

1/22/16

**DRAFT**  
**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**

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**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.**

**Part A**

**Transcript**  
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**Part B**

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**Part A**

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1 MEETING OF THE  
2 RULEMAKING COMMITTEE  
3 OF THE  
4 ABAMA ENVIRONMENTAL MANAGEMENT COMMISSION  
5  
6  
7 ALABAMA DEPARTMENT OF ENVIRONMENTAL  
8 MANAGEMENT  
9  
10 Alabama Room  
11 1400 Coliseum Boulevard  
12 Montgomery, Alabama 36110-2400  
13 December 18, 2015  
14 10:00 a.m.  
15  
16 \* \* \* \* \*  
17  
18  
19  
20  
21  
22 T REPORTER: PATRICK R. MILLER, ACCR 2037  
23 \* \* \* \* \*

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1 \* \* \* \* \*  
2 CHAIRMAN PHILLIPS: Good morning.  
3 MS. MERRITT: Good morning.  
4 CHAIRMAN PHILLIPS: We'll call to  
5 order the Rulemaking Committee meeting  
6 on December the 18th, 2015. I want to  
7 acknowledge that we have a quorum. Go  
8 to Agenda Item Number 1, consideration  
9 of the minutes from the meeting held  
10 on October 16, 2015.  
11 I'll entertain a motion from the  
12 Committee regarding the minutes.  
13 DR. RICHARDSON: I move to adopt  
14 the minutes of the October 16th, 2015  
15 Committee meeting.  
16 MS. MERRITT: Second.  
17 CHAIRMAN PHILLIPS: I have a motion  
18 and a second to adopt the minutes of  
19 the October 16, 2015 Committee  
20 meeting. Any discussion regarding the  
21 motion?  
22 (No response was heard.)  
23 CHAIRMAN PHILLIPS: There being no

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1  
2 APPEARANCES  
3 ATTENDEE MEMBERS:  
4 Mr. W. Scott Phillips, Chair  
5 Terry D. Richardson, Ph.D.  
6 Mary J. Merritt  
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8  
9  
10 PRESENT:  
11 Robert D. Tambling, EMC Legal Counsel  
12 Ms. Debi Thomas, EMC Executive Assistant  
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22  
23

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1 further discussion, I'll call for the  
2 question. All in favor, signify with  
3 the sign of Aye.  
4 (A unanimous response was  
5 heard.)  
6 CHAIRMAN PHILLIPS: All opposed.  
7 (No response was heard.)  
8 CHAIRMAN PHILLIPS: Motion carried.  
9 Agenda Item Number 2, we'll go to our  
10 discussion and possible consideration  
11 of a recommendation from the  
12 Rulemaking Committee to the Commission  
13 on Administrative Code of ADEM, 335-2,  
14 the Environmental Management  
15 Commission Regulations, Rule  
16 335-2-3-.05, Agenda, Sections (1)  
17 through (3).  
18 I'll note that, first, the  
19 Committee, I think, would like to  
20 discuss the latest version of the  
21 draft rule and draft guidelines  
22 prepared by Mr. Tambling. And,  
23 Mr. Tambling, I'd ask you, if you

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1 would, kind of walk us through quickly  
2 your comments, so it's clear what  
3 you're going to put before us as  
4 opposed to what we've been considering  
5 before.  
6 MR. TAMBLING: Well, I think what  
7 we were trying to do was to see how  
8 far we could go with the guidelines  
9 rather than have to amend the rule.  
10 And in reviewing all of this and  
11 working on it as long as I have, I  
12 have come up with minimal changes to  
13 the rule.  
14 CHAIRMAN PHILLIPS: Uh-huh.  
15 MR. TAMBLING: And they're outlined  
16 in red for you, and I have attached to  
17 those rules draft guidelines for  
18 public comment. Those guidelines, in  
19 and of themselves, are not  
20 enforceable. They simply serve to  
21 inform the public as to how the  
22 Commission would interpret the rule  
23 once adopted. And I can go through,

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1 you know, and discuss with you any  
2 questions you may have regarding any  
3 of the proposed changes to the rule  
4 and the guidelines.  
5 CHAIRMAN PHILLIPS: Do we have any  
6 questions from the Commission -- the  
7 Rulemaking Committee members?  
8 (No response was heard.)  
9 CHAIRMAN PHILLIPS: I have a  
10 question --  
11 MR. TAMBLING: Sure.  
12 CHAIRMAN PHILLIPS: -- that I'll  
13 throw out there. I -- we have since  
14 received a comment relative to the  
15 difference between the rule and the  
16 guideline, and I think you have just  
17 answered it in your statement in a  
18 very succinct way, but why don't you  
19 give us a little bit more on your  
20 perspective in response to that  
21 comment?  
22 MR. TAMBLING: Well, I tend to  
23 agree with Mr. Ludder's comment. You

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1 know, these guidelines are intended to  
2 be aspirational. They're intended to  
3 be informative. Obviously, you can't  
4 circumvent rulemaking by strictly  
5 enforcing guidelines, otherwise, the  
6 guidelines themselves would become the  
7 rules, and that would not be  
8 permissible unless we put them  
9 through -- we publish them and put  
10 them through notice and comment. So  
11 again, the guidelines are  
12 informational. They're aspirational.  
13 They're there to educate the public on  
14 how the Commission would interpret the  
15 rule. They are not, in and of  
16 themselves, enforceable.  
17 DR. RICHARDSON: They are not the  
18 rule, but they are how  
19 we -- guidelines that we -- help us  
20 interpret the rule?  
21 MR. TAMBLING: Right.  
22 DR. RICHARDSON: And any acceptance  
23 or declining of something presented

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1 for us, because it did not adhere to  
2 the guidelines, would be tantamount to  
3 not adhering to the rule?  
4 MR. TAMBLING: Yes. And should  
5 there ever be an appeal, if this ever  
6 were to somehow wind up in a court of  
7 law, the general rule is that the  
8 Court gives great deference to  
9 administrative agencies in how they  
10 interpret the rules, their own rules.  
11 And, you know, to the extent we have  
12 guidelines that serve to educate and  
13 inform the public as to how we  
14 interpret the rules, I think those  
15 would also be useful to the Court.  
16 DR. RICHARDSON: And it just  
17 helps -- as you said, it just helps us  
18 interpret the rules --  
19 MR. TAMBLING: Right.  
20 DR. RICHARDSON: -- that we're  
21 setting forth, that we are changing  
22 minimally.  
23 MR. TAMBLING: That's correct.

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1 DR. RICHARDSON: And it  
2 gives -- more importantly, it gives  
3 the public guidelines on how to come  
4 before us and have their piece -- say  
5 their piece.  
6 MR. TAMBLING: I agree with that.  
7 CHAIRMAN PHILLIPS: All right. And  
8 I made reference to Mr. Ludder's --  
9 the two comments that you have  
10 answered one of. Let me, for the  
11 record -- Mr. Ludder sent us an e-mail  
12 through Debi to the Rulemaking  
13 Committee members, Phillips and  
14 Richardson. And for the record, I  
15 want to make sure that everyone knows  
16 that it's a three-person Rulemaking  
17 Committee that also includes Mary  
18 Merritt. And when Mr. -- I see  
19 Mr. Ludder, I'll make sure he knows  
20 that too. He sent it to me and  
21 Dr. Richardson. The first one was  
22 relative to guidance versus rules,  
23 which, Robert, you have just talked us

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1 through. The other one is about  
2 voting and explanation relative to the  
3 last Commission meeting, when the  
4 motion to allow public comment at the  
5 end of the Commission meeting failed  
6 for lack of a motion.  
7 Do you have any discussion you  
8 would like to share there, Robert? If  
9 you don't, I'm going to share  
10 something.  
11 MR. TAMBLING: I don't. My -- in  
12 the best of all possible worlds, it  
13 would be wonderful to be able to  
14 provide an explanation for everything  
15 that happens. However, when  
16 there's -- when a motion dies for lack  
17 of a second, or -- you know, I think  
18 the last meeting, I don't even think  
19 there was a motion made.  
20 CHAIRMAN PHILLIPS: Lack of a  
21 motion.  
22 DR. RICHARDSON: Lack of a motion.  
23 MR. TAMBLING: It was lack of a

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1 motion. I just think it is what it  
2 is.  
3 CHAIRMAN PHILLIPS: Well, I guess  
4 my perspective on that is we operate  
5 using Robert's Rules of Order. And my  
6 best recollection -- and granted, I  
7 haven't read it in a while -- is that  
8 things fail when there's a lack of a  
9 motion. There's nothing to come  
10 before the body.  
11 MR. TAMBLING: That's correct.  
12 CHAIRMAN PHILLIPS: And that's the  
13 privilege of the body. And if there  
14 had been a motion and no second, it  
15 would have still failed. I couldn't  
16 go any further than that. I don't  
17 think the Commission needs to go any  
18 deeper than that.  
19 MR. TAMBLING: I agree.  
20 CHAIRMAN PHILLIPS: That's my  
21 perspective for the Rulemaking  
22 Committee to -- to hear.  
23 Oh, Commissioner Richardson?

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1 Sorry.  
2 DR. RICHARDSON: I wanted to make a  
3 comment along those lines as well, so  
4 that everyone is clear that this body,  
5 as well as the Commission, operates  
6 off of Robert's Rules of Order. I  
7 have had the opportunity to read them  
8 lately, serving as parliamentarian --  
9 CHAIRMAN PHILLIPS: Thank you.  
10 DR. RICHARDSON: -- for several  
11 university-level senates, and there is  
12 no requirement for a motion to be made  
13 by a body. There is no requirement  
14 for a motion to be seconded by a body.  
15 I do not know where Mr. Ludder gets  
16 his information that it was  
17 inappropriate for us to not make a  
18 motion and then act on it. It is  
19 quite common for things to fail by no  
20 motion, or no second, or by  
21 declamation vote. So I just do -- I  
22 don't think that -- that the comments  
23 that I saw are in accordance with

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1 Robert's Rule of Order, which this  
2 body and the Commission operate by.  
3 And I just want to make it clear that  
4 that's -- that's the foundation of our  
5 rules for how we operate in a meeting.  
6 Thank you.  
7 CHAIRMAN PHILLIPS: Thank you. Any  
8 other thoughts relative to the  
9 consideration that Robert has put  
10 before us in the rule that you would  
11 like to discuss?  
12 Commissioner Richardson?  
13 DR. RICHARDSON: Not so much  
14 discuss, but I think I just want to  
15 make this statement, that given other  
16 things going on before the Commission,  
17 I personally have not had enough time  
18 to really digest the comments that  
19 Mr. Tambling has made, and I need -- I  
20 need to get into it deeper than I  
21 have. My time has been torn with  
22 other matters that, quite honestly,  
23 were just more important to me at the

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1 time. And so what I would like for us  
2 to do is, in terms of this body making  
3 any recommendation -- formalizing a  
4 recommendation to present to the  
5 Commission, that we postpone that  
6 until the February -- what's the date,  
7 Debi? The February meeting?  
8 MS. THOMAS: The third -- the third  
9 Friday of the month. I don't have my  
10 calendar in front of me.  
11 DR. RICHARDSON: I think February  
12 meeting will suffice then, of this  
13 Committee.  
14 MS. MERRITT: I concur with you on  
15 that, doing that. That will give me  
16 more time instead of what Mr. Tambling  
17 had put together for us, so...  
18 CHAIRMAN PHILLIPS: Would one of  
19 you like to put that in the form of a  
20 motion?  
21 MS. THOMAS: That would be February  
22 19. Excuse me.  
23 DR. RICHARDSON: I move that we

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1 delay consideration of a  
2 recommendation to the Commission, that  
3 we postpone that until February 19th,  
4 at 10 a.m.  
5 MS. MERRITT: And I second that.  
6 CHAIRMAN PHILLIPS: I have a motion  
7 and a second. Any further discussion?  
8 (No response was heard.)  
9 CHAIRMAN PHILLIPS: Being no  
10 further discussion, all in favor,  
11 signify with the sign of Aye.  
12 (A unanimous response was  
13 heard.)  
14 CHAIRMAN PHILLIPS: No opposed, so  
15 the motion carries. All right. Do I  
16 have a motion to adjourn?  
17 DR. RICHARDSON: I would like to  
18 make a statement to my fellow  
19 Commissioners here as Committee  
20 members. As you go back to read -- to  
21 look over these and consider, I would  
22 just simply like to point out, with  
23 the fact that the State legislature

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1 has removed the Department from the  
2 budget, that it's really removed the  
3 vested interest of the public from the  
4 Department's actions. And it would  
5 bear worthy consideration to think  
6 about whether the public now actually  
7 even has the prerogative to speak  
8 before the Commission with no vested  
9 interest in the Department's finances  
10 and actions.  
11 So please just keep this in mind as  
12 you look over these draft changes.  
13 Thank you.  
14 CHAIRMAN PHILLIPS: Any other  
15 discussion to come before this  
16 Committee?  
17 MS. MERRITT: I don't have any.  
18 CHAIRMAN PHILLIPS: Okay. Thank  
19 you very much.  
20 And do I have a motion to adjourn?  
21 DR. RICHARDSON: So moved.  
22 MS. MERRITT: Second.  
23 CHAIRMAN PHILLIPS: Motion and a

1 second to adjourn. Any discussion?  
2 (No response was heard.)  
3 CHAIRMAN PHILLIPS: All in favor,  
4 signify with the sign of Aye.  
5  
6 (A unanimous response was  
7 heard.)  
8 CHAIRMAN PHILLIPS: Motion carries.  
9 (Whereupon, the meeting  
10 concluded at 10:12 a.m.)  
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1 REPORTER'S CERTIFICATE  
2 E OF ALABAMA  
3 GOMERY COUNTY  
4 I, Patrick Miller, Alabama Certified  
5 t Reporter No. 2037, and Commissioner for the  
6 e of Alabama at Large, hereby certify that on  
7 ay, December 18th, 2015, I reported the  
8 IMONY AND PROCEEDINGS in the matter of the  
9 going cause, and that the pages herein contain  
10 ue and accurate transcription of said  
11 eedings.

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

15 This 2nd day of January, 2016.  
16  
17  
18  
19

20 PATRICK MILLER, ACCR-2037  
21 Commissioner for the  
22 State of Alabama at Large  
23 MY LICENSE EXPIRES: 8/24/16  
MY COMMISSION EXPIRES: 2/19/19

## 1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA

3 MONTGOMERY COUNTY

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

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

15 This 2nd day of January, 2016.

16  
17  
18  
19 

20 PATRICK MILLER, ACCR-2037  
21 Commissioner for the  
22 State of Alabama at Large  
23 MY LICENSE EXPIRES: 8/24/16  
MY COMMISSION EXPIRES: 2/19/19

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**Part B**

## **Attachment Index**

**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**

11/18/15

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](http://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.

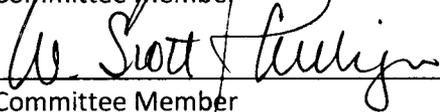
Rulemaking Committee Order  
Page 2

ISSUED this 18th day of December 2015.

APPROVED:



\_\_\_\_\_  
Committee Member



\_\_\_\_\_  
Committee Member



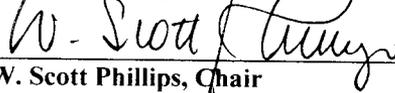
\_\_\_\_\_  
Committee Member

DISAPPROVED:

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
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.



\_\_\_\_\_  
W. Scott Phillips, Chair  
Rulemaking Committee

Certified this 18th day of December 2015