Minutes
Meeting of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 19, 2016
This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Rulemaking Committee of the Alabama Environmental Management Commission on February 19, 2016.

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

Certified this 15th day of April 2016.
Minutes
Meeting of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 19, 2016

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

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Part A
CHAIRMAN PHILLIPS: Good morning. I would like to call the February 19, 2016 Rulemaking Committee Meeting to order.

I recognize that we have a quorum.

Agenda item number 1 is the consideration of minutes of the meeting held on December 18, 2015.

I'll entertain a motion from the Committee regarding the minutes.

DR. RICHARDSON: So moved.

MS. MERRITT: Second.

CHAIRMAN PHILLIPS: I have a motion and a second.

Any further discussion regarding the motion?

(No response.)

CHAIRMAN PHILLIPS: All in favor, signify with a sign of "aye."

THE COMMITTEE: Aye.

CHAIRMAN PHILLIPS: All opposed?

(No response.)

CHAIRMAN PHILLIPS: Motion carries.

Agenda item number 2. We'll have a discussion and possible consideration of a recommendation from this Rulemaking Committee to the Commission on ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections 1 through 3. So with that, I would like to note that the latest version of the draft rule and draft guidelines was made available to the public for comment. And we did receive three sets of comments. I think
all the Committee members have a copy of those.

So I would like to open the floor up to discussion.

Commissioner Richardson.

DR. RICHARDSON: Mr. Chair, having reviewed the comments and considering the rule draft amendment, I have a couple of things I would like to change in this -- or insertions, basically.

Looking at paragraph 2, sixth line from the bottom, a red insertion, already a change we are considering. I would simply like for that to -- instead of reading deny or table, that it read "and/or table." "Deny, and/or table."

CHAIRMAN PHILLIPS: So let me clarify. The only insertion is really the "and/"?

DR. RICHARDSON: Correct. Insert "and/or." So that's to be considered as part of the amendment insertion would now read: The Commission may at its discretion, approve, deny and/or table presentation requests.

CHAIRMAN PHILLIPS: Okay.

DR. RICHARDSON: In rule draft amendment paragraph 4, a new paragraph that is being inserted currently reads, "Members of the public wishing to appear before the Commission, are encouraged to carefully observe the Commission's "Guidelines for Public Comment" applicable to this Rule. This is in order to facilitate the exchange of information between the Commission and the public in a manner that will enable the Commission to better serve the people of this State and their environment."

Now, if you will allow me, that paragraph will now read, "Members of the public wishing to appear before the Commission, are encouraged to carefully observe the Commission's "Guidelines for Public Comment" applicable to this Rule. The "Guidelines for Public Comment" shall be available on the Department's website and at the Commission office."

And I have no further comments or discussion.

CHAIRMAN PHILLIPS: Any questions relative to those comments?

MS. MERRITT: I don't have any questions on it.

CHAIRMAN PHILLIPS: I'm
looking at it for a moment.

MS. MERRITT: I would just
like to say my comment would be
that I agree with the changes.
And that's number 4. I don't
have a problem.
Could you read that one more
time, Commissioner Richardson?

DR. RICHARDSON: The
insertion or the entire
paragraph?

MS. MERRITT: The insertion.

DR. RICHARDSON: To be
inserted as the second sentence
of paragraph 4. "This is in
order to facilitate the exchange
of information between the
Commission and the public in a
manner that will enable the
Commission to better serve the
people of this State and their
environment."

MS. MERRITT: Okay. And

that's fine with me.

CHAIRMAN PHILLIPS: Any
other comments or questions
relative to the amended public
comment rule draft that we have
in front of us?

(No response.)

CHAIRMAN PHILLIPS: Do I
have a motion from the
Committee?

MS. MERRITT: You need a
motion for the changes or to
adopt the rule?

CHAIRMAN PHILLIPS: I'm
asking do I have a
recommendation to take to the
full Commission or do we want to
continue looking at this?

DR. RICHARDSON: If I may.
Mr. Chair.

CHAIRMAN PHILLIPS: Sure.
DR. RICHARDSON: As a matter
of clarification, shouldn't we

have a motion to adopt the
changes I just inserted and then
a motion to adopt the proposed
as presented, then decide --

CHAIRMAN PHILLIPS: I think
you can do it one --

MS. MERRITT: Because these
have not been adopted anyway.

CHAIRMAN PHILLIPS: Right.
I mean, nothing has gone from
this Committee to the Commission
at this point.

MS. MERRITT: Right.

CHAIRMAN PHILLIPS: So
anything that you make in a form
of insertion incorporates the
things we included and
discussed.

Robert, is that --

MR. TAMBLING: I agree with
that.

CHAIRMAN PHILLIPS: If you
make a motion in a form of

accepting these changes that we
made today into the amended,
that's one form of a motion that
you could make.

DR. RICHARDSON: I move that
the Committee recommend that the
Commission proceed to rulemaking
with the draft rule as amended,
and that the Commission consider
adopting the draft guidelines to
accompany the proposed rule.

MS. MERRITT: I second.

CHAIRMAN PHILLIPS: Before
we do that, I'm going to make a
recommendation before you go to
your motion.

MS. MERRITT: Okay.

CHAIRMAN PHILLIPS: And that
is, the guideline is not a rule.
So therefore, there's really no
need for us to make a
recommendation for rulemaking on
the guideline. We still, I
think, have some work to do on
the guideline in Committee.
There were some comments that
were made by the public relative
to requirements on that. If
there's going to be
requirements, they need to be
part of the rule. If they're
not going to be requirements,
they can be a guideline. But I
think we have some work to do on
the guidelines before we move
those forward. Because it's not
the intent of the guidelines to
be a rule.
DR. RICHARDSON: Then allow
me to restate my motion.
I move that the Committee
recommend that the Commission
proceed to rulemaking with the
draft rule as amended.
CHAIRMAN PHILLIPS: Do I
have a second?

MS. MERRITT: Second.
CHAIRMAN PHILLIPS: Any
discussion regarding the motion?
(NO response.)
CHAIRMAN PHILLIPS: The only
discussion I have is I want some
clarification just to be certain
that when you say "as amended,"
you also are including the
suggested changes that you've
provided today.
DR. RICHARDSON: That
includes all of the suggested
amendments to the current rule.
CHAIRMAN PHILLIPS:
Including yours today?
DR. RICHARDSON: Yes.
CHAIRMAN PHILLIPS: Any
other discussion on the motion?
(NO response.)
CHAIRMAN PHILLIPS: There
being no further discussion, all
in favor of the motion, signify

with "aye" and raise your hand.
THE COMMITTEE: Aye.
CHAIRMAN PHILLIPS: All
opposed, same sign.
(NO response.)
CHAIRMAN PHILLIPS: Motion
carries.
Other business?
(NO response.)
CHAIRMAN PHILLIPS: I would
like to mention some other
business to the Committee. That
is partially what I said
earlier, which are the
guidelines. I think at our next
meeting I would like to take up
the discussion of guidelines
should the Commission desire to
move to rulemaking. We need to
see how they act on our
recommendation today. But I
still think we need to go
through those guidelines at our
next meeting.
And Commissioner Richardson,
if you want to think of how we
would deal with the
environmental justice issue that
you brought forward earlier.
And we can talk about that at
our next Rulemaking Committee.
Any other business to
discuss?
(NO response.)
CHAIRMAN PHILLIPS: Future
Rulemaking Committee meeting
will be April 15, at 10:00 a.m.
in this room. So I will ask for
a motion for that.
MS. MERRITT: So moved.
DR. RICHARDSON: Second.
CHAIRMAN PHILLIPS: Motion
and second. Any further
discussion?
(NO response.)
CHAIRMAN PHILLIPS: All in
favor, signify with a sign of
"aye."
THE BOARD: Aye.
CHAIRMAN PHILLIPS: I'll
entertain a motion to adjourn.
DR. RICHARDSON: So moved.
CHAIRMAN PHILLIPS: Second?
MS. MERRITT: Second.
CHAIRMAN PHILLIPS: We're
adjourned. Thank you.

(THE HEARING WAS CONCLUDED AT 10:13 A.M.)

CERTIFICATE
STATE OF ALABAMA 
COUNTY OF CONECEH 
I hereby certify that the above and
foregoing transcript of proceedings was
taken down by me in machine shorthand, and
the questions and answers thereto were
transcribed by means of computer-aided
transcription, and that the foregoing
represents a true and correct transcript of
the proceedings given by said witness upon
said hearing.
I further certify that I am neither
of counsel nor of kin to the parties to the
action, nor am I in anywise interested in
the result of said cause.
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 below.

CHARITY McCULLERY ACCR# 424
My Commission Expires: 2/19/17
CERTIFICATE

STATE OF ALABAMA )
COUNTY OF CONECUH )

I hereby certify that the above and foregoing transcript of proceedings was taken down by me in machine shorthand, and the questions and answers thereto were transcribed by means of computer-aided transcription, and that the foregoing represents a true and correct transcript of the proceedings given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

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 below.

CHARTY McCULLEY
CHARITY McCULLEY ACCR# 424
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Attachment 1
AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: February 19, 2016
TIME: 10:00 a.m.
LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Conference Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

ITEMS

1. Consideration of minutes of meeting held on December 18, 2015**

2. Discussion and possible consideration of a recommendation from the Rulemaking Committee
to the Commission on ADEM Administrative Code 335-2, Environmental Management
Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3)

3. Other business

4. Future Rulemaking Committee meeting

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

** The minutes of this meeting will be available on the ADEM website
under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 18, 2015

2. DISCUSSION AND POSSIBLE CONSIDERATION OF A RECOMMENDATION FROM THE RULEMAKING COMMITTEE TO THE COMMISSION ON ADEM ADMINISTRATIVE CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

The Rulemaking Committee continues its re-examination and study of ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda, Sections (1) through (3). This Rule includes the procedures and requirements regarding requests from the public to make presentations before the Commission at its meetings following consideration of agenda items. The Committee will also discuss and may consider a recommendation to the Commission as to whether the Commission should proceed to rulemaking and whether the Commission should consider adopting guidelines to accompany the proposed Rule.

3. OTHER BUSINESS

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

MOTION

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

ORDER

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

1. That the above motion is hereby adopted; and

2. That this action has been taken and this Order shall be deemed rendered effective as of
the date shown below.
ISSUED this 19th day of February 2016.

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 19th day of February 2016.

[Signature]
W. Scott Phillips, Chair
Rulemaking Committee
Certified this 19th day of February 2016
335-2-3-.05 Agenda and Public Participation.

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

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

(3) After consideration of agenda items the Commission may consider comments from the members of the public. While the Commission encourages public participation at its meetings, for reasons of fairness and due process to the parties in administrative and legal proceedings involving the Commission, it specifically discourages the members of the Commission from engaging in the non-deliberative discussion of any case or legal proceeding pending before the Commission, or of any decision by the Commission on matter involving the Commission or Department that is the subject of in any ongoing case or legal proceeding pending appeal before the Courts of this State. Parties to such proceedings and members of the general public shall not be permitted to use the public participation opportunities herein provided by the Commission to circumvent administrative or judicial procedures which specify the time and manner of presenting testimony, evidence, or comment to the Commission in a formal manner designed to provide due process to all parties.
(4) Members of the public wishing to appear before the Commission are encouraged to carefully observe the Commission's "Guidelines for Public Comment" applicable to this Rule. This is in order to facilitate the exchange of information between the Commission and the public in a manner that will enable the Commission to better serve the people of this state and their environment. The "Guidelines for Public Comment" shall be available on the Department's website and at the Commission office.

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