



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460**

OFFICE OF ADMINISTRATION
AND RESOURCES MANAGEMENT

ACTION REFERRAL MEMORANDUM

SUBJECT: Request for Immediate Suspension of:

**ONIS "TREY" GLENN, III
EPA Case No. 18-0941-05**

**SOUTHEAST ENGINEERING & CONSULTING, LLC
EPA Case No. 18-0941-07**

FROM: Angelia Souder Blackwell
District Counsel, Southeastern District
Suspension and Debarment Division (3902 R)

TO: Duc H. Nguyen
EPA Suspension and Debarment Official (3901 R)

DATE: March 21, 2019

The following facts have come to my attention and are offered in support of this request for the immediate suspension of ONIS "TREY" GLENN ("GLENN") and SOUTHEAST ENGINEERING & CONSULTING, LLC ("SEC") or (collectively "Respondents"). The Federal Acquisition Regulation ("FAR") provides for the debarment of contractors at 48 C.F.R. Subpart 9.4. The FAR further notes that Public Law 103-355, section 2455 and Executive Order 12689 provide for the reciprocal effect of a debarment or suspension action taken under the Nonprocurement Common Rule. Therefore, the United States Environmental Protection Agency ("EPA") Suspension and Debarment Division ("SDD") recommends to the EPA Suspension and Debarment Official that this action be taken pursuant to 2 C.F.R. Parts 180 and 1532. The information supporting the request for suspension is as follows.

I. Introduction

1. EPA SDD respectfully requests that you suspend GLENN pursuant to 2 C.F.R. § 180.700(a) and (c) based on an Indictment alleging that GLENN in Count 1 aided and abetted a public official, Willie S. Phillips, Jr. ("Phillips"), then Commissioner of the Alabama Environmental Management Commission ("AEMC"),¹ to intentionally use Phillips' official

¹ The AEMC and the Alabama Department of Environmental Management ("ADEM") were created by the 1982 Alabama Environmental Management Act. AEMC is a seven-member commission charged with developing Alabama's environmental policy and hearing administrative appeals of permits, administrative orders, and variances

position and/or office to obtain compensation from Drummond Company, Inc.² for Phillips, a family member of Phillips and/or a business with which Phillips is associated in violation of Section 36-25-5(a) of the Code of Alabama; in Count 2 GLENN allegedly aided and abetted Phillips to intentionally solicit or receive compensation from a principal, Drummond Company, Inc., in violation of Section 36-25-5.1(a) of the Code of Alabama; in Count 3 GLENN allegedly aided and abetted Phillips to intentionally solicit compensation, other than in the ordinary course of business, from Drummond Company, Inc., a business that Phillips directly inspects, regulates, or supervises in Phillips' official capacity in violation of Section 36-25-5(e) of the Code of Alabama; in Count 4 GLENN allegedly aided and abetted Phillips to intentionally solicit or accept compensation from Drummond Company, Inc., a business regulated by AEMC, while Phillips was associated with AEMC, in violation of Section 36-25-12 of the Code of Alabama; and in Counts 5 -15 GLENN allegedly aided and abetted Phillips to intentionally solicit or receive money from Drummond Company, Inc. for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission, or other body of which Phillips is a member in violation of Section 36-25-7(d) of the Code of Alabama. *See* Exhibit 1- Indictment in *State of Alabama v. Onis Glenn III* before the State of Alabama Circuit Court of the Tenth Judicial Circuit.

2. Suspension of SEC is requested based on imputation principles pursuant to 2 C.F.R. § 180.630(a).

II. Parties Involved

Respondents

3. GLENN is the former Regional Administrator of EPA Region 4³ and former Director of ADEM. *See* Exhibit 2- Jury Trial Transcript in *U.S. v. Joel Iverson Gilbert, et al.*, United States District Court, Northern District of Alabama, Southern Division, Volume 8 of 19, July 5, 2018 at 2093-2095. Prior to becoming the EPA Region 4 Regional Administrator, GLENN was an independent consultant and engineer. *See id.* at 2093.

4. SEC is an active Alabama limited liability company created by GLENN, Phillips, and others that engages in professional engineering services. *See* Exhibit 2 at 2093-2094 and Exhibit 4- Information from Alabama Secretary of State on Southeast Engineering & Consulting, LLC. SEC contracted with Balch & Bingham, a law firm headquartered in Birmingham, Alabama, to provide services in responding to EPA actions in North Birmingham. *See* Exhibit 2 at 2110-2112. GLENN was the signatory on the contract and provided invoices from SEC to Balch & Bingham for payment. *See id.* at 2110-2114.

that ADEM issues. AEMC also adopts environmental regulations and selects the ADEM director. *See* Exhibit 3 - Information from ADEM website and Exhibit 2 at 2096-2097.

² Drummond Company, Inc. is the largest merchant coal producer in the United States, and ABC Coke is one of its divisions. *See* Exhibit 8- Information from Drummond Company, Inc. website.

³ EPA Region 4 consists of eight states: Alabama, Georgia, Mississippi, Tennessee, North Carolina, South Carolina, Florida, and Kentucky. *See* Exhibit 9- Information from US EPA website.

Other Parties

5. During the relevant time, Phillips was an AEMC Commissioner and worked for SEC, the consulting firm he co-created. *See* Exhibit 1 and Exhibit 2 at 2093-2094, 2110-2113.

6. Joel Iverson Gilbert was an attorney and partner at Balch & Bingham. *See* Exhibit 5 Indictment in *U.S. v. Joel Iverson Gilbert et al.* at 1. Gilbert worked in Balch & Bingham's Environmental and Natural Resources Section. *Id.* Gilbert was one of the Balch & Bingham partners primarily responsible for representing Drummond Company, Inc. and ABC Coke in responding to EPA actions in North Birmingham. *Id.* at 2 and 7. *See also* Exhibit 2 at 2113.

7. David Lynn Roberson was Vice President of Government and Regulatory Affairs for Drummond Company, Inc. and was also involved in responding to EPA's actions in North Birmingham on behalf of Drummond Company, Inc. *See* Exhibit 5 at 2. *See also* Exhibit 2 at 2098-2099.

III. Background

8. The background information regarding the environmental issues in North Birmingham is contained in Exhibit 5 at 4-7. This matter involves the 35th Avenue Superfund Site ("Site") which lies within three northern Birmingham communities, Harriman Park, Collegeville, and Fairmont. The Site is in a mixed industrial and residential area of Birmingham, Jefferson County, Alabama within the area historically known as North Birmingham. The Site and surrounding area include two coke oven plants, asphalt batch plants, pipe manufacturing facilities, steel producing facilities, quarries, coal gas holder and purification system facility, and the Birmingham-Shuttlesworth International Airport. *See* Exhibit 6- EPA Factsheet, 35th Avenue Birmingham, AL Cleanup Activities. This matter involves certain acts aimed at assisting in protecting Drummond Company, Inc. and ABC Coke from potential costs associated with being held responsible for pollution within the Site in North Birmingham and certain actions taken to prevent EPA from listing the Site on the National Priorities List ("NPL") and expanding the Site into the Tarrant and Inglenook areas of North Birmingham. *See* Exhibit 5 at 8-20. The identification of a site for the NPL is intended in part to guide EPA in serving notice to potentially responsible parties that the EPA may initiate financed remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). *See id.* at 5-7.

IV. Factual Summary

9. This matter generally involves GLENN's alleged aiding and abetting Phillips to solicit and/or receive compensation from Drummond Company, Inc. for personal gain or for that of a business with which Phillips is associated in violation of the Alabama Ethics Act, Sections 36-25-5(a); 36-25-5.1(a); 36-25-5(e); and 36-25-7(d) of the Alabama Code. *See* Exhibit 1.

V. Factual Narrative

10. During the trial of Joel Iverson Gilbert, on July 8, 2018 GLENN testified regarding his involvement with Balch & Bingham, the Drummond Company, Inc. and his activities regarding

the actions taken in responding to EPA actions in North Birmingham. *See generally*, Exhibit 2 at 2111-2113, 2134, 2138, 2143-2144, 2146-2147, 2193, 2196, 2200-2201, and 2207. GLENN's testimony is contained in Exhibit 2. Exhibit 2 is incorporated by reference herein.

11. On February 8, 2019, ⁴ a superseding Indictment was filed alleging GLENN engaged in multiple violations of the Alabama Ethics Act as described herein at ¶ 1. *See* Exhibit 1. Exhibit 1 is incorporated by reference herein.

VI. Statement of Authorities

12. GLENN's suspension is warranted pursuant to 2 C.F.R. § 180.700(a). Under 2 C.F.R. § 180.705(b), GLENN's Indictment provides adequate evidence to suspect offenses that, pursuant to 2 C.F.R. § 180.800(a)(4), indicate a lack of business integrity or business honesty that seriously and directly affect his present responsibility. The Indictment alleges that GLENN in Count 1 aided and abetted a public official, Phillips, AEMC Commissioner, to intentionally use Phillips' official position and/or office to obtain compensation from Drummond Company, Inc. for Phillips, a family member of Phillips and/or a business with which Phillips is associated in violation of Section 36-25-5(a) of the Code of Alabama; in Count 2 GLENN allegedly aided and abetted Phillips to intentionally solicit or receive compensation from a principal, Drummond Company, Inc., in violation of Section 36-25-5.1(a) of the Code of Alabama; in Count 3 GLENN allegedly aided and abetted Phillips to intentionally solicit compensation, other than in the ordinary course of business, from Drummond Company, Inc., a business that Phillips directly inspects, regulates, or supervises in Phillips' official capacity in violation of Section 36-25-5(e) of the Code of Alabama; in Count 4 GLENN allegedly aided and abetted Phillips to intentionally solicit or accept compensation from Drummond Company, Inc., a business regulated by AEMC, while Phillips was associated with AEMC in violation of Section 36-25-12 of the Code of Alabama; and in Counts 5 -15 GLENN allegedly aided and abetted Phillips to intentionally solicit or receive money from Drummond Company, Inc. for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission, or other body of which Phillips is a member in violation of Section 36-25-7(d) of the Code of Alabama. *See* Exhibit 1. GLENN's alleged inability to adhere to the law negatively reflects on his ability to comply with the terms of federal nonprocurement transactions. *See id.* As such, commission of any of these offenses as alleged in the Indictment is indicative of a lack of business integrity or business honesty that seriously and directly affects GLENN's present responsibility. These counts, separately and individually, provide causes for suspension.

13. Suspension of GLENN is warranted under 2 C.F.R. § 180.700(c), because immediate action is necessary to protect the public interest. *See* ¶¶ 16-19, *infra*.

14. Suspension of SEC is warranted under 2 C.F.R. § 180.700(b) because the Indictment containing GLENN's alleged misconduct provides adequate evidence to suspect a cause for debarment under 2 C.F.R. § 180.800(d), cause of so serious or compelling a nature that it affects SEC's present responsibility. Pursuant to 2 C.F.R. §180.630(a), GLENN's improper conduct

⁴ GLENN was initially indicted on November 9, 2018 and then a superseding indictment was filed on February 9, 2019.

may be imputed to SEC. GLENN's alleged misconduct occurred in connection with his employment with SEC and SEC accepted the benefits derived from this scheme. *See* Exhibit 1 and Exhibit 2 at 2110-2114.

15. Suspension of SEC is warranted under 2 C.F.R. § 180.700(c), because immediate action is necessary to protect the public interest. *See* ¶¶ 16-19, *infra*.

VII. Impact Analysis

16. ADEM is the state agency responsible for the implementation of environmental programs and policies, including administering federally approved or delegated environmental programs. The State of Alabama and ADEM receive substantial funding from the federal government. *See* Exhibit 5 at 1 and 5. The Governor of Alabama designated ADEM as the State of Alabama's representative on issues concerning the potential listing of the Site on the NPL and the expansion of the Site to the Tarrant and Inglenook communities. *Id.* at 6-7. *See also*, Exhibit 2 at 2095-2098, 2118.

17. AEMC is the state commission responsible for developing environmental policy for the State of Alabama, selecting the ADEM Director, and advising the ADEM director on environmental matters. *See* Exhibit 5 at 5. AEMC holds periodic public meetings and, among other matters, considers comments from interested parties on issues involving the State of Alabama's environmental policy. *See id.* *See also*, Exhibit 2 at 2096-2097, Exhibit 5 at 5-6, and Exhibit 8- AEMC Meeting Minutes dated February 20, 2015.

18. As a former ADEM Director and EPA Regional Administrator in decision-making authority concerning federally funded programs, GLENN has been a "principal" as defined at 2 C.F.R. §§ 180.995 and 1532.995(h). Furthermore, GLENN's trial testimony outlines his participation in a plan and strategy in which Balch & Bingham paid GLENN through a consulting contract with SEC, among other things, to support Balch & Bingham's and Drummond Company's interests in opposition to EPA's actions in North Birmingham. *See* Exhibit 2 at 2111-2113, 2134, 2138, 2143-2144, 2146-2147, 2193, 2196, 2200-2201, and 2207. GLENN's testimony indicates that he as a technical consultant occupied a professional position capable of substantially influencing the outcome of activities aimed at use of federal funds at the Site. *See id.* Thus, GLENN served as a "principal" as defined at 2 C.F.R. §§ 180.995 and 1532.995(b).

19. The nature and circumstances of GLENN's position as a principal and his alleged misconduct as set forth in the Indictment and as described in ¶ 1 herein, indicate that action is necessary to protect the public and the integrity of federal programs. *See* Exhibit 1.

VIII. Recommendation

20. Based upon the information and authorities contained herein, the SDD respectfully recommends the immediate suspension of ONIS "TREY" GLENN and SOUTHEAST ENGINEERING & CONSULTING, LLC pending completion of legal proceedings.

IX. Administrative Coordination

21. The EPA Office of the Inspector General submitted the Indictment this matter to EPA SDD.

22. EPA has submitted relevant information on this matter to the Interagency Suspension and Debarment Committee and has been designated as Lead Agency pursuant to its process.

Exhibits

1. Indictment in *State of Alabama v. Onis Glenn III.* before the State of Alabama Circuit Court of the Tenth Judicial Circuit, filed February 8, 2019.
2. Jury Trial Transcript in *U.S. v. Joel Iverson Gilbert, et al.*, United States District Court, Northern District of Alabama, Southern Division, Volume 8 of 19, July 5, 2018.
3. Information from ADEM website accessed March 11, 2019.
4. Information from Alabama Secretary of State on Southeast Engineering & Consulting, LLC, accessed March 18, 2019.
5. Indictment in *U.S. v. Joel Iverson Gilbert et al.*, U.S. District Court, Northern District of Alabama, Southern Division, filed September 27, 2017.
6. EPA Factsheet- 35th Avenue Birmingham, AL Cleanup Activities, accessed January 24, 2018.
7. AEMC Meeting Minutes dated February 20, 2015 accessed March 5, 2019.
8. Information from Drummond Company, Inc. website, accessed March 11, 2019.
9. Information from US EPA website accessed March 18, 2019.