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
December 18, 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 December 18, 2015.

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

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

Convened: 10:00 a.m.
Adjourned: 10:12 a.m.

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Part A
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
December 18, 2015
10:00 a.m.

* * * * * * *

T REPORTER: PATRICK R. MILLER, ACCR 2037
* * * * * * *

APPEARANCES

ITTEE MEMBERS:
Mr. W. Scott Phillips, Chair
Terry D. Richardson, Ph.D.
Mary J. Merritt

PRESENT:
Robert D. Tambling, EMC Legal Counsel
Ms. Debi Thomas, EMC Executive Assistant

CHAIRMAN PHILLIPS: Good morning.
MS. MERRITT: Good morning.
CHAIRMAN PHILLIPS: We'll call to order the Rulemaking Committee meeting on December the 18th, 2015. I want to acknowledge that we have a quorum. Go to Agenda Item Number 1, consideration of the minutes from the meeting held on October 16, 2015.
I'll entertain a motion from the Committee regarding the minutes.

DR. RICHARDSON: I move to adopt the minutes of the October 16th, 2015 Committee meeting.

MS. MERRITT: Second.

CHAIRMAN PHILLIPS: I have a motion and a second to adopt the minutes of the October 16, 2015 Committee meeting. Any discussion regarding the motion?

(No response was heard.)
CHAIRMAN PHILLIPS: There being no further discussion, I'll call for the question. All in favor, signify with the sign of Aye.

(A unanimous response was heard.)

CHAIRMAN PHILLIPS: All opposed.
(No response was heard.)

CHAIRMAN PHILLIPS: Motion carried.
Agenda Item Number 2, we'll go to our discussion and possible consideration of a recommendation from the Rulemaking Committee to the Commission on Administrative Code of ADEM, 335-2, the Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3).

I'll note that, first, the Committee, I think, would like to discuss the latest version of the draft rule and draft guidelines prepared by Mr. Tambling. And, Mr. Tambling, I'd ask you, if you
would, kind of walk us through quickly
your comments, so it's clear what
you're going to put before us as
opposed to what we've been considering
before.

MR. TAMBLING: Well, I think what
we were trying to do was to see how
far we could go with the guidelines
rather than have to amend the rule.
And in reviewing all of this and
working on it as long as I have, I
have come up with minimal changes to
the rule.

CHAIRMAN PHILLIPS: Uh-huh.

MR. TAMBLING: And they're outlined
in red for you, and I have attached to
those draft guidelines for
public comment. Those guidelines, in
and of themselves, are not
enforceable. They simply serve to
inform the public as to how the
Commission would interpret the rule
once adopted. And I can go through,

you know, and discuss with you any
questions you may have regarding any
of the proposed changes to the rule
and the guidelines.

CHAIRMAN PHILLIPS: Do we have any
questions from the Commission -- the
Rulemaking Committee members?

MR. TAMBLING: I have a
question --

CHAIRMAN PHILLIPS: Sure.

MR. TAMBLING: -- that I'll
throw out there. I -- we have since
received a comment relative to the
difference between the rule and the
guideline, and I think you have just
answered it in your statement in a
very succinct way, but why don't you
give us a little bit more on your
perspective in response to that
comment?

MR. TAMBLING: Well, I tend to
agree with Mr. Ludd's comment. You

know, these guidelines are intended to
be aspirational. They're intended to
be informative. Obviously, you can't
circumvent rulemaking by strictly
enforcing guidelines, otherwise, the
guidelines themselves would become the
rules, and that would not be
permissible unless we put them
through -- we publish them and put
them through notice and comment. So
again, the guidelines are
informational. They're aspirational.
They're there to educate the public on
how the Commission would interpret the
rule. They are not, in and of
themselves, enforceable.

DR. RICHARDSON: They are not the
rule, but they are how
we -- guidelines that we -- help us
interpret the rule?

MR. TAMBLING: Right.

DR. RICHARDSON: And any acceptance
or declining of something presented

for us, because it did not adhere to
the guidelines, would be tantamount to
not adhering to the rule?

MR. TAMBLING: Yes. And should
there ever be an appeal, if this ever
were to somehow wind up in a court of
law, the general rule is that the
Court gives great deference to
administrative agencies in how they
interpret the rules, their own rules.

And, you know, to the extent we have
guidelines that serve to educate and
inform the public as to how we
interpret the rules, I think those
would also be useful to the Court.

DR. RICHARDSON: And it just
helps -- as you said, it just helps us
interpret the rules --

MR. TAMBLING: Right.

DR. RICHARDSON: -- that we're
setting forth, that we are changing
minimally.

MR. TAMBLING: That's correct.
DR. RICHARDSON: And it
gives -- more importantly, it gives
the public guidelines on how to come
before us and have their piece -- say
their piece.

MR. TAMBLING: I agree with that.

CHAIRMAN PHILLIPS: All right. And I
made reference to Mr. Ludder's --
the two comments that you have
answered one of. Let me, for the
record -- Mr. Ludder sent us an e-mail
through Debi to the Rulemaking
Committee members, Phillips and
Richardson. And for the record, I
want to make sure that everyone knows
that it's a three-person Rulemaking
Committee that also includes Mary
Merritt. And when Mr. -- I see
Mr. Ludder, I'll make sure he knows
that too. He sent it to me and
Dr. Richardson. The first one was
relative to guidance versus rules,
which, Robert, you have just talked us
through. The other one is about
voting and explanation relative to the
last Commission meeting, when the
motion to allow public comment at the
end of the Commission meeting failed
for lack of a motion.

Do you have any discussion you
would like to share there, Robert? If
you don't, I'm going to share
something.

MR. TAMBLING: I don't. My -- in
the best of all possible worlds, it
would be wonderful to be able to
provide an explanation for everything
that happens. However, when
there's -- when a motion dies for lack
of a second, or -- you know, I think
the last meeting, I don't even think
there was a motion made.

CHAIRMAN PHILLIPS: Lack of a
motion.

DR. RICHARDSON: Lack of a motion.

MR. TAMBLING: It was lack of a
motion. I just think it is what it is.

CHAIRMAN PHILLIPS: Well, I guess
my perspective on that is we operate
using Robert's Rules of Order. And my
best recollection -- and granted, I
haven't read it in a while -- is that
things fail when there's a lack of a
motion. There's nothing to come
before the body.

MR. TAMBLING: That's correct.

CHAIRMAN PHILLIPS: And that's the
privilege of the body. And if there
had been a motion and no second, it
would have still failed. I couldn't
go any further than that. I don't
think the Commission needs to go any
deeper than that.

MR. TAMBLING: I agree.

CHAIRMAN PHILLIPS: That's my
perspective for the Rulemaking
Committee to -- to hear.

Oh, Commissioner Richardson?

Sorry.

DR. RICHARDSON: I wanted to make a
comment along those lines as well, so
that everyone is clear that this body,
as well as the Commission, operates
off of Robert's Rules of Order. I
have had the opportunity to read them
lately, serving as parliamentarian --

CHAIRMAN PHILLIPS: Thank you.

DR. RICHARDSON: -- for several
university-level senates, and there is
no requirement for a motion to be made
by a body. There is no requirement
for a motion to be seconded by a body.
I do not know where Mr. Ludder gets
his information that it was
inappropriate for us not to make a
motion and then act on it. It is
quite common for things to fail by no
motion, or no second, or by
declaration vote. So I just do -- I
don't think that -- that the comments
that I saw are in accordance with
Robert's Rule of Order, which this body and the Commission operate by. And I just want to make it clear that that's -- that's the foundation of our rules for how we operate in a meeting. Thank you.

Chairman Phillips: Thank you. Any other thoughts relative to the consideration that Robert has put before us in the rule that you would like to discuss?

Commissioner Richardson?

Chairman Phillips: Not so much discuss, but I think I just want to make this statement, that given other things going on before the Commission, I personally have not had enough time to really digest the comments that Mr. Tambling has made, and I need -- I need to get into it deeper than I have. My time has been torn with other matters that, quite honestly, were just more important to me at the time. And so what I would like for us to do is, in terms of this body making any recommendation -- formalizing a recommendation to present to the Commission, that we postpone that until the February -- what's the date, Deb? The February meeting?

Chairman Phillips: The third -- the third Friday of the month. I don't have my calendar in front of me.

Chairman Phillips: I think February meeting will suffice then, of this Committee.

Chairman Phillips: I concur with you on that, doing that. That will give me more time instead of what Mr. Tambling had put together for us, so...

Chairman Phillips: Would one of you like to put that in the form of a motion?

Chairman Phillips: Not supported. Craig. How about, any discussion to come before this Committee?

Chairman Phillips: I don't have any. Chairman Phillips: Okay. Thank you very much. And do I have a motion to adjourn?

Chairman Phillips: Motion and a
second to adjourn. Any discussion?
(No response was heard.)
CHAIRMAN PHILLIPS: All in favor,
signify with the sign of Aye.
(A unanimous response was
heard.)
CHAIRMAN PHILLIPS: Motion carries.
(Whereupon, the meeting
concluded at 10:12 a.m.)

REPORTER'S CERTIFICATE

I, Patrick Miller, Alabama Certified
Reporter No. 2037, and Commissioner for the
county of Alabama at Large, hereby certify that on
this 18th day of December, 2015, I reported the
proceedings in the matter of the
above cause, and that the pages herein contain
an accurate transcription of said
proceedings.
I further certify that I am neither kin
of counsel to the parties to said cause, nor in
any manner interested in the results thereof.
This 2nd day of January, 2016.

PATRICK MILLER, ACCR-2037
Commissioner for the
State of Alabama at Large
MY LICENSE EXPIRES: 8/24/16
MY COMMISSION EXPIRES: 2/19/19
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 2nd day of January, 2016.

______________________________
Patrick Miller

PATRICK MILLER, ACCR-2037
Commissioner for the State of Alabama at Large
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MY COMMISSION EXPIRES: 2/19/19
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Part B
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Attachment 1    Agenda

Attachment 2    Order to adopt motion to postpone consideration of a recommendation to the Commission until the February 19th Committee meeting (Agenda Item 2)
Attachment 1
AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: December 18, 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 October 16, 2015**

2. Discussion and possible consideration of a recommendation from the Rulemaking Committee to the Commission on 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 OCTOBER 16, 2015**

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

3. **OTHER BUSINESS**

4. **FUTURE RULEMAKING COMMITTEE MEETING**
Attachment 2
BEFORE THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

MOTION

Postpone consideration of a recommendation to the Commission

until the February 19th Rulemaking Committee meeting

ORDER

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

1. That the above motion is hereby adopted; and

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

APPROVED:

\[Signature\]
Committee Member

\[Signature\]
Committee Member

\[Signature\]
Committee Member

DISAPPROVED:

\[Signature\]
Committee Member

\[Signature\]
Committee Member

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

\[Signature\]
W. Scott Phillips, Chair
Rulemaking Committee
Certified this 18th day of December 2015