CHAIRMAN BROWN: Thank you. Well, next on the agenda is consideration of the adoption of proposed amendments to the Administrative Code 335-1, General Administration Regulations. We will call today's main events.

MR. KELLY: Good morning, Mr. Chairman, Commission.

DR. MARTIN: Good morning.

CHAIRMAN BROWN: Good morning.
MR. PHILLIPS: Good morning.

MR. KELLY: I'm Russell Kelly, Chief of the Permits and Services Division. Before you now are the Division 1 proposed rule revisions. These revisions include an across-the-board fee adjustment that reflects a 20 percent fee increase with one exception. The comment period began on September 27th and continued until November 12th. A public hearing was held on November 12th here at the ADEM central office. During the comment period, the Department received several comments from several entities. All the comments were addressed in your reconciliation statement that's part of your package. At this time, we ask for your favorable consideration of the proposed rules. We'll answer any questions you may have.

CHAIRMAN BROWN: I recognize --

MR. PHILLIPS: I might as well kick it off.

Let me ask a clarifying question before I start. One, you said a 20 percent across-the-board fee increase with one exception.

MR. KELLY: Yes, sir.

MR. PHILLIPS: Could you tell us what that one exception is?

MR. KELLY: Yes, sir. The exception is the well driller's license and the fee, which is in one of our schedules, but it is established by statute.

MR. PHILLIPS: Okay. So -- so, to make sure I'm correct, with the -- with that one exception, everyone else will pay fees?

MR. KELLY: Yes, sir. The 20 percent is across the board with every fee that's retrieved into any category or activity in those schedules with that lone exception. Again, you would have to -- we would have to go to that particular statute and change that fee.

MR. PHILLIPS: And the Director advised us, relative to the suspension of the CAFO fee, what would be the -- what would happen there? Would the suspension remain? Would it not remain?

MR. KELLY: The suspension currently is in place. It's -- that's a suspension allowed by the rules.

Those CAFO fees are in the schedules. They are suspended and were suspended by a previous director, and that suspension is in place until it's revoked.

MR. PHILLIPS: So -- but the simple answer would be they -- it would --

MR. KELLY: Yes, sir. They are suspended.

MR. PHILLIPS: So they would not pay fees? So there's more than one exception to this 20 percent across the board?

MR. KELLY: Hey -- well, the CAFO fees themselves, the 20 percent is -- is being added to the CAFO fees. They're --

MR. PHILLIPS: But they're not going to pay it?

MR. KELLY: They're suspended yes, sir. At this point.

MR. PHILLIPS: Just trying to get clarity.

MR. KELLY: Yes, sir. I'm making sure I'm answering correctly. They are in the schedule. They are increasing 20 percent, but they're suspended from being paid.

DR. MILLER: When do you anticipate the suspension to be lifted?

MR. PHILLIPS: I would say that's up to --

MR. KELLY: I defer that to
the -- that's a director's call. The
Director suspends and --
MR. PHILLIPS: Isn't that a rule?
MR. KELLY: Yes, sir. By rule.
MR. PHILLIPS: That's the
Commission's call, isn't it? Right?
CHAIRMAN BROWN: Uh-uh.
MR. KELLY: The rules state that --
MR. PHILLIPS: Gives him the power
to make that suspension or not?
MR. KELLY: Yes, sir.
MR. PHILLIPS: Or not?
MR. KELLY: Yes, sir.
MR. PHILLIPS: Okay. So it's not
by rule other than he has the
discretion?
CHAIRMAN BROWN: By rule.
MR. KELLY: That's correct. That's
correct. That's what the rule states.
MR. PHILLIPS: My point is that the
suspension is not by rule; the option
is by rule --
MR. KELLY: The Director has that
authority by rule.
MR. PHILLIPS: You understand the
reason I'm trying to get
classification here?
MR. KELLY: Yes, sir.
MR. PHILLIPS: It's not as simple
as it first sounds. I don't think any
of us feel good about where we sit up
here right now. This funding issue is
real. We understand that. I don't
think anyone here thinks that it's not
real. We don't think it's important,
and I'm looking at you, but this is
directed beyond you.
MR. KELLY: Yeah, I understand.
MR. PHILLIPS: You are in the
unenviable position of getting to
stand there and watch us. So I'm
going to make a few points here for my
fellow Commissioners, as much as for
the rest of you in the room. There
are -- there are quite a few things
that have occurred over the course of
the time that this rule was initiated
that seemed to have come to light to
me. Least of which is the
responsibility of this Commission, and
the accountability of this Commission.
I think very often we sit, and we look
from up here, and we look at the
Director, or we look at the
Legislature, and we go, It's their
fault that we're faced with this. And
to some degree, it is. There are
choices that were made, and there were
answers that were provided that
concern me greatly by legislators, by
the Director, by the regulating
community, by the environmental
groups. There's a lot that has been
said over the course of the last four
months. Today is the day of the
decision. As you say, the prize
event. I'm concerned that we're still
only getting back to the 2014 levels,
even at 20 percent. I'm concerned
that we -- as much as I've been
told, it's been studied to death. I'm
concerned that we're not thinking
innovatively or creatively on how to
do this in a fair and equitable way,
so that everyone in the State of
Alabama has a stake in this
Department. I'm concerned that the
Commission's responsibility in
participating in this really has been
to sit back and wait to see what's
going to happen and then take a
position one way or the other relative
to a lack of State contribution. I'm
concerned when I hear people say,
Well, the Legislature has decided they
made a mistake, and they're going to
do something about it; and then on the
other hand, I hear others say, But
it's going to be worse than it was
last year, and don't expect that
there's any money. I'm concerned when
I hear people say, Well, draw a line
in the sand and make them do it, show
them what their action does, but,
quite honestly, we are the last line
of defense, and we won't be doing our
job if we don't do something. And
that something is for the citizens of
the State of Alabama, for the
regulated community, for my kids, for
your kids. And I don't believe EPA
cares that much about my kids in the
State of Alabama, about their jobs,
about their environment. Everyone
wants to take an extreme position on:
It's about the environment. And it
is. Absolutely it is, but the
improvements we've made over the last
decades are pretty obvious. The real
issues that we're facing, we're not
dealing with. Nonpoint source
pollution. We keep talking about it,
but we're really not dealing with it.
We try to deal with it from the point
side, when we can point at industry
to do not forget it. I will vote for
this fee increase as much as I have
fought it and told you I will not.
But I will not forget it, and I will
work with the Department in some way,
form, or fashion; the Legislature, in
some way, form, or fashion; the
regulated community and the
environmental community, in some way,
form, or fashion, to make sure we're
not here, because my -- what's going
to keep me up at night is EPA waiting
for another year to tell us whether or
not they think we are doing the right
thing on funding. It would have been
nice if they would have come over and
said, Look, guys, you're faced with a
big issue here. Let's see if we can
resolve this in a way where we can
tell you, Yeah, we're happy and be
done with this. I still feel a little
bit like I'm being extorted. I'm
being asked to do a 20 percent fee

and say, You have to pay for this.
But we forget that's exactly where our
kids get jobs, where our neighbors get
jobs. And to a certain degree, while
I'm not happy with the responses that
I got from the Director or the
Department, I asked for pieces of
information that I think would have
made my decision a little easier that
I didn't get. I got words, I got
discussions, and I feel good about the
words and the discussions, but I don't
think the effort of really showing me
that there was no other option was
apparent. So with that, I tell you
that I think there are some issues
that we still have to deal with. I
was on a conversation
yesterday -- phone call -- where
someone said, Just vote yes, and in a
week or two, it will be forgotten,
obody will remember it. I will. And
I do not -- and I ask this Commission
increase with a trust that EPA may not
decide that funding is insufficient,
while, at the same time, they wait
another year, and we wait to see what
happens in the Legislature to know
whether or not we return to where we
are today. I heard the word "final"
at the 50 percent fee increase, and
here we sit again, two years, two
short years from that date. We're not
doing our job. The Department and the
Director are not doing their job if we
let this happen again. If we don't
address the issue of funding in a
proactive way, not in a reactive way,
shame on us. That's all I've got.

CHAIRMAN BROWN: Any other
comments?
Commissioner Richardson?
DR. RICHARDSON: Much of what I
have to say will, I think, echo what
Commissioner Phillips had to say, but
I think one of the things that's
| Alabama Department of Environmental Management  
| Commission Meeting  
| December 18, 2015  
| 1 | important is -- is that I feel that  
| 2 | the members of this Commission and I  
| 3 | have been backed into some untenable  
| 4 | corner with the only solutions being  
| 5 | to raise fees on industries yet again,  
| 6 | or run the apparent near certain risk  
| 7 | of an EPA takeover revoking ADEM's  
| 8 | Clean Water Act authority over  
| 9 | permitting. It's my view that the  
| 10 | Commission has been forced into this  
| 11 | decision making -- essentially --  
| 12 | position that is essentially a  
| 13 | lose-lose proposition. To make this  
| 14 | lose-lose situation even worse,  
| 15 | there's no guarantee, as Commissioner  
| 16 | Phillips has stated, and the Director  
| 17 | concurred, that EPA will not revoke  
| 18 | ADEM's permitting authority even with  
| 19 | the proposed fee increase. The  
| 20 | Alabama Legislature and its leadership  
| 21 | have failed to provide ADEM the  
| 22 | funding necessary to ensure ADEM's  
| 23 | primacy over the Clean Water Act  
| 1 | these will ultimately be passed on to  
| 2 | the consumer.  
| 3 | With the fee increase, however, the  
| 4 | difference is the politicians in  
| 5 | Montgomery will be able to direct the  
| 6 | money elsewhere, primarily to this  
| 7 | Commission. The people of this state  
| 8 | deserve to have a vested financial  
| 9 | interest and stake in ADEM through the  
| 10 | funding from the General Fund; yet,  
| 11 | the people's interest in this  
| 12 | Department is being ignored by the  
| 13 | Legislature. And, now, we have  
| 14 | representative Steve Clouse and  
| 15 | Senator Trip Pittman, the Chairs of  
| 16 | the Legislature's General Fund  
| 17 | committees saying that they expect  
| 18 | further cuts to the budget this  
| 19 | upcoming year and suggest that more  
| 20 | fee increases may be at ADEM's future.  
| 21 | Not only did the Legislature fail to  
| 22 | adequately fund ADEM, but  
| 23 | apparently --  
| 1 | permitting, either by their own  
| 2 | accord, or through the inefficient  
| 3 | lobbying efforts of Alabama businesses  
| 4 | and leadership, people of the State,  
| 5 | and even as Commissioner Phillips  
| 6 | pointed out, even a lack of engagement  
| 7 | by this Commission with the  
| 8 | Legislature. The Alabama Legislature  
| 9 | has the constitutional responsibility  
| 10 | to appropriate money to fund state  
| 11 | agencies, especially agencies like  
| 12 | ADEM with the statutory mandate of  
| 13 | enforcing Federal and state laws. By  
| 14 | refusing to address our state's dire  
| 15 | budget needs, and their resistance to  
| 16 | new taxes or revenue sources, the  
| 17 | politicians of Montgomery have passed  
| 18 | the buck to this Commission rather  
| 19 | than deal with the rising costs. You  
| 20 | can call it a tax increase, or you can  
| 21 | call it a fee increase, but the end  
| 22 | result's the same. Businesses will  
| 23 | pay more to operate in Alabama, and  
| 1 | MR. PHILLIPS: I hate to interrupt.  
| 2 | (A brief recess was taken.)  
| 3 | MR. PHILLIPS: I'm sorry,  
| 4 | Commissioner Richardson, but I was  
| 5 | having difficulty hearing you.  
| 6 | DR. RICHARDSON: Fine, fine. Not  
| 7 | only did the Legislature fail to  
| 8 | adequately fund ADEM, but, apparently,  
| 9 | they now see the Department as a  
| 10 | revenue-generating branch of State  
| 11 | government. The Legislature seized  
| 12 | $1.2 million dollars in earmarked fees  
| 13 | from ADEM, while only appropriating  
| 14 | 280,000 in restricted-use funds, as  
| 15 | we've already heard, a net  
| 16 | confiscation of $1 million. Now,  
| 17 | Senator Pittman is saying that level  
| 18 | funding for the next budget year is,  
| 19 | quote, Optimistic, end quote, and  
| 20 | suggests that agencies like ADEM could  
| 21 | move towards increased fees. I  
| 22 | propose to you that this is not a  
| 23 | final fee increase. With any increase  

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<td>1 in fees, as I think Commissioner Phillips alluded to, there's nothing to stop the Legislature from commandeering even more of ADEM's budget in the next FY '17 cycle. It's clear that our State's legislature and its leadership apparently view ADEM as a state agency critical only to environmental concerns; yet, in reality, it is critical to the economic as well as the environmental health of Alabama. Failure to implement this fee increase followed by an EPA takeover of the permitting authority would, unfortunately, show Alabama's lawmakers the dual significance that this Department holds. But I say that decision has been theirs. I resent being put in this position. I resent being put in a position that I'm having to do what my elected officials have been constitutionally mandated to do. They Phillips alluded to. I think ADEM -- you know, we can't control what the State Legislature does. All we can do is control what we do, and regardless of what the outcome of the vote is, you know, I think we as ADEM, as a Commission, as a director, need to double down our efforts as it relates to the State Legislature. You know, we -- it's probably not an enjoyable process to deal with the State Legislature, but it's just part of the job, and I think we can do a better job at that, in having more effective lobbying, having better communication, and, you know, just plain common sense diplomacy between the State Legislature and ADEM. And I think it's just an opportunity for us to -- we have to work harder at this. I don't want to be in a situation like this in another few months.</td>
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<td>1 have passed the buck to this Commission, basically asking us to raise the taxes so that they can say they didn't. In light of these points and points that Commissioner Phillips made, unlike him, I cannot, in good faith, approve a flat 20 percent across-the-board fee increase in order to provide the Department what the Alabama Legislature is responsible for providing. That's all the comments I have at this time, Mr. Chairman.</td>
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<td>1 Miller? DR. MILLER: You know, this has been a gut-wrenching time for all of us, especially when I found out that the Retirement Systems of Alabama presented a bill for $983 million to be paid, which they received by statute. But having said that, to me, if we lessen the chance of EPA becoming the primary source for enforcing the rules, this is a situation that I don't see any way we cannot attempt to do that, because the economic livelihood of the State is really at stake. You know, I think if you vote for this, you're going to have to hold your nose and vote for it. I think that one thing we need to not overlook though is the fact that we're at zero funding now for our general budget. If they take money from us, it's going to be out of the trust funds, which won't really affect</td>
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<td>1 CHAIRMAN BROWN: Any other Commissioners? DR. MARTIN: I have one. CHAIRMAN BROWN: I recognize Commissioner Martin. DR. MARTIN: Yeah, I don't appreciate being in the position we are as well. I guess I would like to look at things from more of a proactive state as Commissioner.</td>
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<td>1 CHAIRMAN BROWN: Commissioner</td>
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the Department operations per se. And we -- of course, need to lobby stringently not to let them do that again. But, again, that's not something we can control. We can publicize it, let people know what they're doing. I think that probably what they're doing is -- I don't know, I'm not a lawyer, but it seems to me to be a little bit shady from a legal standpoint. But I am going to vote for the fee increase. I'm going to hold my nose and do it, and I think that the regulated community, when faced with the fact that they're going to absorb another fee increase and lessen the likelihood of EPA taking over, that they're not going to fuss too much about it. That's just my opinion.

CHAIRMAN BROWN: Commissioner Phillips?

MR. PHILLIPS: I don't disagree

with anything Commissioner Miller said at all, but I do want to clarify that the Legislature was pretty select in what they would allow money to be taken from the last time.

DR. MILLER: Here, here.

MR. PHILLIPS: So some of the trust funds were plundered as opposed to all of them. That doesn't mean that we can't change that, but that the one that was restricted, in my opinion, had much more latitude to produce revenue for the Department. But, ultimately, I guess, in that case, it would have ended up in the General Fund. So I would say this Commission and this Department need to work together to do some educating. And while those trust funds we can say don't have a direct -- I agree with you -- a direct impact on Department operations per se, they still were set aside to take care of the environment.
CHAIRMAN BROWN: Any comment?
Discussion?
Yes, Mr. -- Commissioner
Richardson, I'm sorry.
DR. RICHARDSON: In light of
everything that's been said and trying
to keep from having to hold my nose as
I vote for this, I would like to move
to amend the resolution as presented.
My amendment would be inserted at the
end of the final paragraph of the
resolution, that is, at the end of the
Now, therefore, paragraph. This
amendment would read: These revisions
to Alabama Administrative Code
335-1-6, as adopted by the Alabama
Environmental Management Commission on
December 18th, 2015, shall expire one
year from the effective date of the
revisions as stated herein, or with
the restoration of $2 million from the
State of Alabama General Fund,
whichever comes first. Additionally,

should be funding ADEM. I urge you
to get together and work to get
legislative funding. Second of all, I
would ask that the Rulemaking
Committee get with the Director and
address how we can be more proactive
and more fair in raising the revenue
of the Department by the Department,
where it can be. And with that, I
think it's obvious that there is
little choice in what we have to do
today. I think that is what makes it
so upsetting -- or anguish -- or
angst-inducing for the Commissioners.
And with that, are there any other
comments or questions for the
Department?
(No response was heard.)

CHAIRMAN BROWN: Is there a motion
from the Commission?

DR. MILLER: I move that we proceed
with the 20 percent fee increase.

DR. LAIER: Second.
DR. MARTIN: Well --
MR. TAMBLING: I think there's a
motion to adopt the rule -- there's a
motion, I guess, to amend -- to make
an amendment to the rule. I think,
under Robert's Rules of Order you're
allowed to do that, aren't you?
MR. PHILLIPS: My question relative
to the amendment is not whether it's
okay under Robert's Rules of Order to
introduce an amendment. My question
is: Does that change the rule to
such --
MR. TAMBLING: Oh, yes. So the
question would be whether the final
rule that is ultimately adopted by the
Commission here today deviates too
sharply from the proposed rule? Is
that -- is that your question?
MR. PHILLIPS: Yeah, I'm trying to
assess the vote.
MR. TAMBLING: And whether --
MR. PHILLIPS: We're in discussion

on the amendment, I assume.
MR. TAMBLING: Yeah, and whether
the affected parties would be deprived
of notice in an opportunity to respond
to the proposed rule. So the legal
test here would be whether the
Agency's action or notice would fairly
apprise interested persons of what the
ultimate rule is. So the rule before
you proposes -- the one that has been
proposed by ADEM -- proposes a
20 percent permanent across-the-board
fee increase that will apply to all
permit applicants; is that correct?
CHAIRMAN BROWN: Correct.
DR. LAIER: Uh-huh.
MR. TAMBLING: The proposed
amendment would impose a 20 percent
fee increase that would, by operation
of law, be set after one year?
CHAIRMAN BROWN: Correct.
MR. PHILLIPS: Or --
DR. RICHARDSON: Or with the

have any comment relative to this?
MR. LEFLEUR: Well -- well, my
comment would be that the rulemaking
process is time consuming, and it
would require approximately -- or a
minimum of approximately 100 days to
achieve, without a special meeting of
the Commission -- or -- and it may
incur a special meeting of the
Commission. It could
take -- depending on when the starting
gun is fired, if you will. If it's
fired today, it would take
approximately 100 days.
MR. PHILLIPS: Yes.
MR. KELLY: Could I just add one
comment? If these rules are adopted
with the amendment such as that,
there's an expiration on them. We
need to make sure that we have some
other rules in place, or we'll have no
fees. It needs to be carefully
crafted. I know it's not what you
DR. RICHARDSON: Well, but that is -- and that is not -- that is not what the amendment would cause --
MR. KELLY: This is concern.
DR. RICHARDSON: The amendment sunsets this change only, not all previous fees or fees set. Only this change.
DR. MILLER: I'd like to make a comment that if we do the sunset rule, that's going to go over like a lead balloon with EPA's decision. I mean, they're -- they're going to look at us like we've lost our mind. I just think that that's a -- we can always come back and lower the fees if that's -- that's what Commissioner Richardson talks about -- we can always come back and lower the fees, but this is not going to sit well with Atlanta and the EPA if we do that. I think that's a bad, bad thing to do.

CHAIRMAN BROWN: Agreed. Mr. Tambling?
MR. TAMBLING: I just had one more point to make. It would be time consuming to go back to rulemaking. It would also be time consuming to litigate an appeal, probably more time consuming than it would take to go back to rulemaking if -- if the amendment is adopted.
DR. LAIER: I -- I personally -- I personally agree with Commissioner Miller. I think his point of view is actually very important for us to consider, but I concur with his thoughts.
CHAIRMAN BROWN: Commissioner Richardson?
DR. RICHARDSON: I would like to point out that without a sunset clause, the 20 percent fee increase has the potential of being perpetual. It also, without a sunset clause, gives no incentive to our Legislature to do anything. As far as EPA's position, how does having this -- we're saying we'll raise fees 20 percent for one year. How is that any different than our Legislature saying, We'll give you $2 million this year? Next year they may give us nothing. And EPA is in the same boat they're in, you know? This is -- this is, in fact, more definitive than relying on the legislative route in EPA's mind. So I think that Commissioner Miller is off base in his comment about how EPA's going to look at this. Because they have to look at the fluctuations and the -- the vagaries of legislative allocations of moneys. And this is -- this is, at worst, no different than what we've dealt with in the history of this Agency.
CHAIRMAN BROWN: We're just simply providing a point to stop this, so that maybe this Commission, this Department, and the Legislature can put their collective heads together and come up with some viable funding solutions instead of relying continuously and ultimately solely on fee increases.
CHAIRMAN BROWN: I think those points are well taken, but the bottom line is we have virtually zero funding from the Legislature. So going with the fee increase, it does provide, presumably, more stable financing in that it will be there year and year. It does not mean that it is necessarily adequate. We are only raising enough money to put us back to a level that's already criticized by EPA, which, I'm not sure is good enough action by the Commission, but it's what is before us.
at this time. So I believe strongly

don't think we can kick this down the
road another 90 days, 100 days, to
send this back to rulemaking. I think
there are some -- obviously going to
be a lot of pushback from permit
holders or permit applicants or
renewals from people who are going to
have a fee -- see a 20 percent
increase this year if they
happen to have to renew this year.

But, you know, people that, you know,
had to renew last year or the year
after catch a break. I don't know
that that's necessarily fair.

DR. RICHARDSON: Kind of like the
people that renewed last year.

CHAIRMAN BROWN: Right.

DR. RICHARDSON: So that they don't
experience this 20 percent fee
increase --

CHAIRMAN BROWN: But they won't
have to be -- if it's 20 percent going
forward, when it comes back up,
everybody has to pay it, not just the
people who got lucky or unlucky and
renewed in fiscal year 2016.

DR. MILLER: Mr. Chairman, I call
for the question.

CHAIRMAN BROWN: All in favor?

(A partial response was
heard.)

CHAIRMAN BROWN: All opposed?

(A partial response was
heard.)

CHAIRMAN BROWN: Fails. Any
discussion --

MS. THOMAS: Could you review that
vote? Was that on --

CHAIRMAN BROWN: On the amendment.

MS. THOMAS: Okay. Yes, sir.

CHAIRMAN BROWN: That was the
question on the amendment.

DR. MILLER: Right -- oh, I didn't
realize that either. I vote against

CHAIRMAN BROWN: If you're in favor
of the amendment. Got it, Debi?

MS. THOMAS: Yes, sir.

CHAIRMAN BROWN: All opposed, raise
of hands. It fails. Now, is there
any additional discussion on the
motion to raise fees across the board,
with the one exception, by 20 percent?

(No response was heard.)

CHAIRMAN BROWN: Therefore, we will
call for the question. All in favor,
raise of hands. All opposed? It
passes.

DR. RICHARDSON: How about
abstentions?

CHAIRMAN BROWN: I'm sorry. Did we
have any abstentions?

(No response was heard.)

MR. KELLY: Thank you,
Mr. Chairman, and Commission.

CHAIRMAN BROWN: Well, Agenda Item
7 is -- at the risk of opening up a
can of worms -- is there any other
business anybody wishes to raise?

DR. LAIER: Not today.

CHAIRMAN BROWN: The Chair notes that future proposed dates for Commission meetings in 2016 have been circulated. Obviously, the meetings have been right here where we meet today. The times are 11 a.m. The proposed dates are February 19, April 15, to -- June 17, August 19, October 21, and December 16, 2007 [verbatim]. The Chair will entertain a motion to adopt those meeting dates and times and location.

DR. MILLER: I believe that's 2016.

DR. LAIER: Yeah, 2016.

CHAIRMAN BROWN: Well, I think that's what it said.

DR. RICHARDSON: Move to -- move to accept the dates.

MS. MERRITT: I second.

CHAIRMAN BROWN: All in favor?

(A unanimous response was heard.)

CHAIRMAN BROWN: Resolution passes.

Chair will entertain a motion to adjourn.

MR. PHILLIPS: So moved.

DR. LAIER: Second.

CHAIRMAN BROWN: All in favor.

(A unanimous response was heard.)

CHAIRMAN BROWN: We're out of here.

(Whereupon, the meeting concluded at 12:26 p.m.)
REPORTER'S CERTIFICATE

STATE OF ALABAMA
MONTGOMERY COUNTY

I, Patrick Miller, Alabama Certified Court Reporter No. 2037, and Commissioner for the State of Alabama at Large, hereby certify that on Friday, December 18th, 2015, I reported the TESTIMONY AND PROCEEDINGS in the matter of the foregoing cause, and that the pages herein contain a true and accurate transcription of said proceedings.

I further certify that I am neither kin nor of counsel to the parties to said cause, nor in any manner interested in the results thereof.

This 10th day of January, 2016.

Patrick Miller

PATRICK MILLER, ACCR-2037
Commissioner for the State of Alabama at Large
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Part B
Attachment Index

Attachment 1 Agenda

Attachment 2 Order to adopt motion to accept nominations to committees as cited by Chair (Agenda Item 2)

Attachment 3 Director’s Slides (Agenda Item 3)

Attachment 4 Resolution to adopt amendments to ADEM Administrative Code 335-1, General Administration Regulations (NPDES-Related Matter) (Agenda Item 6)
Attachment 1
AGENDA*
MEETING OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: December 18, 2015
TIME: 11:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

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<td>7. Other business</td>
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<td>8. Future business sessions</td>
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* The Agenda for this meeting will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission.

** The Minutes for this meeting will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON OCTOBER 16, 2015

2. ELECTIONS

The Commission will elect Chairs and Members of the Commission's Personnel and Rulemaking Committees.

3. REPORT FROM THE ADEM DIRECTOR

4. REPORT FROM THE COMMISSION CHAIR

5. REPORT AND POSSIBLE RECOMMENDATION FROM THE RULEMAKING COMMITTEE ON ADEM ADMIN. CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

The Rulemaking Committee Chair will report on the Committee's re-examination and study of ADEM Admin. Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3). The Committee will also consider presenting to the Commission a recommendation as to whether the Commission should proceed to rulemaking and whether the Commission should consider adopting proposed guidelines to accompany the proposed Rule.

6. CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO ADEM ADMIN. CODE 335-1, GENERAL ADMINISTRATION REGULATIONS (NPDES-RELATED MATTER)

The Commission will consider proposed amendments to ADEM Admin. Code 335-1, General Administration Regulations for the purpose of amending Chapter 335-1-6 to increase permit fees. The Department held a public hearing on the proposed amendments on November 12, 2015.

7. OTHER BUSINESS

8. FUTURE BUSINESS SESSIONS
Attachment 2
BEFORE THE 
ENVIRONMENTAL MANAGEMENT COMMISSION 
OF THE 
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MOTION

Accept nominations to committees as cited by Chair

ORDER

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

1. That the above motion is hereby adopted; and

2. That a copy of the list of committees is attached and made a part hereof; and

3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.
ISSUED this 18th day of December 2015.

APPROVED:

[Signatures]

DISAPPROVED:

[Signatures]

This is to certify that this Order is a true and accurate account of the actions taken by the Environmental Management Commission on this 18th day of December 2015.

[Signature]

H. Lamiir Brown, II, Chair
Environmental Management Commission
Certified this 18th day of December 2015
Alabama Environmental Management Commission 2016 Committees

Personnel Committee

Chair: Jim Laier
Members: Craig Martin
        Sam Miller

Rulemaking Committee

Chair: Scott Phillips
Members: Mary Merritt
        Terry Richardson
Attachment 3
### Comparison of State-sourced Funding per Capita

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State Source Funding

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$14,000,000
$12,000,000
$10,000,000
$8,000,000
$6,000,000
$4,000,000
$2,000,000


Trendline

General Fund
Attachment 4
ENVIRONMENTAL MANAGEMENT COMMISSION
RESOLUTION


WHEREAS, a public hearing was held before a representative of the Alabama Department of Environmental Management designated by the Environmental Management Commission for the purpose of receiving data, views and arguments on the amendment of such proposed rules; and

WHEREAS, the Alabama Department of Environmental Management has reviewed the oral and written submissions introduced into the hearing record, and has prepared a concise statement of the principal reasons for and against the adoption of the proposed rules incorporating therein its reasons for the adoption of certain revisions to the proposed rules in response to oral and written submissions, such revisions, where appropriate, having been incorporated into the proposed rules attached hereto; and

WHEREAS, the Environmental Management Commission has considered fully all oral and written submissions respecting the proposed amendments and the Reconciliation Statement prepared by the Alabama Department of Environmental Management.

NOW THEREFORE, pursuant to Ala. Code. §§ 22-22A-5, 22-22A-6, 22-22A-8 (2006 Rplc. Vol.), and Ala. Code. § 41-22-5 (2000 Rplc. Vol.), as duly appointed members of the Environmental Management Commission, we do hereby adopt and promulgate these revisions to division 335-1 [335-1-6-.04/Permit Application Fees (Amend); 335-1-6-.07/Payment of Fees] of the Department's General Administration Division Program rules, administrative code attached hereto, to become effective thirty-five days, unless otherwise indicated, after filing with the Alabama Legislative Reference Service.
ENVIROMENTAL MANAGEMENT COMMISSION
RESOLUTION

ADEM Admin. Code division 335-1 – General Administration Division Program

IN WITNESS WHEREOF, we have affixed our signatures below on this 18th day of December 2015.

APPROVED:

Mary Mitchell

Gerald E. Poynter

Mary Brown

DISAPPROVED:


This is to certify that this Resolution is a true and accurate account of the actions taken by the Environmental Management Commission on this 18th day of December 2015.

H. Lanier Brown, II, Chair
Environmental Management Commission
Certified this 18th day of December 2015