


12/15/14

**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
October 17, 2014**

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 October 17, 2014.



W. Scott Phillips

Chair

Rulemaking Committee

Alabama Environmental Management Commission

Certified this 12th day of December 2014.

**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
October 17, 2014**

**Convened: 10:00 a.m.
Adjourned: 10:14 a.m.**

Part A

**Transcript
Word Index**

Part B

Attachment 1 - Agenda

Part A

Page 1

1 MEETING OF THE
2 RULEMAKING COMMITTEE
3 OF THE
4 ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
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10
11 ALABAMA DEPARTMENT OF ENVIRONMENTAL
12 MANAGEMENT
13 Alabama Room
14 1400 Coliseum Boulevard
15 Montgomery, Alabama 36110-2400
16 October 17, 2014
17 10:00 a.m.
18
19
20
21
22
23 Taken by: Victoria M. Castillo, CCR#17

Page 3

1 CHAIRMAN PHILLIPS: I want
2 to call to order the Rulemaking Committee
3 meeting this morning. I want to
4 acknowledge that we have a quorum. We have
5 all the members of the Rulemaking Committee
6 here with us today.
7 I'd like to consider the minutes
8 of the Committee meeting held on August
9 15th and would entertain a motion from the
10 Committee regarding those minutes.
11 DR. RICHARDSON: Move to
12 accept the minutes as presented.
13 MS. MERRITT: Second.
14 CHAIRMAN PHILLIPS: We have
15 a motion and a second. Any additional
16 discussion?
17 (No response)
18 CHAIRMAN PHILLIPS: With no
19 additional discussion, all in favor signify
20 by saying "aye."
21 (All Committee members
22 signify "aye.")
23 CHAIRMAN PHILLIPS: All

Page 2

1 A P P E A R A N C E S
2
3 COMMITTEE MEMBERS:
4 W. Scott Phillips, Chair
5 Terry D. Richardson, Ph.D.
6 Mary J. Merritt
7
8 ALSO PRESENT:
9 Robert Tambling, EMC Legal Counsel
10 Debi Thomas, EMC Executive Assistant
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Page 4

1 opposed?
2 (No response)
3 CHAIRMAN PHILLIPS: Motion
4 carries. Agenda item number two is the
5 Committee rule. If you recall, we were
6 charged with taking comments on our public
7 comment regulation rule in Agenda Section 1
8 through 3, Rule 335-2-3-05. These sections
9 of rules include the procedures that we
10 currently use and the requirements
11 regarding requests from the public to
12 appear before the full Commission at its
13 meetings following consideration of the
14 agenda items.
15 We solicited input from the
16 public through written comments regarding
17 the current rule and any proposed changes
18 or improvements to these rules, and those
19 comments were due to us by 5 p.m. on
20 September 15th.
21 We provided all these
22 comments -- Debi provided all those
23 comments to us, and now I would like to

Page 5

1 open up the floor for discussion regarding
2 those comments, any input, thoughts, ideas
3 that we need to talk about as a Committee,
4 and then I will make the report to the
5 Commission regarding our deliberations here
6 today.

7 DR. RICHARDSON: Thank you,
8 Mr. Chairman. I'd just like to make a
9 statement that -- a couple of things.
10 First off, that given the number of
11 comments that came in and some of the
12 things that were mentioned, I personally
13 would like to have more time before we
14 start actually trying to hammer out details
15 to put some more thought to this.

16 I was particularly impressed by
17 the number of comments related to thinking
18 we were doing away with public comments.
19 That is not the intention of our review.
20 This never has been the intention of our
21 review of this, as I understand it. It was
22 simply to make changes to it and not to do
23 away with it. So I certainly want, as a

Page 7

1 you.
2 CHAIRMAN PHILLIPS: And
3 thank you, Commissioner Richardson.
4 Mary?
5 MS. MERRITT: Okay. I
6 concur with Commissioner Richardson. I
7 think we do need more time to look because
8 we did get a lot of comments, and I'd like
9 to have more time before we start, you
10 know, discussing anything on the
11 Committee.
12 CHAIRMAN PHILLIPS: Any
13 other comment?
14 MS. MERRITT: That's it.
15 CHAIRMAN PHILLIPS: Okay.
16 Thank you for your comments, Commissioner
17 Merritt. My thoughts are very aligned with
18 yours, Commissioner Richardson, relative to
19 the large number -- very large number of
20 comments that we got thinking that we were
21 doing away with public comment period.
22 That was never the intention. It's not the
23 intention, at least now, to do that, and I

Page 6

1 matter of clarity for the record, that it
2 clearly stated that the objective of this
3 Committee, as I see it, is not to do away
4 with public comment.
5 Public comment is valuable to
6 me, personally. It helps steer my thinking
7 and -- and give me -- give me food for
8 thought when I'm away from the Commission.
9 So I don't think that that is
10 the intent here. Making some changes to
11 make the process better and smoother?
12 Perhaps, yes. To change it to make it
13 better and clearer for us as
14 Commissioners? Yes. But to do away with
15 it? No.
16 So having said that, I just
17 simply want to mention that, you know,
18 I don't think we're in any big hurry here,
19 as I understand it. So I would just like,
20 before we start really throwing out
21 specific ideas that we might like -- the
22 changes we might like to make to give us a
23 little more time to look at it. Thank

Page 8

1 know it's not of the two of you.
2 It was really more to make them
3 more efficient, more effective for the
4 people that gave us comment, and to make
5 sure, in my mind, that that comment period
6 was focused around the things that this
7 Commission are charged with doing and
8 helping us in doing those charges.
9 We did receive many comments.
10 We did receive some late, which we did not
11 consider those late comments. We need to
12 go on the record with that. However, the
13 number -- large number of comments that we
14 got prior to the deadline I think covered
15 every comment that we could have thought
16 of.
17 There were some good comments
18 about how to do things better. There were
19 comments on supporting the comment -- the
20 public comment process. I don't think we
21 got a lot of details on improvements other
22 than don't make it harder than it already
23 is. That was probably the most prevalent

Page 9

1 improvement comment that we got. Most
2 other comments were around, Don't do away
3 with the comment period.
4 So I think going through those,
5 we're going to have to rely more heavily on
6 ourselves to -- to figure out the things
7 that we think work and the things that
8 don't work and then use our time. As you
9 said, I don't think there is a hurry here
10 because we already have a public
11 comment rule in place. It's not going
12 anywhere until we do something different.
13 And so I think we should take
14 the time and make sure that we're very
15 deliberate in considering all the comments
16 that came in. And if those lead us to make
17 changes and improvements, then so be it.
18 But otherwise I think we should take our
19 time and be very cautious in making
20 changes.
21 DR. RICHARDSON: Well, also,
22 if I may.
23 CHAIRMAN PHILLIPS: Sure.

Page 11

1 the logistics, the timing that we have in
2 the rules and regulations, and we need to
3 become a little more objective about how
4 that process goes so that people know prior
5 to the day of our meeting whether or not
6 we're going to hear their public comment.
7 DR. RICHARDSON: Yes.
8 There's -- there's a fine line between not
9 making it cumbersome for the public,
10 which -- more cumbersome, which I certainly
11 concur, and giving us ample time to prepare
12 and come to a Commission meeting with
13 the -- the knowledge and background that we
14 need in hearing a particular comment, and
15 then making sure someone doesn't drive 200
16 miles to not be heard, you know. I think
17 that's all very, very important.
18 And -- and I think -- I think
19 there's a way we can handle this and -- and
20 make public comments ultimately be more
21 informative for us and more amenable for
22 those who want to make these comments. And
23 if we -- if there is -- as we've stated,

Page 10

1 DR. RICHARDSON: We've asked
2 for some guidance on how bodies such as
3 ours deal with guidelines versus rules and
4 changes to rules. So I think all of this,
5 the large number of comments, and
6 especially the confusion of -- of what the
7 intent of the Rule Committee was in this
8 particular action and needing to hear all
9 the rules and guidelines and such, I think
10 definitely just -- just reiterates the fact
11 for us to take more time to take our time
12 with this.
13 CHAIRMAN PHILLIPS: Okay.
14 Thank you, Commissioner. I think it also
15 needs to be said that, you know, from my
16 perspective, we put in place a rule many
17 years ago, and at least from the logistic
18 standpoint I would like to see that rule
19 become a little more easy for those
20 requesting public comment to know prior to
21 the meeting whether or not we're going to
22 approve public comment for -- for them.
23 So I think we need to look at

Page 12

1 there is no huge hurry here. I think if we
2 take our time, work with this, listen to
3 the public as they give us these comments,
4 I think we can come up with something
5 that's going to be beneficial to all
6 parties involved.
7 CHAIRMAN PHILLIPS: Yes, I
8 agree with that.
9 MS. MERRITT: I agree with
10 that, too. Because I know that a lot of
11 times, coming up to the meetings, we get
12 these -- we don't have the time to prepare
13 ourselves to read it to see what's going
14 on. And we get them at -- during the week
15 of coming here to the meeting, so, you
16 know, I think we do need to look at it so
17 we have a better understanding of what's
18 coming before us.
19 CHAIRMAN PHILLIPS: I agree
20 with both -- both of you. I also think
21 that we need to help the public understand
22 that we can take written comments -- or at
23 least that they're welcome to make written

Page 13

1 comments to us at any time. That's not
2 real clear at that moment that that's
3 something that we accept.
4 DR. RICHARDSON: And that
5 those written comments can be made a part
6 of the record.
7 CHAIRMAN PHILLIPS: Yes.
8 DR. RICHARDSON: That it
9 doesn't have to be something that requires
10 standing up in front of an audience and
11 giving a presentation. We can take written
12 comments and make it part of the record.
13 But that -- that's all the kind of stuff I
14 think we need to work through.
15 CHAIRMAN PHILLIPS: To work
16 through.
17 DR. RICHARDSON: And -- and
18 even if it's not necessarily changing
19 something, per se, perhaps it just needs to
20 be more clearly spelled out, you know,
21 in -- in the rule itself.
22 MS. MERRITT: Yes.
23 CHAIRMAN PHILLIPS: Okay.

Page 15

1 to present that information to us.
2 While I'm not trying to unduly
3 delay things, what I would like for us to
4 do -- we all have a copy of this letter. I
5 want to -- I'm using this mechanism to
6 formally bring this to the Committee's
7 attention. It is a topic I do want us to
8 take up, but after we finish with the 335
9 consideration.
10 But I do want it clearly noted
11 that this is something that I personally
12 feel is important and that we need to -- to
13 look into. But it is something that is
14 going to require quite a bit of thought, I
15 think, deliberation and additional
16 comment. So just laying that out for the
17 record. And we'll certainly welcome any
18 thoughts you-all have on the matter.
19 CHAIRMAN PHILLIPS: Thank
20 you, Commissioner Richardson. Commissioner
21 Merritt, do you have any comments relative
22 to that?
23 MS. MERRITT: No, I don't

Page 14

1 Do we have anything else on agenda item
2 number two?
3 (No response)
4 CHAIRMAN PHILLIPS: All
5 right. We'll move to agenda item number
6 three, Other Business. Any other business
7 to come before the Rulemaking Committee?
8 DR. RICHARDSON: Yes,
9 Mr. Chairman. I think all Commissioners
10 are aware, so the Commissioners certainly
11 of this Committee should be aware, that
12 dated September 12th I received a letter
13 from David Ludder and -- about
14 Environmental Justice and the Department's
15 policy related to Environmental Justice.
16 I had asked Mr. Ludder -- after
17 one of his presentations related to this
18 particular matter, I had asked him to
19 please forward to me some -- some detailed
20 comments that he had indicated he had made
21 and some information that he had. And he's
22 done so. That's really the primary
23 purpose, I think, of his letter to me was

Page 16

1 have any comments.
2 CHAIRMAN PHILLIPS: Okay. I
3 would propose that I take this in our
4 report -- my report to the full Commission,
5 let them know I agree with you, I think we
6 should take this up after we deal with the
7 rulemaking section that we've already
8 talked about -- or -- or the public comment
9 section that we've already talked.
10 DR. RICHARDSON: The -- the
11 thing I think I want clear for those here
12 in the audience as well as for the rest of
13 the Commissioners is that if -- we do
14 intend to take this up, you know. It is
15 definitely intended to be taken up. It's
16 just that, well, we're all kind of spread a
17 little thin, you know, and we've got to
18 take one of these things at a time. So
19 thank you.
20 CHAIRMAN PHILLIPS: Thank
21 you, Commissioner. Any other business to
22 come before the Rulemaking Committee?
23 (No response)

Page 17

1 CHAIRMAN PHILLIPS: Move to
2 agenda item number four, which is the
3 future Rulemaking Committee meeting. I'd
4 like to state that the next Committee
5 meeting is scheduled for December 12th.
6 Does that date work for the two
7 of you?
8 MS. MERRITT: Yes, it works
9 for me.
10 DR. RICHARDSON: Yes.
11 CHAIRMAN PHILLIPS: Then I
12 will entertain a motion to set the next
13 Committee meeting on December 12th at
14 10 a.m. in this conference room.
15 DR. RICHARDSON: So moved.
16 MS. MERRITT: Second.
17 CHAIRMAN PHILLIPS: All in
18 favor, "aye."
19 (All Committee members
20 signify "aye.")
21 CHAIRMAN PHILLIPS: All
22 opposed?
23 (No response)

Page 18

1 CHAIRMAN PHILLIPS: Motion
2 carries. I will entertain a motion to
3 adjourn.
4 MS. MERRITT: Move that we
5 adjourn.
6 DR. RICHARDSON: Second.
7 CHAIRMAN PHILLIPS: All in
8 favor?
9 (All Committee members
10 signify "aye.")
11 CHAIRMAN PHILLIPS: Thank
12 you.
13 (The meeting concluded at
14 10:14 a.m.)
15 *****
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Page 19

1 STATE OF ALABAMA)
2 COUNTY OF MONTGOMERY)
3
4
5 I hereby certify that the above
6 proceedings were taken down by me and
7 transcribed by me using computer-aided
8 transcription and that the above is a true
9 and accurate transcript of said proceedings
10 taken down by me and transcribed by me.
11 I further certify that I am
12 neither of kin nor of counsel to any of the
13 parties nor in anywise financially
14 interested in the outcome of this case.
15 I further certify that I am duly
16 licensed by the Alabama Board of Court
17 Reporting as a Certified Court Reporter as
18 evidenced by the ACCR number following my
19 name found below.
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22 VICTORIA CASTILLO, ACCR #17, 9/30/15
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6 proceedings were taken down by me and
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9 and accurate transcript of said proceedings
10 taken down by me and transcribed by me.

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12 neither of kin nor of counsel to any of the
13 parties nor in anywise financially
14 interested in the outcome of this case.

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16 licensed by the Alabama Board of Court
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18 evidenced by the ACCR number following my
19 name found below.

20
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Victoria Castillo

22 VICTORIA CASTILLO, ACCR #17, 9/30/15
23 FREELANCE COURT REPORTER

*	big (1) 6:18	4:6,16,19,22,23;5:2, 11,17,18;7:8,16,20;8:9, 11,13,17,19;9:2,15;	4:22 December (2) 17:5,13	feel (1) 15:12
***** (1) 18:15	bit (1) 15:14	10:5;11:20,22;12:3,22; 13:1,5,12;14:20;15:21; 16:1	definitely (2) 10:10;16:15	figure (1) 9:6
A	bodies (1) 10:2	Commission (6) 4:12;5:5;6:8;8:7; 11:12;16:4	delay (1) 15:3	fine (1) 11:8
accept (2) 3:12;13:3	both (2) 12:20,20	Commissioner (8) 7:3,6,16,18;10:14; 15:20,20;16:21	deliberate (1) 9:15	finish (1) 15:8
acknowledge (1) 3:4	bring (1) 15:6	Commissioners (4) 6:14;14:9,10;16:13	deliberation (1) 15:15	First (1) 5:10
action (1) 10:8	business (3) 14:6,6;16:21	Committee (18) 3:2,5,8,10,21;4:5; 5:3;6:3;7:11;10:7;14:7, 11;16:22;17:3,4,13,19; 18:9	deliberations (1) 5:5	floor (1) 5:1
actually (1) 5:14	C	Committee's (1) 15:6	Department's (1) 14:14	focused (1) 8:6
additional (3) 3:15,19;15:15	call (1) 3:2	concluded (1) 18:13	detailed (1) 14:19	following (1) 4:13
adjourn (2) 18:3,5	came (2) 5:11;9:16	concur (2) 7:6;11:11	details (2) 5:14;8:21	food (1) 6:7
Agenda (6) 4:4,7,14;14:1,5;17:2	can (5) 11:19;12:4,22;13:5, 11	conference (1) 17:14	different (1) 9:12	formally (1) 15:6
ago (1) 10:17	carries (2) 4:4;18:2	confusion (1) 10:6	discussing (1) 7:10	forward (1) 14:19
agree (4) 12:8,9,19;16:5	cautious (1) 9:19	consider (2) 3:7;8:11	discussion (3) 3:16,19;5:1	four (1) 17:2
aligned (1) 7:17	certainly (4) 5:23;11:10;14:10; 15:17	consideration (2) 4:13;15:9	done (1) 14:22	front (1) 13:10
amenable (1) 11:21	CHAIRMAN (28) 3:1,14,18,23;4:3;5:8; 7:2,12,15;9:23;10:13; 12:7,19;13:7,15,23; 14:4,9;15:19;16:2,20; 17:1,11,17,21;18:1,7, 11	currently (1) 4:10	DR (13) 3:11;5:7;9:21;10:1; 11:7;13:4,8,17;14:8; 16:10;17:10,15;18:6	full (2) 4:12;16:4
ample (1) 11:11	change (1) 6:12	D	drive (1) 11:15	G
appear (1) 4:12	changes (7) 4:17;5:22;6:10,22; 9:17,20;10:4	date (1) 17:6	due (1) 4:19	gave (1) 8:4
approve (1) 10:22	changing (1) 13:18	dated (1) 14:12	during (1) 12:14	given (1) 5:10
around (2) 8:6;9:2	charged (2) 4:6;8:7	David (1) 14:13	E	giving (2) 11:11;13:11
attention (1) 15:7	charges (1) 8:8	day (1) 11:5	easy (1) 10:19	goes (1) 11:4
audience (2) 13:10;16:12	clarity (1) 6:1	Debi (1)	effective (1) 8:3	good (1) 8:17
August (1) 3:8	clear (2) 13:2;16:11		efficient (1) 8:3	guidance (1) 10:2
aware (2) 14:10,11	clearer (1) 6:13		else (1) 14:1	guidelines (2) 10:3,9
away (7) 5:18,23;6:3,8,14; 7:21;9:2	clearly (3) 6:2;13:20;15:10		entertain (3) 3:9;17:12;18:2	H
aye (5) 3:20,22;17:18,20; 18:10	coming (3) 12:11,15,18		Environmental (2) 14:14,15	hammer (1) 5:14
B	comment (19) 4:7;6:4,5;7:13,21; 8:4,5,15,19,20;9:1,3, 11;10:20,22;11:6,14; 15:16;16:8		especially (1) 10:6	handle (1) 11:19
background (1) 11:13	comments (30)		even (1) 13:18	harder (1) 8:22
become (2) 10:19;11:3			F	hear (2) 10:8;11:6
beneficial (1) 12:5			fact (1) 10:10	heard (1) 11:16
better (4) 6:11,13;8:18;12:17			favor (3) 3:19;17:18;18:8	hearing (1) 11:14
				heavily (1)

9:5 held (1) 3:8 help (1) 12:21 helping (1) 8:8 helps (1) 6:6 huge (1) 12:1 hurry (3) 6:18;9:9;12:1	11:13 L large (4) 7:19;19;8:13;10:5 late (2) 8:10,11 laying (1) 15:16 lead (1) 9:16 least (3) 7:23;10:17;12:23 letter (3) 14:12,23;15:4 line (1) 11:8 listen (1) 12:2 little (4) 6:23;10:19;11:3; 16:17 logistic (1) 10:17 logistics (1) 11:1 look (5) 6:23;7:7;10:23; 12:16;15:13 lot (3) 7:8;8:21;12:10 Ludder (2) 14:13,16	16;18:4 might (2) 6:21,22 miles (1) 11:16 mind (1) 8:5 minutes (3) 3:7,10,12 moment (1) 13:2 more (16) 5:13,15;6:23;7:7,9; 8:2,3,3;9:5;10:11,19; 11:3,10,20,21;13:20 morning (1) 3:3 most (2) 8:23;9:1 motion (6) 3:9,15;4:3;17:12; 18:1,2 Move (4) 3:11;14:5;17:1;18:4 moved (1) 17:15	9:18 ours (1) 10:3 ourselves (2) 9:6;12:13 out (5) 5:14;6:20;9:6;13:20; 15:16 P part (2) 13:5,12 particular (3) 10:8;11:14;14:18 particularly (1) 5:16 parties (1) 12:6 people (2) 8:4;11:4 per (1) 13:19 Perhaps (2) 6:12;13:19 period (3) 7:21;8:5;9:3 personally (3) 5:12;6:6;15:11 perspective (1) 10:16 PHILLIPS (26) 3:1,14,18,23;4:3;7:2, 12,15;9:23;10:13;12:7, 19;13:7,15,23;14:4; 15:19;16:2,20;17:1,11, 17,21;18:1,7,11 place (2) 9:11;10:16 please (1) 14:19 pm (1) 4:19 policy (1) 14:15 prepare (2) 11:11;12:12 present (1) 15:1 presentation (1) 13:11 presentations (1) 14:17 presented (1) 3:12 prevalent (1) 8:23 primary (1) 14:22 prior (3) 8:14;10:20;11:4 probably (1) 8:23	procedures (1) 4:9 process (3) 6:11;8:20;11:4 propose (1) 16:3 proposed (1) 4:17 provided (2) 4:21,22 public (17) 4:6,11,16;5:18;6:4,5; 7:21;8:20;9:10;10:20, 22;11:6,9,20;12:3,21; 16:8 purpose (1) 14:23 put (2) 5:15;10:16 Q quite (1) 15:14 quorum (1) 3:4 R read (1) 12:13 real (1) 13:2 really (3) 6:20;8:2;14:22 recall (1) 4:5 receive (2) 8:9,10 received (1) 14:12 record (5) 6:1;8:12;13:6,12; 15:17 regarding (5) 3:10;4:11,16;5:1,5 regulation (1) 4:7 regulations (1) 11:2 reiterates (1) 10:10 related (3) 5:17;14:15,17 relative (2) 7:18;15:21 rely (1) 9:5 report (3) 5:4;16:4,4 requesting (1) 10:20 requests (1)
I	M	N	Q	
ideas (2) 5:2;6:21 important (2) 11:17;15:12 impressed (1) 5:16 improvement (1) 9:1 improvements (3) 4:18;8:21;9:17 include (1) 4:9 indicated (1) 14:20 information (2) 14:21;15:1 informative (1) 11:21 input (2) 4:15;5:2 intend (1) 16:14 intended (1) 16:15 intent (2) 6:10;10:7 intention (4) 5:19,20;7:22,23 into (1) 15:13 involved (1) 12:6 item (4) 4:4;14:1,5;17:2 items (1) 4:14	M Making (4) 6:10;9:19;11:9,15 many (2) 8:9;10:16 Mary (1) 7:4 matter (3) 6:1;14:18;15:18 may (1) 9:22 mechanism (1) 15:5 meeting (10) 3:3,8;10:21;11:5,12; 12:15;17:3,5,13;18:13 meetings (2) 4:13;12:11 members (4) 3:5,21;17:19;18:9 mention (1) 6:17 mentioned (1) 5:12 MERRITT (11) 3:13;7:5,14,17;12:9; 13:22;15:21,23;17:8,	necessarily (1) 13:18 need (10) 5:3;7:7;8:11;10:23; 11:2,14;12:16,21; 13:14;15:12 needing (1) 10:8 needs (2) 10:15;13:19 next (2) 17:4,12 noted (1) 15:10 number (11) 4:4;5:10,17;7:19,19; 8:13,13;10:5;14:2,5; 17:2	personally (3) 5:12;6:6;15:11 perspective (1) 10:16 PHILLIPS (26) 3:1,14,18,23;4:3;7:2, 12,15;9:23;10:13;12:7, 19;13:7,15,23;14:4; 15:19;16:2,20;17:1,11, 17,21;18:1,7,11 place (2) 9:11;10:16 please (1) 14:19 pm (1) 4:19 policy (1) 14:15 prepare (2) 11:11;12:12 present (1) 15:1 presentation (1) 13:11 presentations (1) 14:17 presented (1) 3:12 prevalent (1) 8:23 primary (1) 14:22 prior (3) 8:14;10:20;11:4 probably (1) 8:23	R quite (1) 15:14 quorum (1) 3:4 R read (1) 12:13 real (1) 13:2 really (3) 6:20;8:2;14:22 recall (1) 4:5 receive (2) 8:9,10 received (1) 14:12 record (5) 6:1;8:12;13:6,12; 15:17 regarding (5) 3:10;4:11,16;5:1,5 regulation (1) 4:7 regulations (1) 11:2 reiterates (1) 10:10 related (3) 5:17;14:15,17 relative (2) 7:18;15:21 rely (1) 9:5 report (3) 5:4;16:4,4 requesting (1) 10:20 requests (1)
J	K	O	R	
Justice (2) 14:14,15	kind (2) 13:13;16:16 knowledge (1)	objective (2) 6:2;11:3 off (1) 5:10 one (2) 14:17;16:18 open (1) 5:1 opposed (2) 4:1;17:22 order (1) 3:2 otherwise (1)	read (1) 12:13 real (1) 13:2 really (3) 6:20;8:2;14:22 recall (1) 4:5 receive (2) 8:9,10 received (1) 14:12 record (5) 6:1;8:12;13:6,12; 15:17 regarding (5) 3:10;4:11,16;5:1,5 regulation (1) 4:7 regulations (1) 11:2 reiterates (1) 10:10 related (3) 5:17;14:15,17 relative (2) 7:18;15:21 rely (1) 9:5 report (3) 5:4;16:4,4 requesting (1) 10:20 requests (1)	

4:11 require (1) 15:14 requirements (1) 4:10 requires (1) 13:9 response (5) 3:17;4:2;14:3;16:23; 17:23 rest (1) 16:12 review (2) 5:19,21 RICHARDSON (17) 3:11;5:7;7:3,6,18; 9:21;10:1;11:7;13:4,8, 17;14:8;15:20;16:10; 17:10,15;18:6 right (1) 14:5 room (1) 17:14 rule (9) 4:5,7,8,17;9:11;10:7, 16,18;13:21 Rulemaking (6) 3:2,5;14:7;16:7,22; 17:3 rules (6) 4:9,18;10:3,4,9;11:2	13:20 spread (1) 16:16 standing (1) 13:10 standpoint (1) 10:18 start (3) 5:14;6:20;7:9 state (1) 17:4 stated (2) 6:2;11:23 statement (1) 5:9 steer (1) 6:6 stuff (1) 13:13 supporting (1) 8:19 sure (4) 8:5;9:14,23;11:15	15:8;16:6,14,15 use (2) 4:10;9:8 using (1) 15:5	335-2-3-05 (1) 4:8
			5
		V	5 (1) 4:19
		valuable (1) 6:5 versus (1) 10:3	
		W	
		way (1) 11:19 week (1) 12:14 welcome (2) 12:23;15:17 what's (2) 12:13,17 work (6) 9:7,8;12:2;13:14,15; 17:6 works (1) 17:8 written (5) 4:16;12:22,23;13:5, 11	
	T		
	talk (1) 5:3 talked (2) 16:8,9 thin (1) 16:17 thinking (3) 5:17;6:6;7:20 thought (4) 5:15;6:8;8:15;15:14 thoughts (3) 5:2;7:17;15:18 three (1) 14:6 throwing (1) 6:20 times (1) 12:11 timing (1) 11:1 today (2) 3:6;5:6 topic (1) 15:7 trying (2) 5:14;15:2 two (4) 4:4;8:1;14:2;17:6		Y
		years (1) 10:17 you-all (1) 15:18	
S			1
saying (1) 3:20 scheduled (1) 17:5 se (1) 13:19 Second (4) 3:13,15;17:16;18:6 Section (3) 4:7;16:7,9 sections (1) 4:8 September (2) 4:20;14:12 set (1) 17:12 signify (4) 3:19,22;17:20;18:10 simply (2) 5:22;6:17 smoother (1) 6:11 solicited (1) 4:15 someone (1) 11:15 specific (1) 6:21 spelled (1)			1 (1) 4:7 10 (1) 17:14 10:14 (1) 18:14 12th (3) 14:12;17:5,13 15th (2) 3:9;4:20
	U	200 (1) 11:15	2
	ultimately (1) 11:20 unduly (1) 15:2 up (8) 5:1;12:4,11;13:10;		3
		3 (1) 4:8 335 (1) 15:8	

Part B

Attachment 1

9/17/14

AGENDA*
MEETING OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: October 17, 2014

TIME: 10:00 a.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

ITEMS

1. Consideration of minutes of meeting held on August 15, 2014**
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 AUGUST 15, 2014
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. On August 15, 2014, the Committee through a notice solicited input from the public through written comments regarding the current Rule 335-2-3-.05, Agenda, Sections (1) through (3), and proposed changes, or improvements, to this rule and set the deadline of 5:00 p.m., September 15, 2014, for submission of the comments to the Committee.

3. OTHER BUSINESS
4. FUTURE RULEMAKING COMMITTEE MEETING