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
August 21, 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 August 21, 2015.

W. Scott Phillips  
Chair  
Rulemaking Committee  
Alabama Environmental Management Commission

Certified this 16th day of October 2015.
Minutes
Meeting of the
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Alabama Environmental Management Commission
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1400 Coliseum Boulevard
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August 21, 2015

Convened: 10:00 a.m.
Adjourned: 10:22 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
August 21, 2015
10:00 a.m.

CHAIRMAN PHILLIPS: We'll call the Rulemaking Committee to order and acknowledge that we have a quorum of the Rulemaking Committee.

First agenda item is consideration of the minutes from the meeting held on April 17th, 2015.

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

DR. RICHARDSON: Move to adopt the minutes of the April 17th, 2015, meeting.

CHAIRMAN PHILLIPS: Do I have a second?

MS. MERRITT: Second.

CHAIRMAN PHILLIPS: I have a motion and second to accept and adopt the minutes of the April 17th, 2015, committee meeting. Any discussion?

(No response.)

CHAIRMAN PHILLIPS: No discussion. All in favor signify with the sign of aye.

THE COMMITTEE: Aye.

CHAIRMAN PHILLIPS: All opposed?

(No response.)

CHAIRMAN PHILLIPS: We accept that adoption of the minutes.

Agenda item number two. We're going to move to the discussion and consideration of our Division 2 Environmental Management Commission regulations. Rule 335-2-3-.05, agenda sections 1 through 3.

I'll note that we're continuing our examination of this and the study of this rule. You'll note also that Debi sent out some information from past committee
meetings and commission meetings regarding when this was taken up before. It did not continue through the Rulemaking Committee at that time. Comments made at the Rulemaking Committee session on February the 20th, we sent out, by Debi, she sent that out to all of us, and the Commissioners and participants of that meeting, so that we could continue to look at those. So what I would really like for us to do now is to discuss what we've got in front of us. I'll also point out that Commissioner Richardson took the first step for his thoughts of what he thought we might consider. But I would just like to open it up for the Committee members who have any discussions relative to what we have in front of us.

Anybody want to start? Mr. Richardson?

DR. RICHARDSON: I'll just start by commenting, kind of putting my thoughts out, of where I was when I put this work in progress together. And that was, I felt like, after we had all of the comments in summarized, that we needed to take -- I felt I needed to take what was in those comments and somehow take them from comments to the rule itself. And that's kind of what I've done here, is taken what I thought were some of the major concerns that the public had, that the Committee had, and that the Commission had, and tried to address them in just a draft. That's simply all it is. And what I would recommend is that since you all only have just received this, is that we use this as a place to begin taking the comments that we've received and working on the actual rule itself. Not suggesting for a minute that these additions or deletions actually become a part of the rule. It could be that we make these additions and leave the rule pretty much unchanged and make these additions or deletions a part of the guidelines. On the other hand, it could certainly be a part of the rule changes; it depends on how we decide to go with it.

Nonetheless, what I thought was, we needed something actually down to start working on, and that's what I feel like I've provided here.

CHAIRMAN PHILLIPS: Thank you, Commissioner Richardson. Commissioner Merritt, do you have any thoughts?

MS. MERRITT: Well, I like the way it's put together, and it is something for us to start working on. And we can agree that we can take this and look at it and compare it with our old rules and see what we need to decide on, whether to let the old rule stay or make the changes that he put together here.

CHAIRMAN PHILLIPS: Thank you, Commissioner Merritt. One of the thoughts that I have is before we really get into what you've proposed here, Commissioner Richardson, is do we really want to go to a full rulemaking change, or do we really want to try to do
something in more of a guidance
initially, maybe see if that
works. If it works, then great:
If it doesn't, then perhaps we
have to go to a rulemaking.
One of the things that I did
like, Commissioner Richardson,
and what you proposed, is really
kind of a tiered approach of
hearing from the public, giving
people the opportunity to sign
up before a meeting and present
or just make comments to us
without presentation materials.
But also, those that really
would like to spend a little
more time with us, educating us
or providing information to us,
having the opportunity to do
that in a way that gives us time
to absorb it, and also give them
time to prepare for it. So I
thought that was nice,

considering what we had heard
from the group.

DR. RICHARDSON: And also,
in that approach like that --
again, all of these came from
comments that were made during
the group meeting that we had.
I mean, it could be that we
could use some hybrid approach.

It could be that more
substantial comments could
actually become a part of the
rule, whereas the more briefer
comments, where people just sign
in as something we try as a
guideline. Again, there was no
real intent for specific rule
change in what I've presented
here. It's really just --
again, gives us a place to
start. But I did try to take a
two-tiered approach because I
think that we need to be

prepared when someone wants to
stand up and address us
substantially with five, ten,
fifteen-minute presentations
with visual aids and all of
that. We need to be prepared.
And I feel like it's appropriate
for us to receive that material
upfront, come in prepared.

On the other hand, I can
also see where members of the
public, just a couple of
statements they want to make, to
bring something to our
attention, and I think that's
appropriate to have a meeting
for that.

CHAIRMAN PHILLIPS: I was
struck really by how little
modifications were really
required in what you did to give
us that tiered approach to the
rule. And it seems to me that

-- and, Robert, correct me if
I'm wrong, but it seems to me
that it really is within the
management of our meetings that
these items that you've included
are really more guidance for how
we manage our meeting, as
opposed to really a hard rule
for it.

DR. RICHARDSON: Right.

CHAIRMAN PHILLIPS: And I
think we're within the purview
of the existing rule to be able
to do that. Maybe something
that you want to look at.

MR. TAMBLING: Yeah, I'm
going to need to look at that,
Commissioner Phillips.

DR. RICHARDSON: I mean, I
guess what I'm hearing is I
think we need guidance from you
now that you have a little more
of something in front of you.
MR. TAMBLING: Yes.

DR. RICHARDSON: We need guidance from you as to what of this really would require a rules change or just be guidance and a part of meeting management.

MR. TAMBLING: All right.

DR. RICHARDSON: If it requires a rule change, so be it; if not, it might be that the more expedient way is to handle this under just a matter of managing meetings just for a period to see how it goes. And if it all seems to work very well, we'll make a rule change then, maybe then. I don't know.

CHAIRMAN PHILLIPS: I think that may be a good thing, Robert, if you can look at this between now and our next meeting.

To kind of summarize, I'm going to summarize very briefly what you've proposed here, because I want to make sure that there's not something that anyone on the Committee thinks was left out. To really summarize, you've set up -- written comments are always welcome. The public would sign up for a brief three-minute or less comment period at the beginning of the meeting, and the Chair would manage that, and we end up with 100 signups, we're not going to be able to do all of them.

DR. RICHARDSON: Again, it has to be managed by the Chair. It could be that may be only six people -- time only allows six people to talk that day.

CHAIRMAN PHILLIPS: Right.

DR. RICHARDSON: And next time it may allow ten people.

CHAIRMAN PHILLIPS: And then for those that really want to bring something more substantive to the Commission, that they would do that in a formal process very similar to what we have now. But it would be for the meeting down the road, so that the full Commission gets to make --

DR. RICHARDSON: One of the things that seems to be clear from the general comments when we all met together, was people presenting and putting these things together, wanted to know before they got here, before they traveled, if they were going to be able to present or not. Well, now, the way this is, if you present us the material, we look over it, we vote on it in our Commission meeting and then get back to you and say, yes, at the next meeting you can present. And that way you don't drive down here and waste your time and be turned down. You know up front --

CHAIRMAN PHILLIPS: Right.

DR. RICHARDSON: -- whether you're going to be allowed to speak or not. Although, I do understand it's a meeting removed kind of thing, but still, that was kind of what the comments -- everybody seemed that they would rather know a meeting ahead on that.

CHAIRMAN PHILLIPS: But that's only for those substantive sessions anyway. I mean, if someone wanted a
three-minute signup to do a
public comment, they have that
ability at any meeting. And
then you add an e-mail.

DR. RICHARDSON: Yes.
CHAIRMAN PHILLIPS: Which
was a very popular comment. Was
there anything that we really
didn't cover in what you
suggested or you thought wasn't
necessary in what you suggested
that we heard? Anybody? Debi?
Robert? Did we miss anything?

DR. RICHARDSON: I mean,
there were definitely a few
items. But I still feel like by
allowing people to sign in, and
I suggested in here a stopping
point of five minutes before the
meeting convenes, that way we
can get the list and bring it up
here, and we know who's going to
be talking. That kind of
addresses people who want to
speak but don't really have the
time to prepare something, maybe
just doesn't have the desire to
put together something more
substantial. But, yet, it
leaves open the possibility for
more substantial comments. So I
feel like, no, it did not
address every single item that
was discussed that day, but I
think it really hit our
concerns, as well as most of the
public's concerns. And that's
what I was striving for.

CHAIRMAN PHILLIPS:
Commissioner Merritt, did you
think there was anything that we
needed to add or modify?

MS. MERRITT: The only thing
I see in there is where you talk
about, you know, people come in
and they sign up. I'm thinking
you might need to limit it. I
mean, how many people can sign
up. That's the only thing.
Because of the time. I mean,
you might have ten or fifteen
people, so I just think a limit
should probably be entered. I
mean, if we decide.

DR. RICHARDSON: And the
other thing -- I've already made
some comments on this markup,
this myself. I do think that
before we get, as a
sub-statement under two; public
comment, before we get to A, we
need a statement that says
something after consideration of
the agenda items, the Commission
may consider comments from
members of the public that deal
with concerns of the Commission
under the Commission's purview.
And specifically list the things
we, as a Commission, can deal
with. Factors that we have
control over, and actually list
them there, which I think is
basically three categories,
maybe four categories. I'm not
positive of that. And list
those there; then have these
fall under that.

CHAIRMAN PHILLIPS: We have
three, but one of them I don't
think is something we can take
public comment on relative to
our judicial role.

DR. RICHARDSON: Correct.
That would be one thing I've
already seen that needs to be
added to this. And that's done
right up front. So if someone
is wanting to address us, they
see that and see, okay, well,
what I was going to talk about
really does fall into any one of
those categories. And that was
something else that the public,
I think -- it was a concern of
ours. And I think it was a
concern at the public meeting as
well to know precisely what it
is the Commission can and cannot
deal with.

CHAIRMAN PHILLIPS: I
agree. I think that's a good
addition. Anything else that we
think needs to be included or
not included? We have a rule in
place. We can take some time.
We want Robert to take some time
and look at this and see whether
we can do this as a guidance
versus a rule. I would prefer
to do it as a guidance if we
can. We can start using it as
quickly as we can. I really
don't see that we couldn't start
using it fairly quickly.

MR. TAMBLING: Well, I think
there's a point of departure.
When you're looking at the rule,
you have to look at what the
reasonable expectations are from
the rule. When you look at the
rule, and the rule says that
anybody who wants to speak
before the Commission has to
submit a written request, my
impression of that is that
you're just not going to be able
to get up and speak if you sign
in. I'm not sure how we --

CHAIRMAN PHILLIPS: You want
to interpret that as a written
request?

MR. TAMBLING: Well, I guess
you could. And I think the
other problem that you could run
into, if you don't strictly
enforce this, especially with
regard to the time limit, is

that you're going to have
certain people who are going to
complain, who are going to say,
you know, why did I have to give
two weeks advanced notice and
submit all of my presentations,
when these people were able to
get up and speak for more than
three minutes.

DR. RICHARDSON: Certainly,
the time limit would have to be
strictly enforced.

MS. MERRITT: Yeah.

MR. TAMBLING: And then I
think what Commissioner Merritt
said is, you know, how many
people are you going to allow --
if you're going to have to
manage your meeting, how many
people are you going to permit
to speak for a three-minute
period.

DR. RICHARDSON: I know a

lot of city commissions operate
in this manner. And I don't
think as a general rule they get
overwhelmed. It might be
occasionally they have more than
really they can handle. But I
don't think that as a rule of
thumb, they get overwhelmed. It
may be once or twice they get
really -- you're shaking your
head out there, you're obviously
familiar with some of this. And
occasionally they would. I
don't doubt that whatsoever.
But I think that's a point when
the Chair of the Commission has
to say, okay, we've been at this
for 30 minutes; we're going to
have to stop. If you would like
to continue and maybe make your
comments at the next Commission
meeting, we'll leave your name
on the list or something, you
know. I just feel like that as a general rule -- I know my city, home city, Florence, they do this. And I think many others do. Yeah, like I said, occasionally, it's a problem, but as a general rule, I don't think it is. I think, as a general rule, we wouldn't hear either. I think there might be times when some really emotional hot-button issues come up when you have a lot of people who want to speak. You know, it's kind of important to me, as a Commissioner, to see that a lot of people are passionate enough about what's going on that they want to speak about it. So, I mean, there's pros and cons to it, obviously.

MR. TAMBLING: I think it's a really good idea. My concern is whether or not it needs to be adopted as a rule. Because written requests have to be submitted 14 days ahead of time.

DR. RICHARDSON: Correct.

MR. TAMBLING: And if you sign up and you consider that a written request, well, then, you're kind of in conflict with the rule.

DR. RICHARDSON: Yeah.

Would it require the rule to be changed to accommodate that?

MR. TAMBLING: I think guidelines from the Commission are helpful, because they inform the public as to how the Commission interprets the rule and how they would like the rule to function. You know, given the changes that you've suggested, I think, first of all, they're really, really good changes; I think they encourage public comment. And I think that's what we're here to do.

But I'm not sure that we could go forward with that without making a rule change.

DR. RICHARDSON: Right.

MR. TAMBLING: And if we have to --

CHAIRMAN PHILLIPS: So be it.

MR. TAMBLING: -- so be it.

CHAIRMAN PHILLIPS: Well, and the other, so be it, the Committee tends to recommend --

DR. RICHARDSON: If that's what the Committee decides to do. And I also think that -- my intention wasn't for this to stand alone without guidelines. I do think that, in addition to this, we need to have a set of guidelines for anyone that's wanting to put together a more detailed addressing of the Commission, what kind of -- you know, the guidelines for that, as well as the general guidelines for a three-minute talk. I don't think that's unreasonable for us to have guidelines out and say that, you know, this is what you should strive to obtain or follow, these guidelines.

MR. TAMBLING: And please understand, my role is to protect you as a committee from challenges down the road. If my recommendation is that you pursue this change through rulemaking, then that's what it is. It's done to protect you.

It may not be the most expedient suggestion, but in my opinion, the best course to take. And I
with the adopted motion?

DR. RICHARDSON: What I would suggest then is that Robert take this, we each take this back, think about some of the additions we've even spoken about here today, other things or deletions, changes to this that each of you, as well as myself, may need to be made, and Robert. Also try to put together guidelines that we think should be followed that we know of relative to our experience as sitting on the Commission, and then maybe we'll have that to come forth at the October meeting.

CHAIRMAN PHILLIPS: Are you offering that as a motion?

DR. RICHARDSON: So moved.

MS. MERRITT: I second.

CHAIRMAN PHILLIPS: I have a motion to take the information provided by Commissioner Richardson, for all of us to look, including Robert, who will advise us on the necessity of rulemaking versus guidance, provide any additional guidance that we think should go with this, and we will entertain that at the October Rulemaking Committee meeting. All in favor signify with the sign of aye.

THE COMMITTEE: Aye.

CHAIRMAN PHILLIPS: All opposed?

(No response.)

CHAIRMAN PHILLIPS: It passes.

MS. THOMAS: Scott, I have an order that we can fill in. Do you want an order to go along middle, because it seems a little arbitrary at that point. So that may be a way to deal with that effectively. Agenda item number three. Any other business to come before the Committee?

(No response.)

CHAIRMAN PHILLIPS: All right. Let's talk about the future Rulemaking Committee meeting. We will have that on October the 16th, 2015, at 10:00 a.m. Does that time work with the Committee members?

MS. MERRITT: I won't be able to be here the next meeting.

CHAIRMAN PHILLIPS: Okay. But you'll get us information before?

MS. MERRITT: Yes, I will.

DR. RICHARDSON: I'll be
able to be here.

CHAIRMAN PHILLIPS: I should also. Are you okay with us moving forward?

MS. MERRITT: Yes.

CHAIRMAN PHILLIPS: All right. I'll accept a motion to adjourn.

DR. RICHARDSON: So moved.

CHAIRMAN PHILLIPS: Second?

MS. MERRITT: Second.

CHAIRMAN PHILLIPS: All in favor?

THE COMMITTEE: Aye.

CHAIRMAN PHILLIPS: Thank you.

(THE MEETING OF THE RULEMAKING COMMITTEE WAS ADJOURNED AT 10:22 A.M.)

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.

CHARITY McCULLLEY 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.

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Charity McCulley
CHARITY MCCULLEY ACCR# 424
My Commission Expires: 2/19/17
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<td>Attachment 2</td>
<td>Order adopting motion for EMC counsel to review information provided by Commissioner Richardson and thereafter advise the Committee on the necessity of rulemaking v. guidance, which shall be further addressed by the Committee at its October meeting (Agenda Item 2)</td>
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Attachment 1
AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
DATE: August 21, 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 April 17, 2015**

2. Discussion and consideration of Division 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 APRIL 17, 2015

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

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

3. OTHER BUSINESS

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

ORDER

This cause having come before the Rulemaking Committee pursuant to motion for counsel to review information provided by Commissioner Richardson and thereafter advise the Committee on the necessity of rulemaking v. guidance, which shall be further addressed by the Committee at its October meeting, the Committee hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the motion referenced above 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 21st day of August 2015.

APPROVED:

[Signatures]

Committee Member

[Signatures]

Committee Member

[Signatures]

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 21st day of August 2015.

[Signature]

W. Scott Phillips, Chair
Rulemaking Committee
Certified this 21st day of August 2015