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
June 17, 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 June 17, 2016.

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

Certified this 19th day of August 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
June 17, 2016

Convened: 10:01 a.m.
Adjourned: 10:26 a.m.

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

ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT
Alabama Room
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
June 17, 2016
10:01 a.m.

Taken by: Victoria M. Castillo, CCR#17

APPEARANCES

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

ALSO PRESENT:
Robert Tambling, ARMC Legal Counsel
Debi Thomas, ARMC Executive Assistant

CHAIRMAN PHILLIPS: Good morning.
MS. MERRITT: Good morning.
CHAIRMAN PHILLIPS: I'd like to call to order this Rulemaking Committee meeting. I will acknowledge that we have a quorum.

Agenda Item 1 is the consideration of the minutes of the meeting held on April 15th, 2016. I will note that the Committee will consider these minutes and will entertain a motion from the Committee regarding the minutes.

DR. RICHARDSON: Move to adopt the minutes.

MS. MERRITT: Second to that.

CHAIRMAN PHILLIPS: I have a motion and a second.
Any further discussion?

(No response)

CHAIRMAN PHILLIPS: Hearing none, I will call the question: All in favor, signify the sign "aye."

(All Committee members signify "aye")

CHAIRMAN PHILLIPS: All opposed, same sign.

(No response)

CHAIRMAN PHILLIPS: Motion carries.

Agenda Item No. 2 is the discussion of our draft guidelines to the application of proposed amended Environmental Management Commission Regulations Rule 335-2-3-.05, Agenda.

We will discuss these guidelines, because they are what we are proposing to be used in the proposed rule and will be used to help educate and inform the public as to how the Commission will interpret the rule and intends to apply to this rule. Of course, at this point, we have not shared these with the full Commission. So once we have in the shape for the Committee to recommend, we will be...
providing these to the full Commission, and also to the public, prior to taking the proposed rule at our August meeting. So with that, I will open the floor for a Committee discussion. Do I have any discussion?

DR. RICHARDSON: Yes.

Mr. Chairman, I presented earlier to the members of the Committee some comments that I had on the draft guidelines on a red-line draft. And I think, as has been pointed out, in keeping with the proposed rule, that we'll strike my Comment No. 1. But I would like for us to consider the incorporation of Comments 2, 3, and 4 to these.

Comment No. 2 --

CHAIRMAN PHILLIPS: Do we have any questions, Mary?

MS. MERRITT: On Number 1?

CHAIRMAN PHILLIPS: Yes. on Number 1 before we go to 2?

MS. MERRITT: Okay.

CHAIRMAN PHILLIPS: So you're pulling that comment that you made?

DR. RICHARDSON: Correct.

I'd like to strike that comment in that editorial amendment, if you will.

CHAIRMAN PHILLIPS: All right. So do you want to walk us through the others?

DR. RICHARDSON: I will walk you through the others. On Section 2 of the guidelines where the sentence currently reads, "The topic of any presentation made to the Commission should be related directly to the Commission's functions and how to improve the environment." And I would like for us to strike "and how to improve the environment" and replace that -- you know, not replace that, just strike that, that the comment should be "directly related to the Commission's functions and things that we can act on."

Any questions or comments about that?
DR. RICHARDSON: And, also,
just for further clarification, that the
public will be allowed to make comments on
these guidelines.

CHAIRMAN PHILLIPS: Yes.

DR. RICHARDSON: And those
will be taken into consideration, but by
the Commission, rather than by the
Committee.

CHAIRMAN PHILLIPS: I would
agree with that clarification, but just
point out that this is not a rule that
we're issuing. So it isn't going out for
formal rulemaking and subject to the same
requirements as formal rulemaking. But,
most certainly, we will accept public
comments and bring those before the
Commission when the Commission looks to
accept it.

Correct, Robert?

MR. TAMBLING: Correct. And
I would assume that by just accepting
comments you're not going to require
reconciliation statements, as would be
required by formal rulemaking?

CHAIRMAN PHILLIPS: That is
my intent; therefore, it wouldn't be --
we'd be following rulemaking if we were
doing that, and these are not intended as
rules. These are guidelines.

MR. TAMBLING: Thank you.

CHAIRMAN PHILLIPS: Thank
you.

Moving on to Agenda Item No. 3:
Discussion on the policy issue of
environmental justice and what, if any,
action the Rulemaking Committee should
take.

I want to note that the purpose
of this is really to open up to the full
Committee the policy issue of environmental
justice and have a discussion about it.

I want to call on Commissioner
Richardson to start that discussion, since
you brought that to the full Commission's
attention and asked that it be brought to
the Rulemaking Committee.

DR. RICHARDSON: Thank you,

Mr. Chairman. Just very briefly, kind of
give it a little sort of a history, as I
know it, which I will be the first to admit
I'm not the best versed in this particular
area, though I'm getting that way slowly
but surely.

But President Clinton in '94
signed an Executive Order 12898 that
basically said that the federal
departments, including EPA, were to promote
environmental justice, and it names off
some specifics that kind of defines what
environmental justice is and so forth and
so on.

And so this idea of
environmental justice and the pursuit of it
has been around for quite some time, going
on, what, now 22 years. Two years ago, at
the June meeting, Mr. Ludden gave a
presentation on Environmental Justice in
Alabama, and the ADEM Environmental Justice
Policy that is in place, or the practices
that are in place and currently used.

Following that meeting, I
consulted with you, as Chair of the
Rulemaking Committee, what you thought
about the ideas that were presented in that
meeting and that perhaps we should look
into this. My thinking was that at this
point, even if EPA -- they're making moves
on this, but nothing is to the level of law
yet. But they do have policies and
guidelines, and I thought that it would be
good if we would be a little more proactive
in this in pursuing this particular issue.

With that in mind, I think the
two of us, if I remember -- it may have
just been me, approached Mr. Ludden in the
hallway. And because he had just given a
presentation on the matter, I asked him if
he would mind putting together some
specific comments for me that would help us
as we began to pursue this particular
issue. I am not trying to exclude anyone
else or be prejudiced in who we included.

That wasn't the intent at all. It was the
fact that he had just simply made the
presentation and brought the idea and the
concept forth.

So the idea then, we already at
that point had these public comments before
us as Rulemaking Committee, and we knew we
wanted to be slow and deliberative and in
making those changes. So the idea then was
to take this up following that. Well,
we're just about finished with that, so I
think it's time to begin our changing our
thinking and shifting more towards that
topic as it becomes the primary topic that
the Rulemaking Committee focuses on.

So this past April, end of
March, actually, prior to the last
Commission meeting and Rulemaking Committee
meeting -- which I did not get to attend
but -- and then again this past week, I
sent out several documents to the members
of the Rulemaking Committee. I sent out
the Executive Order 12898. I sent out a
version, I believe it was Version 3, of
ADEM Environmental Justice Activities that
the Director had prepared some time back,
the Director's report that he made to the
Environmental Management Commission at that
particular April meeting, a statement
from -- titled Disparate Impact from an --
I forget exactly what the testimony --
Equal Rights Commission maybe -- it was
testimony before the Equal Rights
Commission, something like that -- I don't
remember the specifics, and then
Mr. Ludden's letter to me that contained
his comments and his thoughts about some
specific things towards the policy.

There's a lot more to come. I
would like to encourage my fellow Committee
members to go to Environmental Justice on
Environmental Protection Agency's website.
There's a lot of helpful information there,
and at least I think that's relevant
because it would tend to put our mindset in
1 what the Environmental Protection Agency's
2 mindset is, what their energy is. They're
3 just kind of moving out of what they refer
4 to as "Plan 2014" and they're moving into
5 what is now better known as "Agenda 2020."
6 I think that's right. I may have my
7 nomenclature mixed up a little bit. But
8 that's where this is headed to, "Action
9 Agenda 2020," yes.
10 So my thoughts right now is for
11 us to just begin reviewing these documents,
12 because there's going to be a lot of
13 documents to review. And I think that what
14 we want to pay attention to at this point
15 is kind of what the Department -- you know,
16 the things we have in front of us, get
17 ourselves as well versed on the topic as we
18 possibly can, and then we can see how we
19 want to proceed in terms of what the
20 Department should or should not be doing.
21 Pretty much that's it. I think
22 that, depending on what some of the things
23 that will be revealed here in a moment, I

1 think we should probably plan on coming
2 back thinking towards full discussion more
3 like in October, at the October meeting,
4 seeing as how we still have some of this
5 public comment to deal with, put to rest at
6 the August meeting. And some of us will
7 pin upon this next area.
8 So that's pretty much what I had
9 to say. I just wanted to bring everybody
10 up to speed, make sure you have the
11 documents, that you know what we need to be
12 looking at and reviewing. And I will be
13 sending other stuff that I find forward and
14 be copying you guys and Mr. Tambling as
15 well.
16 So thank you, Mr. Chairman.
17 CHAIRMAN PHILLIPS: Any
18 other discussion, and specifically about
19 what Commissioner Richardson just provided
20 to us, but specifically any discussion from
21 the Committee or thoughts relative to
22 process? I mean, how do you envision us
23 moving forward with this, kind of using the

1 the public comment consideration is when we
2 had the joint roundtable meeting. And I
3 think that there will be a point at which
4 we probably would wish to do that again
5 with this particular topic. It might not
6 be before the next meeting on this issue.
7 But I definitely think before we start
8 really putting pencil to paper with things
9 that we think the direction this should go,
10 we should sit down and enter into some
11 serious roundtable discussion with
12 stakeholders and things. That's just my
13 thoughts. I appreciate your comment along
14 those lines as well.
15 CHAIRMAN PHILLIPS: My
16 comment relative to process is I think we
17 need to be as thorough and deliberate as we
18 were in the public comment as Rulemaking.
19 DR. RICHARDSON: Yes.
20 CHAIRMAN PHILLIPS: I think
21 we did it correctly. I think we did it
22 deliberately. I think we spent a lot of
23 time before we ever crafted a proposed rule
1 change. We actually didn't go in the
2 public comment period thinking that there
3 was going to be a proposed rule change
4 until after we really spent the time to
5 understand how everyone felt about the
6 existing rule. I think we need to do the
7 same thing here. I don't think we should
8 go into this thinking necessarily that
9 there's a problem that we need to fix --
10 MS. MERRITT: Just --
11 CHAIRMAN PHILLIPS: --
12 without knowing whether there is. And, 13 with that, you know, I appreciate greatly,
14 Commissioner Richardson, the information
15 that you've shared with us. It was quite a
16 bit. It's pretty voluminous, but very
17 helpful in understanding the issues and the
18 different perspectives. And I think in
19 light of that, you know, I would really
20 like to get more information. I'd like to
21 understand it better from all perspectives.
22 And so I'm going to -- I'm going
23 to ask -- so that you don't have to do the

1 heavy lifting, and, Mary, you don't have to
2 do it, and I don't have to do it, I'm going
3 to ask Robert and Debi to do it.
4 And what I mean by "do it" is I
5 think there's some information, Robert,
6 that we really need -- and, Debi, that we
7 really need before we can really sincerely
8 start, and I think maybe October is the
9 right time frame, but I think it's the
10 right time frame to start the process. I'm
11 not sure that we'll really have time to go
12 through a roundtable like we did before
13 then.
14 And, Robert, what I would really
15 like to see is -- and I think the full
16 Committee, please chime in here if you want
17 more or less, is the distinction between
18 Title VI and Environmental Justice. I
19 think it's important -- in Commissioner
20 Richardson's comments just a moment ago, he
21 said really there's an executive order, not
22 a rule, not a federal requirement, not a
23 law for EJ. There is for Title VI, and I
next meeting in August, just kind of an update on where we are. If we have it August, great. If we don't -- but I think before we really step into a process surrounding environmental justice, we really need that information --

DR. RICHARDSON: Correct.

CHAIRMAN PHILLIPS: -- to thoroughly understand it.

MS. MERRITT: I agree.

DR. RICHARDSON: And that's in part, my understanding, would be October, or maybe even December, because I want to hear from Robert along these lines before we really get deep into it.

And you may need the time.

MR. TAMBLING: Yes.

CHAIRMAN PHILLIPS: You don't have anything else to do, do you?

MR. TAMBLING: Yes. I think I will need the time.

DR. RICHARDSON: Very flat this summer, so no other issues to deal with.

CHAIRMAN PHILLIPS: So those are my thoughts, Commissioners, as you've asked.

Any other thoughts or comments that you would like to share today on this topic?

DR. RICHARDSON: Nothing other than I just concur with the comments that you just made, and I think that will help us get started on the topic.

CHAIRMAN PHILLIPS: Moving to Agenda Item No. 4: Other Business. Is there any other business to come before this Committee.

(No response)

CHAIRMAN PHILLIPS: Hearing none, I will move to Agenda Item No. 5:

Future Rulemaking Committee meeting.

Considering what we just talked about, it seems that we need to have a meeting in August, so I will entertain a motion for a possible future Committee meeting. Our next regular Commission meeting is scheduled for August 19th at 11 a.m. in this room.

So any motion?

DR. RICHARDSON: Before I make the motion, I want to ask if -- on the public comment, do we have -- will there be more for us to discuss at that --

CHAIRMAN PHILLIPS: At the August meeting?

DR. RICHARDSON: Possibly.

CHAIRMAN PHILLIPS: Possibly on the guidelines, if we've received any comments or we've heard anything from Commissioners before we go to the full Commission meeting on the proposed rule that might be relevant that we need to bring to the Commission's attention.

DR. RICHARDSON: Then I would move to set the next Committee meeting on August 19th at ten o'clock in this room.

CHAIRMAN PHILLIPS: Okay.
signify "aye")

CHAIRMAN PHILLIPS: Meeting
is adjourned. Thank you.
(The meeting is adjourned at
10:26 a.m.)
***************

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

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

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

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

VICTORIA CASTILLO, ACCR #17, 9/30/16
FREELANCE COURT REPORTER
STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

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

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

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

Victoria Castillo
VICTORIA CASTILLO, ACCR #17, 9/30/16
FREELANCE COURT REPORTER
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Part B
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Attachment 2 Order to adopt motion to accept the draft guidelines with the corrections Commissioner Richardson made
(Agenda Item 2)
Attachment 1
AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: June 17, 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

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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 of this meeting will be available on the ADEM website under Environmental Management Commission.
1. CONSIDERATION OF MINUTES OF MEETING HELD ON APRIL 15, 2016

2. DISCUSSION OF DRAFT GUIDELINES TO THE APPLICATION OF PROPOSED AMENDED ADEM ADMINISTRATIVE CODE 335-2, ENVIRONMENTAL MANAGEMENT COMMISSION REGULATIONS, RULE 335-2-3-.05, AGENDA

The Rulemaking Committee will discuss draft guidelines that would be used in the application of proposed amended ADEM Administrative Code 335-2, Environmental Management Commission Regulations, Rule 335-2-3-.05, Agenda. These guidelines would serve to educate and inform the public as to how the Commission interprets and intends to apply this Rule.

3. DISCUSSION ON THE POLICY ISSUE OF ENVIRONMENTAL JUSTICE AND WHAT, IF ANY, ACTION THE RULEMAKING COMMITTEE SHOULD TAKE

The Rulemaking Committee will discuss the policy issue of environmental justice and what, if any, action the Committee should take.

4. OTHER BUSINESS

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

MOTION

Accept the draft guidelines with the corrections that
Commissioner Richardson made

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 DECRESSES 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 17th day of June 2016.

APPROVED:

Mary Meritt
Committee Member

W. Scott Phillips
Committee Member

J. E. Richardson
Committee Member

DISAPPROVED:

Committee Member

Committee Member

This is to certify that this Order is a true and accurate account of the action taken by the Rulemaking Committee on this 17th day of June 2016.

W. Scott Phillips, Chair
Rulemaking Committee
Certified this 17th day of June 2016