

**Comments of the Environmental Defense Alliance to
the Alabama Environmental Management Commission**

Presented by David A. Ludder

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Mr. Chairman, Members of the Commission:

I speak to you today on behalf of the Environmental Defense Alliance. The Alliance is an Alabama non-profit membership organization dedicated to improving environmental quality.

I am sure you have all followed the trial that resulted in the conviction of Drummond executive David Roberson and Balch & Bingham attorney Joel Gilbert. The trial revealed extensive efforts undertaken by Roberson and Gilbert to influence State, local and federal government officials to actively oppose EPA's efforts to list the 35th Avenue Site on the National Priorities List and to expand the Site to include Tarrant and Inglenook. Among those that Roberson and Gilbert attempted to influence were ADEM Director Lance LeFleur and AEMC member Scott Phillips and AEMC Chair Lanier Brown. Yesterday, I sent you a Chronology that included references to phone calls, email exchanges, and meetings that evidence suggests occurred between David Roberson, Joel Gilbert, or Oliver Robinson and Scott Phillips and Lanier Brown.

The chronology demonstrates that Southeast Engineering & Consulting, LLC - a firm which Scott Phillips worked for - contracted with Balch & Bingham to provide Balch with advice, representation and assistance in connection with environmental and regulatory and political matters that are of direct interest to Balch and/or its clients. The contract provided that Southeast Engineering & Consulting could not disclose the existence of any terms of the contract without the permission of Balch. Southeast Engineering & Consulting was engaged by Balch to provide services designed to defeat EPA's efforts to list the 35th Avenue Site on the NPL and

investigate whether the 35th Avenue Site should be expanded to include Tarrant and Inglenook for the benefit of Balch's client - Drummond.

The Chronology demonstrates the extensive efforts undertaken by Scott Phillips - acting as an agent of Southeast Engineering & Consultants on behalf of Balch and Drummond - to undermine EPA's efforts to protect the residents of North Birmingham from exposure to toxic contaminants by listing the 35th Avenue Site on the NPL and investigating whether the 35th Avenue Site should be expanded to include Tarrant and Inglenook. Clearly, Scott Phillips' efforts were in conflict with his obligation as an AEMC member to assure for all citizens of the state a safe, healthful and productive environment. He chose to protect the financial interests of Drummond rather than protect the health of the residents in North Birmingham.

The Chronology also demonstrates a number of previously undisclosed contacts between AEMC Chair Lanier Brown and Joel Gilbert, David Roberson, and Oliver Robinson. By my count, these include 4 meetings, 4 phone calls, and 5 email exchanges. What was discussed in these meetings, phone calls, and email exchanges is largely unknown. At the very least, it appears that Joel Gilbert was attempting to influence Lanier Brown to provide help with convincing ADEM Director Lance LeFleur to oppose EPA's efforts in North Birmingham, just as Gilbert had done with Governor Robert Bentley and Attorney General Luther Strange.

The paramount concern of this Commission should be the health and welfare of the residents of North Birmingham. Rather than trying to defend the past conduct of ADEM and other State officials, the Alliance asks the Commission to defend the health of North Birmingham residents. You can do this by taking two actions. First, you can advise the Director of ADEM to formally withdraw ADEM's support for the January 8, 2015 letter invoking the dispute resolution process established by EPA for resolving disputes between Alabama and the EPA regarding the proposed listing of the 35th Avenue Site on the National Priorities List. If the "State" wishes to continue to pursue the dispute resolution process, let the Attorney General or Governor do it without ADEM. Second, and most importantly, you can advise the Director of

ADEM to withdraw all previous objections to EPA's proposed listing of the 35th Avenue Site on the National Priorities List and to affirmatively notify EPA that ADEM conditionally concurs with EPA's proposal.

Next, the Commission must confront the troubling actions of one of its own members - Scott Phillips. State law commands that agency heads report violations of the State Ethics Law to the Alabama Ethics Commission. This Commission should advise the Director of ADEM to evaluate the existing evidence and determine whether it is sufficient to conclude that Scott Phillips violated the State Ethics Law, and if the Director concludes that he did, report the same to the Alabama Ethics Commission. In addition, the Commission should make a clear public statement that the actions of Scott Phillips are not acceptable to the AEMC by rescinding the Resolution it adopted on June 16, 2017 expressing gratitude for Scott Phillips' service on the Commission. The evidence revealed during the trial of Roberson and Gilbert demonstrates that Scott Phillips is not deserving of gratitude from the public or this Commission.

Finally, this Commission needs to address the lack of transparency by Commission members in the conduct of official business. The use of private email services to communicate with others about official business and the failure to disclose those emails must end. Meetings and phone calls with regulated parties or their representatives must be memorialized and disclosed. Without this kind of transparency, the public will not have confidence that you are protecting them rather than regulated parties. In this regard, the Environmental Defense Alliance calls upon Chairman Lanier Brown to disclose all emails he has exchanged with others concerning the 35th Avenue Site and to disclose the details of all meetings and phone calls he has had with others concerning the 35th Avenue Site. Failing this act of transparency, the Environmental Defense Alliance calls for his resignation.

On behalf of the Environmental Defense Alliance, I thank you for the opportunity to speak today.