



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF MISSION SUPPORT

SUPPLEMENTAL ACTION REFERRAL MEMORANDUM

SUBJECT: Request for the Continued Suspension and Proposed
Debarment of:

ONIS "TREY" GLENN, III (Currently Suspended 04/11/2019)
EPA Case No. 18-0941-05A

SOUTHEAST ENGINEERING & CONSULTING, LLC
EPA Case No. 18-0941-07A (Currently Suspended 04/11/2019)

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: December 3, 2020

The U.S. Environmental Protection Agency ("EPA") Suspension and Debarment Division ("SDD") offers the following facts in support of this recommendation for the continued suspension and proposed debarment of ONIS "TREY" GLENN ("GLENN") and SOUTHEAST ENGINEERING & CONSULTING, LLC ("SEC") (collectively "Respondents"). The Federal Acquisition Regulation ("FAR") provides for the suspension and debarment of contractors at 48 C.F.R. Subpart 9.4. The Nonprocurement Common Rule ("NCR") at 2 C.F.R. Part 180, as implemented through 2 C.F.R. Part 1532, provides for the suspension and debarment of participants or principals in covered transactions. Public Law 103-355, section 2455, and Executive Order 12689 provide for the reciprocal effect of a debarment or suspension action taken under the FAR or the NCR. SDD recommends that the EPA Suspension and Debarment Official ("SDO") continue to suspend and propose GLENN and SEC for debarment under the NCR.

I. Introduction

1. This request for continued suspension and proposed debarment is based on GLENN's guilty plea and conviction for the "offense of receiving a thing of value for purpose of influencing official action in violation of Section 36-25-7(d) of the Alabama Criminal Code, 1975..." Exhibit 10—Plea of Guilty and Sentence, *State of Alabama v. Onis Glenn III*, Circuit Court of Jefferson County, Alabama, Birmingham Division.

2. This request for continued suspension and proposed debarment of SEC is 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 4¹ and former Director of the Alabama Department of Environmental Management (“ADEM”). Exhibit 2— Jury Trial Transcript, *United States v. Joel Iverson Gilbert*, 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. *Id.* at 2093.

4. SEC is an active Alabama limited liability company created by GLENN, Willie S. Phillips, Jr. (“Phillips”) and others that engages in professional engineering services. Exhibit 2 at 2093-2094; Exhibit 11—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. Exhibit 2 at 2110-2112.

Other Parties

5. Phillips is the former Commissioner of the Alabama Environmental Management Commission (“AEMC”). Exhibit 1—Indictment, *State of Alabama v. Onis Glenn III*, State of Alabama Circuit Court of the Tenth Judicial Circuit. Phillips is a co-creator of SEC. Exhibit 2 at 2093-2094. During the relevant time, Phillips was an AEMC Commissioner and worked for SEC, the consulting firm he co-created. Exhibit 1; Exhibit 2 at 2093-2094, 2110-2113.

6. Joel Iverson Gilbert (“Gilbert”) was an attorney and partner at Balch & Bingham. Exhibit 5—Indictment in *United States v. Joel Iverson Gilbert*, 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; 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. Exhibit 5 at 2; 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

¹ EPA Region 4 consists of eight states: Alabama, Georgia, Mississippi, Tennessee, North Carolina, South Carolina, Florida, and Kentucky. Exhibit 9- Information from US EPA website.

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, a coal gas holder and purification system facility, and the Birmingham-Shuttlesworth International Airport. 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. 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”). *Id.* at 5-7.

IV. Factual Narrative

9. During the trial of Joel Iverson Gilbert, on July 8, 2018, GLENN testified regarding his involvement with Balch & Bingham and the Drummond Company, Inc., and his activities in responding to EPA 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 is contained in Exhibit 2. Exhibit 2 is incorporated by reference herein.

10. On February 8, 2019,² a superseding Indictment filed in the State of Alabama Circuit Court of the Tenth Judicial Circuit alleged that GLENN engaged in multiple violations of the Alabama Ethics Act. The superseding Indictment is attached as Exhibit 1 and is incorporated by reference herein.

11. On October 26, 2020, GLENN pled guilty to Counts 5, 6, and 7 of the superseding Indictment. Exhibit 10. “On recommendation of the prosecutor, Cynthia Raulston, and as part of the plea agreement, Counts 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, and 15 are dismissed.” *Id.* The October 26, 2020 Guilty Plea and Sentence stated “[i]t is the judgment and sentence of the Court that by agreement of the parties, the defendant shall be imprisoned in the County Jail for a term of two years (2). Said sentence is suspended and the defendant is placed on two years (2) of unsupervised probation.” *Id.* GLENN was ordered to pay a \$3,500 fine for Counts 5 and 6 and ordered to pay \$3,000 for Count 7. The Guilty Plea and Sentence is attached as Exhibit 10 and is incorporated by reference herein.

12. On October 27, 2020 an Amended Sentencing Order corrected a mistake in the October 26, 2020 Sentence stating that GLENN is “sentenced to a term of twelve (12) months in the County Jail that is suspended with two years of unsupervised probation to follow.” Exhibit 10 at 3.

V. Statement of Authorities

Authorities for Continued Suspension

13. GLENN’s continued suspension is warranted pursuant to 2 C.F.R. § 180.700(a). Under 2 C.F.R. § 180.705(b), GLENN’s superseding 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

² GLENN was initially indicted on November 9, 2018 and then a superseding indictment was filed on February 9, 2019.

seriously and directly affect his present responsibility. The superseding Indictment to which GLENN pled guilty and was convicted under states in Counts 5, 6 and 7 that GLENN aided and abetted Phillips to intentionally solicit or receive money from Drummond Company, Inc. for advice or assistance on matters concerning the Alabama 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. Exhibit 1. As an independent consultant, engineer and co-creator of SEC, a professional consulting firm, GLENN's business integrity and business honesty includes his honest compliance with the requirements of Alabama law in his provision of engineering or consulting services, which GLENN admittedly failed to do. Exhibits 1 and 10. Counts 5, 6, and 7, separately and individually, provide causes for continued suspension.

14. Continued suspension of GLENN is warranted under 2 C.F.R. § 180.700(c), pending the completion of debarment proceedings to protect the public interest. *See* ¶¶ 20-23, *infra*.

15. Continued suspension of SEC is warranted under 2 C.F.R. § 180.700(b) because the Indictment outlining GLENN's misconduct and GLENN's conviction provide 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 may be imputed to SEC. GLENN's misconduct occurred in connection with his employment with SEC and SEC accepted the benefits derived from this scheme. Exhibit 1; Exhibit 2 at 2110-2114.

16. Continued suspension of SEC is warranted under 2 C.F.R. § 180.700(c), pending the completion of debarment proceedings to protect the public interest. *See* ¶¶ 20-23, *infra*.

Authorities for Proposed Debarment

17. Debarment of GLENN is warranted pursuant to 2 C.F.R. § 180.800(a)(4) for an offense that indicates a lack of business integrity or business honesty that seriously and directly affect GLENN's present responsibility. As an independent consultant, engineer and co-creator of SEC, a professional consulting firm, GLENN's business integrity and business honesty includes his honest compliance with the requirements of Alabama law in his provision of engineering or consulting services which GLENN admittedly failed to do. Exhibits 1 and 10. GLENN's admitted offense of receiving a thing of value for purpose of influencing official action in violation of Section 36-25-7(d) of the Alabama Criminal Code of 1975 is an offense that indicates a lack of business integrity or business honesty that seriously and directly affect GLENN's present responsibility.

18. Debarment of GLENN also is warranted pursuant to 2 C.F.R. § 180.800(d). As stated in Counts 5, 6 and 7 of the Indictment to which GLENN pled guilty, GLENN aided and abetted Phillips to intentionally solicit or receive money from Drummond Company, Inc. for advice or assistance on matters concerning the Alabama 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. Exhibits 1 and 10. GLENN's misconduct in engaging in these offenses constitutes cause of so serious or compelling a nature that it affects his present responsibility.

19. Debarment of SEC is warranted 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 may be imputed to SEC. GLENN's misconduct occurred in connection with his employment with SEC and SEC accepted the benefits derived from this scheme. Exhibit 1; Exhibit 2 at 2110-2114.

VI. Impact Analysis

20. ADEM is the Alabama 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. Exhibit 5 at 1, 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; Exhibit 2 at 2095-2098, 2118.

21. 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. 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. *Id.*; Exhibit 2 at 2096-2097; Exhibit 5 at 5-6; Exhibit 8- AEMC Meeting Minutes dated February 20, 2015.

22. 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. 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. *Id.* Thus, GLENN served as a "principal" as defined at 2 C.F.R. §§ 180.995 and 1532.995(b).

23. The nature and circumstances of GLENN's position as a principal and his misconduct as set forth in ¶¶ 9, 10, 11, 13 and 15 indicate that immediate action is necessary to protect the public and the integrity of federal programs. Exhibits 1 and 10.

VII. Recommendation

24. Based upon the information and authorities contained herein, the SDD respectfully recommends the continued suspension of GLENN and SEC pending completion of debarment proceedings. Further, SDD recommends the proposed debarment of Respondents for a period of up to five years for the following reasons.

25. GLENN's misconduct occurred through a series of transactions in furtherance of the misconduct over a substantial period from 2013 to 2015. Exhibit 2 at 2110, 2114, 2118, 2135, 2148-2149, 2157, 2163, 2168-2169, 2171, 2175-2179, 2189-2190, 2195, 2199, 2205, 2208, 2210, 2212, and 2233.

26. GLENN's conduct evidenced a scheme to cover up or disguise misconduct demonstrating a keen awareness of wrongdoing and a special attention to deceit. GLENN was the signatory on the contract and provided invoices from SEC to Balch & Bingham for payment. Exhibit 2 at 2110-2114. 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. Exhibit 2 at 2111-2113, 2134, 2138, 2143-2144, 2146-2147, 2193, 2196, 2200-2201, and 2207.

27. Although not occupying a position of public trust at the time of the criminal misconduct, as a former ADEM Director and Regional Administrator of EPA Region 4, GLENN has held positions in which he was charged with upholding the public trust. Exhibit 2 at 2093-2095. During the time when GLENN was an independent consultant, because of the prior position he held with ADEM, he was uniquely positioned to engage other public officials like Phillips who, as AEMC Commissioner, held a significant position of public trust. Exhibit 2 at 2095-2099, 2103-2104, 2109- 2110, 2215-2220. However, GLENN's misconduct shows he aided and abetted Phillips in betraying the public trust. Exhibits 1 and 10.

VIII. Administrative Coordination

28. This case was investigated by the EPA Office of the Inspector General.

29. 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

Exhibits attached to the Action Referral Memorandum for Suspension:

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 *United States v. Joel Iverson Gilbert*, 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 *United States 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.

Exhibits attached to the Action Referral Memorandum for Continued Suspension and Proposed Debarment:

10. Plea of Guilty and Sentence, *State of Alabama v. Onis Glenn III*, Circuit Court of Jefferson County, Alabama, Birmingham Division, filed October 26, 2020 and Amended Sentencing Order, *State of Alabama v. Onis Glenn III*, Circuit Court of Jefferson County, Alabama, Birmingham Division, filed October 27, 2020.
11. Information from Alabama Secretary of State on Southeast Engineering & Consulting, LLC, accessed November 23, 2020.