

ENVIRONMENT

LeFleur Still Feeling the Sting From Advocacy Groups' Condemnation, Responds to Their Criticism

Hank Black, December 19, 2018



Months after testifying in the North Birmingham bribery trial, the state's top environmental regulator is firing back at watchdog groups calling for his dismissal or resignation.

Lance LeFleur, director of the Alabama Department of Environmental Management, accuses environmental advocates of seeking media headlines as a means of raising money to keep their organizations financially afloat.

“ADEM is their target to keeping (them) operating,” LeFleur told BirminghamWatch.

The accusation echoes statements that have become more common from industries that are regulated by ADEM and say they are bedeviled by negative media coverage. Alabama Power Co., for example, recently stated that “certain organizations continue to push out information intended to scare Alabamians.”

State regulators and advocacy citizens groups have long had their differences, but testimony in a federal pollution trial earlier this year turned it into a full-fledged war.

In August, 11 Alabama environmental advocacy groups demanded LeFleur be fired, alleging among several reasons that he did not endorse placing the North Birmingham 35th Avenue Superfund site on the National Priority List for pollution clean-up. He responded with a point-by-point rebuttal.

The Alabama Environmental Management Commission, ADEM's oversight body, declined at its October meeting to fire LeFleur. And last week, at its monthly meeting, the commission rejected another request by environmentalists to override LeFleur's objection to the placing the North Birmingham Superfund site on the National Priority List for cleanup.

The groups' attack on LeFleur keyed on his testimony in the federal court trial of attorney Joel Gilbert and lobbyist David Roberson, a vice president of the Drummond Company. The two were convicted for their part in a scheme to prevent the U.S. Environmental Protection Agency from putting the 35th Avenue Superfund neighborhoods on the priority list to clean up decades-old industrial soil pollution and potentially extending the clean-up to nearby Tarrant, where Drummond operates a 100-year-old ABC Coke facility. They are appealing their convictions.

Gilbert and Roberson paid former state Rep. Oliver Robinson participate in the effort, according to testimony and evidence presented in the trial. Robinson pleaded guilty and testified against the two.

There was testimony that Gilbert and Roberson recruited multiple state and local officials as well as members of the Environmental Management Commission to put pressure on LeFleur to oppose EPA's pollution clean-up efforts. If the EPA extended the Superfund site to Tarrant, Drummond could be responsible for at least some of the cost of ridding the area of toxic industrial residue.

The nonprofit environmental groups claimed that LeFleur told EPA officials in June 2014 that he did not oppose the Superfund priority listing but that he later caved under pressure from then-Gov. Robert Bentley and other officials and lawmakers.

LeFleur said he was not aware that a letter Bentley sent him to sign and send to EPA was written by Gilbert. Clean air and water advocates complained that LeFleur testified at trial that he had a common practice of signing letters written by lobbyists.

That is not true, LeFleur said. "They misquote (my) testimony," he said. "Where they said, 'Lance signs letters lobbyists prepare all the time,' the question was, 'Is it unusual for legislators to sign letters lobbyists prepare for them?' And yeah, it is common. But that was not what was asked."

The ADEM director said his letter to EPA in June 2014 did not object to the priority listing, provided three conditions were met: First, if parties responsible for the pollution could be identified and they volunteered to pay for the clean-up; second, if

EPA were to win a court ruling that compelled responsible parties to pay clean-up costs; and, finally, if the Alabama Legislature agreed to cover the state's 10% share of the clean-up cost.

LeFleur said the EPA did not respond to that letter until the following September, when it notified ADEM it would, with his concurrence, put the site on the priority list based on it having achieved a required score on the Hazard Ranking System, a formula often used for such listing.

He told EPA administrators that his June email had expressed only that he would not stand in the way of the listing if the three conditions were met, but their intention to include the 35th Avenue site had no scientific basis. For that he pointed to evaluations by the federal Agency for Toxic Substances and Disease Registry that had found the area's air and soil presented no or very low health hazard to the general public, other than to children who ate the dirt, a condition known as pica. He also pointed to a study by the Jefferson County Department of Health that found no increased cancer, infant mortality and other death rates in the area compared with the rest of the county.

Without other evidence, the director said, EPA based its decision on the Hazard Ranking System, the most common way a site becomes eligible for the priority list. The system evaluates a site's threat to human health or the environment, but LeFleur said that in this case the result was flawed because its calculations of background levels of pollution were not the same as those used in previous tests performed in the 35th Avenue area.

At the oversight commission meeting last week, Michael Hansen, executive director of the clean air advocacy organization Gasp, asked the commission to endorse a Superfund priority listing for 35th Avenue because the site's hazard ranking score of 50 was far above the threshold of 28.5. He said that alone would be sufficient for listing, regardless of other criteria. Making the NPL, he said, would allow more money to be brought into the area for clean-up and to expand activities to benefit the communities.

He disputed LeFleur's interpretation of the results of tests performed by the Agency for Toxic Substances and Disease Registry, saying the director had cherry-picked the findings to downplay other negative public health effects. Hansen also objected to LeFleur's terming of the health department's analysis as a study instead of simply an analysis of death data. "It could not really be called a study of risk and other factors," he said.

LeFleur said a priority listing for the North Birmingham site would not guarantee a fast clean-up of pollution, and that other approaches “have proven more timely and effective.”

He told the commission last week that only three of 15 Alabama sites placed on the priority list in the last 35 years were cleaned up. Regarding the 35th Avenue location, he said, “It is noteworthy that EPA has not finalized (priority) listing but rather employed an alternative approach that’s well on its way to removing contamination. It shows the effectiveness of the alternative approach,” which he said has led to the project being 80% complete with a projected finish in two more years.

“A priority listing would delay completion by decades,” he said, partly because available funding has dwindled significantly over the years. “ADEM will never stand in the way of any clean-up of any site,” LeFleur said, “however, it has to meet the scientific and legal requirements.”

Engagement Disagreement

LeFleur told BirminghamWatch last month that he has been personally offended by environmentalists’ charge that he does not effectively engage with them and has a closer relationship with the industries ADEM regulates.

“We reach out to every party that has an interest in what we’re going to do and get their point of view (and) have sent invitations to every environmental group I could find to come and bring up any (issue) they want,” he insisted.

Yet, he said, the nonprofits “want to communicate by news release...as a means of raising money.”

That strategy, he said, is causing the groups to lose credibility with the wider public, the business community, elected officials and decision-makers in the state. They “are having diminished, diminished, diminished credibility, and at some point they become irrelevant.”

Advocacy groups have less real-world experience in matters that affect them, he said, whereas industries that ADEM regulates will immediately call, write or knock on his door when issues arise that threaten their interests.

Cindy Lowry, director of the Alabama Rivers Alliance, told the commission in October that such single-party communications lack transparency while information discussed

in front of all parties creates “less opportunity for bias and corruption to occur.”

Access to one-on-one meetings is an issue for small organizations and individuals with little time or money, Lowry said, while those “with more financial and human resources have a much greater ability to travel.”

Although the advocacy groups acknowledge they receive invitations to meet with LeFleur, some question the productiveness of those meetings. Environmental attorney David Ludder, a former ADEM staff member, said his attendance became a waste of time and money. He said the meetings were held “just so he could claim he had engaged with (us).”

LeFleur and Ludder have a contentious history, but the director seemed dismayed that his invitations had been met with such low enthusiasm.

Will LeFleur ever have a less contentious relationship with advocacy groups, not to mention with media outlets that have characterized him in unsavory terms?

Bad feelings are obvious and still run deep, with the director often referring to “erroneous” comments and saying he is called “unethical” and even “criminal.” The negative publicity, he said, could affect ADEM’s ability to hire staff.

The accusations keep coming, and Gasp’s Michael Hansen said LeFleur’s “thin-skinned reactions” have become a common theme since the federal bribery trial.

Myra Crawford, Cahaba Riverkeeper executive director, said LeFleur had been “polite” since the trial but has not attempted to engage further.

“It would take a very strong person to hold out an olive branch to the people who asked for his termination because of his actions (during the trial) that did not serve the interests of the citizens he is supposed to be protecting,” Crawford said.

Transparency of communication

In other action last week, the environmental management commission declined to act on a demand from Ludder, representing the nonprofit Environmental Defense Alliance, to require its members to use a government domain for all email communication for official business. Public records requests from that group and others failed to produce emails involving former AEMC member Scott Phillips.

Phillips, along with former ADEM director Trey Glenn, his former business partner, face state trial next year following their indictments in November by a Jefferson County grand jury. They were charged with feloniously using their positions for personal gain, as well as misdemeanor violations of the state ethics law. Both have pleaded innocent, and Glenn later resigned his position as EPA regional administrator overseeing Alabama and other southeastern states.

Robert Tambling, a staff lawyer from the state attorney general's office, told the commission the board had no legal authority to force its members to use a government domain for communications but could request any such emails be copied to the panel's executive assistant. The commission took no formal action on the request.
